United States Department of Education
Office of Postsecondary Education

Docket ID ED-2018-OPE-0076

Public Hearing

Tuesday, September 11, 2018

The Public Hearing convened in the Xavier University Convocation Center Annex, Room 111, Building 62, New Orleans, Louisiana, at 9:00 a.m., Aaron Washington, Facilitator, presiding.

Present

Michael Brickman, Senior Advisor, Office of the Undersecretary, U.S. Department of Education
Aaron Washington, Office of Postsecondary Education, U.S. Department of Education
MR. BRICKMAN: All right. Good morning, everyone. Thank you for being here. My name is Michael Brickman. I am Senior Advisor in the Office of the Undersecretary at the U.S. Department of Education.

On behalf of Secretary Betsy DeVos, I am pleased to welcome you to this public hearing. I'm joined at the table by Aaron Washington, who is from the Office of Postsecondary Education at the Department.

First, let me say how much we appreciate our hosts at Xavier University for having us here. It is a beautiful campus, and we're really appreciative of the opportunity to join you all here in New Orleans.

This is the second of three public hearings that we're convening to gather input regarding regulations that govern programs authorized under Title IV of the Higher Education Act of 1965. Later this week, we will hold a
similar hearing in Wisconsin.

Secretary DeVos has challenged us to rethink education. And to us, rethink means everyone questioning everything, to ensure nothing limits students to be prepared for what comes next.

In postsecondary education, we have focused largely on breaking down barriers to innovation and reducing regulatory burden, while protecting students and taxpayers from unreasonable risk.

To this end, we are seeking input regarding the number of regulatory provisions, including issues related to the recognition of accreditors; distance learning and competency-based education, including the definition of regular and substantive interaction, direct assessment, and prior learning assessment; state authorization; the definition of credit hour; and roles and responsibilities of institutions and accrediting agencies in the teach-out process.

More specifically, with respect to
accreditation, the Department is interested in improving the recognition and oversight process to ensure consistent and equal treatment of all agencies.

In this work, we wish to recognize the autonomy and independence of agencies, support the need of today's students, and honor the missions of various types of institutions.

We would like to hear your thoughts about how to simplify the Department's process for recognition of accrediting agencies and how to emphasize the criteria that focus on educational quality, rather than administrative minutia.

We are also interested in revising any accreditation regulations that are ambiguous, repetitious, or unnecessarily burdensome, as well as reducing duplication of oversight responsibilities between the Department of Education, states, and accrediting agencies, and ensuring the Department is more accountable and responsive to those it serves.

In addition to the accrediting
regulations, we are exploring some specific regulatory provisions that are not directly part of the accreditation regulations, but that impact the work institutions do and the way that work might be evaluated by accreditors.

Those provisions include the development of a single job placement definition and a single methodology for calculating job placement rates; the determination of reasonable program length for clock-hour programs that result in certification or licensure; the elimination of barriers to innovation and competition in postsecondary education or to student completion, graduation, or employment, including barriers created by unnecessary credential inflation or other practices that are unfair to students; the ability for an institution to contract with other entities to provide a percentage of an educational program, including to promote innovation and enable more rapid responses among career and technical programs to employer and workforce needs; and the simplification and clarification of
program requirements to minimize inadvertent
grant-to-loan conversions for TEACH Grant
recipients.

Additionally, in light of the recent
Supreme Court ruling in Trinity Lutheran, the
Department will review provisions and our
regulations related to the eligibility of
faith-based entities to participate in Title IV
programs and the eligibility of students to obtain
certain benefits under those programs.

We welcome your perspectives as we work
on updating our regulations in each of these areas.
We anticipate bringing these issues and any others
that might be added, including at the public's
suggestion, before a negotiated rulemaking
committee that will begin its negotiations in
January of 2019.

We also plan to create two
subcommittees, with one focused on
competency-based education and the other focused
on the eligibility of faith-based entities to
participate in Title IV programs. The
subcommittees would consist of experts in those areas, who would not make decisions, but would report their recommendations back to the full committee for deliberation during public negotiations.

