

Four Year Public Colleges Comments and Suggestions for Negotiated Rulemaking Session 3

Four year public colleges commend the Department of Education efforts to protect students and taxpayers from harmful institutional and programmatic practices. We welcome the opportunity to provide input during the negotiated rulemaking process.

The following represent several of the top concerns with current proposed regulations. Due to the broad scope of proposals, however, it does not represent an exhaustive list.

Issue Paper #2: Standards of Administrative Capability

1) Career services language in 668.16 (h) (3) (i)

Four year public college's offer a variety of quality career services to the students we serve, but remain concerned about ED regulating in this area and trying to define "adequate career services" as introduced into the regulations. When asked how this rule would apply to four year public colleges, the ED negotiator referenced concerns about institutions offering gainful employment (GE) programs with no career services whatsoever, or the type of career services that had been advertised. The language in this section needs to be updated to reflect rules against misrepresentation of career services for GE programs as suggested by other negotiators.

2) Clinical or externship opportunities language in 668.16 (h) (3) (j)

Four-year public colleges offer a variety of programs requiring clinical or externship opportunities as part of a credential. The proposed regulation is not clear on the meaning of "accessible" clinical or externship opportunities. Synonyms for accessible include "nearby", "open", "available", and "manageable", which leads to more confusion. It is also unclear whether the proposed rule applies to all programs, or just GE programs. We note that clinical and externship opportunities are sometimes limited depending on the recognized occupation and/or licensure requirements, and may not be offered within 45 days of coursework completion depending on the timing of a clinical rotation. In some programs it may be difficult to distinguish between the required coursework and the clinical work. The language in this section should be clarified.

Issue Paper #3: Gainful Employment

1) Small program rates language in 668.404 (g)

While we understand the idea of sharing GE program data and metrics for institutions offering certificate programs with a limited number of borrowers (less than 30), we don't think small program rate data will be useful. Students nor institutions will be able to decipher which of the small programs are leading to gainful employment, and which may not be. ED data could be useful if de-identified debt-to-income data by program is shared to allow institutions and students to evaluate whether a program is leading to gainful employment as expected. This will allow institutions to evaluate programs with less than 30 borrowers.

2) Institutional and programmatic information language in 668.43

Four-year public colleges commend ED efforts to build a disclosure website and appreciate the idea of sharing outcome measures and disclosures for all Title IV-eligible programs, regardless of whether they are subject to gainful employment regulation. We agree with other negotiators that comprehensive disclosures for undergraduate and graduate populations may be beneficial to all stakeholders. That said, we question whether ED should regulate in this area while trying to list out every effective disclosure item that will be presumably driven by consumer testing. ED has developed a variety of website tools for the public, including the College Scorecard, without enumerating every website element in regulation. Regulatory scrutiny may make effective consumer information more difficult to make available on an ED website if it subject to periodic regulatory review.

Regarding the elements to be shared on a disclosure website, we note that some of the data referenced will not be readily available, including the total cost of tuition, fees, books, supplies and equipment for the entire length of a program, or the private loan debt of borrowers. We urge clarity from ED on any additional data reporting that would be required, and request that ED consider the use of current available data and limit requests for new institutional data.

Issue Paper #6: Certification Procedures

1) Proposal to “ensure” that program may result in licensure language in 668.14 (32)

Compliance with a patchwork of state rules is a necessary task assumed by institutions as they offer education to students located in multiple U.S. States. Distance education and multistate delivery increases options to a variety of student demographics, including adult learners, veterans, parenting students, working students, and those who seek flexibility and specific training opportunities in a competitive, modern, and mobile economy.

Current proposed language suggests that institutions “ensure” programs will satisfy applicable prerequisites for licensure or certification requirements in a state. The current state regulatory landscape, unfortunately, does not always permit the institution to make a clear and definitive statement. Thus, to “ensure” creates a complex and troubling scenario for the institution to manage and, importantly, restricts availability of options to students nationwide.

The pandemic has allowed higher education to pivot into increased offerings of distance education. Four-year public colleges continue to be interested in serving students via distance education certificate programs, but if this proposed regulation moves forward it will likely lead many four-year public colleges to no longer make distance education certificate and licensure programs eligible for Title IV aid. The language proposed here will lead to unreasonable administrative burdens that will ultimately reduce affordable certificate and licensure programs via distance education for low-income students. We urge ED to work with all negotiators and stakeholders to improve this section of the regulations.

2) Institutional information language 668.43 (5) (v)

Current regulations effective July 1, 2020, already require institutions to issue student disclosures regarding programs that lead to licensure or certification. The current regulations already require that disclosures be made to students on whether the program leads to certification or licensure in their state, but account for the

complexity of the state regulatory landscape which does not always permit the institution to make a clear and definitive statement. At a minimum, the regulatory guidance should account for the fact that there will be cases where it will not be possible for an institution to determine whether a program meets state certification or licensure requirements.