

PEPPERDINE UNIVERSITY

GOVERNMENTAL AND REGULATORY AFFAIRS

August 21, 2017

Hilary Malawer
Assistant General Counsel
United States Department of Education
400 Maryland Avenue SW, Room 6E231
Washington, DC 20202

Re: Pepperdine University's Comments on the Report of the Task Force on Federal Regulation of Higher Education (Docket Number ED-2017-OS-0074)

Dear Assistant General Counsel Malawer:

These comments are submitted on behalf of Pepperdine University. We appreciate the opportunity to provide comments in response to the Report of the Task Force on Federal Regulation of Higher Education (the "Report"). As an institution of higher education, we recognize the need for the Federal Government to ensure that the investment in post secondary education students is a sound one, and that students are receiving the education that they have been promised. Unfortunately, the Department of Education ("DOE"), as charged with the role of carrying out laws passed by Congress, has veered into dangerous territory in that an institution's efforts to comply with the Department's official guidance, currently promulgated at a rate of "more than one document per work day," detracts from the institution's ability to ensure a quality education, student safety, and responsible stewardship of federal funds, while also limiting access and innovation.¹

It goes without saying that regulations do not occur in a vacuum, and each one has its own cumulative impacts. Further, DOE regulations are by no means the only regulations that an institution of higher education must comply with. This issue of overregulation in higher education is not an isolated problem but is instead a systemic issue, and one that institutions like ours grapple with every day. Redundant, unnecessary, and unduly complicated regulations result in staffing, operational, and fiscal impacts that only serve to drive up tuition and otherwise impact the very students these regulations seek to protect. As such, we fully support the work to identify those regulations that are ripe for repeal, replacement, or modification, and in particular, focusing on those regulations that are unduly burdensome or costly.

Further, we endorse the findings of the Report. Indeed, we believe the Task Force did an exceptional job in analyzing and understanding the impacts of DOE regulations on our institutions. The findings of the report were quite consistent with the difficulties we face as an institution in

¹ *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, American Council on Education (ACE), February, 2015. Retrieved from <https://www.acenet.edu/news-room/Documents/Higher-Education-Regulations-Task-ForceReport.pdf>

complying with DOE regulations and guidance. And we believe that implementation of the recommendations in the Report would result in a profound, positive transformation within higher education. The following are some areas we believe require further consideration or institutionally specific perspective on impacts.

Financial Aid

Consistent with the findings of the Task Force, financial aid is one of the most challenging areas, in terms of lost manpower and hours, under the burden of Federal regulations. While we agree that the Federal government must ensure the reasonableness of the return on their investment in terms of students receiving an education, the regulations have become unduly burdensome, costly, time-consuming, and confusing. We have 12 staff members in the undergraduate financial aid department at Pepperdine University, who spend an inordinate amount of time dealing with federal regulations, rather than advising students. A discussion of the most impactful financial aid regulations for Pepperdine University follows:

- The **Return of Title IV Funds** results in an inordinate amount of time and staffing resources and we agree that it is appropriate for replacement or revision. For purposes of example, during the 2016/2017 school year, we had 125 withdrawals out of over 4,500 students receiving federal aid. This is a regulation where the costs clearly exceed the benefits. We agree with the Task Force recommendation that the DOE should allow more time for institutions to process R2T4 and limit rules to undergraduates only.
- As to the **150% Subsidized Loan Limits**, we have over 1,000 undergraduates out of 1,500 undergraduate borrowers with subsidized loans. This regulation is redundant with Satisfactory Academic Progress and other programs that incentivize students to graduate on time. Further, the limit is arbitrary in the sense that the cap is based upon number of years irrespective of whether the student has reached the overall federal cap on borrowing. We agree that the 150% limit should be repealed because it is unnecessary, burdensome, and redundant.
- We concur that with the recommendation to repeal the requirement to **prorate student loans** for undergraduate borrowers enrolled in a program shorter than one year or borrowing for their final enrollment period, at least with respect to the requirement for the last enrollment period. At Pepperdine, we had approximately 300 students impacted by proration during the 2016/2017 school year.
- The **Professional Judgment** review of financial aid requires individualized review of students that could otherwise be handled on an aggregated basis. Last school year there were 100 Professional Judgment cases reviewed. We agree with the Report that this regulation should be modified to allow financial aid departments discretion to make changes for broad categories of students when they deem appropriate.
- **Verification** of federal borrowers by institutions is extremely time-consuming and confusing. At Pepperdine last year, the Financial Aid Office had over 500 students selected for verification. We concur with the Task Force recommendation that the DOE should implement the student-by-student targeted verification approach so as to reduce the impact of the unnecessarily burdensome and costly process of verification.

