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September 20, 2017

Re: Docket ID ED–2017–OS–0074
Department of Education Negotiated Rulemaking

Ms. Hilary Malawar
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave. SW, Room 6E231
Washington, DC 20202

Dear Ms. Malawar,

This comment is respectfully submitted to the Department of Education's Regulatory Reform Task Force on behalf of member institutions of the International Education Council (IEC), a trade association of eligible foreign colleges and universities that participate in the Direct Loan Program. We wish to respond to the request for input to the Task Force with regard to foreign schools' participation in the Direct Loan Program. The regulations upon which we are commenting generally are included in sections of 34 CFR Part 600 and Part 668 although there may be other regulatory sections that also affect the ability of foreign schools to participate in the Direct Loan Program. The regulations fall under Title IV of the Higher Education Act of 1965 (HEA), as amended.

The members of the IEC include some 60 public and non-profit institutions of higher education in 14 countries outside of the United States that are eligible under the HEA for Direct Stafford and PLUS loans in order to make a high-quality international education available to thousands of American students. IEC dedicates itself to ensuring that student loan programs continue to be available to U.S. students who need them to finance their international educations.

It is critical to remember that a foreign institution is regulated first and foremost by its home country's government. The Higher Education Act requires an eligible foreign institution to be in a country whose regulatory oversight is considered to be at least equivalent to that in the United

States (Section 102(a)(1)(C). Imposing myriad additional requirements on a foreign institution by way of US regulations results in a layer of regulation by another country (the US) being imposed on top of an institution's home country rules. IEC does not advocate for elimination of oversight of the use of US loan funds, but we are concerned that treating a foreign institution almost as if it was in the United States for regulatory purposes is making it increasingly difficult for foreign institutions to offer places to American students who need to borrow to finance their education.

We note that the latest cohort default rate for foreign institutions is just 3.6 percent, lower than any type of US institution, which would be one important indicator that in general Americans studying at foreign universities are receiving an education that results in a good job. Furthermore, our member schools recognize the legitimate and justified interest in program integrity and accept being subject to oversight including regular recertification and undergoing annual compliance audits.

Below are some of the specific regulatory issues for consideration. Financial Aid administrators in IEC schools see the unintended consequences and the daily impact to American students: reducing their opportunities, being turned away or unable to complete their studies because foreign schools are exiting the program. It is unfair that American students have to miss valuable study opportunities available to their peers from other countries simply because they have to borrow student loans.

SPECIFIC REGULATORY ISSUES

There are several additional important regulatory issues that have arisen that hinder the ability for foreign institutions to continue offering places to American students who wish to enroll but need to borrow federal loans to finance their educations. We ask that an agenda for the upcoming negotiations include these topics.

1. The first regulation we ask to be revised is the regulation requiring that foreign schools with more than $3 million per year in loan volume conduct a special financial audit for their entire university under US Generally Accepted Accounting Principles, in addition to conducting an audit of their financial statements under their home country's accounting standards. [34CFR668.23(h)] Since this regulation took effect in July 2011, much additional information has become available, including evidence of the extremely high cost of preparing the financial statements with little tangible benefits and ongoing concerns by some governments over public institutions in effect being required to maintain two sets of financial accounts.

In several countries, including Australia and European Union countries, the cost of preparing a duplicate audited financial statement has amounted to the equivalent of hundreds of thousands of US Dollars. In addition, the United States has continued to move towards adoption of international accounting standards, with progress reported in harmonization negotiations, making the requirement that major public and independent universities keep two sets of financial books in order to provide a US GAAP audited financial statement to the U.S. Government duplicative.

The requirement that some universities prepare these duplicative US GAAP financial statements

was included in the regulations in order to permit comparative analysis of the home country and US GAAP audited financial statements, despite objections from a majority of those who commented on the regulations when they were published in 2010 (*Federal Register,* Vol. 75, No. 210, Page 67181). With six years of testing now complete, the Department can make such comparisons, leaving no need for further large, wasteful expenditures by universities that are already conducting audits under their own country's standards and which the Department has no problem reviewing.