In the late fall, we will publish a notice in the Federal Register seeking nominations for negotiators and subcommittee members. We hope that you and your colleagues will consider serving in that capacity at that time.

In order to best use the time of the committee, prior to its first meeting we plan to provide draft proposed regulatory language for discussion by the negotiating committee and the subcommittee, rather than the issue papers we have used in the past.

This will enable the committee to consider concrete proposals before the negotiations and to begin more of its essential work during the first session.

With respect to the logistics for today, many of you have already signed up for times
to speak, and Aaron will call you up to the microphone accordingly.

We still have some time slots available for today, so if you have not signed up and would like to speak, please see Aaron and sign up for a time.

Speakers are asked to limit their remarks to five minutes. If you get to the end of your five minutes, Aaron will ask you to wrap up, and we ask that you do so within 20 seconds.

Please note that this hearing is being transcribed, and the transcription will be posted on our website in the next few weeks. Although the Department is not preparing a video or audio recording of the hearing, this is a public hearing, and it's possible that a member of the public may record your remarks.

If you have written comments you would like to submit here today, you can give them to me or Aaron. We are also accepting those written comments via regulations.gov through Friday, September 14, at 11:59 p.m. Eastern Daylight Time.
We have three scheduled breaks today. Or, actually, two scheduled breaks today. One in the morning from 10:30 to 10:40 and one in the afternoon from 12:00 to 12:15. We may extend those breaks if we do not have people scheduled to speak.

In consideration of others, please silence your cell phones while you're in this room. You're welcome, though, to make calls out in the lobby.

When you're called to speak, please provide your name and affiliation. We look forward to your comments.

Thank you for your time in sharing your expertise with us. We look forward to an interesting and productive day.

MR. WASHINGTON: Mike Saunders?

MR. SAUNDERS: Good morning. My name is Mike Saunders. I'm the Legal Advocacy Director of Veterans Education Success. I appreciate the opportunity to share my thoughts and concerns with you regarding the Department's proposed regulatory changes.
Veterans and military service organizations stand united against waste, fraud, and abuse by bad actor colleges. Veterans, service members, their families, and survivors are often targeted by bad actor colleges with deceptive and aggressive recruiting for subpar education.

We understand the desire to encourage and improve innovation in higher education but take issue with several of the regulatory rollbacks that we believe will undermine critical protections for students, while permitting low quality education providers to waste or fail to provide an adequate return on taxpayer dollars.

The Department must stand strong against this poor behavior and not become an abettor to it.

Of the numerous proposed changes today, I want to focus on the following two key issues, the reasonable relationship between programs and entry-level requirements and outsourcing education.

The requirement that higher education
institutions demonstrate a reasonable relationship between the length of a program and the entry-level requirements for the recognized occupation for which the student is studying is a common sense regulation that was put in place to combat fraud from unscrupulous schools.

The current regulation limits the length of a program that a school can offer, so that the number of hours provided in the program cannot exceed by more than 50 percent the minimum number of hours required for training in the recognized occupation for which the program prepares the student.

Removing this regulation will allow schools to arbitrarily choose any number of hours they wish, essentially charging the student for excess education that is not required in that field of study.

To put this in perspective, even if a program should only be one semester in length, as required by the targeted occupation, removal of this regulation would allow a school to require
student veterans to use all 36 months of their GI Bill benefits.

At many of these low quality schools, students finish a course of study and are unable to get certified or find employment.

In a 2015 published report, Veterans Education Success documented that 20 percent of 300 GI Bill-approved programs in licensed occupations did not leave the veteran eligible to even sit for the licensing exam.

