

## PROPOSAL FOR JOB PLACEMENT RATES AS A DISCLOSURE AND A REPORTING REQUIREMENT IN THE GE REGULATIONS

At the conclusion of this proposal are specific revisions to the draft regulations for defining job placement and disclosing job placement rates to consumers. The arguments against having job placement rates disclosed for all gainful employment programs using a uniform standard are that job placement rates can be manipulated, so the benefit to consumers is undermined; there currently is not a single source of data available to all institutions which will make the rates less than perfectly comparable, and will increase the administrative burden on institutions. While these are valid considerations, they do not outweigh the benefits to consumers. The Department can put in place reasonable measures that would greatly improve the comparability of information being provided to consumers, and it needs to do so. Certainly it cannot be maintained that it is better to have some programs disclosing job placement rates and others not disclosing or for the rates to have no common meaning.

### 1. The Benefit and Necessity of Institutions Disclosing More Meaningful Job Placement Rates to Consumers

One of the most important pieces of information student consumers can have about a program subject to the gainful employment rule (“GE programs”) is whether students who attend are able to obtain jobs in the field studied. See Gallup Politics June 28, 2013, *Americans Say Graduates’ Job Status Key to College Choice*. Many students in GE programs take on significant debt when attending these programs and the debt is much more difficult to discharge in bankruptcy than other forms of consumer debt. These students are often Pell Grant eligible and do not have financial resources beyond the income they generate through employment, so being able to obtain employment from the program is particularly significant to them. The above-referenced Gallup Poll confirmed what many in the industry already know-- consumers are most interested in the cost and the job placement rate of a program.

Beyond cost, Americans care a lot about whether the graduates of a college end up in good jobs, but find it hard to find this type of data. If more data were available, it could help those currently weighing their options to make a quality choice based on likelihood for a strong return in the future.

Gallup Politics June 28, 2013, *Americans Say Graduates’ Job Status Key to College Choice*.

The importance of job placement rates to consumers cannot be denied by institutions. Indeed, the importance is demonstrated by the lengths some schools have gone to mislead consumers by purposefully posting *false and misleading* placement rates on the schools’ websites and advertisements. State and federal investigations have found that several institutions have provided false job placement rates to consumers, presumably to persuade consumers to enroll in the program. See e.g. Senate Help Committee Report For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, *Executive Summary* pp.3-4; *California v. Corinthian College*, Case No. BC374999, Consent Judgment entered July 31, 2007; *State of Colorado v. Alta Colleges d/b/a Westwood College*, et

*al*, Case No. 12 CV1600, Consent Judgment entered March 14, 2012; *State of New York v. Career Education Corp.*, Assurance of Discontinuance entered August 19, 2013 *Commonwealth of Kentucky v. National College*, complaint filed September 27, 2011 *Commonwealth of Kentucky v. Sullivan University System d/b/a Spencerian College*, complaint filed January 16, 2013.

Requiring institutions to disclose truthful job placement rates for all gainful employment programs to consumers would introduce a meaningful check into the market. Consumers armed with reliable information about the job placement rates for programs would be able to make more informed decisions about where best to use their financial aid resources. Consumers would be able to compare the outcomes of students attending programs from different institutions and different programs at the same institution. This is the type of information the consumer needs to evaluate which program or institution offers the greater probability of gainful employment.

## 2. The Benefits of Reporting Job Placement Rates to the Department

In addition to institutions disclosing job placement rates to consumers, the rates should be reported to the Department. Job placement rates reported to the Department for inclusion on platforms such as College Navigator could allow consumers to more easily compare job placement rates. The Technical Review Panel observed that even if the rate was not calculated by IPEDS the rate could still be reported to the Department and provided to NCES. *See Report and Suggestions from IPEDS Technical Review Panel #34 Calculating Job Placement Rates at 8* (hereinafter “TRP”). Moreover, job placement rates reported to the Department are complementary to the gainful employment metrics proposed by the Department. For instance, if the job placement rate is clearly lower than it should be in light of the program’s metric outcomes, the job placement rate would serve as a barometer for potential debt and income manipulation issues. Likewise, a high debt-to-earnings ratio or low rate of repayment would signal when job placement rates may have been inflated. A system of checks and balances like this could deter institutions from inflating rates or unfairly manipulating the gainful employment metrics.

## 3. The Need for a Uniform Definition

The Department should create a uniform standard for calculating and disclosing a job placement rate because currently there is no single system or definition or even requirement that institutions calculate and disclose job placement rates. The seven National Accrediting bodies require institutions to calculate job placement rates and to meet certain job placement thresholds for each program, but regional accrediting bodies do not require job placement rate calculations at all. Also national accreditors have different definitions and factors for calculating job placement rates. For instance, the Accrediting Council for Independent Colleges and Schools (ACICS) and Accrediting Commission of Career Schools and Colleges (ACCSC) are two of the largest national accreditation agencies and they do not include the same cohort of students in their calculations. Therefore, the current regulation’s direction that institutions disclose job placement rates if they are required to calculate rates by an accreditor or a state is of no great benefit to consumers. While institutions may continue to disclose rates calculated according to state and accrediting requirements, for purposes of the disclosure template being developed by

the Department the institutions need to adhere to a single standard.

