EDUCATION REGULATIONS: FEDERAL OVERREACH INTO ACADEMIC AFFAIRS

HEARING

BEFORE THE

SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE TRAINING

COMMITTEE ON EDUCATION AND THE WORKFORCE

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C O N T E N T S

EDUCATION REGULATIONS: FEDERAL OVERREACH INTO ACADEMIC AFFAIRS

Friday, March 11, 2011
U.S. House of Representatives
Subcommittee on Higher Education and Workforce Training
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2175, Rayburn House Office Building, Hon. Virginia Foxx [chairwoman of the subcommittee] presiding.

Present: Representatives Foxx, Kline, Petri, Thompson, Hinojosa, Tierney, Bishop, Andrews, and Davis.

Staff present: Katherine Bathgate, Press Assistant; James Bergeron, Director of Education and Human Services Policy; Colette Beyer, Press Secretary-Education; Kirk Boyle, General Counsel; Casey Buboltz, Coalitions and Member Services Coordinator; Daniela Garcia, Professional Staff Member; Jimmy Hopper, Legislative Assistant; Amy Raaf Jones, Education Policy Counsel and Senior Advisor; Barrett Karr, Staff Director; Brian Melnyk, Legislative Assistant; Mandy Schaumburg, Education and Human Services Oversight Counsel; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Aaron Albright, Minority Deputy Communications Director; Tylease Alli, Minority Hearing Clerk; Daniel Brown, Minority Staff Assistant; John English, Minority Presidential Management Fellow; Jamie Fasteau, Minority Deputy Director of Education Policy; Brian Levin, Minority New Media Press Assistant; Megan O'Reilly, Minority General Counsel; Julie Peller, Minority Deputy Staff Director; Melissa Salmanowitz, Minority Press Secretary; Laura Schifter, Minority Senior Education and Disability Policy Advisor; and Michael Zola, Minority Chief Investigative Counsel.

Chairwoman FOXX [presiding]. Good morning. A quorum being present, the subcommittee will come to order. I want to welcome everyone to the subcommittee's first hearing of the 112th Congress.

And I want to give a special thanks to our witnesses for being with us today. We appreciate your time and look forward to your testimony. We are here this morning to examine burdensome regulations imposed on institutions of higher education and accrediting bodies via the Department of Education.

We can all agree today that the United States has the finest higher education system in the world and it draws students from

all around the globe. But we are also aware of the strain federal regulations can place on schools.

In this era of limited resources these regulations can serve to distract schools from efficiently delivering services to their students. That means onerous mandates force institutions to dedicate scarce resources towards compliance instead of focusing on meeting student needs.

At a time when we should be encouraging common sense education reforms, more regulatory hurdles serve only to undermine the strength of the nation's education system.

In late 2010 the administration introduced regulations on 14 separate higher education issues. While many of these new regulations inject the federal government into areas that have historically been the responsibility of the states or institutions of higher education.

Two of them are particularly alarming; the new state authorization regulation forces states to follow federal requirements when deciding whether to grant a college or university permission to operate within the state.

Many institutions fear this is only the beginning of the federal government and states exercising more control over their colleges and universities.

For schools providing distance education programs this regulation could require them to obtain authorization in every state where an enrolled student resides to participate in the federal student aid programs.

Even if a school has just one student from a state enrolled in an online program, the institution will still be required to go through the process of obtaining authorization in that state.

Schools with more advanced online education opportunities could be forced to deal with this process in all 50 states. Another worrisome regulation creates the first federal definition of a credit hour and requires specific criteria to be used when assessing an institution's definition of a credit hour.

School officials are concerned that this regulation will restrict their ability to determine the number of credit hours for each course, an inherently academic function. While the credit hour is important to the distribution of federal student assistance, institutions of higher education fear they will be required to check in with the government before creating courses and programs eligible for such funding.

To make matters worse, very little information exists on how these regulatory changes could affect students. The state authorization regulation could restrict the student's ability to enroll in a distance education program if the school is not recognized as an accredited online institution in his or her state. The credit hour regulation also stands to restrict the efficiency and productivity at an institution by limiting their ability to create innovative ways to educate students in shorter periods of time.

Many institutions of higher education have been left in the dark on how to proceed. In fact we have just received a letter from the American Council on Education asking us to request the delay of one year of these regulations because of the confusion.

Unless the Department can provide some clarifying guidance before the July 1, 2011 deadline, schools, states, and accreditors will

be left to wonder whether their inability to comply with the unclear regulations will jeopardize schools eligibility to receive federal financial aid.

As such, a delay or complete withdrawal, actually, may be the appropriate action here.

These regulations constitute a federal overreach into academic affairs. Like many other burdensome government mandates, both reduce local control and create uncertainty in the higher education system.

Escalated intervention by Washington bureaucrats has done little to fix the problems in our education system. Instead of more regulations we need to support policies that streamline the government's role in education and provide for more flexibility for states and education institutions.

We look forward to hearing your thoughts on federal regulations like these and gaining your perspective on what should be done in Washington to decrease their negative impact.

I would now like to recognize Ranking Member Ruben Hinojosa for his opening remarks.

[The statement of Chairwoman Foxx follows:]

Prepared Statement of Hon. Virginia Foxx, Chairwoman, Subcommittee on Higher Education and Workforce Training

A quorum being present, the subcommittee will come to order.

Welcome everyone to the subcommittee's first hearing of the 112th Congress. I would like to thank our witnesses for being with us today. We appreciate your time and look forward to your testimony.

We are here this morning to examine burdensome regulations imposed on institutions of higher education and accrediting bodies by the Department of Education.

We can all agree today that the United States has the finest higher education system in the world, which draws students from around the globe. But we are also all aware of the strain federal regulations can place on schools. In this era of limited resources, these regulations can serve to distract schools from efficiently delivering services to their students. That means onerous mandates force institutions to dedicate scarce resources toward compliance instead of focusing on meeting student needs. At a time when we should be encouraging common sense education reforms, more regulatory hurdles serve only to undermine the strength of the nation's education system.

In late 2010, the administration introduced regulations on 14 separate higher education issues. While many of these new regulations inject the federal government into areas that have historically been the responsibility of the states or institutions of higher education, two of them are particularly alarming.

The new state authorization regulation forces states to follow federal requirements when deciding whether to grant a college or university permission to operate within the state. Many institutions fear this is only the beginning of the federal government and states exercising more control over their colleges and universities. For schools providing distance education programs, this regulation could require them to obtain authorization in every state where an enrolled student resides to participate in the federal student aid programs. Even if a school has just one student from a state enrolled in an online program, the institution will still be required to go through the process of obtaining authorization in that state. Schools with more advanced online education opportunities could be forced to deal with this process in all fifty states.

Another worrisome regulation creates the first federal definition of a credit hour and requires specific criteria to be used when assessing an institution's definition of a credit hour. School officials are concerned that this regulation will restrict their ability to determine the number of credit hours for each course, an inherently academic function. While the credit hour is important to the distribution of federal student assistance, institutions of higher education fear they will be required to check in with the government before creating courses and programs eligible for such funding.

To make matters worse, very little information exists on how these regulatory changes could affect students. The state authorization regulation could restrict a student's ability to enroll in a distance education program if the school is not recognized as an accredited online institution in his or her state. The credit hour regulation also stands to restrict efficiency and productivity at an institution by limiting their ability to create innovative ways to educate students in shorter periods of time.

Many institutions of higher education have been left in the dark on how to proceed. In fact, we have just received a letter from the American Council on Education asking us to request a delay of one year of these regulations because of the confusion. Unless the department can provide some clarifying guidance before the July 1, 2011 deadline, schools, states, and accreditors will be left to wonder whether their inability to comply with the unclear regulations will jeopardize schools' eligibility to receive federal financial aid. As such, a delay—or complete withdrawal actually—may be the appropriate action here.

These regulations constitute a federal overreach into academic affairs. Like many other burdensome government mandates, both reduce local control and create uncertainty in the higher education system. Escalated intervention by Washington bureaucrats has done little to fix the problems in our education system. Instead of more regulations, we need to support policies that streamline the government's role in education and provide for more flexibility for states and education institutions.

We look forward to hearing your thoughts on federal regulations like these and gaining your perspective on what should be done in Washington to decrease their negative impact. I would now like to recognize the Ranking Member, Rubén Hinojosa, for his opening remarks.

Mr. HINOJOSA. Thank you Chairwoman Foxx. Today our discussion will focus on two vitally important regulations; the definition of a credit hour and the criteria the secretary uses to determine that institutions are authorized to provide post-secondary education in their states.

In my view, these regulations are greatly needed to strengthen the accountability and review of institutions of higher education that participate in the federal student aid programs. Every year the federal government spends billions of dollars on student financial aid. It is imperative that Congress and the Department of Education provide strong oversight for these federal student dollars.

On May 24, 2010 the Office of the Inspector General, the IG, issued a review of the Higher Learning Commission, I will refer to it as HLC, of the North Central Association of Colleges and Schools. I continue to be troubled by what the Inspector General found in its review.

The IG's report raised serious concerns about the HLC's accrediting practices and the evaluation of Title IV institutions. Specifically the report highlighted the case of American Intercontinental University, an institution which HLC approved for accreditation on May 14, 2009, despite finding that AIU had assigned about double the amount of credit hours in certain undergraduate and graduate programs.

To avoid having institutions overstate credit hours or inflate the federal student aid paid for students attending those programs we must have consistent measures for credit hours.

The regulation being discussed today sets some minimum standard for the work needed to equal a credit hour for the purposes of federal student aid programs. The rule defines a credit hour as "one hour of classroom instruction and 2 hours of homework each week for approximately 15 weeks per semester or 10 to 12 weeks for one-quarter hour of credit. Or, an equivalent amount of work."

The regulation also requires accrediting agencies to review an institution's procedures and policies setting credit hours and determine whether such policies and procedures meet the regulatory standard.

I would also like to underscore that the credit hour definition creates some flexibilities for institutions in determining the appropriate number of credit hours for student course work.

The credit hour definition is a minimum standard that does not restrict an institution from setting a higher standard that requires more student work per credit hour. The definition does not dictate particular amounts of classroom time versus out of class student work. And the institution may take into consideration alternative delivery methods; measurements of student work, academic calendars, disciplines and degree levels.

In addition, an institution may use separate measures of credit hours for the federal student aid programs and for its own academic purposes or other institutional needs.

In regard to state authorization, the Higher Education Act of 1965 has always required an institution to be legally authorized to offer a program of education beyond secondary education by the state in which it is located. Under that rule a state must have a process to review and act on complaints concerning that institution, including enforcing applicable state laws.

The regulation also provides students, prospective students and families the ability to identify which institutions are legally authorized to offer post-secondary education in a state.

An institution offering distance education to students located in states other than the one in which the institution is located for example, must meet the authorization requirements of those states.

Finally, religious institutions exempted from state authorization requirements under state law are exempt from this regulation.

In closing, I believe that we as members of this committee must address these issues and protect the interest of students and taxpayers.

As ranking member for this subcommittee, I intend to be fully engaged in these discussions and will work with the Secretary and my colleagues in both the House and the Senate to ensure that these regulations are implemented.

With that, Madam Chair, I yield.

[The statement of Mr. Hinojosa follows:]

Prepared Statement of Hon. Rubén Hinojosa, Ranking Member, Subcommittee on Higher Education and Workforce Training

Thank you Chairwoman Foxx.

Today, our discussion will focus on two vitally important regulations: the definition of a credit hour and the criteria the Secretary uses to determine that institutions are authorized to provide postsecondary education in their states.

In my view, these regulations are greatly needed to strengthen the accountability and review of institutions of higher education that participate in the Federal Student Aid programs. Every year, the federal government spends billions of dollars on student financial aid. It is imperative that Congress and the Department of Education provide strong oversight for these federal student aid dollars.

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The credit hour definition is a minimum standard that does not restrict an institution from setting a higher standard that requires more student work per credit hour.

The definition does not dictate particular amounts of classroom time versus out-of-class student work, and the institution may take into consideration alternative delivery methods, measurements of student work, academic calendars, disciplines, and degree levels.

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In regard to state authorization, the Higher Education Act of 1965 has always required an institution to be legally authorized to offer a program of education beyond secondary education by the State in which it is located.

Under the rule, a State must have a process to review and act on complaints concerning the institution, including enforcing applicable State laws. The regulation also provides students, prospective students, and families the ability to identify which institutions are legally authorized to offer postsecondary education in a State.

An Institution offering distance education to students located in States other than the one in which the institution is located, for example, must meet the authorization requirements of those States.

Finally, religious institutions exempted from State authorization requirements under State law are exempt from this regulation.

In closing, I believe that we as the members of this committee must address these issues and protect the interests of students and taxpayers. As Ranking Member for this subcommittee, I intend to be fully engaged in these discussions and will work with the Secretary and my colleagues in both the House and the Senate to ensure that these regulations are implemented.

Questions for the Panelists:

I would like to welcome our distinguished guests and say that I am pleased to see that Kathleen Tighe, the Inspector General, is here today.

1. Question for Inspector General Kathleen Tighe (T-i-e), U.S. Department of Education:

Ms. Tighe, in your testimony, you indicate that the explosion of on-line education in recent years has made it even more difficult to assign credit hours and assess student achievement.

What are national and regional accrediting agencies doing to ensure that on-line educational programs provide quality, content, and academic rigor at the postsecondary level?

2. Question for Inspector General Kathleen Tighe:

Ms. Tighe, in your testimony, you indicate that the definition of a credit hour protects students and taxpayers from inflated credit hours, the improper designation of full-time student status, the over-awarding of Federal Student aid funds, and excessive borrowing by students especially with distance, accelerated, and other programs not delivered through traditional classroom format.

What type of impact do you believe this regulation will have on regional and national accrediting agencies?

What can regional and national accrediting agencies do to improve their accreditation practices to ensure that students and taxpayers receive what they are paying for?

3. Question for Ralph A. Wolff, President of the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC):

Mr. Wolff, absent a definition of a credit hour, what do your accreditation teams evaluate on campus to assess institutional assignment of credit hours?

Chairwoman FOXX. Thank you very much Mr. Hinojosa. Pursuant to Committee Rule 7 C, all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record.

And without objection, the hearing record will remain open for 14 days, to allow statements, questions for the record and other extraneous material referenced during the hearing, to be submitted in the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses; Mr. John Ebersole serves as the President of Excelsior College and has over 40 years of education experience. Prior to his current appointment Mr. Ebersole has held positions responsible for extended and online education at Boston University; Colorado State University; The University of California, Berkley and; John F. Kennedy University.

Mr. Ebersole is also the current chair of the American Council on Education's Commission on Lifelong Learning.

Dr. G. Blair Dowden has served as President of Huntington University since 1991. He has previously served as board chair of the Council for Christian Colleges and Universities; chair of the Council of Presidents of the National Association of Intercollegiate Athletics and is chair of the Indiana Conference for Higher Education. In addition to his impressive career, he is a frequent speaker on topics related to leadership, philanthropy, and Christian Faith.

The Honorable Kathleen Tighe was sworn in as the Inspector General for the Department of Education on March 17, 2010. Prior to this she served as the Deputy Inspector General at the U.S. Department of Agriculture and as counsel to the Inspector General Services Administration.

Ms. Tighe is a member of the public contract section of the American Bar Association and is a former chair of the Council of Councils to the Inspector General. That is almost a tongue twister.

Mr. Ralph Wolff has been at the Senior College Commission of the Western Association of Schools and Colleges, WASC, for 30 years and was appointed president in 1996. In that capacity he has led WASC to the forefront of accreditation as an agent of public accountability and innovation.

At the national level he has been appointed to represent regional accreditation in negotiated rule making sessions held by the Department of Education in 2006, 2008, and 2010. Did they give you combat pay for that?

Before I recognize each of you to provide your testimony let me briefly explain our lighting system. You will each have 5 minutes to present your testimony. When you begin the light in front of you will turn green.

When 1 minute is left the light will turn yellow and when your time has expired the light will turn red. At which point I would ask that you wrap up your remarks as best you are able.

After everyone has testified members will each have 5 minutes to ask questions of the panel. And I will tell you that they have announced that we will probably have votes around 12 to 12:30 and I said earlier it is something to see when everyone is trying to vote and get out on a Friday afternoon.

So I am hoping that we can move things along and not have an unseemingly exodus from the room. So I want to thank you all again for taking the time to testify before the committee today.

I want to ask Mr. Hinojosa if he has any other comments he would like to make.

Mr. HINOJOSA. Not at this time.

Chairwoman FOXX. Thank you.

Now, I would like Mr. Ebersole if he would begin.

STATEMENT OF JOHN EBERSOLE, PRESIDENT, EXCELSIOR COLLEGE

Mr. EBERSOLE. I am John Ebersole, President of Excelsior College. I would like to thank you Chairwoman Virginia Fox and also Ranking Member Ruben Hinojosa and members of the Subcommittee on Higher Education and Workforce Training, for the opportunity to testify on these unnecessary regulations.

Founded by the State of New York's Board of Regents as Regents College in 1971 and chartered as a private not for profit institution in 1998, the college was renamed Excelsior College in 2001. We are based in Albany, New York, accredited by the Middle States Commission on Higher Education and we are a recognized leader in removing obstacles to the educational goals of adult learners.

We provide efficient, affordable access to higher education through multiple avenues of degree completion. Excelsior provides distance learning opportunities to adult learners with an emphasis on those historically underrepresented in higher education.

I should say that 30 percent of our students of which there are 30,000, represent themselves as being minorities. We also have about 10,000 Iraq duty military.

The college meets students where they are academically and geographically, offering quality instruction in the assessment of prior learning. We share the stated goals of this administration and the previous administration to increase degree completion over the next 10 years. We understand that is necessary to maintain our economy and to be competitive in a global market.

I believe that online institutions have the capacity to deliver that access to students who would not receive a quality education under other circumstances. This is a time when the traditional brick and mortar public institutions are cutting enrollment, reducing access and increasing costs.

In the 2010 Sloan Survey of Online Learning, we found that online enrollments have risen by almost 1 million students from a year ago. That report also found that three-quarters of institutions report the economic downturn has increased demand for online courses and programs. Nearly 30 percent of those in higher edu-

cation, of which estimate at 19 million today, now take at least one course online.

The 21 percent growth rate for online enrollments far exceeds the 2 percent growth rate in the overall higher education population. Seventy-nine percent of college presidents agreed that launching and expanding online education courses and programs provides a way for their institutions to serve more learners. A recent survey done by Inside Higher Education found that three-quarters of presidents have plans to enter the online market as a part of their future strategy.

In regard to state authorization, every institution is authorized to operate in its home state. In the case of Excelsior, we are chartered by the New York State Board of Regents, which I believe is the only state agency which is recognized by the U.S. Department of Education as an accrediting agency in its own right.

We also hold Middle States accreditation and the new federal regulations would require Excelsior to not only have that accreditation that we document that we are authorized to operate in 54 jurisdictions recognized by the United States Department of Education.

Under Title 4, the new regulations require all colleges to comply with individual state regulations to distance learning if they have enrolled 1 or more students receiving student financial aid.

Failure of an institution to comply with these state authorization rules may result in institutional penalties ranging from a return of all federal financial aid distributed while out of compliance, up to removal of the institution's authorization to participate in Title 4.

Due to a lack of, what I believe is forethought, the proposed state authorization regulations from the Department would create a particular roadblock for those of us in online education at a time where I believe it is most needed.

Excelsior has led the President's Forum, a consortium of public and private institutions with a shared mission of serving adult students that are distance, for 7 years.

We have been trying to advance the innovative practices and the excellence that can be a part of online learning. You should know that even before these regulations were promulgated we were working with the states trying to bring about greater uniformity and standardization between the 50 states.

We continue to be at a loss as to why these regulations, running directly contrary to the shared, stated goals of the administration and to thousands of higher education institutions across the country have been put forward.