Equally disturbing, with the rollback of this regulation, the school would have no incentive to ensure their students complete their program of study. This would result in schools putting much effort into recruiting veterans and service members to get them in the door and to the first few days of class, receiving the money for the GI Bill for only a few short days of attendance, with no incentive to encourage persistence and completion of a program, and leave the student on the hook for paying back the VA for their wasted GI Bill.
Unfortunately, this is not a hypothetical example, as it has happened in the past, and it is why these regulations were instituted in the first place.

Additionally, the cap on the ability of Title IV eligible colleges to outsource instruction to private companies and ineligible institutes is of high importance. Currently, schools must be approved by accrediting agencies authorized by the state and approved by the Department of Education before they can receive federal aid.

As it stands, ineligible institutions can enter into outsourcing agreements with eligible institutions to provide 25 percent, but no more than 50 percent, of the educational program the student receives.

Repeal of this cap would undoubtedly hurt students by undermining the quality of their education. Weakening the limitations on school's ability to outsource the educational programming would also undermine the oversight system tasked
with ensuring sufficient educational quality and eliminate the deterrence factor currently in place that attempts to prevent these schools from engaging in deceptive tactics.

Unscrupulous schools who were deemed ineligible to receive federal financial aid by the Department will partner with approved schools to continue receiving Title IV funding.

The Department's own Inspector General found institutions were inflating the value of college courses with little or no oversight from accreditors, demonstrating that there are bad actors attempting to defraud students and the government.

The weakening of these regulations would pave the way for similar bad actors to charge excessive fees for no real education, to ultimately hurt those that we represent, service members, veterans, and their families, who use their hard earned military education benefits to go to school and are often the targets of predatory schools looking to capitalize on these benefits.
It is reprehensible that those who have been willing to sacrifice all for our country and chose to pursue necessary training that leads to a successful career would find themselves the victims of predatory schools who defraud them of their hard-earned benefits.

It is even more upsetting that the Department would choose to turn a blind eye to this behavior and remove common sense protections that were put in place because this behavior did indeed happen.

In conclusion, the Department of Education must be a good steward of taxpayer dollars and keep quality standards that protect both students and taxpayers.

MR. WASHINGTON: Thank you. Jimmie Bilbo? Jimmie Bilbo?

Okay, we're going to move on to Marshall Hill.

MR. HILL: Shall I begin?

MR. WASHINGTON: Yes, you can.

MR. HILL: Good morning. My name is
Marshall Hill. I'm Executive Director of the National Council for State Authorization Reciprocity Agreements. Thankfully, we have an acronym, NC-SARA, which is a bit easier to manage.

NC-SARA is an independent 501(c)(3) nonprofit organization that provides a voluntary regional approach to state authorization and oversight of postsecondary distance education that crosses state lines.

Forty-nine states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are members of SARA. About 1,875 institutions participate, including Xavier University.

Our close partners in this work are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board, and the Western Interstate Commission for Higher Education.

The matters identified by the Department to be addressed in the proposed negotiated rulemaking are critically important to both students and institutions.
Clear, workable, and effective rules about them best serve all legitimate interests. The issues identified by the Department have all been significantly affected by recent and accumulating changes in higher education, and ensuring that they are addressed in ways that meet the national interests and the needs of students is a goal we support.

I'm focusing my substantive comments today on one of the other issues you proposed to address in negotiated rulemaking, the issue of state authorization of distance education.

NC-SARA supports the Department's 2016 requirement, the one now delayed, that institutions participating in Title IV programs must be able to demonstrate that they have obtained all necessary authorization to offer distance education in each state in which they enroll students.

We appreciate the Department's previous determination that institutions could demonstrate that compliance either by documenting
each individual state's approval or through institutional participation in a State Authorization Reciprocity Agreement that covered the states in which the institution enrolls distance education students.

We do have some concerns about the late-2016 rule's definition of a State Authorization Reciprocity Agreement, and we urge that that definition be addressed and clarified during the upcoming negotiated rulemaking process. I have provided details of our concerns and suggestions for addressing them in the written materials I have submitted electronically.

