

Comments to the US Department of Education on its Proposed Changes to College Accreditation



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Mr. Jean-Didier Gaina
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Re: Docket ID ED-2018-OPE-0076

Dear Mr. Gaina:

Thank you for the opportunity to provide comments on the US Department of Education's (Department's) proposed changes to the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility. We write to express concern that the process of developing these regulations did not provide adequate representation to student and consumer interests, nor was there evidence provided by the Department that suggested changes would improve outcomes at institutions of postsecondary education. Instead, these proposed changes are likely to expand the flow of

federal grants and loans to institutions that are unproven at best, and predatory at worst.

Throughout the negotiating process, there was inadequate representation of student and consumer interests. As part of any negotiated rulemaking process, the Department is required to solicit input and include representation from those most affected by proposed regulations.¹ Being that this negotiated rulemaking session directly affected students by influencing which institutions and higher education programs students are able to obtain federal student loans and grants to attend, student and consumer interests were of primary concern. As has been typical in previous rulemaking sessions, Attorneys General and consumer protection advocates serve as negotiators to help ensure that consumers are protected and that federal student aid is targeted toward institutions and programs that are shown to serve students well.² However, in a break from precedent, the Department omitted Attorneys General from having a spot at the negotiating table and limited the representation of the other constituencies.³ Furthermore, it actively advocated against adding an Attorney General as a negotiator during its first session, serving as the lone no-vote to add an Attorney General even as an alternate member of the committee, helping to stack the deck against student and consumer interests.⁴ Overall, 13 negotiators represented industry members or the Department, while only three represented the interested communities of students, veterans, or employers. Only one served as a representative from a consumer law group.⁵ Inadequate representation helped ensure that proposed regulations protected the best interests of industry, rather than the millions of students who enroll in postsecondary education every year.

The Department provided no evidence that proposed regulatory changes would ensure greater outcomes for students and greater protection to taxpayers. Negotiators repeatedly asked for the data the Department used or could use to inform its proposals, yet almost no data were provided to inform how these proposals would affect students or the

taxpayers that help subsidize institutions of higher education across the United States.⁶ According to the Department's own Accreditation data, there are over 680 accredited institutions that leave the majority of their students degreeless, earning less than the average high school graduate, and unable to pay down even \$1 on their federal loan principal within three years of leaving.⁷ Yet, under current regulations, these institutions remain accredited and received approximately \$15 billion in federal grants and loans within the past year.⁸ Being that our current accreditation regulations already allow low-performing institutions to access federal dollars and remain federally funded year after year, any proposed changes should aim to increase accreditor oversight, rather than weaken accountability for the outcomes of students.

The proposed regulations will make it easier for inexperienced entities to become and remain federally recognized accreditors in charge of granting access to billions of dollars in federal student aid. Current regulations state that in order to become a federally recognized accreditor, an applicant must have at least two years of experience conducting accreditation activities.⁹ The newly proposed regulations open a loophole to this requirement, instead allowing inexperienced entities to be granted federal recognition simply by virtue of an association with an existing recognized accreditor.¹⁰ Opening the door to unproven entities puts students at risk of attending (and taxpayers of subsidizing) institutions that provide little to no return on their education investment.¹¹ The Department should require experience and proof of strong student outcomes for any entity that wishes to become a quality improvement entity and gatekeeper for the federal government. Under these rules, the Department also allows agencies to be recognized as compliant as long as they have a satisfactory standard on paper, eliminating the statutory requirement that accreditors effectively apply their standards. These changes would make it exceedingly difficult for the Department to ever hold an accreditor accountable.

Furthermore, the newly proposed regulations will allow federal accreditors to remain federally recognized long after they've failed to meet federal criteria for recognition. Instead of having 12 months to come into compliance, as is required by current regulations, the newly proposed regulations will allow accreditors that are out of compliance to remain recognized, even if they have not applied all required federal criteria. Additionally, accreditors that are shown to be out of compliance will only be subject to nontransparent Department monitoring, without the input of the National Advisory Committee on Institutional Quality and Integrity during that noncompliance.¹² These changes will allow troublesome accreditors to remain federally recognized and grant access to federal student aid, even years after problems are identified.

The Department's proposed regulations will allow the continued flow of federal student aid to poor-performing institutions. Under current regulations, institutions that do not meet their accreditor's standards have a reasonable time period—two years—to come back into compliance before they lose their accredited status and access to federal student aid dollars.¹³ This provides limited risk for students and taxpayers who are on the hook for funding these institutions through the federal student aid program. However, the newly proposed changes will allow poor-performing institutions to remain federally accredited for a longer time—up to four years—before they are at risk of losing accreditation.¹⁴ Additionally, proposed changes would make it harder for institutions to be recognized as being out of compliance with accreditor standards in the first place. They will allow an institution to remain out of compliance for up to three years--and in some cases even longer--before the accreditor has to take any action whatsoever (for example, placing the school on probation).¹⁵ The Department should remove the proposed language in this subsection.

Furthermore, the newly proposed changes will also allow federal funds to flow to failing institutions for a longer period of time, even after closure. Institutions will be allowed access

to federal student aid funds for an additional 120 days to complete a teach-out, despite being deemed ineligible to receive federal aid. And institutions seeking to acquire campuses of other institutions will only be financially liable for the last year of federal student aid funds disbursed, rather than the entire amount as they are today.¹⁶ All of these changes give institutions a pass, while putting taxpayers on the hook for institutions that leave students with few to no options after an unexpected closure.

Allowing alternative standards for “innovative” programs weakens oversight and makes poor outcomes more likely for students. The Department has proposed to allow accreditors to establish “alternative” standards for certain programs that the agencies deem “innovative.”¹⁷ This sets up a two-tier system in which an accreditor’s seal of approval can’t be considered “reliable” or “consistent,” as required by the law, and students in some programs will be subjected to lower-quality education than they are now. The Department itself acknowledges the flaws of these proposed regulations, stating that “Increased competition among accreditors could have the unintended consequence of encouraging some accreditors to lower standards.”¹⁸ It would also allow an accreditor to create a standard at will to accommodate an “innovative” program, without transparency into what the alternative standard is or when it will be used. The Department should not permit accreditors to invent new, watered-down standards to accommodate “innovative” programs at will, and it should eliminate the proposed language around alternative standards. At minimum, the agency should require transparency into the standards accreditors establish and how they are applied to institutions and incorporate those standards into the recognition review process.

As millions of new and returning students head off to college during the coming months, they are hopeful that their investment in higher education will result in a better life for them and their families. The Department’s proposals fail to show any evidence that their chances of success will be

improved by these changes. Instead, they are likely to open up the door for more bad actors to enter and participate as a federally funded institutions of higher education. While changes to college accreditation are necessary, these actions offer more risk than potential reward, likely to leave students and taxpayers with a lower chance of receiving a return on their education investment.¹⁹

If you have any questions regarding my comments or would like to discuss further, please don't hesitate to reach out to me at LErickson@thirdway.org.

Sincerely,

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Third Way

ENDNOTES

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