Testimony of Ralph A. Wolff
Before the Subcommittee on Higher Education
of the House Education and Workforce Committee

Chairwoman Foxx, ranking Member Miller, and members of the committee, I am pleased to present testimony to you today discussing regulations recently finalized by the U.S. Department of Education regarding State Authorization and the Credit Hour.

My name is Ralph A. Wolff, and for the past 15 years I have served as the President of the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC). WASC is one of seven regional accrediting commissions, and is responsible for the accreditation of institutions in California, Hawaii, Guam and the historic Pacific Trust Territories. I also serve as vice chair of the Council of Regional Accrediting Commissions (C-RAC), which meets regularly to address policy issues affecting accreditation. On behalf of C-RAC I have participated as a primary or alternate negotiator in three negotiated rulemaking processes, most recently in 2009 - 10, leading to the federal regulations being discussed here today.

During that negotiated rulemaking process, fourteen issues were debated, nine of which resulted in tentative agreement, including with respect to credit hour. Among the issues where agreement was not reached was state authorization.

However, when the final regulations were released last year, they included significant changes to the tentative agreement related to credit hour. Nor were our concerns with respect to state authorization addressed.

While we have appreciated the Department's willingness to listen to our concerns with respect to the final regulations, I along with my regional accreditation colleagues recently joined the American Council on Education (ACE) and more than 50 other higher education associations in submitting a letter to the Department calling for the withdrawal of these regulations. Together, all of these associations represent nearly the entire higher education community. I would ask the Chairwoman that both of these letters be submitted for the Record.

State Authorization

I will first focus on the regulation dealing with state authorization, which for the first time establishes a specific federal set of criteria that all states must conform to in order for institutions within their state to be eligible for Title IV financial aid.

The main rationale used by the Department in adopting this regulation stems from the expiration of the California Bureau of Private Postsecondary and Vocational Education (BPPVE) several years ago. Ironically, the California legislature and the Governor did not extend the legislation to continue this Bureau in operation because it was not doing a good enough job of weeding out inadequate institutions, and all agreed that tougher legislation was needed. In the interim period before new legislation was passed, all state licensed institutions were asked to maintain their same commitments to consumers as before and there were no problems reported by any accredited institution that called into question their financial aid from the federal government. USDE recognized accrediting agencies, such as WASC, maintained oversight of these institutions, and followed up on any consumer complaints as already required by federal

law. Subsequently, a new law was passed and a new Bureau overseeing private postsecondary education in California is now in place and working.

So, while the process may not have been as smooth as one would have liked, there were no significant problems that occurred in California as a result of this situation. This fact was confirmed publicly by the Department in negotiated rulemaking; yet, the Department nonetheless felt the need to develop a policy to address a possible set of circumstances similar to those experienced in California to deal with problems the *might* occur. Since the Department was unable to identify any fraud or abuse that resulted from this interim period in California, there is simply not sufficient justification for the considerable extension of federal authority the new regulation imposes.

Beyond the lack of clear need, another major concern is that the regulation overreaches federal authority to instruct states how to establish their regulatory system for higher education institutions operating within their borders. States have utilized a number of statutory and regulatory approaches to license institutions to operate and award degrees, and this new regulation will only complicate and confuse these efforts. For example, the Department has never identified those states where it has found the state licensing process for private institutions to be a problem. Nor have they specifically identified those states that would need to change their regulatory or statutory arrangements to come into compliance with this regulation.

WASC commissioned our legal counsel to undertake a review of state law using a draft of the regulation during the negotiated rulemaking process. Our lawyers found that as many as thirty-seven states would need to modify their licensing statutes in one way or another to comply with these regulations. While this memo was shared with the

Department, the issues raised in it have never been addressed. Today, many states are confused regarding what, if anything, they need to do to come into conformity with the new regulations. At a time when so many states are suffering significant budget reductions, many states will likely be forced to expand their bureaucracies, increase their costs, and impose ever more administrative requirements upon their private institutions. And to think, this unnecessary and inappropriate extension of federal authority is all a result of an attempt to address a problem that even the Department admits failed to materialize when it was expected to occur in California.

Which leads us to our current dilemma. States and institutions alike are confused regarding what they need to do to come into compliance with the new regulation. Institutions in California like the University of the Pacific founded in 1851, and Mills College founded in1852 and Stanford founded in 1891 must suddenly prove they are licensed to exist and potentially face a new level of oversight and review that they have not been subjected to before – despite the fact that there have been no identified problems. In addition, some believe this new regulation will require states to go beyond their existing processes and establish new complaint adjudication systems for all private institutions. This would be a significant expansion of state authority that could result in unprecedented interference in the internal operations of private institutions. Given that most complaints we receive are grade disputes or personnel matters, would these issues now become the subject of duplicative state reviews where the state is expected to second guess the actions of private institutions?

