

# **“Protecting Students” has Emerged as an Ongoing Expectation of Accreditation**

## **An Overview of the Latest Efforts to Hold Accreditors More Accountable, Specifically as it Relates to the For-Profit Sector**

**Sharon H. Bob, Ph.D.**  
**Powers Pyles Sutter & Verville PC**

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# Transparency and Accountability in Accreditation – An Ongoing Theme Beginning With the Bush Administration

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- Most higher education leaders could not wait for President George W. Bush and his Education Secretary Margaret Spellings to head back to Texas in 2009.
- When Secretary Spellings replaced Rod Paige in 2005, she began to focus on higher education and established the Commission on the Future of Higher Education in 2006 to explore issues of affordability, access, accountability, and quality in higher education.

# Transparency and Accountability in Accreditation – An Ongoing Theme Beginning With the Bush Administration, cont.

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- “A Test of Leadership: Charting the Future of U.S. Higher Education,” a Report of the Commission on the Future of Higher Education:
  - Describes the challenges facing accreditation, including the need to emphasize **“performance outcomes, including completion rates and student learning, the core of their assessment as a priority over inputs and processes.”**

# Transparency and Accountability in Accreditation – An Ongoing Theme Beginning With the Bush Administration, cont.

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- Recommends a framework that aligns and expands existing accreditation standards to:
  - ❖ Allow comparisons among institutions regarding learning outcomes and other performance measures;
  - ❖ Encourage innovation and continuous improvement; and
  - ❖ Require institutions and programs to move toward world-class quality relative to specific missions.

# Transparency and Accountability in Accreditation – An Ongoing Theme Beginning With the Bush Administration, cont.

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- Recommends that the accreditation process be more open and accessible by making the findings of final reviews easily accessible to the public and private sector.
- Recommends that accreditors speed up their efforts toward transparency as this affects public policy.
- A bipartisan group of Senators ultimately blocked Secretary Spellings' most aggressive initiative – producing a new set of rules to remake accreditation that would have required accrediting agencies to set minimum standards for colleges' student learning outcomes.

# The Legacy of President Obama in Higher Education: To Protect Students

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- As Under Secretary Ted Mitchell said in a blog post on 1/11/2017, “the Department, federally recognized accrediting agencies and other stakeholders in the accreditation community share a common interest in protecting students and taxpayers, and in upholding the integrity of the higher education accreditation system.”
  - For the last eight years, the accreditation landscape has been changing. Historically, accreditation offered protection for students and taxpayers by assuring quality of our postsecondary education system.

# The Legacy of President Obama in Higher Education: To Protect Students

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- The Department's agenda became more focused on improving accreditors' and the Department's oversight activities and to move toward a new focus on student outcomes and transparency.

# The Legacy of President Obama in Higher Education: To Protect Students, cont.

- In an exit memo of 1/5/2017, Secretary of Education John B. King, Jr. highlighted President Obama's commitment to supporting students by encouraging college access, affordability, and completion:
  - Department published a number of rules:
    - ❖ Program integrity;
    - ❖ Gainful employment;
    - ❖ Borrower defense to repayment; and
    - ❖ State authorization.



# The Legacy of President Obama in Higher Education: To Protect Students, cont.

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- Department published the College Scorecard allowing for comparisons among institutions on outcomes measures.
- Department created a Student Aid Enforcement Unit to investigate high risk institutions.
- **Department strengthened accreditation by dictating that all accreditors should be more transparent and accountable and, at the same time, asked accreditors to recognize innovative models in the delivery of education.**

## ACICS Under Scrutiny

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- In the last eight years, the White House went after accrediting agencies with its long-running attempt to crack down on what it saw as the lax oversight of some for-profit colleges. The criticism extended to accreditors' failure to hold colleges accountable for low graduation rates or other metrics.
- On 6/15/2016, accreditation staff at ED released a report recommending that ACICS no longer be recognized.

## ACICS Under Scrutiny, cont.

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- On 6/22/2016, Under Secretary Ted Mitchell reminded the National Advisory Committee on Institutional Quality and Integrity (NACIQI) members that accreditors must be held accountable, and he fully supported the staff analysis and recommendation to not recognize ACICS.
- On 6/23/2016, NACIQI voted in support of the Department staff's recommendations to not re-recognize ACICS.

## **ACICS Under Scrutiny, cont.**

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- On 9/22/2016, the Senior Department Official (SDO) upheld NACIQI and staff recommendations and withdrew ACICS recognition.
- On 10/21/2016, ACICS filed an appeal.
- On 11/21/2016, the SDO responded to ACICS' appeal.
- On 12/12/2016, the Secretary upheld the SDO's decision to cease the recognition of ACICS.

