June 20, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED–2023–OPE–0089

Dear Secretary Cardona:

On behalf of the undersigned higher education associations, I write in response to the Notice of Proposed Rulemaking (NPRM) regarding Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Certification Procedures, Administrative Capability, and Ability to Benefit. The issues covered by this NPRM are crucial to the vitality of institutions of higher education and to the success of students.

As mentioned in our comment letter on May 19, having ample time to provide comments benefits the regulatory process.[1] While we would have preferred to have 60 days to comment on these proposed regulations, we are thankful to be able to share our thoughts with you. Below, we provide comments on the issue areas of concern to us in the order in which they are listed.

Financial Value Transparency and GE

We support the Department of Education's (Department) intent regarding increasing transparency and accountability for institutions of higher education. Students and families should have better information to make informed decisions regarding attending and financing a postsecondary education, and students should have a greater understanding of what the implications of debt could be when attending a postsecondary institution.

Currently, there are over 6,000 institutions that receive Title IV funding, which represent a plethora of options for current and prospective students.[2] Given this, it becomes even more important that students understand exactly how institutions of higher education can best meet their needs both at the institutional and programmatic

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[1] The American Council on Education sent a letter to Secretary Cardona on May 19th requesting a 30-day extension for comments to the NPRM.
[2] National Center for Education Statistics. (2023). *IPEDS: Integrated Postsecondary Education Data System*. https://nces.ed.gov/ipeds/datacenter/InstitutionByGroup.aspx

levels. Because students experience their postsecondary journeys through an academic lens, better understanding of the actual programs they are enrolled in is critical. It is because of this that we understand why the Department would want to ensure that students are enrolling in programs that serve them well. However, we have concerns that the proposed rules have flaws that will prevent the Department from achieving its goals.

In the proposed rule, we offer support for the items mentioned below.

- <u>The usage of a six-digit Classification of Instructional Programs (CIP) code</u>.

  The usage of a six-digit CIP code better distinguishes programs offered by institutions than the usage of the four-digit code. While the Department mentions that the loss of information is minimal when conducting analysis using a six-digit CIP code versus a four-digit CIP code, there are multiple, distinct programs that are covered by the same four-digit CIP code that would be identified by using the six-digit code.[3]

- <u>Increased data accuracy.</u>

  The ability of an institution of higher education to correct the list of students in the completing cohort, the inclusion of unemployment compensation in the earnings premium (EP), the exclusion of parent PLUS loan debt in the calculation of the debt-to-earnings (D/E) rate, and the 60 days given to institutions to correct any data submitted are all positive steps. If the Department intends to hold programs accountable for the amount of debt a student has compared to their income, it is essential that the data used be accurate. Any and all steps the Department can take in this rulemaking to ensure data accuracy is highly encouraged and applauded.

- <u>Transitional reporting for non-GE programs.</u>

  Given the increased reporting requirements for all programs at institutions of higher education, the option of choosing a transitional reporting period for non-GE programs will prove to be beneficial if the D/E and EP rates are truly transitional rates with no punitive outcomes.

- <u>Student exclusions when calculating both the D/E and EP rates.</u>

  The exclusion of students enrolled in comprehensive transition and postsecondary (CTP) programs is imperative as these programs have a distinct purpose that would make the application of the D/E and EP rates extremely problematic. The Higher Education Act (HEA) created these programs to help students with intellectual disabilities access postsecondary education and the

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[3] Under education at the two-digit CIP code level, there is a four-digit CIP code for teacher education and professional development. This four-digit CIP code includes a total of 37 programs that exist at the six-digit CIP code level. This can be found at https://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cipid=88107

numerous benefits of participating in these programs. It would be highly misleading to compare the potential outcomes of these programs in terms of labor market returns and doing so may have the unintended consequence of discouraging enrollment where it would be extremely beneficial to the student.

The exclusion of students enrolled in prison education programs is extremely important. As stated by the Department, employment options for these students are limited, or nonexistent, and they should not be counted against a program at an institution that seeks to offer opportunities for these very students to better their lives. In addition, the remaining exclusions that are included are all beneficial when holding institutions of higher education accountable to both D/E and EP rates.

