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U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Docket No. ED-2025-OPE-0151

The American Association of Community Colleges (AACC) appreciates the opportunity to submit comments to the Department of Education on the July 25 Federal Register announcement of the formation of two committees to negotiate regulations in a variety of areas. AACC represents the nation's 1,024 community colleges and their students. The new programs and other statutory changes to the Higher Education Act made through the "One Big Beautiful Bill Act" (OBBBA) are of the greatest import to our members. The Department is also, appropriately, using the negotiated rulemaking (neg reg) process to address related existing regulations.

AACC presented its views on the upcoming negotiations at the August 7 virtual hearing and will be nominating individuals for both the RISE and AHEAD committees. Our views on several key issues are outlined below.

Community Colleges Need Their Own Negotiator

Community colleges strongly oppose the Department's decision to merge representation of two-year and four-year public institutions of higher education for the purposes of this negotiating rulemaking process. This approach is deeply troubling to two- and four-year public institutional leaders alike, and AACC has joined with their institutional associations in separate correspondence to urge the Department to rethink this arrangement.

Since the inception of the Department of Education (ED) negotiated rulemaking process, dating back to 1994, community colleges have had their own "seat at the table" in every relevant area. The reason for this policy has been obvious and compelling: community colleges enroll almost 40 percent of all the students in higher education. Furthermore, in terms of programs, funding, governance, and many other variables, they diverge in important ways from four-year institutions.

More specifically relevant to the current neg reg process is the fact that community colleges' perspectives differ from those of four-year institutions on a variety of the major issues up for negotiation. These include workforce Pell Grants, which prominent four-year institutional associations have long opposed; gainful employment, where the prevalence of certificate programs offered by community colleges gives them a particular and different emphasis; and the new program eligibility framework, where the two public sectors have different structural interests and priorities. These are just a few examples that underscore the compelling need for community colleges to have their own representation.

ED has an understandable motivation to limit the number of negotiating parties, but this should not be achieved by locking community colleges out of the process or, for that matter, four-year public institutions.

Financial Value Transparency/Gainful Employment

Community colleges have invested an extraordinary amount of time and effort implementing the FVT/GE regulations as promulgated by the Biden Administration. Unfortunately for institutions, the rollout of the regulations was bungled at numerous points, causing a tremendous waste of resources at a time when institutions were already facing acute Title IV-related implementation challenges from the shortcomings of the Better FAFSA rollout.

A particular issue with the FVT/GE implementation was that ED consistently promised guidance, resources, and data that were repeatedly delayed, retracted and/or amended. Deadlines were rescinded close to closing, such that institutions had already completed the required data collection and reporting under extraordinary pressure. Institutional representatives are understandably wary of a recapitulation of this experience as the Department undertakes a new round of reporting.

In the strongest possible terms, we urge ED to ensure that the current and subsequent rounds of reporting are efficiently implemented and adequately supported. ED must allow sufficient time to provide clear and consistent guidance and correct and timely data to institutions to prevent repetitive, inaccurate, or redundant submissions, and to avoid creating an unreasonable reporting burden on institutions concurrent with critical fall enrollment processes.

That said, in the prior FTV/GE negotiations, and the subsequent formal notice and comment period, the Department made a number of reasonable decisions about how the programmatic cohort process was to be undertaken. ED can build on these as it generates data required for the Workforce Pell Grant and the new earnings test for programmatic loan eligibility. Under the existing FVT/GE regulations, ED initially examines a 2-year cohort to calculate Debt-to-Earnings (D/E) and Earnings Premium (EP) rates. However, if there are fewer than 30 completers in the 2-year cohort, ED expands the cohort period to 4 years for calculation. If the 4-year cohort still has fewer than 30 completers, the D/E and EP rates are not calculated for that program. We urge retention of this approach and, to the extent practicable, that it be applied and aligned with new schemes developed for Workforce Pell Grants and programmatic earnings tests.

Looking forward, it is appropriate for ED to review the gainful employment regulations considering subsequent legislative and regulatory activity. The gainful employment standards should be aligned with any other provisions in statute that require the generation of debt and earnings metrics.