As written, the regulation would unfairly target and stifle the growth of online education options for students, particularly of non-profit institutions. We support the right and responsibility of states to regulate the quality and nature of the education being delivered within their borders, work that we have been trying to advance.

However, the regulation on state authorization essentially places the federal government in the role of enforcing state statutes would force a state to create a new regulatory regime and make an additional financial burden at a time when many states do not have the funds, capacity or structure to comply with this regulation. And they certainly will not have such by July 1st of this year.

One state has already said publicly that it could not consider applications in its state for at least a year to determine how it will even respond. Another has stated that upon receipt of our application it will require 6 to 9 months of review and then be subjected to the second review if any of the education leads to licensure within that state.

Furthermore, there is no way to guarantee that an institution has met the Department's interpretation of any state's regulations and no way for the institution to ensure it would satisfy these federal interpretations if audited.

These uncertainties will stifle innovation and force accredited, not-for-profit institutions with legitimate and creative distance education programs to withdraw from certain jurisdictions potentially leaving the students with the greatest need with a few options to further their education.

Thank you.

[The statement of Mr. Ebersole follows:]

Prepared Statement of John Ebersole, President, Excelsior College

Good morning. I am John Ebersole, President of Excelsior College. I would like to thank Chairwoman Virginia Foxx, Ranking Member Ruben Hinojosa, and members of the Subcommittee on Higher Education and Workforce Training for the opportunity to testify on these unnecessary proposed regulations.

Founded by the State of New York Board of Regents as Regents College in 1971 and chartered as a private, nonprofit institution in 1998, the College was renamed Excelsior College in 2001. Excelsior College is based in Albany, NY and accredited by the Middle States Commission on Higher Education. We are a recognized leader in removing obstacles to the educational goals of the adult learner. We provide efficient and affordable access to higher education through multiple avenues to degree completion. Excelsior College provides distant learning opportunities to adult learners with an emphasis on those historically underrepresented in higher education. The College meets students where they are—academically and geographically, offering quality instruction and the assessment of prior learning.

We share the stated goals of this Administration and the previous Administration to increase degree completion over the next ten years to maintain our economy and be competitive in the global market. I believe that online learning institutions have the capacity to deliver that access to those students that would not receive a quality education under any other circumstances. This is a time when the traditional brick and mortar public institutions are cutting enrollment, reducing access and increasing their costs. In fact, The 2010 Sloan Survey of Online Learning reveals that online enrollment rose by almost one million students from a year ago. The report also found that:

- Three-quarters of institutions report that the economic downturn has increased demand for online courses and programs.
- Nearly thirty percent of higher education students now take at least one course online
- The 21% growth rate for online enrollments far exceeds the 2% growth in the overall higher education student population.[1]
- 78.1% of College Presidents agreed that launching/expanding online education courses and programs provide a way for institutions to serve more learners.[2]

State Authorization

Every institution is authorized to operate in its home state. In the case of Excelsior College, we are chartered by the New York State Board of Regents (one of the accrediting agencies recognized by the U.S. Department of Education), and the Middle States Commission on Higher Education. These new federal state authorization regulations would require Excelsior College to document that it is also authorized to operate in all 54 jurisdictions recognized by the United States Department of

[1] Allen, I. Elaine and Jeff Seaman. Class Differences, Online Education in the United States, 2010. Babson Survey Research Group, 2010.

[2] Green, Kenneth C., Scott Jaschik and Doug Lederman. Presidential Perspectives: The 2011 Inside Higher Ed Survey of College and University Presidents. Inside Higher Ed, 2011.

Education. Federal Title IV regulations require all colleges to comply with individual state regulations related to distance learning in which they have enrolled one or more students receiving federal student financial aid. Failure of an institution to comply with these state authorization rules may result in institutional penalties ranging from return of all federal financial aid distributed while out of compliance up to removal of the institution's authorization to participate in Title IV funding.

Due to a lack of forethought, the proposed State Authorization regulation from the Department of Education would create a road block for online education, perhaps at a time when it is needed the most. Excelsior has led the Presidents' Forum, a consortium of public and private institutions with a shared mission of serving adult students at a distance, for seven years with the goal of advancing innovative practice and excellence in online learning. We continue to be at a loss as to why these regulations run directly contrary to the shared, stated goals of the Administration and thousands of higher education institutions across the country. As written, the regulation would unfairly target and stifle the growth of online education options for students.

We support the right and responsibility of states to regulate the quality and nature of the education being delivered within their borders. However, the regulation on State Authorization essentially places the federal government into the role of enforcing state statutes and would force a state to create a new regulatory regime and take on additional financial burden when some states do not have the funds, capacity or structure to comply with this regulation by July 1, 2011. One state has already indicated that it could take a year to determine how it will respond. Furthermore, there is no way to guarantee that an institution has met the department's interpretation of any state's regulations and no way for the institution to ensure it would satisfy these federal interpretations if audited. These uncertainties would stifle innovation and force accredited institutions with legitimate and creative distance education programs to withdraw from certain jurisdictions, leaving the students with the greatest need with little option to further their education.

It is impossible to predict the future skills that our workforce will need. In order to properly prepare our students for this ever-changing landscape, our higher education curriculums need to be innovative and adapt to those changes.

Impacts to Excelsior College

Excelsior represents at least one student in all 54 jurisdictions that are recognized by the Department of Education. The federal state authorization regulations would require Excelsior to review each individual state's rules and regulations and to document that Excelsior College is in compliance with those rules in each jurisdiction where it is serving Title IV recipients. In order to be fully compliant, we would have to either complete the authorization process within each state or produce documentation for states where this would not be necessary. We have estimated that the average cost for authorization is approximately $2,500 per state. There are some states that have a fee much lower than this number but there are also states where costs would exceed tens of thousands of dollars. In considering these demands, Excelsior College will have to budget $150,000-200,000 per year to comply with these federal mandates. When those costs are multiplied by nearly 3,000 institutions offering online education, this sector is looking at least a half a billion dollars cost of compliance. These additional costs to institutions will undoubtedly be passed on to students in the form of increased tuition and fees. That will raise the cost of learning and deter access.

Arkansas is an example of a state that is very granular in its approval process. We are required to provide details on every program, course, faculty member, credit determination, and projected outcomes. For instance, in the case of our faculty members, Excelsior College was required to provide an individual form describing the qualifications of each faculty member teaching students in the state of Arkansas for review. All of these disclosures take time and man power. In the case of Arkansas, Excelsior spent in excess of 400 man hours preparing over 400 pages for submission.

As a result of these burdensome, costly and vague regulations, students from around the country will be denied access to the high-quality college programs as many reputable accredited institutions, such as Excelsior, discontinue their distance learning programs or limit them only to states with larger enrollments. As the delivery of online courses becomes limited and problematic for legitimate colleges, many students will turn to less reputable, locally based, non-accredited schools for their degree. This would clearly cheapen the education offered to those students in need.

Excelsior's student body is very diverse and we educate many students enlisted in the military. These students and their families are frequently transferred to different states based on their position. Currently, they are able to continue their education and not miss class time following a transfer. However, should this regulation

take effect, those military spouses could be transferred to a state that has not authorized Excelsior and they would not be able to continue their coursework.

By explicitly defining a credit hour, our education system regresses by looking at the input rather than using a more forward looking approach that evaluates learning outcomes. The proposed definition of a credit hour will further block and limit innovation in higher education. President Obama recently applauded the creation of an accelerated learning program at Carnegie Mellon for its innovative online courses. They have found that students can learn more quickly with specially designed online courses. These regulations would have killed that program. By attempting to impose a single definition, the Department would be inserting itself in academic judgments made at the departmental and institutional level. It is of note that Federal law prohibits the Department from interfering in academic decisions without explicit Congressional authorization.

Impacts to Growth of Online Education Industry

For those institutions that are examining and creating online education programs, these regulations will give them great pause whether to continue that development or abandon the endeavor all together. These institutions will not want to risk their Title IV funding based on a confusing regulatory market for online programs. As the capacity for higher education decreases among the traditional sources of learning, we should be promoting online programs and services that can help those in need to further their education.

Conclusion

The resulting ambiguity and confusion over these requirements will limit responsible innovation by institutions at the very time that the Administration is seeking new routes to academic achievement.

It is our hope that you will ask the Department of Education to re-evaluate the rule it has adopted and to see how the rule can be amended to avoid the unintended consequences of the current approach.

Chairwoman FOXX. Thank you very much Mr. Ebersole.

Dr. Dowden?

STATEMENT OF G. BLAIR DOWDEN, PRESIDENT, HUNTINGTON UNIVERSITY

Mr. DOWDEN. Good morning Chairwoman Foxx and Ranking Member Hinojosa.

I appreciate your invitation to share my concerns about the program integrity issue regulations. My name is Blair Dowden, I am President of Huntington University in Huntington, Indiana, and I have served in that capacity for the past 20 years.

I am a past board chair of the Council for Christian Colleges and Universities and I have personally served as board member of the National Association of Independent Colleges and Universities.

As a president of a private college I am concerned about the wide sweeping regulatory overreach that these regulations signal. The American higher education system is the best in the world largely because of its independence, innovation, and creativity. These regulations work to undermine these characteristics.

Certainly, colleges and universities should be held accountable for their work and the expenditure of federal funds, in fact earlier this year, just about a month ago Huntington University was visited by the U.S. Department of Education for a routine review of our Title IV programs. After a week of review the Department representatives indicated that we were very clean in our operation and management of our Title IV funds. I believe that this type of oversight is appropriate.

But the increase in regulation and oversight that is contained in some provisions of the Department's new program integrity regula-

tions, I think, is not warranted and will severely burden colleges and universities.

Specifically, two parts of these regulations are most concerning, the state authorization and credit hour provisions which are the topics of this hearing.

The federal definition of a credited hour inserts the federal government squarely into one of the most sacrosanct elements of higher education. I believe that it is very problematic for the federal government to impose a one-size-fits-all definition of a credited hour. For instance, a scientific laboratory class is different than practicing a musical instrument which is different again than engaging in a business practicum.

I strongly believe that is the colleges, universities, and accrediting organizations, and not the government, that are best able to assess and quantify the learning that results from these varied experiences.

Huntington is a private liberal arts university. We are also a Christian institution. Our Christ-centered mission is foundational to our educational purpose and forms every decision that we make. As president I am concerned that these new regulations have the potential to interfere with our faith based mission.

In particular, the state authorization component of these regulations expands on the requirement that an institution must be authorized by the state in order to participate in Title IV funding. As you know, state authorization is currently required by the Higher Education Act, so is not at all clear to me what value would be added by these new, and I think, confusing requirements.

These regulations clearly open the door for states to impose requirements that go well beyond authorizing an institution to offer postsecondary education. My concern is that there appears to be no limits to what factors a state can consider when granting or withholding authorization and no mechanisms for appeal or due process.

As a president of a Christian institution, I am acutely aware that religion and religious practices can sometimes invoke strong reactions in people, reactions that sometimes motivate certain political positions and actions.

The Department's new regulations delineate a very small category of institutions that are eligible to be exempted under state law if indeed the state should even chose to provide a religious exemption.

This category of schools is so narrowly defined that neither Huntington University nor any other member of the Council of Christian Colleges and Universities would qualify for an exemption as outlined in these new regulations.

This prospect is obviously very troubling and widely shared as a concern by my fellow Christian college presidents. I do not want to have our students' eligibility to receive Title IV funding placed solely in the hands of a politically motivated state entity.

In addition, the possibility exists that certain states may use this new state authorization requirement as leverage to achieve their own higher education policy agenda at the expense of institutional missions. For instance, a state could require a certain curriculum or text books in order to gain authorization potentially violating

both the academic prerogatives and religious convictions of the institutions.

Let me conclude by assuring you that these concerns are not a denial for accountability and excellence in higher education. Nor are they out of a concern that Huntington University would not meet quality standards. To the contrary, Huntington University is ranked by U.S. News and World Report, among the Midwest's top-10 regional colleges and among the region's top-5 best values. We are providing our students with an excellent education and equipping them for the future.

Rather, I oppose these regulations because they unnecessarily interfere with the good work that my institution and many others are doing. And because they create the potential for misunderstanding, misapplication, and even mischief by politically motivated state actors.

I appreciate your time today and look forward to your actions.

[The statement of Mr. Dowden follows:]

Prepared Statement of G. Blair Dowden, President, Huntington University

Good morning Chairwoman Foxx and Ranking Member Hinojosa: I appreciate your invitation to share my concerns about the "program integrity issues" regulations. My name is Blair Dowden, president of Huntington University in Huntington, Indiana, and I have served in that capacity for the last twenty years. I am a past Board chair of the Council for Christian Colleges and Universities, and I presently serve as a Board member of the National Association of Independent Colleges and Universities. I want to share my concerns with you today as the president of Huntington University—a private, accredited, four-year, Christian liberal-arts university and an institution whose religious character and mission is central to everything we are and everything we do.

As a president of a private college, I am concerned about many specific facets of these regulations, but I am also concerned generally about the wide sweeping regulatory overreach that these regulations signal. As private institutions of higher learning come under ever-increasing regulatory burdens, we find fewer and fewer differences in the level of government involvement between our institutions and our public counterparts. The American higher education system is the best in the world largely because of its independence, innovation and creativity. I believe that these regulations work to undermine, rather than strengthen, those valuable characteristics.

Specifically, there are two parts of these regulations that are most concerning: state authorization and credit hour, the topics of this hearing. I strongly believe that the new regulations will elevate the level of involvement by the state and federal governments and significantly impact one of the hallmarks and strengths of the U.S. higher education system, institutional autonomy.

I am not endorsing the premise that institutions should not be held accountable for their work and the expenditure of federal funds. In fact, earlier this year, Huntington University was visited by the US Department of Education for a routine review of our Title IV programs. After a week of review, the Department representatives indicated that we were a "very clean" operation in the management of Title IV funds. This type of oversight is appropriate. But the dramatic increase in regulation and oversight that is contained in some provisions of the Department's new program integrity regulations is not warranted and will severely burden our colleges and universities.

One specific concern is the federal definition of the credit hour which inserts the federal government squarely into one of the most sacrosanct elements of higher education. Because of the diversity of institutions, programs, and methods of the delivery of academic content, I believe that it is very problematic for the federal government to impose one standard definition for and implementation of a credit hour. The effort to transform the credit hour into a simple accounting unit used for bookkeeping, shows, I believe, a fundamental misunderstanding of the credit hour. A credit hour is not only different from institution to institution, but is different even within an institution from program to program. A scientific laboratory class is different from practicing a musical instrument which is different from engaging in a business practicum. I strongly believe that it is colleges, universities and accrediting

organizations—not the government—that are best able to assess and quantify the learning that results from these varied experiences.

In recent decades, there has been significant innovation in higher education, especially for adult learners. Accelerated classes, distance learning, and hybrid format classes have opened up doors of educational opportunity and attainment for new groups of students. A restrictive definition of credit hour based on seat-time alone would turn back the clock and discourage the kind of innovation that enables colleges and universities to serve these students. It is one thing to measure how much time a student spends in a classroom; it is quite another to measure how much the student learned. As Sylvia Manning, president of the Higher Learning Commission testified to the House Committee on Education and Labor on June 17, 2010, a narrow definition of credit hour would not be particularly useful in measuring the learning outcomes of adult students or alternative delivery systems. It would deter innovation in higher education and "require that colleges and universities divert resources away from helping students to demonstrating compliance with the regulation." Imposing a federal definition of a credit hour would usurp the role of accrediting organizations without effectively measuring or improving academic rigor, program quality, or learning outcomes.

Huntington is a private liberal-arts university; we are also a Christian institution. Our Christ-centered mission is foundational to our educational purpose and informs every decision that we make. As president, I am also concerned that these new regulations have potential to interfere with our faith-based mission.

In particular, the state authorization component of these regulations expands on the requirement that an institution must be authorized by a State in order to participate in Title IV funding. State authorization is currently required by the Higher Education Act, and it is not at all clear to me what value would be added by these new—and confusing—requirements. However, this clearly opens the door to have states impose requirements that go well beyond authorizing an institution to offer postsecondary education. My concern is that there appear to be no limits to what factors a state can consider when granting or withholding authorization, and no mechanisms for appeal or due process.

For instance, what if an institution were denied state authorization because of a practice stemming from its religious mission? This would disqualify the college or university from participation in Title IV programs. As the president of a Christian institution, I am acutely aware that religion and religious practices can sometimes invoke strong reactions in people, reactions that can sometimes motivate certain political positions and actions opposing religious practices and institutions. That is why prior higher education legislation has contained strong religious exemptions. The Department's new regulations, however, do not actually create a religious exemption. Instead, they delineate a very small category of institutions that are eligible to be exempted under state law, if the state should choose to do so. This category of schools eligible for a state religious exemption is so narrowly defined that Huntington University and schools like us would not qualify. In fact, not one member of the Council for Christian Colleges and Universities would qualify for an exemption as outlined by the new regulations.

This prospect is very troubling and is widely shared as a concern by my fellow Christian college presidents. I do not want to have our students' eligibility to receive Title IV funding placed solely in the hands of a political state entity, with no possibility of religious exemption.

In addition, the possibility exists that certain states may use this new state authorization leverage to achieve their own higher education policy agenda at the expense of the mission of the institution. For instance a state could require certain curriculum or textbooks in order to gain authorization, violating both the academic prerogatives and religious convictions of the institutions. This would have the effect of putting colleges and universities in the position of choosing between state authorization and the ability to freely engage in their religious missions.

According to some legal analysts, my state of Indiana is one of several states that would not be in compliance with the Department's regulations concerning state authorization. Although Huntington University has operated effectively for more than a century, new legislation might be needed to establish the state authorization required by these new regulations.

My institution was founded in 1897 and has always been recognized by the state, and was formally authorized by statute since 1965. There has never been a problem or question about its authorization. Although the Department's new regulations require it, my state never saw a need to write institutional names into the law. It is unfortunate that, through a seemingly small requirement, the new rules open the potential for the state to take these new requirements as an opportunity to involve

itself in areas that have not been the purview of the state before, such as curriculum or institutional mission.

The Department's regulations require additional state regulation and oversight, without any offsetting reduction in federal regulation or oversight. The burden of compliance will increase, driving up costs. The price of higher education goes up when layers of government create well-intentioned but burdensome rules and regulations. Every dollar spent on compliance is a dollar that is not being spent on educating a student to succeed and contribute to society.

This scenario brings to mind past experience with the 1992 reauthorization of the Higher Education Act. The legislation required the establishment of a State Post Secondary Review Entity, or SPRE, in every state. While the effort was trumpeted as a way to increase accountability in higher education, the actual result was the multiplication of state and federal intrusions into the operations of colleges and universities. The SPRE concept severely eroded the independence of private colleges and universities and led to, in the words of one commentator, "haphazard and capricious regulatory enforcement."[i] In 1994, the Department of Education notified nearly 2,000 institutions that they had failed to meet certain criteria. SPRE was fiercely opposed by those who championed a smaller, less intrusive federal government. Fortunately, Congress defunded the SPRE project and ended implementation in March 1995.

Now, in 2011, it appears we are heading down the same misguided path with the new regulations promulgated by the Department of Education and due to be implemented in July.

Let me conclude by assuring you that my concerns are not intended to deny the need for accountability and excellence in higher education, or out of a concern that Huntington University would not meet quality standards. To the contrary, Huntington University has a proven track record with the Department of Education, with our accrediting organization, and with third-party observers such as U.S. News & World Report, which ranks Huntington among the Midwest's top ten regional colleges and among the region's top five best values. Huntington University is providing our students with an excellent education and equipping them for the future.

Rather, I oppose these regulations because they unnecessarily interfere with the good work that my institution and many others are doing, because they have the likelihood of raising costs without delivering value to students, and because they create the potential for misunderstanding, misapplication, and even mischief by politically motivated state actors.

