

November 20, 2020

Herman Bounds, Director, Accreditation Group
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Re: Petition for Renewal of Recognition, Accrediting Council for Independent Colleges and Schools

Dear Members of the U.S. Department of Education and the National Advisory Committee on Institutional Quality and Integrity,

Thank you for the opportunity to submit comments regarding the application for renewal of recognition from the Accrediting Council for Independent Colleges and Schools (ACICS). This comment is submitted on behalf of the 16 undersigned organizations representing organizations and advocates working on behalf of students, veterans, faculty and staff, consumer, labor, and civil rights groups. Based on all evidence we recommend that you find ACICS out of compliance with federal requirements and withdraw the agency's recognition.

By February 2021, it will have been more than four years since the U.S. Department of Education decided to revoke ACICS's recognition in 2016. Since that time, the agency hasn't managed to go a year without additional evidence of non-compliance or investigations of institutions it accredits. This includes at least three incidents raised to ACICS by Department staff, resulting in seven new findings of noncompliance, and precipitous college closures affecting tens of thousands of students since the Secretary's decision to restore recognition in 2018. As you know, accrediting agencies' recognition cannot be extended unless the agency is able to come into compliance with agency standards within 12 months, something ACICS has repeatedly proven it is incapable of doing.

The Department cannot ignore the long history of non-compliance and the multiple investigations and evidence of additional non-compliance since the Secretary's decision to restore recognition in 2018. ACICS' pervasive and longstanding inability to serve as a reliable authority regarding the quality of education and training offered by the institutions of higher education or programs it accredits, and its lack of action has left tens of thousands of students' lives damaged. These students have taken on excessive debt levels to attend low-quality and predatory institutions of higher education that have been approved by ACICS and sanctioned by the Department of Education to access billions in federal taxpayer dollars.

In particular, we want to ensure the Department and NACIQI consider four key factors when considering ACICS' compliance with federal criteria:

- 1) Its continued non-compliance, four years after it first lost recognition;
- 2) The additional compliance concerns that have surfaced since it regained recognition;

- 3) Its failure to take appropriate action to safeguard students and taxpayers surrounding schools owned by Education Corporation for America; and
- 4) Its weak financial condition, which creates risk for students as a reliable authority.

ACICS continues to be a rubber stamp, allowing low-quality and predatory institutions of higher education access to billions in federal aid, and putting thousands of students at risk. It is too late to fix the damage to countless lives, but withdrawing recognition would restore integrity into the federal aid programs, send a strong and overdue message to other accreditors, and help protect future students enrolling in accredited institutions.

Persistent Issues of Non-Compliance

The decision in 2016 was based on whether ACICS could come into compliance with all criteria in a period of 12 months—a statutory requirement that prevents the Department from continuing the recognition of non-compliant agencies unless it has good reason to believe the agency will cure its deficiencies within a year. In 2018, contradicting numerous evaluations by the Department of Education’s Accreditation Group and a long track record of evidence, the Secretary of Education restored ACICS recognition but noted that it was still out of compliance with two recognition criteria. Now four years later, ACICS still fails to meet all recognition criteria.

The Secretary found ACICS non-compliant with 34 CFR 602.15(a)(2)-Competency of Representatives, which requires ACICS to demonstrate it has “competent and knowledgeable individuals... to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency’s scope, their responsibilities regarding distance education and correspondence education.” Numerous recent examples suggest ACICS fails to meet this standard.

Just this year, a news investigation by *USA Today* reportedly found that ACICS-accredited Reagan National University appeared not to be in operation, with no students and faculty listed on its website who claim to have never worked there.¹ While it is not clear how long the institution operated this way, or whether it was ever a functioning school in the first place, fewer than two years after ACICS granted the school initial accreditation, it cited the school for a 0 percent job placement rate. And just months before the news investigation was published, ACICS placed the institution on warning raising questions about proper materials necessary for education and qualified faculty, reportedly following an on-site visit.² The school also had connections to a suspected visa mill that was previously shut down in the state of Virginia. This lapse in monitoring and evaluation raises concerns about how the institution could have met the agency’s standards and gained accreditation in the first place, and how ACICS could visit the institution and miss so many red flags.

Last year, the State Council of Higher Education for Virginia (SCHEV) recommended revoking state approval to operate ACICS-accredited Virginia International University (VIU). SCHEV raised serious concerns about VIU’s distance education program, citing rampant plagiarism, grade inflation, classes

¹ Chris Quintana and Shelly Conlon, “This College was Accredited by a DeVos-Sanctioned Group. We Couldn’t Find Evidence of Students or Faculty,” *USA Today*, February 15, 2020, available at <https://www.usatoday.com/story/news/education/2020/02/15/college-accreditation-department-education-bets-y-devos-south-dakota-sioux-falls/4746906002/>

² *Ibid.*

deficient in quality and content, graduate courses lacking academic rigor, and lack of student faculty interaction. None of these concerns were found in a review by ACICS, which had approved VIU for a three-year renewal of accreditation the year prior.³ Students enrolling in distance education are at increased risk of enrolling in low-quality programs, making it especially important that recognized accreditors conduct proper oversight and monitoring. ACICS' failure to uncover these problems are deeply concerning.

