CECU | Career Education Colleges and Universities

September 20, 2017

Ms. Kathleen Smith
Acting Assistant Secretary for Higher Education
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

In reference to Executive Order 13777, "Enforcing the Regulatory Reform Agenda"
Docket ID: ED-2017-OS-0074

Dear Ms. Smith:

Thank you for this opportunity! We are delighted to be able to work with you and the Department to find ways that we can "Modernize the Government's Role in the Management of Postsecondary Education."

In many of my speeches I have shared that America has modernized its higher education enrollment. And no sector of higher education does a better job of serving the diversity of our nation than Career Colleges and Universities. We have also modernized the delivery of our academic programs. The use of technology has changed how we learn. For Career Education, we have honed the art of providing on-site, on-line and blended programs in schedules that meet the needs of our students.

The one place where America has not kept pace is in the laws and regulations that guide us. For example, we still count in published completion rates only full-time, first-time, degree-/certificate-seeking students who started and finished at the same institution. Students who need to take a break from their studies are never again counted in our completion numbers. Our financial aid programs are geared to young people living at home with their parents, when over half our students today are independent, adult students. The Department should be commended for beginning this focus on both modernization and reduction of our regulations.

Recent years have seen a dramatic increase in the number and scope of regulations impacting higher education. In testimony before the Department in the summer of 2015, the National Association of Student Financial Aid Administrators summarized the current situation for all of us when they said, "We hope that the Department heeds community concerns regarding overregulation, burden with no justifiable return and regulatory impediments to meeting the needs of a diverse student body. Entities cannot infinitely absorb burdens of regulatory inefficiencies as a cost of doing business." We are ready to work with you both in revising and reducing our regulations and later updating the Higher Education Act, itself.

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The Career Education Sector

I speak to you today on behalf of the more than 600 campuses of the Career Education Colleges & Universities. But, in reality I speak to you today on behalf of the 2.3 million students engaged in postsecondary career education at all our sector's schools. These students are impacted daily – both directly and indirectly – by the current maze of regulations that define how a school serves their academic and career learning.

Let me begin by commending the Department for recognizing that complex rules targeting only one segment of higher education fail on all accounts. Such rules fail to protect the 90 percent of students enrolled in other institutions of higher education. And they fail to meet the needs of students and communities over time. There is no better example of a bad regulation than a Gainful Employment regulation that defines academic quality by a debt/earnings ratio in the third year of a person's employment. Even worse, the metrics used in such calculations now show that the very same program, at the very same cost, can be defined as either passing or failing based upon the location of a graduate's region of employment. For example, Medical Assistants have over a $20,000 income disparity based upon where they live and work. And those regions of the nation most needing Medical Assistants are the very ones whose programs would fail under the current metrics.

We commend the Department for beginning a new negotiated rulemaking process to revise both the Gainful Employment regulation and the Borrower Defense to Repayment regulation. We stand ready to work with you, and others, in developing sound public policy on both issues.

Regulatory Reform in Higher Education:

We wish to briefly lift up a series of regulations that beg for modernization, clarity and consistency. They include the following:

<u>Academic Issues:</u>

1. Definition of Credit Hour: (34 CFR 600.2, 602.24, 603.24 and 668.8)
   The Department would do all of higher education a huge favor if you would simply repeal this rule! While we recognize the intent of the past Administration in providing a minimum baseline, the diversity of today's postsecondary education programs makes clear that "one size simply cannot fit all." We believe the definition of credit hours was, and remains, best left in the hands of our nation's accreditors who are not only capable of defining academic credits for their members schools, but are charged by the Department to do exactly that.

2. Accreditor Roles & Responsibilities: (34 CFR 602)
   One of the most important contributions the Department can make to efficient administration of higher education in America is to articulate clear roles and responsibilities for a.) Program Participation in Title IV; b.) The role of Accreditors in

assuring academic quality; and c.) State Licensing agencies. Recently, the Department of Education has expanded their review and recognition of accrediting agencies based upon the accreditor's ability to enforce federal requirements (refund calculations, financial stability, the definition of credit hour, misrepresentation, etc.). These are the Department's responsibilities, not the role of an academic accreditor.