Finally, having served on four negotiated rulemaking panels convened by the Department, including two of them dealing with accreditation, the number, breadth, and complexity of the regulatory issues proposed to be addressed appear to me to be exceptionally daunting.

If a reduction in the number of topics does not meet the Department's goals, I suggest you consider establishing several additional
subcommittees, similar to those you currently propose on direct assessment and the eligibility of faith-based entities for participation in Title IV programs.

Thank you for allowing me to comment, and best wishes as you begin this process.

MR. WASHINGTON: Thank you. Renee Seruntine?

MS. SERUNTINE: Good morning. My name is Renee Seruntine. I'm a student veteran, and I just recently made ten years in the Army National Guard.

I went to Full Sail University in Winter Park, Florida, from 2004 to 2005, and received an associate's degree. Between living expenses and tuition, I left school with about $95,000 in student loan debt.

Full Sail University made it seem like after attending their school, I would be able to earn a lucrative salary, which their job placement service would help me find.

I never would have spent over $60,000
on tuition and over $30,000 on living expenses had
I know that three years after I graduated, I never
used that education again.

Their career development program, which was featured prominently when I enrolled, turned out to be a joke. When I called their career development office, they told me to go to the alumni section of their website, at alumni.fullsail.edu.

The website currently says that Full Sail's career development program can provide you with industry resources and valuable information, not that they do or that they will, but that they can.

I was not concerned about that at the time I graduated because New Orleans was the number three location in the country for film production.

After living in Orlando for six more months because of the devastation wrought by Hurricane Katrina, I returned home to my chosen profession.

I quickly learned that I did not need a degree, especially the $60,000 one that I got from
Full Sail, to work in the jobs that were available in the industry.

The pay was good, $18 an hour plus time and a half after eight hours each day. A very demanding schedule of 15 to 16 hour days. But because of the nature of the industry, the jobs only lasted for a few weeks or a few months at a time.

I was constantly out of work and competing with others to jump on the next new project. That was never discussed during my time at Full Sail.

Due to the physically demanding work of being a set lighting technician and a grip, something that I should have learned prior to graduation if my training at Full Sail had been of adequate quality, three years after attending school and $95,000 in debt, I joined the National Guard.

Today, I work in the public affairs, doing photojournalism for the Louisiana National Guard, and the debt hangs over me daily.

When I went to school, I believed that
it was a quality school since the school was able 
to offer federal financial aid. I believed that 
the government's approval of that school to use 
taxpayer dollars was a stamp of approval on the type 
of education they offered.

I would have never guessed I would be 
here, 13 years later, still dealing with the 
pressures of having such high student loan debt for 
a worthless degree.

I thought the Department of Education 
was looking out for and protecting, but instead, 
they approved a school that has done nothing but 
cause me heartache and stress, as I struggle to pay 
down unnecessary student debt that grows in 
interest.

The Department of Education has a 
responsibility to protect students like me from 
schools that take advantage of unsuspecting 
students.

We go to these schools to learn 
information that will enrich our lives, not to find 
out afterwards that our futures were sacrificed for
short-term profit.

I implore the Department to please consider the impact of their decisions on students like me and to please keep protections for students in place, so others will not find themselves in the same situation I am currently in.

Thank you for your time and consideration.

MR. WASHINGTON: Thank you. Dr. Michele Ernst?

DR. ERNST: Good morning. My name is Dr. Michele Ernst. I am the Dean of SAE Institute North America and the President of Central States Private Education Network, or CSPEN.

I appreciate the opportunity to talk today about some of the key issues that are impacting the future of higher education.

I've had the privilege of being a peer evaluator for two national accreditation agencies over 20 years. Additionally, my dissertation research reviewed the differences between national and regional accreditation in the implications of
higher education.

Accreditation agencies across the country were created as a way to ensure quality in higher education, while also ensuring standardization of expectations of students entering colleges and universities.

This fundamental expectation was changed when the accreditation agencies were made the gatekeepers of Title IV with the Higher Education Act.