This lack of compliance is nothing new. Many of the seven new areas of noncompliance identified by the Department in its most recent notice have been known problems for years. Those areas include:

- 34 602.15(a)(1) — adequate administrative staff and financial resources. The Department found ACICS out of compliance with this standard in 2016; and Secretary DeVos required additional monitoring from ACICS when she restored recognition to ACICS in November 2018.⁴
- 34 CFR 602.15(a)(2) — competent and knowledgeable individuals. The Department found ACICS out of compliance with this standard in 2016; and out of compliance still in November 2018, when Secretary DeVos restored recognition to ACICS.
- 34 CFR 602.16(d) (formerly 34 CFR 602.16(c)) — effectively addresses distance education.
- 34 CFR 602.17(c) — conducts on-site review. The Department found ACICS out of compliance with this standard in 2016.
- 34 CFR 602.17(e) — conducts its own analysis of the institution.
- 34 CFR 602.18(b)(3) (formerly 34 CFR 602.18(c)) — bases decisions on published standards.
- 34 CFR 602.19(b) — effectively monitors and evaluates institutions. The Department found ACICS out of compliance with this standard in 2016; and Secretary DeVos required additional monitoring from ACICS when she restored recognition to ACICS in November 2018.

Additional Compliance Concerns

In the time since ACICS' recognition was restored, the Department of Education has investigated ACICS compliance on numerous other occasions, which have resulted in identifying seven standards where ACICS remains noncompliant.⁵ These include the examples of VIU, RNU, and the San Diego University for Integrative Studies, which sought ACICS accreditation even after being denied re-approval by ACCET. According to the Department's evaluation, evidence suggests that ACICS does not demonstrate its

³ Elizabeth Redden, "'Rampant Plagiarism' and Patently Deficient' Online Education," Inside Higher Ed, March 18, 2019, available at <https://www.insidehighered.com/news/2019/03/18/staff-virginia-regulator-recommend-revoking-colleges-certific-ate-operate-due>

⁴ Senior Department Official Decision on ACICS, September 2016, <https://blog.ed.gov/files/2016/06/ACICS.pdf>; and Final letter from Secretary DeVos, November 2018, <https://www.ed.gov/acics>

⁵ Michael Stafford, "Education Department Opens New Review of ACICS," Politico, July 7, 2019, available at <https://www.politico.com/newsletters/morning-education/2019/07/31/education-department-opens-new-review-of-acics-463618>; Shalina Chatlani, "Ed Dept Flags Compliance Issues with Troubled Accreditors ACICS," Education Dive, December 10, 2019, available at <https://www.educationdive.com/news/ed-dept-flags-compliance-issues-with-troubled-accreditor-acics/568819/>; Chris Quintana, "Betsy DeVos Orders Probe After USA TODAY Finds College Evidently Without Faculty, Students," USA TODAY, February 27, 2020, available at <https://www.usatoday.com/story/news/education/2020/02/27/college-accreditation-betsy-devos-education-department-house-committee-investigation-sd/4891749002/>

review and monitoring processes are as thorough as necessary to identify issues, that it has adequate mechanisms in place to conduct prompt review, and that it systemically fails to uncover significant quality concerns. These types of failures are typical of the agency's track record and demonstrate that, despite a second chance, the agency is incapable of serving as a reliable authority of quality needed to protect students and taxpayers.

Education Corporation of America

In December 2018, institutions owned by Education Corporation of America and accredited by ACICS precipitously closed, leaving 20,000 students to fend for themselves.⁶ While ACICS revoked their accreditation just before closure, the warning signs were extensive. ACICS failed to uncover numerous long-standing quality concerns and did not secure teach-out agreements for students to assist in transfer until it was too late. A review by another accrediting agency of ECA-owned Virginia College, the largest chain overseen by ACICS, uncovered extensive quality concerns including unacceptable job placement and graduation rates, lack of proper equipment and supplies, and high faculty turnover rates. Despite ACICS' claims that it has improved its ability to conduct oversight of at-risk institutions, and verify job placement rates and other data, it failed to catch any of these concerns or take appropriate action to protect students when the school was facing severe financial trouble.

Weak Finances

We are deeply concerned that ACICS' precarious financial state in combination with the agency's long record of failed oversight put students at further risk of new low-quality institutions gaining accreditation. ACICS has been operating at a \$2.1 million deficit and projects it will not be stable until at least 2023.⁷ In large part, that is because of declining fee revenue from a falling number of institutions accredited by the agency. ACICS approved more than 270 institutions several years ago; some of the agency's more reputable institutions have since fled to other agencies and many of the disreputable ones have collapsed, leaving the agency with a much smaller revenue base and a skeleton staff. Today, the agency accredits only 52 Title IV-participating institutions.⁸

