RETHINKING THE REGULATORY ENVIRONMENT OF COMPETENCY-BASED EDUCATION

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Foreword

Rising tuition prices and finite public budgets have spawned a lively policy debate about innovation in higher education. In particular, competency-based models have garnered a lot of attention from policymakers, reformers, and funders. Unlike online college courses, which often leave the basic semesterlong structure intact, competency-based models award credit based on student learning, not time spent in class. As soon as a student can prove mastery of a particular set of competencies, he or she is free to move on to the next set. A number of institutions are currently engaged in these efforts, including Western Governors University, Excelsior College, Northern Arizona University, and the University of Wisconsin's UW Flexible Option.

The competency-based model presents opportunities for improvement on two dimensions: first, it allows students to move at their own pace, perhaps shortening time to a degree, and second, competencies can provide a clearer signal of what graduates know and are able to do. Yet for all the enthusiasm that surrounds competency-based approaches, a number of fundamental questions remain: What kinds of students are likely to choose competency-based programs? How do students in these programs fare in terms of persistence, completion, and labor market outcomes? Are these programs more affordable than traditional degrees? What does the regulatory environment look like for competency-based providers? Do employers value the credential?

Despite increasing attention being paid to the potential of competency-based education, researchers and policymakers still have few answers to these questions. To provide some early insight, AEI's Center on Higher Education Reform has commissioned a series of papers that examine various aspects of competency-based education. In the fourth paper of the series, Aaron Lacey and Christopher Murray of Thompson Coburn LLP detail the challenges that competency-based education providers face at the state, accreditor, and federal policy levels and, accordingly, prescribe three recommendations to address these regulatory hurdles.

As always, the goal here is not to come up with a verdict as to whether this innovation is good or bad, but to provide a look under the hood that is useful to policymakers and other observers. I hope you find it helpful, and stay tuned for more.

—Andrew P. Kelly
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Executive Summary

In recent years, competency-based education (CBE) has made considerable inroads in higher education. Various institutions have developed or begun developing a range of programs modeled on competency-based principles. CBE is viewed by many, and with good reason, as a potential means to deliver a more effective educational experience at a lower cost.

Yet despite increased interest from postsecondary institutions and strong support from policymakers, examples abound of regulatory barriers that not only fail to encourage competency-based learning but in fact impede its progress. The question thus arises as to whether the postsecondary regulatory community can develop an efficient process for approving and overseeing competency-based models, even within a favorable political environment.

In this paper, we examine current or proposed regulatory frameworks for the management of competency-based programming at the state, accreditor, and federal levels. We highlight key concerns with and among these systems and note where efforts are being made to resolve barriers. Following this exploration, we recommend strategies for improving state, accreditor, and federal oversight of CBE programming, including the following:

- Where state authorization frameworks make specific reference to credit hour thresholds, regulators should consider whether such thresholds are indeed necessary and, if so, whether they might be defined in an alternative manner that could accommodate those forms of CBE that operate independently of the credit hour (in other words, direct assessment programming). Additionally, as state policymakers discuss reforming funding formulas for public postsecondary institutions, they should consider whether alternatives to enrollment-based funding models would, among other things, facilitate the growth of competency-based programming.

- An independent advisory body that would serve all institutional accreditors, regional and national alike, should be formed. Armed with expertise relating to competency-based programming, this advisory body would bring experience, consistency, and efficiency to the review of such programming across the country. Moreover, the broader mission of this advisory body would be to provide clear, detailed, and coordinated recommendations to all levels of government and substantive feedback on the intersection of innovation and regulation.

- The US Department of Education should develop a distinct regulatory framework for approving and managing aid for direct assessment programs without reference to credit hour or instructional time concepts.

Rethinking the Regulatory Environment of Competency-Based Education

Aaron Lacey and Christopher Murray

This paper is the fourth in a series examining competency-based higher education from a number of perspectives.

During an on-campus meeting earlier this year, the general counsel of a premier private research university observed to us that, in his view, there is no industry more heavily regulated than higher education. While this may or may not be the case, there is little doubt that for many years postsecondary institutions have been contending with an expanding and increasingly complex regulatory environment. Indeed, concerned with the detrimental impact of excessive regulation, Senator Lamar Alexander (R-TN), chairman of the Senate Committee on Health, Education, Labor and Pensions, has made the deregulation of higher education a significant priority for the current Higher Education Act reauthorization.

For any institution participating in the federal financial aid programs, the core postsecondary regulatory framework includes the institution's home state, its institutional accreditor, and the US Department of Education (ED). Each part of this framework, often referred to as the "triad," has its own area of oversight and responsibility.

An institution's home state authorizes the institution to operate and grant postsecondary credentials. In addition, states typically regulate certain types of programs and professions (for example, nursing), dispense funding to public institutions, and oversee state financial aid programs.

Accreditors, in turn, focus on the quality and integrity of an institution's programming and operations. They expect their member institutions to adhere to a comprehensive set of accreditation standards that cover nearly every aspect of a school's operations. Most accreditors require annual reporting, and all conduct periodic, in-depth compliance reviews.

ED is primarily focused on ensuring that the federal financial aid programs are properly administered and that taxpayer dollars are well-spent. Institutions must comply, however, with an extraordinary range of laws and regulations that are tied to those institutions' participation in the federal financial aid programs. These requirements relate not only to the day-to-day operation of the financial aid programs but also to institutions' administrative capability, financial strength, admission and compensation practices, campus security, intellectual property protections, and student disciplinary proceedings, to name just a few.