There are a number of areas in the proposed rule that we believe could be improved, where the language is unclear or likely to lead to negative unintended consequences. Below, we offer comments on these areas.

- Calculating the D/E and EP rates.

  While we understand that the Department's goal is to highlight programs that are not serving students well, there remains the question of whether or not the rates used to determine quality are the right indicators. Because the concept of a D/E rate has been around since the 2014 GE rule,[4] we have grown familiar with the idea that measuring debt against the earnings of students is the best available way to determine a quality program. However, numerous factors remain that limit the utility of this formula when it comes to measuring programmatic quality.[5]

  We agree with the concept that, generally, students with a college credential should have a higher income than students with only a high school diploma, but it is not always an apples-to-apples comparison. Because the Department is proposing to use data from the U.S. Census Bureau for those aged 25-34 to determine the median annual earnings, these individuals may have had as many as 16 years in the workforce compared to just three years for college graduates, given the requirement to capture the earnings data just three years after completion. While a variety of data sources show that individuals earn more the higher their level of academic credential,[6] these sources are capturing earnings data on individuals in a given year regardless of when they have graduated from college.

[4] Program Integrity: Gainful Employment, 79 Fed. Reg. 64889 (October 31, 2014) (to be codified at 34 C.F.R. pts. 600 & 668).
[5] U.S. Bureau of Labor Statistics. (2023). *Table 3. Median usual weekly earnings of full-time wage and salary workers by age, race, Hispanic or Latino ethnicity, and sex, first quarter 2023 averages, not seasonally adjusted* [Data set]. https://www.bls.gov/news.release/wkyeng.t03.htm; Board of Governors of the Federal Reserve System. (2020). *Table 1. Before-tax median and mean family income, by selected characteristics of families, 2016 and 2019 surveys* [Data set]. https://www.federalreserve.gov/publications/files/scf20.pdf.
[6] National Center for Education Statistics. (2023). *IPEDS: Integrated Postsecondary Education Data System*. https://nces.ed.gov/programs/coe/indicator/cba?tid=104; NCHEMS Information Center for Higher Education Policymaking and Analysis. (2023). *Difference in Median Earnings Between a High School Diploma and a Bachelors Degree*. http://www.higheredinfo.org/dbrowser/?level=nation&mode=data&state=0&submeasure=368

Undeniably, there is value in obtaining a college degree as these students overwhelmingly have increased earnings throughout their lifetimes,[7] contribute to society at higher rates, and many become leaders in their chosen fields. For these students to fully reap the benefits of a college degree, access, investment, retention, and completion remain the core pillars to success.

- Expanded reporting on all programs.

  The NPRM expands previous reporting from only GE programs to non-GE programs at all institutions of higher education. This reporting includes student acknowledgements for non-GE programs, student warnings for GE programs, reporting criteria for the disclosure website for all programs, and reporting requirements directly to the Department. Not only do institutions need to report on GE and non-GE programs retroactively, but there are also increased reporting requirements for these institutions as well.[8] Based on the Department's analysis using 2022 Program Performance Data, there are 32,058 GE programs and 123,524 non-GE programs on college campuses. The 2014 GE rule estimated, at the time, that there was a total of 37,589 GE programs at all institutions of higher education, with the expectation that reporting would only be done on those programs.[9] With this reporting requirement alone, the Department had estimated a total of 1,223,706 hours to ensure compliance with only reporting programs retroactively and the reporting for the disclosure website, total reporting included 1,947,273 hours.[10] Now that colleges and universities will have to report on all programs offered to students, the estimated number of hours has increased to a total of 5,143,277 hours for the initial year and 1,496,426 hours for the subsequent reporting cycles, this does not include any additional reporting requirements that could be added by the Department in the *Federal Register*. If accurate (and these have generally been underestimated in the past), this represents a significant and expensive new requirement for institutions to meet.

- Due process for institutions of higher education.

