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U.S. Department of Education
400 Maryland Ave. SW
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Re: Notice of Proposed Rulemaking: Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB); Docket ID ED-2023-OPE-0089

The National Skills Coalition (NSC) is a national organization fighting for inclusive, high-quality skills training so that people have access to a better life, and local businesses see sustained growth. NSC supports policies that lead to an inclusive economy where workers and businesses who are most impacted by economic shifts, as well as workers who face structural barriers of discrimination or lack of opportunity, are empowered to equitably participate in –and benefit from –a growing economy. NSC welcomes the opportunity to comment on the Department of Education's (the department's) proposal notice or proposed rulemaking (NPRM) on financial value transparency and gainful employment (GE), financial responsibility, administrative capability, certification procedures, and ability to benefit (ATB). NSC has a strong interest in ensuring equitable access and strong outcomes for students enrolled in subbaccalaureate programs, as well as those enrolled in longer-term career pathway programs.

NSC has an acute interest in advancing policies to support quality non-degree credentials. Through its Quality Postsecondary Credential Policy Academies, NSC has worked with 11 states to adopt a set of quality criteria to guide state policy and investments that are oriented toward increased attainment of and access to quality non-degree credentials for students.[i] Tailored technical assistance, peer learning, and resource development has helped these states make progress towards defining the key criteria for understanding the value offered to learners, workers, and employers of non-degree credentials and integrating racial equity considerations into states' quality assurance criteria and frameworks. NSC also worked with states to develop data policies for measuring and evaluating the quality and equity outcomes of non-degree credentials and to identify and implement policies that are guided by quality assurance frameworks to increase equitable access to and attainment of quality non-degree credentials.

NSC commends the department's efforts to enhance consumer information available to students and families, and safeguard students from institutions and programs that have demonstrated poor performance. Conceptually, the reasoning behind adopting these regulations is sound. The majority of individuals who pursue a postsecondary credential do so in order to enhance their career and earning prospects.[ii]

Yet the array of postsecondary options can be daunting for consumers. It is estimated that there are over one million unique credentials offered in the United States.[iii] Given the vast array of options, students and families need systems to evaluate the quality of institutions and credentials to help identify the education and training programs that align with their goals. Additionally, given statutory authority under the Higher Education Act (HEA), it is incumbent upon the department to provide an accountability structure that protects students and taxpayers. While NSC supports a number of the proposed changes in the NPRM, we request that the department revise certain proposals to ensure that the regulations are accurately targeting bad actors while limiting adverse impacts for students and supporting investments in programs with strong outcomes.

Financial Value Transparency

Historically, the department and Congress have been particularly focused on institutional-level accountability, data, and reporting. The expansion of the College Scorecard in recent years to encompass some programmatic level data was a welcome supplement to that consumer information tool. Considering the quality of the institution alone does not provide a full picture for most students and families when it comes to evaluating postsecondary opportunities. In determining which institution to attend, students will consider a number of factors, including cost, location, selectivity, support services, availability of aid, flexibility, graduation rate, and prestige. Perhaps equally important is the program or field of study a student chooses to pursue and the effect that can have on lifetime earnings. Understanding this potential return on investment is important for students when considering their postsecondary options, particularly for women and students of color given pay gaps associated with occupational segregation and racial and gender discrimination. It is also important from an equity perspective to understand both access and outcomes for historically marginalized groups, including Black, Indigenous, and other communities of color. These data can help facilitate policies to break down barriers for individuals and groups, including women and persons of color, to lead to stronger outcomes.

Conceptually, NSC supports the department's proposal to create a disclosure website that will better enable students to understand the cost and outcomes of a program prior to enrollment. In particular, while aggregate data including both completers and non-completers may be important from a policy perspective, focusing on solely program completers is preferable for a consumer information tool. Additionally, we encourage the disaggregation of these data whenever possible.

NSC supports the department's efforts to identify programs that are "high-debt-burden" or "low-earning." We also believe that it is essential that students and families have the information and tools to identify programs that represent a good return on investment and lead to strong educational and career opportunities. This includes evidence of strong labor market gains, such as employment, earnings, and prospects for advancement. Additionally, assessing the value of programs may go beyond just the financial component and should include whether a program has: strong completion and placement rates (that are disaggregated across groups); a system of academic and non-academic supports; credits that can articulate or stack to additional credentials; significant labor market demand and evidence that it meets the needs of employers; and an adequate pass rate for students taking licensure or certification exams. While some of these components are included in the NPRM, there is an opportunity for the department to provide a more complete picture of programmatic value.

