the institute for college access & success

1212 Broadway, Suite 1100
Oakland, CA 94612
510.318.7900
www.ticas.org

Sophia McArdle
U.S. Department of Education
400 Maryland Ave, SW
Mail Stop 290-44
Washington, D.C. 20202

July 12, 2019

RE: Docket ID ED-2018-OPE-0076
(Comments submitted electronically via Regulations.gov)

Dear Dr. McArdle:

Thank you for the opportunity to comment on the U.S. Department of Education's proposed regulations regarding the recognition of accrediting agencies, institutional eligibility, and other provisions. We submit these comments on behalf of The Institute for College Access & Success (TICAS), a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education.

States have long had important responsibilities to protect college students from low-quality and abusive practices. This year, state legislatures across the country are considering legislation to strengthen college accountability.

We appreciate that the proposed rule retains many important provisions that protect states' ability to enforce their laws and protect their residents. While states have constitutional authority to enforce their own laws, the Department's recognition of this jurisdiction for the purposes of establishing Title IV eligibility is crucial. As Department Under Secretary Ted Mitchell clarified in January 2017, the state authorization rule "does not preempt state law and we cannot do so in guidance."[1] To the extent that reciprocity agreements and state laws create unresolved conflicts, "affected institutions seeking authorization via a reciprocity agreement would not be considered authorized under the Department's regulation."

Importantly, the rule retains explicit requirements that schools offering online education be authorized by each state in which they enroll students, if required by the state.[2] The proposal also retains provisions that facilitate coordination among states to reduce unnecessary administrative burdens while facilitating oversight of online education.[3]

However, we are concerned that the proposal does not do enough to protect students and taxpayers against low quality or even predatory online programs. We urge the Department to include the following provisions in the final rule.

---

[1] Letter from Under Secretary Ted Mitchell. (January 18, 2017). Available at https://www.nc-sara.org/files/docs/OUS%20Letter%20to%20Hill%20Poulin%20re%20StateAuthDistance.pdf.
[2] 34 CFR 600.9(c)
[3] 34 CFR 600.2

1. Ensure the Applicability of State Laws

The Department's proposal would grant colleges the authority to define their own process for determining students' location, pursuant to undefined "policies or procedures."[4] This is concerning on multiple fronts. There is no apparent mechanism for either students or states to discover how schools – and therefore the Department – have determined which state laws are applicable. As a result, schools will be tempted to minimize their regulatory burdens, rather than protect the interests of students, and the extent to which this is happening will be impossible to monitor.
Even more urgently, decisions about which state laws are applicable to students are not colleges' decisions to make, nor is it the purview of the Department to bestow such decision-making authority. Such authority belongs to states alone. The challenges facing schools in determining relevant state jurisdiction would be a better addressed through state efforts to clarify their requirements.

2. Require a Transparent Complaint Process Where Schools and Students are Located

With established procedures to collect and act upon student complaints, states can both resolve students' claims of wrongdoing and identify patterns of problematic practices. For example, the complaint system operated by the Consumer Financial Protection Bureau has become a powerful tool to hold companies accountable and prevent consumer abuse.

The Department proposes to eliminate the current regulations in § 600.9(c) regarding student complaint processes, arguing that they are redundant with other regulatory requirements.[5] However, the language eliminated by the Department clarifies students' right to file complaints in both the state where they are located and in the state in which their school is located. This particular provision was codifed in 2016 after states expressed the importance of being able to "receive, investigate and address student complaints about out-of-state institutions."[6]

Despite the Department's redundancy argument, the stated rationale for eliminating § 600.9(c)(2) demonstrates why the requirement is not redundant with other regulatory requirements.[7] Specifically, the Department states that the change will allow students to receive federal financial aid even if the state in which they are located does not have a complaint process. Such an allowance conflicts with the definition of state authorization articulated in § 600.9(a)(1) which specifies that requirements for authorization include the state having "a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws."[8] Because the only entity that can enforce a particular state's laws is that specific state, it would be impossible for schools to comply with state authorization requirements if there is not a suitable complaint process available to students in their own states.