  In the 2014 GE rule, institutions of higher education had the opportunity to correct the list of students in the completing cohort, appeal the earnings data used, appeal the student loan debt data used, and have draft rates issued before final rates. While the NPRM allows institutions to correct the list of students in

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[7] U.S. Bureau of Labor Statistics. (2023). *Median usual weekly earnings of full-time wage and salary workers by educational attainment* [Data set]. https://www.bls.gov/charts/usual-weekly-earnings/usual-weekly-earnings-over-time-by-education.htm

[8] Institutions of higher education have to report on at least 23 metrics. Additional reporting includes (1) the student's total annual cost of attendance; (2) total tuition and fees assessed to the student for the award year; (3) the student's residency tuition status by state or district; (4) the student's total annual allowance for books, supplies, and equipment from their cost of attendance (COA); (5) the student's total annual allowance for housing and food from their COA; (6) the amount of institutional grants and scholarships disbursed to the student; (7) the amount of other state, Tribal, or private grants disbursed to the student; (8) the amount of any private education loans disbursed, including private education loans made by the institution; and (9) the total amount of institutional grants and scholarships provided for the student's entire enrollment in the program.

[9] Program Integrity: Gainful Employment, 79 Fed. Reg. 64889 (October 31, 2014) (to be codified at 34 C.F.R. pts. 600 & 668) (page 65027)

[10] Ibid, page 65103

the completing cohort, the other aspects of due process for institutions from the 2014 rule are not restored. The Department proposes to simply provide the institution with a final D/E and EP rate and, if the rate is failing, require the institution to submit a student acknowledgement or warning immediately.

We understand the importance of being transparent with enrolled and prospective students regarding program performance, but we believe that institutions should have the ability to correct any data that will be used, especially when Title IV eligibility is at stake. At the very least, non-GE programs should be able to have a transitional period when determining D/E and EP rates and have draft rates issued first to adjust to the new compliance requirements. For our smaller, more under-resourced institutions, having to comply with the regulations for every program will prove both costly and time-consuming.[11] If an institution loses access to Title IV due to faulty data, this would be a disservice to all the students at the institution.

According to our own calculations, we found that there were 32,058 GE programs and 123,524 non-GE programs.[12] Of the GE programs, only 13 percent had data sufficient to calculate an EP rate and only 12 percent had data sufficient to calculate the D/E rate. Of the non-GE programs, only 18 percent of the programs had sufficient data for both the EP and D/E rate calculations.

In determining how many GE programs would fail either the D/E or EP rate, we found that 26 percent of programs at Historically Black Colleges and Universities (HBCUs), 27 percent of programs at Minority-Serving Institutions (MSIs), 19 percent of programs at public institutions, and 36 percent of programs at private nonprofit institutions would fail. Of the non-GE programs that could fail either the D/E or EP rate, we found that 33 percent of programs at HBCUs, 8 percent of programs at MSIs, 6 percent of programs at public institutions, and 11 percent of programs at private nonprofits would fail.

Given these alarming figures, we question the data used by the Department to explain the impacts of the new financial value transparency and gainful employment regulation. It is apparent to us that far more programs will be impacted from what we know and that we do not have a clear understanding of the number of programs that will actually pass or fail the metrics.

- <u>Loss of Title IV eligibility for all programs</u>.

The NPRM allows the Department to consider the following items when determining whether to certify an institution's program participation agreement (PPA) or place a PPA on provisional status: (1) withdrawal rates, (2) D/E rates,

[11] Reporting for small entities include 667,995 hours costing over $31 million for the initial year and 272,365 hours for the subsequent reporting cycles costing over $12 million. According to the Department, small entities are considered two-year institutions of higher education that have fewer than 500 full-time equivalent (FTE) students and four-year institutions with fewer than 1,000 FTE students.

[12] U.S. Department of Education (2023). *GE Data 3* – Dataset* [Data set]. https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html

(3) EP rates, (4) educational and pre-enrollment expenditures, and (5) licensure pass rates. This level of authority by the Department would allow it to assess any of these factors and make a blanket determination to potentially deny an entire institution access to Title IV funding. What gives us serious pause is that the Department is including D/E and EP rates in these metrics, essentially holding all programs at all institutions accountable to GE with a potential loss of Title IV eligibility. This represents a significant, if indirect, expansion of GE provisions to all academic programs that greatly exceeds what is provided in statute.