Gainful Employment
For several years, NSC has undertaken technical assistance work in states to help develop quality assurance frameworks for assessing the value of nondegree credentials. Much like GE, the impetus for this work is helping state policy makers identify nondegree credentials of value though accountability metrics, expand state data systems to better assess performance via those metrics, and embed those quality standards into additional programs and policies. In some states that has taken the form of integrating the quality assurance framework into programmatic eligibility for certain state financial aid programs. Other states have integrated it into how they assess eligible training providers under the Workforce Innovation and Opportunity Act.

State Quality Assurance Frameworks on Nondegree Credentials - For NSC's state work, assessing quality and value in nondegree credentials is multifaceted, considering not only wages, but also employment outcomes, labor market demand, availability of multiple job opportunities, competencies mastered by the credential holder, stackability, and portability. NSC recognizes that this type of framework would be more difficult to implement on a federal level and is not making a recommendation at this time that the department apply this framework to GE. However, it serves as an example of how assessing value should ideally be approached in a comprehensive way. It also helps tackle a fundamental conflict in this space – that some of the programs that align with the greatest demand for workers and the greatest societal need (such as child care and medical assisting) also are vastly underpaid. Community and technical colleges often face a challenging dilemma of whether their institution should fulfil their mission to serve the needs of the community by offering educational programs that are in high demand but lead to low earnings, or whether they should only offer programs that provide paths to better paying jobs. The answer for many colleges has been to offer career pathways and stackable credentials to create roads to additional educational and career opportunities for workers in low-paying jobs.

Using Earnings as a Quality Indicator - NSC recognizes that the department will likely proceed with a GE framework based solely on earnings and debt. We urge the department to proceed with caution and develop a thoughtful approach to assessing wage outcomes. Fundamentally, we do not know what the results will be from cutting off Title IV access to programs that serve hundreds of thousands of students. In the best cases, students will move to an alternative program that provides better outcomes and opportunities. In the worst cases, students see the cost burden shifted onto themselves or decide to no longer pursue a postsecondary credential altogether. Students enrolled in low-road programs at for-profit institutions are likely the greatest at risk for adverse outcomes.

We also do not know what will happen to the programs that previously qualified for Title IV. Presumably, many of these programs will eventually cease to exist and that very well could be a positive development. However, there will still be a fundamental demand for workers in some of these occupations, such as medical assisting and dental support. It is unclear if states and employers will step up to fill in the gap to pay for education and training, or if the cost will shift to the student. It is important to recognize that students in programs that are ineligible for Title IV also take on postsecondary debt, but since we do not have data to assess the degree to which that occurs, they are often forgotten in the narrative of postsecondary outcomes.

In terms of earnings, NSC believes that wages are an important indicator of quality for the credentials and programs that are subject to GE. We commend the department for their efforts to use administrative data in these calculations, thus lowering the burden on institutions. NSC supports the department's proposal to hold GE programs to a standard that considers debt relative to demonstrated earnings. Conceptually, implementing a metric purely on earnings standards also has merit. One of the primary reasons students enroll in GE programs is to enhance their career and earnings prospects. However, the ability to assess earnings relative to programmatic outcomes is not always clear-cut. Eliminating hundreds of programs from Title IV will have a positive impact on some students and an adverse impact on others. Given the implications, NSC recommends that the department reevaluate the proposed earnings premium (EP) metric to provide a more accurate picture of programmatic earnings outcomes.

Challenges with Establishing an Earnings Floor - NSC is skeptical of the use of a bright-line earnings floor as a singular threshold for Title IV eligibility for GE programs, as it does not provide an accurate appraisal of return on investment. An earnings floor does not account for earnings gain and may fail some programs that have demonstrated significant benefit to students while passing others that have little to no earnings benefit. A bright-line standard fails to adequately account for part-time workers - who are often caregivers. It also disadvantages programs that enroll primarily women, and in particular women of color, as many of those programs are less likely to meet wage eligibility thresholds due to longstanding wage inequities. The goal is not to lower standards for groups that have been historically marginalized, but to better assess the actual return on investment for these programs. Ultimately a wage progression model that compares pre-enrollment earnings to post-completion earnings will better account for wage inequities based on race, ethnicity, and gender, as well as the actual return on investment for a cohort of students.