Given the now clear evidence of the high cost of conducting duplicate audits and the progress towards international harmonization of standards, it is time for the issue be reconsidered in order to ascertain if it is necessary to require GAAP audits in every case where a university has more than $3 million in loan volume, or if the Secretary of Education's authority to require an audit done to US GAAP on a case-by-case basis is sufficient. Such authority is also in the regulations [34 CFR 668.23(h)(3)(i)]. The HEA gives the Secretary the authority to modify the US GAAP requirement [Section 487(c)(A)(i)].

2. The Higher Education Act gives the Department of Education the broad authority to determine via regulations whether a foreign institution is "comparable" to a US institution of higher education. The current regulations in this matter, specifically with regard to written arrangements, are out of date and should be revised to reflect modern practices in higher education. Accreditors are looking for innovations such as experiential learning opportunities thatenrich educational experiences and contribute to successful transitions to the workforce.

The Department has in regulation prohibited U.S. students from receiving Direct Loans to enroll in a program of study that includes any component taken in the United States, with a very limited exception for doctoral students, or at another foreign institution, unless that institution is a foreign school that itself is eligible for Direct Loans [34 CFR 600.52 and 600.54(c)].

Today, universities offer, and students demand, diverse programs that include partnerships with other universities that may specialize in certain topics, both in the U.S. and in other countries. U.S. students lose their loan eligibility if they enroll in any of these classes, even one. This means that U.S. students miss out on many highly valuable educational opportunities simply because they need Direct Loans to finance their education. This is not fair to students. The regulations should not keep Americans who need loans from fully participating in their chosen study program when an opportunity arises to study at another campus simply because the American needs student loans.

The policy prohibiting "written arrangements" involving any study in the U.S. or at the vast majority of the world's universities that haven't gone through the process to be eligible for Direct Loans should be reconsidered in order to come up with a modernized rule that achieves the goal of encouraging students to actually go abroad to study at a foreign school but recognizes the value of diverse programs of study. For example, the regulations could require that a student spend more than half of their time, or some other reasonable amount of time, on site at the eligible institution.

3. The Department should reconsider its interpretation of conflicting language in the Higher

Education Act and negotiate a modification of overly severe restrictions on distance education. To date, the Department has taken the position that an entire program is ineligible for American students receiving federal loans if any component is taught via distance education [34 CFR 600.51(d)]. IEC believes the intent of the statutory language, HEA Section 481(b), is to ensure that a student enrolled abroad actually attends classes abroad and is not, for example, located in the United States. One subsection of Section 481(b) states that no more than half of a program taught at a foreign institution can be taught via distance education, while another subsection says an eligible program cannot include distance education in whole or in part. Congressional intent is contradictory: did Congress mean no more than half or none at all? In such a situation, until Congress clarifies its intention, the Department's regulations should follow the best public policy, not simply defer to the most restrictive policy as is now the case.

Regulations should not wholly exclude entire, legitimate, and prestigious foreign school programs based on the mere fact that they include a single telecommunications course or that a student is enrolled in some combination of telecommunications courses and on-site, traditional classroom courses or lab work.

Students enrolled and attending on-site courses/labs at a foreign school and, at the same time and in the same program of study, some telecommunications courses at that same school achieve the same global education experience: the students are abroad, studying with a diverse international student body under the guidance of trained and accredited teachers and mentors. In addition, U.S. military and diplomatic personnel deployed outside of the United States may need to take courses via telecommunications as part of their program of study.

As more and more courses of study offer broader and more diverse opportunities for learning, Americans who need federal student loans are being hurt by a policy that is out of date. We request that the Task Force review the distance education rules.

4. Recent evidence of unfair and inequitable outcomes from regulatory changes made to requirements affecting the eligibility of foreign medical schools to make Direct Loans available to their American students makes essential a review of regulations written seven years ago.