That has created incentives for ACICS to bring in new members, potentially lowering its bar for consideration. At the time the financial trouble was reported, ACICS was considering four institutions for initial accreditation. It recently had 22 new institutions under consideration for initial accreditation, suggesting it is in high need of new membership to shore up its finances.⁹ In its most recent (May 2020)

⁶ Vanessa Romo, "For-Profit College Chain, Education Corporation of America, Announces Shutdown," NPR, December 6, 2018, available at <https://www.npr.org/2018/12/06/674343283/for-profit-college-chain-education-corporation-of-america-announces-shut-down>

⁷ Andrew Kreighbaum, "U.S. Reviewing Finances of Reinstated For-Profit Accreditor, Inside Higher Ed, July 31, 2019, available at <https://www.insidehighered.com/quicktakes/2019/07/31/us-reviewing-finances-reinstated-profit-accreditor>

⁸ Per the College Scorecard, ACICS now accredits 52 institutions. ACICS's directory of institutions includes 83 approved institutions, some of which are excluded from the College Scorecard universe of institutions for a variety of reasons, such as not participating in the Title IV federal financial aid programs.

⁹ ACICS, "Institution Invited to Apply," ACICS, available at <https://www.acics.org/council-institutions-invited> (link no longer active)

meeting, it considered the initial accreditation of just one.¹⁰ This puts ACICS in a hazardous spot as a federal gatekeeper since it both needs to maintain its existing membership while significantly growing, which raises the risk that institutions that do not meet quality standards will either remain accredited or gain new accreditation. If it fails to add new institutions, it will continue to suffer from serious financial shortcomings. The Department must seriously consider this information in its evaluation, and closely monitor ACICS review and approval of institutions seeking accreditation.

Procedural Concerns

The Department has made it particularly difficult to provide relevant comments on ACICS at this time. ACICS was originally scheduled to submit various compliance and monitoring reports to the Department in November 2019, February 2020, and March 2020.¹¹ These compliance issues were scheduled to be discussed at the Summer 2020 NACIQI meeting. However, at the last second, the Department abruptly removed ACICS from the agenda and bumped the review to February 2021. Shortly thereafter, in August 2020, the Department issued its call for these comments, to be discussed at the Summer 2021 NACIQI meeting. At no time prior to this comment deadline in November 2020 has the Department released either ACICS's responses to the compliance issues or its own analysis of those matters; and these comments are being submitted months before the analyses will be presented to NACIQI and the public.

It is clear that the Department has sought to protect ACICS, buy additional time for the agency to come into compliance, and withhold key documents from the public eye. Our comments address a host of known issues with ACICS, but in the absence of even a modicum of transparency from the Department, we are unable to effectively provide comment on each one of those issues. We are confident that a thorough and clear-eyed review of ACICS' many consecutive years of noncompliance that allowed dozens of poor-quality colleges to rip off students and taxpayers before many of them ultimately collapsed, ending millions of students' academic futures, will result in the Department withdrawing the agency's recognition.

Conclusion

¹⁰ ACICS, "Summary of May 2020 Council Actions,"

<https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5f528f8d1d6416689ece6ce7/1599246221951/Summary%2Bof%2BMay%2B2020%2BCouncil%2BActions.pdf>

¹¹ These include a compliance report [due](#) in November 2019, addressing 34 CFR 602.15(a)(2) [competency of representatives] and 34 CFR 602.15(a)(6) [conflicts of interest]; monitoring reports required to be submitted at the same time pursuant to Secretary DeVos' [order, addressing](#) 34 CFR 602.15(a)(1) [administrative and financial resources], 34 CFR 602.16(a)(1)(i) [student achievement standards], 34 CFR 602.16(a)(1)(vii) [recruiting and admissions practices], and 34 CFR 602.19(b) [monitoring]; additional compliance reports submitted by ACICS to the Department, [due](#) February 1, 2020, addressing areas of noncompliance related to 34 CFR 602.15(a)(1) [administrative and financial resources], 34 CFR 602.16(c) [distance education], 34 CFR 602.17(c) [on-site reviews], 34 CFR 602.17(e) [agency conducts its own analysis of institutions' or programs' compliance with agency standards], and 34 CFR 602.28(d) [prompt review following another accreditor's action], especially as they relate to Virginia International University and San Diego University for Integrative Studies; and additional monitoring reports required by March 2020 regarding the Department's February 2020 [letter](#) opening an investigation into ACICS' actions or non-actions related to Reagan National University.

ACICS has repeatedly failed to fulfill its duty as gatekeeper to billions in federal taxpayer money. Four years after it first lost recognition, it still remains out of compliance with federal recognition criteria. The Department of Education and NACIQI have a responsibility to ensure that recognized agencies fully meet all recognition criteria, with significant implications for students and taxpayers. Allowing ACICS to continue despite this track record puts thousands of students at future risk. We urge you to find ACICS non-compliant based on all available evidence, and withdraw the agency's recognition.

