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April 1, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos,

I am writing regarding the ongoing review and evaluation of the current scope of recognition of the Accrediting Council for Independent Colleges and Schools (ACICS), conducted by the Department of Education's Office of Postsecondary Education Accreditation Group. In light of ACICS's involvement in multiple major school closures in the last decade and its demonstrated lack of oversight of its institutions, I urge the Department of Education (Department) to rescind the federal recognition of ACICS. Tens of thousands of students continue to attend institutions accredited by ACICS and they deserve to know that these institutions are subject to rigorous accreditor oversight as intended under the *Higher Education Act of 1965* (HEA).¹

The Department's primary role in the accreditation process is to federally recognize accrediting agencies as laid out in Section 496 of HEA and Title 34 of the Code of Federal Regulations, section 602.² As further described below, ACICS is in clear noncompliance with the recognition criteria, has become ineffective in its performance, and should have its recognition revoked.

A Review of the Department's Failure to Reign in ACICS's Non-Compliance

After years of "perverse noncompliance",³ Secretary John B. King terminated federal recognition of ACICS in September 2016. This came after recommendations from both career staff at the Department and the National Advisory Committee on Institutional Quality and Integrity (NACIQI) – an independent and bipartisan body of members – to derecognize ACICS as a federal accreditor. At the time, ACICS oversaw 725 institutions receiving \$3.3 billion in federal student aid, and the majority of these schools were for-profit institutions. ACICS appealed Secretary King's decision and in December 2016, Secretary King rejected that appeal. ACICS then filed a lawsuit against the Department alleging procedural flaws in its decision to withdraw recognition.⁴ In March 2018, a District Court Judge ruled that the Department had failed to review key evidence when it withdrew recognition of ACICS and ordered you to revisit the 2016 decision.⁵ In April 2018, you tentatively restored recognition to ACICS while you deliberated a final decision on the 2016 application.⁶

As ACICS sought to restore its recognition via the courts, it simultaneously attempted to regain status as a recognized accreditor through other channels. In Fall of 2017, ACICS applied for "initial recognition" as an

agency. In June 2018, ED complied with a FOIA request and released an internal career staff report recommending that the Secretary deny the “initial recognition”⁷ request due to severe non-compliance with regulations.⁸ Despite the career staff report, in September 2018, Diane Auer Jones, a top political appointee designated by you as the Senior Department Official (SDO) reviewing the 2016 decision, recommended restoring recognition to ACICS.⁹ Undersecretary Jones’ analysis was in part based on factual inaccuracies. Notably, in November 2018, the Department restored ACICS’s recognition, despite non-compliance with two criteria and gave ACICS a 12-month period to come into full compliance.¹⁰ The decision to restore ACICS’s recognition based upon Undersecretary Jones’ report calls into question the entire re-recognition process.

For instance, Undersecretary Jones analysis inaccurately stated that ACICS met 19 of the 21 criteria, including that it was “widely accepted” in the higher education community. While her analysis stated that “ACICS provided letters of support from nine other accrediting agencies,” many of the accreditors cited stated that they “never submitted letters of support for ACICS.”¹¹ While the Department referred to this as an “inadvertent error in the editing process,”¹² even the Department’s correction, which you relied on in making your final determination, appears to have been based on a misstating of ACICS’s wide acceptance.

In its correction, the Department cited letters of support from the Accrediting Bureau of Health Education Schools (ABHES), the Accreditation Council for Occupational Therapy Education (ACOTE), the Commission on Accreditation in Physical Therapy Education (CAPTE), the Accreditation Commission for Education in Nursing (ACEN), and the American Registry of Radiologic Technologists (ARRT).¹³ However, when contacted “four out of five of these agencies carefully avoided asserting support, endorsement, or unequivocal acceptance of ACICS as a peer” and “all of them were also clear that they had not reviewed ACICS’s standards, policies, or procedures, or how ACICS makes their decisions to grant or deny accreditation.”¹⁴ These misstatements indicate that ACICS was not in compliance with one of the “basic eligibility requirements” of the regulation and cast doubt upon the validity of the entire review. In effect, the November 2018 decision to restore the recognition of ACICS raises questions of the legal and procedural underpinnings of that decision.¹⁵

Moreover, as noted above, Department career staff have twice found ACICS to be out of compliance with the criteria for recognition. In June 2016 while considering ACICS’s petition to renew recognition, Department career staff found that ACICS was not in compliance with 21 of the recognition criteria.¹⁶ And then in March 2018 in response to ACICS’s application for “initial recognition” Department career staff found ACICS out of compliance with 57 of the 93 criteria.¹⁷ Despite the recommendations of career staff, the Department made the decision to restore recognition of ACICS.¹⁸

