KEISER UNIVERSITY

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SENT VIA FEDERAL eRULEMAKING PORTAL

Ms. Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenues, SW
Room 6E231
Washington, DC 29202

Re: Docket ID ED-2017-OS-0074; Evaluation of Existing Regulations

Dear Ms. Malawer,

On behalf of Keiser University's 20,000 students, 3,800 team members and 60,000 alumni, I am submitting the comments below in response to the Notice on Evaluation of Existing Regulations published in the *Federal Register* on June 22, 2017 which seeks comments on regulations that require repeal, replacement or modification.

Background

Keiser University (the University) is a private, not-for-profit university founded in 1977 that serves nearly 20,000 students offering 100 degrees at the doctoral through associate level on 18 Florida campuses, online and internationally, and employs 3,800 staff and faculty.

The University is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award certificates and degrees at the associate, baccalaureate, masters, specialist, and doctoral levels. We are currently ranked #23 by U.S. News & World Report on their 2017 list of Best Regional Colleges in the South.

We are long-time participants in the Federal Student Aid programs authorized by Title IV of the Higher Education Act of 1965 (Title IV, HEA), and are subject to the Student Assistance General Provisions and the individual program regulations governing those programs.

Financial Responsibility Composite Scores – 34 CFR Part 668 Subpart B (668.15) and Subpart L (668.171-Appendix B)

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The current regulations in the Student Assistance General Provisions (34 CFR Part 668) requiring institutions to demonstrate specific standards of financial responsibility are outdated, inconsistent with Generally Accepted Accounting Principles (GAAP), and force many private, non-profit institutions that are not in danger of precipitous closure to waste funds on securing expensive letters of credit.

We suggest that the Department --

- Repeal the current methodology in §668.172 for computing a higher education institution's composite score and replace it with one that conforms with current accounting principles.
- Retain and modify the alternative methods for demonstrating financial responsibility, currently defined in the HEA statute, and the regulations at §668.175.
- Establish a new uniform appeals process as part of the financial responsibility procedures, similar to that used in determining an institution's cohort default rate, for institutions that may have challenges to the calculation of the score.
- Fully implement the requirement in section 498(c)(3)(C) of the HEA that the "total financial circumstances" of institutions that fail the ratios test before assessing penalties. Establish an advisory panel of nonprofit accounting experts to provide technical guidance to the Department.

Our suggestions are consistent with many of the findings and recommendations of National Association of Independent Colleges and Universities (NAICU) Report of the NAICU Financial Responsibility Task Force, published in November 2012 (enclosed). This report was submitted to Department officials in the previous Administration and provided well-documented evidence of problems with these regulations, no actions was taken by the Department.

Repealing the current methodology and replacing it with one that conforms to current accounting principles (§668.172)

The current procedures for calculating the financial "composite score" in the regulations at 34 CFR 668.172 do not appropriately take into account the full measure of an institution's financial health and have not been updated in over 20 years.

Additionally, the current measures in the regulations have resulted in inaccurate "false positive" failing composite scores on non-profit institutions that are not in danger of precipitous closure. These "false positives" trigger a requirement for these colleges to post expensive letters of credit. This letter of credit requirement makes the current regulations unduly costly and unnecessarily burdensome to institutions not in danger of precipitous closure, and which do not been found to have any Title IV, HEA compliance issues.

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Specific Recommended Changes (§668.172)

In repealing and replacing the current measures in 34 CFR 668.172 with a more accurate system of measurement, the Department should include the following industry-accepted standards as an alternative for high-performing institutions to demonstrate financial responsibility.

1. A rating from a rating agency of investment grade or above on bonds issued by the institution;

2. A positive Composite Financial Index[1] of 1 or higher; or

3. Externally audited evidence of expendable net assets equal to at least 50 percent of the institution's annual Title IV disbursements; and

4. Expand the current provision in 34 CFR 668.15 to Subpart L under which an institution may be deemed financially responsible if it has sufficient resources to ensure against precipitous closure and to meet all its financial obligations.

Additional Specific Recommendations (34 CFR Subpart L)

We endorse NAICU's recommendation to add an official review and appeals process in the regulations for financial responsibility determinations to ensure due process for institutions that would establish a timeline for institutions to correct weaknesses, allow the current total financial situation at an institution to be considered, and limit the situations in which letters of credit are required.

