January 20, 2022

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Director Bounds:

We submit this letter on behalf of the undersigned organizations to respond to the request for comment on accrediting agencies up for review in February 2023.[1] We write to provide both the U.S. Department of Education (ED) and the members of the National Advisory Council on Institutional Quality and Integrity (NACIQI) recommendations to improve the review process for accreditors. For the reasons discussed below, we believe the current process leaves the public with limited ability to understand and comment on accreditors currently under review. This process also deprives the members of NACIQI of the ability to fully evaluate whether accreditors up for review are doing enough to protect students from institutions that leave them worse off. For this reason, we ask ED to integrate our recommended changes prior to the February 2023 meeting and encourage the members of NACIQI to conduct their reviews of the four Title IV gatekeeping accreditors up for review by evaluating how these accreditors address poor student outcomes at several of the institutions they accredit.

Shortcomings of ED accreditor review and NACIQI review

ED's recognition criteria require effective monitoring and evaluation of institutional compliance with accrediting standards and swift enforcement when institutions are in violation of the standards.[2] Several different organizations have documented the shortcomings of our accreditation system in effectively overseeing institutions and protecting student and taxpayer interests in Title IV programs. These external evaluations of accreditor oversight—from both government entities and research organizations—have found several areas of concern, including with ED's own oversight of accreditors. The GAO, for example, found, "schools with weaker student outcomes were, on average, no more likely to have been sanctioned by accreditors than schools with stronger student outcomes," among many other concerning findings.[3]

[1] Accrediting Agencies Currently Undergoing Review for the Purposes of Recognition by the U.S. Secretary of Education, 86 FR 71251. https://www.federalregister.gov/documents/2021/12/15/2021-27095/accrediting-agencies-currently-undergoing-review-for-the-purposes-of-recognition-by-the-us-secretary.
[2] See 34 CFR Sec. 602.16 to 602.22.
[3] Government Accountability Office, "Education Should Strengthen Oversight of Schools and Accreditors." https://www.gao.gov/assets/gao-15-59.pdf.

Independent evaluations of accreditation quality have shown the extent to which even institutions with full accreditation have extremely poor graduation rates, high default rates,[4] and several instances where fully accredited institutions shut down without warning[5]—the worst outcome for students and taxpayers alike. Accreditors in multiple instances have failed to take any corrective action even when the schools they oversee are failing to graduate even 25 percent their students.[6] And especially troubling given the how poorly higher education has met the needs of its most underserved students, independent evaluations have shown that accreditors in general do not evaluate their institutions on the basis of how well they serve their students of color and students from low-income backgrounds.[7]

ED has taken minimal steps toward correcting these shortcomings and protecting students and taxpayers through the accreditation system. The most comprehensive review of accreditor oversight put it bluntly: "The Education Department is not meeting requirements to evaluate accrediting agencies for federal recognition and ensure that they are reliably evaluating the quality of education in the schools they accredit."[8] This is in spite of the fact that ED and NACIQI obligated under the accreditation regulations to review student achievement standards to ensure they are effective. [9] Given the outcomes presented in the final section of this letter, it is clear that both the current ED review process and NACIQI review process are insufficient.

This failure to adequately oversee accreditors stems, in part, from the NACIQI process and the ways it limits public comment and review of accreditor performance. This weak oversight also reflects a failure to empower NACIQI members to recommend corrective action and ED's ability to limit recognition.

For example, the current NACIQI review process does not allow the public an opportunity to review the accreditor's explanations for poor performance prior to submitting comment, nor an opportunity to review and comment upon ED's accreditation staff report and recommendations to NACIQI.

Further, NACIQI members are not informed of their authority to request additional information or recommend ED take corrective action if an accreditor is insufficiently rigorous in its oversight. And self-

[4] Alejandra Acosta, "Accreditation Should be on the Department's NegReg Agenda." New America. https://www.newamerica.org/education-policy/edcentral/accreditation-should-be-on-the-departments-negreg-agenda/.