In this paper—based on a series of meetings and interviews with academics, administrators, regulators, and policy experts and on a thorough examination of pertinent postsecondary statutes, regulations, and standards—we first examine significant challenges facing competency-based programs at each of the aforementioned regulatory levels. We also describe the implications of the identified challenges and any efforts presently underway to remedy or reverse their impact. Second, we provide a set of recommendations for how these challenges might be overcome.

Broadly speaking, competency-based education (CBE) includes any academic model that is, at least in part, built on the assessment of what students know and can do. Traditional education models, in contrast, typically advance students based on the number of instructional hours completed and credit hours earned. As a consequence, traditional models typically limit how quickly a student can progress through a program and may permit a student to advance despite

his or her demonstrating only modest retention of the knowledge and skills that have been taught.

Federal and state policymakers have expressed great interest in the development and expansion of competency-based learning in higher education. And indeed they should. There is little question that competency-based programs have the potential to lower education costs, facilitate access for underrepresented communities, and produce highly qualified graduates. But there are certain preconditions for competency-based programs to fulfill such promise, including the need for postsecondary regulators to develop frameworks that permit programs to evolve and flourish, all while ensuring adequate and appropriate oversight.[1]

Many states have regulatory frameworks that are inextricably linked to the credit hour, posing significant challenges for the approval of direct assessment programming.

Ensuring the success of competency-based programs thus lies, at least in part, in the "how" of the regulatory system. And as we discuss, the current regulatory framework is in many ways ill-suited to accommodate postsecondary CBE.

For the purposes of our discussion, we divide CBE into two categories. "Competency-based programming" refers broadly to the wide range of programs that incorporate the assessment of student knowledge and skills without regard to the location of the learning resources, form and method of assessments, learning modality (such as on-the-ground versus online learning), or whether the program is tied to the credit hour or seat time.

In contrast, when discussing "direct assessment programming," which is a subset of CBE, we refer to a program that is built solely on the direct assessment of student knowledge and skill, divorced entirely from credit hour or seat time concepts. This distinction is significant because it draws a line between the competency-based programs that typically can be managed within the current postsecondary regulatory framework and those that cannot.

State Regulation of CBE

State policymakers face several significant challenges with respect to the regulation of competency-based programming and, in particular, direct assessment programming. In this section, we discuss three areas of concern: state authorization, professional licensure requirements, and direct state funding of public institutions.[2] While there are efforts to formulate and evaluate solutions to these challenges, progress has varied by issue and state.

Wrestling with State Authorization and Credit Hour Requirements. Postsecondary institutions in the United States must be authorized by their state to operate and to grant credentials. In the case of public institutions, such authorization is conferred by legislation; in the case of private institutions, it is conferred by charter or license. Also, to offer programming in other states, both public and private institutions may be required to obtain authorization in those other states.[3]

Many states have regulatory frameworks, for both public and private institutions, that are inextricably linked to the credit hour. While such systems often can accommodate CBE tied to credit hour concepts, they pose significant challenges for the approval of direct assessment programming. Issues frequently arise in the context of institutional or program approval standards. In Virginia, for example, new institutions seeking authorization, and approved institutions that are not exempt from oversight, must comply with minimum certification criteria set out in the law. These criteria include specific minimum credit hour requirements for each academic degree level.[4]

Apart from institutional and program approval standards, other aspects of state authorization laws can be ill-suited to accommodate direct assessment programming. For example, state laws relating to withdrawals, refunds, and academic progress often tie directly to credit hours and instructional time, as do methodologies for calculating graduation rates. And provisions relating to enrollment and financing documentation, academic catalogs, and consumer information disclosures at times specifically require that the number of credit hours and instructional weeks for each program be detailed.

Many public institutions must also satisfy state laws that dictate minimum (and in some cases, maximum) credit hour standards for academic programs offered. In Illinois, community colleges are required to ensure that credit hour totals at each degree level fall within a certain range.[5] Illinois state law also includes prescriptive requirements for community colleges relating to the number of terms and instructional weeks within each term.[6]

States with credit hour requirements of this sort may permit institutions to move forward with direct assessment programming provided such institutions demonstrate that the competencies in the proposed program are equivalent to the mandated credit hour thresholds. But such an approach is a temporary and inefficient solution at best and raises numerous questions, including: Does the state agency have the regulatory authority to sanction such equivalencies? What kind of conversion methodologies ought to be acceptable? Do state approvals of varying methodologies result in the inconsistent application of the law?[7]

While many state policymakers are interested in CBE at the postsecondary level, they have been very slow to address the various challenges we have described.[8] A small but growing number of states have taken steps to create competency-based programming within existing institutions and to create new institutions.[9]

In fact, according to a September 2014 review by Strategy Labs, 23 states currently house at least one postsecondary institution involved in one of the four national CBE initiatives, and in 21 of those states one or more of the participating institutions is public.[10] It is important to remember, however, that establishing a competency-based program at a single public institution is distinct from revising the web of state authorization laws that benefit all public and private postsecondary institutions in a state and, in particular, those offering direct assessment programs.

We should also acknowledge that certain state postsecondary authorization systems are already flexible enough to accommodate direct assessment programming without significant issue. For example, Iowa does not evaluate or approve the specific form or content of individual academic programs. As a consequence, there are no program standards that must be revised to accommodate direct assessment offerings.

Also, certain states exempt from oversight institutions that satisfy select criteria, such as longevity, accreditation, or ownership. Virginia permits institutions "formed, chartered, or established in the Commonwealth of Virginia that have maintained a main campus under the same ownership for 20 years and have remained fully accredited by an accrediting body recognized by the U.S. Department of Education . . . to conduct academic affairs or business without seeking or obtaining [state] approval."[11] Under such a regulatory system, qualifying institutions thus would be able to introduce direct assessment programming without running afoul of state law.

