



Docket ID ED-2016-OPE-0050

August 24, 2016

To Whom It May Concern:

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), I am writing to offer our comments on the Notice of Proposed Rulemaking published on July 25, 2016 concerning state authorization of distance education programs. NASFAA represents more than 3,000 member institutions of all sectors of higher education and its broad membership serves nine out of every ten undergraduates in the country.

NASFAA appreciates the Department of Education's (ED) efforts to clarify state authorization rules for distance education. However, some concern remains about the ability to reach ED's intended goals with the proposed rules. Despite legitimate concerns over the quality and integrity of some distance education providers, it is important to recognize the value of distance education in providing access to higher education. Geographic, economic, and temporal constraints make distance education the only viable path to higher education for a growing college population of adult students who balance work and family responsibilities with their studies. Many high-quality distance education providers offer students training for careers or career advancement that will greatly improve their lives. While it is imperative to ensure that these distance education programs provide the same level of quality as brick-and-mortar institutions of higher education, regulations intended to guarantee quality should not be so onerous as to jeopardize the existence of high-performing distance education programs.

The higher education community has undertaken its own very successful self-regulating initiative on this topic, with the creation and rapid expansion of the National Council for State Authorization Reciprocity Agreements (NC-SARA), spearheaded by the Western Interstate Commission for Higher Education (WICHE). ED's recognition of this well-designed project-- demonstrated through the addition of institutional participation in state authorization reciprocity agreements as acceptable criteria in meeting state authorization requirements for distance education programs in proposed Sec. 600.9 (c)(1)(ii) --is a significant improvement to current regulation. However, some aspects of the proposed rule are unclear as to how they would integrate with NC-SARA.

NASFAA believes strongly that ED should defer wholly to NC-SARA for member states and participating institutions. For institutions that do not participate in a reciprocity agreement, ED should use NC-SARA as a model for reasonable and effective regulation of distance education with regard to state authorization, with rules that are no more onerous for individual institutions than for those that operate under NC-SARA or other reciprocity agreements, and, where possible, no more onerous for distance education than for brick-and-mortar operations. To this end, NASFAA supports the comments submitted by WICHE Cooperative for Educational Technologies (WCET).

For institutions that do not have access to reciprocity agreements, the proposed regulations impose a number of new compliance requirements that will require significant resources on an ongoing

basis. For instance, in proposed 600.9(c)(2), requiring states to document the existence of a state process for action on complaints in each state from which a distance education program enrolls students entails thousands of institutions individually determining and staying current on whether potentially fifty states (plus territories and the District of Columbia) have such a process. In the interest of efficiency and reduced burden on institutions NASFAA recommends that this determination be made centrally under proper legal authority, perhaps by ED or the Consumer Financial Protection Bureau (CFPB), and published by ED as it does for postsecondary vocational school oversight under CFR Part 603. Beyond questions of efficiency and burden, however, we believe it is inappropriate for institutions to make a determination that a state has a process; this determination should be a federal responsibility. If the law does not currently provide authority for ED to act directly to assess a state agency's qualifications to authorize institutions [other than postsecondary vocational institutions under HEA sec. 487(c)(4)], ED should seek such authority rather than use institutions as a backdoor approach to regulating state agencies.

Applicability of Proposed Rules

It is unclear whether the proposed rules are intended to apply to distance education coursework that constitutes an academic program in its entirety, or to any individual courses taken by a student regardless of whether they are enrolled as a regular student in the institution's program. Students undertaking a program of study for the purpose of earning a credential from the institution could be assumed to be seeking associated licensure or certification, but an individual who is enrolling in coursework without intent to earn a credential is likely seeking to improve his or her knowledge or abilities for personal advancement, and might already have a license or certification. In the latter instance, it would be questionable whether the proposed rule, such as disclosures, would serve any practical purpose. The proposed rule language is not consistent or clear in this regard and we request clarification.

We seek clarification that the proposed rules have no impact on coursework that is provided under a written agreement described in 668.5. The preamble addresses this issue for foreign schools and study abroad programs, but not for written agreements between domestic schools. For example, if school A has an arrangement with school B under which school B provides specific courses that fulfill requirements at school A as if they were provided by school A, that arrangement should not trigger these proposed rules even if the content is delivered by distance education.

There appears to be conflicting language in 668.50(a) and (b). In (a) the proposed regulation specifies that institutions offering "... a program solely through distance education or correspondence courses..." must provide the subsequent new disclosures described in (b) and (c). However, (b) specifies institutions that "...offer(s) an educational program that is provided, or can be completed, solely through distance education or correspondence courses...". A program that *can be completed* solely through distance or correspondence courses is not necessarily a program that is *provided solely* through distance education or correspondence courses; a program could have both in-person and online offerings and a student could make exclusive use of one option or some combination of both. We seek clarification as to whether the regulation is intended to capture just programs whose only option is via distance or correspondence, or any program that has the potential to be completed entirely through distance education or correspondence courses.

Additional disclosures

Concerning proposed addition of Sec. 668.50, NASFAA agrees that students must have consumer protections against institutional misconduct and must be aware of their rights and avenues of recourse when they have been victims of fraud, dishonesty, or misrepresentation. Students must also be aware of state licensure and certification requirements and whether their educational program offers the prerequisites to meet those requirements. However, the addition of ten new institutional consumer protection disclosures for programs offered solely through distance education is excessive. It is difficult to imagine how ten additional disclosures would provide a relevant and meaningful benefit to students. It seems more likely that, added to the sea of existing required institutional disclosures, these new disclosures would be ignored, misunderstood, or forgotten, and would likely create more confusion than help. Although NASFAA agrees generally with the required disclosure of essential, timely, and clear information to students we detail below some specific concerns regarding the proposed disclosures.