Community colleges have historically endorsed the concept of tying Title IV eligibility to student borrowing. This perspective derives from the fact that managing loan repayments is an overwhelming concern for those who rely on debt to pay for postsecondary education. Under the OBBBA, borrowers will be required to repay more of their total loan amount, even though some features of the Repayment Assistance Plan (RAP) will make it easier for low-income borrowers to retire their debt.

Community colleges continue to hold reservations about the potential impact of a statewide high school graduate earning standard and its utility in measuring return on investment for differently situated programs and students. However, since Congress has chosen to use an earnings measure for loan eligibility for Title IV degree programs, this is probably a fact of life that community colleges have to face in a variety of HEA and related policy areas. Community colleges maintain that debt-to-earnings is the appropriate metric for GE programs and an important metric for FVT's goals around transparency and empowering consumer choice. If ED chooses to retain the earnings premium concept for GE, it should use the same standards as those for the new eligibility provisions pertaining to loans.

Congress's decision to apply the new earnings test only for loan eligibility in degree programs buttresses AACC's ongoing position that institutional accountability sanctions, including those under gainful employment regulations, should be limited to participation in the loan programs. Negative loan repayment outcomes represent the biggest risk to both students and to taxpayers. Students have less at stake – though they still have much at stake – when they are able to finance their educations solely with grants. Indeed, community colleges keep tuition low in large part so that students can avoid borrowing. Limiting gainful employment sanctions to loans will preserve the measure as a binding accountability system (especially for high-cost programs generating high amounts of debt that is not repaid) without unduly limiting access by restricting federal grant aid for low-income individuals. This incentivizes institutions to keep programs as affordable as possible and will ensure that student loan borrowers won't find themselves saddled with unmanageable levels of debt that crowd out the ability to finance other forward-looking aspects of their life, including buying a home or starting a family.

Workforce Pell Grants

Community colleges advocated for years for the creation of the Workforce Pell Grant and are cheered that Congress finally established the program. The enacted language benefits as well from being less prescriptive than in earlier versions of the legislation. ED has before it a series of implementation decisions on this program, which will influence the extent to which it will be able to support institutions to meet the needs of both employers and would-be employees. AACC urges ED to consider the following:

Early Implementation:

ED will not have final program regulations in place by November 1, so under the terms of the Master Calendar, implementation pursuant to those rules cannot take place next July 1, even though that is the statutory start date. AACC urges ED to develop a process by which established, high-quality programs can be approved for participation by that date. An option for granting preliminary or conditional approval would be to assign this role to a state workforce board. As program implementation proceeds, this role could be integrated with that specifically required by the statute. All stakeholders would gain expeditious program approval.

70 Percent Completion and Placement Rate Calculations:

These collections will almost certainly be undertaken by institutions, in some cases in partnership with other organizations or entities.

For completion rates, current IPEDS and related regulatory requirements should generally be used for the calculation. Time-to-completion must find a way to factor in part-time enrollments for short-term programs, and rare cases of transfers-out also need to be accommodated. (Technically, under the HEA, transfers-out are counted as completers, even though they are not generally reported as such.)

Community colleges have a great interest in how the verified 70 percent placement rates will be collected and calculated. Documenting placement is a notoriously complicated and difficult process, with different methods being used by different entities and institutions, and, in some places, not at all. Therefore, we urge ED to develop procedures that will allow for maximum flexibility in this area, as there is no single national data source in this area or even a widely adopted state mechanism available to provide this documentation. For example, wages earned by a program completer can serve as a reliable proxy for placement, and we encourage the Department to look at this option. In some cases, surveys can be used and generate reliable information from both program completers as well as employer partners. Placement rates should also account for students who enroll in further education after the Workforce Pell program.

State Role:

States are assigned a critical role in approving workforce Pell programs. There are numerous elements in this process. The regulatory process should be used to help define a variety of terms and concepts that apply to the relevance of the program to state and industry needs. In general, simplicity should be the guiding principle, and ED will likely want to issue a framework that will facilitate compliance with the very different state workforce administering agencies. Hopefully over time, common approaches among states will be developed, as states themselves integrate their workforce development strategies along the lines envisioned in the Administration's broader proposals.

An important state role that was assigned to accreditors in previous versions of the legislation is determining that certain workforce Pell Grant completers receive academic credit to meet certificate or program requirements. (The amount of academic credit is not specified in statute.) This "transferability" determination is more of an academic as opposed to administrative responsibility. Again, states will have different capacities to undertake this. Some type of formal certification by institutions, auditable by states, may be one way to accommodate this.

