

February 23, 2018

The Honorable Lamar Alexander
Chair, Committee on Health, Education,
Labor and Pensions
United States Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member, Committee on Health, Education,
Labor and Pensions
United States Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Alexander and Murray:

The Council for Higher Education Accreditation (CHEA) appreciates the opportunity to respond to your request seeking comments and suggestions from education stakeholders for the Senate Health, Education, Labor and Pensions (HELP) Committee to consider as you work to draft a reauthorization of the Higher Education Act.

The amount of federal money spent on higher education appropriately requires holding institutions accountable to deliver quality in their educational offerings. Using accreditation to hold institutions accountable for educational quality and student learning is consistent with the strength, skill and fundamental purposes of accreditation. The role of accreditation should be centered on confirming that institutions are operating at a level of performance essential to meet expectations of educational quality, as judged primarily by what happens to students.

The current accreditation-U.S. Department of Education (USDE) relationship is a complex network of law and regulation. USDE's current emphasis on accreditation reviews uses accreditation as an agent of compliance rather than quality improvement. Congress has the opportunity to restore appropriate boundaries for the oversight of accrediting organizations in its recognition process through the reauthorization of the Higher Education Act. Reauthorization should re-establish accreditors as accountable for academic quality and USDE as responsible for Title IV compliance issues.

It is also important that reauthorization preserve the strengths of accreditation that have been central to the effectiveness of higher education: institutional mission and autonomy, peer review, academic freedom and quality improvement.

Making the statutory changes proposed in the CHEA [Position Paper on Regulatory Relief for Accreditation](#) will strengthen accreditation's accountability and its contribution to students and the public.

Thank you for considering CHEA's comments. We would be glad to discuss these and other concerns you may have at your convenience.

Sincerely,



Judith Eaton
President

(Attachment)

POSITION PAPER

REGULATORY RELIEF FOR ACCREDITATION

APRIL 2017

The Council for Higher Education Accreditation (CHEA) is a national, nongovernmental membership organization of 3,000 degree-granting colleges and universities, the only organization with the sole purpose of providing national coordination of accreditation of higher education institutions and programs. CHEA serves as an advocate, national authority and thought leader on U.S. accreditation. CHEA plays a significant nongovernmental role in oversight of accreditation as the only source of quality review of accrediting organizations outside the federal government. In these roles, CHEA works with Congress and the U.S. Department of Education (USDE) on accreditation issues.

With the advent of a new Administration and Congress, regulatory relief has become a prominent topic of discussion. The purpose of this CHEA Position Paper is to offer proposals for the reduction of federal regulation as this applies to accreditation, whether in law, regulation or sub-regulatory guidance, acknowledging that the major challenge is at the regulatory/sub-regulatory levels. This reduction is not intended nor should result in reduced accountability for accreditation, but can provide a more effective and efficient regulatory framework for this important work.

CHEA sees this regulatory relief as central to achieving three major goals to move accreditation forward. These goals are doing more to:

- **Protect students:** Strengthen accreditation rigor and provide expanded, readily understandable and accessible information about institutions and programs.
- **Advance innovation:** Encourage fresh approaches to quality review of traditional providers and expand quality review to new providers and new credentialing.
- **Sustain the strengths of accreditation:** Maintain and enhance the academic leadership of institutions and programs, peer review and the commitment to academic freedom.

The federal government maintains an extensive scrutiny of accreditation, a process known as “recognition,” because accredited status is a requirement for institutions and programs to obtain and maintain eligibility for federal funds. At present, approximately \$170 billion in student grants and loans, research and program funds go to institutions and programs annually.

Accreditation activity is governed by 10 pages of law, 27 pages of regulation and 88 pages of sub-regulation. Sub-regulation is augmented by “Dear Colleague” letters and “Guidance Letters” issued by USDE. There are more than 200 separate requirements that accrediting organizations must address in order to be considered federally recognized or to have emerged successfully from the USDE recognition review that they must undergo at least every five years.

