



## The Education Trust

Closing the gaps in opportunity and achievement, pre-k through college.

September 14, 2018

Aaron Washington  
U.S. Department of Education  
400 Maryland Ave. SW  
Room 294-12  
Washington, D.C. 20202

RE: Docket ID ED-2018-OPE-0076

Dear Mr. Washington:

On behalf of The Education Trust (Ed Trust), an organization dedicated to closing long-standing gaps in opportunity and achievement that separate low-income students and students of color from their peers, thank you for the opportunity to comment on the notice stating the U.S. Department of Education's (ED's) intent to establish a negotiated rulemaking committee on certain Title IV federal student aid rules.

First and foremost, if ED moves forward with its proposed regulatory agenda, it should be done for one — and only one — purpose: to improve outcomes for students, especially low-income students and students of color.

The Higher Education Act (HEA) became law in 1965 in the spirit of expanding opportunity so that no student would be denied a chance to participate in higher education due to finances or socioeconomic status. More than 50 years later, the research is clear: A college degree is the surest path to upward social mobility in our economy, with two-thirds of new jobs requiring some form of postsecondary education. Yet, there are glaring — and growing — gaps in who enters and completes college.

Since 1965, the U.S. has made substantial progress in college access. College-going rates have climbed for students from all economic and racial groups. Yet, despite this progress, *low-income students are just now enrolling in postsecondary education at rates their high-income peers did in the mid-1970s.*<sup>1</sup> And the low-income students and students of color who do enroll in college are *far less likely* than other students to enroll in institutions where most students graduate and *far more likely* to enroll in the institutions that graduate few of their students and create disproportionate debt.<sup>2</sup> Indeed, in every category of postsecondary education, low-income students and students of color are less likely than others to earn the degrees that they want and need, and far more likely to end up with debt and no degree.

Over the years, both Republican- and Democrat-led Congresses and administrations have made efforts to improve the quality of higher education and counter abuses of students and misuse of federal tax dollars by bad actors. No one has gotten this completely right; in fact, there is room to improve federal law, regulations, and guidance on all of the issues listed in this notice. But we are deeply concerned that the goal of a new, negotiated rulemaking committee will not be to strengthen these existing protections, but

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics (2016). *Digest of Education Statistics 2015*.

<sup>2</sup> Ed Trust analysis of IPEDS Fall enrollment, Fall 2014 (by race) and NCES National Postsecondary Student Aid Study (NPSAS:12), 2011-12 (by Pell recipient status).

instead to weaken them, and roll back the clock so that a long history of waste and abuse of student and taxpayer dollars can begin again.

Ed Trust offers two overall comments on the notice as well as comments on individual issues the negotiated rulemaking committee would tackle.

**The scope of the negotiated rulemaking committee should be much narrower.**

The negotiated rulemaking committee described in this notice would tackle a significant number of critical issues on the quality of programs and instruction at institutions of higher education. Accreditation issues related to accreditor oversight, institutional mission, recognition criteria, and ED review of agencies are all central issues impacting the rigor, quality, and effectiveness of higher education. Likewise, existing rules and guidance pertaining to state authorization, requirements for regular and substantive interaction in distance-education programs, what constitutes a credit hour, which entities can provide an educational program, and requirements governing financial aid access for direct assessment/competency-based education programs provide the necessary structure to ensure that higher education is focused on student success.

Each of these issues merits meaningful consideration with experts and key stakeholders. No committee could possibly be comprised with membership capable of addressing these issues fully. And no committee could give all of these issues the time and attention they deserve, given the breadth. *Ed Trust strongly urges ED to significantly scale back the number of issues to be considered by a negotiated rulemaking committee.*

**The goal of any rulemaking effort should be to improve existing guardrails, not gut them.**

While many of the existing rules and guidance pertaining to these topics can be improved to better protect students and taxpayers, they should not be abandoned or weakened. These protections were put in place in response to clear and tangible past abuses. It makes no sense to roll back protections that are still critically important to the success of students and the integrity of the federal financial aid system.

Reducing burden or simplifying a process that doesn't increase the quality of education or improve student outcomes should not be a primary or even secondary concern as ED moves forward with these actions. Putting deregulation before quality and outcomes will only shortchange students seeking to benefit from Federal student aid programs that help finance their education and waste taxpayer money.

