

Prepared Testimony before the
United States Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

Hearing on “License to Compete: Occupational Licensing and the State Action Doctrine”

Jason Furman, Chairman, Council of Economic Advisers

February 2, 2016

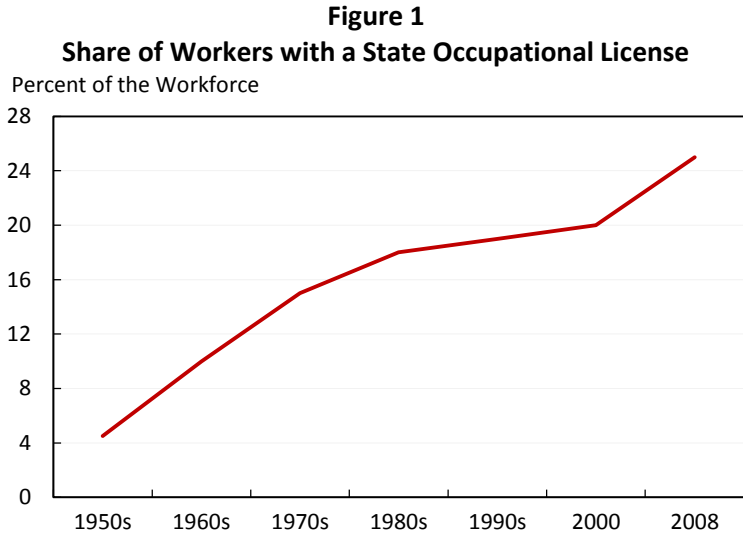
Chairman Lee, Ranking Member Klobuchar, and Members of the Subcommittee: thank you for the opportunity to appear here today to testify about occupational licensing. This is an important economic issue, and one which only in recent years has begun to receive commensurate attention from policymakers and analysts. When carefully designed, licensing can offer important health and safety protections to the public and other benefits to workers. But there is a fine line to tread: the ways that licensing policies are designed and implemented can also affect workers’ wages, employment opportunities, and ability to move across State lines, as well as consumers’ access to essential goods and services. In fact, occupational licensing sometimes functions as an unfair barrier to competition, preventing the benefits of our economic growth from reaching the widest range of households and workers.

My testimony today will draw on a recent report prepared by the Council of Economic Advisers (CEA), the Department of the Treasury’s Office of Economic Policy, and the Department of Labor, which reviews the evidence of the costs and benefits of licensing and recommends several best practices for improving our system of occupational regulation. I will also describe our Administration-wide efforts to reduce overly burdensome and unnecessary licensing.

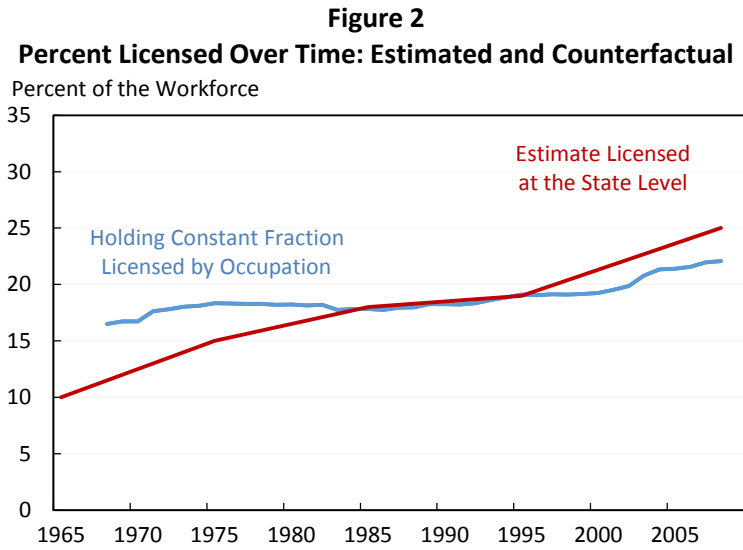
The Prevalence of Licensing: National Increase, State Differences

Occupational licensing has grown substantially over the past several decades. As documented by economists Morris Kleiner and Alan Krueger, the share of the U.S. workforce covered by State licensing laws grew from less than 5 percent in the early 1950s to 25 percent by 2008 (Figure 1). Although State licenses account for the bulk of licensing, the addition of local and Federal licensed occupations further increases the share of the workforce that is licensed to 29 percent.¹

¹ Morris M. Kleiner and Alan B. Krueger. 2013. “Analyzing the Extent and Influence of Occupational Licensing on the Labor Market.” *Journal of Labor Economics* vol. 31, no. 2: S173-S202.

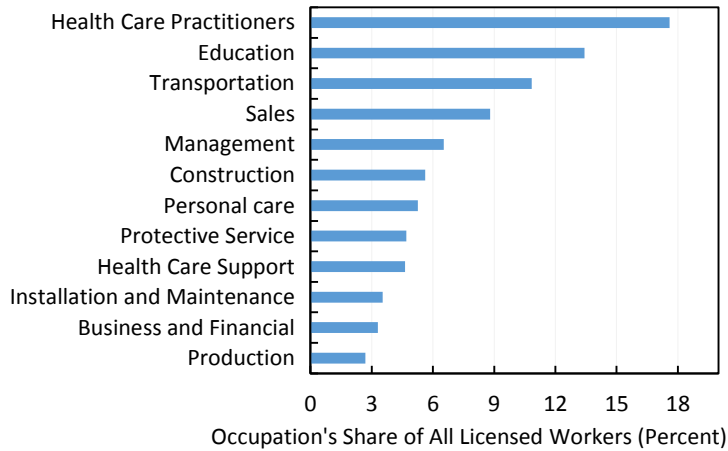


CEA analysis shows that about two-thirds of this change stems from an increase in the number of professions that require a license, with the remaining growth coming from changing composition of the workforce (Figure 2).



