



September 14, 2018

Aaron Washington
U.S. Department of Education
400 Maryland Ave. SW
Room 294-12
Washington, DC 20202

RE: Comments of ED-2018-OPE-0076

Dear Mr. Washington:

Thank you for the opportunity to comment on the intent to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under Title IV of the Higher Education Act, as amended.

Higher Learning Advocates is a non-profit advocacy organization working to shift federal policy from higher education to higher learning—education and training beyond high school that leads to a degree, credential, or employment. We are working toward bipartisan federal policies that create transparent pathways to success, incentivize innovation, protect students and taxpayers, and improve outcomes. Our three areas of policy focus are improving quality and outcomes; updating policies to reflect the needs of today's students; and encouraging a system of higher learning that is affordable and responsive to external changes.

No longer do today's postsecondary students meet the mold envisioned by the original authors of the Higher Education Act. Today's students are more likely to be returning students, parents, working adults, and veterans. They attend postsecondary education online as well as in the classroom, study year-round, and weave together portfolios of skills and credentials to complement career and personal experience. And, they are looking for tangible outcomes - including employment and pathways to further education - from higher education. We urge the Department to keep today's students at the center of any regulatory conversations.

Higher Learning Advocates is a proponent of smart regulations that fit together to improve student outcomes. We believe any negotiated rulemaking should consider how the array of federal regulations drive better student outcomes - or don't. However, the task outlined in the intent to establish negotiated rulemaking is broad and requires significant capacity from the Department of Education and a field of experts. As such, we believe the number of topics proposed by the Department in the notice is far too many to be considered by a single negotiated rulemaking panel. Even with the intent to hold two subcommittees, the diversity and

complexity of these topics could only be earnestly debated through multiple panels, not one. We urge the Department to limit the number and breadth of topics considered at this time to ensure negotiators have the expertise to debate these issues and increase the likelihood of consensus aimed at improving student outcomes.

We ask the Department to consider, at a minimum, two separate negotiated rulemaking panels: one for accreditation issues and a second for issues related to the types of educational programs that can be eligible for federal student aid, including competency-based education.

Accreditation

Accreditors hold the key to increasing quality in higher education. As a critical part of the higher education triad and the gatekeepers to billions of annual expenditures in federal student aid, accreditors are uniquely positioned to monitor quality, improvement, and outcomes at institutions of higher education. Higher Learning Advocates believes much of what federal policy requires of accreditors is too focused on inputs and not enough on outputs, including student outcomes such as completion, employment, equity, and value. As the Department considers how to move forward with this negotiated rulemaking, we support a limited examination of certain accreditation issues that we describe below. Overall, we urge quality to remain at the center of debate and negotiations on any accreditation topic the Department chooses to pursue through this process.

Further, such a panel must prioritize transparency and consistency in regulations governing accreditors and their actions to ensure students receive the same guarantee of quality no matter where they choose to go to school. Transparency and consistency do not need to consist of bright lines that exist regardless of institutional missions and student profiles; however, those challenges can no longer be barriers to implementing concrete measures to better convey how institutions serve their students.

Criteria used by the Secretary to recognize accrediting agencies

As accrediting agencies are gatekeepers to billions of dollars in federal student aid, the recognition and review process for approving them should be justly rigorous. Accrediting agencies must be able to accurately convey and demonstrate their ability to review, monitor, and evaluate institutions of higher education based on standards set forth in law; therefore, the process by which accreditors gain recognition must be equally robust and not subject to any shortcuts. While we support an upcoming panel discussing potential ways to “simplify” this process, it should also consider ways to strengthen the process.

Further, Higher Learning Advocates believes the negotiated rulemaking panel should examine how the use of common terms - such as “show cause” and “probation” - could paint a clearer picture of outcomes at institutions of higher education and empower students and their families with better information.

Accreditation actions and reviews too often occur outside the public domain and discourse. As a result, the assessments by accreditors are not transparent to students, their families, taxpayers,

or policymakers. Accreditors should be required to post the following items online, via an easily-accessible site: standards, reports, information on student outcomes, criteria that triggers sanctions, and specific sanctions taken with institutions who fail to meet such criteria. While some accreditors already choose to take this step, not all of them do, and we support the Department including this set of issues for consideration by the negotiated rulemaking panel.

In addition, any efforts to force regional accreditors to accredit institutions outside their region through negotiated rulemaking deserve extra scrutiny. Regional accreditors are membership associations that serve institutions in specific regions of the country and utilize peer-review and regional workforce and employment trends to best review and approve institutions under their purview. By forcing regional accreditors to accredit institutions outside their region - and thereby enabling any institution of higher education to choose any regional accreditor they wish - could create a “race to the bottom” where poor-performing schools would likely choose the regional accreditor with the least stringent rules for areas the institution may be struggling in. We do not support the Department conducting negotiated rulemaking on this issue through the upcoming process.