I appreciate your time here today and look forward to answering your questions.

STATEMENT OF KATHLEEN TIGHE, INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION

Ms. TIGHE. Thank you Chairwoman Foxx, Ranking Member Hinojosa, and members of the subcommittee.

Thank you for inviting me here today to discuss the Office of Inspector General's work involving issues impacting the higher education community, specifically our work regarding the definition of a credit hour.

Currently, the federal student aid programs are primarily dependent on the credit hour for making award decisions as are other forms of aid including state student aid programs and certain programs administered through the U.S. Department of Veterans Affairs and the Department of Defense.

The credit hour is the most basic unit for determining the amount of federal student aid provided to students and funded by taxpayers. As the credit hour is a proxy measure of a quantity of student learning in exchange for financial assistance, it is in the federal interest to ensure that students are receiving an appro-

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[i] David L. Warren "Why Faculty Should Care about Federal Regulation of Higher Education," Academe, July-August 1994: 19, cited in Terese Rainwater, "The Rise and Fall of SPRE: A Look at Failed Efforts to Regulate Postsecondary Education in the 1990s," American Academic, March 2006: 107.

priate amount of funding and instruction and that taxpayer money is being used properly.

Last year I testified before the full committee providing an extensive view of how the need for a definition of a credit hour evolved, and our work involving accrediting agencies. Because the role they play is vital—accreditation is one of the primary requirements for an institution's participation in the federal student aid programs and determines whether academic programs merit taxpayer's support—the Department is dependent on accrediting agencies to ensure that institutions provide quality content and academic rigor at the postsecondary level as it is itself prohibited from determining the quality of education funded by federal dollars.

All the Department can do with regard to evaluating the quality of postsecondary education, is recognize accrediting agencies as reliable authorities for the quality of education funded by federal dollars.

In anticipation of the 2009-2010 higher education negotiated rule making sessions, we updated work we had previously done that examined accrediting agencies definitions of program length and credit hour. Again, we found that none of the accrediting agencies—the regional accrediting agencies we reviewed—defined a credit hour or provided guidance on the minimum requirements for the assignment of credit hours.

The definition of a credit hour protects students and taxpayers from inflated credit hours, the improper designation of full-time student status, the over awarding of federal student aid funds, and excessive borrowing by students, especially with distance, accelerated and other programs not delivered through the traditional classroom format.

As the Department is prohibited from developing the minimum criteria for an accrediting agency's standards for accreditation or making determinations on curriculum and educational quality, it is not unreasonable for the Department to expect an accrediting agency to have developed its own minimum standards.

The Department's new definition of a credit hour is based on the current funding assumption that a full-time student is academically engaged full time. To the extent that a full-time student is not expected by an institution or the institution's accrediting agency to be academically engaged on a full-time basis, federal student aid may in fact be over awarded.

The OHE is required by the Inspector General Act to review and make recommendations regarding proposed regulations and statutes. In fulfilling this role we have provided the Department with information on a credit hour for its proposed program integrity regulations.

Based on our work we also recommended that the definition of a credit hour include a requirement that accrediting agencies evaluate the assignment of credit hours.

The Department's new regulations reflect our recommendations. We will monitor the implementation of this and all the Department's new regulations and we will do whatever we can to ensure that the new regulations assist in protecting our nation's students, parents, and taxpayers.

Thank you, very much.

[The statement of Ms. Tighe follows:]

Prepared Statement of Kathleen S. Tighe, Inspector General, U.S. Department of Education

Chairwoman Foxx, Ranking Member Hinojosa, and members of the Subcommittee: Thank you for inviting me here today to discuss the U.S. Department of Education (Department) Office of Inspector General's (OIG) work involving issues impacting the higher education community. I appreciate the opportunity to share with you information on our efforts to ensure integrity and efficiency in the Federal student aid programs and operations. I look forward to working with this Subcommittee to help ensure these programs meet the needs of America's students and families.

In today's testimony, I will discuss our work involving the definition of a credit hour—a critically important issue in the Federal student aid programs, as the amount of Federal student aid a student receives is based on the number of credit hours the student is enrolled in. This issue has become even more significant as online education has dramatically increased in recent years, making credit hour assignment difficult, and its comparison to traditional classroom delivery a challenge because online education generally does not involve a scheduled time or time commitment.

Currently, the Federal student aid programs are primarily dependent on the credit hour for making award decisions, as are other forms of aid, including state student aid programs and certain programs administered through the U.S. Department of Veterans Affairs and Department of Defense. The Department of Education has stated that a credit hour is a unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an educational institution. The credit hour is the most basic unit for determining the amount of Federal student aid provided to students and funded by taxpayers. A credit hour is a proxy measure of a quantity of student learning in exchange for financial assistance. It is in the Federal interest to ensure that students are receiving an appropriate amount of funding and instruction and that taxpayer money is being used properly.

Last year, I testified before the full Committee, providing an extensive explanation of how the need for a definition of a credit hour evolved and our work involving accrediting agencies and how they approach ensuring the adequacy of the assignment of credit hours. I have attached a copy of that testimony, which provided a history of our work in this area, detailed our findings, and identified the need for a clear definition of a credit hour for the purposes of awarding Federal student aid.

As stated in that testimony, the role of accrediting agencies is vital: accreditation is one of the primary requirements for an institution's participation in the Federal student aid programs.

Under the Higher Education Act of 1965, as amended (HEA) and the implementing regulations, the Department is dependent on accrediting agencies recognized by the Secretary of Education to ensure that institutions provide quality, content, and academic rigor at the postsecondary level. The Higher Education Opportunity Act of 2008 included a provision that prohibits the Department from developing minimum regulatory criteria for an accrediting agency's standards for accreditation. The Department of Education Organization Act prohibits the Department from making determinations on curriculum and educational quality. Thus, the Department is prohibited from determining the quality of education funded by Federal education dollars. All it can do with regard to the quality of postsecondary education is recognize accrediting agencies as reliable authorities for the quality of education funded by Federal dollars.

One of the primary roles of the OIG is to protect Federal taxpayer dollars funding the Department's programs and operations. Due to changes in the higher education regulations, we became concerned that the interests of students and taxpayers might not be protected. As a result, in 2002-2003 we examined accrediting agencies' definitions of program length and a credit hour. These efforts found that none of the regional accrediting agencies reviewed defined a credit hour and none of the regional accrediting agencies provided guidance on the minimum requirements for the assignment of credit hours. While the national accrediting agencies we reviewed defined a credit hour, the definitions only included hours of instruction, not expectations for outside academic engagement.

In anticipation of the 2009-2010 higher education negotiated rulemaking sessions, where the definition of a credit hour was to be discussed, OIG once again examined this issue in order to provide the Department with facts for its work on the definition of a credit hour and to provide information to Congress on the state of the defi-

nition of a credit hour at regional accrediting agencies. Again, we found that none of the regional accrediting agencies we reviewed defined a credit hour and none of the regional accrediting agencies provided guidance on the minimum requirements for the assignment of credit hours.

The definition of a credit hour protects students and taxpayers from inflated credit hours, the improper designation of full-time student status, the over-awarding of Federal student aid funds, and excessive borrowing by students especially with distance, accelerated, and other programs not delivered through the traditional classroom format. As the Department is prohibited from developing minimum criteria for an accrediting agency's standards for accreditation or making determinations on curriculum and educational quality, it is not unreasonable for the Department to expect an accrediting agency to have developed its own minimum standards.

The Federal student aid programs assume that a full-time student enrolled in 12 credit hours is engaged in full-time study. The Department's definition of a credit hour is based on the current funding assumption that a full-time student is academically engaged full-time. The Department's definition is based on the common understanding that a full-time student is expected to spend 12 hours in class and 2 hours in outside academic engagement for each hour in class, resulting in 36 hours of academic engagement a week—the approximate equivalent of a full-time job. To the extent that a full-time student is not expected by an institution or the institution's accrediting agency to be academically engaged on a full-time basis Federal student aid may be over-awarded.

The OIG is required by the Inspector General Act of 1978, as amended, to review and make recommendations regarding proposed regulations and statutes. In fulfilling this role, we provided the Department with information on a credit hour for its proposed program integrity regulations. Based on our work, we recommended that the definition of a credit hour include a requirement that accrediting agencies evaluate the assignment of credit hours to new courses and on an ongoing basis to evaluate whether courses offered by an institution have maintained the credit hour value assigned to them. The Department's regulations reflect our advice and protect both students and taxpayers by including a definition of a credit hour that seeks to ensure equity in funding across institutions and among students based on the level of academic engagement and to help ensure appropriate funding based on the concept of a full-time student being academically engaged full-time.

It is important to note, however, that even with strong requirements concerning credit hours, it could take up to 10 years to implement the regulation and for students and taxpayers to feel confident that the credit hours assigned to a course are appropriate and that value is being received. The regulation relies on the cycle of accreditation to review an institution's compliance with the new rule, but institutions are generally only required to be reaccredited every 10 years. As such, the Department will need to be vigilant to ensure the effectiveness of this new regulation and determine whether further changes are needed. We will monitor the implementation of this and all of the Department's new regulations and will do whatever we can to ensure that the new regulations assist in protecting our nation's students, parents, and taxpayers.

This concludes my written statement. I am happy to answer any of your questions.

Chairwoman FOXX. Mr. Wolff.

STATEMENT OF RALPH WOLFF, PRESIDENT, WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

Mr. WOLFF. Thank you.

Chairwoman Foxx, Ranking Member Hinojosa, members of the subcommittee, my name is Ralph Wolff. I have been introduced, the President of the Western Association of Schools and Colleges.

I want to speak about both of these regulations because not only did I participate in the negotiation of them and expressed concerns there, I have been hearing from dozens of institutions and meeting with state representatives who also are greatly confused and concerned about them.

First, I would like to address the state authorization regulation, expressly it was stated that this was to address a problem that

arose in California several years ago. New legislation has been adopted so that issue has been resolved and we do not feel there is ample justification for the final regulation now adopted by the Department.

In addition, we have several other concerns. For the first time the regulation establishes specific federal criteria that all states must conform to rather than relying on the judgment of each of the states for determining what is appropriate state licensure.

Secondly, the impact of the regulation is unclear. During the course of negotiations we had a legal memorandum which I would like to submit to—for the record that found that as many as 37 states would need to modify their licensing statutes in one way or another. The Department has failed to provide a list of which states would need to make what changes.

That has left states confused and as I said, states are not quite sure what is required to come into compliance. With respect to student complaints, there is confusion what the new act or the new regulations, excuse me, will require states to do.

Whether existing rules or a new process must be established and how it will overlap with that already required and undertaken by accrediting agencies.

You have heard already about the impact on religious and faith based institutions and distance education programs. We are hearing from a number of institutions, of both types, expressing serious concern about these regulations.

Finally, there is no provision for enforcement, how this new regulation will be enforced and how states will know they have come into appropriate compliance. And an entire state's financial aid is at risk if compliance is not found to be in place.

Establishing an enforcement system would be a problem in and of itself. In sum, this regulation fails to address a clearly stated problem, creates significant confusion, and will represent a major burden on states and institutions far exceeding the problem being addressed.

Next, I would like to turn to the credit hour regulation on which we have spent a lot of time in negotiated rule making. Again, this does stem from the targeted review by the Inspector General's Office that focused on one institution in one region.

As reflected in earlier comments before and in the response to the Inspector General's report, the accreditor had already identified the problem, had worked with the institution to resolve it and we think that the situation was effectively dealt with.

But for the first time a federal definition is now being established for every course at every institution that receives financial aid, we are talking about millions of courses. Institutional accrediting agencies such as WASC must require compliance with this federal definition in all of our comprehensive reviews. We have several major concerns with respect to this regulation.

First, we believe that the federal definition intrudes on the work of faculty across the country and will force faculty to fit their credit hour assignments to the federal definition rather than what they think is most appropriate.

Secondly, it gives primary emphasis to seat time which is an outdated model of measuring quality.

Third, there is an enormous cost to be realized in implementing this, in real dollars, and a shift in focus from the most important goals which are to increase completions of degree programs and improving quality of learning.

Finally, it will expand the potential of federal intrusion as the Department and the National Advisory Committee on the Institutional Quality question and review the effectiveness of accrediting review, the size of our sampling, ultimately we believe, federalizing the entire system of credit awards.

We have done a lot to improve quality at WASC; other regional accreditors are doing the same. We believe that we have focused on the right issues by improving attention to completion.

We request that, with the 70 other higher educational organizations, supporting letters introduced by The American Council of Education, that these two regulations be withdrawn. If not, at least suspended for one year, until these issues may be worked out.

[The statement of Mr. Wolff follows:]

Prepared Statement of Ralph A. Wolff, President, the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC)

Chairwoman Foxx, ranking member Hinojosa, 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 institu-

tional 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.

Mr. WOLFF. And I would like to submit both of those letters into the record.

[The information follows; a Feb. 16, 2011, letter is on page 77:]

TO: RALPH WOLFF, BARBARA BENO
FROM: LAURENCE W. KESSENICK, DANIEL I. ZACHARIA
DATE: JUNE 30, 2010

RE: *State by State Analysis (34 C.F.R. § 600.9)*

This memorandum is our response to your request that we evaluate the impact on the State licensure schemes of the 50 States of a regulation, proposed by the U.S. Department of Education ("DOE "), identified as 34 C.F.R. §600.9 in the Federal Register, dated June 18, 2010 (the "Proposed Regulation ").

Existing federal law requires that, as a condition for eligibility for Title IV funding, private postsecondary institutions are legally authorized to operate within the States in which they are issuing degrees. Under the Proposed Regulation, an institution will not be considered legally authorized unless all of the following four conditions exist: (1) the State in which the institution operates has a method of formally approving of the institution, whether by charter, license or other document issued by an appropriate State agency or entity;[1] (2) the authorization is specifically for programs beyond secondary education;[2] (3) the authorization is subject to adverse action by the State;[3] and (4) the State reviews and acts on complaints concerning an institution and enforces applicable State laws.[4] In order to study the potential impact of the Proposed Regulation on the educational statutory schemes of the 50 States, we attempted to measure each state's licensure scheme against the above four conditions. To that end, we asked four questions:

(1) Does the State have a system of laws that grant private postsecondary degree granting institutions approval or authority to operate in the State?

(2) Is the approval or authority to operate granted by the State specifically for programs beyond secondary education?

(3) Is the approval or authority to operate granted by the State subject to adverse action by the State?

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[1] Subsection (a)(1) of the Proposed Regulation.
[2] Subsection (b)(1) of the Proposed Regulation.
[3] Subsection (b)(2) of the Proposed Regulation.
[4] Subsection (b)(3) of the Proposed Regulation.

(4) Does the State have a process to review and appropriately act on complaints concerning an institution and enforce applicable State laws?

We evaluated each State's laws under the premise that the laws would not comply with the Proposed Regulation if the answer to any of the four above questions is "no" with respect to a particular State's laws. If this is the case, the noncompliant State will either have to amend its existing laws, or adopt new laws, to bring itself into compliance with the Proposed Regulation. Otherwise, private postsecondary schools operating within those States face the prospect of losing their Title IV eligibility. In this regard, there is a large degree of ambiguity in the meaning and application of the terms of the Proposed Regulation. It is uncertain, for example, whether a State can rely on existing federal laws that relate to the accreditation of institutions receiving Title IV funds in fulfilling its "adverse action" responsibilities under condition (3), above. It is also uncertain whether State enforcement of laws unrelated to institutional licensure, such as common law fraud or false advertising laws, for example, could be used to meet condition (4), above. Accordingly, in many instances our evaluation could not determine with any certainty whether the laws will comply with the Proposed Regulation or not. In addition, please keep in mind that memo's conclusions with respect to each State were limited by time constraints, and that it is possible that State statutory or regulatory schemes beyond those identified below may impact the determination of the State's compliance with the Proposed Regulation. We do not practice law in 49 of the 50 states we evaluated. Therefore we cannot presume to be experts with respect to these States. It is quite possible that we missed relevant laws simply because we are not familiar with each States' overall statutory schemes.

The results of the State-by-State analysis are as follows:

- the laws of twelve (12) States will, in our opinion, comply with the Proposed Regulation;
- the laws of six (6) States will, in our opinion, clearly not comply with the Proposed Regulation;
- the laws of thirty two (32) States will probably not comply with the Proposed Regulation (i.e., it is doubtful that the laws of these States will comply with one or more of the four criteria).

Based on these results, it is likely that a total of thirty eight (38) States will have to amend, repeal or otherwise modify their laws to comply with the Proposed Regulation. We provide the complete analysis, in alphabetical order, below:

1. Alabama. It is doubtful that Alabama law will comply with the Proposed Regulation. Although Alabama has a state licensure scheme, Alabama exempts schools from licensure on the basis of age or accreditation. Moreover, the law provides that such exemption "shall not be construed to constitute approval or endorsement by the State of Alabama for any purpose." (See Code of Ala. § 16-46-3. Contrast this with States that have exemptions from licensure schemes, but grant express approval on the grounds of such exemption, such as California's Education Code § 94890.) Current law probably does not meet criteria 1, 2, and 4.

2. Alaska. Alaska law should comply with the Proposed Regulation. It has a state licensure scheme, which includes adverse actions, review of complaints and enforcement. The exemption for accredited schools is discretionary. (See Alaska Stat. § 14-48-010.) Current law probably meets all four criteria.

3. Arizona. Arizona law should comply with the Proposed Regulation. The current law requires that an institution must be licensed by the State. The State Board for Private Postsecondary Education has adequate review and enforcement capability. (See A.R.S. § 32-3001 et seq.) Current law probably meets all four criteria.

4. Arkansas. Arkansas law will comply with the Proposed Regulation. Through the Arkansas Higher Education Coordinating Board, the State has an adequate system for authorization, review and enforcement. (See A.C.A. § 6-61-301 et seq.) Current law meets all four criteria.

5. California. It is doubtful that California law will comply with the Proposed Regulation. Although California recently enacted the California Private Postsecondary Education Act of 2009 (Cal. Ed. Code § 94800 et seq.), and implementing regulations (5 C.C.R. § 70000 et seq.), it is unclear whether California would be deemed to have sufficient authority over WASC accredited institutions, which are exempt. Current probably meets criteria 1, 2, and 3, but probably not criterion 4.

6. Colorado. It is doubtful that Colorado law will comply with the Proposed Regulation. Colorado has a state licensing scheme that requires state authorization and contains review standards that possibly comply with the Proposed Regulation; however, the scheme includes an exemption for accredited institutions. (See C.R.S. § 23-2-103.3.) Current law probably does not meet criteria 1, 2, and 4 with respect to exempt institutions.

7. Connecticut. It is doubtful that Connecticut law will comply with the Proposed Regulation. The State licenses and accredits private postsecondary institutions, and monitors them for compliance with its licensing laws, although there is a State exemption for programs accredited before 1965. (See Conn. Gen. Stat. § 10a-34.) With respect to exempt institutions, current law probably does not meet criteria 1, 2, and 4.

8. Delaware. It is doubtful that Delaware law will comply with the Proposed Regulation. Although there is a state licensure scheme, the State exempts accredited institutions and relies on accrediting agencies to conduct state authorization review. (See C.D.R. § 14-200.) Current law probably does not meet criteria 1, 2, and 4.

9. Florida. Florida law will probably comply with the Proposed Regulation. There is a State licensure scheme, but the State exempts institutions that are granted licenses based on accreditation. However, exempt accredited institutions must still comply with the standards of fair consumer practices established by the State, and the State has the discretion to limit or revoke the exemption (See Fla. Stat. § 1005.32.). Current law probably meets all four criteria.