[5] Sarah Butrymowicz, "Dozens of colleges closed abruptly in recent years — and efforts to protect students have failed." The Hechinger Report. https://www.nbcnews.com/news/education/dozens-colleges-closed-abruptly-recent-years-efforts-protect-students-have-n1235617.

[6] Michael Itzkowitz, "Armed with Better Data, Will Accreditors Finally Have to Act?" Third Way. https://www.thirdway.org/blog/armed-with-better-data-will-accreditors-finally-have-to-act.

[7] Nathan Arnold, Mamie Voight, Jessica Morales, Kim Dancy, and Art Coleman, "Informing Improvement: Recommendations for Enhancing Accreditor Data-Use to Promote Student Success and Equity." Institute for Higher Education Policy and EducationCounsel. https://www.ihep.org/wp-content/uploads/2019/06/uploads_docs_pubs_ihep_informing_improvement_full.pdf.

[8] Antoinette Flores, "The Unwatched Watchdogs: How the Department of Education Fails to Properly Monitor College Accreditation Agencies." Center for American Progress. https://www.americanprogress.org/article/the-unwatched-watchdogs/.

[9] See 34 CFR 602.16(a)(1).

evidently poor institutional performance is rarely a subject of substantive conversation during NACIQI. Accreditors routinely receive recognition without having to justify the full accreditation of schools they oversee, even when data show those schools leave students worse off, saddled with debt they cannot repay.

Recommendations for Improvement

To address these shortcomings and allow for informed public comment and discussion during NACIQI that focuses on protecting students, we recommend ED:

- Make public and allow the public and members of NACIQI to review the documents, inquiries, and responses proffered by the accreditor to ED as part of its review prior to its final federal register notice announcing the opportunity for public comment;
- Make public and allow the public to review ED staff's full report on accreditor compliance to NACIQI prior to final federal register notice announcing the opportunity for public comment;
- Ensure maintenance of relevant records submitted by the accreditor in ED's file review, regardless of ED staff's determination of whether such records are evidence of noncompliance, so that NACIQI members can make an independent determination of whether such evidence evinces noncompliance;
- Allow comments submitted by members of the public to be considered as part of the Senior Department Official's consideration process, if they were submitted timely at any stage in the review process—regardless of whether the commenter submitted comments to the initial Federal Register notice announcing review of the relevant agency;
- Publicly clarify and remind NACIQI members in writing that they are empowered and have the legal authority to focus their review and determine whether to approve an agency on the basis of how well the accreditor oversees the institutions it accredits, particularly with respect to how well the institution is serving its students (including its students from structurally disadvantaged backgrounds), whether the institution has engaged in deceptive and predatory practices, whether their students are being left worse off, and how accreditors address low performance—including through suspension or termination of noncompliant institutions;
- Ensure NACIQI and ED evaluation of accreditor performance includes thorough review of data on student outcomes (such as earnings, employment, completion, and repayment), risk factors such as weak institutional finances, lawsuits, and investigations, and a determination of whether a pattern and practice of failure to address institutional weakness with interventions and necessary consequences exists;
- Provide NACIQI members with an overview, based on the information made available by the Biden Administration through the accreditor dashboards,[10] of the performance of each accreditor under review with respect to student and taxpayer outcomes;
- Devote more time, attention, and discussion to the review of Title IV gatekeeping accreditors relative to non-gatekeeping programmatic accreditors; and

[10] Available at https://sites.ed.gov/naciqi/.

- Consider revising the accreditation regulations through future rulemaking to ensure Departmental oversight of accreditors focuses on how the institutions they oversee are serving their students, whether they are putting taxpayer dollars at unnecessary risk, and whether they are sufficiently addressing the needs of their students of color, low-income students, and other structurally disadvantaged students.

Applicability of Recommendations to Accreditors Under Review

There are several accreditors up for NACIQI review in the coming year, four of which are Title IV approving agencies: Higher Learning Commission, Middle States Commission on Higher Education, New England Commission of Higher Education, and Western Association of Schools and Colleges, Senior College and University Commission. As outlined in our recommendations, we believe more attention and discussion should be focused on these four agencies relative to the others up for review, because of the number of students impacted and taxpayer dollars at risk.

