



July 11, 2019

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Docket ID ED-2018-OPE-0076

Dear Mr. Bounds,

Thank you for the opportunity to respond to a request for public comment regarding the Notice of Proposed Rulemaking (NPRM) to amend the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility. Lumina Foundation is an independent, private foundation in Indianapolis that is committed to making opportunities for learning beyond high school available to all. We envision a system that is easy to navigate, delivers fair results, and meets the nation's need for talent through a broad range of credentials.

We are submitting comment regarding the proposed rulemaking because it is our view that the key to effective regulatory policy is thoughtful design and implementation that is flexible enough to keep up with changing times, policies, and technologies, while taking into account the views of affected constituencies. These regulations provide essential guidance to the higher education community to implement what can be, at times, confusing and contradictory legislative language. In short, when done correctly, regulations can be a much needed, powerful force to provide a guide for complying with Federal law and meeting crucial public policy goals, such as achieving the kind of postsecondary student outcomes Americans seek and deserve, and that the nation needs.

With this context in mind, we offer input on the following elements of the NPRM:

- We were encouraged by 34 CFR 668.43 and urge the Department to keep the proposed language in the final regulations in its entirety. In particular, a requirement that institutions notify their students, as applicable, about whether their educational programs meet the requirements for licensure across states is necessary to empower students as they assess whether their investment in a given educational pathway will pay off.
- We were pleased to see 34 CFR 600.9 & 600.2 preserve the use of a reciprocity agreement (provided the agreement doesn't prevent states from enforcing their general or higher education laws) in relation to distance education programs meeting state authorization requirements in the states where they enroll students. We hope to see the Department adopt the proposed language in its entirety in the final regulations.

- We appreciate that in this NPRM, the Department’s goal is to allow for innovative institutional practices that can improve outcomes and completion rates for all students. However, we remain deeply concerned about the unintended consequences of the proposed change to 34 CFR 602.18(c), which establishes an alternative accreditation standard for programs that are deemed innovative by agency officials without sufficient policy protections to ensure such innovative practices benefit students. The potential to create a two-tiered system in which the seal of approval of accreditation is diminished as a reliable and consistent indicator of quality should give us all pause. We urge caution about this approach, and at the very least encourage the Department to create a mechanism that ensures transparency regarding how these new standards are established and how they are applied to providers of postsecondary education- and incorporate an assessment of those standards into the recognition process review.
- We are concerned about the length of time—up to three years—that a provider of postsecondary education could remain out of compliance with accreditor standards before the accreditor would need to take action that the change to 34 CFR 602.18(d) would permit. We suggest that the Department maintain the existing requirements that cap the time in which an institution must come into compliance at not more than two years. We also suggest clarifying language on what “undue hardship on students” under 602.18(c)(1)(v) means so that is it not a blanket exception. After all, the “normal application” of an agency’s standards should always be made in students’ interests. Current and prospective students deserve to know about any issues with a provider’s accreditation and should not be used as an excuse for non-compliance.
- Relatedly, the proposed change to 34 CFR 602.20(a)(2) that would allow a provider of postsecondary education to remain accredited for up to an additional four years following an accreditor action (like probation) is an exceptionally long period of time to subject current and prospective students to uncertainty about the ultimate quality and value of that institution’s credential. We suggest eliminating the proposed regulation that would allow an institution to effectively be out of compliance for as many as seven years.
- We are uncertain about the intent behind changes to 34 CFR 602.10 & 34 CFR 602.13, which reduces the necessary evidence that demonstrates that a new accreditor can be trusted to perform the role of Title IV gatekeeper and eliminates the requirements that a new accreditor be trusted by peer organizations, practitioners, and other stakeholders. Accrediting agencies hold significant authority as gatekeepers to federal financial aid, and it is thus prudent to maintain the existing requirements in this section. Given the critical nature of this financial stewardship it is reasonable that the Department maintain a high bar, particularly upon initial application when there is likely a limited record of the ability of a new organization. Alternately, at a minimum, the new requirements should place clear numerical caps on the number of institutions and/or programs – e.g., no more than 10 institutions or 25 programs for its first two years of recognition – that the agency may grant accreditation or pre-accreditation for purposes of Title IV.

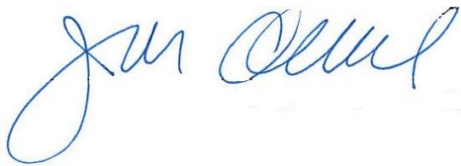
We believe strongly that federal quality assurance should focus on desired results among today’s students, not only on characteristics of the institutions awarding the degrees. The Department’s current rulemaking process provides one important opportunity to take steps toward this outcome. More broadly, Lumina supports the shifting of quality assurance toward a risk-based approach built on relevant data regarding institutional finances and governance; educational outcomes, especially among

students of color and low-income students; and development of strong employability skills among graduates. Federal, state, accreditor, and institutional policies all play important roles in this shift.

A greater focus on student outcomes, based on more accurate, comparable data, is central to assuring the quality of our rapidly evolving postsecondary learning system. It is also essential to correctly evaluating the impact any particular institution has on students and on our nation's ability to grow the talent pool we need to meet today's economic and social challenges. Accelerating this shift to a more transparent, aligned, and outcomes-focused accountability system depends on the ability of existing and new entities to access and use better data. Most importantly, as we work to evolve our accountability systems and to modernize our system of data collection and use, we must prioritize both equity and quality.

Thank you for consideration of our views on these topics. Lumina will continue to closely follow the rulemaking process moving forward and will weigh in as opportunities allow. If you would like to further discuss any of these issues with me or any of my colleagues, you can reach me at joconnell@luminafoundation.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jesse O'Connell". The signature is fluid and cursive, with a large initial "J" and "O".

Jesse O'Connell
Strategy Director for Federal Policy
Lumina Foundation