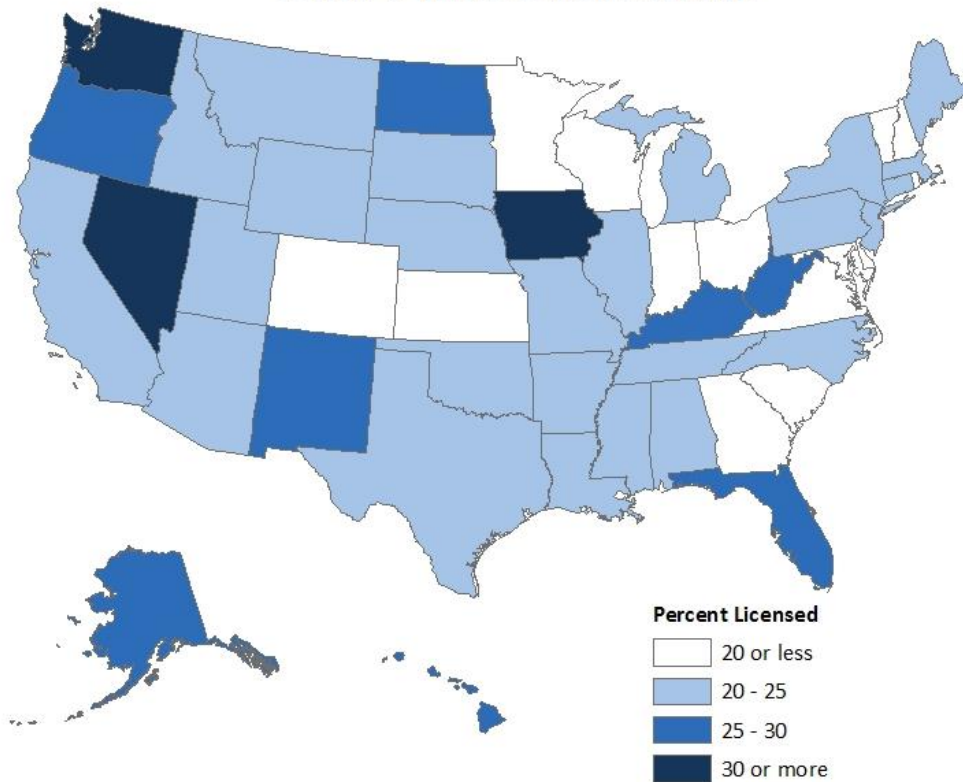
Licensing laws have expanded considerably to cover not only traditionally highly-licensed fields, such as health care and law, but also ones such as sales, management, and construction (Figure 3).

Figure 3
Share of All Licensed Workers in the 12 Occupations with the Most Licensed Workers

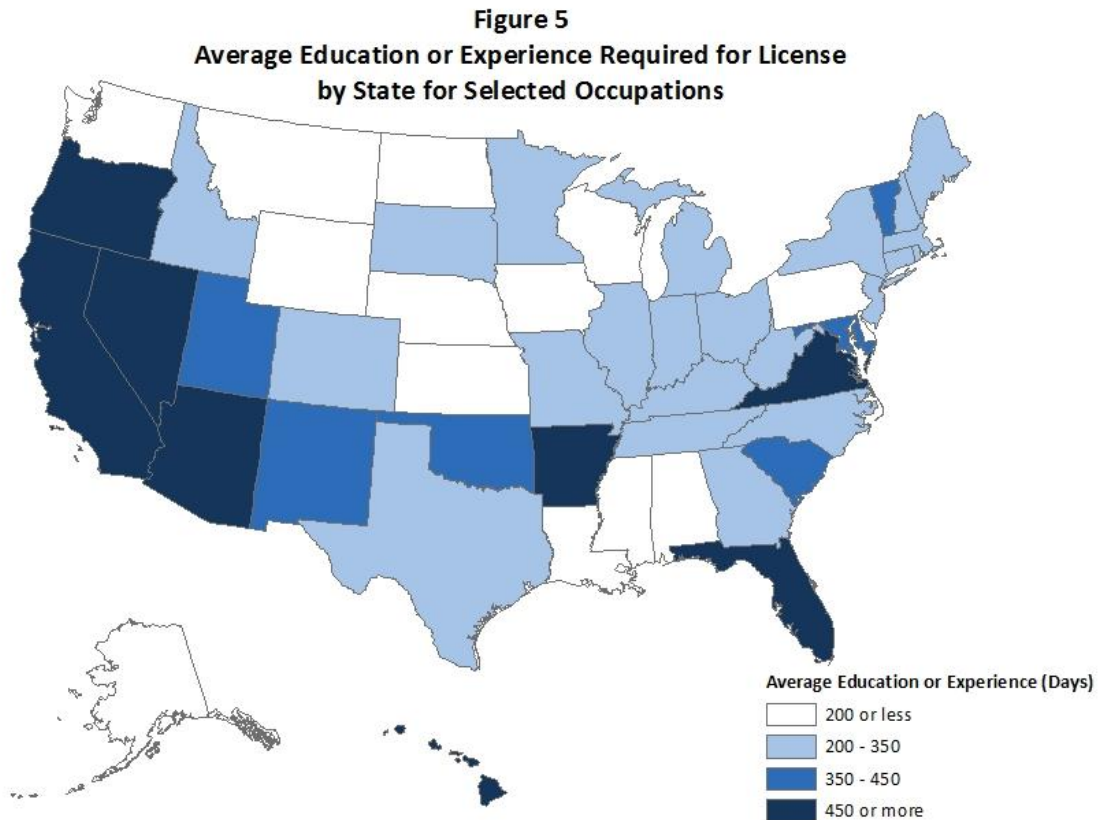


Licensing practices also differ among States. States vary in the licensed share of their workforce, ranging from a low of 12 percent in South Carolina to 33 percent in Iowa (Figure 4).