Furthermore, we question the authority granted by the Department to give itself such broad discretion. In the preamble, the Department points to Section 498 of the HEA as its authority for the newly proposed section in 34 CFR 668.13(e) of the regulations. In our interpretation of the reading of the statute, no such authority exists. Section 498(h) of the HEA clearly states that the secretary of education (Secretary), among other things, may not keep an institution on provisional status for more than three years if "the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement." Given this information, we find it difficult to understand how the proposed five metrics in Section 668.13(e) would have bearing on the administrative or financial conditions of the institution.

- <u>Student loan debt calculation</u>.

When calculating both the discretionary D/E rate and the annual D/E rate, the Department has proposed to use data regarding the total loan debt of the student. In the preamble, the Department states:

> As under the 2014 Prior Rule, in calculating a student's loan debt, the Department would include Title IV, HEA program loans and private education loans that the student obtained for enrollment in the program, less any cancellations or adjustments except for those related to false certification or borrower defense discharges and debt relief initiated by the Secretary as a result of a national emergency.

In the 2014 GE rule, the total amount borrowed by a student for enrollment in a GE program was the total amount disbursed less any cancellations or adjustments. In this NPRM, the total amount borrowed by a student for enrollment in any program is the total amount disbursed less any cancellations or adjustments with the exception of borrower defense discharges, false certification discharges, and any loan debt cancellations due to a national emergency.

If institutions are going to be held accountable to a metric that uses the amount of debt a student is required to repay against their income, then the actual debt of the student should be used because it is this amount that will be amortized to determine the actual payments. Institutions, and programs at those institutions, should not be subject to the loss of Title IV eligibility based on debt that students will never have to repay.

- GE program length limitation.

  The NPRM proposes to limit the length of a GE program based on the greater of the following:

  - The required minimum number of overall requirements (clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student) as established by the state where the institution is located or as established by any federal agency or the institution's accrediting agency; or
  - If the majority of students in the program are from another state, are employed by another state, or expressed, when they initially enrolled, that they intend to work in another state that is a part of the same metropolitan statistical area, the required minimum number of overall requirements of that state.

  While we appreciate the change from requiring institutions to meet the lesser of the two aforementioned scenarios as proposed during the negotiated rulemaking, we still have questions around access to postsecondary education regarding this language.

  We are afraid that the limitation on program length could decrease access to postsecondary education. There are geographical areas in our country that do not offer certain programs for students. For instance, there are 23 states that do not offer marriage and family therapy programs.[13] If students want to enroll in these programs, they are currently able to enroll in distance education courses so as to not disrupt their day-to-day lives. Given the proposed requirement that institutions meet state licensing requirements or lose federal funding for those programs, many institutions would be incentivized to simply not offer programs to students in other states that do not meet the minimum state licensing requirements.

  Because the NPRM proposes to place a limit on GE programs in a state, a situation is created where an institution can only meet the state licensing requirements for those programs in the state the institution is located in and does not have the ability to meet the state licensing requirements in another state, where the minimum number of requirements is greater, if the majority of students are not either enrolled, employed, or seeking to be employed by the other state.

[13] COAMFTE: Commission on Accreditation for Marriage and Family Therapy Education (2023, June 14). *Directory of COAMFTE Accredited Programs* [Data set]. https://coamfte.org/COAMFTE/Directory_of_Accredited_Programs/MFT_Training_Programs.aspx

Financial Responsibility

We agree with the Department that institutions should be held accountable for meeting the financial responsibility requirements as outlined in the HEA. We want to ensure that students are protected from the precipitous closure of institutions, and we support the Department's intent around identifying the many signs indicating that an institution could be at risk of closure.

In particular, we offer comments on the items mentioned below.

- The requirement that institutions must provide financial protection for each mandatory and discretionary trigger.

  In the 2016 borrower defense regulations, the Department created the concept of mandatory and discretionary triggering events.[14] Currently, if an institution meets any of the metrics to determine a trigger, it could be deemed not financially responsible and would only need to provide financial protection under the alternative standards and requirements under 34 CFR 668.175. Financial protection is only removed for institutions that continue to operate under a provisional certification status if their composite score is 1.0 or greater based on a review of the audited financial statements for the fiscal year in which a mandatory or discretionary trigger was met or if their composite score is 1.0 or greater and the mandatory or discretionary trigger no longer exists. Institutions now have the opportunity to submit financial audits from the previous two fiscal years to remove any financial protection requirements due to a mandatory or discretionary trigger, and while we support the inclusion of this new language, we have questions regarding the need for institutions to provide financial protection for every individual mandatory and discretionary triggering event subject to the institution.

