USDE Issues Final Regulations for Title IV of the HEA

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.¹

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.³

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.

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.

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.

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 agree-
ment.

…

(32) In each State in which: the institution
is located; [and] students enrolled by the
institution in distance education or corre-
spondence 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.

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 agree-
ment, (32), seeks to ensure that GE pro-
grams 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” 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 follow-
ing 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 profes-
sions, 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 pro-
gram due to circumstances outside their
control.

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

Discussion: … While we think it is impor-
tant to protect students through this provi-
sion, 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 pro-
grams, 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 implementa-
tion 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.¹

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.¹

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 example, 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.¹

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 located [or a state where this disparity might occur]. In 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 example, 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.¹

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.¹

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):

(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 where this disparity might occur];

(ii) Notwithstanding paragraph (a)(26) 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.¹

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

Reference