CHEA Findings of ACICS’s Non-Compliance

In a December 16, 2019 letter, the Council for Higher Education Accreditation (CHEA) informed ACICS that it was in noncompliance with nine of its standards and that the Committee of Recognition recommended to the CHEA board that recognition be denied.¹⁹ Specifically CHEA found the following:

- “ACICS did not demonstrate that it sufficiently articulates its expectations for academic quality for the institutions that it accredits.
- Although ACICS asserted that it used Campus Accountability Report data as indicators of ACICS performance expectations, ACICS did not demonstrate that it uses those data, or other reports, in its decision-making about accreditation status.

- ACICS did not demonstrate that it makes its reasons for accreditation actions sufficiently accessible to the public.
- ACICS did not provide evidence of implementation of a procedure for taking timely action with regard to substantially underperforming institutions.
- ACICS did not provide evidence of attention to appropriate innovation practices in demonstrating public accountability.
- ACICS did not demonstrate that timely, readily accessible, accurate and consistent aggregate information regarding performance and student achievement is provided to the public. The information that was found is inconsistent and often specific to attendance but does not address performance and student achievement.
- ACICS did not provide adequate evidence of how it provides oversight of the institutions it accredits internationally, including evidence of taking into consideration the quality assurance practices in the country in which the ACICS accreditation is taking place.
- ACICS did not provide evidence that its standards to accredit internationally, including its expectations of results, are substantially comparably applied to U.S. and non-U.S. institutions alike.
- ACICS did not demonstrate sufficient viability and sustainability to carry out its accreditation functions, given its current financial constraints and the impact on staffing and operations.”²⁰

In response, ACICS withdrew its application for recognition by CHEA.²¹ These findings are especially critical because in its decision to restore recognition to ACICS, the Department relied on its continued recognition by CHEA as evidence that it was in compliance with federal accreditation standards. Specifically, the Department stated, “That CHEA continues to recognize ACICS pending review and has not taken negative action against ACICS ... is notable and an important indicator that ACICS continues to be widely accepted as an accreditor.”²² It is similarly notable that CHEA has determined that ACICS is noncompliant with nine of its standards and made a recommendation of denial of recognition.

ACICS’s History of Accrediting Failed Schools

Concerns regarding ACICS’s ability to meet federal standards were ongoing for some time due to its long and troubled history. As the accreditor for Corinthian Colleges, Inc., ITT Technical Institute, and the Education Corporation of America, ACICS has now overseen the three largest collapses of institutions of higher education in the history of the United States. These collapses have cost taxpayers hundreds-of-millions of dollars. In all three instances, ACICS, over a period of years, missed clear warning signs of problematic conduct, poor student outcomes, and a lack of financial stability.²³

More than any other recognized accreditor, institutions accredited and overseen by ACICS have a pervasive and documented record of engaging in deceptive and misleading recruiting practices and providing their students with misleading information regarding the transferability of credits, job placement data, or the promise of guaranteed employment.²⁴ According to a report from the Center for American Progress, ACICS accredited institutions have the worst graduation, default, and student loan repayment rates compared to any other major accreditation agency.²⁵

Financial Stability and Administrative Capacity

Concerns regarding the financial stability of ACICS were first raised in June 2019 when the president of ACICS stated before CHEA's recognition committee that the organization expected a loss of \$2.1 million for the year and that ACICS did not expect to break even until at least 2023.²⁶ As a result of these comments the Department opened a new inquiry into the financial stability of ACICS.²⁷ Specifically this inquiry was focused on whether ACICS has the, "administrative and fiscal capability to carry out its accreditation activities" in compliance with 34 CFR 602.15.

While Department career staff did find that "ACICS currently has sufficient financial resources to carry out its accrediting responsibilities," they have demonstrated that ACICS's financial difficulties led to a, "lack of effective evaluation and monitoring approaches" regarding Virginia International University (VIU) and the San Diego University for Integrative Studies (SDUIS).²⁸ As stated above, this is further concerning given CHEA's findings that, "ACICS did not demonstrate sufficient viability and sustainability to carry out its accreditation functions, given its current financial constraints and the impact on staffing and operations."²⁹ In regards to both VIU and SDUIS, the Department raised concerns that ACICS did not have a review or monitoring process which was as thorough as required to remain in compliance with the accreditation standards.³⁰

