

# USDE Issues Final Regulations for Title IV of the HEA



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The U.S. Department of Education (USDE) promulgated a set of final regulations for Title IV of the Higher Education Act (HEA) in the Oct. 31, 2023, *Federal Register*. These regulations address financial responsibility, administrative capability, certification procedures, and ability to benefit, and they reflect changes to the wording of the proposed regulations in the USDE May 19, 2023, Notice of Proposed Rulemaking (NPRM). These final regulations will go into effect July 1, 2024.

The Oct. 31, 2023, *Federal Register* includes comments from the public about its May 19, 2023, NPRM, as well as the USDE responses to these comments. The final regulations reflect changes prompted by the comments. The following will point out changes in the wording of the regulations that are relevant to the allied health community.

## GE Programs Must Meet Licensure or Certification Requirements

### I.

One of the most controversial elements of the USDE May 19, 2023, NPRM was the requirement that graduates of gainful employment (GE) programs be eligible for licensure or certification requirements in the profession/occupation. GE programs must meet this requirement to receive Title IV funding. The following public comment was published in the Oct. 31, 2023, *Federal Register*:

*Comments:* Several commenters observed that the proposed regulation for institutions to satisfy the educational prerequisites for State licensure or certification requirements would impose an infeasible burden for both schools and State licensing boards.

Many commenters reported that in previous determinations of licensure compliance, such investigations were time-consuming and costly and often yielded no definitive answer. According to these commenters, inquiries to State bodies frequently resulted in no reply. The commenters further explained that State rules vary widely and are subject to frequent changes. ... The commenters asked how the [USDE] could impose this requirement given that we cannot guarantee the necessary State cooperation.<sup>1</sup>

In response to the above comment, the USDE made it clear that it would not compromise on this fundamental element of the GE regulations. Here is the USDE response:

*Discussion:* When a student enters a program that prepares them for an occupation that requires licensure or certification, they should have the expectation that finishing that program will allow them to fulfill the educational requirements necessary for getting the necessary approval to work in that field. We are concerned that students attending programs that do not have those necessary approvals will not only fail to achieve their educational goals but may also end up with earnings far below what they expected. Such programs also represent a waste of taxpayer money, as the Federal Government is supporting credits that cannot be redeemed for their stated purpose. The [USDE] agrees that complying with

this requirement will create costs for institutions, but we also believe those costs are worthwhile to protect student and taxpayer investments. Institutions are not required to participate in the title IV programs, both overall and on a programmatic basis. If they do not want to take the necessary steps to protect against wasted investments, then they can choose to make these programs not eligible for Federal aid.<sup>1</sup>

After weighing all the comments, the USDE decided on the following wording for this section of the final rule:

### § 668.14 Program participation agreement.

...

(32) ... [for] each student who enrolls in a program on or after July 1, 2024, and attests that they intend to seek employment, the institution must determine that each program eligible for title IV, HEA program funds—

(i) Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency; [and]

(ii) Satisfies the applicable educational requirements for professional licensure or certification requirements in the State so that a student who enrolls in the program, and seeks employment in that State after completing the program, qualifies to take any licensure or certification exam that is needed for the student to practice or find

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employment in an occupation that the program prepares students to enter<sup>1</sup>

## II.

Another debated provision of the USDE May 19, 2023, NPRM was the state laws with which schools and their GE programs had to comply. The USDE included the following comment in the Oct. 31, 2023, *Federal Register*:

*Comments:* Many commenters noted that it is not reasonable to presume that students will necessarily pursue their career in the State in which they initially enroll in their program. For example, several commenters offered that the students might be members of the military or family thereof and only be temporarily located in that State, or they might live near a State border and intend to find employment in a neighboring State or move to a State where jobs are more available.<sup>1</sup>

The USDE saw merit in the above comment:

*Discussion:* ... We do agree that there are instances in which a student, such as a military-connected student, might plan to leave the State they reside in and intend to seek employment in another State. Therefore, we have added language to § 668.14(b)(32) to say that an institution can consider the State a student is in at their time of initial enrollment, or the State identified in an attestation from a student where they intend to seek employment in another State. We would note that the student must identify a specific State and the institution's program must meet the requirements of that State.<sup>1</sup>

The USDE settled on the following language for the final rule to consider the

reality that graduates may want to (or have to) work in their occupation/profession in a state other than the state of the GE program. The new language is italicized:

### § 668.14 Program participation agreement.

...

(32) In each State in which: the institution is located; *[and] students enrolled by the institution in distance education or correspondence courses are located, as determined at the time of initial enrollment ... [for] each student who enrolls in a program on or after July 1, 2024, and attests that they intend to seek employment, the institution must determine that each program eligible for title IV, HEA program funds<sup>1</sup>*

See the above language in Section 668.14(32) of the final regulations.

## GE Programs Must Not Exceed Minimum Program Length

Section 668.14, Program participation agreement, (32), seeks to ensure that GE programs *do not omit* education requirements that a state requires for admission into an occupation/profession through licensure or certification. Section 668.14, Program participation agreement, (26), in contrast, seeks to ensure that GE programs *do not add* education requirements that exceed the state's minimum requirement for admission into an occupation/profession. The USDE has used the phrase "course stretching"<sup>1</sup> to describe this practice.