Figure 4
Percent of Workforce Licensed by State



This pattern appears to largely reflect differences across States in which occupations require a license.² According to estimates from the Council of State Governments, over 1,100 occupations were licensed, certified, or registered in at least one State but fewer than 60 were regulated in all 50 States.³ States also vary dramatically in their requirements for obtaining a license (Figure 5). For example, Michigan requires three years of education and training to become a licensed security guard, while most other States require only 11 days or less. South Dakota, Iowa, and Nebraska require 16 months of education to become a licensed cosmetologist, while New York and Massachusetts require less than 8 months.⁴



² Morris M. Kleiner and Evgeny Vorotnikov. 2015. “The Economic Effects of Occupational Licensing Among the States.” Working Paper. Harris data. To see this, we used data from the Survey of Income and Program Participation (SIPP) to test how State licensing rates would change if every State had the same occupation mix but kept their own licensing rates within occupations. This resulting picture was very similar to the actual distribution of shares licensed across States, indicating that differences in occupational mix are not the primary determinant of State licensing differences.

³ Pamela L. Brinegar, and Kara L. Schmitt. 1992. “State Occupational and Professional Licensure.” *The Book of the States* 567–80. Lexington, KY: Council of State Governments.

⁴ Dick Carpenter, Angela C. Erickson, Lisa Knepper, and John K. Ross. 2012. “License to Work: A National Study of Burdens from Occupational Licensing.” Institute for Justice. <https://www.ij.org/licensetowork>.

The Benefits and Costs of Licensing

Like many economic policies, occupational licensing has benefits and costs. Licensing is usually justified on the grounds that it improves quality and protects the public against incompetent or dangerous practitioners. This argument is strongest when low-quality practitioners can potentially inflict serious harm, or when it is difficult for consumers to evaluate provider quality beforehand. Few people, for example, would feel comfortable traveling in a commercial plane flown by an unlicensed pilot or having a medical procedure performed by an unlicensed physician. In such cases, the costs to consumers and the public of choosing an incompetent practitioner are large enough to justify an intervention in the labor market.

But when consumers choose a florist, a barber, or a decorator, there is considerably less potential harm to the public on the line and it may be easier for consumers to evaluate provider quality on their own. It is important to balance the potential quality-improving and safety-promoting benefits of licensing against its potential costs in the labor market. Moreover, while the academic literature has studied only a handful of specific licensing requirements, most empirical evidence does not find that stricter licensing requirements improve quality, public safety or health.⁵

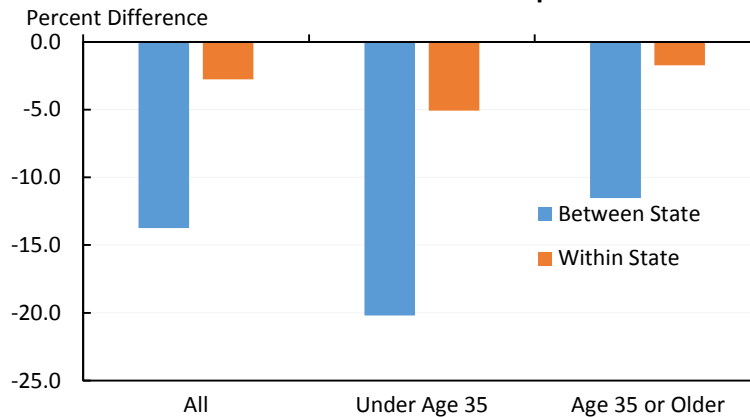
Licensing can also have clear costs. Licensing requirements can create benefits for licensed practitioners at the expense of excluded workers and consumers—increasing inefficiency and inequality. While licensing requirements can lead to higher wages for those able to obtain a license, they can also reduce employment opportunities and depress wages for excluded workers.⁶ This is especially problematic when obtaining a license requires paying large upfront costs, including tuition and lost wages from educational requirements, which many low-income workers cannot afford. Licensing laws also lead to higher prices for goods and services, in many cases for lower-income households, which are not always justified by improved quality or public safety.

The wide variation in licensing requirements at the State level also creates barriers that reduce mobility across State lines. Moving to a new State can entail—among other things—fulfilling new education, training, or testing requirements, as well as paying fees. CEA finds that workers in highly licensed occupations are much less likely than other workers to move across State lines, while these two groups differ only modestly in their likelihood of moving within a State (Figure 6). These barriers to mobility can prevent workers from matching with the jobs best suited to their skills, which in turn makes our labor market less efficient, reducing productivity and wages.

⁵ For a review of the literature on the effects of occupational licensing on the labor market and quality, health, and safety, see: The Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. 2015. “Occupational Licensing: A Framework for Policymakers” (https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

⁶ For example, see Maya N. Federman, David E. Harrington, and Kathy J. Krynski. 2006. “The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists.” *American Economic Review* vol. 96, no. 2: 237-241.

Figure 6
Difference in Migration Rates of Workers
in Most vs. Least Licensed Occupations



Our licensing system places special burdens on certain populations. For example, it creates high costs for military spouses, who frequently have to relocate across State lines.⁷ Our licensure system can also prevent immigrants from applying their training and work experience from abroad to jobs in the United States.⁸ In addition, licensing laws often contain blanket exclusions for those with criminal records, regardless of whether their records are relevant to the job for which they are applying.⁹ As many as one in three Americans has some form of criminal record, so these exclusions render a great number of individuals ineligible for a large share of jobs, which in turn can perpetuate unstable economic situations.¹⁰

Best Practices for Occupational Regulation

The relative magnitude of these costs and benefits depends on the specific circumstances for each profession, so it is important for policymakers to weigh the costs and benefits of licensing proposals in each instance. To that end, drawing on promising State policies, the Administration has developed three sets of best practices that States can apply to ensure that their licensing

⁷ U.S. Department of the Treasury and U.S. Department of Defense. 2012. Supporting our Military Families: Best Practices for Streamlining Occupational Licensing across State Lines

(http://www.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vFINAL.PDF).

