



June 20, 2023

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, DC 20202

Re: Docket ID ED–2023–OPE–0089

Dear Secretary Cardona,

I write as president of the Association of Public and Land-grant Universities (APLU) to provide comments in response to the Department of Education’s (ED) Notice of Proposed Rulemaking on Financial Value Transparency and Gainful Employment, Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit. As I know you appreciate, the regulations have a profound impact on students and the institutions that serve them. APLU respects ED’s intention of creating regulations that strengthen guardrails to protect students and taxpayers as well as help students and families make more informed decisions about higher education. Such regulations must be balanced with requirements on institutions that may stress resources both the Department and schools want prioritized on students. There are a number of areas in which APLU believes ED should improve the proposal to better achieve an appropriate balance. We offer comments in furtherance of that goal and to serve as a resource as ED takes next steps to improve and finalize the regulations.

As the proposed regulations are vast and complex, APLU is disappointed ED did not approve the higher education community’s request for a 60-day comment period. As a result, the comments below reflect as much feedback as possible within the timeframe and focus on main areas of concern. Undoubtedly, there are many other areas of impact and interest to the public research universities and systems that comprise APLU’s membership. In addition to submitting this letter, APLU joined the broader higher education community in comments submitted by the American Council on Education, which raises additional areas of support and concern within the proposed regulations. We also urge ED’s deep attention to comment letters submitted by individual APLU member institutions.

#### **About the Association of Public and Land-grant Universities (APLU)**

APLU is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities. With a membership of more than 250 public research universities, land-grant institutions, state university systems, and affiliated organizations, APLU's agenda is built on the three pillars of increasing degree completion and academic success, advancing scientific research, and expanding engagement. Annually, our U.S. member campuses enroll 4.2 million undergraduates and 1.2 million graduate students, award 1.2 million degrees, employ 1.1 million faculty and staff, and conduct \$48.7 billion in university-based research.

## **Gainful Employment and Financial Value Transparency**

**Recommendation 1:** To **ease burden** on financial aid offices, APLU encourages ED to implement the “transitional” D/E calculation methodology as the standard methodology for non-GE programs moving forward and eliminate the reporting of the nonfederal sources of aid (institutional and private sources) at the student level.

**Recommendation 2:** To **enhance data quality and comparability** of outcomes across programs, APLU encourages ED to remove the reporting of nonfederal sources of aid (particularly private loans and institutional grants) from the student-level reporting requirements and from the D/E ratio calculations; consider reverting back to the 2014 regulation that caps loan debt at the cost of attendance; and tap into other, more accurate sources of licensing, certification, and workforce data.

**Recommendation 3:** To **strengthen the value of earnings data**, we ask ED to consider calculating median earnings at different periods post-completion based on the credential level, use existing data sources for earnings beyond three years after completion, and build upon the Census Bureau’s Postsecondary Employment Outcomes (PSEO) collection and tool. ED should hold off on requiring and publishing new non-GE program data until the College Scorecard allows for the use of longer-term earnings data which is a more appropriate measure for such programs. For GE programs, ED should heed the concerns expressed by higher education associations on the methodology of the Earnings Premium measure.

APLU has a long track record of support for a gainful employment rule that holds applicable programs accountable for workforce outcomes given such programs are intended and designed to deliver short-term occupational outcomes. Similarly, we have strongly supported efforts to enhance available higher education data to inform students, families, and policymakers, and equip institutions with better information to assess their programs. With its gradual improvements, the College Scorecard provides very helpful information and continues to get better. Legislatively, APLU champions the College Transparency Act as the solution to provide robust and comprehensive information on institutional and program-level outcomes. We are also working as part of a collaborative effort among higher education associations to create a set of financial aid offer principles and standards to ensure students can easily understand how much a postsecondary education will cost and more readily compare aid offers from various institutions. APLU is eager to partner with ED in ways that can further our shared goals in empowering students to make informed decisions and shedding a powerful light on postsecondary outcomes at the institutional and program levels. We note that additional requirements on data collection and reporting should always be seen as a balance between the benefits of the additional data as compared to the resources needed for compliance.