If the department proceeds with an earnings premium based on median high school earnings, NSC strongly encourages the department to look beyond state-level medians and instead consider median earnings at the county or regional level, accounting for disparities in metropolitan areas. There is too much wage variation within states for a state median wage metric to be an accurate earnings threshold. For example, nationally, there are currently 47 localities that have a minimum wage that is higher than the state minimum wage.[iv] It is also common for employers to make wage adjustments based on local norms or the cost of living for a particular region. While it may not be the most statistically sound sample, the website 'Indeed' estimates that a certified medical assistant can expect to make nearly $6 per hour more in New York City compared to Rochester, New York. Establishing a singular state standard will likely provide an advantage to in-person and hybrid programs in metropolitan areas while disadvantaging those in rural areas, including many tribal colleges.

Refining the GE Earnings Metric - As the department considers ways to improve the proposals within the NPRM, NSC encourages the consideration of a dual metric to assess programmatic value relative to wages – whereby programs must pass either an earnings threshold or a wage progression metric. Individually, both the wage progression metric and the bright-line earnings threshold have flaws. The bright-line threshold fails to account for racial, ethnic, and gender earnings disparities, lower earnings of part-time workers, and actual wage gains across a cohort. It is a weak metric in terms of assessing return on investment, and fundamentally disadvantages programs that are in rural areas or enroll a disproportionate number of women and students of color. Also, as previously outlined, the proposal in the NPRM does not sufficiently account for variations in wages within a state.

Conversely, while a wage progression model addresses many of the weaknesses associated with a bright-line wage threshold, it disadvantages programs where students already have a higher level of pre-enrollment earnings. For example, students enrolling in IT certificate programs may see a smaller wage progression in terms of percent gain because they often already work in IT, which is typically a well-paying sector. Additionally, there is a risk that institutions could seek out students who have no earnings prior to enrollment in order to game the programmatic wage progression metric. Afterall, any earnings above zero would represent a significant wage gain. This could be addressed by limiting or eliminating students with no pre-enrollment earnings from inclusion in the two-year or four-year cohort.

Ultimately, NSC believes it is incumbent upon the department to address the weaknesses in the proposed median high school wage threshold. The loss of programmatic eligibility for Title IV should not be taken lightly given the potential adverse impact on some students.

Providing Impact Projections - NSC greatly appreciates the department's analysis of GE's impact looking at programs in two-year cohorts. However, the lack of information on the impact for programs in four-year cohorts is concerning. We call for further disclosure of those data. In particular, according to the NPRM the department estimates that an additional eleven percent of GE programs would be subject to EP and debt-to-earnings (D/E) using a four-year cohort. The NPRM data present a comparatively lower impact to the community college sector based on the two-year cohort. Those institutions should be prepared if the estimates significantly change once the four-year cohorts are included.

Certification Procedures

NSC values the department's intent to provide greater protection for students within the certification procedures proposal. In particular, we appreciate the proposals to restrict the withholding of transcripts and provide limits to Title IV access for institutions that have demonstrated questionable conduct in terms of advertising and recruitment. It's important to provide safeguards to both prospective and former students.

Limiting Clock Hours for GE Programs - NSC has significant concerns with the NPRM proposal to limit clock or credit hours for GE programs that either require programmatic state accreditation or state licensure. Presently, GE programs that require programmatic state accreditation or state licensure must be within 150 percent of the state determined clock hour standard with some flexibility for aligning standards with adjoining states. The NPRM proposes limiting clock hours or credit hours for those programs so that they do not exceed the standard set by the state (in lieu of a state threshold, there may be one set by an accreditor or the department). Additionally, the proposal tightens the ability for an institution to align clock or credit hours with an adjoining state by requiring that the institution demonstrate that a majority of students either live in, or plan to work in, an adjoining state.