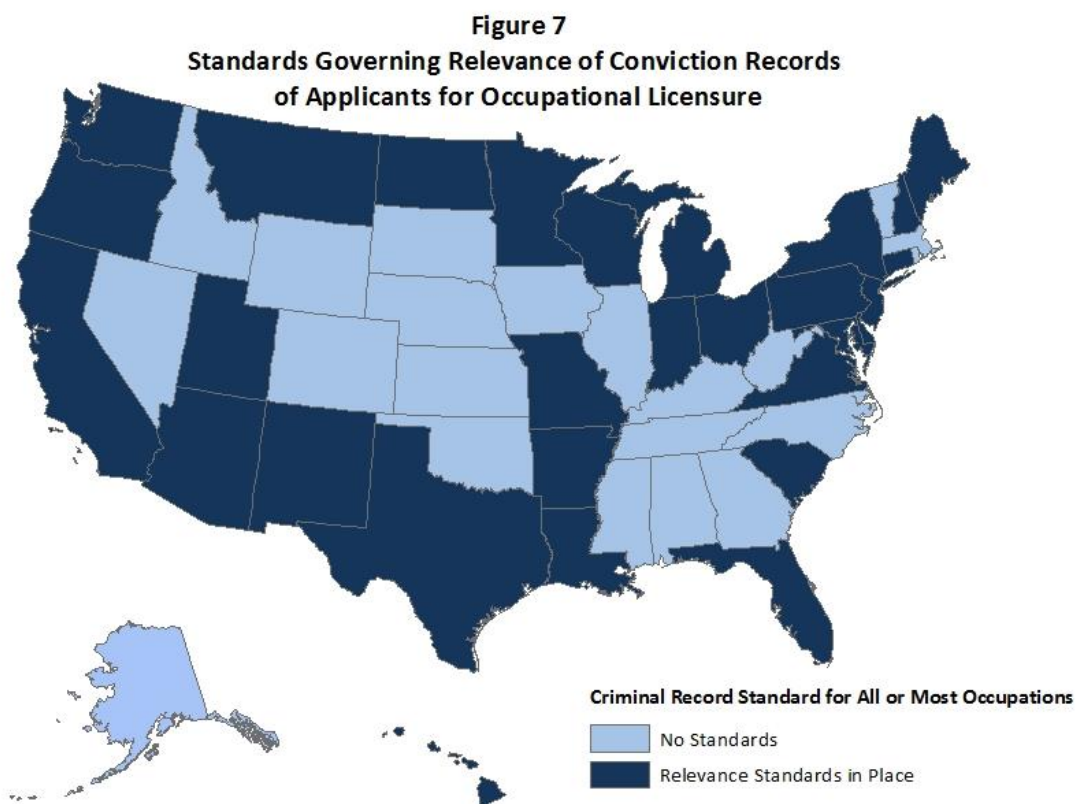
⁸ Matthew Hall, Audrey Singer, Gordon F. De Jong, and Deborah Roempke Graefe. 2011. “The Geography of Immigrant Skills: Educational Profiles of Metropolitan Areas.” State of Metropolitan America no. 33. The Brookings Institution (http://www.brookings.edu/~media/research/files/papers/2011/6/immigrants-singer/06_immigrants_singer.pdf).

⁹ The Legal Action Center. “After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records” (<http://www.lac.org/roadblocks-to-reentry/main.php?view=law&subaction=4>).

¹⁰ Rebecca Vallas and Sharon Dietrich. 2014. “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records.” Center for American Progress (<https://www.americanprogress.org/issues/poverty/report/2014/12/02/102308/one-strike-and-youre-out/>).

policies safeguard the well-being of consumers, while maintaining flexibility in the labor market and opportunities for workers.¹¹

First, licensing restrictions should be closely targeted to protecting public health and safety, and should not be overly broad or burdensome. For example, policymakers should refrain from categorically excluding individuals with criminal records, and instead should only exclude those individuals whose convictions are recent, relevant, and pose a threat to public safety. Drawing on work done by the National Association of Criminal Defense Lawyers and the Legal Action Center, we find that twenty-one States do not have standards in place governing the relevance of conviction records of people applying for occupational licenses for most or all occupations (Figure 7).

