June 16, 2023

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW 2nd Floor  
Washington, DC 20202


Dear Secretary Cardona:

The National Association of State Administrators and Supervisors of Private Schools ("NASASPS") submits this official comment on the Certification Procedures rule proposed by the Education Department on May 19, 2023. This comment is limited to 34 CFR 668.14(b)(32)(iii).

NASASPS supports consumer protection. Our mission is to improve and promote effective state regulation of private postsecondary education by supporting state regulators to improve student success. Our strategic goals in carrying out this mission include to act as the national voice for states; provide policy leadership; promote best practices; and advocate for quality private postsecondary options for students.

About NASASPS

NASASPS is a non-profit, tax-exempt, charitable organization. Its forty-one (41) regular members include state boards, commissions, agencies, or departments that are engaged in the administration, regulation, or supervision of private schools, colleges, or universities, and the educational programs offered therein.

Generally, each state has a process requiring an institution to be recognized by that state before the institution may legally operate in the state, generally referred to as “state authorization.” While the jurisdiction and process of each state and agency differs, there are several commonalities across states:

- State authorization is conferred only after an institution’s compliance with state laws and standards is reviewed.
Unauthorized activity is a central focus, to ensure unapproved providers are not operating unlawfully and putting consumers at risk.

Harmed consumers may submit complaints for investigation and potential discipline of the provider, when necessary.

In sum, the purpose of NASASPS member agencies is to protect consumers by monitoring and safeguarding quality private postsecondary educational options.

**NASASPS Concerns Regarding Section 668.14(b)(32)(iii):**

The draft language in question is [with emphasis added]:

§ 668.14(b)(32)(iii)

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds (iii) Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions.

As seen above, NASASPS members have commonalities in state authorization which are designed to protect consumers. However, states have varying consumer protection laws related to closure, recruitment, and misrepresentation, whether located in generally applicable state laws or laws specific to educational institutions.

NASASPS has concerns and seeks clarification on the language in this section, including:

1. It is critical that the requirement be a self-certification by institutions and not require state authorizing agencies to provide documentation or other proof to the institutions;
   
   a. State regulators have limited resources to answer potentially thousands of institutions’ questions about these consumer protections and have limited authority to provide compliance verification;
   b. State regulations vary based on whether an institution is exempt, public, private, non-profit or for-profit. Therefore, consumer protection requirements vary by state and by type of institution;
   c. If the Department required documentation from a state as to consumer protection compliance, multiple regulatory agencies within a state might need to be consulted.

2. Institutions must comply with state laws in the states in which they operate. Through reciprocity agreements, states agree to rely on the consumer protection laws and compliance mechanisms of the state in which an institution is located. It is unclear how
this draft language intersects with reciprocity agreement arrangements. It is further troubling to suggest that, outside the reciprocity context, institutions must only comply with laws in certain areas, rather than all applicable state laws.

3. We strongly encourage the Department to clearly define the meaning of each of the terms “closure,” “recruitment,” and “misrepresentation.” For example, closure laws may include requirements related to disclosure and notification, surety bonds, tuition recovery funds, record retention procedures, refunds, and teach-out plans.

NASASPS respectfully submits if these concerns cannot be addressed in this regulation, further discussion should be revisited in the context of a State Authorization rule. We encourage the Department to include state regulators in these discussions. NASASPS members stand ready to provide perspective as to how this consumer protection requirement may be enforced with consistency and accuracy.

NASASPS appreciates the opportunity to provide these public comments.

Respectfully submitted,

Cathie A. Maeyaert
2023-2024 President
On behalf of NASASPS