- The transition to **Prior-Prior Year data** in 2016 was a welcome change. It allows the student and parent to provide accurate tax data when completing the FAFSA and hopefully reduce the verification burden and allow more time to decide on which college to attend since the FAFSA is now available on October 1 each year. However, the Prior-Prior year transition has resulted in issues of its own, specifically that 2015 tax data did not match FAFSA 2017 and FAFSA 2018 data. We are hopeful that this issue will be resolved once the transition to Prior-Prior Year is complete, however, it is critical that the DOE and Congress think through the implications of any change in regulations, even a perceived beneficial change, with an eye towards potential unintended consequences such as this.
- The DOE requires **equal disbursement** of federal student loans, which impacted over 300 students last school year. We support the Task Force recommendation that this is a regulation suitable for modification to allow unequal disbursements to accommodate unequal costs and to facilitate disbursement for nonstandard terms.
- Addressing DOE **exit counseling requirements** can be an arduous process for students that withdraw prior to completing their degree, since they are the most difficult to locate. Last year alone, we had over 1,500 students that required exit counseling. Further, the University undertakes extraordinary effort in providing entrance counseling to students to increase student awareness on the effects of borrowing. Specifically, we have formed a Center for Financial Literacy, which seeks to educate our students on the foundational concepts of personal finance including the impact of debt from student loans and otherwise. Because of these and other measures the University undertakes to ensure our students understand the implications when making loan decisions, we strongly support the recommendation to have the DOE handle exit counseling directly with student borrowers.

Institutional Accreditation

As explained in the Report of the Task Force on Federal Regulation of Higher Education, “Ever since the HEA was enacted in 1965... institutions must be accredited in order to participate in federal student aid programs.”² In turn, the Secretary of Education, on the basis of the standards and review processes they apply to institutions, must recognize accreditors. This makes good sense. At the same time, Pepperdine like so many other institutions has seen an increase in the amount and degree of reporting needed to be submitted to our regional accrediting agency, the WASC Senior College and University Commission (“WSCUC”). Meanwhile, the DOE has taken a checklist approach giving even “the most mundane paperwork requirements the same weight and consideration as an accrediting agency’s overall ability to judge student learning and academic quality.”³ Similarly, “accrediting agencies are tasked with reviewing activities and issues completely unrelated to educational quality and student learning.”⁴ We agree with the Report’s conclusion that “Tasking accreditors with these additional functions leaves them less time and fewer resources to focus on institutional quality and student learning.”⁵ And these additional accreditation

² *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, American Council on Education (ACE), February, 2015. Retrieved from <https://www.acenet.edu/news-room/Documents/Higher-Education-Regulations-Task-ForceReport.pdf>

³ *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, American Council on Education (ACE), February, 2015. Retrieved from <https://www.acenet.edu/news-room/Documents/Higher-Education-Regulations-Task-ForceReport.pdf>

⁴ “Ibid.”

⁵ “Ibid.”

requirements also result in the need for the educational institution to hire staff members with expertise in measuring student learning, student success, as well as having an understanding of accreditation guidelines and process in order to successfully submit reports to the regional accreditors.

Over the last fifteen years, Pepperdine's Office of Institutional Effectiveness (which oversees the University's accreditation processes and reporting) has increased the number of staff (researchers and administrators) from three to five. The number of faculty that now have release time for accreditation responsibilities has gone from zero, just fifteen years ago, to well over seventy five. During re-accreditation reviews, the cost of preparation, writing self studies, hosting onsite visits and purchasing software can only be estimated in the hundreds of thousands of dollars to support the dedicated time needed in release time and writing of the reports. All of these accreditation-required activities take time away from other priorities that could improve the education of students.

The good news is that our accrediting agency has started to take prioritization of school performance into account in their re-affirmation process. Specifically, Pepperdine University is up for re-affirmation in 2020-2021. The WSCUC is starting a new process they are calling the "Thematic Pathway for Reaffirmation (TPR)." The Thematic Pathway for Reaffirmation is a streamlined review process approved by the Commission in June 2017. Pepperdine was chosen to participate in this risk-informed process for our next reaffirmation.

