

July 12, 2019

Mr. Jean-Didier Gaina  
U.S. Department of Education  
400 Maryland Ave. SW, Mail Stop 294-20  
Washington, DC 20202.

Submitted electronically via: <http://regulations.gov>

Re: Docket ID ED-2018-OPE-0076, Accreditation

Dear Mr. Gaina,

As 33 organizations and advocates working on behalf of students, consumers, veterans, service members, faculty and staff, civil rights, and college access, we write to express our concern with the Department of Education's proposed changes to regulations setting out requirements for accrediting agencies and colleges eligible for financial aid.

The Department conducted this negotiated rulemaking process under new, deeply flawed procedures that failed to provide the comprehensive discussion and exchange of information envisioned by the Higher Education Act. In particular, the accreditation proposals will result in the weakening of critical protections for students, while granting new low-quality educational providers unfettered access to taxpayer dollars. We urge the Department to withdraw these problematic provisions and leave existing regulations in place.

We also write to express support for the Department's proposed regulations that set out state authorization requirements for institutions to participate in the federal student loan program. These proposals largely mirror the previous carefully considered state authorization rule finalized in 2016 now in effect. If the Department elects to proceed with a final rule, we urge it to ensure that states are able to enforce their laws to protect the growing number of distance education students living in their state.

### **The Negotiated Rulemaking Process Did Not Allow for Full Consideration of the Proposals**

The process by which the Department developed these proposals was unprecedented and failed to provide students and consumers sufficient opportunity to be heard. The rulemaking process failed to provide the opportunity to participate to key stakeholders, did not offer the opportunity to be heard on all topics to negotiators who were seated, and was marred by convoluted procedures patently designed to limit debate on critical issues that impacted the overall fairness of the negotiated rulemaking.

The [negotiating committee](#) included 11 negotiators representing the interests of institutions of higher education and accreditors, while reserving only one seat for students and one for the legal aid community. Because of the wide range of issues under discussion, many negotiators were knowledgeable in only one or two of the dozens of issues being discussed. In contrast to past negotiated

rulemaking efforts, the Department opted not to provide a seat on the voting committee for a state authorizer, a consumer protection organization, or a representative of the state attorneys general.<sup>1</sup>

In recognition of the fact that states had no representation despite being one of three arms of the triad responsible for overseeing higher education, every member of the negotiating committee voted to add a state authorizer. Given their role in ensuring consumers are not subjected to unfair, deceptive, and misleading practices and for enforcing their state's laws, every member of the negotiating committee again voted to add a representative of the state attorneys general. The Department of Education alone vetoed the addition of state attorneys general representative, preventing a critical voice for protecting students from being heard.

Throughout the process, from [public hearings](#) last [summer](#) and in continued comments from negotiators throughout the rulemaking, there was broad agreement that there were simply too many issues and too broad a range of issues under discussion. Many important issues, particularly the far reaching changes proposed to the accreditation process, received only cursory discussion by the committee. Conducting a well-reasoned rulemaking requires that there be enough time to adequately discuss the relevant issues and that negotiators can meaningfully contribute to the process. That standard was not satisfied.

### **A Strong Accreditation Process and Strong Oversight of Accreditors Is Critical to Protecting Students and Taxpayers**

The Department's proposed changes would weaken both the oversight by accreditors of institutions and the oversight of accrediting agencies by the Department of Education. Taken together, these changes greatly reduce the effectiveness of accreditors in ensuring that students are attending programs that provide a quality education and are worthy of taxpayer subsidies. There is strong evidence that accreditors should be doing more, not less, to ensure that institutions are providing tested quality programs and that students are learning and completing these programs. Meanwhile the Department is seeking to weaken its own ability to oversee accreditors despite the obvious need for high quality-oversight given the long record of problems with the Accrediting Council for Independent Colleges and Schools (ACICS).

The Department's proposed regulations on accreditation would:

- Make it much easier for new agencies to become accreditors without requiring evidence they can be trusted in that role;
- Allow institutions to create a separate set of standards for "innovative" programs;

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<sup>1</sup> There was a negotiating seat for student veterans, however the negotiator represented an organization mainly funded by for-profit institutions, see <https://eangus.org/corporate-partner-list/>. A letter from the veteran and military community nominating negotiators for this rulemaking warned of this possibility in a letter, stating: "We urge the Department to beware of other nominations it receives for the veterans and servicemember slots, as our community has heard that they may be industry posing as veterans, who will not represent the interests and perspectives of the broader veterans and servicemember community." See letter here: <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5bf2a85e1ae6cf7a6961f3b8/1542629470871/2019+Neg+Reg+Negotiator+Rec+Letter.pdf>. A representative for state attorneys general was eventually seated on a non-voting subcommittee.