  As a basic concept, institutions that are not financially responsible are those that are unable to provide the services described in their official publications and statements, unable to meet all of their financial obligations, and unable to provide the administrative resources necessary to comply with Title IV, HEA program requirements. Mandatory and discretionary triggering events are meant to be a sign of institutions not being able to meet all of their financial obligations; however, there remain certain triggering events that do not clearly tie to this requirement.[15]

  Requiring institutions to provide financial protection for every single mandatory and discretionary trigger subject to the institution could prove extremely costly for our institutions that are smaller and under-resourced. We also find it hard to understand why the Department would require multiple financial protections

[14] Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program, 81 Fed. Reg. 75926 (November 1, 2016) (to be codified at 34 C.F.R. pts. 30, 668, 674, 682, 685, & 686)

[15] Mandatory triggering events: state actions, GE, and pending court cases for 120 days with no final decision. Discretionary triggering events: pending borrower defense claims and discontinuation of programs.

for the same closure risk, which would be the equivalent of requiring a homeowner to purchase multiple insurance policies on the same house. While we appreciate that the financial protection can be removed, institutions would still need to provide the financial protection until a determination is made by the Department to remove it.

- Increased financial responsibility requirements for public institutions.

As indicated in 34 CFR 668.171(g), public institutions are able to prove that they are financially responsible and are not subject to the requirements in 34 CFR 668.171(b),(c), and (d) as long as they notify the Secretary that they are designated as a public institution by either a (1) state government entity, (2) local government entity, (3) municipal government entity, (4) tribal authority, or (5) other government entity that has the legal authority to make that designation. They must also provide a letter from an official of that state, or other government entity, confirming that the institution is a public institution and must not be subject to a condition of past performance under 34 CFR 668.174. If a public institution is not considered to be financially responsible due to the condition of past performance, it can continue to operate under the provisional certification alternative in 34 CFR 668.175(f), with the exception of needing to provide any financial protection.

The new language proposed in this NPRM requires public institutions to not only meet the aforementioned requirements but also provide a letter from an official of the state, or other government entity, confirming that the institution is a public institution at the time of certification, the first recertification after implementation of the regulations, any recertification after being placed on provisional certification, after a change in ownership, and at any point the Department requests. Also, public institutions cannot be subject to either a mandatory or discretionary triggering event.

Current regulations intentionally carve out public institutions from needing to provide financial protection because they have the backing of the full faith and credit of a government entity; however, the NPRM does not exempt public institutions from needing to provide financial protection when they become subject to a mandatory or discretionary triggering event. Due to this, we believe that this exemption needs to remain, especially for a discretionary triggering event that has a significant adverse effect on the financial condition of the institution.

It is challenging for us to understand the need of the Department to require any additional documentation, or financial protection, because these institutions are not at risk of precipitous closure. If anything, we believe this would create unnecessary burdens and bureaucratic confusions between institutions and states that are not readily able to provide such documentation within the time constraints given by the Department. We do not believe the proposal addresses a documented problem in need of a regulatory solution.

- New requirement for institutions to disclose certain information on their audited financial statements.

  Institutions are required to submit annual audited financial statements as long as they are participating in Title IV programs. The financial statements must cover the most recently completed fiscal year and be prepared according to Generally Accepted Accounting Principles and the Generally Accepted Government Auditing Standards.

  The NPRM proposes that institutions report, in a footnote to the audited financial statements, the recruiting activities, advertising, and other pre-enrollment expenditures made in the most recently completed fiscal year. While this may seem reasonable, a 100 percent disclosure of these items is nearly impossible, rendering institutions acting in good faith unable to comply with this new requirement. Significantly, the aforementioned reporting requirements are not defined, negating any possible value in understanding institutional operations or in providing comparability across institutions.

- Reporting deadlines and Departmental authority.