These examples, however, only demonstrate that certain state authorization schemes, by virtue of their original design, pose limited challenges to the authorization of direct assessment education. They are not evidence of efforts by the state to facilitate the growth and success of direct assessment programs.

Updating States' Professional Licensure Laws. States typically oversee a wide range of licensed professions, setting the standards for professionals who wish to operate in their state. In addition, state licensing boards prescribe criteria for in-state postsecondary programs that prepare graduates to enter their respective profession.

At present, both licensure criteria and criteria for program approval are often tied to credit hour standards. In New Jersey, for instance, an individual seeking certification to serve as principal in a public school must, among other things, complete "a minimum of 30 graduate credits" in select topics.[12] With regard to program approval, teacher preparation programs in New Jersey must include a minimum of 90 credits, including a minimum 60 semester credit hours of general education.[13]

States with such requirements do not appear to be making notable efforts to revise their laws to accommodate direct assessment programs or graduates of those programs, which is particularly disappointing because many professional licensure programs are particularly well-suited for competency-based delivery. Over the years, trade organizations, unions, employers, licensing boards, and programmatic accreditors have worked to articulate the core competencies required of practitioners in a wide range of professions. Consequently,

the "competencies" required of such professions are often well-developed.

Revising Funding Formulas for Public Institutions. Public institutions additionally face complications from public funding formulas tied to the credit hour. In many states, the amount of state aid provided to a public institution is based on how many full-time-equivalent students were enrolled at a particular point during the year. This type of enrollment-based funding model is largely incompatible with direct assessment programming.

To be deemed full-time equivalent, a student typically must be registered for a certain number of credit hours for the term, which is difficult to determine if the program is not measured in credit hours. Often, students in direct assessment programs are able to begin (and complete) their program at any point in time. Indeed, this flexibility is arguably a strength of direct assessment models. It also means, however, that the student population on any particular date (for example, the first day of the term) may not be representative of the program's typical enrollment. As such, an enrollment snapshot is in this context a poor determinant of how to allocate resources to the institution or program.

Notably, performance-based funding models that are far more compatible with direct assessment programming have emerged in recent years. In an effort to incentivize postsecondary institutions to focus on graduation, placement, and other public policy goals, roughly half of the states have revised their funding models to rely on outcome-based metrics: degrees awarded, student retention and progress, passage rates on licensure exams, and others.[14]

Because many of these performance-based metrics function without reference to credit hours or instructional modality, they are well-suited for direct assessment programming. Legislative efforts to adopt performance-based metrics have thus had the positive, unintended consequence of helping resolve one of the significant tensions between states' existing postsecondary regulatory frameworks and the funding of public institutions offering direct assessment programming. This serendipitous progress is a far cry, however, from the sort of deliberate effort needed to permanently remedy the issue.

Accreditation of CBE

Institutional accreditors, which accredit all aspects of an institution's programming and operations, fall into two groups: regional accreditors, which accredit postsecondary institutions located within a specific geographic area, and national accreditors, which accredit institutions throughout the US but focus on institutions of a particular mission or type (for example, online institutions, faith-based organizations, or institutions that offer a specific form of professional or career education).[15] Complementing these institutional accreditors is a wide range of programmatic accreditors that accredit specific programs offered by institutions ("Programmatic Accreditation" textbox).

Because direct assessment programs are just emerging, few in number, and significantly different from traditional programs, it has been challenging for accreditors to manage their approval efficiently and consistently.

Accreditor review processes are designed to evaluate an extraordinary range of institutions and academic offerings. Direct assessment programming, however, has presented difficulties given its extreme departure from traditional postsecondary models.

Lack of Direct Assessment Expertise. Because direct assessment programs are just emerging, few in number, and significantly different from traditional programs, it has been challenging for accreditors to manage their approval efficiently and consistently. The reason for this is simply lack of expertise. As Belle Wheelan, president of the Southern Association of Colleges and Schools Commission on Colleges, observed, direct assessment programs are novel for accreditors, as they are for everyone else.[16]

Although the details vary from one accreditor to the next, most have developed processes for evaluating direct assessment programming.[17] And all of the regional

accreditors have had the opportunity to test these processes because they have each received applications for approval of at least one direct assessment program in the last year. But the number of institutions developing and seeking direct assessment program approval remains relatively low.[18] As a consequence, the number of reviews conducted by accreditors remains low as well.

While accreditation staff possess a wide range of academic and regulatory know-how with traditional higher education models, few have meaningful experience with direct assessment. The same is true of the members of each accreditor's commission or council, despite the fact that these individuals almost always are accomplished academics and postsecondary administrators.

Perhaps most significantly, accreditors are limited in their ability to supplement their internal knowledge and experience with the knowledge and experience of their membership. Each year, accrediting agencies conduct hundreds of onsite visits to institutions. Review teams are primarily comprised of faculty and staff from other accredited institutions who have agreed to serve as evaluators and are not employees of the accreditor.[19] In the case of direct assessment programming, however, where an accreditor may have only one or two institutions among its membership that are experimenting with the model, it becomes a challenge to assemble a review team equipped to evaluate a new direct assessment program.

In an effort to address this experience deficit, one accreditor developed a reviewer training program specific to direct assessment programming. Other accreditors have begun developing this kind of training for their staff and membership alike. Nonetheless, staff and reviewers with meaningful expertise remain few and far between.

Inconsistency in Direct Assessment Programming Review. Given the expertise challenges, it is unsurprising that the ease and timing of the review process for direct assessment programs is inconsistent across accreditors. Not only are accreditors still familiarizing themselves with their own processes, but their processes also differ in meaningful ways.

