

November 23, 2011

Ms. Melissa Lewis
Executive Director
NACIQI
U.S. Department of Education
Room 8060
1990 K Street, NW
Washington, DC 20006

Dear Ms. Lewis:

Thank you for the opportunity to submit comments on the NACIQI Discussion Draft of October 18, 2011. We share many of the views discussed in the letter submitted by the American Council on Education (ACE) and other members of the academic community. In addition, we would like to raise a number of specific issues in this letter.

The Association of Public and Land-grant Universities (A·P·L·U) shares the common goals of ensuring limited federal resources are utilized in the most effective and efficient manner and also that fraud and abuse in the federal student aid system are rooted out. The options laid out in the NACIQI discussion draft crystallize a number of the issues that are key to the value of the accreditation process.

Accreditation as a means for improving quality is important to the maintenance of quality, and as in Option “A” of the document, it should be retained as one of the criteria for institutional eligibility for Title IV funds. A·P·L·U wholeheartedly believes accreditation is a must for institutional eligibility to participate in federal Title IV. Institutional eligibility cannot be delinked from accreditation.

Option “3” in the draft document emphasizes the clarification and partitioning of the roles of 1) the states in consumer protection; 2) the accreditors in program quality improvement; and, 3) the federal government in financial issues. Articulating and strengthening these separate roles in the triad is important to both to avoid wasteful overlap and to achieve adequate oversight.

Central to our comments here is the role of the accrediting process versus the eligibility determinations of the U.S. Department of Education. It is not possible to appropriately define the role of accreditation unless the role the Department is also clearly defined.

The Discussion Draft notes “that both federal and accreditor participants in the quality assurance enterprise are undifferentiated in their reviews,” and Option “15” would allow accreditors to offer more gradations in their accreditation decisions. We see value in gradations that will communicate more accurately issues that should be addressed and look forward to additional opportunities to engage in such a dialogue. Indeed, allowing gradations could more actively promote improvements. Moreover, as we describe below, there should be intermediate sanctions in connection with institutional eligibility determinations.

Different Functions for Different Gate Keepers

The effectiveness of accreditation and the oversight by the Department in achieving quality higher education has become a subject of national discussion because of rising levels of student debt and student loan default rates as well as reported abuses in recruitment, enrollment, and use of federal student aid. A recent Institute for Higher Education Policy (IHEP) report found a majority of borrowers from one cohort at least delay some loan payments, and a full quarter (26 percent) actually go into delinquency on their debt at some point during their first five years of repayment. A Department of Education report on loan default rates of a student cohort over a three-year window suggested a spike in loan default, including 25 percent defaults at for-profit institutions.

The federal government has a large role in providing financial aid, from the Pell Grant program to student loans. In fact, in FY2010, \$29 billion in Pell Grants were awarded and \$101.5 billion in federal student loans were guaranteed. Some estimates indicate there are \$830 billion in outstanding student loans, including both direct loans and loans with federal guarantees.

While some greater loan defaults are the result of bad economic times, such high default rates require close scrutiny. Are students given enough protection and are taxpayers provided with enough accountability? What are the respective roles of accreditation and the Education Department’s eligibility determinations?

COMBINED EFFORT - CLEAR RESPONSIBILITY AND AUTHORITY

The public expects reasonable accountability for the billions of dollars the federal government spends on student financial aid. The question is how to provide appropriate levels of accountability while avoiding government-established learning outcomes. A·P·L·U opposed, and continues to oppose, government prescriptions for learning outcomes as a means to achieve accountability. We do not think it would work and it would surely stifle the vitality, independence and diversity in U.S. higher education that has been the source of its international recognition. We agree with other members of the academic community that the assessment of student learning outcomes does not need intervention from the federal government.

The best means to achieve reasonable accountability would involve at least the following: 1) the accrediting process should be responsible for academic considerations without accreditor-determined learning outcomes; and, 2) the Education Department should have front-line responsibility for the fiscal determinations in the student financial aid eligibility process. This differentiation in roles is in the current law and should be further emphasized. In addition,

eligibility determinations of the Education Department should have more teeth, including the possibility of progressive financial impact on institutions commensurate with the failings found, and with no loopholes. This combined effort of the accreditors and the Education Department can achieve the requisite accountability and much-needed public credibility.

