NAICU’s Written Comments on the July 31, 2018 Notice of Intent to Establish a Negotiated Rulemaking Committee

The National Association of Independent Colleges and Universities (NAICU) advocates on behalf of its more than 1,000 members, including 967 private, nonprofit college and universities. We appreciate the opportunity to offer comments on the Department’s ambitious negotiated rulemaking agenda that was announced in the July 31, 2018 Federal Register.

Given the broad scope of the items set forth in the negotiated rulemaking announcement, NAICU recommends that the Department consider establishing more than one negotiated rulemaking committee to address the numerous issues cited in its notice. In the meantime, we would like to submit the following brief comments.

In general, NAICU supports the maintenance of an accreditation process built upon independent peer review. The existence of an effective non-governmental means for assessing academic quality makes possible the diversity and independence of U.S. institutions of higher education. As such, any changes made to accreditation must take into account individual institutions and their missions and must respect institutional autonomy.

We also encourage the Department to carefully consider the balance of the three actors in the accountability triad: the federal government, the states, and accreditors. In consideration of maintaining that balance, the Department must be mindful of the unique nature of higher education accreditation, as defined by the Higher Education Act (HEA), and resist the temptation to turn accreditors into surrogate government enforcement agencies. Not only would that approach run counter to the spirit of the HEA, but it would also pose a threat to institutional quality improvement and diversity.

Regarding state authorization of distance education programs, NAICU urges the Department to thoroughly consider the challenges associated with colleges receiving authorization from every state in which it enrolls students in its programs. While there are reasonable precautions that must be put in place to protect students and to ensure institutional transparency and accountability for distance education, we recommend an approach that recognizes the significant burden placed on institutions that enroll transient populations of students who often enroll in distance programs specifically because of the mobility that those programs offer.

Similarly, NAICU recommends that the Department consider revisions to other aspects of the state authorization regulations. While the intent to crack down on unscrupulous higher education providers is a laudable goal, the regulations have not functioned as intended. Instead, these provisions have created confusion about the legal status of many private, nonprofit colleges—some of which have been needlessly threatened with loss of eligibility for federal student aid dollars despite the fact that they are well-known, legitimate post-secondary institutions with valid documentation of their establishment as institutions of higher education.

NAICU also advocates for repeal of the credit hour definition. We have long argued that having a federal definition of “credit hour” is inappropriate. Such a mandate could not only lead to government interference in the academic decision-making process, but also limit the flexibility...
of institutions to develop new models of higher education to meet the needs of current and future students.

Likewise, NAICU urges the Department to re-think the structuring of convertible grant-to-loan programs, such as the TEACH Grant program, to ensure that borrowers are not held to unrealistic eligibility standards. It has been estimated that approximately 60% of TEACH Grant recipients have had their grants converted to loans, despite the fact that many of them have met the goals and requirements of the program by serving as teachers in disadvantaged communities. We encourage the Department to consider the intent of the grant program when crafting regulations that could impose unexpected loan debt on our nation’s educators due to overly burdensome eligibility criteria.

In addition, as the Department considers barriers to innovation, competition, and student success—including issues related to direct assessment programs, competency-based education, regular and substantive interaction, program length, relationships with other institutions, the teach-out process, and the definition of foreign schools (which needs to be reexamined)—the Department must be mindful of the balance between encouraging innovation and preventing fraud and abuse. One way to do so is to test ideas first to ensure that they do not provide opportunities for unscrupulous school operators to take advantage of students and taxpayers. In the past, tools such as demonstration programs or experimental sites have provided an avenue for controlled experimentation in the structure or delivery of higher education programs. The information gathered through such tests offers valuable analysis of innovative approaches before a full-scale federal investment is made.

In this regard, the Department should continue the long-standing HEA principle of actively considering when it is most appropriate for the federal student aid programs to assist students in paying for college. Deciding when and how to help students pay for college is distinct from recognizing the legitimacy of a new or emerging educational concept. Put another way, an educational program could be effective, but that does not mean it should be eligible for federal student aid. A good example of this distinction is Congress’ past limitation on short-term job training programs, which were judged to be better funded through means other than Title IV.

Additionally, special consideration should be given to the circumstances under which partnerships between institutions to deliver high-quality instruction are to be encouraged. For example, the Department must prevent the excessive outsourcing of an academic program from a Title IV eligible institution of higher education to a non-Title IV outside provider. Such institutional behavior could be to the detriment of students and effectively make the outside entity eligible for Title IV aid without meeting the state authorization, accreditation and eligibility and certification requirements of Title IV. It is essential that the Department maintain its role as the guardian of the integrity of the federal student aid programs by preventing fraud and abuse by bad actors seeking to take advantage of overly broad partnerships criteria.

Finally, NAICU is encouraged that the Department has publicly committed to holding a negotiated rulemaking committee dedicated to the financial responsibility standards in its proposed borrower defenses to repayment regulations. We urge the Department to maintain consistency with its recent stance on financial responsibility by devoting a negotiated rulemaking
committee dedicated to reforming the methodology and implementation of the financial composite scores.

As the Department moves forward with the negotiated rulemaking process, NAICU urges the Department to continue to include representatives of private, nonprofit colleges and universities on the upcoming negotiated rulemaking committee or committees. We appreciate our recent participation in the process and believe our sector’s perspectives add value to the conversation. Thank you for the opportunity to provide comments on this important regulatory process.