There is some overlap between the disclosure requirements under the proposed state authorization regulations and the recent proposed borrower defense to repayment regulations. For example, both sets of proposed regulations include new disclosures for adverse action by state or accrediting agencies. We seek clarification for instances where institutions meet the criteria for required disclosure under both sets of regulations as to whether both disclosures must be made separately or if a single disclosure is sufficient to satisfy both sets of regulations.

Public disclosures

The requirement in Section 668.50(b)(3) for disclosure of the process for submitting consumer complaints, with applicable contact information, for each state in which enrolled students reside represents a significant investment of time by institutions who must research these processes and locate contact information in potentially every state, territory, and the District of Columbia. Regularly-occurring updates would be necessary to prevent information from becoming outdated, creating an ongoing burden to schools. A more accurate and less burdensome method for providing this information to students would be for ED to collect this information and develop a portal to which institutions could provide a link rather than holding every distance education provider responsible for collecting and updating the same information individually. Alternatively, a school should be able to provide a link to a state's website that provides such information rather than having to reproduce it and risk inadvertently missing subsequent changes.

Regarding Section 668.50(b)(4) & (5) and disclosure of adverse state or accrediting agency action, while it is essential for students to be aware if their program risks loss of accreditation, loss of federal student aid eligibility, closure, or other negative event, it must be balanced against the risk of disclosure fatigue. Not all adverse state or accrediting agency action is necessarily relevant to every student. It is recommended that ED adopt more specific language regarding the types of adverse action that must be disclosed, keeping in mind what would be more relevant to students and using as an example Section 3(2) of NC-SARA's Policies and Standards by which states may grant provisional admission or provisional renewal of an institution's participation based on a set of specific adverse actions against the institution. If ED intends for the definition of adverse accrediting action from Section 602.3 to apply here there should be a cross reference to that section for clarity. Further, due process must be respected. The requirement to disclose initiated actions regardless of their disposition may well be premature and unjustifiably damaging to the institution.

Concerns for the requirement under Section 668.50(b)(6) for distance education providers to disclose refund policies for every state from which they enroll students match those concerns stated earlier with respect to Section 668.50(b)(3). While NASFAA supports access to this important consumer information for students we question the efficiency and accuracy of asking thousands of institutions to research and disclose the same topic individually if it could be collected once, directly from the states, with students pointed by institutions to a central source or portal, or by providing a link to a state website that provides the information. Further, this information would actually be misleading in the case of institutions that are covered by a reciprocity agreement in which the parties have decided the institution's policies should apply.

NASFAA supports the principle behind Section 668.50(b)(7)(i) that a student enrolling in a distance education program leading to certification or licensure in a specific field must be aware whether the program offers the prerequisites for said certification or licensure in their own state. With this as with the other proposed disclosures required for every state in which a distance education provider enrolls students, there is concern for misrepresentation by institutions by error or omission solely due to the volume and complexity of information they are being asked to disclose. In light of recent proposed regulations for borrower defense to repayment where institutions could be subject to penalties or loss of eligibility based even on unintentional misrepresentations or omissions, institutions would be assuming risk in meeting these new disclosure requirements. Further, open access community colleges have expressed a concern that they will experience difficulty identifying a student's home state prior to enrollment. This disclosure requirement places a potential strain on state licensing board offices as well as they attempt to respond to a large number of requests for licensure and certification prerequisites. NASFAA urges ED to assume the burden of collecting and compiling licensure and certification information by state and field and institutions should be required only to compare their course offerings to ED's list and make individualized disclosures as required.

Individual disclosures

As noted in reference to the public disclosure requirements, a centralized repository of state licensure and certification prerequisites by occupational field would greatly aid institutions in complying with the proposed Section 668.50(c)(1)(i) and would also reduce the likelihood of unintentional errors that are almost certain to arise from thousands of institutions researching every state's and territory's ever-changing licensure and certification requirements for every distance education program they offer that lead to licensure or certification in a certain field. NASFAA supports the proposed regulation for individual disclosure to prospective students if the institution discovers their program does not meet the student's state's licensure or certification requirements. However, the burden of collecting and compiling licensure and certification information by state should reside with ED and institutions should be required only to compare their course offerings to that centralized source and make individualized disclosures as required.

Regarding Section 668.50(c)(ii)(A), NASFAA recommends replacing the language requiring individual disclosure for any adverse state or accrediting agency action with NC-SARA's language on this topic from section 3(2) of its Policies and Standards which describes specific adverse action that has the potential to impact prospective and enrolled students and/or cross-referencing Section 602.3 if the existing definition of adverse accrediting action was intended in the regulations.

We appreciate the opportunity to offer these comments and we look forward to working with you on these important issues. Questions about our comments may be directed to Jill Desjean at desjeanj@nasfaa.org.

Sincerely,

A handwritten signature in black ink that reads "Megan McClean Coval". The signature is fluid and cursive, with the first name "Megan" being the most prominent.

Megan McClean Coval
Vice President, Policy & Federal Relations