10. Georgia. It is doubtful that Georgia law will comply with the Proposed Regulation. Although there is a state licensure scheme, and Georgia's State authorization review standards arguably comply with the requirements of the Proposed Regulation, the State law currently exempts institutions on the basis of accreditation, age and non profit status. (See O.C.G.A. § 20-3-250.3.) With respect to exempt institutions, current law will probably not meet criteria 1, 2 and 4.

11. Hawaii. Hawaii law will not comply with the Proposed Regulation. Hawaii does not have a traditional licensure scheme. Institutions accredited by an agency recognized by the U.S. DOE are exempt from regulation by the State (H.R.S. § 446E-1.6); unaccredited institutions must simply comply with a short list of disclosures mandated by the State that fall short of complying with the State authorization review component of the Proposed Regulation (H.R.S. § 446E-2). Current law would not meet any of the four criteria.

12. Idaho. It is doubtful that Idaho law will comply with the Proposed Regulation. The State laws provide for the licensing and review of institutions, and enforcement of State laws, but exempt nonprofit institutions. (See Idaho Code § 33-2402, and implementing regulations, IDAPA 08.01.11.001.) With respect to exempt institutions, current law will probably not meet criteria 1, 2, and 4.

13. Illinois. It is doubtful that Illinois law will comply with the Proposed Regulation. Under the Private College Act (110 ILCS § 1005/0.01) and the Academic Degree Act (110 ILCS § 1010/0.01), Illinois licenses and reviews institutions. However, the Private Business and Vocational Schools Act exempts certain postsecondary vocational schools that would be subject to the Proposed Regulation (See 105 ILCS 425/1.1). With respect to exempt institutions, current law will probably not meet criteria 2, 3, and 4.

14. Indiana. Indiana law will not comply with the Proposed Regulation. Indiana has no state licensure scheme in place for private postsecondary institutions with regional accreditation, nor any laws that address the state's responsibility to conduct state authorization review. Indiana would have to enact comprehensive legislation to comply with the Proposed Regulation. Current law does not comply with any of the four criteria.

15. Iowa. It is doubtful that Iowa law will comply with the Proposed Regulation. Although Iowa has a registration system for private postsecondary institutions, there is an exemption for accredited institutions, and Iowa does not have standards for state authorization review. (See Iowa Code §§ 261B.3A, 261B.11.) With respect to exempt institutions, current law probably will not meet criteria 1, 2, and 4.

16. Kansas. It is doubtful that Kansas law will comply with the Proposed Regulation. The State requires State approval for all private postsecondary institutions, without exception, and has the ability to suspend that approval. However, regulations for State review do not apply to accredited institutions. (See K.S.A. § 74-32,162, and see K.A.R. § 88-28-4.) Current law probably meets criteria 1, 2, and 3, but, with respect to accredited institutions, may not meet criterion 4.

17. Kentucky. It is doubtful that Kentucky law will comply with the Proposed Regulation. Although Kentucky has a state licensure scheme, and system for State review, the State may exempt of schools from licensure on the basis of accreditation. (13 KAR § 1:020.) Current law may not meet criteria 1, 2 and 4 with respect to exempt institutions.

18. Louisiana. It is doubtful that Louisiana law will comply with the Proposed Regulation. The current law requires that an institution must be licensed by the State; but the State expressly allows accrediting agencies to conduct statute authorization review activities. (See LAC 28:IX.Chapters 1-5, 32 LR 386.) Current law probably meets criteria 1, 2 and 3, but not criteria 4.

19. Maine. Maine law will probably comply with the Proposed Regulation. Maine has a state licensure scheme, and although it exempts certain schools from licensure, the State reserves the right to review institutions for exemption status on a case by case basis. (See 20-A M.R.S. § 10708; and see C.M.R. § 05-071-149.) Current probably meets all four criteria.

20. Maryland. Maryland law will comply with the Proposed Regulation. The State has an approval process for private postsecondary institutions, which is subject to State review and action. (See COMAR 13B.02.03, and 13B.02.02.08.) Current law meets all four criteria.

21. Massachusetts. Massachusetts law will comply with the Proposed Regulation. The State Board of Higher Education fulfills all of the duties required. (See 610 CMR 2.01 et seq.) Current law meets all four criteria.

22. Michigan. Michigan law will not comply with the Proposed Regulation. We could not locate a State system of licensing and review for private postsecondary educational institutions. Current law does not appear to meet any of the four criteria.

23. Minnesota. Minnesota law will comply with the Proposed Regulation. (See Minn. Stat. § 136A.61 et seq.) Current law meets all four criteria.

24. Mississippi. It is doubtful that Mississippi law will comply with the Proposed Regulation. Although there is a state licensure scheme, the State exempts institutions that are accredited by S.A.C.S. from its licensing process and standards. (See Miss. Code Ann. § 37-101-241.) With respect to exempt institutions, current law probably will not meet criteria 1, 2, and 4.

25. Missouri. Missouri law will not comply with the Proposed Regulation. We could not locate a State system of licensing and review for private postsecondary educational institutions. Current law does not appear to meet any of the four criteria.

26. Montana. Montana law will not comply with the Proposed Regulation. The State's private postsecondary licensure scheme was repealed and Montana does not regulate private postsecondary degree granting institutions. (See former Mont. Code Anno., § 20-30-101.) Current law does not meet any of the four criteria.

27. Nebraska. Nebraska law will not comply with the Proposed Regulation. The State only requires approval for private postsecondary institutions created after September 1, 1999. (See R.R.S. Neb. § 85-1105.) Current law does not meet any of the four criteria.

28. Nevada. It is doubtful that Nevada law will comply with the Proposed Regulation. The State requires licensure for all private postsecondary degree granting institutions operating in Nevada; however, the State accepts accreditation in lieu of compliance with its minimum standards, including those pertaining to consumer protection. (See Nev. Rev. Stat. Ann. § 394.415, and § 394.447.) Current law meets criteria 1, 2, and 3, but will probably not meet criterion 4 with respect to accredited institutions.

29. New Hampshire. It is doubtful that New Hampshire law will comply with the Proposed Regulation. The State has a system of approving institutions, but may accept accreditation by a U.S. DOE recognized institutional accrediting agency in lieu of State review. (See N.H. Admin. Rules, Pos 1001.05) With respect to accredited institutions, current law probably meets criteria 1, 2 and 3, but may not meet criterion 4.

30. New Jersey. New Jersey law will comply with the Proposed Regulation. The State has a comprehensive system of licensure, review and enforcement. (See N.J. Stat. § 18A:3B-1.) Current law meets all four criteria.

31. New Mexico. It is doubtful that New Mexico law will comply with the Proposed Regulation. New Mexico exempts from state licensure and state authorization review all private postsecondary institutions accredited by a regional accrediting agency recognized by the U.S. DOE. (N.M. Stat. Ann. § 21-23-4.) With respect to exempt institutions, current probably does not meet criteria 1, 2, and 4.

32. New York. New York law should comply with the Proposed Regulation. (See N.Y. C.L.S. Educ. § 224.) Current law meets all four criteria.

33. North Carolina. It is doubtful that North Carolina law will comply with the Proposed Regulation. Although North Carolina licenses and reviews private postsecondary institutions, it exempts from licensure and state authorization review all institutions that have continuously conducted post-secondary degree activity in the State since July 1, 1972. (See N.C. Gen. Stat. § 116-15.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

34. North Dakota. It is doubtful that North Dakota law will comply with the Proposed Regulation. Although North Dakota licenses and reviews private postsecondary institutions for compliance with its consumer protection laws, it exempts all private four-year institutions chartered or incorporated and operating in the state

prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the U. S. DOE. (See N.D. Cent. Code, § 15-20.4-02.) With respect to exempt institutions, current law will probably not meet criteria 1, 2 and 4.

35. Ohio. Ohio law will probably comply with the Proposed Regulation. Private postsecondary institutions are subject to a comprehensive State licensure, review and enforcement scheme. (See ORC Ann. 1713.01 et seq.). Current law probably meets all four criteria.

36. Oklahoma. It is doubtful that Oklahoma law will comply with the Proposed Regulation. Oklahoma exempts from state authorization all degrees offered by a private postsecondary institution accredited by an accrediting agency recognized by the U.S. DOE. (70 Okl. St. § 4104.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

37. Oregon. It is doubtful that Oregon law will comply with the Proposed Regulation. Oregon exempts from state authorization degrees offered by nonprofit postsecondary institutions. (ORS § 348.604.) With respect to exempt nonprofit institutions, current law probably will not meet criteria 1, 2 and 4.

38. Pennsylvania. It is doubtful that Pennsylvania law will comply with the Proposed Regulation. The State certifies and reviews private postsecondary institutions, but exempts institutions incorporated on or before September 1, 1937. (24 Pa.C.S. § 6503.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

39. Rhode Island. It is doubtful that Rhode Island law will comply with the Proposed Regulation. Rhode Island requires State approval and review, but exempts certain institutions. (See R.I. Gen. Laws § 16-40-1§ et seq., and 16-59-1 et seq.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

40. South Carolina. It is doubtful that South Carolina law will comply with the Proposed Regulation. South Carolina licenses private postsecondary institutions, but exempts those domiciled within the State and accredited by S.A.C.S. (See S.C. Code Ann. § 59-58-30.) With respect to exempt institutions, current probably will not meet criteria 1, 2 and 4.

41. South Dakota. It is doubtful that South Dakota law will comply with the Proposed Regulation. South Dakota has a State approval and accreditation process for most nonpublic postsecondary institutions; however, South Dakota allows accreditation by an "external third-party accreditation agency" as an alternative means of approval for nonpublic schools. (See ARSD 24:43:04:01; and ARSD 24:43:04:03.) Current law probably will not meet criteria 1, 2, and 4.

42. Tennessee. It is doubtful that Tennessee law will comply with the Proposed Regulation. Tennessee licenses and reviews institutions, but exempts institutions that are located and domiciled in Tennessee for at least ten (10) consecutive years and accredited by S.A.C.S. (See Tenn. Code Ann. § 49-7-2001, and § 49-7-2004.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

43. Texas. It is doubtful that Texas law will comply with the Proposed Regulation. Texas requires State licensure or certification, and compliance with comprehensive consumer protection laws; however, these laws do not apply to institutions accredited by a regional accrediting agency recognized by the U.S. DOE. (See Tex. Educ. Code § 61.303; and 19 TAC § 7.4.) With respect to exempt institutions, current law probably will not meet criteria 1, 2 and 4.

44. Utah. It is doubtful that Utah law will comply with the Proposed Regulation. Utah has a registration system for private postsecondary institutions, and requires compliance with comprehensive consumer protection laws; however, these laws do not apply to institutions accredited by a regional accrediting agency recognized by the U.S. DOE. (See Utah Code Ann. § 13-34-105.) With respect to exempt institutions, current law probably will not meet criteria 1, 2 and 4.

45. Vermont. It is doubtful that Vermont law will comply with the Proposed Regulation. Although the State requires state board approval, and reviews institutions in accordance with federal standards established in 20 U.S.C. § 1099a-3. (16 V.S.A. § 2882.), it exempts religious institutions, and institutions accredited by an accrediting agency recognized by the State Board. (See 16 V.S.A. § 176.) With respect to exempt institutions, current law will probably not meet criteria 1, 2 and 4.

46. Virginia. It is doubtful that Virginia law will comply with the Proposed Regulation. Virginia requires State licensure or certification, and compliance with comprehensive consumer protection laws; however, these laws do not apply to religious institutions, or nonprofit institutions accredited by an agency recognized by the U.S. DOE, or accredited institutions in operation for at least 10 years at the time the state legislation was passed. (See Va. Code Ann. § 23-276.2; and § 23-276.4.) With respect to exempt institutions, current law will probably not meet criteria 1, 2 and 4.

47. Washington. It is doubtful that Washington law will comply with the Proposed Regulation. Washington requires State licensure or certification, and compliance with comprehensive consumer protection laws; however, Washington's regulatory scheme does not apply to private postsecondary institutions that are religious oriented, or accredited by an agency recognized by the state board and have been operating within the state for 15 years or more. (See Rev. Code Wash. (ARCW) § 28B.85.010 et seq.; and WAC § 250-61-060.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

48. West Virginia. It is doubtful that West Virginia law will comply with the Proposed Regulation. The State requires licensure and compliance with comprehensive consumer protection laws (See W. Va. Code § 18B-4-7); however, it exempts institutions approved to operate in West Virginia prior to July 1, 2006, and waives significant levels of state authorization review for institutions accredited by regional accrediting associations. (See W. Va. CSR § 133-20-9; and W. Va. CSR § 133-20-4.) With respect to exempt institutions, current law may not meet criteria 1, 2 and 4.

49. Wisconsin. It is doubtful that Wisconsin law will comply with the Proposed Regulation. The State approves and reviews private postsecondary institutions, but exempts institutions accredited by accrediting agencies recognized by the State board. (See Wis. Stat. § 38.50.) With respect to exempt institutions, current law will probably not meet criteria 1, 2 and 4.

50. Wyoming. Wyoming law will probably comply with the Proposed Regulation. Wyoming requires State licensure for all private postsecondary degree-granting institutions (See Wyo. Stat. § 21-2-401 et seq.; and W.C.W.R. § 005-000-030). Current law probably meets all four criteria.

AMERICAN COUNCIL ON EDUCATION

OFFICE OF THE PRESIDENT

March 2, 2011

Secretary Arne Duncan
U.S. Department of Education
LBJ Education Building, Room 7W311
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the 60 higher education associations and accrediting organizations listed below, I write to express our serious concerns regarding the state authorization regulations in Section 600.9 of the Oct. 29, 2010, final program integrity rule. These final regulations significantly expand and complicate the existing federal requirements for institutions to be "legally authorized" in a state. While the final rule reflects changes from the draft proposal, these changes do not address the concerns we raised during the rulemaking process. In addition, the final rule includes an entirely new and problematic provision regulating distance education programs.

We request the department's immediate assistance in addressing our concerns.

I. General state authorization requirements and potential for state overreach

Since its inception, the Higher Education Act has required that an institution of higher education be legally authorized within a state to provide postsecondary education. States have approached this authorization function in a variety of ways—particularly with respect to non-public institutions. Unfortunately, the new regulations will significantly complicate and confuse these prior efforts. We have grave concerns about this federal effort to define these relationships and do not believe it is either wise or appropriate for the federal government to pursue this course of action. Although the preamble to the new regulations includes an illustrative list of arrangements the department would consider to be either in or out of compliance, this list is inadequate to dispel confusion about what is expected of an individual institution. In addition, there is no accurate compilation of existing state requirements that might be used to gauge whether or not the policies of any given state pass muster.

The ambiguity of the regulations also raises the concern that state officials may overreach by imposing requirements on private, non-profit institutions that go well beyond the grant of authority to operate as postsecondary institutions and that have

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Web: http://www.acenet.edu

nothing to do with the program integrity objectives of the new regulations. These institutions vary widely in terms of the missions they serve, but what they share is a commitment to fulfilling those missions. Although the final regulations reflect some acknowledgement of mission-based issues in provisions relating to religious mission, they are too narrowly drawn to alleviate these broad concerns, particularly in light of the fact that they could result in state actions that would exceed the scope of the Department's intentions and interfere with religious mission.

II. Distance education requirements

Section 600.9(c) of the new state authorization regulation requires institutions offering distance education programs to: (1) meet any state requirements necessary to be legally offering postsecondary distance education in that state, and (2) upon request, document to the secretary the state's approval. This rule essentially places the federal government in the role of enforcing state statutes—a role inappropriate for it to assume. We support the right and responsibility of states to regulate the quality and nature of the education being delivered within their respective borders. In cases where a state notifies an institution that it is not in compliance with state regulations, the institution must take appropriate steps to bring itself into compliance. Distance education providers have a responsibility to fully comply with state law, even though this can be challenging. States can and do enforce their own distance education laws, and the prior absence of a federal regulation on this topic has in no way hindered their efforts.

Even more troubling is the fact that there is no way to guarantee that an institution has met the department's interpretation of any state's regulations, and no way for an institution to ensure it would satisfy these federal interpretations if audited. Furthermore, if an institution is unable to obtain the federally required documentation by July 1, it will be forced to discontinue enrolling students from that state, even though it has fully complied with all state distance education requirements. Failure to do so could threaten Title IV eligibility for the entire institution.

Because of these uncertainties, this new rule could force campuses to pull back on legitimate and creative distance education programs, leaving the students most in need behind. These programs are often most needed in rural states that have small and dispersed populations and where distance education opportunities are arguably most vital. In addition, these changes could have a particularly negative impact on members of the military and their families, who frequently relocate to new states, as well as other citizens who are attempting to develop new skills to successfully compete and participate in the emerging economic recovery.

Further, the final distance education regulation could seriously hamper efforts to meet the president's 2020 goal—a goal the academic community wholeheartedly supports and endorses. This concern is not theoretical. One leading public flagship university initially decided to stop enrolling students from other states after the rule was first published. Only after careful reconsideration has it reversed its original decision. If other institutions were to follow the initial path this university chose, it would come at the expense of students and our shared goal.

REQUESTED ACTION:

We believe the best course of action would be to rescind the new state authorization regulation in its entirety. This is a conclusion we have not reached lightly and only after determining that our concerns cannot be addressed through modification. As finalized, the regulation creates serious concerns for our private, non-profit institutions—in particular for religiously-affiliated and other mission-based institutions—and threatens the ability of both public and private institutions to serve students through effective distance education programs.

For these reasons, we ask you to rescind Section 600.9.[1] We thank you for your consideration of our request.

Sincerely,

Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations
American Association of Colleges for Teacher Education
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Distance Education Consortium
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Independent Colleges
EDUCAUSE
Hispanic Association of Colleges and Universities
Lutheran Educational Conference of North America
NASPA - Student Affairs Administrators in Higher Education
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

[1] As a technical matter, we note that there are requirements in Section 668.43 related to Section 600.9 that should also be eliminated.

Southern Regional Education Board
University Professional and Continuing Education Association
WICHE – Cooperative for Educational Technologies
Women's College Coalition

Accreditation Organizations
Accreditation Commission for Midwifery Education
Accreditation Council for Pharmacy Education
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Bureau of Health Education Schools
Accrediting Commission of the American Culinary Federation Education Foundation
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education and Training
Accrediting Council for Independent Colleges and Schools
Accrediting Council on Education in Journalism and Mass Communications
American Board of Funeral Service Education
American Council for Construction Education
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Specialized and Professional Accreditors
Commission on Accreditation of Allied Health Education Programs
Commission on Accrediting of the Association of Theological Schools
Commission on Collegiate Nursing Education
Commission on Institutions of Higher Education, New England Association of Schools and Colleges
Council for Accreditation of Counseling and Related Educational Programs
Council of Arts Accrediting Associations, including:
  National Association of Schools of Art and Design
  National Association of Schools of Dance
  National Association of Schools of Music
  National Association of Schools of Theatre
Council on Academic Accreditation in Audiology and Speech-Language Pathology
Distance Education and Training Council
Joint Review Committee on Education in Radiologic Technology
Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Middle States Commission on Higher Education
National Accrediting Agency for Clinical Laboratory Sciences
National Council for Accreditation of Teacher Education
National League for Nursing Accrediting Commission

Northwest Commission on Colleges and Universities
Society of American Foresters
Southern Association of Colleges and Schools Commission on Colleges
The Higher Learning Commission of the North Central Association of Colleges and Schools
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

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Chairwoman FOXX. Without objection.

Thank you all very much again, for your comments. I would like to direct this question to Mr. Ebersole, Dr. Dowden, and Mr. Wolff. I understand the Department is working on some additional guidance for these regulations and it is been our understanding that the purpose of regulations was to provide additional clarity to the statute, not to further complicate it. But if you didn't cover in your testimony, could you provide us with some of the—some examples of unanswered questions you still have about these regulations?

Mr. Ebersole.