Sincerely,

American Federation of Teachers
Center for American Progress
Consumer Action
David Halperin, Attorney
Generation Progress
National Association for College Admission Counseling
National Consumer Law Center (on behalf of its low-income clients)
New America Higher Education Program
Partnership for College Completion
Stephanie Hall, The Century Foundation
Student Veterans of America
The Education Trust
The Institute for College Access and Success (TICAS)
Third Way
Veterans Education Success
Young Invincibles

November 20, 2020

Office of Postsecondary Education
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Written Comments: Accrediting Council for Independent Colleges and Schools (ACICS)

To Whom It May Concern:

Thank you for the opportunity to submit comments regarding the Accrediting Council for Independent Colleges and Schools (ACICS). Based on the information available on ACICS' recent track record with regard to the criteria mentioned in the report, we recommend the Department find ACICS non-compliant with federal requirements for recognized accrediting agencies and withdraw the agency's recognition. We detail the reasons for this finding of non-compliance below.

ACICS' History of Non-Compliance

As you know, ACICS was due to submit a compliance report to the Department¹ by November 2019 regarding two areas of noncompliance: competency of representatives, to demonstrate additional training had been provided to volunteers, submit evidence regarding the qualifications of the data integrity reviewer, and offer additional information regarding the agency's ethics review board²; and conflicts of interest, requiring intermediate review committee members to sign attestations that they do not have conflicts of interest.³

Alongside the compliance report sought by the Department, ACICS was also instructed to submit "monitoring reports" regarding another four areas. And since the original decision, the Department has had to issue several subsequent requests for reporting from the agency on areas of non-compliance.⁴ Prior to identifying these multiple separate compliance issues (each touching on

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<https://opeweb.ed.gov/e-Recognition/PublicDocuments/DecisionLetter?agencyid=15&endpt=Final%20Decision%20of%20the%20Secretary%20November%202018.pdf&agencycd=ACICS&meetingdate=6%2F23%2F2016%2012%3A00%3A00%20AM>

² 34 CFR 602.15(a)(2)

³ 34 CFR 602.15(a)(6)

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<https://www.educationdive.com/news/ed-dept-flags-compliance-issues-with-troubled-accreditor-acics/568819/>; and <https://www.documentcloud.org/documents/6789634-Education-Dept-Letter-to-ACICS.html>.

multiple issues) over the last two years, the Department had withdrawn recognition from the agency completely, citing non-compliance with nearly two-dozen different criteria.⁵ Continued evidence of the agency's non-compliance demonstrates that, even given *years* to come back into compliance with federal requirements, ACICS is unable or unwilling to do so, and remains an inadequate arbiter of quality in numerous significant ways. The notice issued by the Department confirms this continued non-compliance, finding the agency was out of compliance with 34 CFR 602.15(a)(1), 602.15(a)(2), and 602.19(b) in 2016 and again was out of compliance or required additional monitoring when the Secretary ordered monitoring reports in November 2018, two years ago; was out of compliance with 34 CFR 602.17(c) in 2016; and is now additionally out of compliance with 34 CFR 602.16(d),⁶ 602.17(e), and 602.18(b)(3).⁷ With such a long history of failing to meet prescribed standards in a timely manner, the Department must require extraordinary evidence—not present in ACICS's track record—if it were to give ACICS yet another chance.

Flawed Public Comment Process

As required by the regulations, the Department has sought comments from the public regarding ACICS's recognition. It has not, however, released the ACICS petition or any relevant documentation necessary to allow for fully-informed comments. Nor has the Department released the various compliance and monitoring reports required of ACICS over the years.

It should come as no surprise to the Department that commenters must have compliance reports in order to make informed comments, given that in 2018, a court granted a temporary restraining order, forcing the Department to delay a third-party comment deadline for several accreditors' recognition—including ACICS—because the Department had not previously released the accreditor's petition. When the Department argued that it did not typically produce documents, the judge countered that “the fact that something has always been done a certain way does not necessarily mean that it is correct or lawful.” The judge also said that by “ending the comment period before [third-party commenters] have an opportunity to review the application, the Department may very well be acting arbitrarily and capriciously.”⁸

The Department should publish the compliance report submitted by ACICS, any monitoring reports that the agency has submitted, and all subsequent compliance reports, as well as any other petition or comparable submission by the agency to the Department. And future public-comment sessions should open only once the Department has made the relevant documentation available to the public, as well. For the purposes of this public comment period, the Department must recognize that commenters do not have access to all necessary information, and thoroughly analyze and consider all outside comments against federal rules and other materials denied to the public.

⁵ <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>

⁶ Formerly known as 34 CFR 602.16(c) in the regulations.

⁷ Formerly known as 34 CFR 602.18(c) in the regulations.

⁸ *The Century Foundation v. Betsy DeVos and the U.S. Department of Education*, Case No. 18-cv-1129(PAC)

Competency of Representatives

The Department cited ACICS for its failure to adequately meet the standards around competency of representatives. Continued evaluation of ACICS suggests that those problems have continued. The Department apparently agrees, given that it found non-compliance with this section in its inquiry of ACICS's accreditation of Reagan National University.⁹

The regulations require that agencies demonstrate they have “competent and knowledgeable individuals...to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency’s scope, their responsibilities regarding distance education and correspondence education.”¹⁰ But several recent incidents--situations that have occurred during the last year, since ACICS was assigned the compliance report--suggest ACICS is not adequately staffed with individuals who can uphold the agency’s responsibilities.

