

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

September 19, 2017

Dear Ms. Malawer:

Re: ED-2017-OS-0074-0001

Thank you for the opportunity to comment on the U.S. Department of Education's (ED) implementation of Executive Order 13777, "Enforcing the Regulatory Reform Agenda." Under this Executive Order, ED has formed a Regulatory Reform Task Force and is seeking input on regulations that are "appropriate for repeal, replacement, or modification." This letter provides the views of the Lumina Foundation on this important set of issues.

As part of the implementation of the Higher Education Act and other laws impacting the pursuit of a postsecondary education, regulations provide the direction and guidance needed to adhere to the goals Congress prescribes in statutes. Regulations often provide the level of detail necessary to actually implement Congress's laws in real-world higher education settings. At the same time, however, regulations that lack the ability to adapt to the changing postsecondary environment can inhibit postsecondary attainment. Regulatory policy should be both effective at ensuring quality and while not be so exacting as to stifle innovation or impede new efforts to improve student outcomes.

The key to effective regulatory policy is thoughtful design and implementation that is flexible enough to keep up with changing times, policies and technologies. History has proven that the most effective higher education regulations are subject to rigorous public debate and constructed with the goals of achieving high outcomes and minimizing institutional burden. These regulations provide essential guidance to the higher education community to implement what can be, at times, confusing and contradictory legislative language. In short, when done correctly, regulation in and of itself is not a bad word; in fact, regulations can be a much needed, powerful force to provide a guide for complying with Federal law and meeting crucial public policy goals, such as achieving the kind of postsecondary student outcomes Americans seek.

In addition to providing clear guidance to providers and maximizing outcomes, smart regulations must also allow for innovation and adaptation to the changing higher education landscape. Enshrining a set of policies in a regulation can establish important baseline expectations. If these policies are rigid and unable to respond to the changing needs of students or how postsecondary education is provided, they become inhibiting forces for institutions and students seeking credential and degree attainment. For example, sticking to unyielding definitions of the credit hour across all institutions and all types of postsecondary education programs has proven to be a challenging hindrance to institutions seeking to explore competency-based education approaches and alternative forms of quality control. As students seek new pathways to acquire a degree or credential, regulations must be able to adapt. The Task Force should explore how ED's current set of higher education regulations create barriers to innovation and inhibit institutions from pursuing new and promising approaches.

At the same time, it is important for regulations to focus on quality and outcomes. Concerns about quality undermine the credibility of the entire postsecondary education system. If students, employers and the public cannot trust that the Federal aid system is providing access to quality programs, it weakens the system and ultimately, the value of postsecondary credentials and degrees.

Coupled with a focus on quality and outcomes is the need for more actionable data. Presently, Federal data systems, such as IPEDS, and the connection between State employment data systems and institutions of higher education lack the capacity to provide actionable data. As the Task Force examines existing regulations and ED embarks on other regulatory efforts, maximizing quality assurance and student outcomes should be paramount along with improving and modernizing the data systems necessary to assess these outcomes. The Task Force and ED are responsible for ensuring that regulations focus on quality and student outcomes and are uniquely positioned to accomplish this.

Part of any effort to ensure quality and student outcomes must include an examination of the regulatory requirements for accreditors. Under current law, accreditors lead the efforts in ensuring quality and outcomes at postsecondary institutions. While much of what governs the content of accreditation standards is shaped by the Higher Education Act, the Task Force should closely examine how the existing regulations pertaining to accreditation can maximize a focus on student outcomes.

Thank you for the opportunity to provide our views on the Task Force's ongoing examination of ED's regulations and for your consideration of our views.

Sincerely,

Jamie Merisotis, CEO  
Lumina Foundation