No longer was accreditation about ensuring quality in higher education, but it also became a way to police schools for receiving federal financial aid.

We need to refocus on the purpose of accreditation agencies being responsible for ensuring quality, instead of determining whether an R2T4 was calculated properly or whether an institutional loan is administered correctly. While those questions need to be answered, it shouldn't be the role of an accreditation agency.

As many are aware, the credit hour
definition was created by the Carnegie Foundation over 100 years ago. It was a system created to aid in the calculation of college professor pensions by gauging how many hours an instructor was teaching.

As stated by the Carnegie Foundation, it was never intended to function as a measure of what students learned. Yet, that is what it has become.

A student spends so much time sitting in a class and earns a grade of a B, and the expectation is that the student has mastered the learning outcome of the course in order to earn a grade of above average. Unfortunately, this is not always the case.

We need a system that determines how much financial aid a student is qualified for, while also communicating to the student, to the public, including the employers, what a student actually learned.

This leads me to the discussion on innovation in higher education. There are some
institutions of higher learning that have been able to push the envelope and create some very innovative practices, such as Western Governors, Capella University, Excelsior College, to name a few.

However, these schools are the exception, and we have not seen innovation throughout higher education. Certainly, the implications of attempting something unique that might challenge this current system comes with risk, especially with our regulatory environment.

As a school administrator, I have found myself continually having to set aside what I know to be a better approach to student learning simply because I cannot make it fit into the current regulations.

I've had the privilege of working with a global group of schools, with over 50 throughout the world. During my interactions with my global colleagues, I hear about the innovations that they're able to implement, but yet, very few are things that we can replicate in the U.S., due to
our regulations.

Competency-based and direct assessment are innovations that I believe can be a game changer in the U.S. The ability for a student to focus only on learning what they don't know, instead of spending time relearning what they already know, seems like a poor way to teach.

I have triplets that are now in college, all three of whom are attending traditional four-year public universities. My son, after his first semester, told me how easy college was compared to high school, and it was in large part because he was being taught what he already knew. He thought he was smarter than everybody else.

As a parent and as a taxpayer, you can imagine how disappointed I am, knowing that I paid that much money for my son to learn what he already knew.

Clearly, I support the need to commence with a new round of negotiated rulemaking that will address these critical topics. I applaud the Secretary for having the courage to review these
critical components of higher education in an effort to make it better.

However, I am concerned about the sheer volume of topics --

MR. WASHINGTON: Twenty seconds left.

DR. ERNST: -- that are scheduled to be addressed. While they all need to be discussed, it seems it would be difficult to cover completely to reach consensus.

Thank you very much for giving me the opportunity to voice my opinion on these matters. I'm very passionate about all these topics and believe that we have the ability to make great changes to the current landscape, which will have lasting effects on future college students, as well as the employers who hire them.

MR. WASHINGTON: Thank you.

DR. ERNST: Thanks.

MR. WASHINGTON: Rachel Farris?

MS. FARRIS: Good morning, thank you for this opportunity. My name is Rachel Farris, and I serve as Registrar for Columbia Southern
University, and have for the last 13 years.

Prior to joining CSU, I served in the United States Navy for the same amount of time. I take pride in my chosen profession, and I am passionate about providing the necessary support to see our students succeed, no matter where they attend.

It is also my pleasure to support my fellow veterans and active-duty military students, which represent approximately 40 percent of CSU's nearly 30,000 active student body.

CSU is a private, family-owned, fully online institution that serves students across many professions. CSU is accredited by the Distance Education Accrediting Commission, which is a national accreditor recognized by the U.S. Department of Education and CHEA.

In addition, CSU participates in Quality Matters, a nationally recognized faculty-centered peer review process that certifies the quality of online educational courses.
I appreciate the Department reviewing the regular and substantive interaction, the credit hour definition, and state authorization, among many other areas affecting accrediting agencies and institutions.

