

**Nicholas Kent, Senior Vice President of Policy and Research  
Career Education Colleges and Universities  
Comments Prepared for the U.S. Department of Education  
Public Hearing on September 13, 2018  
Sturtevant, WI  
Docket ID ED-2018-OPE-0076**

Good afternoon.

My name is Nicholas Kent, Senior Vice President of Policy and Research at Career Education Colleges and Universities (CECU).

On behalf of CECU and its members, I want to extend my appreciation to the Department for holding these important public hearings in anticipation of convening a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid (FSA) programs authorized under title IV of the Higher Education Act.

We applaud the Department for proposing a comprehensive list of regulatory issues to be considered as part of the negotiations, which we hope will begin in January 2019. These topics include, but are not limited to, the core functions of accreditation, state authorization related to programs offered through distance education, developing a single definition for measuring and reporting job placement, and the concept of the term "credit hour."

I will briefly address each of these topics, but to start, I would like to provide feedback on the upcoming rulemaking process.

## **Rulemaking Process**

Due to the indisputable need to develop new or revised regulations in each of the proposed topic areas, we fully endorse the Department designating one rulemaking committee with responsibility to address the list of issues listed in the July 31, 2018 *Federal Register* notice. Although some may suggest otherwise, it is not uncommon for a rulemaking committee to negotiate on several tangential topics. For example, see the 2009-10 negotiated rulemaking addressing Program Integrity.

However, due to the variety and complexity of the proposed topics listed in the July 31 notice, we recommend the Department consider convening additional subcommittees, beyond the two already planned, to help inform the rulemaking committee's work. Like the proposed subcommittees on competency-based education and faith-based entities, additional subcommittees would include individuals with specific knowledge and expertise in the topic areas to advise the rulemaking committee. We believe that this committee arrangement (i.e., one rulemaking committee and several subcommittees), along with the Department's plan to provide draft regulatory language for discussion prior to the first meeting of the committees, will lead to a more meaningful, structured, and efficient debate of the issues with a higher likelihood the rulemaking committee will reach consensus on proposed regulatory language.

### **Regulatory Update**

The current version of the Higher Education Act was last fully reauthorized by Congress in 2008. So much has changed in the last decade, including our student demographics, program offerings, and delivery models. Thus, we applaud the Department for recognizing the need to update regulations that prevent access to quality programs, stifle innovation, and impede on institutional and academic freedoms.

### **Regulatory Triad**

An effective and efficient accountability framework must be the foundation to modernizing higher education. But to begin, we must acknowledge the current "regulatory triad" is broken. Under this checks-and-balances system, each of three important actors should play a distinct role in protecting students and taxpayers. For example, the Federal government historically attended to issues related to financial capacity, state governments concentrated on consumer protection, and accreditors focused on academic quality assurance and improvement.

Unfortunately, in recent years, the lines of responsibility between these three actors have become increasingly blurred beyond the notion of shared responsibility. For example, the Department has imposed upon accreditors duties that are well beyond their expertise, such as assessing and approving complex financial transactions and title IV policies, which has led

in many cases to the imposition of bright-line standards that do not serve students or institutions well.

We advocate for a framework where there are discrete roles and responsibilities for each actor of the triad.

### **Accreditation**

One critique we often hear of the current accreditation system is that it restricts innovation, limits colleges' abilities to try new organizational or delivery models, and is costly. For example, the proprietary sector has been handcuffed by both the demands for new programs and the inability to get the necessary approvals from accreditors or the Department in a timely fashion. We cannot sustain the delivery of high-quality, and often highly-capitalized, programs providing the current occupational skills demanded of our career-focused students until we break down the bureaucracy that currently prevents quick review and approval of new cutting-edge programs. We must find ways for accreditors and the Department to provide low-risk institutions approvals more expeditiously.