In the case of VIU, a state authorizing agency, the State Council for Higher Education in Virginia (SCHEV), found, "rampant plagiarism by students and grade inflation; online classes that are patently deficient in terms of quality and content and graduate courses that are lacking academic rigor; and the admission of large numbers of students with inadequate English proficiency."³¹ The Department raised concerns that: 1) ACICS received the audit and recommendation from SCHEV in February 2019, but appear to only have taken action only after the issue was raised by the press; 2) ACICS did not conduct its own review and relied on the SCHEV review, calling into question whether it has adequate mechanisms in place to do so promptly following a negative report from a state or other agency; and, and 3) ACICS and SCHEV reached very different conclusions regarding the academic quality of VIU's distance learning programs.³²

Regarding SDUIS, the Department's primary concerns were that: 1) ACICS did not conduct an analysis as required under 34 C.F.R. § 602.28(d) to determine whether ACICS was required to consider the fact that SDUIS is currently appealing a denial of reaccreditation decision by the Accrediting Council for Continuing Education & Training (ACCET); and, 2) ACICS did not demonstrate it conducted its analysis of the 400 pages of documentation provided by SDUIS in response to public comments as required under 34 C.F.R. § 602.17(e).³³

In sum, institutions like VIU and SDUIS were not held to the proper level of accountability, to the detriment of students and taxpayers, because ACICS lacked the financial resources to carry out its accrediting responsibilities to conduct proper monitoring and oversight of institutions. Regrettably, ACICS's lack of oversight is by no means limited to these two institutions, as demonstrated by what was recently found in the case of Reagan National University.

Reagan National University

According to recent news reports, the ACICS accredited college Reagan National University (RNU) appears to have no faculty, students, or classrooms.³⁴ ACICS first accredited RNU in 2017. Although ACICS placed RNU

on show cause status because of its zero percent job placement rate, show cause status was later removed after ACICS found that RNU had, "satisfactorily addressed all compliance concerns from previous actions."³⁵

The Department has initiated an inquiry into this matter and stated in its letter that these "allegations raise questions as to the effectiveness of the agency's evaluation and monitoring of its applicant and membership institutions."³⁶ The letter further notes that while RNU withdrew from accreditation, "the agency's member directory indicates that RNU is still accredited and there is no indication that the institution voluntarily withdrew."³⁷ These allegations further support the notion, that like the cases of VIU and SDUIS, ACICS lacks the adequate staffing and other resources to be able to comply with the requirement that they, "adequate administrative staff and financial resources to carry out its accrediting responsibilities."³⁸

Conclusion

ACICS has continued to demonstrate that it is unable to meet basic accreditation standards and that it is incapable of acting to protect students from low-quality predatory institutions. As a result, ACICS's inaction has cost taxpayers hundreds of millions of dollars. Further, the Department's own career staff have repeatedly affirmed ACICS's noncompliance with the accreditation criteria even though there is no evidence that ACICS has taken the requisite steps to correct these deficiencies. The Department quite simply has no choice but to revoke ACICS's federal recognition.

Thank you for your consideration of this matter.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman



SUSAN A. DAVIS
Chairwoman
Subcommittee on Higher Education and
Workforce Investment

cc: The Honorable Virginia Foxx, Ranking Member

cc: The Honorable Lloyd Smucker, Ranking Member, Subcommittee on Higher Education and Workforce Investment

¹ According to the Department the purpose of accreditation is to: "1) assess the quality of academic programs at institutions of higher education; 2) create a culture of continuous improvement of academic quality at colleges and universities and stimulate a general raising of standards among educational institutions; 3) involve the faculty and staff comprehensively in institutional evaluation and planning; and 4) establish criteria for professional certification and licensure and for upgrading courses offering such preparation." See U.S. Department of Education, "Accreditation in the United States,"

<http://www2.ed.gov/admns/finaid/accred/accreditation.html#Overview>. The Council for Higher Education Accreditation (CHEA) similarly defines accreditation as "a process of external quality review created and used by higher education to scrutinize colleges, universities, and programs for quality assurance and quality improvement."

<http://chea.org/userfiles/uploads/Overview%20of%20US%20Accreditation%202015.pdf>.

² Under 32 CFR 602.33 (a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time - (1) At the request of the Advisory Committee; or (2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

³ <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>.