In reviewing the proposed regulations, APLU strongly believes ED should more narrowly tailor its proposal to accomplish intended outcomes on program-level accountability, collect the data necessary for such purposes, and then rely on the robust information available on the College Scorecard or the Census Bureau’s Postsecondary Employment Outcomes (PSEO) data and tools as much as possible for program transparency/consumer information. There are a number of areas within the NPRM we believe needlessly extend beyond what is necessary to accomplish a strong and effective gainful employment

rule and/or present substantial administrative challenges for institutions that are not commensurate with the value of the data that would be returned for the efforts.

As examples of data reporting burden and its real costs, a public university system within APLU's membership estimates that just in the first year it would cost its institutions approximately \$1.7 million to implement. Further, an Alaska Native and Native Hawaiian Serving (ANNH) Institution with enrollment around 7,500 students estimates a minimum cost of \$200,000, mostly to its financial aid office. These are real costs that have real impacts on resources available to support students.

While some have criticized accountability approaches targeted to GE programs, APLU believes a unique approach of accountability and transparency to GE programs makes sense given the disproportionate risk to students and taxpayers. Federal loan default data demonstrate why such programs merit special attention. Per the National Center for Education Statistics, "among those who attained undergraduate certificates, the rate of defaulting within 12 years was 44 percent; for associate's degree recipients, it was 22 percent; and for bachelor's degree recipients, it was 8 percent."

### *The Proposed Reporting Requirements are Extremely Onerous and Would Strain Resources Devoted to Students*

The proposed regulations would place a significant burden on institutional resources – especially with the addition of data requirements for non-GE programs and student-level aid from institutional and private sources. APLU cautions that this would place the most burden on financial aid offices that are already providing critical services to student populations that the regulations are intended to support. While ED estimates that the first year of implementation would cost institutions 5.1 million hours and an additional 1.5 million hours annually after the first year and that the burden would be distributed throughout the institution, APLU would note that student-level data requirements for this proposed regulation comes mostly through financial aid offices.

Further, for medical and dental programs requiring internships or residency, ED is requiring institutions to report an additional two years of student-level aid data, going back to award years 2012-13. Program-level data collection in NSLDS did not even commence until award year 2014-15, and financial aid offices without student enrollment by program will be scrambling to find the data, if it is available. With the implementation of the simplified FAFSA and the related reporting of work-study data tentatively starting in December 2023, financial aid offices are already strained preparing for these changes. If the Department requires institutions to report data under the new regulations by July 31, 2024, this will place undue pressure on financial aid office resources that could be applied toward serving students.

APLU appreciates ED is willing to calculate "transitional" D/E metrics for non-GE programs that would exclude nonfederal debt (i.e., institutional and private loans) and use loan debt already available through NSLDS. Given the poor quality of data for nonfederal sources of aid and the extra resources required to gather and report it, APLU urges ED to implement the "transitional" D/E calculation methodology as the standard methodology for non-GE programs moving forward and eliminate the reporting of the nonfederal sources of aid at the student level.

### *Poor Data Quality Will Lead to Inconsistent Comparison Across Programs*

In order to calculate the D/E ratios, ED is requiring institutions report at the student-level private loans for both GE and non-GE programs. Private loans are not consistently known by financial aid offices across institutions. Institutions will only know about private loans if lenders reach out as part of the student verification process or if students report the data to their financial aid offices. Given there is no federal or state policy for private loans to be reported to institutions, the quality of the data reported under the proposed regulation would be inconsistent and lead to inaccurate calculations of the D/E ratios. If ED's goal is to provide more consistent debt and earnings data for students and families to use in comparing programs and colleges, the poor quality of private loan amounts used in D/E calculations would not support this goal. APLU encourages ED to remove private loans from the reporting requirements and from the D/E ratio calculations. In addition to establishing more consistency across institutions, it would help address reporting burden mentioned above.

