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July 12, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20002

Re: Docket ID ED 2018-OPE-0076

Dear Secretary DeVos:

We write to express concern with the U.S. Department of Education's (Department) proposed changes to federal requirements governing accreditation and state authorization published on June 12, 2019. The Department's proposed rule is based on a faulty premise that increased flexibility will improve students' access to postsecondary education. Yet, the Department provides little evidence to show that these changes would produce the intended outcomes.

We are concerned that the proposed rule would increase the autonomy of accrediting agencies without adequate federal oversight. Given the volume of evidence making clear that prior deregulation of higher education has facilitated the abuse of federal student aid at the expense of students and taxpayers, we believe that the proposed sweeping changes will result in more students attending low-quality institutions while leaving the Department with little regulatory authority to require improvement. This is underscored by the Department's own estimates that the additional flexibility provided in the proposed rule will cost taxpayers \$3.8 billion over the next decade.

Our key concerns with the proposed rule are detailed below.

The proposed rule undermines the Department's ability to conduct adequate oversight of accreditors.

As the gatekeepers to approximately \$120 billion in federal financial aid distributed each year, accrediting agencies play a critical role in the regulatory triad and hold the primary responsibility

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for ensuring that students are receiving a quality education. However, over the last several years, five high profile for-profit colleges have closed abruptly, leaving tens of thousands of students with little forewarning or recourse. These institutions retained accreditation almost up to the date of closure despite glaring warning signs, raising significant questions about the effectiveness of the oversight conducted by the relevant accreditation agencies. Rather than strengthen oversight of accreditors, the Department is now proposing to further relax regulations that are designed to hold accreditors accountable if they approve low-quality institutions.

First, instead of requiring accreditors to be *fully* compliant with federal criteria (e.g., ensuring accreditors have competent staff and that there are no conflicts of interest) or lose Departmental recognition, as present regulation requires, the proposed rule would require accreditors to only be *substantially* compliant with the criteria.³ Because the Department does not define how many or which criteria the accreditor must meet to be substantially compliant, the proposed rewrite could potentially allow an accreditor to be out of compliance with multiple criteria while still operating as a gatekeeper for federal aid. This revision would have the impact of allowing non-compliant accreditors to maintain federal recognition at the expense of students. We urge the Department to abandon this revision.

Second, the Department proposes to remove the requirement that existing accreditors be “widely accepted” by the higher education community and dilute the “widely accepted” requirement for new accreditors.⁴ The Department states that this criterion is being enforced inconsistently across accreditors such that some accreditors are asked to submit multiple documents of support from stakeholders while others have been asked to only submit one document. Instead of standardizing the process to ensure the criterion is applied consistently, the Department proposes to eliminate the criterion entirely for existing accreditors.

Secretary DeVos recently relied on an inconsistent application of this requirement when she re-recognized the Accrediting Council for Independent Colleges and Schools (ACICS). ACICS’ inadequate standards created a safe-harbor for low-quality institutions, some of which ultimately failed at the cost of students and taxpayers. As a result, many accreditors refused to support its bid to be re-recognized. By extension, the proposed regulations would eliminate the “wide acceptance” requirement for existing accreditors, which would hurt institutional quality by allowing aberrantly substandard accreditors to retain Departmental recognition. We argue that new regulations should instead clarify the specific process for implementing the “wide acceptance” requirement to address the inconsistent application of the requirement.

For accrediting agencies petitioning for recognition, the Department is standardizing the “wide acceptance” requirement by limiting the amount of evidence needed to letters of support from three accredited institutions, three educators, and if appropriate, three employers or practitioners. These letters may come from entities that have a direct interest in ensuring that the agency is recognized, such as institutions that the entrant will oversee. The removal of this criterion would allow for the approval of accreditors that peers do not believe adequately oversee institutions of higher education. We urge the Department to abandon this revision and instead ensure that all

accreditors, regardless of whether or not it is an existing or new entrant, meet the “widely accepted” criterion through further standardization of compliance across accreditors.