3. Eligibility and Certification Approval Report (ECAR) Timelines: (34 CFR 600.20(c) and (d))
   The partnership between schools and the Department must work in ways that mutually serve the needs of the Department to protect program integrity while also protecting a school's ability to expand programs and/or locations as needed to ensure students receive the most up-to-date program options at locations most convenient to them. The current regulations appropriately place timelines on a school's need to make such applications. However, there are no similar and reciprocal timelines for the Department's consideration of the request and a formal response leading to exorbitant delays in the approval of new or revised programs and new locations. Given today's quickly changing workplace, new and updated programs are an essential part of equipping students with the most current skill demands. Regulations should establish clear expectations for both parties – one of which is similar timelines for consideration of such requests.

<u>Financial Aid Issues:</u>

4. Loan Limitations: (34 CFR 685.301(a)(8))
   Schools must be permitted to limit loan amounts, or at least require additional loan counseling, in order to help prevent their students from incurring unnecessary and excessive levels of debt.

   While the current regulation allows such determinations on a case-by-case basis (a process called "professional judgment"), this process is ill-suited to remedying systemic over borrowing. Schools should be allowed to create modified loan limits based on a student's costs and expected earnings in ways that serve as a uniform policy to all students enrolled.

   There is also a prohibition on requiring students to undergo additional loan counseling prior to borrowing to the maximum loan level allowed, versus the loan amount appropriate to cover the cost of a student's program. The current regulations require the loan be certified in a timely manner for the student regardless of their participation in any loan counseling.

   Finally, we understand there exists "informal guidance" within the Department allowing a school to include recommended loan amounts on student award letters, as long as a statement is included that states the student might be eligible for more support, encouraging the student to confer with their Financial Aid officer. In addition to the above suggestion that schools be permitted to impose appropriate loan amount limits, we encourage the Department to clearly explain the ability of schools to work with all students through consistent policies encouraging efforts to limit loans to actual need.

5. Verification Regulations in processing Financial Aid: (34 CFR 668.57)
   We all agree that verification is essential in processing the appropriate federal aid to students. And we recognize that federal statute also requires income verification and documentation. However, the Department's revised verification regulations significantly expanded the data elements for verification. This places a new, significant burden on both students and institutions. In many cases the data is very difficult for students of low-economic means to produce, putting at risk their ability to comply with the law.

   An option for the Department to consider is random verification based upon appropriate triggers rather than placing a universal burden on students and institutions.

6. Recertification Timelines: (34 CFR 668.13 and 600.20)
   We must create some order in the timing of the Department's consideration of institutions' applications for Title IV recertification. We believe the Department should be required to make a determination within six months of the application submission. We believe the regulation should include such clear timeline responsibilities of the Department. Delayed recertifications place a practical moratorium on program and location expansion that impedes schools' ability to innovate and otherwise keep up with rapidly changing workplace demands.

7. The Process for R2T4 has become overly complex: (34 CFR 668.22)
   Given that today's adult students (and others) must frequently start and stop their academic studies multiple times for multiple reasons, the Return of Title IV Funds (R2T4) requirements are too complex and almost impossible to manage for every student's unique needs. We recommend the Department consider a more streamlined approach for return calculations based on the end of a quarter/semester academic period. If you conclude you cannot make such revisions without also amending section 484B of the Higher Education Act, we stand ready to work with you during Reauthorization to make such changes.

8. Third Party Loan Servicer Definition: (34 CFR 668.2)
   Sometimes regulations can protect schools by providing clarity! 34 CFR 668.2 essentially defines Third Party Servicers to include those entities a school engages to help carry out functions required for its Title IV administration. But recent sub-regulatory guidance injects significant uncertainty regarding what may be considered a Third Party Servicer.

   We request the Department to consider developing a clear, tight definition of what constitutes a Third Party Servicer; and ensure the specific requirements for Third Party Servicers under ED's regulations interact in clear and understandable terms. The current definition of a Third Party Servicer is so expanded by the Department's interpretation that almost any entity that contracts with a school, including those verifying placement rates or providing voluntary default prevention services, have been deemed Third Party Servicers. Schools need better, clearer direction as it relates to what qualifies as a Third Party Servicer, and then what actions of such servicer the school may be liable for under current regulations and Department determinations.