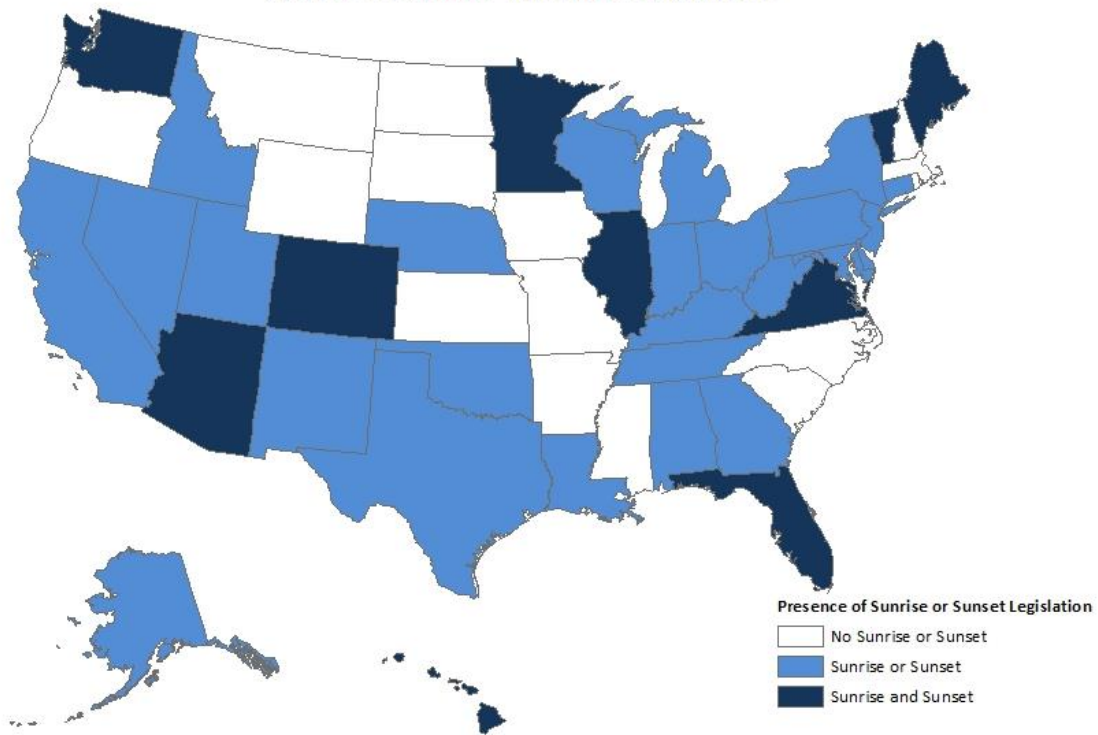


Second, States should create or strengthen “sunrise” review processes to facilitate a careful cost-benefit analysis each time a new licensing law is proposed. Data collected by the Council on Licensure, Enforcement, and Regulation indicate that 13 States have some sort of sunrise law, while 32 States maintain a sunset process for existing licensing laws, and only 10 States have

¹¹ See CEA et al. (2015) for a more detailed list of best practices.

both (Figure 8).¹² For example, since 1995, Maine’s Department of Professional and Financial Regulation has conducted a sunrise review of any proposed legislation that would establish an occupational licensing board or expand a current practitioner’s scope of practice. According to Maine’s Department of Professional and Financial Regulation, only one occupation has acquired licensed status in Maine in the past 15 years.¹³

Figure 8
States with Sunrise and Sunset Legislation



Finally, States should expand reciprocity agreements and harmonize licensing requirements to increase workers’ mobility across state lines. For example, various

¹² The Council on Licensure, Enforcement, and Regulation defines sunset and sunrise reviews as follows: “Sunset is the automatic termination of regulatory boards and agencies unless legislative action is taken to reinstate them... Sunrise is a process under which an occupation or profession wishing to receive State certification or licensure must propose the components of the legislation, along with cost and benefit estimates of the proposed regulation. The profession must then convince the legislators that consumers will be unduly harmed if the proposed legislation is not adopted.” Council on Licensure Enforcement and Regulation. Sunrise, Sunset and State Agency Audits (<http://www.clearhq.org/page-486181>).

¹³ Maine Revised Statutes Title 32 § 60-J (<http://legislature.maine.gov/statutes/32/title32sec60-J.html>); Maine Department of Professional and Financial Regulation. 2015. Private Correspondence.

professions, including nurses,¹⁴ physicians,¹⁵ and physical therapists,¹⁶ either have constructed or are in the process of constructing their own interstate compacts. Ideally, however, States would establish a compact that applied to a range of different professions.

Federal Reform Efforts

While licensing reform takes place primarily at the State level, the Administration is committed to working with Congress and collaborating with States to make progress on this issue. Following the release of the White House report in July, we have presented the report's findings and policy recommendations to a wide range of State policymakers, officials from State licensing boards, members of professional organizations, and members of the think tank community.

The Administration has also worked with Congress, to reduce licensing burdens for veterans, service members, and military spouses. Under the President's direction, the Department of Defense established the Military Credentialing and Licensing Task Force in 2012, and with its help, thousands of service members have earned or are in the process of earning civilian occupational credentials and licenses through partnerships with national certifying bodies.¹⁷ Thanks in part to the leadership of Senators Blumenthal and Klobuchar, the President signed into law the Veterans Skills to Jobs Act in 2012, which requires federal agencies to recognize relevant military training when certifying veterans for occupational licenses. In addition, building on First Lady Michelle Obama and Dr. Jill Biden's call to governors in 2012, the Administration has partnered with States to streamline State occupational licensing for service members, veterans, and their spouses.¹⁸ As a result of this call for action, and through the Department of Defense's efforts working side by side with the Department of Labor, the Department of Veterans Affairs, and the States, over 54 laws have been enacted in nearly all 50 States that reduce licensing and credentialing barriers for military members and their families.¹⁹

Over the coming year, we will continue to conduct outreach to help spur action at the State level. The FY2016 Budget signed by the President included \$7.5 million to support efforts by a consortium of States to expand reciprocity for a range of occupational licenses.

¹⁴ National Council of State Boards of Nursing. "Nurse Licensure Compact" (<https://www.ncsbn.org/94.htm>).

¹⁵ Humayun J. Chaudhry, Lisa A. Robin, Eric M. Fish, Donald H. Polk, and J. Daniel Gifford. 2015. "Improving Access and Mobility – The Interstate Medical Licensure Compact." *The New England Journal of Medicine* vol. 372, no. 17: 1581:1583.

¹⁶ American Physical Therapy Association. 2014. "Interstate Licensure Compact for Physical Therapy" (<http://www.apta.org/StateIssues/InterstateLicensureCompact/>).

¹⁷ The White House. 2013. "Fact Sheet: Administration Partners with Industry to Get Service Members Credentialed for High-Demand Jobs" (<https://www.whitehouse.gov/the-press-office/2013/04/29/fact-sheet-administration-partners-industry-get-service-members-credenti>).

¹⁸ National Economic Council and Council of Economic Advisers. 2013. *The Fast Track to Civilian Employment: Streamlining Credentialing and Licensing for Service Members, Veterans, and their Spouses*; Department of Defense and States, Partnering to Support Military Families. "Removing Licensure Impediments for Transitioning Military Spouses" (http://www.usa4militaryfamilies.dod.mil/MOS/f?p=USA4:ISSUE:0::::P2_ISSUE:2).

¹⁹ Department of Defense Briefing. 4 December 2015. "DoD Credentialing Update to Office of Senator Barbara Boxer."