Third, the Department’s proposed rule would further weaken its oversight by allowing an accreditor to remain compliant for 12 months or more under certain circumstances without confirming that the accreditor is following its own stated policies as long such policies are in place.⁵ For example, the *Higher Education Act of 1965* (HEA) requires each institution to demonstrate to its accreditor that it is financially responsible. Compliance with this requirement is vital to ensuring that institutions are being good stewards of taxpayer money.⁶ Under the proposed rule, however, an accreditor could be considered in compliance if it has strict policies for reviewing financial responsibility but does not adhere to its stated policies. We urge the Department to abandon this provision of the proposed rule and maintain the requirement that each accreditor consistently demonstrate compliance with its stated policies.

The proposed rule opens the doors to untested accreditors without demonstrated experience.

In addition to reducing the Department’s oversight of existing accreditors, the proposed rule makes it easy for a non-recognized accreditor without adequate experience to secure the Department’s recognition. Current rules require new accrediting agencies to have two years of experience before becoming a recognized accreditor. The Department proposes to remove this requirement for accrediting agencies that are “affiliated” with another recognized agency.⁷ Institutional oversight is a complicated task, requiring experience and demonstrated expertise. We are extremely concerned that this revision positions inexperienced accrediting agencies as eligible gatekeepers of federal financial aid dollars.

The proposed rule would further allow an existing agency to expand its scope into areas where it lacks experience. For example, if an accrediting agency that only had experience accrediting institutions offering baccalaureate degrees wanted to expand its scope to include institutions with only graduate programs, current regulations require the agency to document experience approving a graduate school prior to securing approval.⁸ However, under the proposed rule, agencies would be exempt from demonstrating any prior experience and allowed to immediately expand its scope, putting students and taxpayers at risk.⁹

The proposed rule reduces transparency during the accreditation recognition and re-recognition processes.

Contrary to the Department’s claim that the proposed rule will increase transparency, we contend that the rule will further obscure an already opaque Departmental recognition process. The Department proposes to decrease the amount of physical evidence an accrediting agency must submit, replacing it instead with a Department review of documents during an on-site visit.¹⁰ Per the Department, these documents would only be included in the public record if the Department finds areas of noncompliance.¹¹ This severely limits transparency and makes it impossible for the National Advisory Committee on Institutional Quality and Integrity and others to validate the

Department's claims or confirm whether the Department is fulfilling its oversight and monitoring responsibility. This proposed revision is particularly concerning given the Inspector General's findings that the Department is already inadequately assessing and monitoring agency compliance with federal criteria.¹² Further, based on the Department's recently issued handbook, it is clear that the Department has no intention of increasing its oversight and instead will reduce the documentation it will review during on-site visits compared with the current process.¹³ We urge the Department to abandon this revision and increase transparency by including an on-site visit in addition to the document production currently required. Further, we urge the Department to make all document production, review, and feedback of each accreditor—even when held on-site—available to the public.

The proposed rule would reduce institutional accountability, exposing students and taxpayers to significant risk.

We agree that aspects of our higher education system should be modernized to better serve today's students. But innovation is not an end in and of itself. The federal government must not risk lowering quality or reducing student protections for the sake of innovation. The proposed regulations would allow an accrediting agency to adopt and apply alternative accreditation standards when, for example, evaluating success with respect to student achievement.¹⁴ The proposed rule does not require the accrediting agency to publish the standards before enforcement or specify when the use of an alternative standard is appropriate.¹⁵ This yields a regulatory framework in which accreditors can create alternative, potentially lower quality standards for any institution or program that does not meet the agency's original published standards of accreditation, undermining the public trust and weakening the value of the accreditor's quality seal of approval. We urge the Department to detail the circumstances under which the proposed alternative standards may be applied and create a process to verify that the alternative is equivalent to the original standard.