Also, any change to the Secretary's recognition criteria must reduce the challenges of students transferring college credits. In today's higher education environment, students' pursuit of postsecondary education often includes transferring from one school to another, be it a vertical transfer, a reverse transfer, or a lateral transfer. However, recent studies, including one published in 2017 by the Government Accountability Office (GAO)

titled "Higher Education: Students Need More Information to Help Reduce Challenges in Transferring College Credits," suggest the cost to students and taxpayers incurred through the lack of academic credit transfer is significant. To illustrate this point, in the GAO's study, it found that students who transferred from private for-profit schools to public schools lost an estimated 94 percent of their credits, on average.

### **NACIQI**

In addition to the need to improve the core functions of accreditation, the process by which accreditors are recognized must also be changed.

Notably, no sector has been more impacted by the recent politicization of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) than the proprietary sector. For example, in June 2016, NACIQI took the unprecedented step of singling out the Accrediting Council for Independent Colleges and Schools (ACICS) for political purposes, using the inappropriate behavior of a few schools as the rationale for an ideological attack on an entire sector.

We recognize there are limits to the changes that the Department can make to NACIQI through the regulatory process. However, there are steps the Department can, and must, take to ensure future fairness for all accreditors and institutions.

First, NACIQI must recognize its role is meant to be advisory. The previous Administration had every right to oppose the existence of the proprietary sector, even though it is a policy position with which we strongly disagree. However, they did not have the authority to use the Committee as a tool for advancing such a position preference because its role is one of providing impartial advice to the Secretary.

Second, the format of NACIQI meetings must be overhauled so that never again will Committee members be allowed to accept information from the public during the Committee's proceedings that has not been previously reviewed and cleared by the NACIQI Executive Director and shared with all other members. This will help ensure deliberative and transparent oversight in the recognition process.

And finally, to ensure NACIQI focuses on institutional quality and improvement, we recommend creating common definitions for all performance indicators used by the Committee to review agencies' effectiveness.

### **Common Definitions of Outcomes**

Transparency is critical in higher education. Every student, family, and policy-maker deserves to know the expected outcomes of a program, and the ability to easily compare those data to similarly situated programs at other institutions. However, this can only be achieved through consistently defined outcome indicators across all sectors.

Although we recognize different sectors have different missions, often serving different purposes, we believe programs are sufficiently similar in both construction and purpose that common measures can and should be established to allow for lateral comparisons of student outcomes. Some accreditors say that there cannot be universal definitions and methodologies for measuring outcomes such as completion, graduation, and placement. But we do not believe this challenge is impossible to overcome. We must expect and demand more transparency of our outcomes. The first step is developing easy-to-understand Federal definitions and methodologies for indicators students and families believe are most important in defining academic quality, including placement.

### **State Authorization**

We must encourage technology and innovation in our educational and student services delivery models. Yet, we must also recognize that the cost of burdensome regulations - like those associated with the rightfully delayed 2016 State authorization rule - are passed on to students through higher tuition and fees. Accordingly, the concept that institutions offering online programs be required for FSA eligibility purposes to obtain authorization from each State in which the institution enrolls students is unnecessarily confusing and a waste of institutional resources better directed toward student learning. We believe reciprocity agreements are just one appropriate

mechanism for states to address a simplified and uniform commitment to balancing quality and consumer protection.

### **Definition of a Credit Hour**

No sector of higher education is more engaged in experiential learning than ours. We are also a sector whose very foundation is based upon meeting a minimum level of skills and expertise for the career occupation one pursues. The use of the over-limiting definition of a credit hour doesn't fit today's students or today's programs. And dare I say, it is the imposition of a new construction on "seat time" that encourages the non-academic community to simply seize the moment to create a new delivery system that is more relevant to today's definition of knowledge. As a result, we propose repealing the Federal definition of a credit hour for FSA eligibility purposes and re-empowering accreditors with the core academic responsibility of measuring students' work in their educational activities.

### **Collaboration**

This Administration's call for comments and the ambitious rulemaking agenda proposed reflects the urgent need for us to modernize the delivery of today's postsecondary education system, which is something Congress has been slow to do. This need exists among both the traditional colleges and universities and those of us engaged in the delivery of postsecondary career education.

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We stand ready as a sector to provide the Department with further input and recommendations as it proceeds with this important work.

Thank you.