Re: Proposed rulemaking [Docket ID ED-2018-OPE-0076]

To Whom It May Concern:

Thank you for the opportunity to comment on the Department's recent proposed rulemaking to address many important topics facing higher education. UPCEA's members represent a wide range of institutions and units of American higher education focused on professional, continuing, and online education. On behalf of UPCEA (University Professional and Continuing Education Association), we wish to issue formal comments regarding the proposed regulations amending the Student Assistance General Provisions, the Secretary's Recognition of Accrediting Agencies, and the Secretary's Recognition Procedures for State Agencies under the Higher Education Act of 1965.

UPCEA recognizes the importance of regulations in protecting students and the general public. As such, our comments focus on seeking clarification in order to better prepare institutions to meet these requirements as well as to protect and advise students.

1. Specify the state approvals necessary to meet the requirements in new section 600.9(c)(1)(i) and provide guidance on the type of proof that will suffice

In order to better define the research necessary for compliance with the proposed regulations, we ask that the Department more specifically define what is required in 600.9(c)(1)(i), which states that an institution "must meet *any* State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State" (emphasis added). The language as written seemingly indicates that an institution will need to prove compliance with more state agencies than just the state higher education agency, such as a state Secretary of State, or a state's licensing board. Given that, as detailed below, we are required to document proof to the Secretary of such approval, we request that the Department clarify if it only would request documentation of approval from the state higher education agency, or if the Department would request documentation from any state agency with which we may need to comply to legally offer postsecondary distance education.

If the Department does in fact require documentation of approval from any state agency (not just the state higher education agency), we request guidance on types of proof to "document to the Secretary the State's approval." In our experience, state regulators have heavy work volumes. If institutions were required to provide yearly proof of compliance, that may provide an undue burden on institutions and regulators to meet this requirement. In addition, some state regulators (such as a state Secretary of State) do not provide official letters of authorization nor provide legal advice. In these instances, institutions would benefit from guidance from the Department on how to proceed and obtain the appropriate level of proof. Understanding this is important for institutions so that they can make plans for compliance, and if necessary, restrict enrollments in certain states until all state requirements are met.

2. Clarify the Department's interpretation of the language regarding reciprocity agreements in §600.9(c)(1)(ii))

The proposed regulation indicates that state authorization reciprocity agreements will be sufficient for participating institutions to meet State requirements to be legally offering postsecondary education in any state that is a member of the agreement. We appreciate and support the Department's continued recognition of reciprocity as a means of meeting State requirements for purposes of Title IV.

However, we are concerned that language in that section may inadvertently render reciprocity agreements moot. The regulatory language states that "…the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State."

We are concerned that the "additional requirements of that State" language could be read to allow states to enforce any statutes and regulations of their choosing, even if these laws would contradict or go beyond the scope of existing SARA provisions. It does not seem that has ever been the Department's intention, but it would be best to close that loophole and avoid that possibility in the future.

SARA's standards for consumer protection are quite high and consequences for misbehavior can be severe, including public tracking of complaints and possible expulsion from the agreement. We recommend that the Department of Education formally endorse the interpretation of the definition of a state authorization reciprocity agreement as outlined in the letter from Ted Mitchell on this issue (see the letter here: https://wcet.wiche.edu/sites/default/files/Ted-Mitchell-Reciprocity-Response.pdf)

3. Proposed changes to § 600.9(c) and 34 CFR 668.43(c). - *Determining Student Locations*

We support the change from "residence" to "location" when determining student location for state authorization and licensure disclosure purposes. However, we are (i) requesting clarification as to what "consistency" looks like in applying the same standard to "all students." For some institutions, this may mean centralizing processes that are currently somewhat unique on a school-by-school basis, such as processes for tracking student location on internships and other experiential learning placements. Additionally, we are(ii) requesting more time, both because of the effort involved for institutions to coordinate internally and decide on a single, uniform policy, and because we see a strong need for a gap period to allow institutions to transition from the 2016 "residence" approach to the "location" approach in the new rules. We believe postponing the enforcement of this rule change for at least six months after the effective date would provide a sufficient transition period to our member institutions and help eliminate any confusion that may otherwise result.