Further, the proposed change provides excessive time for non-compliant institutions to improve, subjecting multiple cohorts of students to sub-par education. Already, under current regulation, a non-compliant institution is given up to two years to work with its accreditor to bring itself into compliance or find a new accreditor.¹⁶ The use of various procedural motions (e.g., warnings, notices, and appeals) often extends the time for coming into compliance even further. The proposed rule would allow institutions to remain out of compliance with an accrediting agency's criteria for a maximum of three years—and even longer under certain exemptions—before the accreditor is required to take any action and gives an institution up to four years to become fully compliant.¹⁷ Worsening the elongated time frame is the Department's proposal to allow institutions to remain eligible for federal financial aid for up to 120 days after closure to complete teach-out agreements.¹⁸ While a teach-out may be the appropriate remedy for some students, the regulation fails to account for concerning circumstances that could lead to a sudden closure. Under this proposal, these institutions would continue to have access to federal financial aid for up to four months, further costing the taxpayer and putting students at risk. These changes, taken together, would allow low-quality institutions to operate for an alarming amount of time, putting potentially millions of student and taxpayer dollars at risk. Given the already

generous timeframe for non-compliant institutions, we urge the Department to abandon this proposal.

The proposed rule also reduces the information that institutions must disclose with regards to job placement rates.¹⁹ Job placement rates not only inform key decision-makers, like state governments and accrediting agencies, about student outcomes, but are also used by students when selecting an institution and program. Already, states and accreditors require disclosure of job placement rates, but sometimes use different formulas that result in very different rates.²⁰ This is why it is critical that an institution disclose the data source each time it discloses its job placement rate, as well as the timeframes and methodology associated with the rate.²¹ It is troubling, then, that the proposed rule would no longer require institutions to disclose the data sources, timeline, or methodology used to calculate the rates.²² The proposed revision will shield institutions from public scrutiny that systematically manipulate job placement rates (e.g., the now-shuttered Career Education Corporation), giving these colleges the flexibility to publish misleading or false information in an effort to drive enrollment and deceive students and the public.²³ We urge the Department to maintain the requirement that institutions disclose data sources, timeframes, and methodologies used to calculate job placement rates.

The proposed rule provides special treatment to religious institutions while limiting accreditors' authority.

The proposed rule limits an accreditor's authority to enforce its own standards in areas such as curricula, faculty, student support services, and recruiting and admissions practices when an institution's policies are "religious mission-based."²⁴ This undermines the authority of an agency to determine what constitutes a quality education and could require an agency to ignore its own standards and allow a religious institution to discriminate against students or create unwelcoming or inappropriate policies.

Current regulation exempts certain, defined religious institutions from the statutorily mandated obligation under the HEA to obtain authorization from the state(s) in which they operate.²⁵ The proposed rule would strike this definition. As a result, a state could adopt any definition of "religious institution" and exempt a broad set of institutions from the state authorization requirement, thereby undermining essential protections for students.²⁶

The Department has yet to adequately justify these proposed changes. It stated that it has not received any formal complaints about an institution's negative treatment during the accreditation process because of its adherence to a religious mission. Additionally, the Department has not provided any data on the number of institutions and students these changes would impact. We urge the Department to abandon the proposed revisions.

The proposed rule would reduce regulatory protections for students.

The Department is obligated to protect students and taxpayers in promulgating regulations, yet as the Office of Management and Budget's regulatory impact analysis reveals, the Department is

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pursuing deregulatory actions without adequately considering the impact on students.²⁷ Under current substantive change regulations, when an institution proposes to significantly change or expand a core function of its operation (e.g., undergoing a change in ownership or opening a branch campus), these changes must be approved by its accreditor.²⁸ The proposed rule would not only reduce the list of substantive changes that accrediting agencies are required to review, it would also make it easier for an institution to make a significant change by altering the accreditor's review process.²⁹ Under this proposal, senior staff on the accreditor's commission—rather than the members of the commission—would be responsible for approving substantive changes.³⁰ The Department states this change would help accrediting agencies expedite decisions but, in reality, it would reduce accountability among agency commissioners and shift responsibility and potential consequences of poor-decision making onto staff. We are concerned that expediting approval of such changes and limiting public accountability could lead to a significant expansion of low-quality programs, with insufficient oversight from accreditors, the Department, and the public.