Further, ED proposes to cap loan debt used in D/E calculations at the "net direct costs" to students, defined as the total cost of attendance less the amount of institutional grants received by students in the program. While APLU agrees that the total cost of attendance should not include amounts that are cancelled through institutional grants and scholarships, reporting institutional grants by program is problematic. As ED also recognizes, students transfer programs (especially early in their undergraduate enrollment) and do not always declare a major upon entering into a program. Therefore, institutional grants and scholarships awarded when students are in one program may or may not follow the student when they switch to another program. When students change programs within one award year, it is unclear under which program the institutional grants will be reported, leading to inconsistencies in net direct costs of programs and loan debt caps used in D/E calculations. As such, APLU asks that ED reverts back to the 2014 regulation that caps loan debt at the cost of attendance (without excluding institutional grants) and removes the reporting requirement for institutional grants by program.

Additionally, the proposed regulations require institutions to report licensure information (i.e., whether the program meets licensure requirements for all states in the institution's area, whether the program prepares students for licensure exams, number of graduates taking and passing licensure exams) at the 6-digit CIP level for both GE and non-GE programs. ED's 2022 Program Performance Data indicates that there are over 30,000 GE and over 120,000 non-GE programs that would be required to report this data. Many of the programs are in the Education or Healthcare 2-digit CIP groups, where licensure could be an outcome at completion of the program. However, licensure data are not consistently reported across programs, institutions, or states. Licensure requirements vary by state and which entity collects the data and reports it out also differs, leading to inconsistent sources of data for institutional reporting. Instead of requiring the data from institutions, APLU recommends ED tap into other, more accurate sources of licensing, certification, and workforce data, including BLS's Occupational and Wage Statistics or Employment Projections data. ED has also administered surveys to measure licensure and certification in the past (e.g., the National Household Education Surveys in 2016) and could expand on this sample data collection to ensure accurate data instead of administratively collecting from all institutions inconsistent data.

*Relying on Three Years Post-Completion Earnings Data Applies Inappropriate Measure to Programs Not Designed for Short-Term Outcomes*

For both the D/E ratios and the Earnings Premium calculations, ED proposes to use median earnings for program completers three years post-completion across all credential levels. This is concerning for several reasons. First, as noted in ED's own College Scorecard documentation, the distribution of median earnings looks very different one, five, and 10 years out by credential level. Median earnings for bachelor's degrees from PSEO, for example, measured at one-year post-completion is approximately \$34,000. Median earnings at five years out is about \$49,000 (a 44% increase) and approximately \$59,000 at 10 years out (a 74% increase from year one). It is very likely that the earnings differential at three years and 10 years post-completion at the master's and post-baccalaureate certificate levels are greater. Disclosing the earnings premium at three years to students undermines the value of degree programs that are meant to provide the premium in the long term. Thus, we request ED calculate median earnings at different periods post-completion based on the credential level and use existing data sources for earnings beyond three years after completion (e.g., the PSEO contains earnings 10 years post-completion, the College Scorecard contains earnings by program four years post-completion and can deliver additional years' earnings if the Department holds on calculating the earnings premium for non-GE programs until such data is available).

Second, ED calculates the earnings premium metric by comparing the median earnings of program graduates three years post-completion to those of high school graduates aged 25-34 in the workforce across all credential levels and programs. APLU appreciates ED performed an analysis of the mean age of completers by credential level in the proposed rule's Regulatory Impact Analysis (RIA). However, the RIA estimates the average age of program completers by using the average age of FAFSA completers, which provides an incomplete dataset on college students. According to the National College Attainment Network's analysis of FAFSA completers as a percentage of all high school seniors from 2015-16 to 2022-23, FAFSA completers cover about half (49-54%) of students eligible to enroll in college. Using FAFSA data to estimate the age of program completers by credential type is problematic, especially given that non-GE programs (many at the bachelor's, master's, and doctoral levels) tend to enroll more traditional student populations that are younger than GE programs. For a traditional student graduating with a bachelor's degree, the earnings premium data requirement could compare someone with just several years in the workforce to someone with 7-16 years of experience in the workforce. APLU has great confidence, backed by evidence, that degree holders will substantially outperform high school graduates over the long term.

