

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

March 10, 2011

The Honorable Virginia Foxx
Chairwoman, Subcommittee on Higher Education
and Workforce Training
House Education and the Workforce Committee
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx:

On behalf of more than 70 higher education associations and accrediting organizations listed below, I write to thank you for holding a hearing to examine the Department of Education's final program integrity rule issued on October 29, 2010. The goal of this rule was to eliminate fraud and abuse, shield students from predatory practices and protect taxpayer investment in the Title IV financial aid programs, all of which are objectives we strongly support.

Although some of these new regulations will help meet these goals, others miss the mark. In particular, we are concerned about provisions of the regulations that establish a federal definition of "credit hour" and expand state authorization requirements. These provisions will have little or no effect in curbing fraud and abuse, but they could do enormous damage to the quality and diversity of postsecondary academic offerings.

Briefly, a credit hour is the most basic building block of any academic program. Our primary concern about establishing a federal definition is that it opens the door to inappropriate federal interference in the core academic decisions surrounding curriculum, which represents the very kind of interference expressly prohibited in the department's enabling legislation. As a practical matter, the particular definition at issue is, at best, highly ambiguous and poses serious challenges for institutions and accreditors as they attempt to ensure policies consistent with it.

We have a similar set of concerns about the state authorization provisions. The regulation could subject religiously affiliated institutions to new state regulation, opening the door to state involvement in the curricular affairs of these institutions. Moreover, the expectations for what constitutes an appropriate authorization of an institution or an adequate complaint process are so ill-defined that institutions, accreditors and states do not feel confident in their ability to identify practices and policies that will be accepted by

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department regulators. The portions of the state authorization regulations dealing with distance education are particularly confusing. Because of these uncertainties, this new rule could force campuses to pull back on legitimate and creative distance education programs, leaving the students most in need behind.

We have shared detailed comments about these issues with Secretary Duncan in separate letters signed by more than 60 higher education associations and accreditation organizations, and asked the Secretary to exercise his authority to rescind these two regulations in their entirety. We hope he will do so. Copies of these letters are attached for your reference.

No response to our letters has been received from the Secretary. With just over 100 days remaining to comply with the July 1 implementation deadline, we do not see any realistic way that these problems can be addressed in time. The fact that our institutions will need to have documentation by July 1 that they satisfy state distance education requirements is a particularly pressing worry.

In light of the daunting challenges institutions, accrediting agencies and states will face in attempting to implement these two regulations by July 1, 2011, we ask for your assistance in obtaining a one-year extension in the effective date for these two regulations.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

Attachments: Community letters on credit hour & state authorization

On behalf of:

Higher Education Associations

ACPA – College Student Educators International
American Association of Colleges for Teacher Education
American Association of Colleges of Nursing
American Association of Community Colleges
American Association of Presidents of Independent Colleges and Universities
American Association of State Colleges and Universities
American Council on Education
American Distance Education Consortium
American Indian Higher Education Consortium
Appalachian College Association
Association for Biblical Higher Education

Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Lutheran Educational Conference of North America
NASPA – Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
Southern Regional Education Board
University Professional & Continuing Education Association
Women’s College Coalition
Work Colleges Consortium

Accreditation Organizations

Accreditation Commission for Audiology Education
Accreditation Commission for Midwifery Education
Accreditation Council for Business Schools and Programs
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Bureau of Health Education Schools
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education & Training
Accrediting Council for Independent Colleges and Schools
American Board of Funeral Service Education
American Council for Construction Education
American Culinary Federation Education Foundation Accrediting Commission
American Dental Association Commission on Dental Accreditation
Association for Biblical Higher Education Commission on Accreditation
Association of Advanced Rabbinical and Talmudic Schools
Association of Independent Colleges of Art & Design
Association of Specialized and Professional Accreditors
Aviation Accreditation Board International
Commission on Accreditation for Health Informatics and Information Management Education
Commission on Accreditation for Marriage and Family Therapy Education
Commission on Accreditation of Allied Health Education Programs
Commission on Accrediting of the Association of Theological Schools
Commission on Collegiate Nursing Education
Commission on Massage Therapy Accreditation
Council for Accreditation of Counseling and Related Educational Programs

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Council of Arts Accrediting Associations, including:

National Association of Schools of Art and Design

National Association of Schools of Dance

National Association of Schools of Music

National Association of Schools of Theatre

Council on Academic Accreditation in Audiology and Speech-Language Pathology

Council on Occupational Education

Council on Rehabilitation Education

Distance Education and Training Council

Higher Learning Commission of the North Central Association of Colleges and Schools