Mr. EBERSOLE. Thank you. We have a number of questions about these regulations. We have not received guidance, even though we

have asked for and been granted one-on-one meetings with various officials within the Department of Education. We have been told that there is some form of Dear Colleague Letter which will be forthcoming. We have been waiting for a couple of months now for this.

Meanwhile the clock continues to tick towards the effective date. And we have been told by a number of states that they do not know how they are going to enforce this rule and we are going to be put in a position of jeopardy where we are either going to have withdrawn from those states or put our Title IV eligibility at risk.

We would prefer not to do either but we are quite confused at this point. We do know we have put money in our budget for compliance and we estimate that at our institution by the time we hire the additional staff that will be necessary to coordinate this and we pay the fees which each of these states requires we are going to have an annual recurring cost of somewhere between $150,000 and $200,000 which when multiplied by the number of institutions that offer online programs today, we are talking about an additional cost which will eventually be passed to students of $500 million.

Chairwoman FOXX. Dr. Dowden.

Mr. DOWDEN. I would answer that by saying that, in regards to the state authorization we, in preparation for this testimony called our state, and they at this point have no idea of how they are going to implement it, what it actually means for the state and what will be the requirements.

For the credit hour, I think the definition is obviously clear but it is confusing and how it relates to a variety of educational experiences that we offer at the institution including practicums and student teaching experiences and many other experiences that don't include the formula of the seat time and that might be difficult to figure out an equivalency as proposed in the regulations.

Chairwoman FOXX. Thank you.

Mr. Wolff.

Mr. WOLFF. Three quick comments. First, the nature of Dear Colleague Letters issued by the Department are such they offer interpretations of regulatory language that themselves need further interpretation by the staff, that vary from region, from accreditor to accreditor, when accreditors come up for review.

And institutions will not know until they have gone through their program review whether or not they have gone through their program reviews whether or not they have conformed. So it is a never ending, sub-regulatory interpretation approach.

There are so many areas of confusion, let me identify one with each of the regulations. With respect to the credit hour, the accrediting agencies are expected or allowed to sample courses to ensure the reliability and accuracy and conduct effective reviews.

The California community colleges offer over 180,000 courses, the University of California, 50,000, Stanford 10,000. Even a small middle-sized institution like the University of San Francisco offers 5,000 courses. What would be an effective sample size, how much time will it take? We don't know and we are afraid that the—any sample size will require an enormous burden on the institutions.

With respect to state authorization, for 40 years we had an arrangement with the State of California that student complaints

would be referred to WASC, we would review them, and if we found they were serious they would be referred to the Attorney General. We have no idea if that would be continued or if a completely new and duplicative complaint process would need to be established. That is just two of many areas.

Chairwoman FOXX. Thank you all very much.

Mr. Hinojosa, you are recognized for 5 minutes.

Mr. HINOJOSA. Thank you. First I would like to welcome our distinguished guests and say that I am pleased to see that Ms. Kathleen Tighe, our Inspector General, is here today.

My first question is directed to Inspector General Tighe. In your testimony you indicate that the explosion of online education in recent years has made it even more difficult to assign credit hours and assess student achievement. What are national and regional accreditation agencies doing to ensure that online education programs provide quality—that they provide content and academic rigor at the post-secondary level?

Ms. TIGHE. Well, I think that was one of the things we went in to look at when we did our review over the last couple of years. We went into three regional accrediting agencies who collectively were responsible for accrediting over 2,000 schools including schools offering online education programs.

I think the difficult problem in this area, that we have found, is when you don't have a definition of a credit hour or guidance as to program length or guidance as to assignment of a credit hour, when you have nontraditional format it is very hard to sort of make judgments as to the kinds of standards I think accrediting agencies should be making judgments on.

Mr. HINOJOSA. If you could expand Ms. Tighe, in your testimony you indicate that the definition of a credit hour protects students and taxpayers from inflated credit hours, the improper designation of full-time student status, the over-awarding of federal student aid funds and excessive borrowing by students, especially with distance, accelerated and other programs not delivered through traditional classroom format. So what type of impact do you believe this regulation will have on regional and national accrediting agencies?

Ms. TIGHE. Well, I think that they will have to do what we believe they should be doing, which is really looking at schools in a way that—I think a definition of a credit hour will allow them to have sort of a common understanding and standard to judge these schools by. It is a challenge. There is no doubt about it—in the online environment—for coming up with something that makes sense.

It appears to us that the Department has come up with a definition that provides enough flexibility to bring in student outcomes and I know those were some of the issues raised to us by HLC and Middle States also—that they relied on student outcomes and didn't want to be tied to a definition of a credit hour. I don't think those two concepts are inherently incompatible.

So I think it is really a matter for us, in the Office of Inspector General, making sure Title IV money is spent wisely and that students do not over-borrow and that taxpayers aren't on the hook where they should not be.

Mr. HINOJOSA. Thank you.

Mr. Wolff, absent a definition of a credit hour, what do your accreditation teams evaluate on campus to assess institutional assignment of credit hour?

Mr. WOLFF. Our teams—first of all, at the Western Association we have had a broad definition of a credit hour for many years. But I will say and that one other regional association does, the three that the Inspector General looked at did not have formal definition.

But every—when a team goes and visits a campus, the first thing it does is it looks at a catalog, it looks at the range of courses that are offered, the kinds of courses that are offered, and what leads up to a degree. We are very concerned about how—the capacities of a graduate, at the time the student completes their program.

We put primary attention on online programs, accelerated learning programs, where we think there are potential concerns. And so teams will go in. We look at syllabi, we look at what is in the kinds of work that is expected of students. We will often look at samples of student work. This is very labor intensive.

And we have done so and required institutions to improve both—less their credit hour assignment, than the rigor of their work and the outcomes that are expected of the students.

I would submit that the accrediting process is effective as it showed in the case of the Higher Learning Commission. In identifying issues we are primarily interested in the quality and the rigor of the work and think we do an effective job.

Mr. HINOJOSA. Dr. Dowden, how does it impact religious colleges like yours?

Mr. DOWDEN. Well, if I could comment on the accrediting situation as well. I am a consultant evaluator for the Higher Learning Commission——

Chairwoman FOXX. Mr. Dowden, I am afraid we are out of time, so I am going to ask you to submit that for the record.

Mr. DOWDEN. Okay.

Chairwoman FOXX. Thank you.

I now would like to recognize Mr. Thompson, from Pennsylvania.

Mr. THOMPSON. Thank you Madam Chairwoman for hosting this hearing. Thanks to all of the members of the panel for bringing your expertise on this very important issue. The—of higher education. Madam Chair I want to ask for unanimous consent to enter into the record a letter sent from the Citizens for Responsibility and Ethics in Washington, or CREW, to the Department of Education, Secretary Arne Duncan, dated March 1, 2011.

[The information follows:]

CREW | citizens for responsibility and ethics in washington

March 1, 2011

By Facsimile (202) 401-2854 and First-Class Mail

Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Duncan:

Citizens for Responsibility and Ethics in Washington ("CREW") writes to follow-up to our letter to you of January 19, 2011, requesting that you examine the role hedge fund managers and outside interest groups have played in the Department of Education's (Education) formulation of regulations governing the for-profit education industry. Additional agency records CREW obtained recently in response to our Freedom of Information Act (FOIA) request provide further evidence that high-level Education officials involved in the agency rulemaking process not only knew of the efforts of certain hedge fund managers to influence the regulatory outcome, but may themselves have colluded with those individuals to protect the short-sellers' financial interests. They also document a plan by high-level Education officials to leak the contents of the gainful employment regulations in advance of their public issuance.

The newly discovered documents show, among other things, that both Deputy Undersecretary James Kvaal and Budget Development Staff Director David Bergeron carried out a planned leak of the proposed gainful employment regulations to a number of outside individuals and groups in advance of the regulations' public release. This effort started with an email from hedge fund short-seller Steven Eisman to Mr. Bergeron on July 19, 2010, just days before Education released the regulations. The subject line of Mr. Eisman's email reads "I know you cannot respond" with the following text:

> But just fyi. Education stocks are running because people are hearing DOE is backing down on gainful employment.[1]

The email thread of which this is a part shows this email was forwarded to a number of Education officials, landing eventually in the email box of your confidential assistant, Phil Martin, with the statement "Let's discuss."[2]

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[1] A copy of this email is attached as Exhibit A.

[2] *See id.*

The following day Mr. Kvaal initiated a plan to call various outside groups and individuals with the apparent purpose of giving them a heads up on the upcoming regulations. The email thread shows that Mr. Kvaal and Mr. Bergeron divided the calls between them, with some key individuals and groups scheduled for contact as early as July 21, two days in advance of when Education issued the proposed gainful employment regulations.[3] None of the listed groups and individuals included anyone representing or acting on behalf of the for-profit education industry.

The email chain references both Mr. Eisman and Diane Schulman of The Indago Group as individuals who should receive advance notice.[4] The Indago Group is a small research company used by Mr. Eisman and his hedge fund, FrontPoint Services Fund to obtain information and entree to Washington lawmakers for Mr. Eisman.[5] Notice to either Mr. Eisman or Ms. Schulman, either directly from Education officials or indirectly from others in contact with Education officials, would have provided Mr. Eisman with reassurance about the likely market impact of the upcoming regulations. While neither is listed on the final call list for Mr. Kvaal or Mr. Bergeron, other documents reveal that Mr. Eisman likely received that notice from at least one non-profit group in receipt of an advance copy of the regulations.[6]

The newly acquired documents also show that on the same day Mr. Eisman initially contacted Mr. Bergeron with an update on how education stocks were faring, Mr. Kvaal quickly located the analysis prepared by the investment banking firm Signal Hill that apparently was fueling market speculation that Education had made the proposed gainful employment regulations "more accommodating" to the for-profit education industry.[7] Signal Hill questioned Mr. Eisman's analysis, suggesting a need to "discredit the widely-circulated Eisman negative-earnings scenario," and disputing "the assumption used by most shorts, including apparently Mr.

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[3] This email chain is attached as Exhibit B.

[4] Specifically, a follow-up email from Mr. Bergeron on July 21 (enclosed with Exhibit B) discussing who both he and Mr. Kvaal would call states: "Also, there's the Eisman/Schluman/et al [sic] but Eisman is a short seller anyway you cut it and anything you tell Schulman gets to Eisman."

[5] Their professional relationship is spelled out in our January 19, 2011 letter to you.

[6] *See* Letter to Arne Duncan from Anne L. Weismann, January 19, 2011, at pp. 6-7.

[7] *See* Email from Barmak Nassirian to James Kvaal, Re Write-up, July 19, 2010 and enclosed Regulatory Update from Signal Hill, attached as Exhibit C.

Eisman, that 'active repayment' means current within 30 days."[8] Mr. Kvall, with no explanation, promptly characterized this assessment as "not all accurate information."[9]

These documents also bear directly on issues that have been referred to Education Inspector General Kathleen Tighe. Last November Senators Richard Burr (R-NC) and Tom A. Coburn (R-OK), who at that time were both on the Senate Committee on Health, Education, Labor and Pensions, requested that Ms. Tighe investigate the failure of key Education negotiators for the gainful employment regulations to comply with the organizational protocols governing Education's rulemaking process. Among their concerns was evidence that "the Department may have leaked the proposed regulations to parties supporting the Administration's position and investors who stand to benefit from the failure of the proprietary school sector."[10] As this latest batch of documents reveals, Education officials at least had a coordinated plan to leak information about the gainful employment regulations to outside organizations in advance of the regulations' issuance.[11]

Together with the previously released documents discussed in our letter of January 19, 2011, this new batch of documents raises extremely troubling questions about the actions of Education officials at the highest levels of this regulatory process. Those officials knowingly allowed short-sellers to manipulate agency processes for personal gain and ignored their own

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[8] *See* Signal Hill Regulatory Update at p. 1.

[9] *See* Email from James Kvaal to Gomez Gabriella (Education's Assistant Secretary for Legislative and Congressional Affairs), Re Write-up, July 19, 2010 (attached as Exhibit D).

[10] See letter from Senators Burr and Coburn to Kathleen Tighe, November 17, 2010 (attached as Exhibit E).

[11] One of the newly released documents shows that at least some in the non-profit community understood the restrictions imposed on Education officials. In a June 17, 2010 email to Education Press Secretary Justin Hamilton, Edie Irons, Communications Director for TICAS, notes: "I know that you all haven't been allowed to talk publicly about these rules yet." This email is enclosed as Exhibit F.

responsibilities to the agency they serve. Unless these questions are answered, the public can have no faith in any aspect of Education's rulemaking process.

Very truly yours,

Anne L. Weismann
Chief Counsel

cc: Chairman Tom Harkin
Ranking Member Michael B. Enzi
Senator Richard Burr
Senate Committee on Health, Education, Labor, and Pensions
Chairman John Kline
Ranking Member George Miller
House Committee on Education and the Workforce
Inspector General Kathleen Tighe

Enclosures

EXHIBIT A

Kvaal, James

From: Kvaal, James
Sent: Monday, July 19, 2010 10:09 AM
To: Martin, Phil
Subject: FW: i know you cannot respond

Importance: High

Let's discuss

From: Bergeron, David
Sent: Monday, July 19, 2010 10:06 AM
To: Kvaal, James; Yuan, Georgia
Subject: FW: i know you cannot respond
Importance: High

fyi

From: Eisman, Steven [mailto:seisman@fppartners.com]
Sent: Monday, July 19, 2010 9:45 AM
To: Bergeron, David
Subject: i know you cannot respond

But just fyi. Education stocks are running because people are hearing DOE is backing down on gainful employment.

Steven Eisman
FrontPoint Financial Services Fund
seisman@fppartners.com
917-934-1770

EXHIBIT B

Kvaal, James

From: Bergeron, David
Sent: Wednesday, July 21, 2010 2:47 PM
To: Kvaal, James
Subject: RE: group calls

Looks good. Hartle called me today from the road and asked what was going on. I said to expect a call from one of us tomorrow or Friday. He said he'll be in the office and that we should ask to have him interrupted to take the call.

From: Kvaal, James
Sent: Wednesday, July 21, 2010 2:45 PM
To: Bergeron, David
Subject: RE: group calls

How's this for a division of labor?

Today/Tomorrow morning:

David:
Baime
AASCU

James:
TICAS
Barmak
Terry
Kantrowitz

Friday:

David:
Angela Peoples, USSA
Jason DeLisle and Steve Burd, New America
Deanne Loonin, NCLC

James:
Chris Lindstrom, PIRG
David Halperin, Campus Progress
Jamie Studley, Public Allies

From: Bergeron, David
Sent: Wednesday, July 21, 2010 8:02 AM
To: Kvaal, James
Subject: RE: group calls

I'd suggest we add David Baime, ACCU & Pat Smith or Robert Moran at AASCU. Also, should probably call NASFAA on Day 2 or 3. I can make any calls you'd like. I'd prefer not to call Mark but Danny could do that one. He gets the guy. When I talk Mark, the conversation goes more like Bob & Tony.

Also, there's the Eisman/Schluman/et al but Eisman is a short seller anyway you cut it and anything you tell Schulman gets to Eisman.

From: Kvaal, James
Sent: Tuesday, July 20, 2010 11:13 PM
To: Bergeron, David
Subject: group calls

While I'm on a roll ... here is my list of people who need calls. What am I missing? Do you want to sign up for a few or how should we split up?

Day 1 (most likely to be called by reporters)
- Pauline Abernathy and Lauren Asher, TICAS
- Barmak Nassarian, AACRAO
- Terry Hartle, ACE
- Mark Kantowitz, Finaid

Day 2:
- Deanne Loonin, NCLC
- Jason DeLisle and Steve Burd, New America
- Chris Lindstrom, PIRG
- Angela Peoples, USSA
- Jamie Studley, Public Allies
- David Halperin, Campus Progress

EXHIBIT C

Kvaal, James

From: Kvaal, James
Sent: Monday, July 19, 2010 10:52 AM
To: Martin, Phil
Subject: FW: Write-up
Attachments: Download.aspx.pdf

From: Nassirian, Barmak [mailto:barmak@aacrao.org]
Sent: Monday, July 19, 2010 10:47 AM
To: Kvaal, James
Subject: Write-up

Signal Hill **Business Services - Education Services**

Industry Update

July 16, 2010

Regulatory Update -- What's Next

Trace Urdan
turdan@signalhill.com
415.364.0365

Our Call:
On Gainful Employment:

Multiple reliable sources say that the Department of Education (ED) sent a revised, metric-based Gainful Employment draft to the OMB for review around July 4, suggesting that next week could see the proposal released for public comment. We believe this new draft could include terms more accommodating than the infamous 8% language first floated by ED in January's neg-reg sessions.

We further expect, based on reports of conversations between industry and ED officials over the last few months, that the revised proposal will effectively relieve most of the BA and MA programs from the debt/income measure through an alternative measure of graduate loan repayments. We believe the intent of the rules is to target AA and non-degree programs, where students are seen as less sophisticated and less able to make informed decisions about borrowing for their education. We also think there could be a completion/placement standard as part of the final proposal.

Near-term, we see the publication of the Gainful Employment draft rule as most likely to relieve pressure on BA and MA programs and to better clarify the exposure for non-degree and AA degree providers. (We note that COCO management has publicly stated that it will offer an indication of the the likely impact of the rule on its future earnings, even before a final rule is published.) Because we believe that clarity in both cases will begin to discredit the widely-circulated Eisman negative-earnings scenario, we see the GE rule as a potentially positive catalyst.

Specifically, we believe the terms of an alternative default measure will be such that company's with two-year graduate default rates of <3.5% should meet the 90% "active repayment" criterion. We do not believe the assumption used by most shorts, including apparently Mr. Eisman, that "active repayment" means current within 30 days.

- Near-term beneficiaries: APOL, BPI, DV, EDMC, LOPE, STRA.

But near-term evidence that negative earnings are unlikely will not by itself relieve the short pressure on the sector or persuade disenchanted longs to reinvest. The more meaningful catalyst for the sector will not come, in our opinion, until we see a) an LBO; b) a balanced assessment of the industry's contribution to higher education by the GAO; or c) some positive commentary/testimony from USDOE following the rules being finalized.

We believe that private equity remains highly engaged in the sector, and possible Senate bills notwithstanding, inclined to act as soon as rules become clearer. Though some may be cowed by Harkin's rhetoric, we think others will be able to read the political environment as one in which a liberal Democrat will be hard-pressed to pass heavy new regulations that will discourage college access, industry jobs and tax receipts.

- Most likely LBO candidates: ESI, COCO, CECO, and (if John Sperling is prepared to cede control,) APOL.

Please see important disclosure information on pages 2 - 3 of this report.

Investment Analysis:

Senate HELP Hearings

We're told that the next Senate HELP committee hearing on for-profit education will be devoted to the issue of "misrepresentation" and will take place during the first week of August.

We believe the politics of rule-making, which encourages USDOE to generate support for the rules during this public comment period, as well as the politics of the mid-term elections, in which the Democrats appear to be appealing to the left in order to rally their political base, has caused the current firestorm of populist outrage in Congress as expressed by Senators Harkin, Franken, Sanders, and Durbin.

Our read is that having been placed on the defensive early with respect to the need and appropriateness of new Gainful Employment rules that effectively cap student debt levels by program, USDOE has coordinated an impressive and highly successful public relations and lobbying effort to shift the terms of the debate such that these rules now appear to the public to be a badly-needed and even moderate response to a crisis.

We read the Senate HELP hearings, as well as Senator Durbin's speech to the National Press Club, in this context as well. There is a strong professional association between Senator Harkin's top education staffer Luke Swarthout and Bob Shireman's advocacy organization, the Institute for College Access & Success. And Senator Durbin's speech likewise seems to have benefited from a host of talking points supplied directly by USDOE.