"This Thematic Pathway for Reaffirmation (TPR) proposal emerged from several motivating forces: as part of WSCUCs regular review and refinement of the handbook and standards; as a response to a national conversation on ways to improve peer review accreditation; and as a means of addressing recommendations issued by several national organizations. A consistent theme was that all institutions need not be subject to the same review process. Consistent with the recommendation from the 2012 Task Force of the American Council on Education (ACE), this pathway puts into place a mechanism that enables WSCUC "to screen institutions in ways that assess key performance indicators and the levels of attendant risk and to calibrate the nature and extent of the accreditation review accordingly" [ACE Task Force report]. Only those institutions with consistent evidence of a healthy fiscal condition, strong student achievement indicators, and sustained quality performance will be eligible for this process for reaffirmation."⁶

We are grateful the WSCUC has included us in this type of review for our upcoming reaffirmation, as this is precisely the type of differentiated review that Congress and the DOE should allow accreditors to follow. Accreditors should have the autonomy to allocate resources to those institutions that are not performing at the highest level to ensure that students are receiving the quality education that they deserve. At the same time, it would allow those high performing institutions to allocate their resources towards access, innovation, and academic quality.

State Authorization of Distance Education Requirements

Currently institutions must meet the state requirements for the state of residence for every student

⁶ *Thematic Pathway for Reaffirmation (TPR)*, Western Association of Schools and Colleges Senior College and University Commission. June 2017. Retrieved from <https://www.wscuc.org/announcements/thematic-pathway-reaffirmation-tpr>

enrolled in an online or distance education program. At Pepperdine, for example, we have twenty-seven different states represented by three Distance Education Programs. The amount of time, money, and manpower that goes into ensuring compliance with these current DOE requirements is unduly burdensome and costly without benefit to the students, indeed it causes a detriment in the form of a disincentive for us to offer the program in certain states. Fortunately for defined member states, SARA (the State Authorization Reciprocity Agreement) is an agreement among member states that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs. Unfortunately for non-member states including those within the WSCUC, we must still comply with the current requirements to meet state requirements of any state in which any one of our students resides, irrespective of the state in which the program is offered. This of course impacts students by reducing access to higher education opportunities available through distance learning. As such, we absolutely concur with the Task Force recommendation that institutions only have to meet the requirements of the state they reside in and not the state the student resides in.

Crime Reporting

We agree with the Task Force Report's conclusion that the **Clery Act definitions of crimes** as conflicting with the Uniform Crime Reporting ("UCR") and National Incident Based Reporting System ("NIBRS") definitions creates confusion, undue burden, and costs for campus law enforcement. Further, this lack of consistency results in an inability to compare crime statistics with other agencies across the country, as the law intended. At Pepperdine, for example, our 2016 Annual Security Report listed eight occurrences of "burglary" as defined by the Clery Act yet the Department of Public Safety documented over sixty occurrences of larceny, grand theft, and burglary on the Malibu campus during the same timeframe. The reason for the variance is due to the inconsistencies with how the Clery Act defines "burglary" compared to the UCR. For example, the Clery Act excludes data regarding items stolen from a locker or vehicle. Additionally, the Clery Act requires reporting on dating violence, but the UCR does not identify this as a stand-alone crime. This time spent trying to decipher definitions and distinctions by our law enforcement personnel is better spent fulfilling their purpose of ensuring student safety. We agree with the recommendation that the Clery Act should rely upon the Department of Justice in creating standard definitions with clear requirements for reporting based upon the UCR and NIBRS standards, which would allow for comparison of crime statistics while simultaneously reducing the undue burden and cost from campus safety personnel.

Regarding the concerns about **Timely Warnings to Campus**, Pepperdine University complies with the Clery Act by notifying the community about serious or continuing safety threats regarding Clery Act crimes as soon as the pertinent information is available. We agree with the recommendation to give institutions the clear authority to rely upon their own professional judgment in determining both what constitutes a "continuing threat" and when they have the information needed to release a warning, provided it is consistent with the spirit of the law.