For example, certain accreditors would treat a new direct assessment program as a standard substantive change, while others would require that the application be given heightened consideration requiring review and direct approval by the accreditor's governing body.[20] Some accreditors have designed customized pathways for the approval of direct assessment programs. The Middle States Commission on Higher Education, a regional accreditor, has worked to create a robust set of criteria and processes dedicated entirely to the evaluation of direct assessment learning. Similarly, the Accrediting Council for Independent Colleges and Schools, a national accreditor, will soon implement a regulatory framework specifically for reviewing and approving direct assessment programs.[21]

On the other end of the spectrum are accreditors that have not created any custom processes for the evaluation of direct assessment programming. Consequently, their member institutions are left without guidance on how the accreditor defines direct assessment, what constitutes an acceptable conversion methodology, and other critical questions.[22]

In an effort to bring increased clarity and consistency to the accreditation of direct assessment programming, the Council of Regional Accrediting Commissions (C-RAC) is working on a framing statement that will provide guidance to its member accreditors for the evaluation of direct assessment programming. However, this statement will provide only general guidelines for the development of standards (similar to the general guidelines developed by C-RAC in 2002 for the management of distance education programs). In addition, the C-RAC guidelines may or may not be adopted by the many national accreditors recognized by ED. It thus seems likely that for some time, the specific processes and timelines for the approval of direct assessment programming will continue to vary from one accreditor to the next.

Federal Regulation of CBE

For a student enrolled in a postsecondary program to receive federal financial aid, the program must be "eligible" under the Higher Education Act of 1965.[23] Because most programs are not economically viable over the long term if students are unable to access federal financial aid, it is thus critical that competency-based programs are able to secure eligible program status.

Programmatic Accreditation

Although it is not required for participation in federal financial aid, programmatic accreditation can be of great importance to a postsecondary institution. In many instances, an individual who graduates from a program that lacks programmatic accreditation may be limited, or even completely barred, from practicing in his or her field (for example, in many states individuals graduating from a law school lacking American Bar Association programmatic accreditation are unable to sit for the bar exam).[1] Even in cases where lack of programmatic accreditation may not be fatal to a program, it still may place the program at a significant competitive disadvantage in the marketplace.

To date, programmatic accreditors presented with direct assessment programs have demonstrated an ability and willingness to consider such programs for accreditation.[2] They must be mindful, however, of state laws governing licensed professionals and whether those laws can accommodate direct assessment models. If a programmatic accreditor were to approve a direct assessment program that a state licensing body viewed as deficient, it could lead the state to remove references to the programmatic accreditor in its professional licensing laws, which could in turn devalue the programmatic accreditation.

Notes

1. Although state statutes and other resources often refer to American Bar Association (ABA) accreditation, programmatic accreditation is in fact bestowed by the Council of the Section of Legal Education and Admissions to the Bar, which is recognized by ED and independent of the ABA, as required under federal law.

2. Excelsior College, for example, offers a well-known competency-based nursing program that enjoys programmatic accreditation from the Accreditation Commission for Education in Nursing. See Excelsior College, "Accreditations," www.excelsior.edu/about/accreditations. Western Governors University also offers programs with programmatic accreditation from, among others, the Commission on Collegiate Nursing Education, National Council for the Accreditation of Teacher Education, and Commission on Accreditation for Health Informatics and Information Management Education. See Western Governors University, "Accreditation and Recognition," www.wgu.edu/about_WGU/accreditation.

Historically, competency-based programs that are tethered to the credit hour have been able to qualify as eligible, as exemplified by the success of Western Governors University's competency-based efforts, among others. But the path to approval for direct assessment programs has been, and continues to be, a rocky one. While these difficulties are attributed primarily to the incompatibility of direct assessment education and the federal regulatory framework, poor communication and insufficient resources have also played a role.[24]

Square Peg, Round Hole: CBE Programs and Federal Financial Aid. As currently constructed, the federal financial aid framework is simply unable to facilitate the efficient and effective regulation of direct assessment programming because it is inextricably linked to credit hours and instructional time. Before 2005, program eligibility was determined only by the number of credit or clock hours delivered over a specified period of time.[25] Then, in 2005, Congress modified the definition such that students could be eligible to receive federal financial aid while enrolled in a program with no ties to the credit hour.[26] While the 2005 legislation opened the door for ED to approve direct assessment programs, the question remained as to how to go about approving and administering aid to a program without credit hours or instructional weeks.

In 2006, ED made its first (and only) effort to implement the new law.[27] Rather than create a separate, custom regulatory framework for managing direct

The Experimental Sites Initiative and the CBE Demonstration Project

In response to the White House's efforts to promote innovation in postsecondary education, and recognizing the need to improve the 2006 direct assessment regulations, in December 2013, ED invited institutions to suggest innovative experiments that might form the basis of an Experimental Sites Initiative.[1] The intent was to solicit ideas for the management of federal financial aid in the direct assessment context and for the approval of federal aid for prior learning assessment.[2]

ED received and evaluated various submissions, including a joint submission by 17 institutions and agencies at the forefront of the development of CBE.[3] Based on these submissions, ED determined to move ahead with the Experimental Sites Initiative and, in July 2014, formally invited applications for experiments involving prior learning assessment, competency-based education, and limited direct assessment, among others.[4]

In Congress, the Advancing Competency-Based Education Demonstration Project Act (H.R. 3136), sponsored by Representatives Jared Polis (D-CO) and Matt Salmon (R-AZ) in the last Congress, would have allowed ED to select up to 30 institutions to participate in a competency-based demonstration project at ED. When operating the demonstration project, the secretary would have been empowered to waive requirements, including those related to minimum number of weeks of instruction and minimum number of clock or credit hours.