In December 2018, ACICS withdrew accreditation from the Education Corporation of America and its Virginia College brand, which operated both in-person and online programs. But that college’s precipitous closure--and the preceding actions by ACICS--came after years of questions about the institution’s quality, action by the Education Department to restrict federal financial aid dollars to the school, another accrediting agency denying the institution accreditation, and the institution’s drastic step to file for federal receivership in an attempt to evade federal bankruptcy rules.¹¹ When the institution closed, it did not have teach-out agreements in place, despite having been on show cause status with ACICS for months.¹² And when ACICS was asked why it didn’t seek teach-out plans from the school sooner, it failed to respond to comments.¹³ ECA’s collapse presents yet another example of ACICS’ failure to monitor institutions that present a known risk to students and taxpayers, and its continued failure to take actionable steps to protect students in advance of harm.

Another major flag comes with Virginia International University. In March 2019, Virginia’s state authorizer (SCHEV) “uncovered allegations of widespread plagiarism, grade inflation, and other concerns about academic quality” and recommended revoking the school’s recognition.¹⁴ Just six months earlier, ACICS had re-accredited the school for a full three years -- apparently missing all of

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https://www.govinfo.gov/content/pkg/FR-2020-11-05/pdf/2020-24595.pdf?utm_campaign=subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email

¹⁰ 34 CFR 602.15(a)(2)

¹¹

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

¹² <https://ope.ed.gov/dapip/#/institution-profile/163213>

¹³

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

¹⁴ <https://www.chronicle.com/article/How-a-Troubled-Accreditor-s/246448>

the quality issues identified by the state. Only *after* SCHEV reported the issues did ACICS follow suit with an action. And when SCHEV reached a consent agreement with the institution in June 2019,¹⁵ ACICS promptly dropped its show cause order.¹⁶ Competent representatives can reasonably be expected to spot widespread quality issues at an institution, and to follow through on such an institution once those quality issues are acted upon. ACICS officials did neither.

In another disturbing example (as cited by the Department in its recent notice), a news story this year reportedly found that ACICS had been accrediting Reagan National University in South Dakota since 2017 -- but the “institution” did not appear to exist or operate, except on paper, and seemed to have zero students or faculty. Only after *USA Today* made calls to ACICS requesting comment did the institution withdraw from ACICS’ accreditation.¹⁷ This clear dereliction of responsibility—even *after* repeated failures, intense public scrutiny, and Department of Education actions and loss of recognition—to conduct adequate oversight gets to the heart of questions about the competency of those managing ACICS operations and making accreditation decisions.

Administrative and Fiscal Resources

The Department’s Accreditation Group staff have previously identified numerous areas of concern related to the agency’s administrative and fiscal resources;¹⁸ the Secretary herself required ACICS to complete additional annual monitoring in this regard, and Department staff subsequently found ACICS to be noncompliant with these requirements through that monitoring report, as well as subsequent investigations of ACICS’s finances and its handling of multiple institutions. Accreditation staff pointed to Virginia International University (VIU, as described above) and San Diego University for Integrative Studies (SDUIS, which ACICS failed to investigate after its affiliated USA English Language Center lost accreditation from another accrediting agency), noting that “the lack of effective evaluation and monitoring approaches” to the two institutions “does not demonstrate effective compliance with Section 602.15(a)(1)” [adequate administrative staff and financial resources to carry out its accrediting responsibilities].

Additionally, after news reports about the agency’s budget deficit, Accreditation Group staff raised concerns about available resources for the agency to conduct rigorous quality assurance for its institutions. Despite a determination that ACICS would be back in the black soon enough, though, ACICS has continued to overfill its pipeline of new institutions. Today, more than 20 colleges have

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<https://www.insidehighered.com/quicktakes/2019/06/18/agreement-allows-virginia-international-continue-operating>

¹⁶

<https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5d824829cf1e8a6558472956/1568819242208/Summary+of+August+2019+Council+Actions.pdf>

¹⁷

<https://www.usatoday.com/story/news/education/2020/02/15/college-accreditation-department-education-betsy-devos-south-dakota-sioux-falls/4746906002/>

¹⁸ 34 CFR 602.15(a)(1)

been invited to apply for initial accreditation¹⁹ — above and beyond the 10 per year that ACICS said it needed to add to its roster of accredited colleges in order to break even.²⁰ This raises significant questions about the level of rigor the agency is applying, and whether its commitment to quality assurance is being overshadowed by its business decisions.

Distance Education

Several of the examples noted previously suggest that ACICS is not meeting federal criteria for oversight of distance education.²¹ For instance, the Virginia findings with respect to Virginia International University implicated the school's distance-education program. And Education Corporation of America (with its poor quality and serious financial problems that ultimately led to the school filing for federal receivership) operated online programs, as well. ACICS has demonstrated a clear lack of rigor and a consistent failure to meet federal standards related to distance education — a matter that has never been of greater importance than during the current national emergency.

