



May 3, 2020

Gregory Martin
U.S. Department of Education
400 Maryland Ave. SW
Mail Stop 294-42
Washington, DC 20202

RE: Docket ID ED-2018-OPE-0076

Dear Mr. Martin,

Thank you for the opportunity to respond to a request for public comment regarding the Distance Education Notice of Proposed Rulemaking (NPRM) to amend the general, establishing eligibility, maintaining eligibility, and losing eligibility sections of the Institutional Eligibility regulations issued under the Higher Education Act of 1965, as amended (HEA), related to distance education and innovation. 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.

Though this rulemaking process began well before our current crisis, the subject area of these new regulations could not be more central to the current state of affairs in higher education. All students and institutions have now been plunged into an unexpected and unplanned for transition to online learning; which has served to starkly illustrate that the quality of distance education has never been more important in terms of equity and student success. Federal rules can provide much-needed clarity and rigor to colleges about how to comply with federal law and how to best protect their students and the quality of their learning.

It is not controversial to say that online education varies greatly in quality today. This is important for all students, but particularly for the students who most need the benefits promised by higher education. We cannot and should not tolerate a racial equity gap in online-education student outcomes. And this matters because even if we ignore the recent surge of necessity born out of the current public health crisis, distance-education enrollment had already exploded to 6.3 million students, a five-fold increase over the previous two decades. What's more, a recent survey showed over 600 colleges offering or working to

offer competency-based education (CBE) programs, which is up from a 2015 scan that showed only about 50 institutions doing so.

This indicates that the prevailing regulatory scheme has not prevented distance education from growing, nor is it evident that the existing regulatory scheme prevents innovation in curriculum development and/or educational delivery models. Given these two key points, it is therefore appropriate to focus this rulemaking effort on a more crucial question: how to ensure that students have access to and are paying for high-quality distance education.

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

- We urge you to keep the consensus language the Department agreed to regarding the definition of the credit hour. The credit hour rule helps create a common language for awarding taxpayer dollars to students and programs, as it is the mechanism by which colleges and the Department determine students' enrollment intensity and assess program eligibility. While the credit hour may be an imperfect measure, there is not yet an acceptable replacement. Both the NPRM, along with current guidance, allows for any alternatives and flexibility that might be necessary.
- We support the proposed language on the definition of distance education and would caution the Department against further changes to the definitions of regular and substantive interaction, including the definition of an instructor. Regular and substantive interaction requirements exist in law because of a long history of abuse in correspondence education programs, particularly of veterans seeking to use their education benefits. Congress created regular and substantive interaction requirements at the urging of the Bush administration to develop "quality standards for electronically-delivered education [that] emphasize the importance of interaction between the instructor and student" and thus these requirements stand as effectively the sole statutory distinction between correspondence courses (on which Congress has placed additional limitations) and distance-education courses. Moreover, the language in the NPRM reflects a hard-fought compromise among negotiators, and we would hope that the Department does not depart from the proposed definition in its final rule.
- We were concerned by the proposed change to require institutions to seek approval for direct assessment programs from the Department only the first time they offer such a program. We view the NPRM's provisions here as contradictory to the statute as the Higher Education Act requires "In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program" (section 481(b)(4) of such Act). We view this statutory provision as an important oversight protection ensuring that new direct assessment programs receive adequate scrutiny and that each new eligible direct assessment program be approved by the Secretary first. Yet these proposed regulations instead allow for institutions to obtain approval only for their first direct assessment program, by credential level. We do not agree that simply because an institution has established a direct assessment program that a new program at the same credential level would be assured of being equal quality. We know that programs of all types at the same institution, within the same credential level, can vary in this manner. If you are determined to pursue this change, we would at least recommend that accreditors utilize the C-BEN Quality

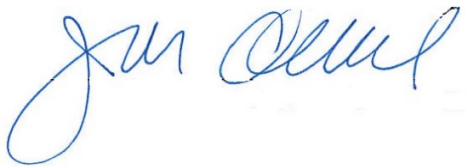
Framework for CBE Programs so that both students and policymakers can be confident the program has been designed to meet quality standards.

- We support the language related to subscription models but would ask that the Department provide clarity about the ability for institutions not under the direct assessment to use this model. This was approved by the Department for those participating in the experimental sites, and while those have ended, institutions are still operating in this manner and would benefit from further clarification.

Above all, we hope to see a regulation that facilitates our belief in the necessity of 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. Such a focus on outcomes 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,



Jesse O’Connell
Strategy Director for Federal Policy
Lumina Foundation