June 11, 2018

Sophia McArdle, Ph.D.
U.S. Department of Education
400 Maryland Ave., SW
Mail Stop 290-44
Washington, D.C. 20202

RE: Notice of Proposed Rulemaking on ED-2018-OPE-0041-0001

Dear Dr. McArdle:

Thank you for the opportunity to comment on the U.S. Department of Education’s proposed two-year delay of final regulations related to the state authorization of distance education institutions and foreign locations. An independent, nonprofit organization, the Institute for College Access & Success (TICAS) works to make higher education more available and affordable for people of all backgrounds, with an emphasis on low-income, underrepresented students.

States have long had important responsibilities in protecting students from low-quality and abusive colleges. The distance education regulation the Department seeks to delay includes important protections that enable states to fulfill those roles. It protects states’ ability to enforce their laws, ensures students are able to file complaints against their schools when need be, and requires schools to make certain information available to students, such as whether or not the program the student is pursuing will lead to licensure in their field of study for that state. The Department’s two-year delay is unnecessary and puts students at risk.

As the basis for delaying the rule, the Department cites two letters: The first from the American Council on Education dated February 6, 2018, and the other dated February 7, 2018 from three organizations that oversee distance education providers – the National Council for State Authorization Reciprocity Agreements, the Western Interstate Commission for Higher Education, and the Distance Education Accrediting Commission.

The February 6 letter posits that some students may not be eligible for student aid as their state may not have a system in place to act on consumer complaints associated with out-of-state institutions, and specifically cites California as a state lacking a complaint handling process. The February 7 letter raised two administrative issues for clarification: How to determine the residency of students for purposes of the rule, and the appropriate format for consumer disclosures.

The delay of the entire rule is unnecessary to address any of these concerns.

Any confusion regarding residency and disclosure formatting are capable of being resolved through guidance, rather than delaying and redrafting the rule. As currently drafted, the state authorization and distance education rules allow an institution to simply rely on the student’s assessment of their residency
in meeting the requirements of the rule. The concern over disclosures is even weaker. There is no
required format for the disclosures required by the rule. Institutions can use whatever format they would
like for the public disclosures, unless otherwise directed by the Department. These are
misunderstandings about the rule, not flaws in it. Therefore, to address any outstanding confusion on
these issues, the Department could simply provide guidance without any delay of the implementation.

If concerns about California's complaint handling procedures remain that cannot be addressed by
technical assistance and guidance, despite having had nearly 18 months to work with the state to
implement the rule, the Department should proceed with a narrower delay affecting only students living
in California and attending online programs at out-of-state institutions. Notably, the Department does
not describe any effort it has made to gather information since the rule was finalized 18 months ago, or
to clarify California's complaint processes. California should not be used as justification to delay the rule
for the over 1 million students enrolled in out-of-state distance education programs.

The Department first began to consider state authorization with a public hearing on June 16, 2009. The
most recent regulation was finalized on December 16, 2016, more than 18 months ago. The two letters
were received more than four months ago. After these ample opportunities to fully consider all aspects
of this issue, further delay is unnecessary and harmful to students.

We urge the Department to immediately provide the guidance and technical assistance necessary to
address these concerns, and to protect students by allowing the rule to go into effect as scheduled on
July 1, 2018. If you have questions about our comments, please contact me at aperry@ticas.org.

Sincerely,

[Signature]

Angela Perry

1 “State Authorization.” Correspondence to Secretary Betsy DeVos. Letter from Amy Laitinen, New America; Yan Cao, The
Century Foundation; National Consumer Law Center; and Service Employees International Union. 26 March 2018.