This \$3.8 billion proposal only erodes the quality of America's higher education system, allowing some institutions to provide substandard education while profiting from the system as taxpayers and students needlessly suffer. We remind the Department that innovations in higher education happen every day under the current regulatory scheme. The claims that regulations stifle innovation fall flat when one considers the success of types of programs you laud (e.g., distance education and competency-based education).³¹ These truths, in combination with the Department's failure to address accreditor malfeasance precipitating recent school closures, lead rational observers to one conclusion: that the Department must recommit to its mission and strengthen oversight to protect students and taxpayer dollars through a robust and reliable regulatory triad. Regrettably, the proposed rule is a step in the wrong direction and the Department should reconsider its proposed changes.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chair
Committee on Education and Labor



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



RAUL M. GRIJALVA
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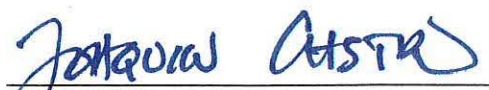
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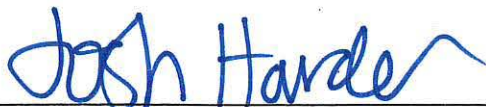
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¹ David Whitman, *The GOP Reversal on For Profit Colleges in the Bush Era*. (The Century Foundation, 2018)
Retrieved from <https://tcf.org/content/report/gop-reversal-profit-colleges-george-w-bush-era/>

² See Table 3: United States Department of Education. (2019) Notice of proposed rulemaking: 34 CFR Parts 600, 602, 603, 654, 668, and 674. June 11, 2019. Estimated Net Impact of Pell Grant and Loan Changes- 2020-2029 Outlays (\$mns). Retrieved from: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-12371.pdf>

³ Higher Education Act of 1965, Pub. L. 115-334, codified as amended at title 20 U.S.C. § 1099 b and 84 *Federal Register* 27439

⁴ 84 *Federal Register* 27435-27436

⁵ 84 *Federal Register* 27439

⁶ Higher Education Act of 1965, Pub. L. 115-334, codified as amended at title 20 U.S.C. § 1099 b.

⁷ 84 *Federal Register* 27418

⁸ 34 CFR 602.12

⁹ 84 *Federal Register* 27418

¹⁰ 84 *Federal Register* 27433

¹¹ Comments from Herman Bounds, beginning at 6:34:00, US Department of Education. (2019, February 21) Accreditation and Innovation Negotiated Rulemaking, part 2 [livestream video file] <https://edstream.ed.gov/webcast/Play/e0818c9c2037481da1573d8447e2d3401d?catalog=82d9933c-1256-4cb28783-89599eb97fd8&playFrom=3944&autoStart=true>

¹² United States Office of the Inspector General (2018). Final Audit Report, U.S. Department of Education's Recognition and Oversight of Accrediting Agencies. (ED OIG A09R0003). Retrieved from <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf>

¹³ United States Department of Education. (2019) Accreditation Handbook: In Accordance With 34 CFR Part 602, The Secretary's Recognition of Accrediting Agencies. Retrieved From <https://www2.ed.gov/admins/finaid/accred/accreditation-handbook.pdf>

¹⁴ 84 *Federal Register* 27423

¹⁵ 84 *Federal Register* 27423

¹⁶ 34 CFR 602.20

¹⁷ 84 *Federal Register* 27423; and 84 *Federal Register* 27424

¹⁸ 84 *Federal Register* 27440

¹⁹ 34 CFR 668.41; and 87 *Federal Register* 27441

²⁰ The Institute for College Access and Success, Of Metrics and Markets: Measuring Post College Employment Success (2019). Retrieved from https://ticas.org/sites/default/files/pub_files/of_metrics_markets.pdf

²¹ 34 CFR 668.41(d)(5)(A); and 34 CFR 668.41(d)(5)(ii)

²² 84 *Federal Register* 27441

²³ The Institute for College Access and Success, Of Metrics and Markets: Measuring Post College Employment Success (2019). Retrieved from https://ticas.org/sites/default/files/pub_files/of_metrics_markets.pdf

²⁴ 84 *Federal Register* 27423

²⁵ 34 CFR 600.9(b)

²⁶ 84 *Federal Register* 27413

²⁷ 84 *Federal Register* 27444

²⁸ 34 CFR 602.22(a)

²⁹ 84 *Federal Register* 27426

³⁰ 34 CFR 602.22

³¹ 84 *Federal Register* 27444; and United States Department of Education. (2018) Prepared Remarks by U.S. Secretary of Education Betsy DeVos to South by Southwest, SXSW, EDU