We recommend NACIQI members and ED staff focus their review and inquiry on the student outcomes of these four accreditors, particularly: (1) an evaluation of the extent to which these accreditors review and incorporate student outcomes data into their accreditation decisions; (2) the process by which the accreditor determines whether remedial actions and interventions must be taken in response to poor outcomes; and (3) specific inquiries into programs and institutions evincing persistent poor performance, deceptive and predatory practices, and instances of particularly harmful student outcomes.

Below we have provided one of many possible metrics by which these determinations can be made: ED's College Scorecard measure of how many of an institution's students earned more than the average high school graduate six years after enrollment.[11] This indicator measures the students who are still earning less money than if they had not attended in the first place. In these instances, it's fair to ask what economic value the institution provides its students in exchange for their time and money (often including student loans)—and by extension, what the accreditors overseeing such institutions are doing to protect students.

For example, the Higher Learning Commission (HLC) accredits Baker College, where 41% of its students don't earn more than a high school graduate six years after enrolling—roughly the same amount as if they'd never attended at all. Baker remains fully accredited, despite these poor outcomes and significant concerns raised in a recent investigation by ProPublica.[12] NACIQI members and ED staff should ask what action HLC has taken to protect students who are not being served by this program. They should ask whether these types of student outcomes are reviewed as part of the accreditation process and

[11] This data is derived from the authors' analysis of ED's College Scorecard and Accreditor Data file provided to NACIQI members.

[12] https://www.freep.com/in-depth/news/local/michigan/2022/01/12/baker-college-financial-aid-marketing/9155389002/

addressed directly with the school. And they should ask what each accreditor is going to do to alter their reviews going forward to ensure fewer programs leave students worse off.

We note that earnings is one metric that illustrates these accreditors are not sufficiently overseeing schools, but it is not the only one that oversight entities should be reviewing—for example, if ED were to restart publication of debt to earnings ratios, accreditors should evaluate their institutions on that basis, too; other measures relating to employment, repayment, retention, and completion are also critical student outcome measures that accreditors and NACIQI should be reviewing.

Higher Learning Commission

Out of 876 institutions that HLC oversees with earnings data available, 299 show the majority of students earning less than the typical high school graduate, even six years after enrolling in the institution.

One of these institutions, Baker College, showed only 41% of students hitting this benchmark. Even so, the institution remains accredited and received $57 million in federal grant and loan disbursements in the last award year.

We also encourage ED and NACIQI to further investigate HLC's failure to adequately address a long record of predatory abuses by schools operated by Perdoceo Education Corporation (formerly Career Education Corporation). Perdoceo schools have repeatedly faced federal and state law enforcement investigations in the past decade over alleged deceptive practices, including settlements with 49 state attorneys totaling over $500 million[13] and a $30 million settlement with the Federal Trade Commission[14] (plus an announced suspension by the Department of Veterans affairs of G.I. Bill eligibility[15], later reversed by the Trump administration[16] after alleged corrective action). Numerous whistleblowers with whom we have personally met and referred to Department of Education investigators say the abuses have continued into the current decade at the two current schools operated by Perdoceo: American Intercontinental University and Colorado Technical University.[17]

[13] https://www.marylandattorneygeneral.gov/News%20Documents/1_3_19_CEC_AVC.pdf

[14] https://www.ftc.gov/system/files/documents/cases/career_education_corporation_proposed_stipulated_order_for_permanent_injunction_8-27-19.pdf

[15] https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5399

[16] https://vetsedsuccess.org/vas-resolution-of-3696-violations-by-5-schools/

[17] David Halperin, "The Monitor Insists Perdoceo is Doing OK. Whistleblowers' Evidence Shows Otherwise." Republic Report, Feb. 24, 2021. https://www.republicreport.org/2021/the-monitor-insists-perdoceo-is-doing-ok-whistleblowers-evidence-shows-otherwise/

Middle States Commission on Higher Education

Out of 440 institutions that Middle States Commission on Higher Education oversees with earnings data available, 141 show the majority of students earning less than the typical high school graduate, even six years after enrolling in the institution.