There is considerable evidence that enormous time and effort is involved in successfully navigating this regulatory regimen. The recognition review requires, for all practical purposes, that an accreditor must attend to actual or expected demands of the federal government on an annual basis. Although accrediting organizations are nongovernmental bodies that are financed by higher education institutions and programs themselves, they are required to operate as if they were federal contractors. The impact on these organizations, while assuring that they operate in a given way, is also deleterious.

The federal presence is disproportionate and distorts the accreditation enterprise. It seriously crowds available space for initiative and innovation. Especially in relation to the goals presented here, accreditors are forced to operate in a culture that, however unintentionally, discourages creativity and experimentation. Unless USDE agrees, accreditors are reluctant to act. They are not going to move forward with creative efforts and are inhibited with regard to risk-taking, anticipating that this could result in the loss of recognition.

Proposal One: Relief with Regard to Federal Regulation

1. [Rethink the requirements](#) for the extent of experience in order to become a recognized accreditor.
2. [Streamline what is considered “substantive change”](#) for an institution or program in order that fewer changes are subject to this process, including the establishment of branch campuses.
3. [Remove the definition](#) of [credit hour](#).
4. [Eliminate the requirement for confidentiality](#) such that accreditors cannot inform institutions of investigations.

Likely Impact: These changes in regulation will enable accrediting organizations to more fully embrace innovation without fear of reprisal or loss of recognition. They will also provide greater flexibility to institutions and programs as both seek to embrace innovative approaches to teaching and learning, absent fear of loss of accreditation. These changes will diminish barriers to the establishment of new accrediting or quality assurance bodies. Students will be better served and better protected as a result of innovative and competitive new entrants to the accreditation space. This relief will not compromise the appropriate accountability to be expected of accreditation.

Proposal Two: Relief with Regard to Sub-Regulation: Dear Colleague Letters/Guidance Communications

1. [Eliminate requirement](#) for common definitions and terms.
2. [Remove USDE final oversight](#) in posting accreditor actions and decision letters.

3. [Eliminate USDE oversight](#) of differentiated review.

Likely Impact: These changes, tied to the [Transparency Agenda](#) issued by USDE in November 2015, were enacted as part of strengthening the accountability of accreditation, but at the enormous price of standardizing expectations of institutional and program performance, thereby reducing the valuable diversity of higher education. Accreditors can be held fully accountable without such standardization. Rather than insist that all accreditors conform to a one-size-fits-all set of practices, these organizations need the flexibility to design their own innovative practices. At the same time, this does not preclude accreditors being held accountable for providing clear and readily accessible information to the public about the performance of institutions and programs, meeting high expectations of rigor in quality review and preserving as well as encouraging diversity and creativity in the service of students

Proposal Three: Relief with Regard to Federal Law

1. [Retain](#) the Rule of Construction.
[Oppose legislation](#) that would further expand excessive regulation such as the Warren-Durbin-Schatz Bill introduced in the 114th Congress.
2. [Rethink the role](#) of the National Advisory Committee on Institutional Quality and Integrity, including the creation of an [alternative committee structure and operation](#).
3. [Revise Negotiated Rulemaking](#) to assure that it is a balanced, transparent and consultative process.
4. Require consultation with academics and accreditors for Dear Colleague Letters and Guidance Letters and clarify their role in federal oversight of accreditation.

Likely Impact: The federal infrastructure for oversight of accreditation is cumbersome, redundant, often *ad hoc* and routinely inefficient. These proposed changes, a combination of preventing expansion of the deleterious features of current federal practice and eliminating some of this practice, will result in future law and regulation that is more effective and responsive to the needs of students and eliminate unnecessary and regulation. These changes will also sustain and enhance greater opportunity for innovation in accreditation.

Regulatory relief can only strengthen the contribution that accreditation makes to students and society. It can enhance not only the effectiveness of accreditation, but also its accountability.