Joint Review Committee on Education in Radiologic Technology

Joint Review Committee on Educational Programs in Nuclear Medicine Technology

Middle States Commission on Higher Education

Midwifery Education Accreditation Council

National Accrediting Agency for Clinical Laboratory Sciences

National Accrediting Commission of Cosmetology Arts and Sciences

National League for Nursing Accrediting Commission

New England Association of Schools and Colleges, Commission on Institutions of Higher Education

Northwest Commission on Colleges and Universities

Southern Association of Colleges and Schools Commission on Colleges

Transnational Association of Christian Colleges and Schools

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

cc: Congressman John Kline

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

March 2, 2011

Secretary Arne Duncan
U.S. Department of Education
LBJ Education Building, Room 7W311
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the 60 higher education associations and accrediting organizations listed below, I write to express our serious concerns regarding the state authorization regulations in Section 600.9 of the Oct. 29, 2010, final program integrity rule. These final regulations significantly expand and complicate the existing federal requirements for institutions to be “legally authorized” in a state. While the final rule reflects changes from the draft proposal, these changes do not address the concerns we raised during the rulemaking process. In addition, the final rule includes an entirely new and problematic provision regulating distance education programs.

We request the department’s immediate assistance in addressing our concerns.

I. General state authorization requirements and potential for state overreach

Since its inception, the Higher Education Act has required that an institution of higher education be legally authorized within a state to provide postsecondary education. States have approached this authorization function in a variety of ways—particularly with respect to non-public institutions. Unfortunately, the new regulations will significantly complicate and confuse these prior efforts. We have grave concerns about this federal effort to define these relationships and do not believe it is either wise or appropriate for the federal government to pursue this course of action. Although the preamble to the new regulations includes an illustrative list of arrangements the department would consider to be either in or out of compliance, this list is inadequate to dispel confusion about what is expected of an individual institution. In addition, there is no accurate compilation of existing state requirements that might be used to gauge whether or not the policies of any given state pass muster.

The ambiguity of the regulations also raises the concern that state officials may overreach by imposing requirements on private, non-profit institutions that go well beyond the grant of authority to operate as postsecondary institutions and that have

nothing to do with the program integrity objectives of the new regulations. These institutions vary widely in terms of the missions they serve, but what they share is a commitment to fulfilling those missions. Although the final regulations reflect some acknowledgement of mission-based issues in provisions relating to religious mission, they are too narrowly drawn to alleviate these broad concerns, particularly in light of the fact that they could result in state actions that would exceed the scope of the Department's intentions and interfere with religious mission.

II. Distance education requirements

Section 600.9(c) of the new state authorization regulation requires institutions offering distance education programs to: (1) meet any state requirements necessary to be legally offering postsecondary distance education in that state, and (2) upon request, document to the secretary the state's approval. This rule essentially places the federal government in the role of enforcing state statutes—a role inappropriate for it to assume. We support the right and responsibility of states to regulate the quality and nature of the education being delivered within their respective borders. In cases where a state notifies an institution that it is not in compliance with state regulations, the institution must take appropriate steps to bring itself into compliance. Distance education providers have a responsibility to fully comply with state law, even though this can be challenging. States can and do enforce their own distance education laws, and the prior absence of a federal regulation on this topic has in no way hindered their efforts.

Even more troubling is the fact that there is no way to guarantee that an institution has met the department's interpretation of any state's regulations, and no way for an institution to ensure it would satisfy these federal interpretations if audited. Furthermore, if an institution is unable to obtain the federally required documentation by July 1, it will be forced to discontinue enrolling students from that state, even though it has fully complied with all state distance education requirements. Failure to do so could threaten Title IV eligibility for the entire institution.

Because of these uncertainties, this new rule could force campuses to pull back on legitimate and creative distance education programs, leaving the students most in need behind. These programs are often most needed in rural states that have small and dispersed populations and where distance education opportunities are arguably most vital. In addition, these changes could have a particularly negative impact on members of the military and their families, who frequently relocate to new states, as well as other citizens who are attempting to develop new skills to successfully compete and participate in the emerging economic recovery.

Further, the final distance education regulation could seriously hamper efforts to meet the president's 2020 goal—a goal the academic community wholeheartedly supports and endorses. This concern is not theoretical. One leading public flagship university initially decided to stop enrolling students from other states after the rule was first published. Only after careful reconsideration has it reversed its original decision. If other institutions were to follow the initial path this university chose, it would come at the expense of students and our shared goal.

