

Community College Proposals for Negotiated Rulemaking Session 3

Issue Paper 1: Ability-to-Benefit

1) Definition of a Career Pathways Program

Community colleges strongly oppose imposing any further regulatory elaborations or restrictions on the congressional definition of an eligible career pathway program (ECCP). At community colleges, career pathway programs are designed, in part, to facilitate the attainment of postsecondary credentials for those who do not have a high school diploma and do not necessarily need or want one. Altering the statutory ECCP definition through regulation, in a manner clearly not anticipated by Congress, represents substantial regulatory overreach and exceeds the Department of Education's (ED) statutory authority. The General Education Provisions Act prohibits ED from "exercising any direction, supervision, or control over the curriculum, program of instruction, administration or personnel and any educational institution ... except to the extent authorized by law."

For these reasons, we strongly oppose the additional regulatory language proposed in Subsection 668.157 that extends beyond the statutory language and oppose any additional requirements.

Consequently, 668.157 should be deleted, leaving only the ECCP definition in 668.2(b) that adheres to the statutory definition.

2) Limitation on the Percentage of Eligible ATB Students Under State Plans

As noted in the negotiating sessions, the 1% cap on ATB enrollments for the first two years of a state plan should be applied across the state's public postsecondary institutions, not individual colleges—this is a *state* plan. Under ED's proposal, a particular institution might be prohibited from offering a high-quality career pathways program to more than this *de minimis* level, while other institutions in the state would choose not to participate. It also must be remembered that because this is a *state* plan, most instances will involve the considerable expenditure of state resources to serve these same students, and thus includes an inherent level of quality control. Therefore, the language in Subsection 668.156(b)(3) should read:

"The total number of students who could potentially qualify under a plan should be limited to one percent of the total enrollment in a state's public institutions of higher education."

3) Standards for Approval of State ATB Plans

Community colleges oppose the imposition of quantitative standards on state ATB plans, but the statutory reference makes implementation of this nature a route ED may opt to take. ED has proposed a "success rate" of 95% for ATB students, compared to their high school graduate or equivalent counterparts; but this standard is overly stringent and can only serve to deny access to the career pathways programs that Congress has envisioned. The 95% standard has been in regulation for more than 20 years, and a clear effect of this has been to discourage the development of state plans.

Therefore, if ED chooses to use this “success rate” as a basis for the approval of state plans, the rate should be set at 85% of that of high school graduates or equivalents.

The 85% success rate reflects differences in student preparation while ensuring a high element of “quality control” in the program—which is arguably overly stringent, given the fact that completion rates often obscure community college successes and that Congress has recently reaffirmed its intent in making the state plan a viable path to Title IV participation for impacted students. Community colleges, working with state entities, have no interest in manipulating the state plan to enroll students in programs from which they are not likely to benefit. However, in the spirit of compromise, community colleges propose that ATB enrollees should be required to meet a success rate of 85%, as in modified Subsection (e)(1):

~~(1) Demonstrate that the students it admits under that process have a success rate as determined under paragraph (e) of this section that is within 85 percent of the success rate of students with high school diplomas;~~

Issue Paper #2: Standards of Administrative Capability

1) Career Services

Community colleges continue to be concerned about the newly introduced concept of “adequate career services” into Section 6 of the regulations. The application of the term “adequate” in practice would be inherently subjective. The analogy to regulatory requirements relating to adequate student financial aid services is weak because student aid administration involves specific federal programs with specific regulatory requirements. This is not to state that career services are unimportant; they just do not logically fall under Title IV’s purview.

If ED now chooses to regulate the provision of “career services,” these services should be required of the thousands of programs that manifestly prepare students for employment and that fall well outside the narrow scope of gainful employment (at non-profit institutions). In fact, students across higher education programs and sectors continue to state that their primary reason for attending college is to increase their employment prospects. Therefore, this reference in Subsection 668.16(h)(3)(i)(1) is inappropriate and should be deleted:

~~(1) The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation;~~

2) Student Information

Community colleges support providing additional information to students about the financial aid process and their options, as well as other potential sources of student supports by modifying Sec. 668.16(h)(3) and adding Sec. 668.16(h)(4) and (5) as follows:

~~(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, **methods by which the student may apply for professional**~~

judgment; and other conditions that may alter the student's aid package.