- Make it easier for colleges to add new locations and open new campuses without receiving approval or oversight from accreditors;
- Lower the standard for an accreditor to remain recognized from compliant to “substantially” compliant;
- Curtail the Department’s ability to adequately oversee accreditors; and
- Eliminate requirements that an accrediting agency be trusted by peer organizations, practitioners, and other stakeholders.

The proposed regulations would allow colleges to remain out of compliance with accreditor standards for three years or more before facing any accreditor action and then remain accredited for up to an additional four years from the time an accreditor initiates action. It could be more than seven years, far longer than it would take a student to enroll and complete a degree, from when an accreditor discovers potentially serious problems until an institution faces consequences, not including the extensions and appeals along the way that would likely lengthen such a process.

Institutions that do lose their accreditation, and accompanying access to federal student aid, would nonetheless be able to access an additional 120 days of federal aid dollars. By encouraging students to remain at a failing school, the regulation puts students further at risk of incurring debt with no path to completion, without addressing the very real issue of how to better protect students attending schools that abruptly close. In fact, this regulation could also limit students’ ability to collect closed school discharges when their schools suddenly close, by enticing them to continue enrollment at a failed institution, leaving them with debt, credits that would unlikely transfer, and a degree that may never pay off.

The regulation also seeks to keep low-quality and failing schools open and eligible for taxpayer dollars by incentivizing new owners to purchase them. Because the regulation would limit the financial liability of purchasers for the past conduct of troubled colleges, it is likely that more questionable sales like that of EDMC to Dream Center Holdings will occur, which ultimately led to thousands of students left with debt and no path to a degree, complex legal maneuvering, misrepresentations to students and accreditors, and even the misappropriation of funds.<sup>2</sup>

We urge you to abandon these ill-developed and insufficiently considered proposals with regard to accreditation and instead hold accreditors to high standards, and empower accreditors to better act in the interests of students.

### **State Authorization Rules Must Allow States to Protect Students in their State**

We are encouraged that, despite the manifest procedural challenges faced by negotiators, consensus was reached that largely maintains the existing 2016 rule on state authorization. The rule and the proposal set out requirements for institutions receiving federal financial aid, requires that distance education providers be authorized in states where they operate, and ensures that states can enforce

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<sup>2</sup> Michael Vasquez, “The Nightmarish End of the Dream Center’s Higher-Ed Empire” The Chronicle of Higher Education, March 9, 2019.

their own laws. The dramatic growth in online education makes it more important than ever for states to be able to protect their residents, even if they are enrolled in institutions based in other states.

Distance education programs should have to meet any state authorization requirements in the states where they enroll students. These proposed regulations continue to allow them to do so through a reciprocity agreement, provided that states are still able to enforce their relevant consumer protection laws. We strongly support maintaining these requirements and urge the Department to adopt the proposed language regarding the definition of a qualifying reciprocity agreement in the final regulations.

The Department's proposed regulations also require institutions to notify impacted students whether their educational programs meet the requirements for licensure across states. In early 2018, representatives of both community colleges and for-profit colleges proposed prohibiting colleges from even enrolling students for which licensure would not be possible. We urge the Department, at a minimum, to retain these notification requirements.

State authorization is a critical component of the program integrity triad. The regulations governing state authorization must ensure a strong state role, particularly as more and more programs are offered online and from institutions across state lines.

We urge you to maintain the state authorization proposal, which was the result of carefully considered rulemaking leading up to the final 2016 rule, and which is currently in effect after having been upheld at the district court level. To depart from this proposal given the body of evidence supporting the rule, now further bolstered by the consensus of even the imbalanced group of negotiators to maintain the rule, would require dramatic new evidence placed in the record to support changes.

For the reasons detailed above, this negotiated rulemaking process was deeply flawed and lacked critical information supporting the Department's assertion of the need for changes to longstanding accreditation processes. We strongly urge the Department not to move forward with this proposal and instead to leave in effect existing requirements with regard to accreditors, as well as the 2016 state authorization rule.

Signed,

American Federation of Teachers  
Americans for Financial Reform Education Fund  
Association of Young Americans (AYA)  
Augustus F. Hawkins Foundation  
Center for American Progress  
Center for Public Interest Law  
Center for Responsible Lending  
Children's Advocacy Institute  
CLASP  
Consumer Action  
East Bay Community Law Center  
The Education Trust  
Empire Justice Center  
Generation Progress  
The Institute for College Access & Success

Government Accountability Project  
Hildreth Institute  
Maine Center for Economic Policy  
Maine Equal Justice  
National Alliance for Partnerships in Equity (NAPE)  
National Consumers League  
New America  
PHENOM (Public Higher Education Network of Massachusetts)  
Public Counsel  
Public Law Center  
Southeast Asia Resource Action Center  
Stephanie Hall, Fellow, The Century Foundation  
Student Debt Crisis  
Student Veterans of America  
U.S. Public Interest Research Group (USPIRG)  
UnidosUS  
Veterans Education Success  
Young Invincibles