It is appropriate for ED to look for short-term employment outcomes for programs designed and advertised in providing such outcomes. However, this is not the case for degree programs intended to deliver benefits to graduates over a lifetime. ED should not extend such short-term measures to non-GE programs simply because GE programs must report the data. While we understand the argument about comparability of data and comparisons for consumers, College Scorecard data can demonstrate program-level earnings for non-GE for consumer purposes. Finally, graduates often do not remain in the state where they received their degree, so calculating an earnings premium comparing the median earnings of high school graduates for the state of where students received the degree to earnings of graduates will not be accurate across institutions and credential levels. For example, the PSEO Explorer tool, which covers 83 percent of Montana's graduates, shows the percentage of students remaining in the

state varies after one, five, and 10 years post-graduation and by credential level. Looking at just the data for the University of Montana, approximately 60 percent of bachelor's completers remain in Montana one year after completion. The percentage dips to approximately 49 percent after five years and 46 percent after 10 years. For an associate's completer, approximately 76 percent remain in the state after one year, 72 percent after five years, and 63 percent after 10 years. Under ED's proposal, median earnings for the 24-28 percent of associate's completers who have left the state would be included and compared to earnings of high school completers that remain in the state. This is problematic given the cost of living and consequently salaries and wages in other states vary from Montana's. Using a national average would not solve the issue either for states where the cost of living is below the national average. As an option instead of the earnings premium measure, ED could build upon the existing PSEO collection and tool, which not only shows earnings by programs and institutions but also graduates' industry changes and geographic flows. While the PSEO does not currently cover all Title IV institutions and states, we believe the resources ED would spend on the new disclosure website could be leveraged to support additional state and institutional participation in the PSEO, improve that tool for consumer use/transparency, and reduce duplication of efforts across agencies.

### **Financial Responsibility**

**Recommendation:** ED should eliminate new and unnecessary requirements on public institutions to obtain letters from states and the application of mandatory and discretionary financial responsibility triggers. If ED is not willing to eliminate the requirements, at a minimum ED should substantially narrow the application to address limited areas of particular concern to the Department, i.e. change of ownership.

The Department proposes to amend § 668.171(g) to require public institutions to provide documentation from a government entity that confirms that the institution is a public institution and is backed by the full faith and credit of that government entity to be considered as financially responsible. Additionally, the Department proposes to apply financial responsibility standards to public institutions if certain discretionary and mandatory triggers are met. It is unclear what problem the Department is attempting to solve through the new application of financial responsibility standards to public institutions and the requirement that such institutions receive an attesting confirmation from states that they are backed by full faith and credit. There is no documented history of precipitous closure or financial collapse of public institutions that would merit concern by the Department to broaden regulations intended for private and for-profit institutions to state institutions. While obtaining a letter from states may on its face seem pro forma, navigating multiple bureaucracies, reaching empowered decisionmakers at the highest levels of state governments merely to confirm what has never been previously questioned, is needlessly challenging and a significant distraction from the core mission of public universities. These kinds of requirements fuel the need for institutions to grow positions related to administrative operations rather than student supports. Further, at its worst, the provision can exacerbate challenging dynamics between states and public universities.

## State Authorization

**Recommendation:** APLU recommends ED table the proposed regulations and consider state authorization during the upcoming negotiated rulemaking session, for which state authorization is explicitly listed as a topic of consideration.

APLU urges the Department to table these proposed regulations relative to state authorization and solicit appropriate nominees for the upcoming round of negotiated rulemaking to properly address the Department's concerns on the issue. APLU is committed to strong and fair consumer protections in higher education and looks forward to working with the Department to address these issues, including nominating representatives of the public university sector who will negotiate in good faith to reach consensus in balancing multiple and important interests.

These highly consequential regulations came forth from the spring 2022 negotiated rulemaking process that did not include state authorization experts, nor was state authorization included in the list of topics for the session. As a result, experts who could speak to the importance of reciprocity agreements and the consequences and impact of the proposed rule were not present.