## ACICS Under Scrutiny, cont.

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- ED issued ACICS schools a provisional Program Participation Agreement with Addendum giving them 18 months to seek another agency's accreditation.
- On 12/20/2016, Judge Reggie Walton denied ACICS' request to block ED's decision.
- Judge Walton set the preliminary injunction hearing for 2/1/2017.
- On 1/24/2017, attorneys general from 5 states and DC filed a motion asking the U.S. District Court for D.C. to allow them to interview in defense of the Obama Administration's decision to terminate ACICS' accreditation.

## **ACICS Under Scrutiny, cont.**

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- It should be noted that Judith Eaton, your president, called ED's action a federal takeover of quality assurance in higher education.

# Role of Accreditors Under Scrutiny

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- During the Obama Administration, ED examined the current accreditation system:
  - In his State of the Union address in 2013, President Obama called on Congress to explore incorporating measures of value and affordability into the existing accreditation system or by establishing alternative accreditation pathways for higher education.
  - The Department examined the role of accreditation in addressing innovative approaches to delivering education; and

# Role of Accreditors Under Scrutiny

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- The Department worked to strengthen the accreditation system to protect students and families by increasing accountability and transparency of decisions made by the agencies.



# Role of Accreditation in Overseeing Non-Traditional Providers

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On 10/15/2015, ED issued a Notice in *Federal Register* for an experimental site initiative whereby an eligible institution enters into a contract with an ineligible entity to provide 50% or more of a program. In addition to being included in the institution's accreditation, the program must be approved and monitored by an independent quality assurance entity that is qualified to review and monitor the program.

- The Educational Quality through Innovative Partnerships (EQUIP) is designed to encourage innovation in higher education through partnerships between participating institutions and nontraditional providers.

# Role of Accreditors in Overseeing Outcomes and Enforcement

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On 11/5/2015, ED announced a series of executive actions and proposals to improve coordination with, and clarifying flexibility for, accreditors:

- Meeting more regularly with accreditors to increase their knowledge of ED policies;
- Sharing more information with accreditors on actions ED plans to take;

# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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- Requiring information submitted by accreditors to ED to be structured to better distinguish where additional action is needed;
- Requiring and sharing publicly when possible, more information from accreditors on why institutions were placed on probation, warning, or found out of compliance with standard(s); and
- Clarifying the flexibility agencies have to differentiate review processes for institutions.

# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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- On 11/6/2015, ED published each accreditor's Student Achievement Standards for evaluating student outcomes, which is located at: <https://www.ed.gov/accreditation>.
- On 11/6/2015, ED advanced its transparency agenda for accreditation. Previously, in 7/2015, Secretary Arne Duncan had said that accreditors have provided little accountability for some poor-performing institutions and that for many accreditors, student outcomes are far down the priority list, saying: "For the most part, accreditation organizations are the watchdogs that don't bark." **ED described the steps taken to achieve more bark and even bite:**

# Role of Accreditors Overseeing Outcomes and Enforcement, cont.

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- Publishing each accreditors' standards for evaluating student outcomes;
- Increasing transparency in accreditation process and in institutional oversight;
- Increasing coordination within the Department and with any accreditors and states to improve oversight;
- Publishing key student and institutional metrics by institutions, arranged by accreditors; and



# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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- Promoting greater attention to outcomes with current accretor review processes.
- See: <https://www.ed.gov/news/press-releases/department-education-advances-transparency-agenda-accreditation>.

# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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On 2/4/2016, ED announced that it would require accreditors to provide more information to ED and to the public about sanctions taken against institutions.

- “Agencies need to do more than certify that institutions make quality offerings available; they must gauge the extent to which institutions actually help more students achieve their goals.”
- Copies of “Strengthening Accreditation Memo” of 1/20/2016 and “Strengthening Accreditation’s Focus on Outcomes” of 2/4/2016 are found at: <https://www.ed.gov/accreditation>.

# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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On 4/22/2016, ED sent letters to accreditors providing them with clarification on the flexibility that they have in differentiating their reviews of institutions and programs and encouraging them to use that flexibility to focus their monitoring and resources on student achievement and problematic institutions or programs.