Regard for Decisions of States and Other Accrediting Agencies

The Department has also found evidence that ACICS failed to meet regulatory requirements to investigate an institution or program if another recognized agency takes an adverse action against the institution.²² With Virginia International University, for instance, it is not clear that ACICS conducted an independent investigation following the reported problems from SCHEV -- just that it eventually took an action. Similarly, following a decision from the Accrediting Council for Continuing Education and Training (ACCET) to withdraw accreditation from the USA English Language Center owned by San Diego University for Integrative Studies, ACICS failed to produce evidence sufficient to persuade the Education Department that it "conducted a comprehensive analysis to assess the relationship [between SDUIS and USA English Language Center] to determine if ACICS is required to take into account the accreditation action by ACCET."²³

These repeated problems demonstrate ACICS' utter inability or unwillingness to follow federal rules and criteria where they require even the most basic quality assurance practices. In addition to demonstrating that ACICS is out of compliance with criteria regarding competency of representatives,²⁴ these cases depict an agency that has been persistently out of compliance with multiple criteria.

¹⁹ <https://www.acics.org/council-institutions-invited>

²⁰ As described by ACICS at a June 2019 CHEA meeting, documented in the author's notes; and <https://twitter.com/TheToniFlores/status/1135882203982946305>.

²¹ 34 CFR 602.16(d)(1)

²² 34 CFR 602.28(d); see:

<https://www.documentcloud.org/documents/6572673-2019-11-21-Letter-From-ED-to-ACICS.html>

²³ <https://www.documentcloud.org/documents/6572673-2019-11-21-Letter-From-ED-to-ACICS.html>

²⁴ 34 CFR 602.15(a)(2)

Moreover, ACICS' long track record of failure to adequately oversee institutions should increase the significance of these failures. In fact, even the Council for Higher Education Accreditation (CHEA) recommended denying ACICS' continued recognition (at which point the agency promptly withdrew its application).²⁵ While CHEA has declined to say with which nine standards the agency was out of compliance, such significant action by an entity that has historically been more a membership association than a regulator should carry substantial weight with the Department.

The Department cannot keep continuously extending the one-year clock for ACICS;²⁶ it lacks good cause to do so, as required in the law, and students and taxpayers deserve better than an endless string of second chances for ACICS. We are available to discuss these comments in greater detail if you have questions or concerns. Please do not hesitate to contact us at laitinen@newamerica.org and mccann@newamerica.org.

Sincerely,

Amy Laitinen
Director
Higher Education Program, New America

Clare McCann
Deputy Director for Federal Policy
Higher Education Program, New America

²⁵ <https://www.educationdive.com/news/breaking-acics-withdraws-application-for-recognition/570711/>

²⁶ Pursuant to 34 CFR 602.36(e)(3)(i)(A), the senior Department official may only continue the agency's recognition with a requirement for a compliance report if the SDO believes that the agency will come into compliance within 12 months, a timeline that ACICS has failed to meet several times over.



The Council for Education

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VIA ELECTRONIC MAIL

November 20, 2020 | Herman Bounds, Director
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U.S. Department of Education
400 Maryland Avenue SW, Room 270-01
Washington, DC 20202

[RE: THE COUNCIL FOR EDUCATION’S WRITTEN THIRD-PARTY COMMENTS:
A NOTICE BY THE U.S. EDUCATION DEPARTMENT, ACCREDITATION
GROUP, OFFICE OF POSTSECONDARY EDUCATION, U.S. DEPARTMENT OF
EDUCATION, CALL FOR WRITTEN THIRD-PARTY COMMENTS, 85 F.R. 70594,
NOV. 5, 2020](#)

Dear Mr. Herman Bounds,

My name is Harold Huggins and I’m the Director of The Council for Education (“CED”) (EIN:82-3295336)¹. I am writing you on behalf of the CED, along with the U.S. Department of Education, has taken part in the administrative process² of auditing schools that are recipients of federal student aid loans on behalf of a charitable class of student loan borrowers and Servicers of Student Loans.

¹ <https://tinyurl.com/EIN-CED>

² Negotiated Rulemaking for Higher Education 2018-19, Federal Register Notices by Date, Distance and Innovation (Final Rule – unofficial copy, August 24, 2020, Fact Sheet, p. 293, "These regulations also reaffirm that it is accreditors--and not the Department-- who are authorized by the HEA to establish and evaluate compliance with education quality standards, including when innovative delivery models challenge the status quo," available at <https://www.federalregister.gov/d/2020-18636/p-689>

It operates under section 501(c)(3)³ of the Internal Revenue Code and is organized to litigate (Rev. Rul. 80–278, 1980–2 C.B. 175⁴) in defense of the Civil Rights Act on behalf of a charitable class. Its principal activity consists of legal services⁵ as an audit relator⁶ of institutions in receipt of Title IV funds for specific evidence of any violation of 34 C.F.R. §§ 668.161⁷ and 668.162⁸.

