

May 4, 2020

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

Re: Distance Education and Innovation, Docket ID number ED-2018-OPE-0076-0845

*Submitted electronically via: <http://regulations.gov>*

Dear Mr. Martin:

The 50 undersigned organizations representing and advocating for students, families, taxpayers, veterans and service members, faculty and staff, civil rights and consumers write to urge you to maintain basic safeguards, described below, in the final distance education regulations.

We are in an unprecedented moment as many institutions of higher education are confronting the need to move instruction online rapidly due to the pandemic Coronavirus Disease 2019. Online education has provided an important venue for students to continue their education in this trying time. However, the astounding scale and speed of this mass migration, and the potential for a prolonged trend toward online programs, underscores the need to ensure that online students receive an education of value. The Department of Education must be a strong guarantor of quality to protect students and taxpayer funds.

COVID-19 has made it more important than ever to maintain strong oversight of distance education programs and their use of taxpayer dollars, and significantly changing or weakening the protections included in the proposed rule presents a serious risk to students – something discussed at great length during the negotiated rulemaking and which these proposed rules seek to protect against. We know that the most vulnerable student populations will continue to be disproportionately targeted by unscrupulous actors and suffer the most if protections are weakened, including Black, Latino, and other racial minority students, active-duty military and veterans, and low-income, first generation, and non-traditional students.

We appreciate that, in its regulatory proposal, the Department has maintained some basic student and taxpayer safeguards regarding the definition of a credit hour, the definition of distance education programs, and written arrangements to outsource education to unaccredited providers. However, in each case, Department officials participating in negotiated rulemaking initially suggested far weaker language that would put students at risk. We urge you to maintain the proposed language for these critical student protections, which earned consensus among participants in those negotiations, in the final rule.

## **Credit Hour (34 CFR 600.2)**

The credit hour is the fundamental unit for measuring higher education. It allows for a basic accounting of students' course load and therefore their eligibility for federal funds. Eliminating the definition of a credit hour would throw the door wide open for credit hour inflation, increasing taxpayer costs and robbing students of their full education. Investigations by the Office of Inspector General have documented [past abuses](#) by schools and shown that [accreditors](#) have not reliably defined the credit hour, demonstrating the imperative for the Department's existing definition.

It is a myth that defining the term "credit hour" requires colleges to measure learning by "seat time" rather than learning. Both the consensus definition and the current rule include a great deal of flexibility, allowing ample room for innovative and non-traditional programs to assess student learning as a proxy for a time-based measure within this framework. Non-traditional programs, such as competency-based education (CBE) practitioners, recognize the importance of the credit-hour rule to protect students. Institutions implementing CBE have worked well within the bounds of the credit-hour rule, thanks to flexibility already given them in defining a credit hour based on time or evidence of student learning. The consensus definition includes this flexibility, allowing ample room for innovative and non-traditional programs to try new things within this framework, and we urge the Department to maintain the consensus language.

## **Distance Education (34 CFR 600.2)**

In order to differentiate distance education programs from correspondence courses, colleges must ensure there is "regular and substantive interaction" between students and their instructor. There has been a long history of abuses in the correspondence course sector, and several limitations on the use of taxpayer-financed federal aid dollars are in place for correspondence programs, which is why this differentiation must be clearly understood by institutions.

Regular and substantive interaction requires colleges to provide students with real, meaningful communication related to the content of their courses with qualified instructors. In 2014, [ED issued guidance](#) clarifying that this interaction cannot be "wholly optional or initiated primarily by the student" and that the interaction has to be facilitated by "institutional staff who meet accrediting agency standards for providing instruction in the subject matter being discussed."

A rollback of this definition could result in, for example, programs becoming eligible for federal student aid when they provide no more than YouTube videos for students. Such a course clearly does not deliver the same quality of education, or bear the same costs to educate students, as a traditional college course. With colleges now forced to move online during an emergency, we must ensure that students continue to receive value for the money they are investing in their education and maintain a real connection with expert instructors.

## **Outsourcing of Educational Programs (34 CFR 668.5)**

In order for programs to enroll students who are eligible for federal dollars, institutions of higher education must meet quality standards defined by the Department and accreditors. Schools are currently allowed to outsource up to half of their programs to unaccredited entities. We appreciate the Department's proposal to leave this limit intact, given the tremendous danger raising the cap could present to students and taxpayers.

Any rollback of the current 50 percent limit creates substantial risk for students receiving education from unaccountable entities. At the extreme—but easy to imagine--end, an institution could essentially rent out their accreditation, while an entirely unproven entity provides education of dubious quality to students.

The 50 percent outsourcing limit provides colleges with a great deal of flexibility. Moreover, it ensures that other federal laws, such as those requiring colleges to pass financial responsibility and cohort default rate tests, are effectively enforced. Allowing the outsourcing of any more of a program would constitute an abdication of oversight.

## **Maintain the Consensus Language**

We strongly encourage ED not to weaken the credit hour, regular and substantive interaction, or outsourcing provisions. In these provisions, ED must maintain the consensus language agreed to at the rulemaking. ED's primary role is to protect students and ensure that they benefit from access to high-quality higher education. Weakening or eliminating these provisions would do the opposite and create the conditions that would harm students, particularly now, at a massive scale.

Signed,

AFSCME  
Allied Progress  
American Federation of Teachers  
Americans for Financial Reform Education Fund  
Association of Young Americans (AYA)  
Augustus F. Hawkins Foundation  
Center for Public Interest Law  
Center for Responsible Lending  
Children's Advocacy Institute  
CLASP  
Clearinghouse on Women's Issues  
Congress of CT Community Colleges  
Consumer Action  
Consumer Advocacy and Protection Society (CAPS) at Berkeley Law  
Consumer Federation of California

CSU-AAUP  
Duke Consumer Rights Project  
East Bay Community Law Center  
Eastern Connecticut State University  
Education Reform Now  
The Education Trust  
Generation Progress  
Government Accountability Project  
Higher Education Loan Coalition  
Hildreth Institute  
Housing and Economic Rights Advocates  
The Institute for College Access & Success (TICAS)  
Maryland Consumer Rights Coalition  
National Alliance for Partnerships in Equity (NAPE)  
National Association for College Admission Counseling  
National Association of Consumer Advocates  
National Consumers League  
National Student Legal Defense Network  
New America Higher Education Program  
NextGen California  
Partnership for College Completion  
PHENOM (Public Higher Education Network of Massachusetts)  
Project on Predatory Student Lending  
Public Counsel  
Public Good Law Center  
Public Law Center  
Robert Shireman, The Century Foundation  
Student Veterans of America  
Temple Association of University Professionals (AFT #4531, AFL-CIO)  
U.S. Public Interest Research Group (PIRG)  
UnidosUS  
Veterans Education Success  
Veterans for Common Sense  
The Western New York Law Center, Inc  
Young Invincibles