However, today, I would like to specifically share an issue I see all too often as the Registrar. Because CSU is nationally accredited, our students are oftentimes denied acceptance of their earned credit or are denied entrance into a graduate program, a decision based solely on accreditation, with no comprehensive review of the program.

It is not uncommon for CSU students to encounter transfer credit and admissions policies that indicate only credits or degrees from regionally accredited institutions are accepted.

This happens even though the Department of Education and CHEA recognizes both national and regional accreditation.

Furthermore, CHEA, the American Council on Education, and AACRAO, issued a joint
statement on transfer credit and award of the credit that states, institutions and accreditors should ensure that decisions about awarding transfer credit are not made solely on the source of accreditation of the sending program or institution, and further states that students should have reasonable explanations when credit is denied.

Despite this strong support for merit review when determining transferability of credit, we continue to see the denial of earned credits with no review or explanation, other than the sending institution is not regionally accredited.

Interestingly, it is common for admissions policies to accommodate international students holding academic credentials from foreign institutions to receive a review based on merit, but exclude a U.S. citizen who has earned a degree from a nationally accredited domestic institution.

In an effort to further assist these students, my office prepares transfer packets containing instructor credentials and curriculum.
information to encourage a merit-based review. Unfortunately, these efforts do not work if the receiving institution chooses to base transfer credit decision based solely on accreditation.

Discussing the issue of denied credit or a degree not meeting admissions requirements because of national accreditation is disheartening and a source of student frustration. These practices do not honor the student's investment of time and money, nor does it promote timely program completion with minimal financial debt.

I am not a proponent of regulations as a solution to fix every issue. I support each institution's responsibility for establishing its own academic policies.

However, I do believe that earned credits from a recognized institution should be granted a fair and merit-based review prior to a decision to deny the credit.

I understand why so many states have passed regulations to provide for the transfer of credit between community colleges and public
four-year institutions.

I hope the Department can further explore this issue affecting so many students during this negotiated rulemaking session and determine a proper solution that respects the right of institutions to establish its own policies, while requiring transfer credit practice described in the joint statement.

I believe that we all want to promote timely program completion, the ability of a mobile student population to transfer earned credits, and for all students to be treated fairly.

CSU will follow up with written comments.

MR. WASHINGTON: Twenty seconds remaining.

MS. FARRIS: Thank you for the opportunity to share my remarks.

MR. WASHINGTON: Thank you. We've reached the end of our registered speakers. If someone who has not already spoken wishes to speak, you can come forward at this time.
If you haven't signed it, please sign in at the table here with the sign-in sheet. I did notice a few folks came in after we began.

And I will be here until our first break, if anyone wishes, that hasn't already spoken, wishes to testify. Thank you.

(Whereupon, the above-entitled matter went off the record at 9:32 a.m. and resumed at 10:31 a.m.)

MR. WASHINGTON: Hello, everybody. We have decided to change the break schedule, based on not having any speakers for the remainder of the day. We are going to take a break from 11:00 to 12:15.

So we're not going to take a break now, we're going to take a break from 11:00 to 12:15. And we will reconvene at 12:15 until 1:00 p.m. Thank you.

(Whereupon, the above-entitled matter went off the record at 10:31 a.m. and resumed at 11:00 a.m.)

MR. WASHINGTON: We're going to break
from 11:00 to 12:15.

(Whereupon, the above-entitled matter went off the record at 11:00 a.m. and resumed at 12:17 p.m.)

MR. WASHINGTON: Hello, everybody. We are reconvening for the rest of the day. So anybody in attendance who would like to come and speak that has not spoken, please come forward. We will finish the day at 1:00 p.m.

(Whereupon, the above-entitled matter went off the record at 12:18 p.m. and resumed at 1:01 p.m.)

MR. WASHINGTON: That concludes our public hearing. Thank you all for coming.

(Whereupon, the above-entitled matter went off the record at 1:01 p.m.)