Requirements for accrediting agencies to honor institutional mission

An accrediting agency’s standards must effectively address the quality of the institution or program in “success with respect to student achievement in relation to the institution’s mission...”¹ As American higher education has become a hallmark of academic freedom, student empowerment, and meaningful innovation, we recognize the important role institutional mission plays in ensuring the country has campuses that offer different settings and priorities for different groups of students.

However, as long as such institutions are eligible for the \$130 billion annually in federal student aid, the federal government has the right and responsibility to ensure students use their aid at institutions and programs that offer high-quality student outcomes. Higher Learning Advocates believes the negotiated rulemaking panel and the Department must work to balance the importance of respecting institutional missions while still assuring quality for students and taxpayers in the form of student success if this issue is taken up by the panel.

Developing a single definition for purposes of measuring & reporting job placement rates

By 2020, 65 percent of jobs in 2020 will require a postsecondary education and training,² and those who earn a bachelor’s degree earn one million dollars more over their lifetime than their peers with a high school diploma.³ As a postsecondary degree or credential continues to be the hallmark for social mobility and economic opportunity - it is critical that we give accurate and useful information to students and their families about the return on investment and likelihood of success. As 91 percent of students enter higher education to better their employment

¹ CFR 602.16(a)(i)

² <https://cew.georgetown.edu/cew-reports/recovery-job-growth-and-education-requirements-through-2020/>

³ <https://cew.georgetown.edu/wp-content/uploads/Exec-Summary-web-B.pdf>

opportunities, better and more accurate measuring and reporting of job placement rates by academic program would be a useful tool, if done correctly.⁴

Better and more accurate job placement rates should remain part of the larger discussion about greater transparency for students and their families. Previous attempts at collecting and accurately reporting job placement rates have fallen short due to collection problems such as alumni surveys, how to handle transfer students, and how to treat underemployment or part-time employment. Higher Learning Advocates believes these issues are likely too onerous to be resolved during this compact negotiated rulemaking process and we do not support inclusion of this issue.

Moreover, any attempt to roll back Department-wide efforts for greater transparency - for any student outcomes, but especially those pertaining to employment and earnings - and place that onus solely on accreditors and their private reviews and processes is sorely misguided.

Requirements for accrediting agencies with regard to substantive change

To respond in responding to local workforce needs, institutions often will work with employers and the business community to stand up a new program at the institution to help fulfill local workforce demand. The creation of new programs can trigger substantive change as described in 34 CFR 602.22(a)(2)(iii) - “the addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.”⁵

After triggering substantive change, an institution must undergo review and approval by its accreditor, which can often be expensive and/or too lengthy in comparison to the quickly-evolving workforce needs. Instead, institutions often choose to offer such programs as non-credit courses or programs that are ineligible for federal student aid. As a result, the credentials that students receive may not be transferable or translatable to other employers or at institutions of higher education.

Higher Learning Advocates believes accreditors should be able to waive or expedite substantive change requirements in certain instances, such as when a new program that triggers substantive change is directly related to local workforce needs, an employer is involved in the program, and the program is at an institution of higher education in “good standing” with its accreditor. Should a waiver or expedition be granted, a process should be established to intermittently review student outcomes at the institution to ensure educational quality.

Educational Program, Innovation, and the Federal Role in Higher Education

Higher Learning Advocates is a proponent of smart regulations that fit together to improve outcomes—including completion, employment, equity, and value—for today’s students in our postsecondary system. We believe the panel should use this opportunity to holistically review

⁴ <https://www.newamerica.org/education-policy/edcentral/collegedecisions/>

⁵ 34 CFR 602.22(a)(2)(iii)

and consider how its array of regulations and requirements work to advance student outcomes in postsecondary education—including breaking down barriers to innovation, reconfirming and better defining what constitutes high-quality programs, and ensuring guardrails are in place to protect students and taxpayers from programs that do not meet quality standards.

More specifically, we believe the Department should establish a separate panel if they wish to move forward in considering the types of educational programs that can be eligible for federal student aid. The goal of such a panel should be to break down barriers for today's students while ensuring all programs provide the highest level of quality. It would be detrimental to simply remove existing guardrails without replacing them with updated protections.

Many of the proposed topics are new frontiers for higher education and Title IV funding. We urge that the Department consider examining these issues with the goal of supporting a sustainable high-quality system of higher learning that has student outcomes at the center. To accomplish this, we urge a measured approach that may require further experimentation, such as through a demonstration project, that will allow for responsible innovation and glean lessons for future policymaking.