Determination of Value-Added Earnings:

This is a particularly challenging aspect of the law. In general, as stated previously, ED should use the same procedure for generating cohorts and running wage matches for all similar programs and purposes—in this case, the process should include FVT/GE, workforce Pell, and the new accountability scheme. However, the workforce Pell authorizing statute stipulates that the earnings to be used for workforce Pell are to be from Title IV-aided students who completed a program in the three years prior to the award year. Because students enrolled in the program could not, by definition, have received federal aid, generating the wages in this method will not be possible for gaining initial eligibility. Consequently, the Department, working with negotiators, will have to determine some alternative method of documenting preliminary earnings.

Loss of Programmatic Loan Eligibility Due to Low Earnings

The application of the new earnings standard for loan eligibility on a programmatic basis presents complicated choices for the Department and negotiators. The most difficult decisions revolve around how to create cohorts of 30 students. Under the law, the Secretary is to add additional years of programmatic data to create a cohort of at least 30 individuals, and then, if that cannot be achieved, to aggregate additional cohort years for educational programs of equivalent length. As noted earlier, the FVT/GE regulations prescribe a process for generating cohorts of 30 that should be used here as well. In cases in which other programs must be relied upon, to the maximum extent possible, similar programs should be used, but this is an inherently imprecise and arbitrary undertaking, and perhaps negotiators can develop some guidelines to generate cohorts of the mandated size.

We note that under the FVT/GE regulations, if a cohort of 30 cannot be created by looking back four years, that the cohort is simply not generated. This may not be possible under the statute, but it would in practice be desirable.

We also note that, for the cohort of completers who are classified as being "working," some greater precision will be needed—it should clarify status elements like full-time, not self-employed, not doing seasonal work, not military, or similar types of situations. There are many legitimate elements to exclude wages that do not represent typical full-time earnings.

Loan Programs

Federal loan programs provide a relatively small but extremely important source of financial assistance to community college students. About 12 percent of all community college students borrow through the federal loan programs, in amounts that represent less than one-third of the Pell Grant funds they receive. This ratio makes community college student financing unique.

Discretion to Reduce Loan Amounts by Program:

Community colleges have a significant interest in regulations implementing OBBBA's provisions authorizing institutions to limit loans on a programmatic basis. AACC has long supported giving institutions the discretion to limit loan amounts for certain programs, based on the recognition that the ability to repay loans after completion varies significantly by program. This same policy approach is reflected in the current gainful employment regulations. However, the decision to lower access to loans on a program-by-program basis is a weighty one and will require significant institutional analysis and reflection. Institutions will likely learn from each other in setting policies and balancing program access and strong post-college repayment outcomes.

Given this, ED is best off not providing any further regulatory language concerning this new authority. The statutory language is clear and unambiguous. Additional regulation will likely serve to complicate the process of setting differential loan amounts, for those institutions that choose to do so. Furthermore, local conditions will, and should, shape institutional choices in this area. Note that, according to an AACC analysis, 124 community colleges have opted not to participate in the loan programs altogether.

Repayment Terms for Small Balances:

And, although Congress has taken a different position, AACC maintains that small balance loans should be forgiven in less than the 30 years required under the new Repayment Assistance Plan. It serves neither borrowers nor taxpayers to have relatively small student loan debts lingering and being serviced for decades. The Department should consider using regulatory authority to achieve this.

Loss of Title IV eligibility for one-year CDR of 40% or more:

Finally, the Administration should use discussions on loan programs to eliminate from the regulations the requirement that an institution may lose its Title IV eligibility if its cohort default rate (CDR) exceeds 40 percent for one year. The Executive Branch adopted this policy and it was never codified into statute. Given the extreme uncertainty of the repayment environment over the past five years, as well as the catastrophic consequences of the loss of Title IV for an institution, this unnecessary and threatening regulatory requirement should be eliminated. Congress has clearly stated the terms under which institutions should lose Title IV eligibility as a result of high CDRs.

Thank you for considering these views as you develop issue papers, structure topics for discussion, and draft regulations. Community colleges look forward to working with the Department as these critical regulations are promulgated.