In our analysis, the mid-term elections, the publication of a GAO report and most importantly, the finalization of new rules on Nov. 1, 2010 governing the sector should result in a much more moderate tone among lawmakers. While we cannot dismiss the possibility of new legislation being introduced in the Senate to alter rules governing for-profit schools, we rate the likelihood of *passage* of any such law as very low given the source of the agitation and the tough line being taken by Republicans on new regulatory initiatives.

Important Disclosures

Analyst Certification

I, Trace Urdan, hereby certify that all of the views expressed in this research report accurately reflect my personal views about the subject securities or issuers. I also certify that no part of my compensation was, is or will be directly or indirectly related to the specific recommendations or views expressed in this research report.Signal Hill does not compensate its equity research analysts based on specific investment banking transactions. Signal Hill Equity research analysts receive compensation based on several factors, including overall profitability and revenues of the firm, which include investment banking revenues.

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July 16, 2010

Signal Hill

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Signal Hill

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BUY	79	61.7	74	93.7
HOLD	48	37.5	39	81.2
SELL	1	0.8	1	100.0

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This report has been prepared using sources we deem to be reliable but we do not guarantee its accuracy and it does not purport to be complete. This report is published solely for information purposes and is not intended to be used as the primary basis for making investment decisions, which should reflect the investment objectives and financial situation of the investor. The opinions expressed herein are subject to change without notice. This report is not an offer or the solicitation of an offer to buy or sell securities. Additional information is available upon request.

EXHIBIT D

Kvaal, James

From: Kvaal, James
Sent: Monday, July 19, 2010 11:12 AM
To: Gomez, Gabriella
Subject: Fw: Write-up
Attachments: Download.aspx.pdf

This is not all accurate information

Sent using BlackBerry

From: Nassirian, Barmak <barmak@aacrao.org>
To: Kvaal, James
Sent: Mon Jul 19 09:47:29 2010
Subject: Write-up

EXHIBIT E

United States Senate
WASHINGTON, DC 20510

November 17, 2010

Ms. Kathleen Tighe
Inspector General
U.S. Department of Education
Office of Inspector General
400 Maryland Avenue, SW
Washington, DC 20202-1500

Dear Ms. Tighe:

The work of your office is essential to protecting the efficiency and effectiveness of programs administered by the U.S. Department of Education. Independent analysis helps ensure the integrity of the Department's mission and operations. To that end, we request an investigation by your office of the events leading up to the issuance of the Department's proposed regulations regarding "gainful employment."

As you know, Section 492 of the Higher Education Act requires the Department to convene negotiated rulemaking any time it promulgates regulations affecting the federal student aid programs. Negotiated rulemaking ensures the Department works with individuals who are experienced in implementing the federal student aid programs and who understand the consequences of the proposed regulations.

Information has become available that raises serious concerns about whether some negotiators failed to comply with the organizational protocols governing the rulemaking process and other laws governing these proceedings. In addition, publicly available documents indicate the Department may have leaked the proposed regulations to parties supporting the Administration's position and investors who stand to benefit from the failure of the proprietary school sector. We believe an independent investigation will provide additional transparency surrounding the actions taken by Department officials and those who stand to benefit financially from the regulations.

Since November 2009, the Department of Education has been engaged in negotiations to promulgate regulations designed to improve the integrity of the federal student aid programs. At the beginning of the rulemaking sessions, the negotiators adopted "Organizational Protocols" that governed the proceedings. One of the agreed upon principles states: "All members and the organizations they represent shall act in good faith in all aspects of these negotiations" ("Organizational Protocols," U.S. Department of Education. Section VI.B). Another states: "Contact with the media, the investment community, and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations" ("Organizational Protocols," U.S. Department of Education. Section VI.C.).

The panel met three times between November 2009 and January 2010 and did not reach consensus on the regulations package. On June 16, 2010, the Department released the first package of proposed regulations on "program integrity." A month later, on July 23, 2010, the Department released the second package of proposed regulations on "gainful employment."

In a July 23 Freedom of Information Act (FOIA) request, Citizens for Responsibility and Ethics in Washington (CREW) sought information pertaining to the communications occurring between Department officials and several individuals and organizations outside of the Department. In its request, CREW stated:

> Specifically the requested records will inform the public about the role of Education in the controversy over the for-profit education industry and the extent to which Education has knowingly relied on, or has been manipulated by, the views of individuals who seek to advance their financial interests in the for-profit industry by publicly criticizing certain for-profit education entities and companies.

It is our understanding that as of today, the Department has not responded to this FOIA request.

Based on information that has come to light from records released under a Florida public records request, it appears Department officials may have leaked information to outside organizations, some of whom may stand to financially benefit from the failure of the proprietary school sector. For example, an email attached to this letter demonstrates that Edie Irons, Communications Director for TICAS, emailed an embargoed copy of the program integrity regulations to the "GainfulEmploymentGroup" on June 15 at 5:38 p.m. As previously noted, the regulations were not made public until June 16. If one group received an embargoed copy of these proposed regulations, other groups, including those who stand to benefit financially from the failure of the proprietary sector, may have as well.

To resolve these questions, we request an investigation by your office into the events leading up to and surrounding the issuance of the Department's proposed program integrity regulations for the period of April 2009 to the present. In this investigation we respectfully request your review of whether the organizational protocols adopted for negotiated rulemaking were followed by both non-federal negotiators and Department staff. In addition, we ask that you review the propriety of all communications between Department employees and outside individuals and organizations to determine if the proposed regulations packages were inappropriately provided to any individuals or organizations prior to their public release.

Members of the public, including students and the institutions they attend, have a right to expect the Department of Education to promulgate regulations through a negotiated rulemaking process that is undertaken in good faith and without bias.

Thank you for your attention to this request. If you have any questions, please do not hesitate to contact our offices.

Sincerely,

Richard Burr
United States Senator

Tom A. Coburn, M.D.
United States Senator

Enclosures

EXHIBIT F

Kvaal, James

From: Pauline Abernathy [pabernathy@ticas.org]
Sent: Thursday, June 17, 2010 6:53 PM
To: Kvaal, James
Subject: FW: Error in your NPRM release

From: Hamilton, Justin [mailto:Justin.Hamilton@ed.gov]
Sent: Thursday, June 17, 2010 3:45 PM
To: Edie Irons
Cc: Lauren Asher; Pauline Abernathy
Subject: Re: Error in your NPRM release

Thanks. We'll take a look.

Justin Hamilton
Press Secretary
U.S. Department of Education
c: 202-591-6734

From: Edie Irons <EIrons@ticas.org>
To: Hamilton, Justin
Cc: Lauren Asher <LAsher@ticas.org>; Pauline Abernathy <pabernathy@ticas.org>
Sent: Thu Jun 17 17:43:13 2010
Subject: Error in your NPRM release

Hi Justin,
I left you a voicemail yesterday. Your press release on the proposed rules says, "Though current laws prohibit schools from compensating admissions recruiters based solely on success in securing student enrollment," however, the current law actually says "directly or indirectly." "Solely" is the language that was in the safe harbors, and what the for-profits want to keep! This definitely needs to be fixed online ASAP, not sure it is worth issuing a correction.

I wanted to flag another issue – not one that needs immediate correction, but something to be aware of. None of the stories from yesterday characterize the likely GE rule correctly. They say the metric will be based on an average of the student's debt-to-income ratio, or they make it sound like any student with a high debt-to-income ratio could cause a school to lose federal aid eligibility. Here are the three points we have found it is very important to make super clear (and sometimes reporters still get it wrong!):

1. More than half of a program's students would need to be beyond 8% (or whatever the metric will be).
2. 8% is just a "red flag," and there are other metrics that the school could then use to prove gainful employment. In other words, it's not the be-all-end-all, but the first of a series of tests, so schools are getting ample and flexible opportunities to show they lead to gainful employment.
3. That the rules apply to *programs*, not schools. So even if a program is negatively affected, it wouldn't necessarily put an entire school out of business.

I know that you all haven't been allowed to talk publicly about these rules yet, so I just thought it might be helpful to share what we've learned since we've been talking about this for a while!

Edie

Edie Irons
Communications Director

The Institute for College Access & Success
405 14th St. 11th floor
Oakland, CA 94612
(510) 318-7902
eirons@ticas.org
Please note the new address and phone number, we moved in April.

www.ticas.org
http://projectonstudentdebt.org

Chairwoman FOXX. Without objection.

Mr. THOMPSON. Thank you.

Inspector General, thanks for being with us. My first question is really to just touch briefly on this, have you seen the letter from CREW to the Secretary, requesting that he examine the role of hedge fund managers and outside interest groups that played in the Department of Education's regulations governing the for-profit education better known as gainful employment?

Ms. TIGHE. I have seen the letter, yes.

Mr. THOMPSON. Okay. Great. And do you understand that CREW had obtained Freedom of Information Act request for emails of high-level Department of Education officials and their correspond-

ence from outside groups with regards to the proposed gainful employment regulations?

Ms. TIGHE. That is my understanding.

Mr. THOMPSON. Great. And are you aware that CREW has alleged, within the letter, that both Deputy Undersecretary James Kvaal and Budget Development Staff Director, David Bergeron had knowingly planned a leak of the proposed regulations 2 days in advance of the regulations anticipated public roll out?

Ms. TIGHE. That is what the letter says, yes.

Mr. THOMPSON. I am sure you know—can understand the gravity of the situation. Gainful employment regulations have had an effect on proprietary schools. Any collusion or insider information would have a bearing on short sellers hedging their bets against proprietary schools. And I believe this is what the SEC refers to as "insider training." I am certainly no expert in that area.

Were you—my question for you is, will you seek the assistance of the SEC in conducting the review that the Secretary has asked you to undertake of shortseller contracts and the influence with department officials?

Ms. TIGHE. My understanding is a separate letter was also sent to the SEC with similar information and what I can tell you is that prior to receiving that particular letter we had also received an earlier letter from CREW and also from Senator Coburn, raising the same issues to us. It was pre—before FOIA request—response. And we had initiated an audit related to those issues and we are currently doing our work on that audit.

Based on the further information CREW provided in that letter, that you spoke of, we gave that to our people looking at it and so they will take that all into account.

Mr. THOMPSON. So will you at some point be working with the SEC given the implications of just a—just to be able to thoroughly investigate it from all areas.

Ms. TIGHE. Faced with them, it would seem to make sense to do so, yes.

Mr. THOMPSON. Great, thank you. We—changing gears a bit. The—Pennsylvania's budget rolled out this week and cuts to higher education were as expected. I mean, this is tough times, both in the nation and across the states and support for higher education was reduced. And so I have a concern as we know that revenues, certain parts of revenues are growing smaller, that the cost regulations continues to grow larger.

And so my question for the panel is we have been spending much of the month talking about the impact of federal regulations on students and schools and can you briefly discuss the amount of time and specifically money that you spend on complying with federal laws and statutes and how much is this going to cost the institution which in the end goes towards making higher education more expensive and less accessible.

Start with Mr. Ebersole, if we can.

Mr. EBERSOLE. I believe that this is going to have a great impact on the cost of education. As I indicated in my earlier comments, I believe that we are going to see something in the neighborhood of $500,000 just on the education side let alone what it is going to require for the states in order to be compliant.

It is also going to bring into question programs such as that which the President lauded recently at Carnegie Melon where they were talking about accelerated learning. That would not be possible for any student studying under Title IV, given this definition.

I am personally somewhat concerned that we in the higher education community, 4 years ago, spent a great deal of time and effort looking at learning outcomes. And we have been busy building learning outcomes which are being very much examined by accreditors rather than looking at inputs.

The Inspector General talks about wanting to protect the taxpayers, I think what the taxpayers wants is, is learning occurring, not how many hours you have spent in a seat. Did you learn something?

And we are actively at work right now assessing learning outcomes.

Mr. THOMPSON. Thank you.

Chairwoman FOXX. Dr. Dowden and Mr. Wolff, I think I am going to have to ask you to submit your answers for the record also. And I would now like to recognize Mr. Bishop.

Mr. BISHOP. Thank you very much Madam Chair. Mr. Ebersole, I want to engage you on the point you just made. I administered a college in New York State for 29 years before I came here. I wanted to get into a profession where politics was less of a factor. [Laughter.]

Mr. EBERSOLE. I see you have succeeded sir.

Mr. BISHOP. I have, yes. When I was in New York we had to register every academic program we offered. With the State of New York it was something we simply had to do. And it wasn't just ministerial. It was a qualitative assessment by the New York State Education Department. We somehow managed to survive. Syracuse has somehow managed to survive. Lemoyne has somehow managed to survive. And we also had to follow the Carnegie definition of a credit hour or its equivalent.

And I want to pick up on what you just said. You said that the kind of program that President Obama lauded at Carnegie Melon would not be possible under this new regulation. And I really want to challenge you on that because if that logic is correct then we would not be offering summer courses, we would not be offering interim courses, because that is accelerated learning.

If a student can earn three credits over a 4-or 5-or 6-week summer term, by virtue of having the same number of clock hours or seat hours of instruction, that in fact is accelerated learning but it is the credit hour or its equivalent. Am I not right?

Mr. EBERSOLE. No, sir, I don't think so.

Mr. BISHOP. All right, then educate me.

Mr. EBERSOLE. What we are talking about is we are talking about gaining greater mastery over a subject area in the same or a less amount of time.

Mr. BISHOP. And that is precisely what a summer course is.

Mr. EBERSOLE. But a summer program, to carry a certain number of units, still has to meet for a certain number of hours. Online and with the computer I can match my instruction to your learning style.

Mr. BISHOP. So let's be clear about one thing, because I think I agree with you. This issue is exclusively about non-traditional modes of instruction, correct?

Mr. EBERSOLE. Well, that is my concern sir. My institution could not——

Mr. BISHOP. Okay, and Dr. Dowden, do you all agree?

I know you haven't had a chance to—you could——

Mr. DOWDEN. I would not agree with that. I think we——

Mr. BISHOP. Right. Then help me. If it isn't about just non-traditional forms of instruction, would the curriculum committee at your school approve a full semester course that met for fewer than 45, 50-minute hours?

Mr. DOWDEN. They could, just depending on what the out-of-classroom-work requirement was. We would have to—under these regulations the——

Mr. BISHOP. But does that not again—I mean my understanding of the regulation—I am not trying to be argumentative. I want to make sure I understand this. Is that it would be the Carnegie—what we all call the Carnegie definition—a three-credit course would be 45, 50-hours?

Mr. DOWDEN. Right. Yes.

Mr. BISHOP. Or its equivalent. So if your curriculum committee were to say, you know what, this instructor is phenomenal he can get this information transmitted to the students in 6 weeks. Would your curriculum committee approve that? 6 weeks of maybe 18 hours of instruction?

Mr. DOWDEN. Let me say that at our institution faculty are very stingy with credit hour. It is the corn of the realm and they are very, very careful to award credit hour. In fact, they probably would award less than more in many cases.

Mr. BISHOP. You are making my point. I thank you for that.

Mr. DOWDEN. But——

Mr. BISHOP. Because—so if it is about traditional modes of instruction I think what I just heard you say is your faculty would more likely err on the side of requiring more seat hours as opposed to fewer, am I right?

Mr. DOWDEN. Perhaps in traditional modes of instruction. But there are a lot of other modes of instruction that the practicums and other——

Mr. BISHOP. I understand that. That is what I am trying to focus in on.

Mr. DOWDEN [continuing]. Yes.

Mr. BISHOP. This issue is largely, if not exclusively, about non-traditional modes of instruction. Is that not correct?

Mr. DOWDEN. It depends on how you define non-traditional modes. Is a practicum a non-traditional mode, I——

Mr. BISHOP. Yes, yes it is.

Mr. DOWDEN. Yes, I would—probably largely, about that. Although, take a music class, let's say a student might have an hour but might be practicing for 8 or 10 hours during the week as opposed to a class in sociology where it would be fair standard with the definition that we are proposing. So it is not largely the non-traditional as you would define it but it would apply to the traditional classes as well.

Mr. BISHOP. Tell me what is so hard about determining an equivalent? My daughter just got a Masters in Library Science. She took some of her course work online, through a New York State institution which was required to assert that the instruction she took had its equivalent in 45, 50-minute hours.

Now what is—why can that institution do it but this is going to create an enormous burden? I know I am over my time Madam Chair.

Mr. DOWDEN. Well, the key is that that institution did that, it wasn't some definition of the federal government that is pretty unclear about how you determine equivalency.

Mr. BISHOP. Well, at the risk of—indulge me. It was pursuant to a New York State requirement that has existed at least as long as I have been involved which was 1973.

I yield back.

Chairwoman FOXX. Thank you Mr. Bishop and thank you for being sensitive to the time.

I want to raise one example that I observed when I was in administration in a university. We often would have students who would come in and say that they had the knowledge to pass a course and would ask to take the final exam and they could pass that final exam and then they were awarded the credit for the course.

As I read the regulations, there is no way to take care of that situation, and I think there are lots of others so I think Mr. Bishop, both of us having had some experience in university and college we could probably find lots of situations that aren't going to meet the definition of this regulation that are common practice right now within institutions and don't even deal with the new learning experiences.

Thank you for indulging me on that comment. I now am keeping the chairman of the committee waiting and I apologize for that. I would like to recognize Mr. Kline.

Mr. KLINE. Thank you Madam Chair. I am feeling very humbled here in the presence of Mr. Bishop and Mrs. Foxx and their many, many years of experience in higher education.

Mr. BISHOP. Mr. Chairman, you will get over it I am sure. [Laughter.]

Mr. KLINE. I think I just did, thank you very much.

And Madam Inspector General, we are very pleased to have you here today and I don't have a series of questions for you but I do have a plea, a statement and a plea. We had the Secretary here yesterday and I posed a question for the record, for him, on this issue of short selling. It is a very, very troubling issue. We hope that you are looking at this vigorously. We hope that there is cooperation with the SEC and that we will get an answer.

Clearly, the impact on the entire sector, we saw stock prices move radically and rapidly and the potential for real mischief and felony activity is high. So I really hope that you will look into that and come back to us quickly with those results.

Let me see, stepping off into this continuing discussion about the federal definition of the credit hour. Mr. Wolff, you said in your testimony that you thought that it would stifle innovation. But I understand there is an alternative in the regulation that was sup-

posed to address this, why isn't that good enough? Can you tell us—and we don't—I don't think any of us here want to stifle innovation and the ability to move out and meet the demands of the work place. So why isn't that alternative good enough?

Mr. WOLFF. It is a fair question. I would personally say that to many of us the definition itself is unclear because it uses so many terms. It—I will just read to you some of the terms, "intended learning outcomes, verified by student achievements, reasonable equivalency, classroom seat time" so that you put all of these together and then accreditors are supposed to assure that the assignment of credit meets customary practice. Well is it the federal definition or is it customary practice?

So, the definition itself is unclear. And what institutions have told us, they are afraid that whatever it is they do, that it may be possible to be found out of compliance.

Secondly, institutions are held to be responsible to ensure the "reliability and accuracy of the credit assignment." There are many concerns of how does one verify that without an enormous expenditure of time.

Thirdly, there are, as others have said, new models that are coming forward. Carnegie Mellon for example has developed a computer based learning model that is shown to establish very effective learning outcomes with very little faculty interaction. It is not based on seat time. It is based on learning objectives.

Here the question is: which is going to take priority, the learning objectives or the amount of work correlated to seat time?

We are trying to move institutions to learning outcomes particularly as they coalesce or cohere together toward a complete set of outcomes at the degree level. This drives the whole conversation to a lower unit of analysis at the course level and we have heard that people are concerned that they are going to be found out of compliance and subject their entire financial aid at risk if they fail to meet the federal definition.

Having this in the regulation federalizes and potentially increases the risk of violating a very confusing set of criteria.

Mr. KLINE. So they are just afraid to try?