## I.

Commenters urged the USDE not to penalize students who will already be enrolled in GE programs that exceed the state's minimum requirement when the final regulations go into effect on July 1, 2024. Note the following comment in the Oct. 31, 2023, *Federal Register*:

*Comments:* ... Commenters that supported the NPRM's proposal stated that they understand our concerns with excessive length and the wide variation among States' requirements for the same professions, but that the Department's original proposal during negotiated rulemaking would place undue hardship on institutions and students in States with much longer requirements. The commenters also raised a concern that, if the new rule went into effect immediately, it could place undue hardship on students currently enrolled in a program that could lose title IV, HEA eligibility before they complete their program due to circumstances outside their control.<sup>1</sup>

The USDE acknowledged the wisdom of this comment and proposed a solution:

*Discussion:* ... While we think it is important to protect students through this provision, we also agree with the commenters who said that it would not be appropriate for this new requirement to affect students who are already enrolled in eligible programs, as we do not want to disrupt those students' educational plans if their program were to lose eligibility for title IV, HEA funds due to being too long. Therefore, when these regulations are implemented, we will permit institutions to continue offering a program after the implementation date of the regulations that exceeds the

applicable minimum length for students who were enrolled prior to the regulatory change taking effect [July 1, 2024]. This will mean that some institutions may temporarily offer two versions of the same program concurrently but will not be able to enroll new students in the version of the program that exceeds the minimum length. In these cases, the institution is not required to report both programs to the [USDE] but must internally document the existence of two separate versions of the program and indicate which students are enrolled in each program.<sup>1</sup>

## II.

The initial draft of the regulations in the May 19, 2023, NPRM apparently overlooked professions that offer a degree option that exceeds the minimum requirements for practicing the profession. Nurse education was used as an example in the following comment:

*Comments:* One commenter stated the proposed rule would curtail title IV, HEA eligibility in ways that would sharply reduce nursing graduates, worsening the severe shortage of nurses. The commenter argued that many institutions may no longer be permitted to offer Bachelor of Science in Nursing (BSN) programs with title IV, HEA eligibility because such programs would include more credits than necessary to practice as a nurse, which in many States only requires a diploma or associate degree.<sup>1</sup>

Once again, the USDE was persuaded by the logic of this comment. The USDE offered the following:

*Discussion:* We agree with the concerns raised by the commenter about how degree programs subject to State hours requirements could be affected and have made a change to address this issue. We are clarifying that this provision does not apply to situations where a State has a requirement for a student to obtain a degree in order to be licensed in the profession for which the program prepares the student. Minimum length requirements typically operate differently for non-degree and degree programs. For a non-degree program, the hours required by a State typically represent all, or the vast majority of, the curriculum offered in a program. By

contrast, State educational requirements for licensure or certification within a degree program may only represent a portion of that credential and likely will not include other components of a degree, such as general education requirements. As such, minimum length requirements for degree programs may understate the potential length of the program and inadvertently exclude programs that are otherwise abiding by the minimum time related to the component of the program that fulfills specific State licensure requirements. For instance, a State may establish requirements for the component of a bachelor's degree in registered nursing related to the nursing instruction, but not speak to the rest of the degree program.<sup>1</sup>

## III.

The next comment and USDE response demonstrate the difficulty of wording regulations that account adequately for distance education:

*Comments:* One commenter suggested the rule should be amended to allow programs to meet title IV, HEA eligibility by allowing for the longer of two measures: The program length can be no longer than the longest number of credit hours required for licensure in a State in which the institution is permitted to enroll students in compliance with §600.9; or the program length is in compliance with the standards of one of the institution's accreditors. The commenter argued that this approach would allow distance education programs to continue to participate in the title IV, HEA programs while recognizing the licensure variances amongst States.

*Discussion:* The Department recognizes that § 668.14(b)(26)(ii) as written in the NPRM created the potential for confusion for programs offered entirely online or through correspondence. ... For fully online programs, there may be situations when the length of a program required in the institution's State differs from State requirements for the length of a program in the student's State. To address this issue, we have clarified that this provision does not apply to fully online programs or programs offered completely through correspondence, since these are the only situations where this disparity might occur.<sup>1</sup>

## IV.

After taking into account the three comments discussed above (and other comments), the USDE decided on the following language for Section 668.14(b)(26):

(26) If an educational program offered by the institution on or after July 1, 2024, is required to prepare a student for gainful employment in a recognized occupation, the institution must—

...

(ii) Demonstrate a reasonable relationship between the length of the program and the entry level requirements for the recognized occupation for which the program prepares the student by limiting the number of hours in the program to the greater of—

(A) The required minimum number of 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 in which the institution is located [or a state that meets the criteria in the final rule], if the State has established such a requirement or as established by any Federal agency; ...

(iii) Notwithstanding paragraph (a)(26)(ii) of this section, the program length limitation does not apply for occupations where the State entry level requirements include the completion of an associate or higher-level degree; or where the program is delivered entirely through distance education or correspondence courses.<sup>1</sup> ♦

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*Questions about this article may be directed to the author at DBalasa@aama-ntl.org.*

### Reference

1. Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB). *Fed Regist.* 2023;88(209):74568-74710. 34 CFR §668.