The bill passed the House by a vote of 414-0 in July 2014. Unfortunately, it did not make it to a vote in the Senate in the congressional session that concluded last year. Some iteration of the bill should find its way into the forthcoming reauthorization of the Higher Education Act.

Notes

1. Pursuant to Section 487A(b) of the Higher Education Act, the US secretary of education has the authority to create and invite participation in institutionally based experiments under the Experimental Sites Initiative, which is a vehicle for testing alternative methods for administering federal financial aid funds.

2. See Office of Postsecondary Education, US Department of Education, "Invitation to Participate in the Experimental Sites Initiative" 79, no. 147, "July 31, 2014, http://ifap.ed.gov/fregisters/FR073114ExperimentalSites.html. Note that ED also proposed to experiment in one area unrelated to CBE: the compensation of Federal Work Study students employed as "near-peer" counselors to high-school students. See US Department of Education, "Notice Inviting Suggestions for New Experiments for the Title IV Student Assistance Programs" 78, no. 235, December 6, 2013, http://ifap.ed.gov/fregisters/FR120613.html.

3. See *Experimental Sites Concept Paper: Competency-Based Education* (January 2014), http://chronicle.com/blogs/ticker/files/2014/01/Experimental-Sites-Concept-Paper-FINAL.pdf.

4. Office of Postsecondary Education, US Department of Education, "Invitation to Participate in the Experimental Sites Initiative."

assessment programming, ED opted to require institutions to convert their direct assessment programs back into the familiar credit hour format. Faced with a square peg and a round hole, ED reshaped the peg.

While this Band-Aid approach did open the door for the approval of direct assessment programs, the subsequent case-by-case review required of each proposal under the current regulations in addition to the lack of certainty surrounding basic concepts and standards make for a frustrating and inefficient application and approval process.[28] Such deficiencies come at considerable cost to the institutions dedicating time and resources to the design and launch of direct assessment programming and raise very real questions about whether the law is being consistently applied to each applicant. In addition, requiring institutions

to package and administer aid to students based on a modified version of their direct assessment program is clumsy and inefficient at best.

But to focus on the particular failings of the 2006 regulations is to miss the forest for the trees. The current financial aid system is built on the credit hour and instructional week. As a consequence, it is unable to accommodate a programming model such as direct assessment, which is entirely divorced from these core concepts. Efforts are underway in Congress and at ED to improve the current system, and these efforts are laudable. But inefficiency and inconsistency will persist so long as ED continues to require that direct assessment programming be reshaped and forced into the existing regulatory framework.

Functional Limitations at ED. The frustrations caused by the deficiencies of the 2006 regulations have been exacerbated by ED's reticence to meaningfully engage with institutions and other regulators on direct assessment education. ED leadership has been outspoken regarding its support for direct assessment programming and, more generally, CBE. Current Under Secretary of Education Ted Mitchell has publicly expressed support for the advancement of competency-based models, and this commitment has been reflected in the Experimental Sites Initiative ("Experimental Sites Initiative and CBE Demonstration Project" textbox).

High-level communication and support is distinct, however, from communication and support at the bureaucratic level. The latter, which is so critical to the effective expansion of direct assessment programming, is wanting. This view was repeatedly expressed to us not only by institutions but also by other members of the regulatory triad. Such sentiments have also been publicly expressed. For example, Elizabeth Sibolski, president of the Middle States Commission on Higher Education, described her agency's interactions with ED as "incredibly frustrating," leaving her "rather disappointed."[29]

ED's Office of the Inspector General (OIG) released a final audit report in September 2014 that further substantiated these concerns.[30] In general, the OIG faulted ED for failing to properly assess the risks associated with approving direct assessment programming and for failing to establish controls designed to mitigate such risks. The OIG also offered several examples of communication and documentation deficiencies in ED's review and approval processes.

Based on the many interviews we conducted for this piece, it seems that ED's lack of engagement at the bureaucratic level may largely be the result of a resource deficiency. A handful of individuals at ED have been tasked with addressing direct assessment applications, including a working group formed specifically to manage direct assessment policy and issues. The overwhelming impression, however, is that these individuals all have considerable responsibilities unrelated and in addition to their direct assessment efforts.

The challenges facing ED are substantial. The existing process for evaluating direct assessment programming requires an intensive, time-consuming, case-by-case review of each application. And developing and implementing a new regulatory framework for direct assessment programming would likely require an enormous effort. These are not tasks easily accomplished by individuals who are already pressed to execute them in a timely and effective manner. Accordingly, an increase in resources—both financial and human—is critical to removing the obstacles presently facing the agency.

Recommendations

The Carnegie Foundation for the Advancement of Teaching recently released a thoughtful paper that noted:

> American education has a long history of promising reform ideas that have failed to achieve their intended outcomes. It is one thing to have a good idea for change; it is another to execute effectively and efficiently in our large, complex educational systems.[31]

We could not agree more. Having spoken to some of the leading US education innovators, we cannot help but get excited about the promise of CBE. But as professionals immersed daily in the regulation of an overregulated industry, we also worry that innovation will inevitably be choked. What most often seems to get missed in policy and regulatory reform are meaningful interactions between those in practice and those

writing standards, and that chasm may indeed be deepest and darkest in CBE regulation.