9. Consider the regulatory relief from Distribution of Financial Aid directly to students: (34 CFR Part 668)
   We are well aware of the controversy in 2015 and 2016 with the Department's promulgation of regulations on financial products. This criticism avoids a bigger question regarding the role of schools in administering federal financial aid. Certainly schools must always be responsible for determining an individual's enrollment, attendance and eligibility for aid at their campus. However, today's technology enables the Department to directly disburse such aid to the student once eligibility is confirmed. We encourage the Department to be bold in considering the design, development and use of debit cards directly to the student – eliminating the processing now required on each campus.

10. Due Process upon Denial of Recertification: (34 CFR 600.20)
    While a school has the right to appeal a Department decision to *terminate* its Title IV participation, a school denied *recertification* of its Title IV participation has no recourse and no appeal process – unless they choose legal action. There is no reason to afford less protection upon recertification than upon termination. A loss of Title IV certification (whether by termination or denial) is a death knell to most institutions, making any lack of due process unnecessary and unacceptable. Schools deserve due process. Such due process should provide the school with the ability to appeal a denial to a higher level within the Department in ways that assure an independent and fair review of the facts, insulated from a decision that could have been made as much for personality disputes as substantive issues.

11. Appeal Process upon Termination of Provisional PPA: (34 CFR 668.13(d))
    In the same regard, if a provisional PPA is terminated, the school is afforded substantially less due process than when the same action is taken regarding a full PPA, even though the consequences of the action are the same. This is unnecessary and unacceptable. This, most likely, will determine a school's very existence. Where an action would deprive a school of its Title IV participation (and thus would threaten its very existence), schools should receive the same strong due process regardless of what form ED's action takes.

12. Disbursing Credit Balances from Institutional Funds (HCM1 and HCM2): (34 CFR 668.162(c) and (d)
    Schools should not be required to issue a student credit balance until such funds have been provided by the Department to the school. It is not the responsibility of a school to subsidize the Department's work until such time as the Department finalizes payment to the school.

13. Excessive Delays and Arbitrary Requirements for Delivering Funds (HCM2 and reimbursement): (34 CFR 668.164)
    The current regulations provide the Department so much discretion in administering the delivery of Title IV funds to schools that it can withhold all funds due to a school based on an unproven allegation of wrongdoing. This withholding of funds can be perpetuated by imposing arbitrary documentation requests or by failing to timely respond to the school's HCM2 or reimbursement submissions. These arbitrary and unchecked actions can place a school's very existence in jeopardy. The regulations should allow schools to appeal a denial to a higher level within the Department in ways that assure an

independent and fair review of the facts and require the Department to promptly provide the Title IV funds for which students are eligible. In particular, for any payment method under which a school must obtain Department pre-approval before drawing down funds, the regulations should clearly state the types of documentation required, and should compel the Department to act on schools' funding requests in a reasonable period of time. The regulations should also provide for payment of any funds properly accounted for, even if other funds are still pending appropriate data from the school.

Administration:

14. State Authorization: (34 CFR 600.9, and possibly 668.50)
    The incredible problems finding a consensus on a State Authorization regulation in recent years reflect the basic reality that this may not be the federal government's role! The federal government's recent regulations have forced states to increase their regulatory operations to authorize institutions beyond their state borders, just to serve students within their own state! Schools have had to seek authorization from countless states, often based upon very low enrollment numbers from such a state. Each state has the authority to create its own authorization regulations, and the Department should recognize the states' rights to promulgate their own rules.

15. Program Reviews (34 CFR 668, Subpart H)
    Program reviews are an essential and important part of the partnership between the Department and the schools. However, there are no established time periods for the completion of the process. This results in schools living in-limbo while waiting for some kind of Department action. We recommend the regulations be revised to establish appropriate time limits that respect both the Department and the school. We suggest the following:
    - The Department shall issue a preliminary report within 180 days of commencing a program review.
    - The institution shall respond to the items raised within 60 days; if large file reviews are required, that deadline should be expanded to 120 days.
    - A final program review/determination shall occur within 60 days following the submission of a response by the school to the Department.

