AMERICAN COUNCIL ON EDUCATION

OFFICE OF THE PRESIDENT

April 26, 2011

The Honorable John Kline
Chairman
U.S. House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Ranking Member
U.S. House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline and Ranking Member Miller:

On behalf of the 70 associations and organizations listed below, I write to request your assistance in blocking two regulations issued as part of the Department of Education's Oct. 29, 2010, final program integrity rule: (1) the regulation creating a federal definition of credit hour in Section 600.2; and (2) the state authorization and related distance education requirements in Section 600.9. We support many other regulations contained in the 150-page final rule and believe they represent important steps toward curbing abuse and bringing greater integrity to federal student aid programs. However, given the almost total lack of evidence of a problem in either the credit hour or state authorization context, we see no basis for issuing two regulations that so fundamentally change the relationships among the federal government, states, accreditors and institutions. Ultimately, we believe these two regulations invite inappropriate federal interference in campus-based decisions on academic matters and will limit student access to high-quality education opportunities.

On March 11, the House Subcommittee on Higher Education and Workforce Training held a hearing focused exclusively on the federal definition of credit hour and state authorization regulations. The hearing highlighted widespread concerns regarding these regulations. Some concerns involved objections on matters of principle to the regulations themselves while others focused on the practical difficulties of complying with the regulations by their July 1 effective date.

One Dupont Circle NW, Washington, DC 20036-1193
Telephone: (202) 939-9355 • Fax: (202) 833-4762
Web: http://www.acenet.edu

In the week following the hearing, the department issued two Dear Colleague letters in an effort to provide additional guidance regarding these regulations. Unfortunately, these letters fail to cure fundamental objections inherent in the regulations and raise new questions and concerns about the requirements for compliance. Last week, the department issued a third Dear Colleague letter focusing specifically on the new federal distance education requirements. While we greatly appreciate the effort by the department to provide a more reasonable path and timeline for institutions to come into compliance, we continue to question the need for federal involvement in this area.

Briefly, our concerns with these two regulations are as follows:

A credit hour is the most basic building block of any academic program. By establishing a federal definition of a credit hour, the regulation opens the door to inappropriate federal interference in the core academic decisions surrounding curriculum—the very kind of interference expressly prohibited in the department's enabling legislation.[1] Consistent with our support of the principles and limitations outlined in this and other federal laws, it is our position that no federal definition of a credit hour is ever appropriate because it becomes the basis for perpetual regulatory intervention in multiple institutional and accreditation decisions associated with the credit hour. As a secondary but practical matter, the ambiguity of the particular definition at issue and the insufficiency of the guidance about it pose serious challenges for institutions as they review tens of thousands of courses in an effort to ensure consistency with the new federal definition. Accreditors will face similar burdens as they attempt to develop or revise polices and practices to review credit policies of institutions. The definition and related guidance also place accreditors in the unprecedented position of being required to force institutions to meet a federal standard in an academic area as a condition of accreditation.

The state authorization regulation reflects a significant intrusion into prerogatives properly reserved to the states and threatens to upset recognition and complaint resolution procedures that have functioned effectively for decades. The regulation could also open the door to inappropriate state involvement in the academic decision-making of private non-profit institutions, in particular for religiously affiliated institutions.

The state authorization regulation also creates new and significant hurdles for students pursuing higher education through distance education programs. Institutions have raced to attempt to determine applicable state requirements and, if not already in compliance, to come into compliance despite sometimes conflicting information from state officials. As a practical matter, because of the inability to accurately predict or control student mobility from state to state, most institutions will need to become authorized in all 50 states, if they have not already done so, even before knowing from which states their students may ultimately enroll. Moreover, some states are in the

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[1] "No provision of a program administered by the Secretary or any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution …."20 U.S.C. § 3403.

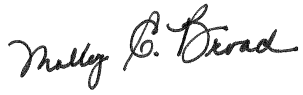
process of developing or modifying their requirements, forcing institutions to invest time and money chasing evolving state requirements or to begin complying with state requirements that may well become moot.

Institutions are committed to continuing to work with states to ensure full compliance with all applicable state laws as well as achieving better coordination of existing state policies. However, state laws regulating distance education and the enforcement of these laws are matters best left to the states—not the federal government. If implemented, the regulation threatens to limit student access to quality distance education programs, particularly those offered by public and private non-profit college and universities. Indeed, some colleges and universities have already begun to identify states where they will not offer distance education should the regulations take effect. At a time when the higher education community is working with others to increase college persistence and attainment, we believe this regulation runs counter to our shared goals.

We have shared detailed comments about these issues with Secretary Arne Duncan in separate letters signed by more than 60 higher education organizations and have repeatedly asked the department to clarify the regulations, to delay them or to rescind them in their entirety. However, with fewer than 90 days until the July 1 effective date, the department has been unable to address our concerns. As a result, we are seeking your assistance in turning away these harmful regulations. Without congressional action, higher education will face significant federal intrusion into core areas of academic decision-making and students will be denied opportunities to participate in quality distance education programs.

We thank you for your continued attention to these pressing matters.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations
American Association of Colleges of Nursing
American Association of University Professors
American Council on Education
American Dental Education Association
American Indian Higher Education Consortium
American Psychological Association
APPA, "Leadership in Educational Facilities"

Appalachian College Association
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Hispanic Association of Colleges and Universities
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Schools of Public Affairs and Administration
University Professional & Continuing Education Association
Women's College Coalition

Accreditation Organizations
Accreditation Commission for Audiology Education
Accreditation Commission for Midwifery Education
Accreditation Council for Business Schools and Programs
Accreditation Council for Pharmacy Education
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education & Training
Accrediting Council for Independent Colleges and Schools
American Board of Funeral Service Education
American Dental Association Commission on Dental Accreditation
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Independent Colleges of Art and Design
Association of Specialized and Professional Accreditors
Aviation Accreditation Board International
Commission for Accreditation of Athletic Training Education
Commission on Accreditation for Dietetics Education
Commission on Accreditation in Physical Therapy Education/American Physical Therapy Association
Commission on Accrediting of the Association of Theological Schools
Commission on Collegiate Nursing Education
Council for Accreditation of Counseling and Related Educational Programs
Council of Arts Accrediting Associations, including:
  National Association of Schools of Art and Design
  National Association of Schools of Dance
  National Association of Schools of Music
  National Association of Schools of Theatre
Council on Academic Accreditation in Audiology and Speech-Language Pathology

Council on Accreditation of Nurse Anesthesia Educational Programs
Council on Education for Public Health
Council on Occupational Education
Council on Rehabilitation Education
Council on Social Work Education
Distance Education and Training Council
Higher Learning Commission of the North Central Association of Colleges and Schools
Joint Review Committee on Education in Radiologic Technology
Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Mennonite Education Agency
Middle States Commission on Higher Education
National Accrediting Commission of Cosmetology Arts and Sciences, Inc.
National League for Nursing Accrediting Commission, Inc.
New England Association of Schools and Colleges, Commission on Institutions of Higher Education
Northwest Commission on Colleges and Universities
Society of American Foresters
Southern Association of Colleges and Schools Commission on Colleges
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges