



September 19, 2017

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Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW, Room 6E231
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RE: Docket ID ED-2017-OS-0074

Dear Ms. Malawer:

Thank you for the opportunity to comment on and provide recommendations for changes to existing regulations promulgated by the U.S. Department of Education (“the Department”). These comments are provided by Education Corporation of America, which owns and operates a number of institutions of higher education across the United States.

We urge the Department to take this opportunity to remove or substantially revise several regulations that are unnecessary and overly burdensome, often are unfairly targeted against for-profit institutions, and do not always accomplish their intended goal. Some of these regulations already have been identified by the Department as subjects for continued review and revision, including the Gainful Employment and Borrower Defense to Repayment rules, which should be drastically overhauled or scrapped altogether. Other regulations worthy of review and revision include those summarized below.

Financial Responsibility Composite Scores and Remedies

The formulas for calculating an institution’s financial responsibility have been in place for more than 20 years. These formulas deviate in significant ways from Generally Accepted Accounting Principles (“GAAP”) and are influenced by subjective judgment that is not always transparent. We suggest that a more objective analysis consistent with GAAP that also allows an institution to appeal a determination of financial irresponsibility based on mitigating factors before the imposition of a penalty would be preferable.

We also suggest that the Department reconsider its recourse when it determines that an institution is not financially responsible. Today, that recourse typically consists of some combination of a letter of credit and restrictions on an institution’s access to and distribution of

federal student aid dollars by way of reimbursement or heightened cash monitoring. These steps are intended to provide some protection to students and the federal Treasury if a weak institution closes precipitously. However, the remedies often have the perverse result of hastening or even forcing the very closure that they are intended to guard against because these institutions typically will have difficulty obtaining a letter of credit or cannot continue to operate when a major source of cash flow is restricted. We encourage the Department to consider other alternatives that accomplish its goals without having a disastrous impact on institutions.

State Authorization for Online Programs

The prior Administration adopted regulations that require all institutions offering online educational programs to comply with the requirements of each state where the institution's online students reside. The result has been bureaucratic overreach by some states and an enormous regulatory compliance challenge for institutions.

These regulations should be rescinded. The longstanding requirement that an institution must be authorized or otherwise approved in its home state ensures that institutions are operating legally. It is inappropriate, and constitutionally suspect, that a foreign state can purport to exercise control over institutions that have no physical presence in or nexus with it, and we do not believe that an institution's eligibility to participate in the federal student aid programs should be subject to this state-level overreach.

Required Information and Disclosures

Over the years, the amount of information and the number of required disclosures that institutions must provide to current and prospective students have ballooned to the point where the value of the disseminated information is called into question. We encourage the Department to review these myriad requirements to determine a single and consistent set of meaningful disclosures. We also encourage the Department to collect all of these notice and disclosure requirements in a single section of the regulations for ease of reference by institutions.

One Set of Regulations

To the greatest extent permitted by the authorizing legislation, we believe that a single set of regulations should apply to all postsecondary institutions, as opposed to the previous Administration's efforts to write regulations targeted at for-profit institutions, historically black colleges and universities, community colleges and other discrete subsets of institutions. Both the Gainful Employment and the Borrower Defense to Repayment regulations were directed primarily at for-profit institutions with little justification or rationale. The Department's obligation should be to ensure that the government has established a clear set of regulations that

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are applied equally and consistently to all postsecondary institutions that are subject to the Department's regulation, not to design regulations that target or shield a subset of institutions in order to advance a political goal.

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We appreciate the Department's interest in reducing or eliminating unnecessary and burdensome regulations.

Sincerely,

/s/

Roger L. Swartzwelder
Executive Vice President, General Counsel
and Chief Compliance Officer