REQUESTED ACTION:

We believe the best course of action would be to rescind the new state authorization regulation in its entirety. This is a conclusion we have not reached lightly and only after determining that our concerns cannot be addressed through modification. As finalized, the regulation creates serious concerns for our private, non-profit institutions—in particular for religiously-affiliated and other mission-based institutions—and threatens the ability of both public and private institutions to serve students through effective distance education programs.

For these reasons, we ask you to rescind Section 600.9.¹ We thank you for your consideration of our request.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations

American Association of Colleges for Teacher Education
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Distance Education Consortium
Association of American Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Hispanic Association of Colleges and Universities
Lutheran Educational Conference of North America
NASPA - Student Affairs Administrators in Higher Education
National Association of Independent Colleges and Universities

¹ As a technical matter, we note that there are requirements in Section 668.43 related to Section 600.9 that should also be eliminated.

National Association of Student Financial Aid Administrators
Southern Regional Education Board
University Professional and Continuing Education Association
WICHE – Cooperative for Educational Technologies
Women’s College Coalition

Accreditation Organizations

Accreditation Commission for Midwifery Education
Accreditation Council for Pharmacy Education
Accreditation Review Commission on Education for the Physician Assistant
Accrediting Bureau of Health Education Schools
Accrediting Commission of the American Culinary Federation Education Foundation
Accrediting Commission of Career Schools and Colleges
Accrediting Council for Continuing Education and Training
Accrediting Council for Independent Colleges and Schools
Accrediting Council on Education in Journalism and Mass Communications
American Board of Funeral Service Education
American Council for Construction Education
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Specialized and Professional Accreditors
Commission on Accreditation of Allied Health Education Programs
Commission on Accrediting of the Association of Theological Schools
Commission on Collegiate Nursing Education
Commission on Institutions of Higher Education, New England Association of Schools and Colleges
Council for Accreditation of Counseling and Related Educational Programs
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 National Association of Schools of Dance
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 National Association of Schools of Theatre
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Distance Education and Training Council
Joint Review Committee on Education in Radiologic Technology
Joint Review Committee on Educational Programs in Nuclear Medicine Technology
Middle States Commission on Higher Education
National Accrediting Agency for Clinical Laboratory Sciences
National Council for Accreditation of Teacher Education
National League for Nursing Accrediting Commission

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Northwest Commission on Colleges and Universities

Society of American Foresters

Southern Association of Colleges and Schools Commission on Colleges

The Higher Learning Commission of the North Central Association of Colleges and Schools

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

February 16, 2011

Secretary Arne Duncan
U.S. Department of Education
LBJ Education Building, Room 7W311
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the more than 70 higher education associations and accrediting organizations listed below, I write to express grave concerns with the creation of a federal definition of credit hour in Section 600.2 of the Oct. 29, 2010, program integrity regulations. We request that you immediately rescind this definition from the final regulations.

Over the past year, we have followed the department's efforts to develop new regulations to enhance the integrity of the Title IV student financial aid programs, and we support many of the regulations contained in the final rule. However, after close examination, we find the rule fails to address serious concerns we raised during the rulemaking process in several key areas, most notably credit hour, state authorization and misrepresentation. This letter focuses solely on the regulations pertaining to credit hour; we will communicate our views regarding state authorization and misrepresentation to the department separately.

In discussions with our respective members, the strongest objections to the credit hour regulation have consistently centered on the inclusion of a federal definition of credit hour in Section 600.2. With this language, the Department of Education has federalized a basic academic concept and, at the same time, developed a complex, ambiguous and unworkable definition.

The concern is not that accreditors are expected to examine institutional policies with respect to credit hours. They have and will continue to do so. Rather, the issue is that with little evidence of a problem and no evidence that Congress wants the federal government to intervene in this area, the department intends to use accreditors to extend federal authority over academic decision-making on local campuses.

We are familiar with the inspector general's report that was sharply critical of one accreditation agency's handling of a credit hour issue for some courses at one online

university. What is often overlooked, however, is that the accreditor's peer review team identified the problem and brought it to the attention of school officials, who corrected it within a matter of months. Institutional accreditation has always been designed to be a self-regulating system and in this instance, it worked exactly as intended. Moreover, had a federal definition of credit hour been in place, it would not have changed the outcome of this case.

