



April 24, 2023

Ashley Clark
U.S. Department of Education
400 Maryland Ave. SW, Room 2C-185
Washington, DC 20202

RE: Docket ID ED-2023-OPE-0039

Dear Ms. Clark,

I am pleased to submit comments in response to the Department of Education's March 24, 2023 Notice in the *Federal Register*, referenced above, on behalf of Veterans Education Success, a nonprofit research, policy, and student-veteran advocacy organization based in Washington, D.C. We work on a bipartisan basis to advance higher education success for veterans, servicemembers, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs.

The constituency we represent and the educational programs administered by the Departments of Defense and Veterans Affairs are significantly affected by the quality assurance and program integrity safeguards that fall chiefly under the Department of Education's jurisdiction. Two of the three pillars of the Department's gatekeeping and program integrity regulations--state authorization and accreditation--are of particular concern to us for their respective failings to properly perform the functions assigned to them. We are therefore pleased with the Department's intent to undertake a negotiated rulemaking process for re-examination and re-regulation of federal rules related to these critical topics.

State Authorization

A comprehensive review of the Department's regulations on this topic is urgently needed to address two distinct issues: nondelegation of governmental authority to purely private actors, and mandatory terms and conditions of interstate reciprocity agreements for purposes of satisfying the state authorization requirements of Title IV.

The Department should re-examine state authorization practices that delegate what is clearly intended to be a state function to nongovernmental entities such as accrediting bodies. Not only do such arrangements delegate a state responsibility to private interests that are significantly controlled by the regulated entities themselves, but they also effectively collapse one leg of the triad (state authorization) unto another (accreditation) and thus undermine the statutory design of the federal gatekeeping system.

Additionally, the emergence of distance delivery across state lines has created significant new consumer protection concerns that require federal attention. While well-configured state reciprocity agreements can be an efficient mechanism for interstate delivery of distance education, their proper governance and the substantive adequacy of their safeguards must be addressed through federal regulations. Failure to do so has created a state reciprocity system that is unduly influenced by the regulated entities, that is designed primarily for purposes of administrative and financial convenience of the schools rather than protection of students and the federal taxpayers, and that creates perverse incentives for predictable modes of regulatory arbitrage through forum-shopping and manipulation of geographic location to avoid robust state rules.

Accreditation

Whatever its possible virtues as a collegial quality improvement process, accreditation as it exists today is clearly failing in its federal responsibility to serve as a quality assurance tool, as evident in sudden

closures and collapses of accredited institutions, government allegations of institutional deceptive practices, and prevalence of intolerable outcomes—e.g. low graduation rates, low job placement rates, high debt to earnings rates, and low repayment rates—that characterize the performance of too many fully accredited institutions in all sectors.

The Department has an opportunity to strengthen accreditation and the American tradition of political non-interference in academic affairs of colleges and universities by instituting regulatory changes that extend Secretarial recognition only to those bodies that can demonstrate a properly documented, evidence-based, and independent approach to federally mandated quality assurance functions expected of them for Title IV purposes. To that end, we urge the Department to consider specific actions including the following:

- 1- Place the entirety of 34 CFR 602 and 603, and the relevant sections of 34 CFR 600, on the negotiating committee’s agenda, even if the Department itself does not have any proposed changes. This will enable members of the committee to propose changes that the Department itself might not have previously considered.
- 2- Require accreditors seeking Secretarial recognition to delineate their mandatory quality assurance standards under the law from their voluntary quality improvement functions, and require them to articulate how they enforce said standards. The comingling and conflation of these two unrelated roles have allowed vague platitudes and self-referential assertions to replace fact-based enforcement of accreditation standards.
- 3- Require accreditors seeking Secretarial recognition to disclose how they determine the veracity and accuracy of the information they rely on in making accreditation decisions.
- 4- Review conflict-of-interest rules and ensure that the “separate and independent” requirements of the law are not being circumvented through the appointment of individuals that play a de facto proxy role for regulated entities.
- 5- Ensure, with concrete specificity, that accreditors seeking Secretarial recognition have adequate expertise, staffing, resources, and internal organizational configurations that comport with the level of oversight and due diligence required of them in view of the number and size of the institutions they accredit.
- 6- While it is important for accreditors seeking Secretarial recognition to pay adequate attention to institutional inputs and processes, they should not be allowed to ignore or dismiss outcomes. In both regards, furthermore, accreditors should be required to maintain and enforce concrete, articulable, and fact-based standards.
- 7- The framing of institutional accreditation as an evaluation of the whole institution rather than its specific programs should not be used as an excuse by Secretarially-recognized institutional accreditors to maintain a position of studied ignorance with regard to specific programmatic offerings of the institutions that they deem trustworthy. Particularly as financial pressures have intensified the search for revenues, too many institutions are bifurcating their offerings by attempting to capture revenues from subpar programs as a means of cross-subsidizing their traditional courses.

I thank the Department for the opportunity to provide comments.

Sincerely



Barmak Nassirian
Vice President for Higher Education Policy