ACCREDITATION AND ACADEMIC QUALITY

The accreditation system was designed as a collaborative self-improvement process to gauge and enhance academic quality as appropriate to the mission of the institution. It is a system designed to promote academic improvement and accountability, with the determination of academic content and quality in the purview of academia.

Overall, accreditation has enhanced higher education quality. If we did not have the process, we would create something like it. Accreditation should, at its essence, continue as a self-improvement process to enhance academic quality. Individual institutions should measure learning outcomes in a manner they find appropriate for purposes of their mission and type of institution, and accrediting agencies should expect them to do so.

We support accountability and transparency for public higher education as a means to continue to improve our institutions. In that spirit, A·P·L·U and the American Association of State Colleges and Universities (AASCU) and their members created the Voluntary System of Accountability (VSA), which assists campuses with monitoring and reporting certain learning outcomes. The VSA, with more than 300 participating universities, was created as a voluntary system because we strongly felt measurements must be flexible enough to adjust to different needs and new information. We note that community colleges are in the process of creating a system somewhat modeled after the VSA. Also, the National Association of Independent Colleges and Universities (NAICU) has a system used by a large number of private colleges and universities to report key data.

THE EDUCATION DEPARTMENT AND INSTITUTIONAL ELIGIBILITY FOR STUDENT FINANCIAL AID

The Education Department has the ultimate responsibility under the law to make the decision on whether an institution is eligible to participate in federal student financial aid programs. Relying suitably on the work of the Government Accountability Office (GAO) and other parts of the government, the Education Department should bring to bear the important fiscal factors, such as student loan default rates, in making eligibility decisions.

An institution cannot keep its eligibility unless it also keeps its academic accreditation. Unfortunately, some do not understand that eligibility and accreditation are and should be two separate processes. In fact, many have begun to confuse or even partly merge the two processes as accreditors have been pushed to make fiscal factors, like loan default rates, primary factors in accreditation decisions.

The Education Department's eligibility process should be at the front line for fiscal considerations like loan default rates, not the accreditors. Fiscal reviews should be done regularly, not just in an accreditation cycle, to catch default and related troubles early because such problems generally get worse with age, not better. Moreover, the Education Department

appropriately has the responsibility for investigating fraud in connection with financial aid. Accreditors and accrediting teams are not qualified to be auditors or credit officers and lack the front-line authority. In short, the Education Department has or should have the ongoing institutional capacity to make the fiscally related decisions, and the accreditors do not have comparable capacity. The Department must serve as the primary gatekeeper to federal funds with respect to such improprieties. We agree with the draft report that the front-line financial function lies with the Department.

Enhanced Enforcement Mechanisms

Many believe that a major accountability challenge is the high default rates of a small number of institutions—institutions which frequently have very low indicators of academic progress and graduation rates. This matter is complex because many of these institutions serve a disproportional number of low-income, minority, first generation and non-traditional students. Nevertheless, with these factors objectively considered, the Education Department's eligibility process should appropriately deal with problematic institutions.

The true default rates of some institutions may be substantially higher than the rates commonly cited because of how the rates are calculated under the current law. The general perception is that the default rate of an institution is the percentage of students with outstanding payable loans in default. However, that is not so because the default rate, as defined in the law, is focused in time and narrowly defined. We simplify here some very complex provisions. Students generally are required to begin repaying shortly after they leave school but are not in default until they are 270 days (about nine months) in arrears on their payments. The Education Department by law makes the calculation based only on first two years of the time after students are required to begin repayment on the loans. Defaults which occur after the two-year period are not counted.

There is another reduction of the number of defaults counted in these calculations. Students may defer payments for as long as three years after they are required to start paying for reasons such as unemployment, hardship or military service. Loans are not considered in default during the deferment period. However, a student's default after the deferment period ends is not included in the default calculation of the institution in that later period; in other words, such a default is never counted in an institution's default rate.