Recommendation #1: Review and Revise State Laws. Our review of state law reveals that a great deal needs to be done to facilitate the growth of postsecondary, competency-based programming at the state level. As an initial matter, states should revisit their authorization statutes to determine to what extent existing provisions may impede CBE approval in general, and direct assessment programming in particular. Where authorization frameworks make specific reference to credit hour thresholds, regulators should consider whether such thresholds are indeed necessary and, if so, whether they might be defined in an alternative manner that could accommodate direct assessment programming.

If states determine that credit hour requirements cannot be removed or altered, then they should consider specifically granting the authorizing agency the authority necessary to evaluate and approve direct assessment programming and to establish evaluation standards sufficient to encourage the consistent application of the law. A similar strategy could be employed to evaluate and potentially revise state laws governing licensed professions.

The impact of state efforts to facilitate the authorization of direct assessment programming will be enhanced by the State Authorization Reciprocity Agreement (SARA) initiative. Practically speaking, a SARA-approved institution authorized in its SARA-participating home state can offer its distance education programming to students in any other SARA-participating state without going through the host state's authorization process. With regard to online direct assessment programming, this means that once the institution's home state revises its authorization standards to accommodate direct assessment education, the institution can offer its program to students in any other SARA-participating state, even if those other states have not taken similar action.

Furthermore, many states are actively discussing and reforming their funding formulas for public postsecondary institutions. As this continues, policymakers should not only consider whether alternatives to enrollment-based funding models would incentivize better educational outcomes but also contemplate the role CBE could play in achieving those outcomes. If states determine to leave traditional enrollment-based models in place, they should develop regulatory mechanisms capable of accommodating direct assessment programming in order to avoid penalizing public institutions investing in competency-based innovation.

A specialized body with CBE-specific expertise could facilitate the efficient, expert review of competency-based programming, but this group should take the form of an independent advisory body, not a programmatic accreditor.

Recommendation #2: Create a Guiding Voice for CBE. Individuals from several different education corners have suggested that a new programmatic accreditor specializing in CBE might assist in addressing the expertise and consistency issues discussed herein. Indeed, in a September 2014 Inside Higher Ed article, Elizabeth Sibolski openly stated that regional accreditors "might benefit from a new specialized accreditor that focused on competency-based education." Furthermore, the article suggests that this view is shared by the presidents of two other regional accreditors, and "The three officials said a coalition of early adopters, such as the Lumina-led Competency-Based Education Network (C-BEN), could eventually morph into a specialized accreditor."[32]

We support the notion that a specialized body with CBE-specific expertise could facilitate the efficient, expert review of competency-based programming, but we recommend that this group take the form of an independent advisory body, not a programmatic accreditor. A new programmatic accreditor would add yet another entry to the long list of regulators with which postsecondary institutions already contend. Instead of creating a more efficient regulatory process, it would create an additional layer of standards, fees, reporting, and like obligations. Moreover, and perhaps more importantly, it would not directly enhance the ability of institutional

accreditors to make efficient and informed decisions regarding their own approval of competency-based programs. And as discussed earlier, in the case of direct assessment, a school's institutional accreditor must *directly* approve the program and conversion methodology as a prerequisite for federal approval.

Instead, we suggest that an independent advisory body be formed to serve all institutional accreditors, regional and national alike. Armed with specialized expertise relating to competency-based programming, this advisory body would bring experience and consistency—and, therefore, efficiency—to the review of such programming across the country. The advisory body, much like a typical review team, could evaluate standards, conduct onsite visits, and issue harmonized reports to the accreditors. The accreditor, in turn, could evaluate and act on the report within the context of its own accreditation standards and processes.

Moreover, the mission of this advisory body need not be confined to CBE. Postsecondary education needs an independent, nongovernmental advisory body to make clear, detailed, and coordinated recommendations to all levels of government and to provide substantive feedback on the intersection between innovation and regulation. Although CBE needs much attention in the short term, we see this advisory body as having relevance to a host of other initiatives and innovations. Any number of existing organizations could house this entity—from the American Council on Education to the Council for Adult and Experiential Learning to the Council for Higher Education Accreditation, to name a few—and any number of private philanthropies would support it.

On one side, you have practitioners who say that regulators just don't get what practitioners are trying to do. On the other, we see regulators struggling to cope with change. What always seems missing, however, is a bridge between the two. Our proposed entity's activities would not be restricted to competency-based programs but would instead look more broadly to real barriers to innovation in regulation and oversight. The most important element of this entity's work would be to provide specific recommendations that are practitioner based and standards focused.

Recommendation #3: Develop a Distinct Regulatory Scheme for Federal Financial Aid Programs. The Experimental Sites Initiative at ED and the demonstration project introduced on Capitol Hill are both promising signs of support for CBE. But these well-meaning proposals miss the mark because they are an attempt to give credence to a proven model rather than change the regulatory paradigm.

Some institutions have avoided participating in the experimental sites altogether due to the associated red tape. Why make a sizable investment in new internal systems when you know that your program already works? And while we expect widespread interest in a demonstration project akin to what was proposed in the last Congress, competency-based models have been around long enough for us to move beyond the demonstration phase of their deployment to the next step: lasting regulatory reform.

To be clear, demonstration programs and experimental sites have real value and, in the case of the Distance Education Demonstration Program from the 1998 reauthorization of the Higher Education Act, can accelerate innovation. Nevertheless, these types of solutions are both small scale and, despite the waivers of certain requirements, compliance heavy.

To truly unlock the potential of direct assessment programming, ED must pursue a distinct regulatory framework that would permit the approval and management of aid to direct assessment programs without reference to credit hour or instructional time concepts. We acknowledge the great difficulty associated with carrying out this task but maintain that it is necessary to the ultimate growth and success of direct assessment learning.

