July 12, 2019

Jean-Didier Gaina
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

**RE: Docket ID ED-2018-OPE-0076**

Dear Mr. Gaina,

On behalf of the American Association of State Colleges and Universities (AASCU), I write to submit comments on the Department of Education's proposed changes to regulations governing certain federal requirements in the higher education accreditation system.

AASCU is a Washington-based higher education association of nearly 400 public colleges, universities and systems whose members share a learning and teaching-centered culture, a historic commitment to underserved student populations and a dedication to research and creativity that advances their regions' economic progress and cultural development.

While we understand and support the Department's efforts to accommodate innovative delivery models by eligible postsecondary institutions, we are concerned the proposed regulatory changes remove important safeguards protecting students, taxpayers and legitimate institutions of higher education.

**The Process**

The proposed regulations—governing criteria for Secretarial recognition of accrediting agencies and for eligibility of postsecondary institutions to participate in the federal student aid programs authorized under Title IV of the Higher Education Act (HEA)—were developed through a negotiated rulemaking process mandated under Section 492 of the HEA. However, the Department chose an unconventional and unprecedented negotiated rulemaking model, which significantly limited the level of attention and review changes of this magnitude deserve.

- The sheer number of policy issues on the agenda was too large and these issues were too varied and dissimilar for one negotiating committee to have the expertise or adequate time to address them properly. Furthermore, the novel subcommittee process that the Department devised to address this concern further obscured the issues by parceling out components of the system to different groups: the subcommittees' output could not be properly coordinated in a coherent overarching regulatory architecture. Even at this late stage, when a notice of proposed rulemaking (NPRM) has been published in the *Federal Register* on some agenda items, the Department's failure to publish the entirety of the proposed regulations it developed through

one negotiated rulemaking committee poses a serious policy challenge and raises important compliance concerns under the Administrative Procedures Act. The fragmentation of proposed regulations into separate NPRMs makes it impossible to submit informed comments on the partial provisions disclosed thus far because the public is unaware of other changes the Department intends to propose to related provisions on the agenda in this rulemaking.

- The Department provided little data or evidence to support the need for the proposed changes, and it generally did not provide analytics on the likely effects of such changes if implemented.
- While we understand the Department is expediting this critically important process to meet the master calendar's November 1 deadline, we believe this haste will create unintended consequences—including substantive policy mistakes and procedural and legal weaknesses—that will frustrate the legitimate goals of this rulemaking.

We recommend that the Department delay the publication of a final rule and extend the comment period to enable stakeholders—including the Secretary—to collect more evidence and conduct more careful legal, budgetary and policy analyses to better inform the process before final regulations are promulgated.

**Effects on Accreditation**

As noted above, we do support the Department's effort to accommodate innovation by providing greater flexibility in the federal financing system's regulatory requirements. We are, however, concerned that the proposed regulations weaken the Department's oversight of accrediting agencies and undermine the reliability of accrediting agencies as quality assurance entities. Additionally, the interactive results of the numerous proposed changes would diminish necessary protections for students, taxpayers and legitimate institutions of higher education. For example, the proposed regulations would:

- Make it easier for untested entities to become Secretarially recognized accrediting agencies [Proposed 34 CFR 602.10, 602.12, and 602.13].
- Create an opaque process through which agencies with significant deficiencies in meeting their obligations may remain recognized due to "substantial compliance" with the statutory criteria on which their recognition was based [Proposed 602.3 and 602.36].
- Allow accrediting agencies to adopt a different set of standards for programs they designate as "innovative," without articulating proper criteria for such a designation or imposing reasonable time, enrollment or cost restrictions on what will likely become a de facto parallel system to the one specified in the underlying statute [Proposed 602.18(c)].
- Significantly extend the time problem institutions are given before accrediting agencies must act and the time provided for such institutions after such action has been taken. Compounding our concerns are changes that allow closed schools to continue to access federal aid for 120 days, enable risky institutions to spin off new locations and campuses without the minimal oversight

currently provided by some accreditors, and keep failing schools in operation by allowing them to be sold to new owners who would no longer be required to fully accept the liabilities of the schools they acquire [Proposed 602.18(d), 602.20(a)(2), 600.32(c), 602.22(c), and 668.26].

Even this partial enumeration of possible problem areas should suffice for the Department to slow the process in the interest of getting the policy right for the good-faith regulatory changes it seeks. As noted above, we are unable to recommend specific changes until the entire package of proposed regulations is made available for review. We therefore recommend an extension of the comment period after the publication of all NPRMs, followed by lengthier internal deliberations and analysis at the Department before the publication of a final rule. This approach would enable the Department to devise the innovative framework for federal financing it aims to promote, without the unintended harmful consequences associated with the changes it has proposed.

Barring such an extension, we can only urge the Department to significantly modify the provisions to address the concerns identified above, ensuring that only credible and reliable entities can gain and maintain Secretarial recognition as accrediting bodies. Furthermore, all accrediting bodies should continue to be required to comply with all statutory criteria by maintaining and enforcing robust and consistent standards for the institutions they enable to access federal student aid programs. Finally, the Department should refrain from regulating changes that weaken academic or financial oversight of problem institutions.

**State Authorization**

We support the proposed rule's general retention of the 2016 regulations on state authorization. We are particularly pleased the proposed regulation recognizes the critical role state authorization plays in the triad, and we strongly support the 2016 rule's retention of reciprocity agreements that allow states to perform this role in an operationally effective manner while maintaining their consumer protections safeguards.

Sincerely,

Mildred García, Ed.D.
President

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