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Ms. Hilary Malawer
U.S. Department of Education
400 Maryland Avenue S.W.
Room 6E231
Washington, D.C. 20202

Re: In accordance with Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” the Department of Education (Department) is seeking input on regulations that may be appropriate for repeal, replacement, or modification

Dear Ms. Malawer:

On behalf of the University of Wisconsin System—one of the largest systems of public higher education in the country—thank you for soliciting comments with respect to Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” regarding regulations appropriate for repeal, replacement or modification.

As you know, a task force of college and university presidents and chancellors was appointed to study federal regulation and identify potential improvements. Their report, “Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education,” was issued by a bipartisan group of U.S. Senators in 2015. The UW System continues to broadly support the recommendations of the Alexander-Mikulski Regulations Task Force report.

The UW System recognizes the importance of safeguards to prevent misuse of public funds and to protect students from fraud and abuse. We also demonstrate a strong commitment to transparency and to providing students and their families with information they need to be successful.

However, the trend toward sweeping, overly-complex regulation over higher education has reached a tipping point. Increasing numbers of staff and other resources are required to assure understanding of and compliance with federal regulations. These add to our costs without a documentable benefit to educational outcomes. Further, duplication in state and local laws creates unnecessary redundancy in collection of data, reporting, and verifying compliance. We appreciate the Department’s willingness to consider reducing the regulatory burden on colleges and universities.

The UW System calls attention to one critical area in need of reform to allow for new models of learning and new roles for a variety of educators. The issue of “**regular-and-substantive interaction**” with an instructor—as defined by the Higher Education Act and interpreted by the Department of Education—is of particular concern to the UW System and others that offer, or are

planning to offer, competency-based education (CBE). See Appendix A, “History and Background of ‘Regular-and- Substantive’ Interaction.”

Statutory interpretations from the U.S. Department of Education’s Office of Inspector General require regular-and-substantive interaction to be defined narrowly. The current definition leaves out modern uses of adaptive instructional technologies and instructional roles. Institutions offering CBE programs must adhere to this narrow definition of regular-and-substantive interaction, or they risk having their CBE programs labeled as correspondence study. This determination limits students’ access to Federal Financial Aid (FFA) and can limit an institution’s eligibility to disburse FFA, if it is determined that more than 50 percent of the institution’s programs are determined to be correspondence.

To date, schools are operating by a “Dear Colleague” letter that was issued in 2014. The Obama Administration enforced that guidance as if it were law. However, none of the guidance has gone through the rule-making process. Hence, the guidance has not had the benefit of comments by those who work in this area, and it perpetuates uncertainty in the application and enforcement of such guidance.

Because the rules governing competency-based learning are unclear and often conflicting, the UW System respectfully requests the following actions to bring greater clarity and consistency to the delivery of competency-based education:

- A clear definition of “competency-based education” should be inserted in the Higher Education Act and associated regulations to recognize key features of competency-based education.
- An updated definition of “correspondence program” should be incorporated into the Higher Education Act and associated regulations to differentiate correspondence courses from online degree programs.
- The “Dear Colleague” guidance should be clarified through the notice and comment rule-making process with appropriate input from institutions of higher education, and others, to ensure an accurate interpretation and understanding of what the Department expects of accrediting agencies, institutions and faculty in complying.

As one institution among hundreds across the country involved in moving these innovations forward, we ask for the Department’s assistance in providing clarification that will allow these important innovations in higher education to flourish. We all share the goals of affordable, high-quality higher education that was envisioned by the Higher Education Act, including the use of technology-facilitated and competency-based education.

In closing, we thank you for your attention to these comments and greatly appreciate the opportunity to offer comments that will inform future policy deliberations about federal regulatory relief.

Sincerely,



Ray Cross
President

APPENDIX A: Background of Regular-and-Substantive Interaction

(Adapted from Bushway, D. (April 2016) “Memo to Participants in the Competency-Based Education Network”)

In an effort to protect the taxpayers’ investment in Federal Student Aid dollars under Title IV, and to protect students from paying for credentials with no value, the 1992 authorization of the Higher Education Act (HEA) defined correspondence courses as follows:

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced. (2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course. (3) A correspondence course is not distance education.

By the late 1990s, Congress recognized the potential to increase access to postsecondary education and recognized that distance education and correspondence courses are not the same thing. The Distance Education Demonstration Program was authorized and three reports (2001, 2003 and 2005) were issued to Congress. The term “regular-and-substantive interaction” was used for the first time in the third of four recommendations as follows:

Incorporate a definition of a “telecommunications course” into the HEA amendments, replacing the current definition. The new definition would specify that there be regular-and-substantive interaction between students and the instructor.

Ultimately the language of “regular-and-substantive interaction” appears in statute in the Title 1, section 103, definition of Distance Education.

The U.S. Department of Education also issued a “Dear Colleague” letter in late 2014 that addressed a number of pressing issues, including definitions for both CBE and direct assessment (a subset of CBE) and the requirement for regular-and-substantive interaction. This Dear Colleague letter allows for interaction to occur between students and more than one “instructor.” Previous regulatory language had referenced “the instructor.” It also appears to be the first time the requirement for regular-and-substantive interaction has been applied to all forms of Title IV-eligible higher education, except for correspondence programs.

When the Department issued technical guidance related to an Experimental Sites Initiative - Competency-Based Education, the guidance for the institutions participating in the CBE experiment was viewed as giving participating institutions permission to ease from the regular-and-substantive requirement. That guidance from the Department applied only to that Experimental Site Initiative - CBE and not to CBE programs outside of the experiment.

Clarification of “regular-and-substantive interaction,” including recognition that new models create new roles for educators, would be extremely helpful to both institutions and accrediting agencies.