
September 20, 2017

Hilary Malawer, Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW, Room 6E231
Washington, DC 20202

Dear Ms. Malawer:

The Council for Higher Education Accreditation (CHEA) appreciates the opportunity to respond to the U.S. Department of Education's (USDE) June 22, 2017 *Federal Register* notice requesting public comment "on regulations that may be appropriate for repeal, replacement, or modification." Our focus is accreditation.

As we are all aware, the amount of federal money spent on higher education appropriately requires holding institutions accountable to deliver quality in their educational offerings. And, as we are also aware, this is the central role of accreditation - to confirm that institutions and programs are operating at a level of performance essential to meet expectations of educational quality as judged primarily by what happens to students.

For six decades, USDE and the nongovernmental institutional and programmatic accrediting organizations sustained a relationship to meet this goal, defined by an increasingly complex network of law and regulation. Until recently, this relationship enabled USDE to meet its obligations under the law and accreditation to focus on its twin goals of quality assurance and quality improvement. This is no longer the case - driven by the ever-growing extent and complexity of regulation. The net result, recent USDE emphasis on accreditation as an agent of compliance rather than quality assurance, undermines the fundamental effectiveness of this enterprise to provide higher education of value and quality to students.

To address this emerging imbalance - and to strengthen the service that both USDE and accrediting organizations provide to students and society - CHEA suggests attention to the following recommendations related to modification of current regulation. We are aware that some of the suggestions will also require changes in law and are eager to work with you.

CHEA's comments focus on two areas: removing or rethinking regulations that we view as unnecessary or ineffective to the oversight of accrediting organizations and second, addressing regulations that define USDE practice in reviewing accrediting organizations and calling for significant overhaul. What follows are several recommendations that have a high priority for CHEA. We have a number of other suggestions as well, as presented in the CHEA [Position Paper on Regulatory Relief for Accreditation](#).

Regulations

A) *Removal of Credit Hour Definition in statute and regulation (34 CFR 600.2 – 34 CFR 602.24(f))*. The credit hour is an academic decision that should be made by faculty and academic administrators. A federal definition and review of monitoring and compliance can replace faculty leadership with federal influence in academic decisions, reducing the important role of academics in serving students.

B) *Rethink the requirements for the extent of experience in order to become a recognized accreditor (602.12)*. CHEA supports opportunity for new types of quality assurance organizations that are responsible and reliable to review and could provide additional access to Title IV as part of supporting innovative approaches to teaching and learning that can lead to student success.

C) *Removal of Transfer of Credit requirements in statute and regulation (20 U.S. Code 1099b(c)(9); 34 CFR 602.24(e))*. Awarding transfer of credit is the privilege and responsibility of the receiving institution and should not be subject to federal regulations. The acceptance of credit depends on programs and courses offered at each institution and on the rigor of the course at the sending institution. Each transfer of credit request should be evaluated by the receiving institution based on its merit and not on the accreditation of the sending institution if the accreditor is recognized by CHEA or USDE. Courses should be evaluated on the criteria set by the academic departments in the receiving institution.

D) *Streamline the Substantive Change section of the Regulations (34 CFR 602.22) so that fewer changes are subject to this process*. This regulation is a barrier to innovation. It has too many items that need review and the review is too granular. If institutions are to reach new populations or implement new programs this regulation must be modified so that reviews which need to take place can happen more quickly. Currently, institutions must delay implementation of innovative approaches to teaching and learning as they wait for substantive change review. This will enable accreditors and institutions to more fully embrace innovative approaches to teaching and learning without fear of loss of recognition or accreditation. As a result, students will be better served.

E) *Remove USDE final oversight, meaning review and approval, in posting accreditor actions and decision letters (<https://www.regulations.gov/document?D=ED-2016-ICCD-0035-0024>) and eliminate USDE oversight of differentiated review (http://kry224-site0001.maxesp.net/pdf/042216_ED_Accreditation%20Letter.pdf)*. These recommendations eliminate changes imposed by the *Transparency Agenda* announced by USDE in November 2015. These changes look to standardize institutional and program performance, which will reduce the critical diversity of U.S. higher education. Institutions and accreditors need the flexibility to design their own innovative practices while still being accountable for the federal money spent on higher education.

USDE Practice

F) Complete rethinking of sub-regulatory *Guidelines for Preparing/Reviewing Petitions and Compliance Reports – Review Elements*. The role of the *Guidelines* should change to holding accreditors accountable rather than a compliance document. The review elements in the current *Guidelines* have become a checklist for USDE as accreditors are reviewed for recognition. That was the concern expressed at the time that the *Guidelines* were published and accreditors were assured that these elements would not become a check list. The review elements require not only the need for a policy to be in place but also the need to demonstrate that the policy has been used or implemented. Many of the items in the review elements happen on rare occasions so they became the reason accreditors were required to provide interim reports.

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G) *Rethink the role of the National Advisory Committee on Institutional Quality and Integrity (NACIQI)*, including the creation of an alternative committee structure and operation ([20 U.S. Code § 1011\(c\)](#)) ([602.34](#)). NACIQI is no longer holding accreditors accountable for reviewing institutional quality but is now trying to force accreditation standards and practices on accreditors as a means of compliance rather than as a means of accountability.

H) Revise Negotiated Rulemaking to assure that it is a balanced, transparent and consultative process ([20 U.S. Code §1098a Section 492](#)). The current Negotiated Rulemaking system is so weighted in favor of the USDE that it has lost its value.

Making the regulatory relief changes proposed here will strengthen accreditation's accountability and its contribution to students and the public.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Judith Eaton', with a long horizontal flourish extending to the right.

Judith Eaton
President