Mr. WOLFF. I am sorry I didn't——

Mr. KLINE. So they are just afraid to try, is what you are——

Mr. WOLFF. I think that we may find, that at least some faculty committees will say, well—they are going to be focusing on the federal definition rather than what the institution is trying to accomplish.

I think it is going to shift the focus and I think it may be up with others saying this may not meet the definition because it will inhibit experimentation.

Let me also say that individual faculty members take a syllabus and try to play with it to improve learning. Do out of class assignments, some students are going to take more time than others. I think that is what it is going to inhibit the most because the institution is going to say, you can't do too much experimentation because you are violating the federal standard here. And it may inhibit individual faculty members from trying new approaches.

Mr. KLINE. Okay, I can see that my time is just about to expire. Yes, Dr. Dowden, jump in.

Mr. DOWDEN. I was just going to say, I think if this definition goes through I would suspect that our faculty would need to review every single class we have and try to see if the credit hour allocation is appropriate and that would take a significant amount of time and really would deflect from the learning experience and emphasis on our students.

Mr. KLINE. Thank you. I yield back Madam Chair.

Chairwoman FOXX. I thank the chairman for being so punctual. It occurred to me as you were talking Mr. Wolff that this sounds like No Child Left Behind, applied to the universities and colleges. I would now like to recognize Mr. Andrews.

Mr. ANDREWS. Thank you Madam Chairwoman. Congratulations on your election as chair of the subcommittee. It is good to be working with you.

And I thank the panel for being really expert, getting us into the details of this issue. And as a layperson I would like to leave the details for a minute and get to maybe 10,000 feet and ask a couple of questions at that level.

I think there is universal agreement that students need to get what they paid for and they need some kind of standard that helps them know whether they are getting what they pay for.

So the hypothesis behind the regulation on credit hour would be that there is rather systemic evidence that students aren't getting what they pay for. So therefore it is necessary to switch to a system where there is a federal, legal definition of credit hours so people can get what they pay for. This is kind of what this is about.

And I want to ask the Inspector General—I know we had this report from last June—about the Northern Central accreditation problem. What other evidence is there? And that really was, as I understand it, one school that raised an issue and it was remedied. What evidence is there of any systemic failure of the status quo system on credit hour regulation?

Ms. TIGHE. Well, I think as far as the particular issue we looked at with the Higher Learning Commission, I would point out to my fellow panelists who raised this issue, that when we submitted our alert report to the Department it immediately went in and looked at the Higher Learning Commission and examined further institutions in addition to the ones that we had looked at.

Mr. ANDREWS. And what did they find?

Ms. TIGHE. They found the instance we found with AIU was not an isolated incident.

Mr. ANDREWS. How many others did they find?

Ms. TIGHE. I can't say that based on that, but I know that they found others. And I think if——

Mr. ANDREWS. With all due respect, I would ask you to submit for the record, a quantification of that comment. I mean if it is four others that is not much concern. If it is 4,000 it is a major——

Ms. TIGHE. Okay. I don't think it was 4,000. I don't think they would have looked at that many schools but we can let—we can——

Mr. ANDREWS. What about other accreditation agencies beyond the Northern Central one?

Ms. TIGHE. Well, we know that the Higher Learning Commission was not the only—Higher Learning Commission is the largest re-

gional, it accredits 975 schools. We looked at two other very large regional accrediting agencies. We also found they didn't—we didn't find the particular problems in the schools, but we also find they didn't define or give standards to a credit hour or assignment of a credit hour.

Mr. ANDREWS. I do understand and we very much appreciated your testimony last June, when you pointed that out. But let me sort of summarize what I think the record shows.

There was some examination of three accreditation agencies. The first is the Northern Central one and you said there is "some evidence of other problems at other schools." We would invite you to supplement the record of what that is.

And then the other two, the evidence shows that there wasn't a standard or guidance articulated, but was there any evidence of students not getting what they pay for in those two regions?

Ms. TIGHE. Well, I would say—well my answer to that would be its sort of hard to tell without some uniform guidance on what a credit hour means. And I think in that lies the heart of the problem. I will say, I don't think the Department based its definition of a credit hour or the fact that it wanted to have a definition of a credit hour, based on our work. I think that may have fed into the discussion related to it, but I think they had other concerns based on information that——

Mr. ANDREWS. My time is kind of fleeting here. I hope that is not a generic statement, or should be for this hearing.

I understand that, although that kind of goes to the point of my question. Your work is to uncover, frankly, abuses of the law and taxpayer's dollars. And if there are such, let's fix it. But if the rules aren't based on your work, and I realize this is not your answer to give, but what is it, what are they based on?

So that—the concern that I have is that if the evidence shows that there is systemic cheating of students and taxpayers because of the credit hour status quo I think we should fix it. But if the record shows that there isn't, then I wonder if this is not a solution in search of a problem.

And if there is a problem here I think you are going to find a lot of support for fixing it. But I am one who wants to see the evidence of that before we take position.

I would just also ask to submit for the record, a letter of February 16th, from The American Council on Education, Office of the President, if I could.

Chairwoman FOXX. Without objection.

Mr. ANDREWS. Thank you very much.

Chairwoman FOXX. Thank you very much for your sensitivity to the time.

Also, Mr. Tierney?

Mr. TIERNEY. Thank you Madam Chairwoman. I want to thank all of the witnesses for their testimony. This is an interesting area, or at least I have found it interesting. Since the enrollments in online courses have started to increase, and I have always sort of struggled with the idea of how is there is an increase in, obviously, grant money—Pell grant money—and everything goes in that direction. The taxpayers' concern that they are getting their money's worth increases along with that.

So if we don't have some standard or baseline against which to judge it, how do you propose we are going to be able to convince the taxpayer that their investments are well founded? Sir.

Mr. EBERSOLE. I have been involved both as a chair of an accreditation team, recently. I also have been very involved with the President's forum where we have been looking at the creation of a method by which we can assess learning outcomes. This is something that has been incorporated into the standards of the middle states accreditation and I suspect others as well.

We are looking at outcomes. We are looking at proof of learning and we are looking to make that proof of learning objective. And we also are publicizing it so that others can look at this proof of learning before making a decision as to whether to come to our institution.

Mr. TIERNEY. Can you give me an idea of what would constitute proof or evidence of learning?

Mr. EBERSOLE. Yes. Using objective criteria or objective instruments such as the standardized examinations, which are coming from the University of Indiana, the piece all. These are examinations which show the degree to which our students are, learning, and gives us the ability to compare——

Mr. TIERNEY. Sounds suspiciously like No Child Left Behind, for all the people behind, written for all the people here. You are going to—I mean are you going to be teaching to the test? Are we going to see all this fight and battle back and forth again?

Mr. EBERSOLE. Well, we don't have access to the test so we couldn't really teach to it. It is really very objective and we are using multiple methodologies. It is not a single methodology. And I suggest to you sir, that the measurement of seat time is kind of like measuring the number of books in the library and the number of dollars in the endowment as a way of defining quality. I don't believe that inputs tell us very much at all about what our tax payers are buying.

Mr. TIERNEY. I don't necessarily disagree with what you are saying. I am just struggling with the idea of a course, some of the sociology courses, some history courses of different areas, other broader subjects like that a different faculty may attack those from different ways.

I am having a difficult time struggling with how one test is going to satisfy all the different universities that may get people a lot of knowledge, just not the same set of knowledge on that. And I think you are going to have some difficulty probably dealing with that issue.

Mr. EBERSOLE. Well, we are looking at some standards which have had some agreement relative to what it is we think that someone who possesses our degree, our faculty have come together and says that someone who is awarded a degree from our institution should be able to do the following. Whether that degree is in business, or liberal arts, or versing, they need to be able to think critically.

They need to be able to communicate with both the written and the oral word. There are absolutely things which we believe define a baccalaureate education, and that is what we are testing for.

Mr. TIERNEY. Dr. Tighe, do you think that would be a good substitution for the credit hour measure?

Ms. TIGHE. Well, I think student outcomes and a credit hour as defined by the Department are not inconsistent. What worries me, and what I hear here is that in the end you have to be a full-time student to get a full time—you know, a full time amount of student aid. What does that mean if you can't put some temporal, you know, measure on it that measures student engagement in some fashion?

And I am not sure, without some definition of a credit hour—which does allow you for equivalents—you can get there.

Mr. TIERNEY. To the other three panelists, if the regulation were better defined, if you could read it and easily understand what it said, would you have less of an objection or would you still be objecting on a philosophical level that you just don't want that standard or any standard in that regard? Mr. Wolff. Well, I am going to ask Mr. Wolff, he was in the——

Mr. WOLFF. I would still have concern in the sense that, I would agree with Dr. Dowden, that I think what institutions have to do is assure the reliability of every course offered and that the scale of this is quite extraordinary.

Mr. TIERNEY. How do you do that, though? I mean, you keep saying that over again. Is it subjective? Are you sort of taking nods, saying I like that, I don't like something else? I mean, if you don't have a standard that is more tangible like a credit hour or something like that, do you just go in as a team and you say I don't like the way the professor is approaching it? What do you——

Mr. WOLFF. There is not—I think it is important to say, first of all, there is not a vacuum. Institutions already are doing this. There are faculty committees that review courses that look at the assignment of credit in relationship to the rigor. It is being done.

The issue is, the federal definition that——

Mr. TIERNEY. Okay, so you are out—you think that schools regulating themselves give the taxpayer the protection that they need to know that no school is dumbing it down or avoiding anything?

Mr. WOLFF. Well, in line with what Mr. Andrews was saying, that we asked repeatedly at the negotiated rule making, what is the scope of this problem so that we could help define a resolution. And we were never told what the scope was, beyond this one incident. So arguably, it ought—it is being done and we are not clear that what is being done is ineffective.

Secondly, I can say that there already are existing regulations with the Department of Education that we must conform to that require us to approve an advanced distance education programs where we are looking at this.

And secondly, to review, assure that all of our standards are being applied when we do reviews of institutions.

Mr. TIERNEY. Thank you.

Chairwoman FOXX. Thank you Mr. Wolff, and thank you Mr. Tierney.

Someone just pointed out to me that the fact that you and I are agreeing on this and Mr. Andrews said, "it looks like a solution in search of a problem" was something I said yesterday. Something must be happening here that we are agreeing.

I would like to recognize now Ms. Davis.

Mrs. DAVIS. Thank you Madam Chairman. It is always a problem when you walk in after—excuse me, after a lot of questions. But let me—if I could just go back a second, because I know you have been talking about the type of standards that the accrediting agencies use when they are trying to accredit colleges and universities. Is that clear? Do those vary from state to state as well, when we are talking about this credit hour?

Mr. DOWDEN. I would say they vary from institution to institution based on the knowledge of a faculty. The review of—a careful review of the faculty on what constitutes a credit hour and then I would recommend that that be held accountable, those credit hour allocations be held accountable by the accrediting associations rather than through a credit hour definition.

Mr. EBERSOLE. I would like to say that for those of us in the online arena, this is a problem. We don't know exactly what the equivalent, acceptable equivalency is going to look like. There are definitely going to be differences of interpretation. Why we feel like that, rather than trying to say how much time does someone sit in front of a computer or how much time does one take before sitting for one of our assessments of prior learning, that in fact we look at the outcomes that are being produced by our institution.

That I think is what the taxpayer is paying for and the student is paying for.

Mrs. DAVIS. Dr. Tighe, would you say that in trying to bring that together that you were consulting these different agencies, how did you actually arrive at that in the first place? And perhaps you have already discussed this, I am sorry.

Ms. TIGHE. I am sorry?

Mrs. DAVIS. The federal definition of the credit hour?

Ms. TIGHE. Well, the federal definition of a credit hour is not something we define. What we recommended in our work is that there be some definition of a credit hour. We did not dictate what that definition would be.

We felt in our work in looking at the accrediting agencies and saw that there was no definition by which they were judging the institutions that they accredit, that that led to some inconsistencies in how those credit hours were being assigned.

Mrs. DAVIS. Does it—is it your belief though that it should ensure flexibility in the way that——

Ms. TIGHE. Our reading of the definition is that it looks like it provides flexibility.

Mrs. DAVIS. Okay, thank you.

Mr. WOLFF. Could I add that there are seven regional commissions, all of us focus on learning outcomes. Not only is it a federal requirement is our belief that constitutes real quality and will lead to excellence.

We focus on the outcomes of the certificate or degree program. We assure that the courses are aligned to achieve it and that the outcomes build together to that. We all work together acceptable models, not a single model of a test or—we use portfolios, CapStone courses and the like.

So we do look at credit hours, but more importantly we look at, does it bring together to a set of learning outcomes that are appro-

priate for the degree or certificate being awarded. There is a great consistency across the seven regions.

Mrs. DAVIS. Dr. Tighe, what kind of assistance is being granted to—just give some technical assistance—to folks that are going to be trying to comply with this?

Ms. TIGHE. I can't exactly speak for the Department but I am aware that they are trying to come out with guidance in these areas to further explain the issues that have been raised in the regulations.

Mrs. DAVIS. Do you have a sense, I guess all of you, what is it that you most think is going to be needed as you move forward with this in terms of being clear about what is going on?

Mr. DOWDEN. If I could say, there is 100 days until these regulations have to be implemented. And I think the regulations are not clear. We really don't have a lot of guidance from the Department of Education on how to implement them.

The states don't have a lot of guidance on how to implement the state authorization and I think it's going to be an interesting 100 days if these, the credit hour and state authorization provisions remain in the statutes.

Mr. EBERSOLE. In the area of state authorization there is no way that we can be in compliance. The states won't be in the position to accept our applications, will not be in a position to review them or act on them. Some states have program reviews which require stacks and stacks of documents covering every single course and every single faculty member in those programs.

It took us 400 hours in one state just to register two programs. To think that 3,000 institutions with hundreds of programs will be able to register in these states is, frankly, not realistic.

Chairwoman FOXX. Thank you Mrs. Davis. And I want to again, thank the witnesses for the taking of your time today. I want to thank all of the members of the subcommittee who came and have been so judicious in sticking to the time. We are very grateful to you. I am very grateful for the information you have shared with us.

Mr. Hinojosa, do you have any closing remarks you would like to make?

Mr. HINOJOSA. I would just like to thank the presenters. I would insist that you have given us good information that we can work from. And that we are going to be working with all of our colleges and universities to help them be able to do their work. I know that this is the time in our country where legislators are cutting back on their investment in higher education and it is quite challenging for you to do your work.

So we need to work together. It is important and I am one that believes that there should be definitions and regulations so that they aren't being interpreted differently by others and thus not doing what we should for our students.

And since we have so much federal money that is going towards getting our students educated, I think it is our responsibility in Congress to take that as one of the priorities that in this committee we are going to see that is clear and doable.

And so with that, Madam Chair, thank you for calling this hearing today and we will continue working with you.

Chairwoman FOXX. Thank you very much Mr. Hinojosa.

There being no further business, the subcommittee stands adjourned.

[Additional submission of Mrs. Foxx follows:]

AMERICAN COUNCIL ON EDUCATION

OFFICE OF THE PRESIDENT

March 10, 2011

The Honorable Virginia Foxx
Chairwoman, Subcommittee on Higher Education
and Workforce Training
House Education and the Workforce Committee
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx:

On behalf of more than 70 higher education associations and accrediting organizations listed below, I write to thank you for holding a hearing to examine the Department of Education's final program integrity rule issued on October 29, 2010. The goal of this rule was to eliminate fraud and abuse, shield students from predatory practices and protect taxpayer investment in the Title IV financial aid programs, all of which are objectives we strongly support.

Although some of these new regulations will help meet these goals, others miss the mark. In particular, we are concerned about provisions of the regulations that establish a federal definition of "credit hour" and expand state authorization requirements. These provisions will have little or no effect in curbing fraud and abuse, but they could do enormous damage to the quality and diversity of postsecondary academic offerings.

Briefly, a credit hour is the most basic building block of any academic program. Our primary concern about establishing a federal definition is that it opens the door to inappropriate federal interference in the core academic decisions surrounding curriculum, which represents the very kind of interference expressly prohibited in the department's enabling legislation. As a practical matter, the particular definition at issue is, at best, highly ambiguous and poses serious challenges for institutions and accreditors as they attempt to ensure policies consistent with it.

We have a similar set of concerns about the state authorization provisions. The regulation could subject religiously affiliated institutions to new state regulation, opening the door to state involvement in the curricular affairs of these institutions. Moreover, the expectations for what constitutes an appropriate authorization of an institution or an adequate complaint process are so ill-defined that institutions, accreditors and states do not feel confident in their ability to identify practices and policies that will be accepted by

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Web: http://www.acenet.edu

department regulators. The portions of the state authorization regulations dealing with distance education are particularly confusing. Because of these uncertainties, this new rule could force campuses to pull back on legitimate and creative distance education programs, leaving the students most in need behind.

We have shared detailed comments about these issues with Secretary Duncan in separate letters signed by more than 60 higher education associations and accreditation organizations, and asked the Secretary to exercise his authority to rescind these two regulations in their entirety. We hope he will do so. Copies of these letters are attached for your reference.

No response to our letters has been received from the Secretary. With just over 100 days remaining to comply with the July 1 implementation deadline, we do not see any realistic way that these problems can be addressed in time. The fact that our institutions will need to have documentation by July 1 that they satisfy state distance education requirements is a particularly pressing worry.

In light of the daunting challenges institutions, accrediting agencies and states will face in attempting to implement these two regulations by July 1, 2011, we ask for your assistance in obtaining a one-year extension in the effective date for these two regulations.

Sincerely,

Molly Corbett Broad
President

MCB/ldw

Attachments: Community letters on credit hour & state authorization

On behalf of:

Higher Education Associations
ACPA – College Student Educators International
American Association of Colleges for Teacher Education
American Association of Colleges of Nursing
American Association of Community Colleges
American Association of Presidents of Independent Colleges and Universities
American Association of State Colleges and Universities
American Council on Education
American Distance Education Consortium
American Indian Higher Education Consortium
Appalachian College Association
Association for Biblical Higher Education

Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Lutheran Educational Conference of North America
NASPA – Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
Southern Regional Education Board
University Professional & Continuing Education Association
Women's College Coalition
Work Colleges Consortium

Accreditation Organizations
Accreditation Commission for Audiology Education
Accreditation Commission for Midwifery Education
Accreditation Council for Business Schools and Programs
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Bureau of Health Education Schools
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education & Training
Accrediting Council for Independent Colleges and Schools
American Board of Funeral Service Education
American Council for Construction Education
American Culinary Federation Education Foundation Accrediting Commission
American Dental Association Commission on Dental Accreditation
Association for Biblical Higher Education Commission on Accreditation
Association of Advanced Rabbinical and Talmudic Schools
Association of Independent Colleges of Art & Design
Association of Specialized and Professional Accreditors
Aviation Accreditation Board International
Commission on Accreditation for Health Informatics and Information Management Education
Commission on Accreditation for Marriage and Family Therapy Education
Commission on Accreditation of Allied Health Education Programs
Commission on Accrediting of the Association of Theological Schools
Commission on Collegiate Nursing Education
Commission on Massage Therapy Accreditation
Council for Accreditation of Counseling and Related Educational Programs

Council of Arts Accrediting Associations, including:
National Association of Schools of Art and Design
National Association of Schools of Dance
National Association of Schools of Music
National Association of Schools of Theatre
Council on Academic Accreditation in Audiology and Speech-Language Pathology
Council on Occupational Education
Council on Rehabilitation Education
Distance Education and Training Council
Joint Review Committee on Education in Radiologic Technology
Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Middle States Commission on Higher Education
Midwifery Education Accreditation Council
National Accrediting Agency for Clinical Laboratory Sciences
National Accrediting Commission of Cosmetology Arts and Sciences
National League for Nursing Accrediting Commission
New England Association of Schools and Colleges, Commission on Institutions of Higher Education
Northwest Commission on Colleges and Universities
Southern Association of Colleges and Schools Commission on Colleges
Transnational Association of Christian Colleges and Schools
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

cc: Congressman John Kline

[Identical letter submitted by Mr. Andrews and Mr. Wolff follows:]

AMERICAN COUNCIL ON EDUCATION

OFFICE OF THE PRESIDENT

February 16, 2011

Secretary Arne Duncan
U.S. Department of Education
LBJ Education Building, Room 7W311
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the more than 70 higher education associations and accrediting organizations listed below, I write to express grave concerns with the creation of a federal definition of credit hour in Section 600.2 of the Oct. 29, 2010, program integrity regulations. We request that you immediately rescind this definition from the final regulations.