On the Secretary’s appeal decision, the CED submits a request to the National Advisory Committee on Institutional Quality and Integrity (NACIQI) for permission to conduct a forensic audit of the Accrediting Council for Independent Colleges and Schools (ACICS) under the Governmental Accounting Standards Board (GASB), which is the source of generally accepted accounting principles (GAAP) used by state and local governments in the United States.

We believe that a forensic audit is in the public interest to provide restitution to the federal government as an audit relator.

Sincerely,

HAROLD HUGGINS

Harold Huggins
Council for Education (CED)
Director, Council for Education

³ <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>

⁴ <https://www.irs.gov/pub/irs-tege/rr80-278.pdf>

⁵ See, "When C.E.D. sells \$50.00 membership subscriptions to California residents as a federal relator to provide the U.S. Department of Education with specific evidence of any violation of 34 CFR 668.161 and 668.162, the true object of the membership subscription agreement sought by subscribers is legal representation. As such, it is my opinion that C.E.D.'s primary purpose is providing legal services." Letter from Greg Buehrer, Acting Supervisor, Cal. Dep't Tax & Fee Admin., Audit & Info. Sec., to Harold Huggins, Director, The Council for Educ, pp.3-4 (July 22, 2020) (on file with author).

⁶ <https://dictionary.findlaw.com/definition/relator.html>

⁷ <https://www.govinfo.gov/content/pkg/CFR-2019-title34-vol3/xml/CFR-2019-title34-vol3-sec668-161.xml>

⁸ <https://www.govinfo.gov/content/pkg/CFR-2019-title34-vol3/xml/CFR-2019-title34-vol3-sec668-162.xml>



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

November 20, 2020

The Honorable Elisabeth DeVos
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Herman Bounds
Director, Accreditation Group
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Delivered via email to: ThirdPartyComments@ed.gov

**RE: Department Recognition of the Accrediting Council for Independent Colleges
and Schools**

Dear Secretary DeVos and Mr. Bounds:

We, the undersigned Attorneys General of New York, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and the District of Columbia write in response to the Department of Education's call for written comments regarding the Accrediting Council for Independent Colleges and Schools' ("ACICS") compliance with federal regulations, as published in the Federal Register on November 5, 2020. 85 Fed. Reg. 70594. ACICS's oversight failures have persisted unabated for years and have resulted in substantial harm to thousands of students across the nation. ACICS's extensive and continuing record of noncompliance with federal regulations and its oversight failures demonstrate that ACICS it is unable or unwilling to meet its responsibilities. Accordingly, we urge the Department to immediately terminate ACICS's recognition.

A. ACICS's Oversight Failures Have Seriously Harmed Students and Taxpayers

State Attorneys General are charged with enforcing consumer protection laws in our respective states. Through our offices' investigations and enforcement actions against predatory for-profit schools, we have seen firsthand that ACICS has failed to fulfill its role as a gatekeeper and has failed to protect students and taxpayers. ACICS's failures have resulted in significant harm to students and in the waste of enormous amounts of taxpayer funds.

Among ACICS's most glaring oversight failures is its lack of oversight of campuses operated by the now-defunct Corinthian Colleges ("Corinthian"). ACICS continued accrediting Corinthian even after upwards of twenty state and federal agencies initiated investigations into Corinthian's fraud. In fact, ACICS continued to accredit Corinthian up until the day Corinthian declared bankruptcy. Because of ACICS's continued accreditation, tens of thousands of Corinthian students enrolled in high-cost, low-quality Corinthian programs and now face insurmountable student loan debt. In addition, Corinthian obtained approximately \$3.5 billion dollars from U.S. taxpayers in the form of federal student aid.¹

Corinthian is merely one example of ACICS's egregious oversight failures. ACICS accredited campuses for multiple for-profit schools that defrauded tens of thousands of students including ITT Tech, Education Management Company (EDMC), Career Education Corp. (now known as Perdoceo Education Corp.) and Westwood College. ITT Tech closed its doors after facing enforcement actions by the Consumer Financial Protection Bureau and other regulators, disrupting the education of tens of thousands of students. ACICS also accredited campuses of the Education Management Company (EDMC), which settled with thirty-nine State Attorneys General and agreed to forgive \$102.8 million in outstanding loan debt.² Career Education Corporation also had ACICS-accredited campuses and settled deceptive practices allegations with the New York Attorney General's office in a \$10.25 million agreement. The school later settled similar allegations of fraud with 48 State Attorneys General in an agreement that provided nearly \$500 million in debt relief.³ Finally, ACICS accredited campuses for Westwood College, a for-profit school that misrepresented its accreditation and settled fraud allegations with the Illinois Attorney General's Office for over \$15 million just before closing nationwide.⁴

ACICS's oversight lapses include its disregard for student outcomes at ACICS-accredited institutions, its inaction after regulators concluded that multiple ACICS-accredited institutions had reported fabricated job placement rates to ACICS, its failure to verify job placement

¹ Tamar Lewin, *Government to Forgive Student Loans at Corinthian Colleges*, N.Y. TIMES (June 8, 2015), <https://www.nytimes.com/2015/06/09/education/us-to-forgive-federal-loans-of-corinthian-college-students.html>.