    In addition, file reviews should be required only for the period under review in the program review and under published standards. The prior administration used file reviews as a weapon, requiring some for-profit schools to engage in five and six year file reviews after the Department took three or more years to process its initial program review report. This places an enormous administrative burden on schools and denies them due process based on the staleness of student records and the inability to contact long departed students.

In addition, there were cases in which the Department under the prior administration launched informal inquiries that were, for all intents and purposes, program reviews—but without the procedural protections that go along with formal program reviews. The regulations should prohibit the Department from sanctioning schools in the context of any action in which the school was not afforded appropriate procedural and due process protections.

16. The Audit Guide:
    The Department of Education Inspector General released a 203 page document designed to uniquely and exclusively regulate the audits of for-profit schools. This was released in September of 2016 as one of the previous administration's final assaults on the sector.

    Under this new guide, auditors are now required to test more student files, more non-student-related items, and otherwise perform more expansive procedures, with a focus on the many new regulations imposed upon the sector by the past administration. Tellingly, no similar updates were made to any audit guidance applicable to public and non-profit institutions.

    We support updating an Audit Guide that had not been updated since 2000. However, we encourage the Department to review this guide within its commitment to treat all sectors of higher education equally and fairly – which should help avoid the establishment of arbitrary standards. This guide is guided by political ideology and does not meet that test.

17. Composite Scores: (34 CFR 668. Subpart L)
    The Calculation and use of the Composite Score needs to be revisited. The Department has recognized this need in your August 30th Call for nominations for Negotiated Rulemaking. It is not our intention to address every issue within this paper. But, we do want to lift up the potential effects the guidance issued regarding leases will have on composite scores.

    In February 2016, the Financial Accounting Standards Board (FASB) issued ASU 2016-02, Leases (Topic 842). The guidance in ASU 2016-02 provides guidance in GAAP about the recognition of assets and liabilities by lessees for those leases classified as operating leases under GAAP. The guidance requires that a lessee should recognize in the statement of financial position a liability to make lease payments and a right-to-use asset representing the company's right to use the underlying assets for the term of the lease. The provisions of ASU 2016-02 are effective for the fiscal periods beginning after December 15, 2019, and for interim periods within fiscal years beginning after December 15, 2020.

    Currently, the composite score does not consider right-to-use assets or liabilities as a result of the implementation of ASU 2016-12. If the composite score is not changed, it will adversely impact the school's composite score. We encourage the Department to review the composite score and the potential effects the ASU 2016-12 will have on the composite score.

18. One Common Set of Consumer Information: (34 CFR 668.41-49)
We strongly support providing all students with uniform access to relevant information that equips them with the information essential to making an informed decision regarding their education future.

The current process for collecting and distributing such information is chaotic at best; and only serves to confuse students. For example, the GE Disclosure Template, the Financial Aid Shopping Sheet, the College Scorecard and the Net Price Calculator all use different metrics, student cohorts and time frames.

We encourage the Department to revise all Consumer Information regulations so that all institutions of higher education are disclosing the same information in the same format. We recognize the College Scorecard is not actually in current regulations; rather, it was an informational item provided by the prior administration. We simply request the Department decide how best to provide one set of common information metrics.

19. Cleary Act and Violence Against Women Act: (34 CFR 668.41; and 668.46)
The Clery Act has served to provide valuable crime and safety information to students regarding their institutions. As part of the Clery Act requirements, each institution's Annual Security Report provides public disclosures and vital safety information for remaining safe while on campus. However, the reporting requirements have evolved over the years to include unclear crime definitions, inconsistent policy statements, and confusing data for students to make informed decisions. For example, many incidents that occur on campuses are not considered "crimes" by the Department of Justice's Uniform Crime Reporting (UCR) definitions, yet they must be reported in the institution's crime log and Annual Security Report. This only causes confusion for campus safety officers trying to report appropriate statistics and likely errors and inconsistencies in reporting.