  The NPRM gives institutions only 10 days to report on certain mandatory and discretionary triggering events, with the exception of reporting regarding 90/10 for proprietary institutions. While 10 days may seem reasonable to the Department, this timeframe can be very difficult for institutions, especially smaller, more under-resourced institutions, to meet given capacity issues. Also, if an institution does not comply with the timeframe due to needing a few more days to compile and submit the proper information, the Department could simply declare the institution not financially responsible. Institutions should not be subject to providing financial protection simply because they need an extra day to ensure they are accurately reporting.

  As it relates to the authority given by the Department, the Department is proposing to allow itself to conclude that diminished liquidity, ability to continue operations, or ability to continue as a going concern has not been alleviated even if the audited financial disclosure proves that it has. We do not understand the rationale behind this proposed language, and no reasonable explanation is given by the Department for this increased authority. If an auditor finds that an institution does not have any of the aforementioned issues, then the auditor's opinion should stand.

Certification Procedures

Authority is given to the Department in Section 498 of the HEA regarding the participation of institutions in Title IV programming. PPAs are set for no longer than six years and after this time has concluded, an institution with a current PPA would need to have its PPA recertified by the Department. The process of obtaining an initial certification, and a recertification, can be a tedious one for institutions due to the many aspects of the electronic application to participate in Title IV programs. We urge the Department to work to better facilitate this process.

The Department is also proposing to make additional requirements for determining whether to certify, recertify, or place an institution under provisional certification status, and we offer comments on the items mentioned below.

- Programs must meet state licensing requirements.

  Currently, in 34 CFR 668.43(a)(5)(v), an institution is required to disclose to current and prospective students whether a program that is designed to meet educational requirements for a specific professional license, or a certification that is required for employment in an occupation, meets those requirements, does not meet those requirements, or it is undetermined whether the program meets those requirements. With this disclosure, students are still able to use their federal financial aid for the program, if it remains the program of their choice. However, the Department is proposing to limit students' ability to use their federal financial aid for programs designed to meet specific professional licensure requirements by removing institutions' ability to articulate that meeting state licensure requirements cannot be determined. In addition, institutions must meet the state licensure requirements of the state where the student is located when they initially enroll in the program.

  Determining whether their programs are in compliance with varying state licensure requirements across multiple states will present a significant challenge to institutions. In some states, determining whether a program meets the licensure requirements can prove to be difficult if those states do not have these requirements publicly available on a website or are undergoing a change in these requirements. What is of the utmost concern is when a student is enrolled in a program and, all of a sudden, the institution is unable to determine if the program meets the state licensure requirements of the state where the student initially enrolled. We also have questions around how the Department would define "initially enrolled," as this could refer to a number of different steps in the admissions process and further clarification is needed.

- Institutions must meet all state consumer protection laws related to closure, recruitment, and misrepresentations.

  Institutions currently have the ability to offer distance education courses to students located in different states without needing to be independently authorized to operate in those states as long as the states participate in a reciprocity agreement. The National Council for State Authorization Reciprocity Agreements (NC-SARA) serves as a private nonprofit organization established by higher education stakeholders to increase access to postsecondary institutions. As part of the reciprocity agreement, institutions are required to meet the state consumer protection laws of NC-SARA as agreed upon by the participating states. This serves as a way to decrease the barrier to institutions in providing distance education for students.

According to NC-SARA, more than 2,200 institutions in 49 member states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands all voluntarily participate in SARA.[16] With the Department's proposal to require all institutions to meet all state consumer protection laws related to closure, recruitment, and misrepresentation, this creates a major hurdle for institutions to offer distance education courses to students in other states. It also decreases access to postsecondary education due to the inability of smaller, more under-resourced, institutions to maintain ongoing compliance with varying laws across multiple states. With this change, institutions will likely only offer distance education courses to neighboring states, if any at all.