We also believe that ED policymakers will require significant support from Congress and within ED if they are to build a new, customized framework for direct assessment programs. In addition to providing statutory authority and direction, both policy and staff positions dedicated primarily (if not entirely) to the direct assessment endeavor must be funded. This level of support will enable ED to create a framework for the efficient approval and oversight of direct assessment programs and should also help resolve the communication and support deficiencies that have plagued efforts to date.

Notes

At the outset of this project, we met with a distinguished group of academics and administrators, all of whom have significant experience examining the promise of and challenges facing postsecondary competency-based education. Over the subsequent months, many of these individuals were kind enough to participate in lengthy interviews, during which we discussed their competency-based models, their experiences obtaining approval from postsecondary regulators, and their vision for the future of competency-based programming. We were also able to conduct interviews with a range of postsecondary regulators and policy experts. These individuals detailed their own challenges, strategies, and hopes for the regulation of CBE. Finally, we examined the statutes, regulations, and standards of various postsecondary regulators and reviewed a wide range of research and policy papers previously written on the topic of postsecondary CBE.

1. Critically, institutions must also safeguard the quality and integrity of their competency-based programming. For example, programs must be designed and competencies determined by qualified personnel. Assessments must be, in turn, properly aligned with competencies and carried out pursuant to a robust, consistent, and meaningful protocol.

2. Because the laws and policies governing state financial aid programs were designed with the credit hour in mind, they are also ill-suited to accommodate direct assessment programming. Considerable progress has been made in some states, however, as the introduction of direct assessment programs and institutions has necessitated speedy resolution to ensure student access to state aid.

3. There is presently an ongoing effort to simplify the regulation of institutions operating in multiple jurisdictions through the State Authorization Reciprocity Agreement, a voluntary agreement among member states "that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs." See National Council for State Authorization Reciprocity Agreements, "About," http://nc-sara.org/about.

4. For example, an associate degree "shall be granted only after the successful completion of at least 60 semester hour or 90 quarter credit hours of collegiate level study," a bachelor's degree only after "completion of at least 120 semester hours or 180 quarter credit hours of collegiate level study," and so forth. See State Council of Higher Education for Virginia, *Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates* (August 4, 2006), www.schev.edu/adminfaculty/iApproval/final% 20regs%208-24-06.pdf.

5. 23 Ill. Adm. Code 1501.302(a)(3)(A)(i), www.isbe.net/rules/archive/pdfs/oneark.pdf.

6. 23 Ill. Adm. Code 1501.303(e), www.isbe.state.il.us/rules/archive/pdfs/23ark.pdf.

7. It bears mentioning that even if state regulatory frameworks were adjusted to resolve such challenges, significant practical challenges relating to the updating and integration of institutional and government data systems would likely remain.

8. One notable exception involves the Maryland Higher Education Commission, which promulgated new regulations, effective July 2014, specifically for the purpose of facilitating the authorization of competency-based programming offered by in-state institutions. See Division of State Documents, State of Maryland, "16 Graduation Requirements," www.dsd.state.md.us/comar/comarhtml/13b/13b .02.02.16.htm. These new regulations create a framework for the oversight and approval of competency-based programs offered by in-state institutions and include provisions relating to assessments, recordkeeping, reporting, and policymaking.

9. Among the best-known examples is Western Governors University, which since 1996 has educated thousands of students using a competency-based model. More recent entrants into competency-based learning include the Kentucky Community and Technical College System's Learn on Demand initiative, the University of Wisconsin's UW Flexible Option, and the University of Michigan's master of health professions education.

10. The four initiatives are (1) the Competency-Based Education Network, (2) the Next Generation Learning Challenges 2014 Breakthrough Models Incubator, (3) the Council for Adult and Experiential Learning Jumpstart, and (4) Community Colleges in Partnership–Western Governors University. For additional information, see Strategy Labs: State Policy to Increase Higher Education Attainment, *Competency-Based Education Initiatives* (September 2014), http://strategylabs.luminafoundation.org/wp-content/ uploads/2014/09/CBE-50-State-Table.pdf.

11. See VA Code § 23-276.4, http://law.justia.com/codes/ virginia/2011/title23/chapter21-1/23-276-4; and State Council of Higher Education for Virginia, "Private Institutions Exempt from Certification," www.schev.edu/students/PrivateExempt.asp.

12. State of New Jersey, "N.J.A.C. 6A:9, Professional Standards," August 4, 2014, www.nj.gov/education/code/current/title6a/chap9. pdf.

13. State of New Jersey, "N.J.A.C. 6A:9A, New Jersey Educator Preparation Programs," August 4, 2014, www.state.nj.us/education/ code/current/title6a/chap9a.pdf.

14. The National Conference of State Legislators maintains a running tally of such performance-based initiatives and has found that

30 states currently allocate some amount of funding based on student outcomes, while another four have an initiative in the works. See National Conference of State Legislators, "Performance-Based Funding for Higher Education," January 13, 2015, www.ncsl.org/research/education/performance-funding.aspx.

15. To participate in the federal financial aid programs, postsecondary institutions must hold institutional accreditation from a regional or national accreditor "recognized" by ED. A complete list of accreditors recognized by ED can be found at http://ope.ed.gov/accreditation/Agencies.aspx.

16. "Many of the proposed competency-based degrees are also novel for accreditors, said Belle Wheelan, president of the Southern Association of Colleges and Schools (SACS) Commission on Colleges." See Paul Fain, "Tugged in Two Directions," Inside Higher Ed, September 10, 2014, www.insidehighered.com/news/2014/09/10/accreditors-role-expansion-competency-based-education.