Competency-based education and direct assessment programs

According to Lumina Foundation, research shows 87 percent of Americans think students should be able to earn college credit for previously-acquired knowledge and skills, and 72 percent would be more likely to enroll in a higher education program where they would receive credits for prior knowledge.⁶ Yet the Department's efforts to date, and recent actions by the Office of the Inspector General (OIG), have left providers of competency-based education (CBE) in a murky state.

Higher Learning Advocates believes the panel must take up the issue of CBE and direct assessment programs to create a comprehensive system of regulations that breaks down barriers for today's students while still ensuring quality is of the highest import. CBE holds promise, especially for adult and returning students, and the Department and negotiators should carefully consider any changes in regulations with student success and quality in mind.

Definition of regular and substantive interaction

The requirement that distance education programs provide "regular and substantive interaction" with their students was originally included to differentiate substantive distance programs from correspondence courses and is a critical protection against fraud and abuse. While we agree that the requirements need to be updated to reflect evolutions in both technology and learning delivery, we caution the Department from simply removing this important protection for students.

The existing regulation, as well as statute, are explicit that "regular and substantive interaction" must be with an instructor, which is a limited definition of how a student, particularly in a high-quality competency-based education program, might substantively interact with a program.

⁶ <https://www.luminafoundation.org/files/resources/americas-call-for-higher-education-redesign.pdf>

However, there is still significant conversation and experimentation needed to update the requirement in the proper way that holds quality and student outcomes at the center. The current experimental sites initiative on competency-based education can provide both the Department and Congress with lessons for consideration.

Further, as this requirement affects all distance education programs and not only those offered through competency-based education, this is an area in need of broader testing and conversation, such as through a demonstration project, prior to further updating. As such, we suggest the Department not include this issue in this rulemaking and work with Congress to outline a process that will update, not eliminate, the requirement that allows for both innovative delivery model growth and protections for students.

Existing State Authorization and Credit Hour Regulations

Higher Learning Advocates is concerned about the proposal's inclusion of two recently regulated topics, state authorization and the definition of a credit hour. While there may be need for clarification and refinement to ensure there are not unnecessary burdens or confusion among states, accreditors, and institutions, quality and outcomes must remain at the center of these two regulations. Simply removing or greatly streamlining these requirements could put student and taxpayer dollars at risk.

While the credit hour is often cited as an impediment to the growth of competency-based education, the Department's existing regulation, as well as the direct assessment process, provides a pathway for programs not tied to 'seat time.' Further, the credit hour provides a concrete foundation on which to base new approaches. Simply removing the requirement without another common and accepted currency could create a lack of clarity, at best, and a path for fraud and abuse, at worst. Either scenario does not serve students or the taxpayer's interest.

Program length

In our 21st century global economy, continued education and training is now required to ensure Americans are upwardly mobile and economically successful. Younger workers are changing jobs as many as four times by age 32, and lifelong learning has quickly become the norm for most adults. More Americans are living outside city centers and away from traditional learning, and more groups - like military veterans - are learning skills in nontraditional settings that could translate directly to educational credentials.

As such, today's students utilize multiple pathways through which they intersect with postsecondary education - including work-based training, apprenticeships, and other non-degree programs, in addition to more traditional settings like four-year universities and community colleges - and employment. These multiple pathways make up a diverse and integrated set of programs that meet today's students where they are and provide multiple entry and exit points to and through education and the workforce.

Higher Learning Advocates believes this panel should discuss the issue of required program length for a postsecondary provider - especially work-based training programs - to be eligible for federal financial aid.

Arrangements to provide a portion of an educational program

While not all postsecondary pathways meet requirements to be deemed an institution of higher education eligible for federal student aid, some do offer high-quality learning that should have more equitable access for all of today's students. Higher Learning Advocates believes the panel should take up this discussion and debate the right path forward for allowing institutions of higher education to partner with providers that offer high quality pathways to employment. Importantly, the panel will be responsible for answering questions of what kind of quality standards and guardrails these partnerships must demonstrate to provide the greatest return on investment from students and protect them from adverse outcomes. In this consideration, the Department and the negotiators should examine the early lessons from the EQUIP experimental sites.

To conclude, Higher Learning Advocates believes the Department's current intent to establish a negotiated rulemaking panel should be fine-tuned to turned into an effort for two separate panels - one on accreditation, the other on what types of programs can be eligible for federal student aid. The Department and negotiators must work to maintain a balance the desire for innovative or alternative delivery models and deregulation with student protections and taxpayer stewardship.

Thank you for the opportunity to offer comments to the Department. We look forward to engaging as this process continues.

Sincerely,



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emilybouck (Sep 13, 2018)

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