Conclusion

The rise of occupational licensing fits into a broader context of what appears to be the growing importance of “economic rents.”²⁰ Economists define rents as the return to a factor of production like capital, labor, or land that exceeds what is needed to keep that factor of production in the market. Rents often result from unproductive “rent-seeking” behavior that limits competition in the market. Sometimes the benefits of rents are worth that limited competition—such as in well-designed occupational licensing systems and well-designed intellectual property regimes. But in many cases, rents protect entrenched interests without providing broader societal benefit.

Removing overly burdensome licensing requirements is one example of a policy that can reduce harmful rents, but there are others, such as limiting zoning and other land-use restrictions and appropriately balancing intellectual property regimes. These types of policies can foster more competitive markets, increasing efficiency while also reducing inequality.

Licensing reform is only a small part of the effort to raise incomes, improve access to employment, and reduce inequality. But when the problem we are facing is so large, we cannot afford to leave any stone unturned in addressing it. And we certainly cannot afford not to take measures that would provide greater opportunities for Americans while making the economy more efficient.

²⁰ Jason Furman and Peter Orszag. 2015. “A Firm-Level Perspective on the Role of Rents in the Rise in Inequality” (https://www.whitehouse.gov/sites/default/files/page/files/20151016_firm_level_perspective_on_role_of_rents_in_inequality.pdf); Jason Furman. 2015. “Occupational Licensing and Economic Rents” (https://www.whitehouse.gov/sites/default/files/page/files/20151102_occupational_licensing_and_economic_rents.pdf).

References

Figure 1

Source: The Council of State Governments (1952); Greene (1969); Kleiner (1990); Kleiner (2006); and Kleiner and Krueger (2013), Westat data; CEA Calculations.

Figure 2

Source: Kleiner and Krueger (2013), Westat data; Bureau of Labor Statistics; Current Population Survey.

Note: To make the adjustment, we use Kleiner and Krueger's estimates of the shares of State-licensed workers in each occupation in 2008, and adjust for changes in occupational mix back to 1968, taking advantage of a historically consistent occupational classification system contained in the Integrated Public Use Microdata Series version of the Current Population Survey. Meyer, Peter B. and Anastasiya M. Osborne. 2005. "Proposed category system for 1960-2000 Census Occupations." U.S. Bureau of Labor Statistics. Working Paper 383; Alexander, J. Trent, Sarah Flood, Katie Genadek, Miriam King, Steven Ruggles, Matthew B. Schroeder, and Brandon Trample. 2010. Integrated Public Use Microdata Series, Current Population Survey: Version 3.0. [Machine-readable database].

Figure 3

Source: Source: Kleiner and Krueger (2013) Westat data; Current Population Survey Outgoing Rotation Group; CEA calculations.

Figure 4

Source: 2013 Harris Poll Interactive survey, reported in Kleiner and Vorotnikov (2013) and Kleiner (2015).

Figure 5

Source: Source: Institute for Justice analysis, reported in Carpenter (2012).

Note: Sample of 102 lower- and middle-skill occupations. Hours averaged over all licensed occupations from the sample of 102, by state.

Figure 6

Source: Census Bureau, American Community Survey 2010-2013; CEA Calculations.

Note: Number is calculated from an OLS regression controlling for race, citizenship, sex, citizenship, number of children, marital status, education, income, year, and state. Ages 25 to 65 were included.

Figure 7

Source: National Association of Criminal Defense Lawyers; Legal Action Center; UST and CEA tabulations.

Figure 8

Source: Council on Licensure, Enforcement, and Regulation (2015).

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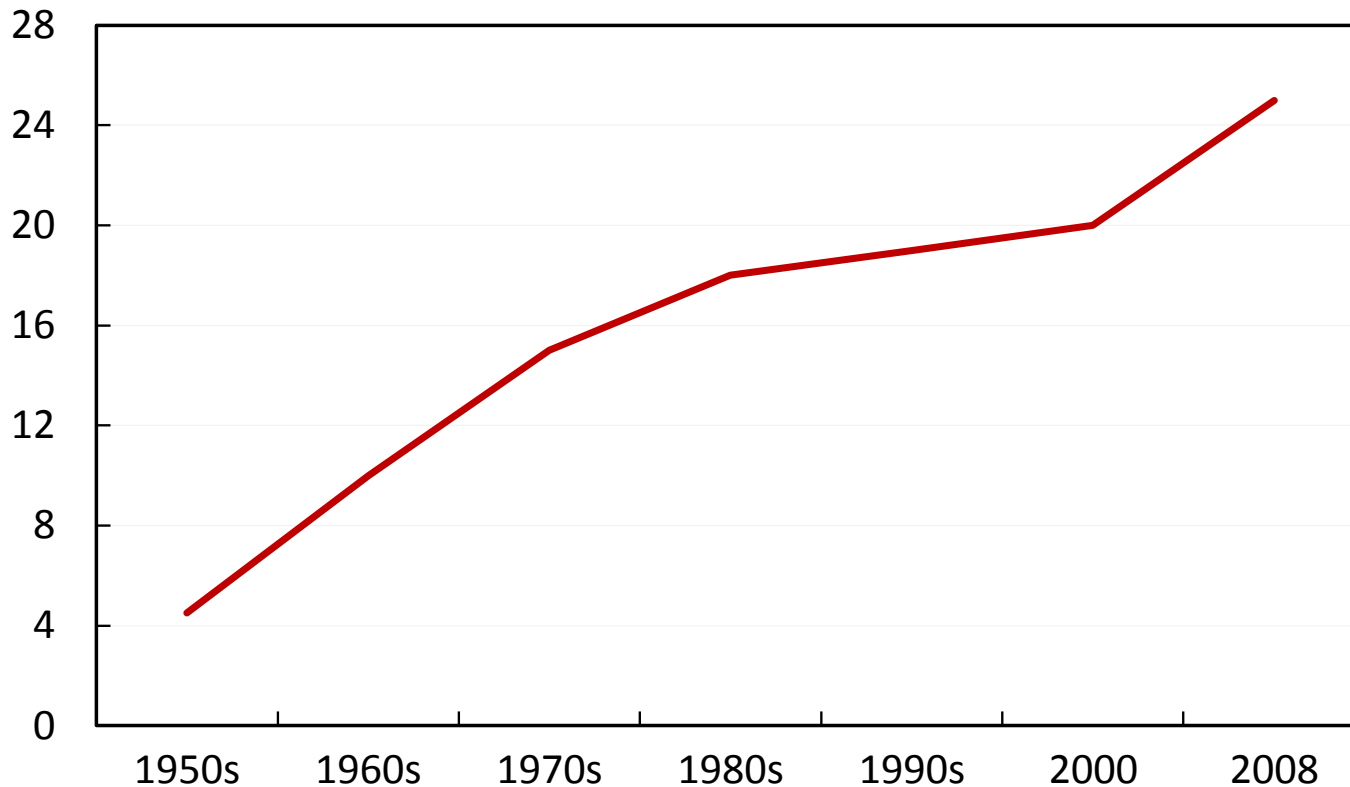