An institution loses student loan and Pell eligibility when the cohort default rate, as determined year-by-year for an institution, exceeds a certain threshold. Currently, the threshold is as follows: over the most three year period the default rate cannot be greater than 40 percent for any one year or greater than 25 percent for the other two years. This is not a demanding threshold for institutions given that the overall default rate for participating institutions is now about 8 percent.

We note that in 2010 only five schools lost their eligibility out of thousands of eligible institutions. Apparently some schools or their agents work with borrowers to get deferments so that the school's default numbers are below the levels that would threaten eligibility. We are not in a position to make a judgment about the appropriateness of individual deferments. But as

noted above deferred loans that are later defaulted on might never be part of an institution's default numbers for purposes of making eligibility determinations.

Apparently because of such concerns, the Higher Education Opportunity Act of 2008 increased the window for these student borrower cohort calculations from two years to three years as of 2014. This will improve the calculations, but this change will not capture many defaults that have been postponed by deferments.

In short, the default provisions need to be revised and strengthened so that full and reasonable eligibility determinations can be made by the Department. This is important for the protection of taxpayer dollars and efficient use of those dollars. Moreover it is important to help ensure quality educational programs because high default rates suggest weakness in those programs.

Also, the Education Department's eligibility determinations should certainly be informed by post-graduate employment information. Of course, it is costly and difficult for institutions to gather the information themselves. Perhaps information from the Social Security Administration, with appropriate privacy safeguards, could be used. This is substantially less information than would be required under the Education Department's new "gainful employment" regulations. Employment data are important for accountability.

Graduation rates are another valuable indicator of institutional effectiveness for the Education Department to consider in making eligibility decisions. Of course such information is only useful if those rates are adjusted to incorporate transfers in and out of institutions, including data on eventual graduation success at other institutions. We need to properly define graduation rates and fully put in place the method to retrieve this data.

It would be reasonable for institutions to meet certain levels of success, e.g., not too high default rates as well as reasonable employment rates and graduation rates (fairly calculated), in order for them to continue to be institutionally eligible for Title IV monies. No doubt the nature of an institution's student body should be taken into consideration, e.g., percentage of Pell eligibility students, in establishing the expected level of success to maintain eligibility.

Accreditors should be informed by default rates, employment figures and appropriate graduation rates as they review academic effectiveness.

In making eligibility decisions and determining their impact, the Education Department should have a full set of options to deal with poorly performing institutions. Too often cases drag on for years while the institutions continue to receive federal student aid funds. The current fines are frequently not large enough to impact an institution's behavior. The problem is that the core eligibility decision on whether an institution can participate in student aid programs is either full availability of student loan monies or no availability. No availability would often be the death knell for an institution.

To address this "all or nothing" scenario, we suggest intermediate sanctions, which would limit, but not completely cut off the availability of student aid to problematic institutions. Such a mechanism would be easier to implement politically and may be more effective to drive changes

in the institutions. An intermediate sanction might work as follows: a poor performing institution could have the number of students eligible for student loans or the total amount of money available now limited to 85 to 90 percent of the prior three-year average. Such reductions would impact an institution and force change. Qualified students denied financial aid at that institution would go to another institution, as practical. We believe changes in laws and regulations should be brought about to allow for this new gate keeping mechanism.

Closing

The Education Department's institutional eligibility decisions should be based the considerations outlined above as well the other non-academic quality factors appropriately in the law. The Education Department should be the front line in making these decisions, thereby avoiding the current confusion on default versus academic considerations that has crept into the processes. This front-line role for the Education Department on default determinations would not require a change of the law but the law would need to be changed to tighten up the default requirement, to establish measures for employment and properly determined graduation rates, and probably to allow for less harsh but more effective intermediate sanctions.

Accreditation should remain a collaborative self improvement process to gauge and enhance academic quality. There will always remain some overlap with this division of responsibility, but the primary roles of each must be clear. The approach, outlined here, would provide the greater accountability and credibility needed for the use of public resources in higher education.

Sincerely,

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