The HEA permits foreign medical schools to participate in the Direct Loan Program if their students who take the U.S. Medical Licensing Exam (USMLE) administered by the Education Commission for Foreign Medical Graduates (ECFMG) have a passing rate of 75 percent each year for the Exam. This rate was raised from 60 percent by the Higher Education Opportunity Act of 2008. The regulations, however, add a significant additional requirement: that a passage rate of 75 percent be achieved year by a Medical School's students for each of three sections of the USMLE, Step One and Parts 1 and 2 of Step Two [34 CFR 600.55(f)].

Foreign medical schools often provide instruction in a different order than U.S. schools. This means that students who take Step One of the exam may have trouble simply because they haven't yet covered in school all the topics covered in the exam. Prior to 2011, the passing requirement was based on an aggregate of Step One and both parts of Step Two. We feel that the aggregate approach is a better assessment of a school's performance in producing clinically proficient physicians. We ask that the pass rate regulations be revised.

The HEA requirement is designed to demonstrate that foreign medical schools are providing a worthwhile education. But it does not affect whether or not doctors practicing in the United States are qualified, since only those who pass their exams and complete required medical residencies can practice.

It is also important to note that this law does not affect foreign nationals who come to this country to practice; it only affects American students who would lose their ability to attend a foreign medical school unless they can do so without borrowing Direct Loans. In some cases, students may be forced to withdraw part way through their educational program, having already incurred debt but not a degree.

For institutions that have relatively small numbers of students taking the exam, a few failures can make all their American students ineligible for student loans. For example, if 10 people take Step One of the licensing exam in a particular year and three fail, loans are cut off to all American students at the school after one year, and future students are denied loans.

Foreign medical institutions must comply with a host of other U.S. regulations, including being required to prove to the U.S. Government that their country's accreditation system is equivalent to American accreditation, that they are financially viable and that they follow the complex US student aid regulations. They must submit annual regulatory compliance audits conducted by an independent auditing firm.

The inordinate burden of current regulations has led some foreign medical schools simply to withdraw from participating in the US loan programs, cutting off access to Americans who can't afford to pay for medical schools without borrowing federal loans. For example, we understand that only one Canadian medical school now offers places to Americans who need to borrow federal loans to attend. Regulatory burdens are significant for US schools, but they are inordinate for foreign schools that enroll relatively small numbers of Americans.

All foreign medical colleges are now required to provide the individual USMLE scores to the Department of Education for all of their students and graduates of the past three years who take the test. Medical schools are being required to retroactively obtain the scores of their former students who took the USMLE, not just Americans but students of all nationalities. Some students and graduates can simply refuse to provide the scores on privacy grounds, and the college cannot force them to do so, especially if the student is not an American who received US student loans. When that happens, the score is treated as a failure whether or not that is the case. This creates a situation where a school's inability for technical reasons to comply with a regulation may lead to American students being denied educational opportunities or even forced to drop out of medical school partway through.

Section 600.55(d) of the regulations requires foreign medical schools to secure consent for exam scores to be sent to the Department from students when they enter the medical school. The idea behind the regulation was that if the school had students' consent to access their USMLE data then they could access any student's USMLE scores and report them to the Department. However, consents can be withdrawn at any time, making this approach fatally flawed. If a

medical student or graduate selects the privacy option with ECFMG at the time they take their exams then ECFMG will not act on a previously signed consent.

At the time these regulations were modified in 2010, most foreign medical schools had only haphazard access to their students' USMLE results. Nevertheless, schools did their best to get that information in order to fulfill their reporting requirements. More accurate information is now available. This is critical information, information that was not available to the negotiators reviewing the regulations in 2009-2010. For that reason, we ask that the Task Force review and revise regulations governing USMLE passing rate calculations and score reporting and their relationship to institutional eligibility.

On behalf of the members of the International Education Council around the world, thank you for the opportunity to comment on the proposed negotiated rulemaking. Please don't hesitate to contact me if you have any questions. We look forward to working with you on these important changes that will benefit American students.

Sincerely

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