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The Share of Workers Licensed at the State Level Has Risen Five-Fold Since the 1950s

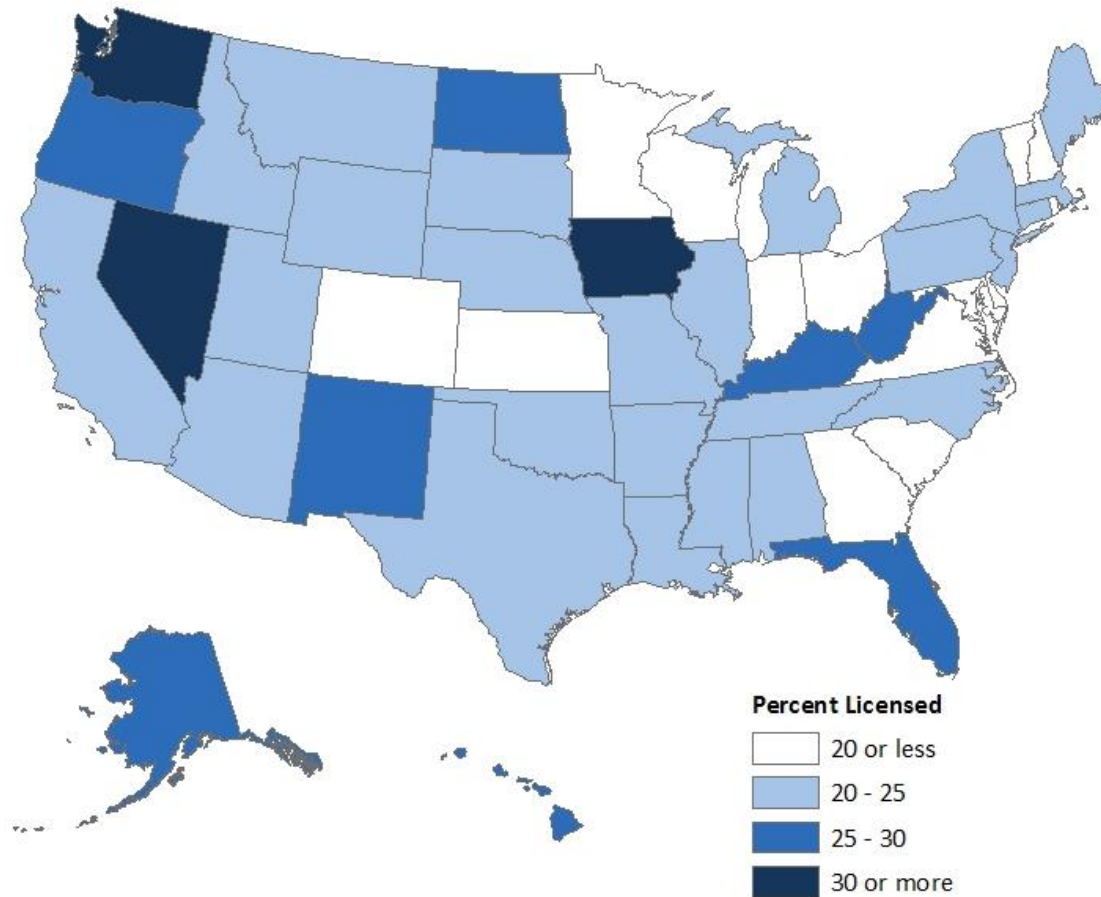
Share of Workers with a State Occupational License