As ED is aware, institutions must be authorized by the state they operate in to offer postsecondary credentials. To alleviate the insurmountable task of institutions offering online programs from obtaining approval in each state, 49 states voluntarily entered into the National Council for State Reciprocity Agreements (NC-SARA), allowing an institution authorized in one state to essentially be authorized in nearly all. Under the current system, participating states agree not to exceed generally applicable consumer protection statutes to avoid a 50-state patchwork of compliance obligations for institutions offering distance education to students in states in which the institution is not physically present. A combination of NC-SARA's minimum standards as well as the application of broadly applicable state consumer protection statutes, provide protections to states, institutions, and students. The NC-SARA standards are under continual review and can be improved upon as needed.

The proposed regulations would upend the entire system, leading to a likely return of a 50-state patchwork system for distance education authorizations. States would be permitted to change their consumer protection laws for recruiting, closure, and misrepresentation, thus removing the current standardized NC-SARA policies and turning these policies into a floor. Reciprocity would end, along with consistent national policies. States' role in the regulatory triad of higher education would be greatly diminished by weakening their ability to enter into interstate compacts.

The proposed language would needlessly increase burden on both institutions and states when concerns regarding consumer protections standards can be accomplished in ways that do not upend reciprocity. Institutions would be required to adhere to not only NC-SARA rules, but also to evolving laws unique to each state in which they operate. States would be required to manage the authorization of institutions within their state and the authorization of institutions offering online programs within their borders. With more than 2,400 institutions currently participating in NC-SARA, compliance would be costly and time-consuming. The unintended consequence of the policy could run counter to the Department's goals. With compliance obligations and costs soaring, the largest providers – which could afford the expenses – would likely remain while others would need to cease offering programs to students outside state borders.

## State Licensure

**Recommendation:** APLU requests ED retain current regulations outlining institutions disclose whether a program meets applicable education prerequisites for licensure and certification requirements in which the student is located or if the institution is unable to determine whether a program's curriculum meets state requirements.

Current regulations require institutions to provide written notification to students if it is determined the program's curriculum does not meet state standards for licensure or certification in the state in which the student is located, or if the institution was unable to determine whether the program's curriculum meets the required standards in that state. In both instances, students remain eligible to use federal financial aid.

The proposed regulations extend the requirement that institutions disclose whether a program meets applicable educational prerequisites for licensure and certification requirements in the location in which enrolled students are located. Under the proposed regulations, though, students would be unable to use federal financial aid in programs for which institutions are unable to determine whether the program's curriculum meets state requirements. The Department notes it is aware of institutions enrolling students in programs that do not meet state requirements, thus contributing to students struggling to find employment with the earned credential.

APLU supports the disclosure of programs meeting licensure and certification prerequisites to protect students' financial investments in these programs, to provide students and their families the information they need to pursue postsecondary education, responsibly steward taxpayer resources, and ensure students are enrolling in programs that will lead to their desired occupational outcomes. While the proposal makes intuitive sense, unfortunately it is detached from the practicalities of how institutions may confirm compliance with state requirements. Not all states publicly post these requirements in an easily obtained format, nor do they provide contact information for out of state institutions to cross reference educational requirements. Furthermore, states update licensure requirements without notifying institutions, requiring colleges and universities to continuously monitor a 50 state patchwork of obligations to evaluate and change required coursework to maintain compliance with the regulation.

While we understand ED is limited in levers to bind states, a much more effective practice would be to require states to maintain standards, transparency of such standards, and processes for institutions to determine compliance.

Additionally, the proposed regulations do not offer enough clarity on the notification to students of these requirements. Institutions would be required to notify students whether a program meets licensure or certification requirements of the state in which they reside at time of initial enrollment. No guidance is provided on disclosures required if a student would relocate to a different state during their period of enrollment, nor is "initial enrollment," which could refer to a number of steps in the admissions process, defined.

Thank you for your consideration of APLU's views as ED moves forward in considering comments from the higher education community and finalizing regulations that balance multiple interests with the



ultimate goal of best serving students. Please do not hesitate to let me know how APLU can continue to be a resource.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Becker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Becker  
President  
Association of Public and Land-grant Universities