*Ed Trust believes ED should only move forward with this negotiated rulemaking effort if maintaining guardrails for quality and students outcomes, rather than carving away protections simply to reduce institutional burden, is assured.*

**Comments on Specific Issues**

**Accreditation**

Under the accreditation section of the notice, ED lists five major topics for negotiation. We appreciate seeing that the third item references "emphasizing criteria that focus on educational quality" in the process used to recognize accreditation agencies. A focus on student outcomes must be a central part of accreditation and a particularly important factor in determining how ED recognizes accreditation agencies. However, ED's track record in this regard is suspect, given that it is currently considering permanently reinstating ACICS, a failed accreditor. While accreditation and the process for recognizing accreditors clearly needs to improve, we do not believe this Department will be rigorous in its review or focus on meaningful

student outcomes sufficiently. Thus, we are deeply concerned about a negotiated rulemaking committee addressing accreditation.

### **State Authorization**

The Department has already delayed, and now plans to rewrite or rescind, the rules governing state authorization for distance education programs. We strongly urge you to maintain those requirements. States should not be permitted to shirk their responsibilities as a piece of the program integrity triad to oversee the institutions enrolling their residents; and institutions should not be permitted to avoid oversight by finding the most lenient states from which to exploit students across the border. A strong, functioning oversight system requires the active engagement of states, and the regulations published two years ago ensure states are, at least, aware of and responsible for the institutions operating within their borders. Given the growth of distance-education programs in recent years, such requirements have never been more important.

### **Regular and Substantive Interaction**

Current ED guidance reinforces that students should have “regular and substantive” interaction with instructors when in distance-education programs — a critical distinction between those programs and the correspondence programs of decades past that abused federal aid dollars and left students with little education in exchange. These safeguards are important to ensuring that institutions proactively provide instruction, support, and assistance to their students. Most importantly, a passive or solely student-initiated environment seems to beg the question of what value an institution is providing to a student. Low-income students would be disproportionately affected by changes to these rules, given that they are more likely to enroll in online programs; a weakening of interaction requirements could mean those most vulnerable students, most in need of support from their instructors, are pushed into automated classes where they are less likely to be successful.

As ED looks to regulate in this area, we would express extreme caution about moving forward with an agenda that would arbitrarily reduce the frequency or quality required through a regular and substantive interaction standard. This should not be viewed as an opportunity to reduce the level of effort by online institutions to proactively interact with and provide instruction to their students.

### **Definition of a Credit Hour**

The underpinning of much of the existing federal student aid system is what constitutes a credit hour. The last administration, largely at the urging of ED’s Inspector General and other parties given the issues with serious abuses by colleges and insufficient oversight by accreditors, established regulations on the definition of a credit hour. While institutions should have the ability to innovate and provide different instructional formats that don’t simply rely on a set number of class and self-work time — and do, under the existing definition — the floodgates should not be opened to undermine the amount and length of instruction or support and assistance provided to students in a program eligible for federal student aid.

### **Direct Assessment and Competency-based Education**

As with the definition of credit hour and regular and substantive interaction, we urge ED to carefully consider how changes to direct assessment and competency-based education provisions will impact quality and outcomes. High-quality direct assessment and competency-based education programs can help adult and other students for whom a traditionally structured college education is not logistically possible. These approaches have also enabled institutions to innovate and respond to student needs.

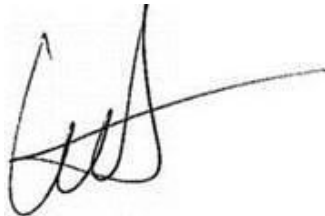
However, this negotiated rulemaking effort should not be viewed as an opportunity to reduce student focus or instructional quality, or to artificially increase the number of students who graduate with degrees or credentials, even if they don't have the skills and education that should be reflected in those documents. Simplifying the process for direct assessment and competency-based education without real accountability based on students' outcomes will fail to arm college graduates with the education and skills they need if quality is not the primary focus of this effort. When ED publishes a final list of topics, it should add additional language to this topic that reflects that quality and improved outcomes will be the goal of the any new direct assessment and competency-based education regulatory proposals.

### **Outsourcing of Educational Programs**

A critical safeguard for students is knowing that federal funds they receive can only be used at institutions that have been approved by the triad: accreditors, ED, and the state. That quality assurance is critical. Already, institutions can outsource up to half of an instructional program to an entity that has not met this quality assurance bar. It is irresponsible to students and to taxpayers to consider raising or even removing that cap. ED will actually be inviting bad actors in to prey on students. We strongly urge ED to remove this item from its agenda.

Thank you for the opportunity to comment on these important topics. The Education Trust will continue to closely follow the process ED establishes for this negotiation effort moving forward and will weigh in when opportunity and need allows.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wil Del Pilar', with a long horizontal stroke extending to the right.

Wil Del Pilar  
Vice President of Higher Education  
The Education Trust