Percent of the Workforce



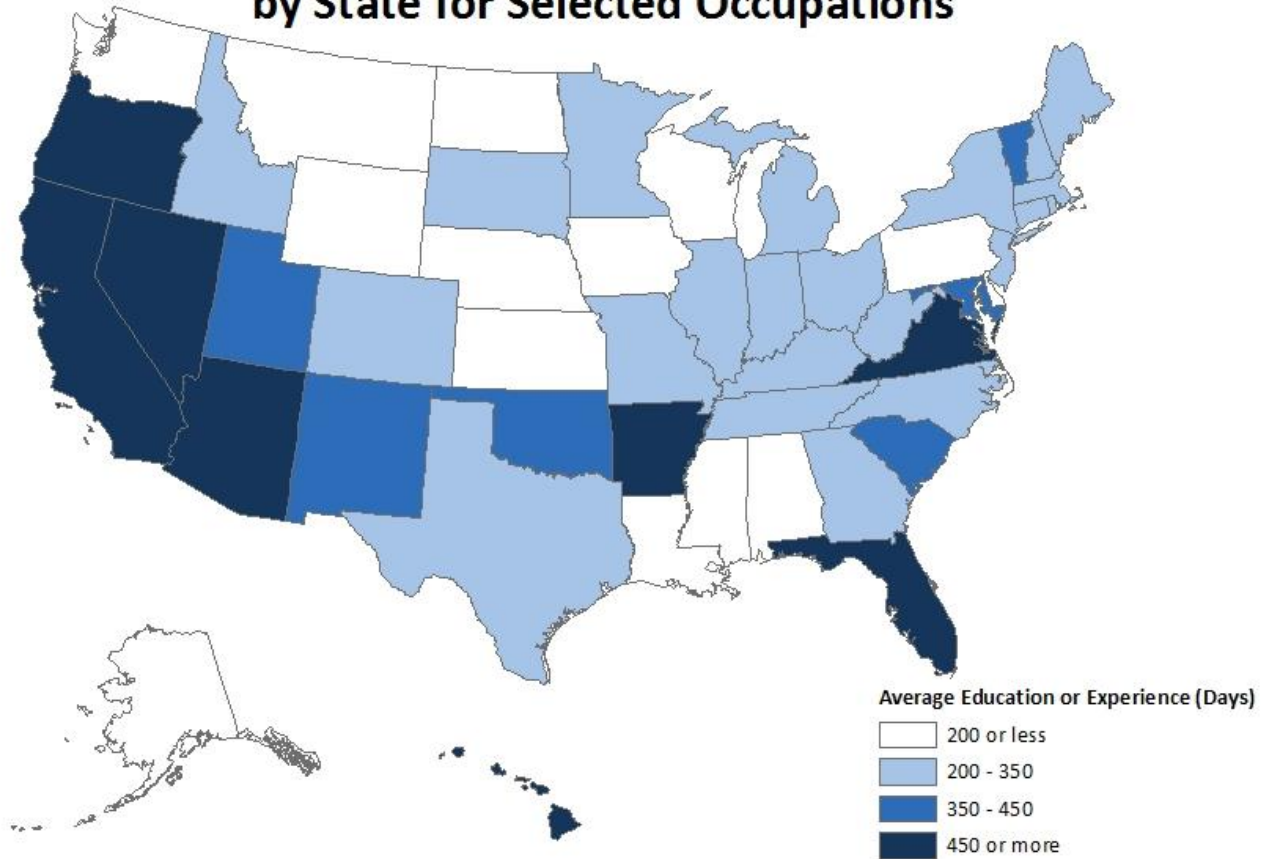
Licensing Is Very Uneven Across States

Percent of Workforce Licensed by State



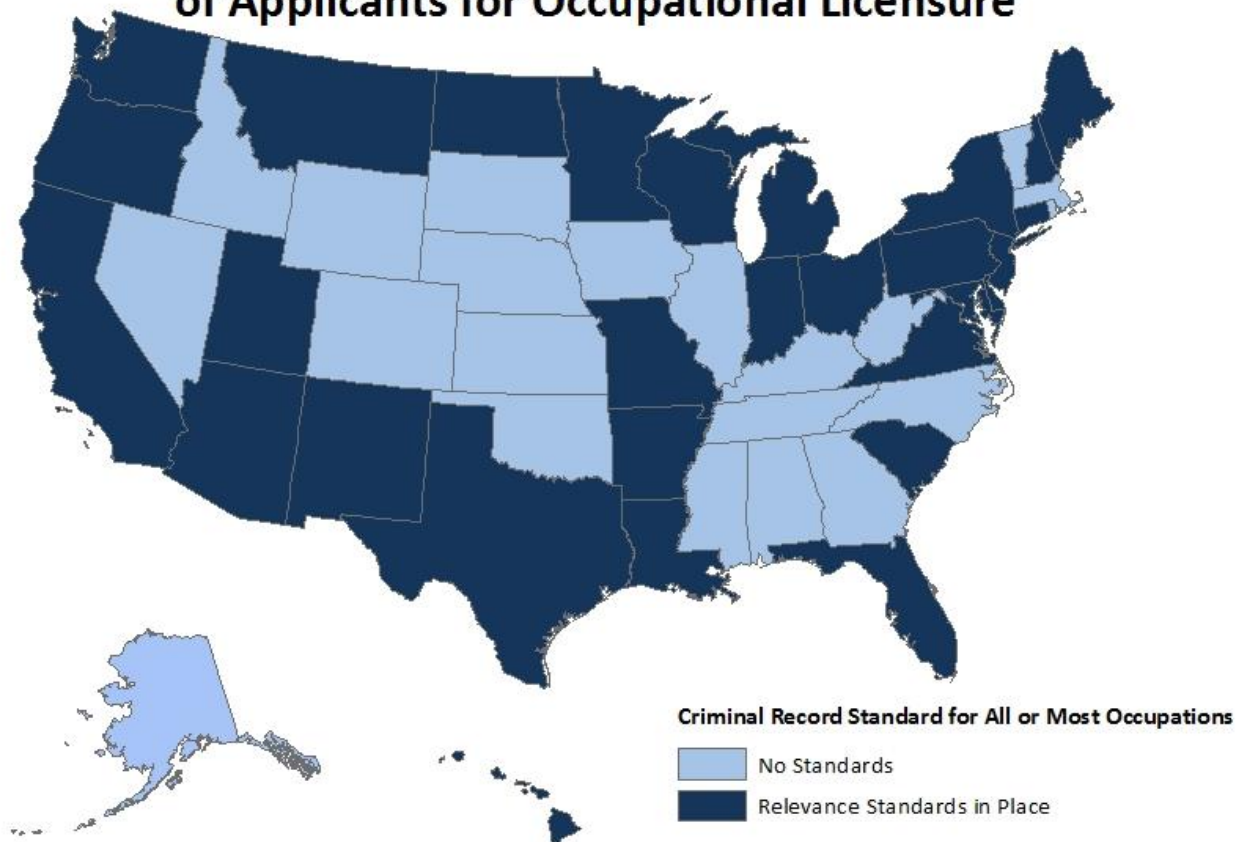
States Also Differ in the Requirements for their Licenses

Average Education or Experience Required for License by State for Selected Occupations



Only Some States Have General Standards Governing the Relevance of Conviction Records

Standards Governing Relevance of Conviction Records of Applicants for Occupational Licensure



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