Over the past year, we have followed the department's efforts to develop new regulations to enhance the integrity of the Title IV student financial aid programs, and we support many of the regulations contained in the final rule. However, after close examination, we find the rule fails to address serious concerns we raised during the rulemaking process in several key areas, most notably credit hour, state authorization and misrepresentation. This letter focuses solely on the regulations pertaining to credit hour; we will communicate our views regarding state authorization and misrepresentation to the department separately.

In discussions with our respective members, the strongest objections to the credit hour regulation have consistently centered on the inclusion of a federal definition of credit hour in Section 600.2. With this language, the Department of Education has federalized a basic academic concept and, at the same time, developed a complex, ambiguous and unworkable definition.

The concern is not that accreditors are expected to examine institutional policies with respect to credit hours. They have and will continue to do so. Rather, the issue is that with little evidence of a problem and no evidence that Congress wants the federal government to intervene in this area, the department intends to use accreditors to extend federal authority over academic decision-making on local campuses.

We are familiar with the inspector general's report that was sharply critical of one accreditation agency's handling of a credit hour issue for some courses at one online

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university. What is often overlooked, however, is that the accreditor's peer review team identified the problem and brought it to the attention of school officials, who corrected it within a matter of months. Institutional accreditation has always been designed to be a self-regulating system and in this instance, it worked exactly as intended. Moreover, had a federal definition of credit hour been in place, it would not have changed the outcome of this case.

A single instance such as this is not a good basis for imposing a one-size-fits-all federal regulation on fundamental academic considerations at more than 6,000 institutions. We believe this is particularly true with respect to a federal standard for credit hour for the following reasons:

1) A credit hour is the most basic building block of any academic program at any institution of higher education. Federalizing this definition will allow the Department of Education—through staff interpretations and the National Advisory Committee on Institutional Quality and Integrity—to micro-manage campus academic programs.

2) A federal standard imposed on all institutions will inevitably homogenize academic programs and sharply limit curricular innovations. Given the pace of curricular change and the widespread desire to develop new models to deliver postsecondary education effectively and efficiently, a federal definition represents a giant step in the wrong direction.

3) The definition of credit hour in Section 600.2 is ambiguous. It combines, for example, two very different concepts—seat time and student learning outcomes. While the goal is more consistent consideration and evaluation across campuses, blending such fundamentally different ideas guarantees that this goal will not be reached. Vastly different interpretations will inevitably emerge. Confusion will reign.

4) This confusion will impose enormous burdens on institutions as they attempt to interpret and apply the definition to all courses and on accreditors as they attempt to review these interpretations and their application within many diverse institutions. These tasks will require new levels of highly detailed and labor-intensive compilation and evaluation. They will divert time and money from productive academic investment to detailed compliance reporting. Moreover, this effort will inevitably draw attention away from broader considerations of academic content and effectiveness.

5) The preamble discussion suggests the possibility that an institution could create two separate credit hour systems—one for federal purposes and one to meet institutional needs. This is a false dichotomy that can exist on paper but not in practice. In reality, when looking at academic matters on a campus, an accreditor cannot enforce a credit hour definition that is detached from or different than the academic measure used by the institution. Thus, the suggestion is unworkable for

two basic reasons: It would pose insurmountable record-keeping, evaluation and credit-mobility problems; and it would confuse current and prospective students, thereby failing to meet long-standing academic integrity requirements and new federal regulations on misrepresentation in Section 668.71.

As we noted earlier, reviewing institutional policies regarding the assignment of academic credit remains an appropriate function for accreditors. However, we vigorously oppose the creation of a federal definition of this term in Section 600.2 because it will have extensive and negative impact on academic programs.

During the negotiated rulemaking session that preceded this regulation, the Department of Education and non-federal negotiators agreed on language to address the government's concern. The federal definition of a credit hour was deliberately excluded from this agreement. The department abandoned this consensus in the draft regulation it published on June 18, 2010. In ACE's Aug. 2, 2010, letter to the department on behalf of over 70 higher education organizations and accreditors, we indicated grave reservations about the unanticipated consequences of the department's proposal. In response, rather than address our concerns, the final regulations simply advanced yet another definition. Unfortunately, the latest version is as flawed as the one that preceded it.

We strongly support the Department of Education's goal to reduce abuses in student aid programs that harm students and waste federal student aid dollars. However, the department's apparent desire to impose a federal definition on a central academic concept threatens to set us on a collision course that will dramatically undermine our support for these regulations.

In light of these concerns, we request that you rescind the regulation containing the credit hour definition in Section 600.2.

Sincerely,

Molly C. Broad

Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations
ACPA - College Student Educators International
American Association of Colleges for Teacher Education
American Association of State Colleges and Universities
American Association of University Professors
American Council on Education
American Dental Education Association
American Indian Higher Education Consortium

American Psychological Association
APPA, "Leadership in Educational Facilities"
Appalachian College Association
Association of American Universities
Association of Chiropractic Colleges
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Independent Colleges of Art & Design
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Hispanic Association of Colleges and Universities
International Association of Baptist Colleges and Universities
NASPA - Student Affairs Administrators in Higher Education
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association
The New American Colleges & Universities
UNCF
Work Colleges Consortium
Women's College Coalition

Accreditation Organizations
Accreditation Council for Pharmacy Education
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education & Training
Accrediting Council on Education in Journalism and Mass Communications
American Board for Accreditation in Psychoanalysis
American Board of Funeral Service Education
American Council for Construction Education
American Dental Association Commission on Dental Accreditation
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Specialized & Professional Accreditors
Association to Advance Collegiate Schools of Business
Commission on Accreditation for Health Informatics and Information Management Education
Commission on Accreditation for Marriage and Family Therapy Education
Commission on Accreditation of Allied Health Education Programs
Commission on Accreditation of Athletic Training Education
Commission on Accrediting of the Association of Theological Schools
Council for Accreditation of Counseling and Related Educational Programs

Council of Arts Accrediting Associations, including:
National Association of Schools of Art and Design
National Association of Schools of Dance
National Association of Schools of Music
National Association of Schools of Theatre
Council on Rehabilitation Education
Council on Social Work Education
Distance Education and Training Council
The Higher Learning Commission of the North Central Association of Colleges and Schools
Landscape Architectural Accreditation Board
Middle States Commission on Higher Education
Montessori Accreditation Council for Teacher Education
National Accrediting Agency for Clinical Laboratory Sciences
New England Association of Schools and Colleges, Commission on Institutions of Higher Education
Northwest Commission on Colleges and Universities
Society of American Foresters
Southern Association of Colleges and Schools Commission on Colleges
The Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

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[Additional submission of Ms. Tighe follows:]

Supplemental Material Submitted by Ms. Tighe

Chairman Miller, Ranking Member Kline, and members of the Committee: Thank you for inviting me here today to discuss the U.S. Department of Education (Department) Office of Inspector General's (OIG) reviews of accrediting agencies' standards for program length in higher education. This is my first opportunity to testify before Congress since my March confirmation as the Inspector General. It is an honor to lead this organization with its long history of accomplishment and to have the opportunity to work with this Committee, which has led the way in improving Federal education programs and operations so they meet the needs of America's students and families.

As requested, I will provide information on our work involving standards for program length and the definition of a credit hour—critically important issues in the

Federal student aid programs, as the amount of Federal student aid a student can receive is based on the number of credit hours for which a student is enrolled.

This issue has become even more significant as on-line education has exploded in recent years, making credit hour assignment difficult, its comparison to traditional classroom delivery a challenge, and its value increasingly important in order to ensure that students and taxpayers get what they are paying for.

Background on the OIG and Accrediting Agencies

For 30 years, the OIG has worked to promote the efficiency, effectiveness, and integrity of Federal education programs and operations. We conduct independent audits, inspections, investigations, and other reviews, and based on our findings, make recommendations to the Department to address systemic weaknesses and recommend to both the Department and Congress needed changes in Federal laws.

As members of this Committee know, the Federal student aid programs have long been a major focus of our audit, inspection, and investigative work, as they have been considered the most susceptible to fraud and abuse. The programs are large, complex, and inherently risky due to their design, reliance on numerous entities, and the nature of the student population. OIG has produced volumes of significant work involving the Federal student aid programs, leading to statutory changes to the Higher Education Act of 1965, as amended (HEA), as well as regulatory and Departmental operational changes. This includes extensive work involving accrediting agencies. Accrediting agencies are private educational associations that develop evaluation criteria and conduct peer reviews of institutions of higher education to ensure that the instruction provided by those institutions meets acceptable levels of quality. The role they play is vital, as accreditation is one of the primary requirements for an institution's participation in the Federal student aid programs and determines whether academic programs merit taxpayer support.

Under the HEA, the Department is dependent on the accrediting agencies recognized by the Secretary of Education (Secretary) to ensure that institutions provide quality, content, and academic rigor at the postsecondary level. The Higher Education Opportunity Act of 2008 included a provision that prohibits the Department from developing minimum regulatory criteria for an accrediting agency's standards for accreditation. The Department of Education Organization Act of 1980 prohibits the Department from making determinations on curriculum and educational quality. Thus, the Department is prohibited from determining the quality of education funded by Federal education dollars. All it can do with regard to evaluating the quality of postsecondary education is recognize accrediting agencies as reliable authorities for the quality of education funded by Federal dollars. In 1992, Congress established the National Advisory Committee on Institutional Quality and Integrity—an independent body charged with doing what the Department cannot: evaluating the adequacy of accrediting agencies' standards for accreditation and making recommendations to the Secretary as to those agencies that should be recognized. That input is vital, as the recognition of accrediting agencies by the Secretary is the primary tool available to the Department for ensuring that students receive value for the taxpayer investment in postsecondary education.

OIG Work Involving Accrediting Agencies

In the late 1980s and early 1990s, OIG identified significant problems with some accrediting agencies' oversight of program length at some institutions. Our work contributed to significantly strengthening the requirements accrediting agencies needed to meet for recognition by the Secretary in the Higher Education Act Amendments of 1992. The Amendments also mandated that an academic year, for undergraduate programs, must be a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 24 credit hours. The Department faced difficulty in applying this requirement to programs measuring student progress in credit hours but not using a semester, trimester, or quarter system, including nontraditional educational delivery methods. Therefore, the Department established the regulatory 12-Hour Rule. The 12-Hour Rule served as a surrogate for the Carnegie formula, which provided the standard unit of measuring credit in higher education, whereby one credit hour generally consisted of one hour of classroom work and two hours of outside preparation over the course of the academic year. "One hour of classroom work" is defined as 50 to 60 minutes. Under this method, a full-time student in an education program using a semester, trimester, or quarter system would have a workload of 36 hours per week through the academic year (12 hours of classroom work and 24 hours of outside preparation per week). At the time, there was an assumption that the traditional semester, trimester, and quarter system provided a minimum level of instruction and that these programs closely followed the Carnegie formula.

The 12-Hour Rule provided a tool for the Department to help ensure that students received a given quantity of instruction. The Department relied on accrediting agencies to ensure that the quantity and quality of instruction was at the postsecondary level. The assumption was that a full-time student attempting 12 credit hours in a semester would have 12 hours of scheduled instruction per week. In 2000, we performed an audit where we found that an institution's programs offered much less classroom education than programs provided by traditional termbased institutions and that the institution was in violation of the 12-Hour Rule. A series of audits over the next two years identified other institutions that were in violation of the 12-Hour Rule.

In 2002, the Department eliminated the 12-Hour Rule in favor of the One-Day Rule. Under this regulation, an institution is required to provide one day of regularly scheduled instruction during each week in an academic year. However, neither the HEA nor the implementing regulations define what constitutes instruction or the minimum amount of instruction that needs to be provided during the required one day of instruction. At the time of the change, much like today, there were many different delivery methods for instruction: the traditional residential term-based programs; residential programs not offered on a semester, trimester, or quarter system; correspondence courses; telecommunications programs; and independent study. There was no specificity in what could be included as instruction for determining an institution's academic year and credit hours for the awarding of Federal student aid funds.

We informed the Department about our concern with the elimination of the 12-Hour Rule, as well as the need to address the definition of instruction, the appropriate amount of Federal student aid to be awarded in non-traditional programs, and accrediting agency oversight of nontraditional programs. As a result of this concern, in 2002-2003, we took another look at this issue and examined two regional accrediting agencies and two national accrediting agencies, evaluating their standards for program length and student achievement. The scope of recognition for regional accrediting agencies is limited to specific states for each accrediting agency, while the scope of national accrediting agencies is not limited to specific states. We found:

Program Length

- Neither regional agency had a definition of a credit hour that it required its institutions to follow. The standards these regional agencies applied to program length were vague and without definition, effectively allowing institutions to establish their own standards; and
- The two national agencies both had a definition of a credit hour in terms of the required hours of instruction needed to equate to a credit hour.

Student Achievement

- The regional agencies had not established minimum graduation, placement, and licensure rates for any of their institutions providing vocational education programs. For all education programs, these regional agencies permitted institutions to establish their own standards for student achievement, without any specified minimum standard; and
- The national agencies had established minimum graduation, placement, and state licensure rates for the institutions they accredited. However, at both agencies we identified problems in the methodology by which the rates were calculated that caused the rates to be overstated.

As a result of these findings and in anticipation of the scheduled 2004 reauthorization of the HEA, we made a recommendation that Congress establish a statutory definition of a credit hour stating: "For programs that are not offered in clock-hours, credit hours are the basis for determining the amount of aid students are eligible for. Absent a definition of a credit hour, there are no measures in the [Higher Education Act] or regulations to ensure comparable funding across different types of educational programs." The recommendation was not included in the reauthorization.

Recent OIG Reviews

As a follow-up to this work and in anticipation of the 2009-2010 higher education negotiated rulemaking sessions in which the definition of a credit hour was to be discussed, OIG once again examined the issue in order to provide the Department with facts on program length and the definition of a credit hour in negotiated rulemaking and to provide information to Congress on the state of the definition of a credit hour at regional accrediting agencies. As regional accreditation has long been considered the "gold standard" in accreditation and information on what the regional accrediting agencies were doing with regard to credit hours could greatly in-

form the regulatory process, we determined that we would do reviews at the three largest of the seven regional accrediting agencies. The three accrediting agencies were: the Southern Association of Colleges and Schools Commission on Colleges (SACS); the Middle States Association of Colleges and Schools (Middle States); and the Higher Learning Commission of the North Central Association of Colleges and Schools (HLC). These three accrediting agencies represent one-third of the institutions participating in Federal student aid programs: 2,222 postsecondary institutions with more than $60 billion in Federal student aid funding.

Our objectives were to determine: (1) what guidance the accrediting agencies provide to institutions regarding program length and credit hours; (2) what guidance the accrediting agencies provide to peer reviewers to assess program length and credit hours when evaluating institutions; and (3) what documentation the accrediting agencies maintain to demonstrate how they evaluate institutions' program length and credit hours. We found that none of the accrediting agencies defined a credit hour and none of the accrediting agencies provided guidance on the minimum requirements for the assignment of credit hours. At two of the accrediting agencies (HLC and Middle States), we were told that student learning outcomes were more important than the assignment of credit hours; however, these two accrediting agencies provided no guidance to institutions or peer reviewers on acceptable minimum student learning outcomes at the postsecondary level. The following is a summary of our results at each accrediting agency:

Southern Association of Colleges and Schools Commission on Colleges

- SACS provides guidance to institutions regarding program length and the required number of credit hours; however, it does not provide guidance on the minimum requirements for the assignment of credit hours or the definition of a credit hour;
- SACS provides guidance to reviewers regarding the assessment of program length, but does not provide reviewers guidance regarding the assessment of credit hours; and
- SACS maintains documentation to demonstrate that it evaluates institutions' program length and credit hours.

Middle States Association of Colleges and Schools

- Middle States does not have minimum requirements specific to program length and does not have minimum requirements for the assignment of credit hours; and
- Middle States senior staff stated that their main focus was on student learning outcomes; however, we did not find that Middle States provided any guidance to institutions and peer reviewers on minimum outcome measures to ensure that courses and programs are sufficient in content and rigor.

Higher Learning Commission of the North Central Association of Colleges and Schools

- HLC's standards for accreditation do not establish the definition of a credit hour or set minimum requirements for program length and the assignment of credit hours;
- HLC does not provide specific guidance to peer reviewers on how to evaluate the appropriateness of an institution's processes for determining program length and assigning credit hours or on the minimum level of acceptability for accreditation when evaluating these processes;
- HLC maintains self-studies and team reports as documentation of its evaluation of institutions' program lengths and credit hours, but the amount of information related to program length and credit hours that institutions and peer reviewers included in these respective documents varied; and
- HLC determines whether institutions assess student learning outcomes; however, it does not define a minimum threshold for when the measures of achievement for student learning outcomes indicate poor educational or programmatic quality.

While conducting our inspection at HLC, we identified a serious issue that we brought to the Department's attention through an Alert Memorandum, HLC evaluated American InterContinental University (AIU)—a for-profit institution owned by Career Education Corporation (CEC)—for initial accreditation and identified issues related to the school's assignment of credit hours to certain undergraduate and graduate programs. HLC found the school to have an "egregious" credit policy that was not in the best interest of students, but nonetheless accredited AIU. HLC's accreditation of AIU calls into question whether it is a reliable authority regarding the quality of education or training provided by the institution. Since HLC determined that the practices at AIU meet its standards for quality, without limitation, we believe that the Department should be concerned about the quality of education or training at other institutions accredited by HLC. Based on this finding, our Alert

Memorandum recommended that the Department determine whether HLC is in compliance with the regulatory requirements for accrediting agencies and, if not, take appropriate action under the regulations to limit, suspend, or terminate HLC's recognition by the Secretary. The Department initiated a review of HLC and determined that the issue identified was not an isolated incident. As a result, the Department gave HLC two options for coming into compliance: (1) to accept a set of corrective actions determined by the Department; or (2) the Department would initiate a limitation, suspension, or termination action. In May 2010, HLC accepted the Department's corrective action plan.

Current Status

With the explosion of on-line postsecondary education and accelerated programs, the value of a credit hour becomes increasingly important to ensure that students and taxpayers get what they are paying for. Currently, the Federal student aid programs are primarily dependent on the credit hour for making funding decisions, as are other forms of aid, including state student aid programs and certain programs administered through the U.S. Department of Veterans Affairs. To help address this, the Department will soon be issuing a definition of a credit hour through a notice of proposed rulemaking that we understand will be issued on June 18. Once a final rule is adopted by the Department, we will be closely watching its implementation and evaluating whether the definition of a credit hour is effective in protecting students and taxpayers.

Closing Remarks

We view the recognition of accrediting agencies by the Secretary as the primary tool available to the Department for ensuring that students receive value for the taxpayer investment in postsecondary education. As the Department is prohibited from developing minimum regulatory criteria for an accrediting agency's standards for accreditation or making determinations on curriculum and educational quality, it is not unreasonable for the Department to expect an accrediting agency to have developed its own minimum standards.

On behalf of the OIG, I want to thank you for the support Congress has given to this office over the years. We look forward to working with the 111th Congress in furthering our mutual goal of protecting students and serving the taxpayers.

This concludes my written statement. I am happy to answer any of your questions.

[Whereupon, at 11:24 a.m., the subcommittee was adjourned.]