The Senate HELP Committee specifically called for establishing “a uniform and accurate methodology for calculating job placement rates.” See HELP Committee *Executive Summary*, p. 9. The benefits of having institutions disclose job placement rates was recognized by the TRP when it recommended that all institutions offering gainful employment programs calculate and disclose job placement rates to consumers. See TRP Report at 9. The TRP, however, did not offer a uniform method for calculating job placement rates, appearing to assert that because institutions are regulated by different accreditors and states, and because there is not a single source of data available to institutions, it would be too difficult to create a uniform definition. Rather, the TRP recommended that institutions calculate the rates according to their own methodologies and disclose the rates and the information used to support the placement rates to consumers. While requiring all institutions to disclose a job placement rate is a good start, this type of disclosure is problematic for several reasons. Requiring institutions to disclose a rate that they come up with on their own could present additional problems not the least of which is that the disclosure may not be comparable in any way to what other institutions disclose. Further, the reason a job placement rate could be so useful to consumers is that it does not require a great deal of verbiage to understand—it is expressed as a simple percentage. Extensive explanation detracts from the ease of understanding and further presents an opportunity for bad actors to misrepresent a simple rate that is disclaimed with the “explanation” provided.

#### Proposed Job Placement Rate Regulations

The following revisions to the draft regulations provided by the Department include methods for defining job placement, reporting job placement to the Department and disclosing calculated job placement rates. The definitions are a combination of the requirements that are currently being used or that have been used by accreditors, states or the Department. Following each proposal inside brackets [] is the rationale for the proposal.

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#### **§668.402 Definitions.**

(a) Job Placement:

- (i) Within 180 days of completing the program or graduating from the program the completer or graduate has been employed for at least 13 weeks with the employer in a full-time paid Position in the Field or Related Field of Study as defined in §668.402(b).
- (ii) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the completer/graduate would have been able to take after completing the program, the completer/graduate has been employed for at least 13 weeks with the employer in a full-time paid Position in the Field or Related Field of Study §668.402(b).

- (iii) In addition to (i) or (ii), for a part-time Position in the Field or Related Field of Study to be considered Job Placement, there must be a handwritten statement from the completer/graduate at time of completion that part-time employment is his/her objective for employment including a general explanation for such objective.

[Rationale: The 180 day tracking period and 13 weeks length of employment are from the current regulations for short-programs. The issue raised by negotiators concerning students who take licensing exams has been addressed by having the 180 days start to run from the date the results of the exam are available. It is worth noting that a federal court of appeals determined in prior litigation that the 13 weeks is not arbitrary or capricious. See *Career College Ass'n v. Riley*, 74 F.3d 1265, 1275 (DC Cir 1996).]

(b) Position in the field or related field of study: The completer/graduate's employment is--

(1) A position included in the list of job titles for the program published by the institution and included in the U.S. Department of Labor Standard Occupation Classification Code for which the programs were approved by the Department;

or

(2) A position where the routine work predominantly requires using the core skills and knowledge expected to have been taught in the program and the position requires education beyond high school level;

or

(3) In instances where completers/graduates are continuing in prior employment, the prior employment position must be reasonably related to the program training and the completer/graduate attests in his/her own handwriting at the time of enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position;

or

(4) A position in the applicable program's industry with a starting salary equal to or exceeding the 25th percentile of salaries reported by the Bureau of Labor Statistics for the highest paid SOC code approved for the program.

[Rationale: Generally these definitions are based on accrediting definitions and definitions employed by state agencies, although these definitions are combinations and not exactly the same. Some negotiators have suggested that number 3 is not enforceable. It is enforceable in terms that the institution is required to maintain all the underlying documentation supporting its placement rate and so upon an audit or review of the job placement rate this information must be provided. Number 3 is intended to address what seems a reasonable concern for some stakeholders that sometimes students enroll in the program to qualify themselves for a promotion or to retain their employment. If that is the circumstance, then the school needs to specifically document that. Otherwise, this definition that is intended to address a very specific circumstance could swallow the general rule. Number 4 is intended to allow institutions to rely on available state workforce data systems, such as UI data, which contains the industry of the employment and the wage information but may not, at this time, include information such as SOC codes or job duties.]

### §668.409 Reporting Requirements for GE programs.

...

- (3) The Job Placement Rate calculated and disclosed in accordance with §668.410 (a)(5).

[Rationale: As discussed above, the job placement rates should also be reported to the Department for inclusion in the College Navigator. The TRP stated that this could be accomplished even if the rates are not calculated by IPEDS. See TRP Report at 8.]

