

————— Council of —————
Regional Accrediting Commissions

July 11, 2019

Secretary Betsy DeVos
C/O Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave., SW
Mail Stop 294-20
Washington, D.C. 20202

RE: Docket ID ED-2018-OPE-0076

Dear Secretary DeVos:

On behalf of the Council of Regional Accrediting Commissions (C-RAC), I am writing to submit the following comments in response to the U.S. Department of Education's notice of proposed rulemaking (NPRM), "Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition for State Agencies."

As president of the Higher Learning Commission and chair of C-RAC, I along with my colleague Elizabeth Sibolski, president of the Mid-Atlantic Region Commission on Higher Education and vice-chair of C-RAC, appreciated the opportunity to represent the perspective of regional accreditors throughout the negotiated rulemaking process. Despite significant concerns about many of the original proposals put forth by the Department at the beginning of these negotiations, we applaud the Department for working with accreditors and many other stakeholders involved in the process to reach a consensus for the proposed language reflected in this NPRM.

The comments below generally reinforce our support for many of the key provisions agreed to as part of negotiated rulemaking and seek clarification on a number of specific issues. However, we must also express our concern about several sections of the preamble that we believe inaccurately criticize accreditors on issues related to innovation, respect for institutional mission, and transfer policies. Accreditors are committed to enhancing innovation, partnering with institutions to assure quality and rigor, understanding and respecting the missions of our diverse institutions and helping students receive the academic credits that align with institutions' policies on academic quality.

We sincerely hope the Department takes our comments into consideration as part of any final rule, and we look forward to continuing to work with the Department as these regulations are implemented.

As requested in the NPRM, the following comments are arranged in the order in which they appear in the proposed regulations.

34 CFR Part 602.12 Accrediting Experience

The proposed language under 34 CFR_Part 602.12 removes the "two-year" requirement for accrediting experience if the agency seeking initial recognition is an affiliate or division of an already-recognized agency. C-RAC does not oppose the change to the two-year requirement

but believes more clarification and great caution are warranted regarding what the Department may consider an “affiliate or division” of a recognized accrediting agency. In addition, the Department should consider additional guidance on the appropriate expertise and experience an entity must demonstrate in its prior capacity as an affiliate or division in order to qualify as an accrediting agency.

A separate provision under § 602.12 would allow agencies to more easily expand their scope by removing the requirement that they must have previously accredited an institution or program in the areas of such expansion prior to their application for expanded scope. Although we support the additional flexibility provided to accreditors under this provision, we believe the Department should consider clarifying that, despite not requiring prior experience in the areas of expanded scope, an agency would be required in the application process to demonstrate the ability and capacity necessary to justify and support such expanded scope.

34 CFR Part 602.16 Accreditation and Preaccreditation Standards

Under 34 CFR Part 602.16(a)(1), the Department proposes to “clarify that agencies establish clear expectations across a number of critical factors.” In describing the reason for such change, the NPRM states, “the Department seeks to move from the vague description of accreditation standards that ‘effectively address’ factors that contribute to quality to a more specific requirement for agencies to set forth ‘clear expectations’” for the institutions and programs it accredits.

The provision was added during negotiations with limited discussion or debate. However, questions have since been raised regarding this new requirement and what specific expectations (including examples) the Department has for accreditors tasked with implementing this change. This issue also ties to the proposed change (highlighted below) under § 602.17(a)(2), which would require institutional accreditors to evaluate individual programs. Is the expectation that institutional accreditors would also set “clear expectations” for each and every program within the institutions it accredits? For example, would we be expected to change our course and review schools of education, thus duplicating the work of programmatic accreditors of teacher education? If so, we urge the Department to reconsider this mandate based upon the fact that institutional accreditors do not have the capacity or need to carry out such requirement.

To be clear, the current practice of regional accreditors is to require institutions to meet strong accreditation standards, establish program-level outcomes, and ensure they have a process in place for reviewing programs and their outcomes. While accreditors have various approaches in monitoring this process (such as sampling programs during comprehensive reviews) and often collaborate with professional and programmatic accreditors, no regional accreditor currently has the capacity to undertake the very different responsibilities of a program-by-program review as potentially envisioned under this provision.

34 CFR Part 602.17 Application of Standards in Reaching Accreditation Decisions

Proposed 34 CFR 602.17(a) would require institutional or programmatic accreditors to demonstrate effective mechanisms for evaluating an institution’s or program’s compliance with

the agency's standards before reaching a decision to accredit or preaccredit the institution or program. 34 CFR 602.17(a)(2) further requires the agency to demonstrate this requirement by evaluating whether an institution or program "is successful in achieving its stated objectives at both the institutional and program levels."

The NPRM notes that the Department proposed this change "to clarify that [the Department] expect[s] institutional accrediting agencies to evaluate both an institution broadly and individual programs within that institution against rigorous standards for meeting stated objectives consistent with its mission and appropriate given the credentials awarded."

However, as noted also above, requiring the individual review of programs is not within the purview of institutional accreditors. Instead, we look at each institution as a whole on an array of measures, such as financial stability, planning, and academic and related program, including program review policies and implementation. We generally do not drill down to review individual programs unless a red flag is called to our attention that affects existing standards. This requirement would duplicate and confuse our work with that of programmatic and specialized accreditors. Additionally, it would require us to separately review hundreds, if not thousands, of programs, which would require significantly more staff capacity and resources, thus increasing costs to accreditors and institutions.