4. Provide adequate time for research and compliance for professional licensure disclosures (section 668.50(b)(7))

UPCEA and its members agree with the goal of assuring that institutions are more proactive in providing important information to students before enrolling them. As outlined below, we do not object to the requirement in the section regarding professional licensure disclosures but ask the Department for adequate time for compliance.

For the professional licensure requirements, the Department's estimate of burden underestimates the amount of time institutions will spend in fulfilling this requirement. The Department states "We further estimate that it would take an institution an estimated 50 hours per program to research individual State requirements, determine program compatibility and provide a listing of the States where the program curriculum meets the State requirements, where it does not meet the State requirements, or list the States where no such determination has been made."

Under this estimate, 50 hours means one hour per state. If an institution researches more jurisdictions, it would be even less time per state/jurisdiction. Given the information is not always widely available, and the fact that time is needed to confirm the requirements with the program, draft language and have it approved, and get the language organized on the website, that estimate is highly unrealistic. That also assumes that there are no other steps in the process, such as obtaining specific program approval from a licensing board, or reporting any clinical placement details that may be required. The estimate is also assuming that the research needed to complete this task would happen once rather than be an ongoing commitment. Institutions may wish to hire additional staff or establish larger-scale efforts to meet the requirements as a result, which are separate processes dependent on more than just one hour of research, per program, per state.

Additionally, the currently effective regulations for professional licensure disclosures and the proposed professional licensure disclosures vary in terms of the information that is to be disclosed for the programs and how that information is to be displayed. Thus, it would be very difficult for institutions to be compliant for the currently effective requirements and then have new processes in place for a possible effective date of July 1, 2020.

Additionally, professional boards in the states will be overwhelmed with requests. The boards will not be staffed to handle the volume of inquiries and turn-around will become slower. UPCEA estimates that it may take substantially more time per program for an institution to fully come into compliance. Therefore, we suggest the Department not enforce this provision for at least three years after enacting the regulation.

Lastly, it will be very difficult for face-to-face, on-campus programs to be in compliance by a possible effective date of July 1, 2020. These disclosures were not previously required of these

programs, and it may be difficult for institutions to come up with a university-wide approach on how to comply, let alone do the research or disclosure drafting work, by next summer.

Rushing this process could result in institutions opting to simply state they have not determined whether licensure prerequisites are met, which would ultimately give less information to students and may encourage students to not apply to or matriculate into programs that would have, in fact, satisfied their needs. This may in effect limit options for students solely on account of regulatory burden.

Given all we describe above, we suggest the Department not enforce this provision for at least one year, and preferably three years, after enacting the regulation.

5. Allow adequate time for institutions to come into compliance with the Department's change from "national" and "regional" accreditors to "institutional accreditation" (see 34 CFR 602.3 and 34 CFR 602.11)

The Department proposes to remove "geographic area of accrediting activities" from the definition of "scope of recognition or scope" of an accreditor's activities. We understand the Department wants to simplify the labeling of accrediting agencies to reflect their scope more accurately (e.g., institutional agencies, programmatic agencies, specialty agencies).

We do not object to this change, but ask the Department for adequate time for compliance. Institutions that distinguish between national and regional accreditation in some of their policies will need to amend those policies. In addition, some state laws and regulations distinguish between national and regional accreditation, and those state regulators would need time to amend those laws and adjust the procedures in implementing those laws. Given that changes like that do not happen overnight, it would be difficult to adjust policies and laws accordingly by July 1 of next year.

6. Clarify what constitutes "notice" and "action" under 34 CFR 668.43 (a)(20)

This new section proposes to require the institution to "supply notice of an investigation, action, or prosecution by a law enforcement agency for an issue related to academic quality, misrepresentation, fraud, if the institution is aware." In this publication, the Department indicated that the disclosure of any adverse action a state entity or accrediting agency would be required under this section.

We do not object to this change, but ask the Department for clarification on what constitutes "notice" and "action" in this new proposed regulation.

Conclusion

Thank you in advance for providing this opportunity to comment on this proposed rule change and for considering these comments. Please send any future correspondence or information about this proposed rule to: Jordan DiMaggio, Director of Policy + Digital Strategy
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Sincerely,

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