The Clery Handbook requires schools to report designated crimes that occur in facilities owned or controlled by Pepperdine, frequented by students, but not contiguous to the main campus property. These locations are categorized as **"noncampus property."** This process is especially challenging as it requires the review of all facility agreements to assess if the facility has become a noncampus per the definition under the Clery Handbook. At Pepperdine, this could include field trips, summer programs, and rental of learning facilities for domestic and international programs. Although Clery guidelines require schools to obtain crime reports from local and international law enforcement agencies, this process has proven very difficult. The international agencies do not always cooperate, and then when they do, the results are not very helpful as the format varies by agency. We thus

agree with the Task Force Report's recommendation to clarify the definition of noncampus property to focus more on property that is a core part of a college or university and should specifically exclude all foreign locations not designated as a campus by the institution itself as well as short-term stays in hotels or other lodging facilities.

Proof of Eligibility for Student Employment (I-9 Process)

In order to receive federal aid, a student must be a legal resident or U.S. citizen, and yet, institutions, per the I-9 process, must still request documentation showing that they are authorized to work. This is redundant, unduly burdensome, and provides no benefit to students. The I-9 process is further complicated because an I-9 only remains effective for three years. The University's Student Employment Office must thus continually obtain documents to verify that the student can legally work in the U.S. As a result, the Student Employment Office had to increase resources, to the tune of two employees, thousands of dollars spent on iPads and accessories, as well as several thousand dollars required annually for Form I-9 compliance software. Again, we concur with the Task Force recommendation that this unnecessary and redundant regulation should be repealed so that institutions are not required to verify employment eligibility of students already deemed U.S. citizens or legal residents through receipt of federal aid.

Recommended Improvements in the Regulatory Process

We agree with all of the recommendations regarding improving the regulatory process in the development, implementation, and enforcement phases. As to the **development** of regulations, the DOE should better ascribe to the intent of the Negotiated Rulemaking Act of 1990, including ensuring that stakeholders are properly represented and that the designated facilitators of the negotiated rulemaking process have the authority to respond to the stakeholders and resolve differences amongst stakeholders. Further, the bundling of issues into a single negotiated rulemaking process with review by stakeholders that do not have expertise or even an understanding of all of the substantive issues involved is not appropriate.

We wholeheartedly support the effort by the DOE to better understand the costs, manpower, hours, and other burdens associated with regulations prior to development of the same. Pepperdine University seeks to ensure we are in compliance on all regulations be they federal, state, or regional, however, the ever-increasing complexity of the regulations becomes more and more difficult and the necessity of clear regulatory safe harbors ever more obvious. Given these significant burdens, we further agree that no new regulations, or guidance with the same impact as regulation, should be enacted without an appropriate opportunity for public comment from impacted stakeholders. Further, given the resources and manpower required to prepare for new regulations as they are enacted, the DOE should ensure that appropriate time is given in between approval and **implementation** of the regulation or guidance, and these clearly designated timeframes and compliance dates should be provided by a compliance calendar updated and disseminated annually by the DOE.


As to enforcement, we agree that the DOE should recognize when institutions have acted in **good faith** in seeking to achieve compliance, which again becomes more and more difficult as regulatory burdens increase. Further, violations vary in degree as to the impact – the DOE should distinguish the important from the trivial violations when determining whether to issue fines or other penalties. The DOE should also consider **mitigating circumstances** for violations as is done in the K-12 arena. Finally, we concur that as the DOE holds institutions of higher education to very tight standards with respect to timelines, the DOE too should have time limits imposed when issuing a final determination on a program review, issuance of fines, or regulatory guidance.

Additional Regulatory Burdens and Complexity

Compliance with federal, state, and local regulations is an increasingly complicated and continually evolving process that requires significant time, manpower, and coordination. While the Task Force Report is incredibly helpful and we fully support the implementation of the recommendations provided therein, we also do not want to lose sight of the fact that compliance for an institution of higher education is not merely limited to the DOE regulations. Indeed, just looking at federal regulations alone, not taking into account state and local regulations, institutions must comply with federal research requirements, HIPAA, NCAA, USCIS Student Visa Guidelines, amongst many other non-DOE federal regulations. The Task Force should also recommend that the DOE must work with all other federal agencies with regulations that impact higher education prior to issuing new regulations to ensure not just the individual impact, but indeed the cumulative impact of federal regulations on higher education is considered.

We sincerely appreciate the acknowledgement of the impact of overregulation on higher education, and we remain grateful for the opportunity to provide comments and direction on overly burdensome, costly, and complicated regulations. We stand ready to provide any additional information that the Task Force would find helpful in guiding the direction of the reauthorization of the Higher Education Act.

Respectfully yours,



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