We ask the Department to clarify this point in the final regulations or further express its vision and expectations for a rule that would essentially blur the roles between institutional and programmatic accreditors.

§ 34 CFR Part 602.18 Ensuring Consistency in Decision-Making

We wish to highlight our support for several provisions under proposed §34 CFR Part 602.18. Specifically —

- Proposed § 602.18(c) reflects interest on the part of regional accreditors to have more latitude to work with institutions seeking to be more innovative by clarifying the ability to establish, through formal action of their Commissions, alternate standards, policies, and procedures to satisfy recognition requirements in order to support innovation or address undue hardship to students. We believe the proposed language includes sufficient guardrails and limitations to protect students, but also note the importance for the Department to be rigorous in the oversight of any implementation of these provisions.
- Proposed § 602.18(d) provides accreditors additional flexibility in determining the length of time an institution or program may remain out of compliance in cases where circumstances beyond the institution's or program's control require this forbearance. This is a common-sense change and can help protect the interest of students, providing it is made clear that such decisions are up to each accreditor and will not leave accreditors vulnerable to legal action if they determine an extension is not appropriate. In turn, it is up to the Department to ensure agencies use this flexibility judiciously and do not allow unwarranted extensions of accreditation without compelling reason.

34 CFR Part 602.20 Enforcement of Standards

C-RAC supports the proposed change to 34 CFR Part 602.20, which establishes the process for the enforcement of standards. Specifically, we support the added flexibility for accreditors in

setting the length of time institutions or programs have to come into compliance if they have been found to be in noncompliance. This change reflects the reality that, in some circumstances, an institution's ability to come into compliance under the current "two-year" rule is insufficient. As with proposed § 602.18(d) above, this is a common-sense change as long as its use is exercised carefully and reviewed by the Department when agencies come up for re-recognition, and that it is clear that such decisions are up to each accreditor and will not leave accreditors vulnerable to legal action if it is determined that an extension is not appropriate.

34 CFR Part 602.22 Substantive Changes and Other Reporting Requirements

C-RAC supports the proposed revisions related to substantive changes under 34 CFR Part 602.22. These revisions clarify the current process accreditors must use when reviewing substantive changes and provide accreditors more flexibility to focus on changes that are most high-impact and high-risk. The proposed language also gives accreditors more flexibility to approve less risky changes by granting an agency's decision-making body the authority to designate senior agency staff to approve or disapprove the substantive change request in a "timely, fair and equitable manner."

34 CFR Part 602.26 Notification of Accrediting Decision

Proposed § 602.26(b) would require an accrediting agency to provide written notice of a final decision of a probation or equivalent status or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision. It would also require the institution or program to disclose such action to all current and prospective students within seven business days of receipt. C-RAC supports the proposed change but would appreciate additional clarification of how accreditors might ensure they adhere to the spirit and intent of this provision with respect to notification "at the same time" while recognizing the challenging logistics of notification at the same "exact" time.

34 CFR Part 602.32 Procedures for Department review of applications for recognition or for change in scope and increases in enrollment

C-RAC supports proposed changes to § 602.32(h)(4), which allows the Department to include a determination of "substantial compliance" as a permissible outcome in the recognition process of accreditors. As noted in the NPRM, this designation would "acknowledge and convey the reliability of an agency that has achieved compliance in all but a technical sense, increase the efficiency of the recognition process, and conserve resources by leaving such technicalities to the staff to follow through on via monitoring reports." Importantly, the language also ensures the unfettered ability of Department staff to re-escalate an issue, should it prove more serious than initially determined. Over the years, accreditors have at times been faced with unnecessary follow-up at NACIQI or shortened periods of recognition based upon very technical issues, such as not providing a full roster of staff or board members – something that can be easily addressed. The concept of "substantial compliance" will address this issue while the Department continues to have responsibility for ensuring that accreditors are held accountable and that substantial compliance is applied only in those cases where all but "technicalities" are satisfied.

34 CFR Part 668.26 End of an Institution's Participation in the Title IV, HEA programs

C-RAC supports proposed changes to § 668.26(e) allowing the Secretary (with agreement from an institution's accrediting agency and State) to enable an institution to continue to originate, award, or disburse funds under a Title IV HEA program for no more than 120 days following the end of the institution's participation in the Title IV HEA programs, during which time the institution may teach-out its own students. This language would justifiably allow students to complete their academic program at their chosen institution and reduce the disruption associated with relocating to another institution as long as all three actors – federal, state and accreditor – agree that this allowance is appropriate under the circumstances. The provision anticipates that institutional accrediting agencies would be in a position to know whether such continued access to funds is warranted based on the governance and program in place at the institution. Furthermore, we note that the Secretary can set conditions for the duration and scope of eligibility that could limit the extension to exactly what is needed to assist students.

Thank you for the opportunity to comment on this NPRM and we look forward to continuing to work with the Department as this process moves forward.

Sincerely,

A handwritten signature in black ink that reads "Barbara Gellman-Danley". The signature is written in a cursive, flowing style.

Barbara Gellman-Danley
Chair, C-RAC
President, Higher Learning Commission (HLC)