



FEDERATION OF ASSOCIATIONS  
OF REGULATORY BOARDS

1466 Techny Road  
Northbrook, IL 60062  
847-559-3272  
847-714-9796 FAX  
farb@farb.org  
www.farb.org

July 19, 2017

(Submitted electronically via [ftcpublic.commentworks.com/ftc/economic-liberty](https://ftcpublic.commentworks.com/ftc/economic-liberty))

Maureen Ohlhausen, Acting Chairman  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC

American Association of Dental Boards

American Association of  
State Counseling Boards

American Association of  
Veterinary State Boards

Association of Appraiser Regulatory  
Officials

Association of Regulatory  
Boards of Optometry

Association of Social Work Boards

Association of State and Provincial  
Psychology Boards

Board of Certification for the Athletic  
Trainer

Council of Landscape Architectural  
Registration Boards

Federation of Chiropractic  
Licensing Boards

Federation of State Massage  
Therapy Boards

Federation of State Medical Boards

International Conference of  
Funeral Service Examining Boards

National Association of Barber Boards of  
America

National Association of  
Boards of Pharmacy

The National Association of Long Term  
Care Administrator Boards

National Association of State  
Boards of Accountancy

National Association of State  
Contractors Licensing Agencies

National Association of State  
EMS Officials

National Board for Certification  
In Occupational Therapy

National Council of Architectural  
Registration Boards

Re: License Portability

Dear Chairman Ohlhausen,

On behalf of the Federation of Associations of Regulatory Boards (FARB) and its 21 Governing Members, this letter is submitted to the Federal Trade Commission (FTC) and its Economic Liberty Task Force (ELTF) in preparation of its July 27, 2017, meeting in Washington, D.C. FARB is a not-for-profit organization whose membership is comprised of associations and federations of regulatory boards from numerous occupations and professions. The membership of FARB Governing Members is comprised of the statutorily created state boards of the various occupations and professions from all United States jurisdictions. Since its inception in 1974, FARB has been recognized by the Internal Revenue Service as exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code based upon its educational and charitable activities.

The mission of FARB is to “*advance excellence in regulation of the professions in the interest of public protection.*” This mission compliments the FTC’s own interest in consumer protection through the furtherance of policies that ultimately benefit the public. These coinciding public protection missions are clearly paramount to each of our goals. Although recent political and legal movements invoke economic growth over public protection, it is a foundational construct that state regulation of licensed professionals is necessary to effectively provide consumers with a means of protection both before products and services are rendered as well as after receipt. An approach that relies on an unregulated free market is a dangerous departure from regulatory structures that have benefited consumers. While the two concepts can coexist, a healthy balance among economic growth, common sense regulation, and a recognition of states’ rights must be respected.

The purpose of the July 27, 2017, FTC ELTF roundtable is to explore options for enhancing portability of occupational licenses by bringing together various experts knowledgeable in the arena of state based licensure of the occupations and professions. The ELTF event description focuses on mobility and portability and queries whether there are unnecessary barriers to obtaining a state issued professional or occupational license. With a focus on mobility and portability, FARB enthusiastically submits this letter to the FTC ELTF and, through its membership, offers significant information about and access to state boards and licensure eligibility decision makers.

FARB is uniquely situated to assist the FTC and other policy makers in addressing issues related to mobility and license portability. FARB Governing Members are associations and federations of state regulatory boards that communicate regularly with all state boards of the respective occupations and professions. In addition, FARB Governing Members provide programs and services to their member state boards and applicant populations that promote uniformity and enhance mobility and portability.

Such programs and services include uniform examinations and assessment mechanisms to ensure entry level competence as one criterion of licensure eligibility. Additional programs include educational assessment of domestic and foreign educational programs, comprehensive databanks of primary source documentation substantiating applicant information such as education, examination, demographics, experience, post licensure continuing education, continuing competence, and more. Such comprehensive databanks are available to the state boards as a means of facilitating efficient licensure eligibility determinations and ultimate issuance of licenses. Finally, FARB and its Governing Members provide model legislation intended to promote uniformity, as well as educational programs, training sessions of board members, staff, and attorneys and numerous relevant written materials regarding regulation.

FARB recognizes and respects the rights of the states to determine what occupations and professions are in need of regulation. A healthy respect for such rights is imperative in understanding the similarities and differences of occupational and professional licensure. A one size fits all approach may not fulfill the public protection needs of the states and respect must be shown for the concepts of federalism and state based regulation. As such, states have crafted a regulatory structure that sets forth standards for qualification for licensure and a means of enforcement for the benefit of the public.

Focus must remain on the need for and benefits of common sense, state based regulation. An administrative system provides protections to virtually all consumers through a means of recognition of qualifications, renewal of licensure, and enforcement on behalf of all consumers in arenas where consumers of products and services may not have the necessary knowledge to otherwise protect themselves. Of course, qualifications for a license will differ from profession to profession and occupation to occupation based upon the level of sophistication necessary to safely and effectively practice.