One of these institutions, Bryant & Stratton College, showed only 34% of students hitting this benchmark. Even so, the institution remains accredited and received $159 million in federal grant and loan disbursements in the last award year.

New England Commission of Higher Education

Out of 186 institutions that New England Commission of Higher Education oversees with earnings data available, 44 show the majority of students earning less than the typical high school graduate, even six years after enrolling in the institution.

One of these institutions, Dean College, showed only 47% of students hitting this benchmark. Even so, the institution remains accredited and received $15 million in federal grant and loan disbursements in the last award year.

Western Association of Schools and Colleges, Senior College and University Commission

Out of 126 institutions that WASCUC oversees with earnings data available, 17 show more than half of students earning less than the typical high school graduate, even six years after enrolling in the institution.

One of these institutions, San Joaquin Valley College, showed more than only 42% of former students earning more than someone with no college experience. Even so, the institution remains accredited and received $90 million in federal grant and loan disbursements in the last award year.

We also encourage ED and NACIQI to further investigate how WSCUC is addressing a long record of predatory abuses by Ashford University, now called University of Arizona Global Campus; the school was previously owned, and is now serviced, by Zovio, formerly called Bridgepoint Education. Ashford was exposed at a 2011 Senate hearing as, in the words of committee chairman Sen. Tom Harkin, "an absolute scam."[18] In 2014, Bridgepoint agreed to pay $7.25 million to settle claims by Iowa's Attorney General that Ashford violated the state's Consumer Fraud Act.[19] In 2016, Bridgepoint entered into a consent order with the federal Consumer Financial Protection Bureau in which that agency found that

[18] Doug Lederman, "More Than Bridgepoint on Trial," Inside Higher Ed, March 11, 2011. https://www.insidehighered.com/news/2011/03/11/more-bridgepoint-trial.

[19] https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-majo

Ashford "engaged in deceptive acts and practices" and ordered the company to discharge all outstanding private loans the institution made to its students and to refund loan payments totaling $23.5 million and pay an $8 million civil penalty.[20] And late last year, California's attorney general brought to trial[21] a case against Ashford alleging unfair and fraudulent business practices[22]; a judge will issue a verdict later. There is recent evidence that these deceptive and predatory practices by Zovio are continuing after the sale and the renaming of the school to UAGC.[23]

Thank you for your consideration of our recommendations regarding review required as to these accreditors and accreditor steps needed to strengthen accreditation reviews. We urge you to implement these recommendations as part of the preparations for the February 2023 NACIQI meeting and we welcome the opportunity to continue this discussion of needed reviews and reforms.

Sincerely,

Americans for Financial Reform Education Fund
Association of Young Americans (AYA)
Center for American Progress
Consumer Action
David Halperin, Attorney
Generation Progress
New America Higher Education Program
Student Defense
Student Veterans of America
The Education Trust
The Institute for College Access & Success
Third Way
UnidosUS
Tiara Moultrie, TCF
Veterans Education Success
Young Invincibles

CC: The Honorable Secretary Miguel Cardona, Secretary of Education
The Honorable James Kvaal, Under Secretary of Education

[20] https://www.republicreport.org/wp-content/uploads/2016/09/092016_cfpb_BridgepointConsentOrder.pdf
[21] https://oag.ca.gov/news/press-releases/attorney-general-bonta-continues-fight-hold-ashford-university-accountable
[22] https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and
[23] https://oag.ca.gov/news/press-releases/attorney-general-bonta-continues-fight-hold-ashford-university-accountable; David Halperin, "Zovio Adds Board Members As Deceptions At Arizona Global Campus Persist," Republic Report, June 2, 2021. https://www.republicreport.org/2021/zovio-adds-board-members-as-deceptions-at-arizona-global-persist/