

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

From: Tamar Hoffman and Zoe Kemmerling, representing legal assistance organizations that represent students and borrowers, consumer advocates, and civil rights groups that represent students

Re: Update to proposed language to exclude written arrangements to provide educational programs

Date: December 9, 2025

Below, we propose an update to the Department's proposed language in 34 CFR 668.5, which relates to allowing written arrangements with an ineligible institution or organization that provides 25 percent or less of the educational program.

Background:

H.R.1 states that a program is an eligible program for purposes of the Workforce Pell Grant only if it is offered by an eligible institution, which is defined as an eligible institution for the purposes of section 401. The authorizing legislation does not contemplate a program offered in any part by an ineligible institution or organization. Earlier iterations of proposed legislation [included language](#) that would have allowed eligibility for an eligible institution or any other entity but that language was [struck down](#) and removed before final passage, suggesting Congress's particular intent to ensure programs were offered by accredited, Title IV-participating institutions themselves.

The Department's proposed language allows for a program to be offered in part to an entity up to 25 percent and it notes, it is "particularly concerned about such arrangements in light of the risk to both students and taxpayers." The Department, students, and taxpayers already have reason to be concerned, both about the nature of such arrangements and about the accuracy with which institutions calculate the share of a program offered under an arrangement (and thus their compliance with this cap).¹

The risk associated with these types of written arrangements may be even greater in the context of Workforce Pell, given the short length of the programs. In a program as short as 8 weeks, outsourcing up to 25 percent of the program means two of those weeks may be taught by another, unaccredited

¹ In 2022, the Department issued a Dear Colleague Letter ([GEN-22-07](#)) which noted that institutions do not always accurately account for the percentage of a program that is provided by an ineligible entity resulting in arrangements where the ineligible entity provides services that are instead attributed to the eligible institution. Examples provided by the Department include instances where the program is offered in its entirety by an ineligible entity, institutions misrepresented that a program was taught by one of its own instructors but was actually taught by staff employed by the ineligible entity, or an institution agreed to serve as the institution of record for a program actually offered by an ineligible entity in order to access Title IV, HEA funds.

provider -- not the institution in which the student sought to enroll. This raises questions about the institution's ability to comply with the requirements for Workforce Pell programs in the law, the nature of the program in which the student thought they were enrolling, the price the student (and the taxpayer) pays, and the quality of instruction offered either by the unaccredited provider or the college itself.

Moreover, Congress clearly did not intend to include eligibility for any entity other than eligible institutions -- in fact, it explicitly rejected language that would have done so. To allow unaccredited providers inroads into the Workforce Pell program via these written arrangements goes against the goals of the statute, while creating risk for students and taxpayers.

Amended Language:

668.5 Written arrangements to provide educational programs.

(c) Written arrangements between an eligible institution and an ineligible institution or organization. Except as provided in paragraph (d) of this section, if an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if--

* * *

(3)

(i) The **educational program is not an eligible workforce program, and the** ineligible institution or organization provides 25 percent or less of the educational program, including in accordance with 34 CFR 602.22(b)(4); or

(ii)

(A) The educational program is not an eligible workforce program;

(AB) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program, in accordance with 34 CFR 602.22(a)(1)(ii)(J);

(BC) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(ED) The eligible institution's accrediting agency or, if the institution is a public postsecondary vocational educational institution, the State agency listed in the Federal Register in accordance with 34 CFR part 603 has specifically determined that the institution's arrangement meets the agency's standards for executing a written arrangement with an ineligible institution or organization.