A significant number of religious and faith-based institutions have also expressed concerns about the broad reach of this new regulation which limits the definition of a

religious institution to only those that award religious degrees or certificates including, but not limited to, "a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity or a doctor of divinity." This is an unprecedented narrowing of the definition of a religious institution. Again, in many states, religious institutions are defined much more broadly and we and other accrediting agencies accredit religious institutions that award a range of degrees well beyond those so narrowly defined in the regulation. These institutions are appropriately concerned that such a narrow definition will subject them to intrusive state monitoring of their activities and violation of their founding religious principles.

Yet another area of great confusion and inappropriate federal intrusiveness is related to distance education programs. Under the regulations, institutions must: 1) meet any necessary state requirements to offer distance education legally in the state, and 2) upon request, document such legal authority. This puts the federal government in a position to determine if state law is met. It also puts institutions in an insurmountable quandary – if there is no state regulation must the institution nonetheless demonstrate it is not required to register with the state? Must states now issue letters indicating that institutions don't need to be registered? Will this lead states to enact new and likely contradictory, registration requirements for their states? This provision already has led to enormous confusion and uncertainty.

Finally, there is no provision for enforcement. After states have gone to the trouble of working though these issues how will the Department determine whether the state has done what is required to conform to the confusing language of the regulation? There is no process by which the Department will assure that a state has come into

compliance or that institutions have done so as well. Will an entire state's federal financial aid now be at risk? Will an institution's entire financial aid eligibility now be at risk if it fails to obtain the proper letters of authorization to offer distance education in each and every state? No one knows.

In sum, this regulation fails to address a clearly stated problem; creates significant confusion in its implementation; and represents a major burden on states and institutions which far exceeds the nature of the problem being addressed.

Credit Hour

An even greater set of problems arises from the adoption of the regulation on the credit hour. This regulation establishes, for the first time, a federal definition of a credit hour for all courses at all institutions receiving federal financial aid. Institutional accrediting agencies, such as WASC, in turn, must require compliance with this federal definition in all comprehensive institutional reviews, and are permitted to use a sampling approach. Deficiencies are to be corrected, and systemic problems are to be promptly reported to the Secretary of Education. While this may appear straightforward, each one of the elements of this regulation has already led to significant confusion and concern.

As with the state authorization regulation, the justification used by the Department to impose this regulation is very limited. Specifically, this regulation stems largely from a targeted review by the Department's Inspector General. This review found that one regional accreditor, in the course of a site review, found an excessive award of credit for the amount of engagement required by some courses within a single institution. The accreditor required that the institution address this issue, and the institution corrected

the credit award, and a follow up visit confirmed that the corrections had been made. In a nutshell, the existing system worked, and worked within a timely manner. Yet this example is cited as the basis for requiring every one of the more than 5,000 institutions of higher education to justify the credit award for each and every course offered.

The primary concern regarding credit awards is not the traditional seat-time based classroom course – it is rather the accelerated course formats offered over intensive days or weekends, or online courses that may not have required interactions with faculty or other students (asynchronous). Existing federal regulations already establish that a change in modality will trigger a substantive change review and all accreditors closely monitor online programs, and are already required by the Department to review online programs and assure that all accrediting standards are applied to them. Similarly, all off-site and major new programs are reviewed prior to opening through the substantive change processes that review courses and curricula to assure that the programs are appropriately resourced and of sound academic quality. In our site reviews, we pay special attention to all of these types of programs. Thus, for those programs where credit awards are most likely to present an issue, there are existing procedures in place prior to programs being offered and as part of ongoing accrediting reviews that assure program integrity. There is no adequate rationale for requiring every institution to verify every course credit assignment as required by this regulation, especially given the close level of monitoring that accreditors already provide.

The credit hour is a cornerstone of the American academic system, and the faculty at nearly every institution are responsible to set and oversee credit awards for all courses, certificates and degrees awarded in the name of the institution. This is a central role of

the faculty, and one that has been well established and has proved to be highly effective in supporting the diversity of institutions within the American higher education system – which continues to be the best in the world. The application of the American credit hour system has been sufficiently flexible within and across institutions to adapt to the many different levels of courses across multiple disciplines, different delivery modes, and accommodate not only classroom courses but laboratory work, internships, online courses and programs, and other forms of academic endeavor. To apply a federal definition to all of these academic endeavors will intrude into the work of faculty across the country, and force their decisions to fit the federal definition. This makes no sense and will only lead to stifling new and innovative approaches to delivery as institutions worry that they may not be meeting an externally imposed definition of a credit hour.

Moreover, the definition of the credit hour in this regulation gives primary emphasis to seat time. This returns to an outdated input model of measuring quality when we are working with institutions to focus increasingly on learning outcomes. All accrediting agencies have challenged institutions to be more explicit about identifying learning outcomes at the program and institutional levels, and reviewing the competencies and capacities of students at the completion of their programs. This regulation fundamentally shifts the focus to a smaller unit of analysis. We would like to see a more forward looking approach to addressing institutional quality than this outdated seat-time compliance model for each and every course offered in the US.