It is our recommendation that the Department not decrease access to postsecondary education and work with NC-SARA to address the consumer protection law requirements in the reciprocity agreement. As highlighted in NC-SARA's current policy manual, consumer protection is an important part of the organization, and this policy can be amended to address the concerns the Department has articulated.[17] Also, it may behoove the Department to consider addressing this issue in the upcoming negotiated rulemaking related to state authorization instead of in this NPRM.[18]

Administrative Capability

For institutions to participate in federal financial aid programs, they must be administratively capable as outlined in Section 498(d) of the HEA and implemented by the Department in 34 CFR 668.16. The Department is proposing to modify the requirements regarding administrative capability, and we would like to offer the following comments.

- <u>The defining of adequate career services.</u>

  In the NPRM, the Department indicates that most students attend postsecondary education with the intention of getting a job.[19] While we agree with the Department that it is important for institutions to have sufficient career services to help their students find jobs and follow through on any and all commitments regarding the career services that they provide, we do not believe that allowing the Department to entirely define "adequate career services" is the best path forward.

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[16] NC-SARA. (2023, June 14). *About NC-SARA*. https://www.nc-sara.org/about-nc-sara
[17] NC-SARA. (2022). *SARA POLICY MANUAL* [Version 22.1]. https://www.nc-sara.org/sites/default/files/files/2022-08/SARA_Policy_Manual_22-1_6-27-2022.pdf
[18] Office of Information and Regulatory Affairs (2023, June 15). *Agency Rule List - Spring* 2023. https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1800&csrf_token=3BFC84AFA2C5F648E5823D2148C8E7EDA50B9E512BD1B58AF62DD8E0D99A8606F9BDD235013B8CFE1787066946140913B3D8
[19] Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB), 88 Fed. Reg 32300 (May 19, 2023) (to be codified at 34 C.F.R. pts. 600 & 668) (Page 32374)

We support that the Department does not use certain ratios, or other numerical requirements, to determine the share of students enrolled in GE programs; the number and distribution of career services staff; and the presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institutions. We are also thankful that the Department added the ability of institutions to consider their own policies around career services and what they have already shared with current and prospective students. But we still have questions around how this new language will be implemented. Because there are no clear indicators of what the Department will consider “adequate,” especially across varying administrations, institutions are placed in a vulnerable and uncertain position in attempting to comply with this new requirement.

- The requirement that institutions provide accessible clinical or externship opportunities.

  The Department is proposing that, within 45 days of completion of the required coursework, institutions provide students with clinical or externship opportunities that are geographically accessible and are required for completion of a program. This requirement may seem reasonable, but it is likely that this provision would instead limit access to programs that have internship and externship components.

  For institutions to comply with this new requirement, they would need to successfully secure clinical and externship opportunities for the students; otherwise, the Department would not deem the institution to be administratively capable, which could terminate their access to federal financial aid. To ensure compliance, institutions would likely only enroll the number of students relevant to the clinical and externship opportunities that can be absolutely guaranteed by the institution.

  We do understand and support the intent of the Department as we believe that institutions should do what they can to assist students in successfully completing their programs; however, we would be remiss if we did not highlight the unintended consequences of the proposed change.

Thank you for your time and consideration of this request.

Sincerely,

Ted Mitchell
President

On behalf of:

Achieving the Dream
ACPA-College Student Educators International
American Association of Colleges and Universities
American Association of Colleges for Teacher Education
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Indian Higher Education Consortium
American Psychological Association Services
APPA, "Leadership in Educational Facilities"
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Independent California Colleges and Universities
Association of Independent Colleges & Universities in Massachusetts
Association of Independent Colleges and Universities of Ohio
Association of Independent Colleges and Universities of Pennsylvania
Association of Independent Colleges and Universities of Rhode Island
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Schools Advancing Health Professions
Association of Schools and Programs of Public Health
Coalition of Urban and Metropolitan Universities
Complete College America
Connecticut Conference of Independent Colleges
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Higher Education Consultants Association
Hispanic Association of Colleges and Universities
Independent Colleges of Indiana
Independent Colleges of Washington
Maryland Independent College and University Association
Michigan Independent Colleges & Universities
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Colleges and Employers
National Association of Diversity Officers in Higher Education
National Association of Independent Colleges and Universities

North Carolina Independent Colleges and Universities
Tennessee Independent Colleges and Universities Association
UNCF (United Negro College Fund)
UPCEA
Wisconsin Association of Independent Colleges and Universities