Given the consequences and complexity of the composite score calculation, it is important for institutions to have an opportunity to correct or update financial information before final scores are determined and made public. Currently, this opportunity does not exist and the NAICU report found inconsistency between the Department's regional offices in calculating and correcting composite scores.

In addition to the consequences under the Department's regulations, the inaccuracy of the current composite score has other negative impacts on institutions of higher education. For example, the standards for interstate State Authorization Reciprocity Agreements (SARA) developed by the National Council for State Reciprocity Agreements (NC-SARA) apply the Department's current composite score in determining eligibility for non-public institutions to offer distance education out-of-state.

[1] The Composite Financial Index (CFI) is a financial strength measure developed by KPMG, Prager, Sealy, and Co., LLC, and Bearing Point, Inc. to provide a more complete picture of the financial health of institutions at a point in time that is possible by simply comparing the current indicators in the existing format.

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NC-SARA acknowledges that it is using a "flawed" but nonetheless widely-available measure in the composite score.[2] NC-SARA, the four regional interstate compacts for higher education, and the Commission on Regulation of Postsecondary Distance Education have all recommended that the Department review its current methodology for computing the composite score.[3] The failure of the Department to improve the accuracy of the composite score will likely pressure states to develop their own financial measures thus undermining recent reciprocity efforts.

State Authorization Regulations – 34 CFR 600.9

The previous Administration promulgated new regulations at 34 CFR 600.9 that significantly expanded the requirement in the HEA for institutions to be authorized to offer postsecondary education programs by the State in which they are located. While institutions have always been required to be authorized or licensed to operate in the state in which they are physically located or have additional locations, these new regulations expanded the concept for institutions offering distance learning programs to states in which their students taking online courses reside.

A portion of this regulation was struck down in federal court in 2011, and legislation was introduced in Congress to repeal the provision because it went far beyond the intent and requirements of the existing statute. In the waning days of the previous Administration, the Department published new final rules in December 2016 affecting distance education programs which become effective on July 1, 2018.

These new regulations on distance education programs go far beyond the current statute requiring authorization or licensure by the institution's "home state" (ie., the state in which they are located in) in order to participate in the Title IV, HEA programs. Specifically, the new regulations establish the state licensure requirement to be be extended to licensure in the state in which a student resides, not by the "home state" of the institution.

Historically, institutions have been subject to the state approvals of the home state in which they were established and are operating, not the requirements of the states of which their students may be legal residents of. A student enrolling in a distance education program outside of their state should not be treated differently than a student enrolling at a residential campus outside of their home state, nor should the federal regulations apply a different standard to institutions solely because of the modality in which the postsecondary education is offered.

Finally, the new regulations impose costs and administrative burdens on institutions offering distance education programs that far exceed any potential benefits to society, create inconsistencies in the treatment between out-of-state students enrolled in residential programs and students

[2] I. Greco, (Nov. 14, 2014) *New FAQs for NC-SARA*, Retrieved from http://nc-sara.org/content/new-faqs-nc-sara.
[3] See http://nc-sara.org/files/docs/Commission-on-Regulation-of-Postsecondary-Distance-Education-Draft-Recommendations.pdf pages 28-29 for additional discussion.

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enrolled in online programs, create confusion in the requirements for hybrid programs offering both classroom and online instruction, as well as in executive weekend programs that use multiple instruction modalities and often meet at different locations over the entire course of study.

Specific Recommendation – 34 CFR 660.9

We request that the Department re-examine the new State Authorization regulations for consistency with the statute upon which this provision purports to be based on and the legislative intent of the provision as demonstrated in its legislative history.

Further, given the lack of a legislative mandate supporting this regulation and the burdens it imposes, the regulation should be repealed in its entirety because the potential benefits do not outweigh the costs and complexity of implementing the new requirement.

Closing Comments

Thank you for this opportunity to offer input into the Department's review of its regulations as directed by President Trump in Executive Order 13777.

We look forward to working with the Department staff and our colleagues in the higher education community to amend these regulations to alleviate their unnecessary regulatory burdens.

Sincerely,

Dr. Arthur Keiser
Chancellor

Enclosure