July 12, 2019

Mr. Jean-Didier Gaina
Office of Postsecondary Education
Department of Education
400 Maryland Ave., SW, Mail Stop 294-20
Washington, DC 20202
Submitted via online portal

Re: Docket ID ED-2018-OPE-0076, Notice of proposed rulemaking on recognition of accrediting agencies

Dear Mr. Gaina,

Thank you for the opportunity to comment on the Department of Education's proposed rulemaking on recognition of accrediting agencies and colleges eligible for financial aid. We at Veterans Education Success – a nonprofit organization that advocates on behalf of veterans, servicemembers, and their families – believe that many of the proposed regulations would weaken accreditors' power to do their jobs, make it harder for the Department to hold failing accreditors accountable, and ultimately hurt students and taxpayers by allowing bad and predatory schools to operate without the proper accountability.

We agree with the Department and negotiators on maintaining in its proposed regulations the existing 2016 rule on state authorization which requires distance education programs to meet state authorization requirements in any state where they enroll students, including through reciprocity agreements (proposed 34 CFR 600.9, 600.2). We also support the proposed requirement that institutions notify their students when their educational programs meet the requirements for licensure across states.

However, the negotiated rulemaking process the Department used to develop all of their proposals was unprecedented, confusing, and beset with flaws. The agenda was unwieldly in that it included a dozen separate issues which prevented the negotiators from spending the necessary time to evaluate each individual issue. The Department did not provide seats to many key stakeholders, specifically leaving off the voting committee a seat for a state authorizer, a consumer protection organization, and a representative of the state attorneys general. Every member of the negotiating committee voted to give a state attorneys general representative a seat, but the Department alone vetoed this addition. The negotiating seat for student veterans was allocated to an organization that receives funding from more than a

dozen for-profit colleges and to an alternate with no ties whatsoever to veterans or military concerns – and both appointments were against the recommendations, and clear warning about industry posing as veterans, made by VSOs/MSOs nominating other negotiators. [1]

Regarding the actual regulations, the proposals will make it easier for bad actor schools to operate for longer periods of time without the proper accountability, as well as restrain the Department's ability to oversee accreditors. Given the recent string of school closures, with over 1,200 campuses closing their doors in the last five years, as well as significant law enforcement concerns about consumer fraud including a recent suit brought by 49 state attorneys general,[2] the proposed rule would make it easier for closing schools to be revived by companies with minimum liability. Specifically, the proposed changes would allow purchasers of these failing or failed schools to be responsible only for the most recent fiscal year of financial liability, instead of the current rule which requires the purchaser to cover all liability (proposed 34 CFR 600.32(c)). The Department should ensure that institutions accept the liability of any campus they may acquire.

These new rules also remove the immediate action requirement which mandates that accreditors take adverse action if a school is out of compliance with the accreditor's standards. The proposed changes would allow colleges to remain out of compliance for up to three years (and sometimes longer) before the accreditor has to take any action (proposed 34 CFR 602.18(d), 602.20(a)(2)). This would seem to ignore the mounting evidence of legitimate public and law enforcement concern about practices at predatory schools that defraud students and taxpayers. The Department did not provide clear evidence that necessitated the increase in the additional time and number of years colleges can be out of compliance with accreditor standards, and this change would likely only exacerbate many of the issues facing students at the school before action is taken by the accreditor. At a bare minimum, if the Department were to extend this time frame, then there should be stringent enough consequences to discourage a school from continuing out of compliance.

Similarly, the Department proposed to allow accreditors to establish alternative standards for programs the agency deems "innovative" (proposed 34 CFR 602.18(c)). This undercuts the accreditor's seal of approval as being "reliable" (as required by law), by establishing dual systems with differing criteria. Truly innovative programs do not need to be propped up by different accreditor standards in order to thrive; rather, this change could encourage accreditors to lower their standards which would allow programs which out of compliance with the normal level of standards to still operate.

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[1] *See* VSO/MSO letter to Department of Education on VSO and MSO negotiating representatives, Nov. 15, 2018, available at https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5bf2a85e1ae6cf7a6961f3b8/1542629470871/2019+Neg+Reg+Negotiator+Rec+Letter.pdf.

[2] Iowa Department of Justice Attorney General Tom Miller Press Release, *For-profit school to forgo collecting loans, change practices in agreement with Miler, 48 AGs*, January 3, 2019, available at https://www.iowaattorneygeneral.gov/newsroom/for-profit-school-education-cec-career-ags-intercontinental.

The new rules would change the federal recognition process of accreditors, thereby making it easier for accreditors with little to no experience to become federally recognized (proposed 34 CFR 602.12). In addition, the new regulations would make it harder for the Department to hold failing accreditors accountable. These rules would eliminate the statutory requirement that accreditors effectively apply their standards, and accreditors would be compliant if they simply have a satisfactory standard on paper (proposed 34 CFR 602.3, 602.36). The proposals would rewrite the accreditation process and limit the Department's scope of review of accreditors, thereby limiting necessary accountability measures (proposed 34 CFR 602.16(a)(1), 602.36). Additionally, the new regulations would remove requirements that accreditors be trusted by peer organizations and other stakeholders. Given the inadequate accreditor oversight of failing and fraudulent schools in recent years, these changes are imprudent. These changes would weaken accreditor accountability and public trust in the accreditation process.

We believe the procedural issues during negotiated rulemaking process, coupled with the lack of critical information supporting the Department's reasoning for the proposed changes, means that the Department should not continue with these proposals. The proposed regulations will weaken accreditation, a vital part of the program integrity triad, and allow failing colleges and bad actor schools to operate without the necessary accountability. We agree that accreditation needs to be addressed; however, the number of recent school closures and significant law enforcement concerns about consumer fraud by some bad actor colleges communicates a need for more rigorous expectations from accreditors when evaluating programs. The Department should at minimum leave the current requirements for accreditations as well as the 2016 state authorization rule in effect. Thank you.

Sincerely,

Carrie Wofford
President

James Haynes
Legal Advisor