(4) That federal student loans provided under Title IV, HEA have terms that are generally more favorable than private education loans; and

(5) Provides information to students who apply for Title IV, HEA program assistance on federal public benefit programs, and other sources of federal financial assistance, that can help meet any component of the student's cost of attendance

Issue Paper #3: Gainful Employment

1) Additional Metrics Beyond Debt-to-Earnings

Community colleges strongly oppose using any metrics beyond the debt-to-earnings measure for gainful employment program eligibility for the following reasons:

- 1) Students should be encouraged to enroll in GE programs in which minimal or no debt is required to finance their studies. This policy would be achieved by adoption of the 2014 debt-to-earnings framework, as modified by ED in its current proposals. Fortunately, in recent years, student borrowing has steadily decreased across all sectors. The 2014 regulations appropriately focused on keeping students clear of unmanageable debt, and community colleges continue to strongly support this approach. Additional metrics are neither necessary nor desirable.
- 2) As has been pointed out in the negotiating sessions, uniform national standards do not and cannot reflect the tremendous variation across the country in wages and earnings experienced by completers in GE programs. Trying to craft a fair, uniform national standard is not possible and might ultimately prevent some individuals from enrolling in a low-cost community college program.
- 3) An additional eligibility measure will confuse students and the public. It will also make planning more difficult for campus officials because of the need to take the multiplicity of measures into consideration in developing and implementing programs.

2) Development of Debt-to-Earnings Measures and Related Reporting

Community colleges continue to strongly support uniform programmatic reporting and related outcomes data and disclosures for all Title IV-eligible programs, regardless of whether they are subject to gainful employment regulation. Comprehensive disclosures are equally beneficial to all stakeholders, and there is no logical reason to limit disclosures to GE programs. In fact, at non-profit institutions, far more debt is accrued by students in non-GE programs than those enrolled in GE programs, providing another compelling reason for their inclusion. Hopefully, all the data generated through the program-focused framework will be integrated into ED's College Scorecard.

The GE statute makes no reference to disclosures and requiring them is—and always has been—a strictly administrative choice made by ED. Including all programs at all institutions in a common disclosure framework is not only equitable, but by virtue of its comprehensive nature, it will foster more effective implementation by both the Executive Branch and institutions. Community college officials recoiled at the more than 100 communications sent by ED in its implementation of the 2014 GE rules (particularly its reporting and disclosure requirements) reflecting its complex, almost Byzantine nature.

A holistic, straightforward pan-higher education approach to this core element of its implementation should result in more efficient GE rule.

In the negotiating sessions, comments have been made about the challenges of determining what should constitute a specific “program” for reporting and disclosure purposes, and related to that, what would provide the most helpful aggregation of information for stakeholders. It should be remembered that all students must be enrolled in a Title IV eligible program to receive aid. Nonetheless, community college students often take circuitous paths to attaining a certificate or degree, which adds to the complexity of meshing reporting requirements with actual academic progress. These issues are important, but they do not diminish the much larger benefit provided by displaying programmatic information across higher education.

Therefore, community colleges propose modifying Subsection 668.43(d)(1) to make the “may” a “must,” as follows:

- (1) **Disclosure website.** An institution must provide such information as the Secretary prescribes through a Federal Register notice for disclosure to prospective and enrolled students through a website established and maintained by the Secretary. The Secretary will conduct consumer testing to inform the design of the website. The Secretary ~~may~~ must include on the website, among other disclosures:

3) Implementation Safe Harbor

As referenced above, earlier implementation of GE was extraordinarily costly and problematic for community colleges. Unfortunately, these implementation issues were overshadowed by controversy over the metrics themselves.

Community colleges commend ED for recognizing the difficulties entailed in GE compliance, reflected in Section 668.408(b)(2). This is particularly important given the extensive retroactive application of the GE framework—requiring years of retrospective data. Although this retrospective requirement places a tremendous burden on community colleges, we will not oppose it, but it must be coupled with policies that reflect the administrative realities that will accompany its implementation. Therefore, we propose the addition of the following language to the end of subsection 668.408(b)(2):

“If the Secretary rejects the institution’s explanation, the Secretary must specify the reasons why it determines that the institution’s explanation has not been accepted.”

4) Supplementary Performance Measures

These measures in subsection 668.409 either fall outside the statutory scope of the gainful employment authority or are redundant with it and should be deleted. The entire subsection should be taken out of the regulation.