There will be an enormous cost – in real dollars and in a shift in focus – to implement this regulation given that the more than 5000 institutions eligible for financial

aid offer millions of courses each year. A sense of scale is useful: Stanford University and the University of Southern California each offer close to 10,000 courses a year in several hundred degree programs; California State University, San Bernardino and San Francisco State University, medium sized institutions, offer over 8500 courses each annually; the University of California estimates they offer over 50,000 courses a year; the California Community Colleges over 180,000. Even a small comprehensive university like the University of San Francisco offers over 5000 courses a year. The credit hour regulation requires institutions to be responsible to verify the "reliability and accuracy" of their credit awards, meaning that they will now need to divert extensive resources and faculty time to document course credit awards across the entire institution. While most institutions have systems in place for reviewing and approving new courses and programs, this regulation will lead institutions to review and document the credit awards for all existing courses of all types, even if offered for many years. There is no evidence that the issue of questionable credit awards applies to traditional course delivery formats, which comprise the majority of courses at traditional institutions. The breadth of this regulatory requirement, therefore, is unnecessary and will require an enormous amount of human and financial resources to implement.

In addition, accrediting agencies are expected to evaluate the reliability and accuracy of institutional credit assignments, which means that a whole new dimension is added to the institutional accreditation review process. How will the "reliability and accuracy" of course assignments be determined without looking in detail at a significant sample of course syllabi and student assignments across a wide range of disciplines, levels and formats? While this surely can be done, is it the best focus to give to

institutional reviews or quality and integrity? We think not. In undertaking these evaluations, the regulation permits a "sampling" approach. While this may sound simple, given the enormous number of courses offered each year by institutions, how large or broad must the sample be? No sample size is identified, but assume that a sample size of 10% of courses was undertaken for small to medium sized institutions, and even 5% for large institutions. Would this be considered enough? If one were to assume that it took a single evaluator up to 10-20 minutes per course to review a sample syllabus and the credit assignment for a medium sized institution offering 5,500 courses, as does the University of San Francisco, this would require up to 180 hours for just this one institution, or the equivalent of a single person working full-time for 3 - 4.5 weeks on this task alone. For larger institutions, it is very likely that the amount of time would be even greater. The result is an incredible diversion of time and resources for both institutions and accrediting agencies to define and implement sampling methods.

As president of an accrediting agency I am also concerned that regardless of how we, along with our institutions, decide to implement this regulation, we will still be subject to being overturned by the staff of the Department or of the National Advisory Committee for Institutional Quality and Integrity (NACIQI) when our agencies come up for recognition review. We could foresee such determinations as our reviews not being "effective," as required in the regulation, through such identified issues as the sample size being found not large enough, or the scope of review, even at institutions with no history of problems, found not broad enough. Or being told that the evidence of "reliability and accuracy" of credit awards, as determined by the institution, is not sufficiently scientific.

In other words, it is possible that Departmental review of institutions and accrediting agencies will delve into actual institutional policies on credit awards, or course credit assignments, or the accrediting agency's review methodology – ultimately federalizing the entire system of credit awards.

Additional steps underway

As an institutional accreditor serving the public as well as over 160 institutions with more than a million students, we take our responsibilities to assure institutional quality and integrity seriously. We believe that both of these regulations are moving higher education in the wrong direction. I would urge that instead our attention be directed toward 1) increasing completion rates of all students; 2) assuring that the outcomes of degrees and certificates are of high quality; and 3) that high quality innovation be supported.

At WASC, for the past several years, we have been requiring that a review and evaluation of retention and graduation data be a central part of each comprehensive institutional review, and are working to go beyond this to benchmark, within each institution's context, an appropriate graduation rate for key groups. Second, we are exploring the use of a common framework for the associate and bachelor's degree that focuses institutions on essential outcomes for these degrees. Third, we are working with institutions to improve methods of assessing student learning, share best practices, and establish external benchmarks that will be useful for assuring high quality. In addition, we are exploring increasing the transparency of the accrediting process through expanded

public information provided by the institution and by WASC at the end of the accreditation review cycle.

These steps are forward looking and the two regulations I have addressed today move us away from these goals. They impose unnecessary and extensive burdens on institutions, states and accreditors at a time when every dollar counts, and when the focus needs to be on focusing energies where there are real problems, and relying on using more effectively the existing systems already in place.

Conclusion

In conclusion, these two regulations need to be withdrawn. At a minimum, since they require institutions, accreditors and states to be in compliance by July 1, 2011, there should be a one year extension to allow further discussion and resolution of these issues.

Thank you for this opportunity to provide these comments.