



The Education Trust

Closing the gaps in opportunity and achievement, pre-k through college.

August 8, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW
Room 6E231
Washington, DC 20202

RE: Docket Number ED-2017-OS-0074-0001

Dear Ms. Malawer,

On behalf of The Education Trust, an organization dedicated to closing long-standing gaps in opportunity and achievement separating low-income students and students of color from their peers, thank you for the opportunity to provide input on existing regulations.

Central to the federal role in education is the responsibility to protect the rights and interests of students that have, for far too long, been underserved in our nation's schools: low-income students, students of color, students with disabilities, and English learners. That role is as important today as it was when the Elementary and Secondary Education Act and the Higher Education Act passed in 1965. The U.S. Department of Education has a responsibility to advance equity by implementing regulations that ensure that states, localities, and institutions are living up to the purpose of federal legislation and providing equitable opportunities to all students.

As the Department conducts its review of the existing regulations, we ask you to keep the interests of all students, particularly the most vulnerable, in front of mind. This means maintaining, and in some cases strengthening, existing regulations that are meant to protect students.

This letter outlines our views on key regulations we believe are most important to promoting student success. For more information or further discussion, please contact Kelly McManus, Director of Government Affairs at The Education Trust, at kmcm Manus@edtrust.org or 202-293-1217, x. 359.

Sincerely,

Daria Hall
Vice President for Government Affairs and Communications
The Education Trust

Regulations within CFR Title 34, Part 200

Standards - §200.1

Academic standards are shared expectations for what all students need to know and be able to do at each grade level. Consistent, high expectations linked to the demands of postsecondary education are critical for ensuring that all students — not just some — get access to meaningful learning opportunities that prepare them for success after high school.

The Every Student Succeeds Act took a significant step forward in ensuring each state’s academic standards in mathematics, reading or language arts, and science represent the knowledge and skills students need to be successful in postsecondary education and the workforce.ⁱ The regulation should be updated to align with this new statutory requirement.

Assessment - §200.2 - §200.9; §200.104 - §200.108

Statewide, annual assessments aligned with state standards are an important way of measuring student progress consistently across classrooms, schools, and districts. They provide parents with objective information about whether their children are academically on track. They help educators benchmark the performance of their students against those across the state. And they give parents and the public an objective measure of how schools are doing at improving learning for all groups of students.

In 2016, the negotiated rulemaking committee came to a consensus on the regulations now in place. That consensus highlighted the need for assessments not only to be rigorous and comparable, but also to reflect the needs of vulnerable populations — including English learners and students with disabilities. This regulation should be maintained in its current form.

Regarding the Innovative Assessment Demonstration Authority, we appreciate the potential of this pilot program to leverage new and ongoing advances in the assessment field. Yet this innovation cannot come at the cost of assessment rigor and comparability, which would undermine the central equity tenet undergirding assessments — the value of the common measurement. The existing regulations balance these concerns appropriately and should be maintained.

Regulations within CFR Title 34, Part 600

Gainful Employment - §668.401 - §668.415

The abuses by career colleges are well documented. Many aggressively recruit students by offering the false promise of a rewarding career and charging high fees for a low-quality education that rarely results in completion. Students of color and low-income students are disproportionately hurt by these predatory practices. Without the protections offered by stronger oversight and accountability, students will continue to enroll in these programs and be left with debilitating debt, no degree, or a degree with no labor market value.

The existing gainful employment rule has already made a difference in prompting institutions to improve or close the worst-performing programs. As the Department moves forward with its new negotiated rulemaking committee to revisit these regulations, the existing rule should be considered the floor for accountability, not something to back away from.

Borrower Defense to Repayment – 81 FR 75926

The borrower defense rule finalized in October 2016 codifies a process for providing student loan relief to defrauded borrowers. The regulation ensures that students at schools that close suddenly know their options and that their loans are automatically discharged if they do not continue their studies within three years of the school's closure. It also protects students by banning mandatory arbitration clauses in student enrollment contracts.

Additionally, the regulation enacted new financial responsibility, triggering events that sought to fortify the Department's ability to assess the financial strength of an institution of higher education. These additions would ensure that institutions that are facing lawsuits (including those related to borrower defense claims), are in violation of the 90/10 rule, withdraw financial equity, or have other issues would be subject to additional scrutiny and possible required letters of credit. This regulation is critical because the students most often attending these institutions are disproportionately low-income and students of color.

Again, we urge the Department to use the existing rule as a starting point for the negotiated rulemaking committee and take this opportunity to do more to protect defrauded students.

State Authorization - §600.9 and §668.50

As part of the triad for program eligibility, state authorization can play an important role in ensuring institutional quality and accountability. Recent updates to this regulation focusing on distance education help strengthen this rule, but states can and should be taking a more active role in monitoring and evaluating institutions. The Department should consider strengthening this regulation to ensure a stronger focus on student outcomes, particularly for historically underserved students, in the state authorization process.

Accreditation - §602

There has been much discussion about how to improve the accreditation process so it can be more effective in assuring institutional quality and focusing on student outcomes for all students. Under current regulations, accreditors are tasked with oversight of non-academic quality functions of institutions, such as compliance with fire codes and Title IV financial requirements — issues the Department is much better suited to oversee.

The Department should consider changes to these regulations to allow accreditors to focus more fully on academic quality issues by transferring responsibility of non-academic quality oversight to the Department.

ⁱ §1111(b)(D)(i)