### §668.410 Disclosure requirements for GE programs.

(a) ...

~~(5) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate.~~ The Job Placement Rate for the program calculated as follows:

(i) Determine the total number of students who, during the award year, graduated from or completed the program. For purposes of calculating job placement rates, a student has completed the program if the student is no longer enrolled in the campus and has either completed the time allowed or attempted the maximum allowable number of credits for the program of study but did not accomplish one of the following graduation requirements:

1. Achieve the necessary GPA.
2. Attain required competencies or speed skills.
3. Satisfy non-academic requirements (e.g., outstanding financial obligations).

[Rationale: This definition of completer is based on the guidelines provided by ACICS to its institutions for calculating the job placement rate. ACICS and the Council on Education require both completers and graduates to be included in the job placement calculation. The recent Consent Judgment against CEC from New York also requires both completers and graduates, and so did California law. Thus, other agencies involved in regulating the industry have determined that it is important to require institutions to include completers in the calculation of job placement rates.]

(ii) Of the total number determined under paragraph (a)(5)(i), determine the number of completers/graduates who the **institution has documented** as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse/dependent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time. Subtract this number of completers/graduates unavailable for employment from the total number of completers/graduates under (a)(5)(i) of this section. This difference shall be the denominator for the equation.

[Rationale: These exemptions are the exemptions generally provided by the national accrediting bodies, such as ACICS and ACCSC. The accreditors also require these reasons to be proven with documentation or the student is considered not placed. Some accrediting bodies also include “pregnancy” as a basis for exemption, but not including pregnant women in the calculation simply because they are pregnant seems antiquated and unreasonable.]

(iii) Of the total number determined under paragraph (a)(5)(i), determine the number of graduates/completers who obtained Job Placement in a Position in the Field or Related Field of Study as defined in §668.402 (a) and (b). This shall be the numerator for the equation.

(iv) Divide the number of students determined under paragraph (a)(5)(iii) of this section by the difference found in (a)(5)(ii) of this section. This quotient converted to a percentage is the Job Placement Rate.

(v) For purposes of the Job Placement Rate calculation—

(1) The institution shall use state workforce data systems that provide the data necessary for determining job placement in accordance with §668.402 (a) and (b) if the information from the system is available to the institution.

(2) In the event information from the state workforce data systems is not available to the institution or does not provide the necessary data, then the institution may track the placement data itself by contacting employers and completers/graduates to obtain the relevant information under the definitions in §668.402 (a) and (b). Such contact and information shall be documented in writing, including the name of the employer, name of the student, address and telephone number of student and employer, title of employment, duties of employment, length of employment, hours worked, the name and title of the person(s) providing the information to the institution, the name and title of the person(s) at the institution who received and recorded the information, and the date the information was provided. When the institution obtains the relevant information by telephone or personal contact, as opposed to a written document, the institution shall send a confirming letter to the provider of the information setting-forth in specific detail the information provided and the date it was provided. The institution shall maintain a copy of the confirming letter and evidence it was sent.

(3) If the institution determines the job placement rate by the salary earned in the applicable industry as provided in §668.402(b)(4), the institution shall document the placement with signed copies of State or Federal income tax forms or certified state Unemployment Insurance data.

[Rationale: The state data systems are the preferred method for obtaining the underlying placement data because in some states it provides all the information necessary for calculating job placement rates, so reliability of the information is increased. According to the TRP, federal initiatives to support “the development of state data systems, such as the State Longitudinal Data Systems” are being implemented that ultimately will provide better information over time. Further, since 2011 it seems many state workforce data systems have been implemented and/or improved to contain all the data

that would be necessary to demonstrate job placement according to at least one of the alternative definitions proposed herein. Preferring the state data systems in the regulation means that once this better information is available in all states it will be the system used and the regulation remains current with the best information available. Some institutions may not currently have direct access to the state data systems, but it is worth noting that 20 CFR Part 603.5 (e) allows public officials to obtain Unemployment Compensation information in the performance of official duties, including research, which means state licensing agencies could obtain the information for the purpose of assisting institutions in calculating job placement rates.]

(4) All data used by institutions to support the job placement rate must be reliable, verifiable and documented in writing. Documentation supporting job placement rates for each applicable period for each program shall be maintained in a retrievable and well-organized manner. The job placement rates disclosed and reported by the institution and the underlying documentation shall be subject to review and audit by the Department. Nothing herein shall prevent any other state or federal agency from investigating, reviewing or auditing the underlying documentation and the rates provided hereunder in accordance with any appropriate law, including consumer protection laws.

(vi) An institution shall substantiate the calculation of its placement rates by having the certified public accountant who prepares its audit report required under §668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

[Rationale: This certification provision is taken from 34 CFR 668.8(e)(2)]

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