The recent amendments to the Violence Against Women Act (VAWA), which amended the Clery Act, require institutions to report on sexual assault, stalking, dating violence and domestic violence and expanded staff and student training responsibilities. However, the Department's definition for these crimes does not align with the institution's state definitions of these crimes, which vary from state to state. The expanded training and policy statement language also overlaps with Title IX DCL guidance and again is inconsistent and causes confusion for institutions try to implement these laws.

We recommend that the Department review the Clery Act/VAWA definitions and requirements and align with the Department of Justice's UCR guidance for defining crimes. This would create consistency across all Annual Security Reports provided by institutions. Additionally, we recommend that the Department consider aligning VAWA policy and training requirements with its Title IX requirements.

Sale and/or Transfer of School Ownership/Operations: (34 CFR 600.31)

20. The prior administration insisted in many cases that, if school ownership wished to sell or transfer control to one or more locations of an institution, then all campuses within a school's OPEID number must be transferred. The problems with such a requirement were obvious in the closing of Corinthian, Anthem and other large groups of campuses where some very good schools were unable to continue operating because a potential buyer was not able to separate successful campuses from the larger group of schools. The previous administration arbitrarily restricted sales to "all or none." They also insisted unaffiliated buyers accept the liabilities of a past operator and incur any problems the previous owner had with 90/10, CDR, and other issues. The end result was many successful campuses closed students were left on the street with no opportunity to finish their education, and taxpayers incurred large liabilities for loan forgiveness. Students would be better-served if individual locations within a system of an institution could be transferred without all locations being impacted.

    The current regulations provide the Department with nearly unbounded discretion regarding whether to permit ownership or control over a school to be sold/transferred, and to impose conditions on such a sale/transfer. A more orderly process is needed – one that prioritizes continued learning by the students enrolled in such schools. The students must be our priority whenever change in ownership or control occurs.

21. Tainted Sites: (34 CFR 600.32 (b))
    The current regulation states that as a school acquires the assets of a closed school it will not have to meet the requirements of being in operation for two years before being eligible for participation in Title IV so long as it pays the liabilities of the closed school. This requirement to pay a closed school's liabilities kills almost all attempts to move forward. The Department (in the past) has viewed the school that is acquiring the assets and using the space to continue teaching the students as a continuation of the closed school. The exception to this interpretation is if the Department takes a formal action to limit, suspend, or terminate the school – or other emergency action – resulting in a school closure then a new owner/operator can acquire assets, teach out students and make the location a permanent additional location without being responsible for the closed school's liabilities.

    There should be no such difference between formal actions by the government closing a school; and other factors leading to a school closure (loss of credit, program reviews by accreditor, poor enrollment, etc.).

22. Protecting Staff of a Closed School/Past Performance Regulation: (34 CFR 668.174 (b))
    The current regulations defining "persons in control" go too far. It covers anyone who exercises "substantial control over the institution" or any member of that person's family. The definition of substantial control sweeps in family members, financial aid administrators, and others not reasonably viewed as "in control" of the institution.

Substantial control can mean ownership interests of 25 percent or more, being the CEO or CFO, financial aid administrator or anyone who possesses the power – directly or indirectly – to cause the direction of the management and policies. This would easily include board members, and in some cases, even educators and administrators.

The regulation (668.174(b)(1)(iii) does allow for a person to rebut the presumption of control by demonstrating that he/she did not have control. This regulation is very problematic since it literally holds a son of a family member responsible for the liabilities of the father. In reality, if a son worked at the new school as financial aid administrator, the Department informs the school that it is not financially responsible because of the employment of the son. The son is fired. Clearly, liability should be limited to the ownership unless the Department can prove the other persons were also responsible for causing the liabilities that closed the school.

Thank you for the opportunity to provide commentary on a range of regulations that should be revisited and addressed. We applaud the Department for your commitment to review, revise or reduce regulations that impede the delivery of access and opportunity to our students. We stand ready to work with you in further review of these regulations. If helpful, we can provide real-life examples of how such regulations impede the effective, efficient delivery of postsecondary career education.

Sincerely,

Steve Gunderson
President & CEO
Career Education Colleges & Universities