Turning our attention to the ELTF analysis, FARB provides the following responses to FTC questions and comments for memorialization into the record.

1. *Is obtaining a license in another state a significant barrier to mobility in certain occupations? If licensing is a barrier, what factors contribute to the difficulty – e.g., differences in state standards, burdensome paperwork, multiple fees, etc.?*

In the professions and occupations within the FARB membership, obtaining a license in (an) additional state(s) (after initial licensure) may carry with it certain requirements set forth in state law. However, for the most part, the core criteria related to education, examination, experience and personal history are relatively uniform. Further, as mentioned above, many associations and federations of boards have, at the behest of their member boards, created databanks populated with the information necessary to expedite the decision making of licensure eligibility. Accreditation of educational programs, standardized examinations used by all states, centralized data collection and storage, national databanks of adverse actions, and, where appropriate, national and state criminal background checks provide much of the information necessary to make an informed licensure eligibility determination. Under some circumstances, such decisions can be made within a few days of a request by the licensee for e-profiles to be forwarded to a state.

2. *To what extent is the increased ability to provide certain services electronically (such as by telehealth or telework) driving greater interest in mechanisms to ease the burdens of multistate licensing?*

The advent of technological advancements certainly facilitates practice of certain professions without physical presence in a particular state. Technology in practice can also lead to technology in licensure systems, as referenced above. Based upon how practice of the professions is defined, electronic practice will lead to persons practicing a profession in more states than if limited by physical presence. Driven by technology, along with effective and efficient state based regulation, the above referenced data collection, management, and access programs have been developed and allow for successful integration of technology without sacrificing public safety.

3. *What are the advantages and disadvantages of the mechanisms that interstate licensure compacts and model laws use to ease licensing requirements across state lines, such as mutual recognition, endorsement, and expedited licensure?*

The advantages to model laws and compacts are evident through the standardization of criteria and processes to apply for and be granted a license. At the same time, model laws and compacts must be enacted into law through an unpredictable legislative process. Mutual recognition, reciprocity, and endorsement statutes already exist in many professions and occupations, thereby providing a state by state legislative recognition of issues related to portability and mobility.

4. *How effective are compacts and model laws in reducing barriers to entry in licensed occupations, enhancing mobility of licensees, increasing the supply of licensees, and promoting competition among service providers?*

Compacts and model laws promote uniformity, thereby providing a mechanism for expedited state issued licensure or, alternatively, recognition of an already issued credential. The effectiveness of such arrangements is limited by the fact that each and every state must enact verbatim legislation, again interjecting political processes into the equation. One would theorize that compacts and uniform legislation would not necessarily increase the number of practitioners, but may increase access to services through electronic or other means. Technology and other advancements would play a role as would the various professions and occupations at issue.

5. *How does an interstate licensure compact differ from a model law used to streamline licensing across state lines? What factors influence the choice of an interstate compact or a model law to ease cross-state licensing requirements?*

Interstate compacts create contractual obligations on the part of the adopting states. These obligations address numerous facets of the licensure and enforcement processes, including sharing of complaint information and cooperation in investigations and administrative prosecutions. Like all contracts, compacts are subject to legal enforcement if a state does not comply with the terms and conditions. Model legislation standardizes licensure eligibility criteria that is enforced in each state. Standardized criteria enhance the ability of the states to recognize licensure decisions made elsewhere, while also respecting the rights of the states to legislate as determined necessary. As with compacts, enactment of uniform laws requires legislative action subject to the politics of the circumstances. However, a carefully drafted uniform model law delegates authority to the regulatory board to promulgate rules/regulations to address the specifics unique to the respective occupations and professions. Populating state boards with persons possessing expertise provides an efficient means of promulgating relevant and necessary rules/regulations.

6. *What factors contribute to a successful compact or model law for easing licensing requirements across state lines? Are interstate licensure compacts or other mechanisms more suitable for some occupations than others?*

A healthy respect for the traditional role of state government and agencies is essential to ensure that mobility and portability programs are successful. FARB educational programs emphasize the needs for mobility and license portability programs through the various approaches implemented by Governing Members and available to the respective state boards. Since many professions already recognize uniform criteria related to education and examination, the licensure eligibility determinations by the states can focus on efficiencies related to process. Compacts and model laws gain momentum when addressing professions and occupations that recognize uniform standards and many FARB Governing Members provide the state boards with access to information designed to increase the efficiencies of processing licensure eligibility determinations.