NSC appreciates the intent to protect students from using financial aid unnecessarily and accepts that 150 percent may be providing too much flexibility. However, setting a limit at 100 percent of the state standard with significant barriers to aligning curriculum with adjoining states is too rigid and does not allow institutions proper leeway to design curriculum that best supports students.

In NSC's discussions with state partners, we found that in the vast majority of cases community and technical colleges are aligning clock hours with state standards. However, there are programs that are also designed to be a pipeline to a particular employer that may have a limited set of additional competencies, requiring them to avail themselves of the flexibility allowed in current regulations. NSC's partners in Texas noted that they have programs that would fall into this category. Additionally, there are instances where an adjoining state may have slightly different licensure requirements. For example, our partners in Oregon posed the scenario where one state's licensure may require 20 hours of biology and 30 hours of chemistry, while the neighboring state requires 40 hours of biology and 20 hours of chemistry. Arizona had concerns regarding health care programs where the state standard for clock hours is lower than that set by the specialized accreditor. Minnesota was concerned that this could impact trade programs that are embedded within career ladders. These are not instances where institutions are operating in bad faith. Ultimately, there should be some flexibility with the clock hour standards when additional competencies are added to advance the career goals of graduates.

In fact, the department's proposal (under financial value transparency) to provide students with additional disclosures regarding licensure requirements in other states seems to conflict with this proposed clock hour limitation. Essentially, the department is directing institutions to disclose to students instances where their program will not meet licensing requirements in other states (including a state the student might reside in), while simultaneously preventing the institution from matching those standards while also remaining Title IV eligible. NSC recommends that the department provide some leeway to institutions by setting the clock hour limitation at 125 percent of the state standard. This would be the most streamlined approach to addressing this issue. Alternatively, the department could loosen the threshold for using an adjoining state's standards and institute a federal approval process for institutions and programs to increase their clock or credit hours above state thresholds.

NSC takes the department's justification for this change at face value and believes that some flexibility in terms of competencies and curriculum can support a student's career goals and thus is not a misuse of Title IV. If there is a secondary goal to standardize state licensure requirements, NSC would be interested in that conversation, but it seems to fall outside of the scope of Title IV certification procedures.

Ability to Benefit

The Ability to Benefit (AtB) provision under Title IV enables students without a high school diploma or equivalent to qualify for Title IV aid if they can demonstrate the 'ability to benefit' from postsecondary education and training. Functionally, AtB supports an integrated education and training (IET) model though its career pathway requirement, which enables students to attain both a secondary diploma and a postsecondary credential concurrently. IET has been a successful model, and a recent study by IES concluded that Washington's I-BEST program leads to increased completion rates for industry-recognized credentials.[v] NSC remains concerned that many states and institutions continue to underutilize AtB. In fact, since 2016 the utilization of AtB among public and non-profit institutions has dropped precipitously, while use by for-profits has remained steady.[vi]

Much of the NPRM focuses on the so-called 'state process' that allows a state to forego the standard testing or credit-hour eligibility option, and instead establish its own eligibility criteria for students enrolled in eligible career pathway programs. The state process has the ability to establish intentional career pathway strategies that leverage adult education and career technical education investments with federal student aid to benefit the many adults who may have the ability to benefit from postsecondary education. It is something that the department should be actively facilitating and promoting.

<u>Capping Aid Under the State Process</u> - One area of concern for NSC is the NPRM proposal to institute an AtB enrollment cap for institutions within the first two years of approval under the state process. It is our understanding that states submitting a plan for approval under the state process would have to provide some type of assurance that participating institutions would cap enrollment of AtB students eligible under the state process within the first two years of initial

eligibility. This two-year cap would be equal to one percent of the institution's overall enrollment or 25 students - whichever is greater.

