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

Re: Docket ID ED–2023–OPE–0089

Dear Secretary Cardona:

On behalf of New York University (NYU), we are writing to express concerns about certain provisions included as part of the U.S. Department of Education (ED’s) rulemaking proposal related to (i) certification procedures addressing programs leading to professional licensure or certification and state consumer protection laws, and (ii) financial value transparency and gainful employment.

Professional Licensure
The public policy reasoning behind raising the standard for institutions serving students in other states seems justifiable to protect students who are pursuing their chosen profession based on the education and training of such an institution. NYU is concerned, however, with ED’s proposal that would require educational programs to satisfy applicable educational prerequisites for professional licensure or certification requirements in each State where the institution or a student is located at the time of enrollment (34 CFR 668.14(b)(32)(ii)). The proposal would effectively eliminate the option for certain students that may have legitimate reasons to enroll in a program even if it does not satisfy licensure requirements where the student is currently located, taking away a student’s ability to choose to pursue a program of their choice. For example, this would eliminate the ability of a student to pursue an education in a certain state due to temporary circumstances (e.g., extenuating family circumstances, active-duty military, short-term employment), who eventually plans to seek licensure in a different state.

We are also concerned that the proposal fails to acknowledge the fact that professions in some states do not have an approval process for an out-of-state institution’s program to affirm satisfaction of educational requirements. In addition, it may require institutions to modify curriculum to meet the variable requirements of each state where students are located, which could create unnecessary coursework for students who do not anticipate seeking licensure in those states.
State Consumer Protection Laws
NYU supports the consumer protection goals behind 34 CFR 668.14(b)(32)(iii), as it is essential that ED safeguards the integrity of Title IV programs under the Higher Education Act (HEA). However, this proposal would effectively upend parts of the state authorization reciprocity agreement (SARA) by eliminating reciprocity for consumer protection laws relating to closure, recruitment and misrepresentation. We believe that the proposed language is unclear and does not fully take into account the fact that state requirements in these areas may vary significantly. For example, it is not clear whether “closure” in the proposed language means closure of an institution, a program, or both, and this can have different meanings in different states.

Furthermore, the proposed language would have the effect of dramatically reducing student choice and institutional flexibility. Currently, educational programs from NC-SARA participating institutions are open to all qualified applicants. This allows students to select from programs of their choice in all 52-NC-SARA-covered states, districts and U.S. territories, maximizing student choice among the myriad of programs offered at postsecondary institutions across the U.S. Should all institutions be required to return to a regulatory regime of state-by-state compliance, a single student enrolling from a state new to the institution would trigger considerable compliance review costs, which could make enrolling that student problematic for the institution – reducing programmatic options for students.

We respectfully request ED delay implementing these new rules related to professional licensing and state consumer protection laws and address these topics via the Fall 2023 negotiated rulemaking process.

Financial Value Transparency and Gainful Employment
In addition, NYU fully supports the transparency goals of the financial value transparency and gainful employment proposed rules to ensure that students fully understand the cost of a higher education. However, we are concerned that these regulations may complicate our shared goal of making higher education more accessible to low-income and underrepresented students – and potentially encourage students to forgo a college education and the commensurate pathways to more professional opportunities and meaningful life experiences.

Specifically, we are troubled by the concept of labeling programs as “failing” because recent graduates are not earning the income of those who have been out of high school for more than a decade. This arbitrary debt-to-earnings metric reduces the value of higher education to immediate earnings and does not acknowledge that graduates of certain medical, health care and arts programs do not realize their full earnings potential until later in their careers. This is a dangerous message to first-generation students, as research shows that the value of a higher education, including economic value, personal health and well-being, and civic engagement, benefit individuals and society throughout a lifetime.
Lastly, as ED moves forward with issuing final regulations later this year, NYU urges careful consideration of the detailed comments and suggestions submitted by the American Council on Education (ACE). We sincerely appreciate your close attention to NYU and the higher education sector’s views on these important matters.

Respectfully,

Andrew Hamilton
New York University