7. *To what extent does the effectiveness of a compact or model law depend on harmonization of state requirements for licensing? Do compacts and model laws tend to increase the substantive or procedural standards to obtain a state license? If there is an increase in standards, does that limit licensee participation or otherwise reduce the effectiveness of a compact or model law in easing licensing requirements?*

Compacts effectuate a contractual obligation to accept and recognize licensure in one state as a means of licensure in another but do not create undifferentiated harmony in standards. Thus far within the regulated professions, compacts represent the use of agreed standards for recognition and acceptance, but do not entirely displace existing standards for licensure. Model laws promote uniformity in regulation, including the establishment of like licensure eligibility criteria. In many professions, uniformity exists in licensure eligibility criteria so there is likely no modification of criteria.

8. *To what extent do centralized databases of applicants' credentials, criminal background checks, and disciplinary information contribute to the effectiveness of an interstate licensure compact? Do centralized databases make it more likely that the compact will be accepted by licensees and employers of licensees?*

Centralized databanks provide state boards with access to information relevant to making licensure eligibility determinations in a more efficient manner. All necessary information is housed in such databanks which state boards can access and, therefore, process applications for licensure more quickly and based upon uniform information. Further, the applicants need not resubmit or re-request redundant data (e.g. transcripts) already housed in the databanks, thereby realizing a savings of time and financial resources. While centralized databanks may provide access to information regarding applicants and licensees, the basis for compacts is recognition of licensure issued by other compact states, not necessarily a method to re-review credentials that otherwise qualify applicants for licensure.

9. *What factors influence a state's decision to enter into a compact or adopt a model law? Are some states more willing to become part of a compact or model law than others? How effective are compacts and model laws that are not universally adopted? How can organizations that develop and administer compacts and model laws foster their adoption by more states?*

Several factors play a role in the legislative enactment of compact legislation or model laws, many of which are dictated by the political environment. As referenced above, a well drafted practice act delegates certain authority to the board which, in turn, can agree to participate in programs that promote uniformity without the need for legislative action, thereby decreasing the political influences that frustrate the process.

10. *What, if anything, can or should the federal government do to encourage adoption of compacts and model laws that promote license portability across state lines?*

The federal government can respect the rights of the states to exercise their authority to regulate the professions. In the era post *North Carolina State Board of Dental Examiners* judicial decision, states are reacting (and perhaps overreacting) to the threats of antitrust liability. The FTC could create safe harbor rules that would ease the antitrust liability threats that are intimidating volunteer board members, both public members and professional members alike.

11. & 12. *How effective are state-based initiatives at improving the portability of licenses for military spouses? Are such portability measures more effective for some professions than others? What mechanisms have states used (e.g., endorsement, temporary licensure, expedited licensure, etc.) to assist military spouses, and which have been the most effective? What lessons have been learned from efforts to improve license portability for military spouses? To what extent might these lessons be extended to streamlining cross-state licensure for all licensees?*

FTC Chairman Ohlhausen

July 19, 2017

Page 6 of 6

Cohesion for state based initiatives is facilitated through the FARB Governing Members, the associations and federations of state regulatory boards. Through the uniformity promoted by these associations/federations, state boards, and ultimately the legislatures, are exposed to the benefits of compacts, model laws, endorsement, reciprocity and other means of mobility and portability. The publicity of media outlets, social media, and Presidential initiatives has brought the military spouse issues to the forefront. An inclusive approach which involves state regulators at the start of such efforts will be an effective way to assist policy makers in distilling the commonalities necessary for regulatory improvements and do so through cooperative, rather than combative reform.

13. *Are there some occupations for which it would be better to reduce or eliminate licensing requirements, rather than develop an interstate licensure compact or model law to ease licensing requirements across state lines? What factors would influence this analysis?*

Attempting to determine occupations and professions that are or may not be in need of regulation oversimplifies the issues at stake. It is easy to develop momentum by citing economic arguments as a basis for not regulating or deregulating. However, when events occur that point toward the need for regulation, the momentum swings back to government involvement. As has been emphasized throughout this letter, there are numerous mechanisms, in addition to model laws and compacts, to address the mobility and portability issues. Further, these options for addressing movement and technology differ from profession to profession and occupation to occupation.

FARB promotes the use of the associations and federations of regulatory boards as a means for achieving efficiencies in state-based licensure eligibility determinations and diminishing the unnecessary barriers without sacrificing consumer protection. Also, recognition of the rights of the states to make such determinations must be taken into consideration as many approaches will require legislative action and/or promulgation of rules/regulations.

FARB thanks the FTC for inviting commentary in advance of the July 27, 2017, meeting. FARB has much to offer in the way of perspectives, ideas, and initiatives being contemplated by state regulatory boards and welcomes a continuing dialogue and further meetings on these important issues.

Sincerely,

  
Dale J. Atkinson  
Executive Director & General Counsel  
Federation of Associations of Regulatory Boards (FARB)

cc: FARB Board of Directors