Accreditors may differentiate their reviews by:

- Recognizing differing conditions, such as institutions or programs with higher risk due to poor performance, size, volume of student aid, or other factors;



# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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- Focusing on individual standards with particular relevance to student achievement; and
- Ensuring that certain accreditation processes are effective.
- A copy of the 4/22/2016 memo “Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness is found at: <https://www.ed.gov/accreditation>.

# Role of Accreditors in Overseeing Outcomes and Enforcement, cont.

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- On 11/17/2016, ED published guidance to clarify the requirements, terminology, and channels used by accreditors to report to ED. The guidance is to create standard definitions that can be used in reporting to the Department which will be more useful (e.g., probation actions when an institution is significantly out of compliance). See: <https://www.regulations.gov/document?D=ED-2016-ICCD-0035-0024>.

# Senate Democrats Urge ED to Make Accreditors More Accountable

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- On 4/25/2016, 24 Senate Democrats urged the Department to hold accreditors accountable since they are gatekeepers of the \$150 billion in federal revenue that goes to institutions. See <http://www.dpcc.senate.gov/?p=issue&id=548>.

# Senate Democrats Urge ED to Make Accreditors More Accountable, cont.

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Senate Democrats Call for Accreditation Reform. On 9/22/2016, Senators Elizabeth Warren (MA), Dick Durbin (IL), and Brian Schatz (HI) introduced S. 3380, *Accreditation Reform and Enhanced Accountability Act of 2016* (AREAA) :

- Requires ED to establish standards for student outcomes data (e.g., loan repayment rate, loan default rate, graduation rate, retention rate, student earnings, job placement rate, etc.);
- Safeguards access by giving accreditors the ability to evaluate college affordability and Pell student enrollment levels;

# Senate Democrats Urge ED to Make Accreditors More Accountable, cont.

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- Strengthens consumer protections by forcing accreditors to respond quickly to federal and state investigations and lawsuits regarding fraud;
- Increases transparency around accreditation decisions for students, families, and regulators;
- Cleans up conflicts of interest; and
- Increases accountability by giving the Secretary more authority to terminate or fine accreditors that fail to do their job.

# Accreditation and Reauthorization

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- Accreditation has been raised as an area needing to be addressed in reauthorization by both the House and Senate, Democrats and Republicans.
- Accrediting agencies should be asked to:
  - Increase transparency in their decisions;
  - Examine student outcomes and address low-performing institutions;
  - Limit conflicts of interest; and
  - Permit innovation in delivering educational programs.

# Accreditation and Reauthorization, cont.

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- Judith Eaton and other higher education representatives continue to argue that metrics alone cannot measure the quality of the accreditation process.



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**\*The End\***

Questions?







## Sharon H. Bob, Ph.D.

*Practice Areas:*

- Education
- Title IV Eligibility & Compliance
- Program Reviews and IG Audits
- Accreditation
- Mergers & Acquisitions
- Public Policy & Government Relations
- State Licensing
- Education Policy

*Member:*

- NASFAA
- CCA

*Education:*

- Ph.D., University of Maryland, 1976
- BA, State University of Buffalo, 1971, *summa cum laude*

Sharon H. Bob, Ph.D., Higher Education Specialist on Policy and Regulation, is a member of the Education Group at the Washington, D.C. law firm of Powers Pyles Sutter & Verville PC. Dr. Bob advises all sectors of higher education regarding strategic issues pertaining to their participation in the federal student financial assistance programs, accreditation, licensure, education tax benefits, and related regulatory matters.

Dr. Bob advises public and private colleges and universities, as well as private and publicly-traded companies. In this role, she provides clients with detailed technical guidance related to compliance with applicable statute and regulations. She regularly assists postsecondary educational institutions on issues relating to institutional eligibility, program eligibility, student eligibility, financial responsibility and administrative capability standards, changes of ownership, adding locations and programs, program reviews and compliance audits, and institutional responsibilities for the education tax benefits. Through training seminars and on-site reviews, she assists clients in complying with the federal requirements for administering federal student financial assistance. Dr. Bob has authored numerous articles on federal financial aid issues for *The Greentree Gazette*, *NASFAA's Journal of Student Financial Aid*, *NASFAA's Student Aid Transcript*, the *Career College Link*, and other higher education publications and frequently speaks at meetings of college officials and student aid administrators.

Dr. Bob received her undergraduate degree *summa cum laude* from the State University of New York at Buffalo and was elected to *Phi Beta Kappa*. She received her doctorate from the University of Maryland.

Powers Pyles Sutter & Verville is a Washington, D.C.-based law firm that focuses on health care, education, and the law of tax-exempt organizations.