⁴ "ACICS Files Motion for Summary Judgment in U.S. District Court." Accrediting Council for Independent Colleges and Schools. Retrieved from: <http://acics.org/news/content.aspx?id=6937>

⁵ Lederman, Doug. "Court Opens Door for For-Profit Accreditor's Futures." *Inside Higher Ed*. March 26, 2018. Retrieved from: <https://www.insidehighered.com/news/2018/03/26/federal-court-orders-education-dept-reconsider-acicss-fate>

⁶ U.S. Department of Education. Order, Accrediting Council For Independent Colleges and Schools. April 3, 2018. Retrieved from: <https://www2.ed.gov/documents/press-releases/acics-docketno-16-44-0.pdf>

⁷ Agencies applying for initial recognition are evaluated based on a different standard and the process includes the review of criteria that is not considered when seeking to renew recognition. <https://www2.ed.gov/admins/finaid/accred/accreditation.html>

⁸ U.S. Department of Education. FOIA Request No. 18-01346-F. June 8, 2018. Retrieved from: https://production-tcf.imgix.net/app/uploads/2018/06/08174207/ACICS-draft-and-written-comments-060818_1.pdf

⁹ U.S. Department of Education. Senior Department Official's Response to ACICS, Accrediting Council For Independent Colleges and Schools. September 28, 2018. Retrieved from:

https://www.insidehighered.com/sites/default/server_files/media/SDO%20Response%20to%20ACICS%209.28.18.pdf

¹⁰ Kreighbaum, Andrew. "DeVos Restores Recognition for Troubled For-Profit Accreditor." *Inside Higher Ed*. November 26, 2018. Retrieved from: <https://www.insidehighered.com/news/2018/11/26/devos-restores-authority-profit-accreditor>

¹¹ "Education Department overstated endorsements of for-profit college accreditor." Politico Pro. Published October 4, 2018 and updated October 5, 2018. <https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214>.

¹² *Id.*

¹³ Correction to Letter from Diane Auer Jones, Deputy Under Secretary of Education, to ACICS, Updated October 15, 2018, Page 24. <https://www2.ed.gov/about/offices/list/ope/correctedresponsefinal.pdf>. Only ABHES had been cited in the original report.

¹⁴ Senator Warren and Representative Bonamici, et al to Secretary DeVos asking the Department to rescind recognition of ACICS. December 11, 2018. Retrieved from <https://www.warren.senate.gov/imo/media/doc/2018.12.11%20Letter%20to%20Department%20of%20Education%20re%20ACICS%20recognition.pdf>. This letter also notes that eight of the nine accrediting agencies originally cited "disputed that they had provided any letters of support" and "confirmed that they did not provide any written or verbal statements to the Department or to ACICS regarding the agency's acceptance as an accreditor in the higher education community."

¹⁵ See e.g. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)

¹⁶ U.S. Department of Education, Accrediting Council for Independent Colleges and Schools, "Petition for Continued Recognition," June 2016, <https://opeweb.ed.gov/e-Recognition/Home/StaffReport?aid=15&mid=68&status=final&format=pdf>.

¹⁷ Stratford, Michael, "DeVos reinstated for-profit college accreditor despite staff objections, report shows." Politico. June 9, 2018. <https://www.politico.com/story/2018/06/09/devos-for-profit-college-accreditor-report-611935>.

¹⁸ *Id.*

¹⁹ CHEA December 16, 2019 Letter to ACICS. In making this determination, CHEA "took into account the final (May 6, 2019) application narrative submitted by ACICS, the CHEA observation visit report, the response from ACICS to the observation visit report, the written third-party comments received by CHEA and the response provided by ACICS, and the information provided by ACICS during the June 3, 2019 public session of the Committee meeting."

²⁰ *Id.*

²¹ January 17, 2020 Letter from ACICS to CHEA.

²² Senior Designated Official (SDO), Diane Auer Jones, Deputy Under Secretary of Education, Response to ACICS, Updated October 15, 2018. <https://www2.ed.gov/about/offices/list/ope/correctedresponsefinal.pdf>.

²³ See U.S. Department of Education. Decision of the Secretary, Accrediting Council for Independent Colleges and Schools. December 12, 2016. <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>; Kreighbaum, Andrew,

"Collapse of For-Profit Chain Long in the Making." *Inside Higher Ed*. December 6, 2018.

<https://www.insidehighered.com/news/2018/12/06/closure-education-corporation-america-raises-questions-about-oversight-and-support>.

²⁴ See October 24, 2016 memo from Borrower Defense Unit to Under Secretary Ted Mitchell, Re: Recommendation for Everest/Wyotech Borrowers Alleging Transfer of Credit Claims; January 9, 2017 memo from Borrower Defense Unit to Under Secretary Ted Mitchell, Re: Recommendation for Corinthian Borrowers Alleging That They Were Guaranteed Employment; January