A single instance such as this is not a good basis for imposing a one-size-fits-all federal regulation on fundamental academic considerations at more than 6,000 institutions. We believe this is particularly true with respect to a federal standard for credit hour for the following reasons:

- 1) A credit hour is the most basic building block of any academic program at any institution of higher education. Federalizing this definition will allow the Department of Education—through staff interpretations and the National Advisory Committee on Institutional Quality and Integrity—to micro-manage campus academic programs.
- 2) A federal standard imposed on all institutions will inevitably homogenize academic programs and sharply limit curricular innovations. Given the pace of curricular change and the widespread desire to develop new models to deliver postsecondary education effectively and efficiently, a federal definition represents a giant step in the wrong direction.
- 3) The definition of credit hour in Section 600.2 is ambiguous. It combines, for example, two very different concepts—seat time and student learning outcomes. While the goal is more consistent consideration and evaluation across campuses, blending such fundamentally different ideas guarantees that this goal will not be reached. Vastly different interpretations will inevitably emerge. Confusion will reign.
- 4) This confusion will impose enormous burdens on institutions as they attempt to interpret and apply the definition to all courses and on accreditors as they attempt to review these interpretations and their application within many diverse institutions. These tasks will require new levels of highly detailed and labor-intensive compilation and evaluation. They will divert time and money from productive academic investment to detailed compliance reporting. Moreover, this effort will inevitably draw attention away from broader considerations of academic content and effectiveness.
- 5) The preamble discussion suggests the possibility that an institution could create two separate credit hour systems—one for federal purposes and one to meet institutional needs. This is a false dichotomy that can exist on paper but not in practice. In reality, when looking at academic matters on a campus, an accreditor cannot enforce a credit hour definition that is detached from or different than the academic measure used by the institution. Thus, the suggestion is unworkable for

two basic reasons: It would pose insurmountable record-keeping, evaluation and credit-mobility problems; and it would confuse current and prospective students, thereby failing to meet long-standing academic integrity requirements and new federal regulations on misrepresentation in Section 668.71.

As we noted earlier, reviewing institutional policies regarding the assignment of academic credit remains an appropriate function for accreditors. However, we vigorously oppose the creation of a federal definition of this term in Section 600.2 because it will have extensive and negative impact on academic programs.

During the negotiated rulemaking session that preceded this regulation, the Department of Education and non-federal negotiators agreed on language to address the government's concern. The federal definition of a credit hour was deliberately excluded from this agreement. The department abandoned this consensus in the draft regulation it published on June 18, 2010. In ACE's Aug. 2, 2010, letter to the department on behalf of over 70 higher education organizations and accreditors, we indicated grave reservations about the unanticipated consequences of the department's proposal. In response, rather than address our concerns, the final regulations simply advanced yet another definition. Unfortunately, the latest version is as flawed as the one that preceded it.

We strongly support the Department of Education's goal to reduce abuses in student aid programs that harm students and waste federal student aid dollars. However, the department's apparent desire to impose a federal definition on a central academic concept threatens to set us on a collision course that will dramatically undermine our support for these regulations.

In light of these concerns, we request that you rescind the regulation containing the credit hour definition in Section 600.2.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations

ACPA - College Student Educators International
American Association of Colleges for Teacher Education
American Association of State Colleges and Universities
American Association of University Professors
American Council on Education
American Dental Education Association
American Indian Higher Education Consortium

American Psychological Association
APPA, "Leadership in Educational Facilities"
Appalachian College Association
Association of American Universities
Association of Chiropractic Colleges
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Independent Colleges of Art & Design
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
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International Association of Baptist Colleges and Universities
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National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Collegiate Athletic Association
The New American Colleges & Universities
UNCF
Work Colleges Consortium
Women's College Coalition

Accreditation Organizations

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Accrediting Council on Education in Journalism and Mass Communications
American Board for Accreditation in Psychoanalysis
American Board of Funeral Service Education
American Council for Construction Education
American Dental Association Commission on Dental Accreditation
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of Specialized & Professional Accreditors
Association to Advance Collegiate Schools of Business
Commission on Accreditation for Health Informatics and Information Management Education
Commission on Accreditation for Marriage and Family Therapy Education
Commission on Accreditation of Allied Health Education Programs
Commission on Accreditation of Athletic Training Education
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Council of Arts Accrediting Associations, including:

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National Association of Schools of Dance

National Association of Schools of Music

National Association of Schools of Theatre

Council on Rehabilitation Education

Council on Social Work Education

Distance Education and Training Council

The Higher Learning Commission of the North Central Association of Colleges and Schools

Landscape Architectural Accreditation Board

Middle States Commission on Higher Education

Montessori Accreditation Council for Teacher Education

National Accrediting Agency for Clinical Laboratory Sciences

New England Association of Schools and Colleges, Commission on Institutions of Higher Education

Northwest Commission on Colleges and Universities

Society of American Foresters

Southern Association of Colleges and Schools Commission on Colleges

The Joint Review Committee on Educational Programs in Nuclear Medicine Technology

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges