

To: Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Committee

From: Tamar Hoffman and Zoe Kemmerling (Legal Aid Negotiators)

Re: Proposed clarifications regarding Workforce Pell programs offered via distance education

Date: December 9, 2025

Below, we propose an update to the Department's proposed language related to Governor approval of Workforce Pell programs.

Background:

During the first day of negotiations, several stakeholders raised questions regarding how Workforce Pell programs delivered online—and particularly those offered by institutions located outside a student's state—fit within the statutory and regulatory framework. Specifically, negotiators asked whether an institution that is authorized to offer distance education in a state, either through direct state authorization or participation in a state authorization reciprocity agreement (SARA), may offer a Workforce Pell program to students in another state without additional approval.

In this discussion, the Department drew an important distinction between state authorization under the Higher Education Act and Governor approval of Workforce Pell programs under the One Big Beautiful Bill Act (OBBB). These two processes serve different purposes and operate under different statutory authorities.

State authorization governs whether an institution may legally offer education in the state in which it is physically located or where it enrolls students. By contrast, Governor approval of a workforce Pell program is a substantive quality and workforce-alignment determination—one that requires the state executive to assess whether a proposed Workforce Pell program meets statutory requirements, particularly those requirements whose thresholds are defined by each state based on its respective economic situation, such as alignment with high-skill, high-wage, or in-demand occupations, and meeting employer hiring needs. The definition of "in-demand industry sector or occupation" in the proposed regulations illustrates this perfectly when it refers to a sector or occupation with "impact on the State, regional, or local economy."

Because economic conditions, labor-market needs, and priority sectors vary widely across states, and those deemed appropriate in one state may not meet the needs or employer expectations in another. For that reason, even if an institution is fully authorized to offer online or distance education across multiple states, it must still obtain explicit Governor approval for any Workforce Pell program it intends to offer to students in a given state.

From a practical implementation point, this is also a necessary clarification. In the proposed regulations, the Governor is required to calculate the job placement rate using administrative data. The Governor of another state will not have adequate access to data to calculate this measure for students enrolled in another state.

Recommendation

Given the potential for confusion—particularly among institutions that operate nationally or rely heavily on distance education mechanisms—refinements to the proposed text are needed. We recommend inserting “to enroll students residing in that State” in the regulatory language describing Governor approval of Workforce Pell programs to clarify that each state must make its own determination, consistent with the statutory framework for the Workforce Pell initiative.

Amended Language:

§ 690.92 Eligible workforce program

* * *

(d) Is approved by the Governor **to enroll students residing in that State** through a process as described in 34 CFR § 690.93;

* * *

§ 690.93 Components determined by Governors

(a) Prior to the Secretary’s evaluation of an eligible workforce program, the Governor, after consultation with the State board, approves the program **to enroll students residing in that State** by determining that the program—

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