17. At a minimum, all institutional accreditors require that an institution seeking to launch a direct assessment program submit an application for "substantive change," which is an existing approach to evaluating institutional changes that exceed a certain threshold of significance. ED has also expressed its view that direct assessment programming should be approved by accreditors as a substantive change. See 79 Fed. Reg. 44433 (July 31, 2014), http://ifap.ed.gov/fregisters/attachments/FR073114ExperimentalSites.pdf.

18. The low number of applications was confirmed by each of the accreditors with which we spoke and has been reported in various media outlets: "The Higher Learning Commission has received relatively few 'solid requests' for direct assessment programs, said Gellman-Danley. Many of the applications are still tied in some way to the credit hour, she said, so they don't qualify as direct assessment." See Fain, "Tugged in Two Directions."

19. For example, an accreditor preparing to conduct a visit to a faith-based liberal-arts institution will try to include evaluators familiar with that type of institution's programming and mission.

20. The Western Association of Schools and Colleges, for example, treats an institution's inaugural direct assessment programming as a "structural change," which means, among other things, that the application must be reviewed and approved directly by the commission, not simply treated as an item on a consent agenda.

21. This framework, which will become effective on July 1, 2015, includes a two-part application process and "at least two quality monitoring on-site visits" to the institution following implementation of the program. See Accrediting Council for Independent Colleges and Schools, "Memorandum to the Field," www.acics.org/commission%20actions/content.aspx?id=2544.

22. As previously discussed, a wide range of programming can rightly be characterized as competency-based education. Only a subset, however, qualifies as direct assessment programming and is eligible for approval as such by ED. To many, the distinction is not always clear. To ensure that both institution and accreditor are proceeding appropriately, several accreditors have developed a screening form designed to assess whether the proposed program is indeed a direct assessment program requiring a substantive-change approval. As a prerequisite to federal financial aid eligibility, an institution must show that its accreditor has evaluated and approved its methodology for equating its direct assessment program to credit or clock hours. An institution "must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours." See 34 C.F.R. §668.10 (3) and 34 C.F.R. § 668.10, requiring institutions to produce documentation "from the accrediting agency or relevant state licensing body indicating agreement with the institution's claim of the direct assessment program's equivalence in terms of credit or clock hours."

23. *Higher Education Act of 1965*, Public Law 89-329, US Statutes at Large 1219 (1965), 549, http://legcounsel.house.gov/Comps/HEA65_CMD.pdf; and 34 C.F.R. 668.8.

24. Several federal agencies apart from ED also administer funding programs that benefit postsecondary students, including the US Departments of Defense, Veterans Affairs, and Labor. In addition, the Department of Homeland Security oversees the Student and Exchange Visitor Program, which permits nonimmigrants to lawfully study in the US. The statutes and regulations enforced by each of these agencies in varying degrees incorporate credit hour and instructional week concepts that are in tension with some forms of CBE, to include direct assessment programming. We have not profiled these agencies here, but note that we are unaware of any effort on the part of these agencies to revise or update their respective regulatory frameworks to accommodate competency-based programming.

25. As a matter of law, programs are divided into academic years, which must include a minimum number of credit hours delivered within a minimum number of weeks. Student funding levels are determined in part by the overall length of the program, level of study (first year, second year, and so forth), and by the student's enrollment status within that particular academic year. Even the timing of student financial aid decisions are based on the standard credit hour and academic year. See 34 C.F.R. 668.3 and 34 C.F.R. 668.2.

26. The Higher Education Reconciliation Act of 2005 also specified that the secretary of education must initially determine whether

each program for which an institution proposes to use direct assessment is an eligible program. See *Higher Education Reconciliation Act,* Public Law 109-171 (2005), 27, http://ocap.org/Partners/Legislation/Documents/HERA_Provisions.pdf.

27. See 71 Fed. Reg. 64378 (November 1, 2006), www.gpo.gov/fdsys/pkg/FR-2006-11-01/pdf/E6-18183.pdf.

28. In some cases, critical concepts simply are not addressed. For example, the regulations require any institution desiring approval of a direct assessment program to "establish a methodology to equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements." See 34 C.F.R. 668.10(a)(3). Despite the importance of the conversion to the student aid process, ED declined to stipulate any particular methodology for the equation of a direct assessment program to credit or clock hours. Similarly, ED elected not to prescribe any one approach for the determination of satisfactory academic progress in the direct assessment context. In the preamble to the final regulations, ED simply observed, since "direct assessment programs may be designed in a variety of ways, we will determine how we will evaluate institutional compliance with satisfactory academic progress standards on a case-by-case basis as part of the initial eligibility review." See 71 Fed. Reg. 64379 (November 1, 2006), www.gpo.gov/fdsys/pkg/FR-2006-11-01/pdf/E6-18183.pdf.

29. Fain, "Tugged in Two Directions."

30. As of January 23, 2014, five institutions had submitted direct assessment program applications to ED, including Argosy University, Capella University, Northern Arizona University, Southern New Hampshire University, and the University of Wisconsin. See US Department of Education, Office of Inspector General, *Final Audit Report ED-OIG/A05N0004*, September 30, 2014, 4, www2.ed.gov/about/offices/list/oig/auditreports/fy2014/a05n0004.pdf.

31. Elena Silva, Taylor White, and Thomas Toch, "The Carnegie Unit: A Century-Old Standard in a Changing Educational Landscape," Carnegie Foundation for the Advancement of Teaching, January 2015, www.carnegiefoundation.org/resources/publications/carnegie-unit/.

32. Fain, "Tugged in Two Directions."

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