---

[4] Proposed Rule by the Education Department. (June 12, 2019). Available at: https://www.federalregister.gov/d/2019-12371/p-176.
[5] Proposed Rule by the Education Department. (June 12, 2019). Available at: https://www.federalregister.gov/d/2019-12371/p-182.
[6] Rule by the Education Department. (December 19, 2016). Available at: https://www.federalregister.gov/d/2016-29444/p-11.
[7] Proposed Rule by the Education Department. (June 12, 2019). Available at: https://www.federalregister.gov/d/2019-12371/p-182.
[8] 34 CFR 600.9(a)(1)

The final regulations must reflect states' authority to accept, investigate, and act on complaints from students located in the state and from students enrolled at schools physically located within their borders. In addition, the final regulations should provide for the collection of complaint records in a central database, available to the public, to more easily identify any patterns of problematic institutional behavior. Complaints can be an especially important source of information on out-of-state schools that enroll students located in the state.

3. Require Financial Safeguards for Students and Taxpayers

In recent years, colleges enrolling more than 100,000 students have closed, often leaving students with outstanding debts and few or no good transfer options.[9] Some states maintain tuition recovery funds and performance bonds to reimburse students who are enrolled at a private college that closes. Other states maintain refund and cancellation requirements for closing schools.

However, many states do not require student protection funds or refund requirements. The 2016 regulations required institutions to comply with relevant state laws,[10] including laws relating to student protection funds, but did not otherwise require states to create such protection funds. We recommend that the final rule require each state to put these laws in place.

4. Limit Federal Financial Aid to Programs Leading to Licensure

In many fields, from accounting to veterinary medicine, students seeking employment must not only complete their academic program but also earn professional licensure. State often have unique requirements for the educational programs that lead to licensure. Students may not realize that an out-of-state program may not lead to licensure in their state or know how to determine whether it does.

Current regulations require schools to notify students whether the distance education program satisfied the requirements for professional licensure or certification in students' states.[11] The proposed rule also provides for disclosure requirements.[12] However, unless carefully designed and executed, disclosure requirements often fail to impact student behavior.[13]

Instead, we recommend that the Department prohibit institutions from offering federal financial aid to students located in states where licensure is not possible. The rule should allow for individualized, handwritten consent waivers to serve students in rare situations – such as the student who plans to move across state lines after graduation – without leaving many students at risk of a worthless credential.

---

[9] Michael Vasquez. (March 9, 2019). The Nightmarish End of the Dream Center's Higher-Ed Empire. The Chronicle of Higher Education. Available at: https://www.chronicle.com/article/The-Nightmarish-End-of-the/245855.
[10] Proposed Rule by the Education Department. (June 12, 2019). Available at: https://www.federalregister.gov/d/2016-29444/p-14.
[11] 34 CFR 668.50
[12] 34 CFR 668.43
[13] Consumer Information in Higher Education. (April 2019). The Institute for College Access and Success. Available at: https://ticas.org/sites/default/files/pub_files/consumer_information_in_higher_education.pdf.

In early 2018, representatives of both community colleges and for-profit colleges proposed such a prohibition during negotiations on the gainful employment rule.[14] Such a protection would be particularly valuable in distance education programs, where out-of-state enrollment is common.

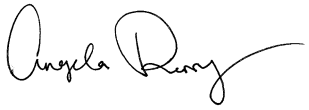
5. Disclosures Should be Retained and Strengthened

In proposed § 668.41(d), the Department would eliminate language requiring that institutions disclose any job placement rates they calculate, as well as a requirement that institutions identify the source, timeframe, and methodology which informed the data.[15] Job placement rates are essential consumer information, and eliminating the requirement that institutions publish all of the placement rates they calculate puts students at risk of receiving only the data the school is willing to advertise.

We appreciate that the Department is proposing to require that institutions disclose to students the states in which an educational program meets the state's requirements for licensure, as applicable. Yet as outlined above, institutions should not be enrolling federally-funded students in programs where subsequent in-field employment requires licensure if the programs are not eligible for licensure. If the Department moves forward with disclosure rather than enrollment restrictions, the Department should move the requirement from § 668.43, which requires that disclosures be "readily available,"[16] to § 668.41, which requires the information be shared through "appropriate publications, mailings or electronic media."[17]

Sincerely,

Debbie Cochrane
Executive Vice President
The Institute for College Access & Success



Angela Perry
Policy Analyst
The Institute for College Access & Success

[14] Laura Metune. (January 30, 2018). Memorandum from Gainful Employment Negotiated Rulemaking Committee. U.S. Department of Education. Available at https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/memoissue8metune.docx.
[15] Proposed Rule by the Education Department. (June 12, 2019). Available at: https://www.federalregister.gov/d/2019-12371/p-651
[16] 34 CFR 668.43
[17] 34 CFR 668.41