² Stephanie Saul, *For-Profit College Operator EDMC Will Forgive Student Loans*, N.Y. TIMES (Nov. 16, 2015), <https://www.nytimes.com/2015/11/17/us/for-profit-college-operator-edmc-will-forgive-student-loans.html>.

³ A.G. Schneiderman Announces Groundbreaking \$10.25 Million Dollar Settlement with For-Profit Education Company That Inflated Job Placement Rates to Attract Students (Aug. 19, 2013), <https://ag.ny.gov/press-release/2013/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>; Ian Stewart, *Nearly 180,000 Students Won't Have to Repay Loans from For-Profit Higher Ed Company*, NPR (Jan. 3, 2019), <https://www.npr.org/2019/01/03/682057881/nearly-180-000-students-wont-have-to-repay-loans-from-for-profit-higher-ed-compa>.

⁴ Jason Knowles & Ann Pistone, *Westwood College to Forgive \$15M in Loans to Criminal Justice Students*, ABC7 CHICAGO (Nov. 4, 2015), <https://abc7chicago.com/for-profit-colleges-chicago-westwood-college-criminal-justice/1068354/>.

statistics even after findings of fabricated job placement statistics were publicized, its failure to report evidence of misconduct at ACICS-accredited schools to the Department, and its concerning lack of transparency or cooperation with regulators' investigations into student outcomes at ACICS-accredited institutions.

B. ACICS's Oversight Failures Have Continued Unabated

ACICS's pervasive oversight failures have continued unabated, even after the Department terminated, and then reinstated, ACICS's recognition. After ACICS's recognition was restored in 2018, the Department identified multiple new incidences of ACICS's noncompliance with federal regulations. For example, the Department's review of a monitoring report required pursuant to the November 21, 2018 Decision of the Secretary identified noncompliance with 34 CFR § 602.15(a)(1), which requires accreditors to maintain adequate staff and financial resources to carry out its accrediting responsibilities, and § 602.19(b), which requires accreditors to demonstrate effective monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards.⁵

The Department also made findings of noncompliance in a separate review initiated after media coverage of ACICS's presentation to the Council for Higher Education Accreditation ("CHEA") concerning its financial situation and its review of two institutions, Virginia International University and San Diego University for Integrative Studies.⁶ In yet another review, the Department identified noncompliance with a number of federal regulations, including 34 CFR §§ 602.15(a)(1), and 602.15(a)(2)⁷, in a review that arose out of media coverage that reported that ACICS accredited Regan National University, despite the fact that the school was not in operation.⁸

In addition to the Department's multiple findings of ACICS's failure to comply with federal regulations, earlier this year, CHEA, a national accreditor oversight organization, recommended that ACICS's application for recognition by CHEA be denied after CHEA found that ACICS was out of compliance with nine of its recognition standards.⁹ CHEA's Committee on Recognition found that ACICS failed to comply with CHEA standards governing the core duties of accreditors, including, for example, a requirement that accreditors' policies and procedures ensure that accrediting decision-making address how well institutions or programs meet performance expectations.¹⁰ ACICS later withdrew its application for recognition from CHEA.

⁵ See Notice, 85 Fed. Reg. 70594 (Nov. 5, 2020).

⁶ See *id.*

⁷ 34 CFR § 602.15(a)(2) requires accreditors to demonstrate that they have competent, qualified employees who are adequately trained regarding the agency's standards, policies, and procedures.

⁸ See Notice, 85 Fed. Reg. 70594 (Nov. 5, 2020).

⁹ Jeremy Bauer-Wolf, *ACICS No Longer Seeking Recognition from Key Oversight Group*, EDUCATION DIVE (Jan. 21, 2020), <https://www.educationdive.com/news/breaking-acics-withdraws-application-for-recognition/570711/>.

¹⁰ See letter from ACICS President Michelle Edwards to CHEA President Dr. Judith Eaton, dated Jan. 17, 2020, <https://static1.squarespace.com/static/5ce58a38738b880001909396/t/5e20ec63c8ae141b3ed9585e/1579215971409/ACICS+CHEA+Withdrawal+Notice.pdf>. See also, Council for Higher Education Accreditation Recognition of

C. ACICS's Failures Warrant Immediate Termination of Recognition

ACICS's extensive and continuing record of noncompliance with federal regulations and oversight failures demonstrate that despite receiving multiple chances to reform its practices, ACICS is unwilling or unable to bring itself into compliance with federal regulations and adequately address oversight failures. ACICS's systemic accreditation failures and refusal to fulfill its obligations to protect students and taxpayers have enabled predatory schools to victimize thousands of students and to enrich themselves at taxpayers' expense. Given the gravity and longevity of ACICS's string of oversight failures and noncompliance with federal regulations, we urge the Department to immediately terminate ACICS's recognition.

Sincerely,

(b)(6)

LETITIA JAMES
New York Attorney General

XAVIER BECERRA
California Attorney General

(b)(6)

Colorado Attorney General
Attorney General

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