This proposal to cap AtB enrollment gives NSC pause for a number of reasons. The department cites the reason for instituting such cap is "to serve as a guardrail against the rapid expansion of eligible career pathway programs." This implies that the expansion of eligible career pathway programs is potentially harmful to students, which is perplexing given the department's support for expanding career pathway programs. For example, last November Secretary Cardona and the First Lady announced the launch of an initiative called *Raise the Bar: Unlocking Career Success* which included $5.6 million in Perkins funds to support work-based learning opportunities and new guidance to help institutions utilize ARP funds to support the expansion of career pathway programs. The department's fiscal year (FY) 2024 budget request includes calls for new funding to support the development and expansion of career pathway programs, including $45 million for the Rural Postsecondary and Economic Development program, and $165 million for Postsecondary Student Success Grants. Last year, the department developed a "Pathways in Action" webinar to provide stakeholders with advice on developing career pathway programs. Additionally, the statutory definition of eligible career pathway programs largely aligns with the department's practice guide within IES's What Works Clearinghouse. NSC is unclear as to why the department deems the expansion of eligible career pathway programs as harmful based on the explanation given in the NPRM and the department's current priorities in this space.

While NSC opposes adding this limitation to the AtB regulations, we strongly encourage the department to clarify the language in this proposal if the decision is to proceed.

- First, it should be clear that this proposal is calling for a state assurance regarding limitations placed on participating institutions. Under certain circumstances this may be problematic in terms of enforcement since the state is not responsible for enrolling students at an institution or distributing federal student aid. Will the department take steps to enforce this limitation?
- Second, the length of the proposed restriction should be identified in a transparent manner. NSC presumes that the limitation on student participation would apply to the two-year period of initial approval, but that time period is not currently specified.
- Additionally, the terms 'enrollment cap' and 'enrolled student' should be further defined. In particular, the use of the term 'enrollment cap' seems to indicate that states seeking initial approval under the AtB state process would have to provide some enforcement to limit institutional enrollment within an eligible career pathway program. In fact, the goal here is not to limit enrollment in eligible career pathway programs or the expansion of eligible career pathway programs, but instead to cap the number of students who can receive Title IV aid under eligibility established via the state process. It should be clarified that this is not a cap on enrollment but a limitation on the number of students who are eligible to receive aid. Thus, the term 'enrolled student' should either be modified or defined as a student receiving Title IV via eligibility established as part of an approved state process. Conflating receipt of aid with enrollment obscures the intent of this proposal.

NSC is also requesting clarification regarding the department's statutory authority to institute a cap on the number of students who are eligible to receive aid under the AtB state process. Within the NPRM the department references section 484(d) of the Higher Education Act [20 U.S.C. 1091] to validate its authority to regulate the state process under AtB. However, that language does not necessarily give the department authority to limit access to Title IV aid (which operates as an entitlement) to students under certain conditions. The relative subclause states that:

Sec. 484(d)(1)(A)(ii) The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves such process. In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without secondary school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

We request that the department provide greater insight into its rationale regarding how 20 U.S.C. 1091 renders authority to limit Title IV aid distribution.

NSC believes that the AtB state process should be promoted by the department as the preferred method to distribute aid under AtB. Unlike the testing option, which is primarily utilized by for-profit colleges, the state process promotes adult dual enrollment through state leadership and intentional career pathway strategies. It also provides evidence into the effectiveness of those strategies through annual reporting. Instituting a limitation on aid distribution will likely dissuade states from undertaking this option, and further depress utilization of AtB among public institutions. It will also serve to limit aid to students who would have otherwise qualified if not for the cap.

Conclusion

NSC appreciates the department's work on the NPRM and commends its dedication to protecting students. Additional accountability is necessary, especially given the vast array of programs and education and training providers. However, NSC believes it is incumbent upon the department to ensure that regulations are correctly targeting bad actors in this space. Within the regulations there must also be room for innovation and developing programs and supports that lead to strong outcomes for students. Fundamentally, not all actions should be punitive. It is important to invest in programs and providers that are able to meet students where they are at and develop successful career pathways to support a continuum of learning. We must support and invest in programs with strong outcomes, not just identify and curtail bad actors. If we provide students with solid debt-free pathways for effective degree and non-degree credentials it will lead to greater access and better outcomes for students.

NSC appreciates the opportunity to provide input on this topic. Please contact Jennifer Stiddard (jennifers@nationalskillscoalition.org) if you have any questions.

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[i] https://nationalskillscoalition.org/networks/state-initiatives-and-academies/quality-postsecondary-credential-policy-academy/
[ii] https://news.gallup.com/reports/226457/why-higher-ed.aspx
[iii] https://credentialengine.org/all-resources/counting-credentials/
[iv] https://www.epi.org/minimum-wage-tracker/
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