



Policy solutions that work for low-income people

September 14, 2018

Aaron Washington
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED-2018-OPE-0076

Dear Mr. Washington,

We appreciate the opportunity to comment on the Department of Education's (ED) intention to create a negotiated rulemaking panel focused on accreditation and a host of other vitally important issues in postsecondary education.

As a non-profit, anti-poverty organization, the Center for Law and Social Policy (CLASP) promotes federal and state policies that provide economic security to low-income people of color and immigrants. In the area of postsecondary education, we develop and promote policies to ensure that low-income students, students of color, working students and immigrant students have equitable access to high-quality, affordable postsecondary pathways and credentials.

Scope of issues is too expansive

First, we are deeply concerned by the overly expansive list of higher education issues that the committee would cover. Negotiating policy changes related to the core functions of accreditation, state authorization, the definitions of "regular and substantive interaction" and the credit hour, the roles and responsibilities of institutions and accrediting agencies in the teach-out process, direct assessment and competency-based education programs, and a host of other issues through one negotiated rulemaking panel is simply unworkable. This process would require drawing on panelists with broad and deep expertise and an adequate amount of time to give each policy issue the attention it deserves. Due to the broad scope set out by the notice, it is unlikely that this proposed negotiated rulemaking panel would be able to resolve these complex issues in a comprehensive and thoughtful manner, let alone reach consensus. This would allow ED to develop their own rules, which we believe would harm low-income students, working students, students of color and immigrants.

Today's diverse student body deserves an affordable, high-quality education

As ED moves forward to form a negotiating rulemaking committee, it must recognize and respond to the changing face of postsecondary students by working to offer them an affordable, high-quality postsecondary education. Low-income students, students of color and nontraditional students have the most to lose, and will bear the consequences of adverse policy changes to current federal regulations.

According to the National Center for Education Statistics, between 1976 and 2015, college participation for students of color significantly increased.¹ In 2015, students of color constituted over forty percent of all U.S. residents enrolled in degree-granting institutions.² Yet, disparities in educational attainment between and whites and students of color persist.³ As an anti-poverty organization, we advocate for an accreditation and postsecondary education system that places a greater focus on institutional and program quality and accountability; racial equity and inclusion; and student achievement, including completion, workforce preparation, and employability when Congress takes up the reauthorization of the Higher Education Act (HEA). This negotiated rulemaking process appears to be intended to pull postsecondary education further away from those goals.

As you are aware, millions of college students do not fit the “traditional” student profile of a full-time student transitioning directly from high school to a four-year college or university. Fifty-one percent of undergraduates are independent, 40 percent are adults age 25 or older, 27 percent work full time, and 26 percent are parents.⁴ These students are often juggling work and/or family obligations and need flexible schedules and high-quality education delivery systems that meet their needs. CLASP has long advocated for nontraditional students and will continue to do so throughout this process.

Accreditation must promote quality, oversight, accountability, and student success

Congress created the accreditation “triad”—which consists of ED, accrediting agencies, and the states—to provide oversight and ensure that institutions participating in federal student aid programs authorized under Title IV of HEA are offering students a quality education.⁵ We believe that ED must abide by the intent of Congress and aim to strengthen, not weaken, the current accreditation system. In fact, accreditors must place a greater focus on oversight, institutional and program quality, and student success. It is not ED’s role to simply legitimize or allow bad actors to further harm students by offering low-quality programs, course offerings, and educational delivery models that do not serve students well. In our view, accreditors can and must do more to encourage institutions and educational providers to close racial equity gaps; increase educational attainment, particularly for low-income students, students of color, working students, adult learners, and immigrants; promote diversity and inclusion at levels of postsecondary education; and, prepare low-income students and students of color for family-sustaining jobs and careers.

While we support innovation in postsecondary education that seeks to address the unique needs of low-income working students and student-parents who must manage the demands of school and family obligations, we fear that weakening current regulations would allow for a proliferation of low-quality educational providers and delivery models. Simply put, online education and competency-based education must offer high-quality learning experiences, support students in attaining a degree or credential, and prepare students for high-demand, high-wage jobs in the economy. Faculty are essential to adequately preparing students to achieve these goals. Any changes to the definition of “regular and substantive interaction” should encourage greater student-teacher interaction, not less.

Furthermore, nontraditional students who are underprepared for postsecondary education may require greater human interaction and comprehensive student supports to successfully obtain a postsecondary credential. As such, accrediting bodies must ensure that institutions and educational providers offer these students access to racially and culturally diverse faculty and staff and comprehensive academic support services to complete their degree or credential. Along with academic supports, these students need access to comprehensive culturally-competent advising, tutoring, and mentoring and robust financial aid to cover the cost of tuition, fees, and living expenses, including childcare, transportation, and food.

Prioritize the needs of low-income students and students of color

We urge you to refrain from lowering the bar for institutional quality and accountability, and instead, prioritize the needs of low-income students, students of color, working students, and immigrants. The department must lead with an equitable, student-centered approach in mind, including strategies to make college more affordable, close racial equity gaps, and connect students to family sustaining jobs and careers. Such an agenda must also provide much-needed resources to strengthen the capacity of Historically-Black Colleges and Universities, Hispanic-Serving Institutions, Predominantly Black Institutions, Asian American and Native American Pacific Islander-Serving Institutions and other minority-serving institutions (MSIs)—institutions that have served as engines for economic mobility for millions of low-income students and students of color.⁶ Finally, a student-centered approach requires that ED uphold its responsibility to hold institutions accountable when they have failed to provide underrepresented students with a high-quality education.

Roles and responsibilities of institutions and accrediting agencies in teach-outs

In our comments to ED-2018-OPE-0027 (in reference to borrower defense to repayment), we outlined our concerns with ED's proposed changes to the teach-out process. Given that the borrower defense to repayment rule is yet to be finalized, it seems premature to consider altering the teach-out process as a part of the rule at issue here. Changes to the teach-out process should be limited only to those required to conform with the finalized borrower defense rule (if changes to teach-outs are indeed adopted as a part of the final rule).

General concern given other recent ED proposals

Our final concern is the potential negative impact that implementing this rule could have in combination with other changes recently proposed by ED (specifically, Docket IDs ED-2018-OPE-0027 and ED-2018-OPE-0042). Given that these rulemaking processes are advancing in tandem, it is difficult to ascertain what the collective impact of these changes will mean for students.

ED-2018-OPE-0042 would repeal the gainful employment rule without a replacement accountability system. The repeal would make college enrollment less transparent and cause students to enroll in low quality programs, including those that have already been identified as low-quality under the existing rule. This would be a significant erosion of institutional accountability and ED's oversight role. Similar thematic changes are included in this notice, which validates our concern with allowing ED to write the final rule. These include modifications to the definition of "regular and substantive interaction," the relationship between program length and requirements for the student's occupational field, and agreements between institutions and other entities to provide educational programming.

As referenced above, ED-2018-OPE-0027 would significantly alter the borrower defense to repayment rule. Implementing changes to any of the policies we listed in the preceding paragraph could create new opportunities for fraud, which would, in turn, impact student loan borrowers seeking relief under borrower defense to repayment.

Low-Income Students and Students of Color Must Be Part of the Conversation

Finally, if the department decides to move forward in creating this negotiated rulemaking panel or a series of panels to cover all of the proposed issues, we strongly urge you to include policy experts who offer a deep expertise in anti-poverty, postsecondary, and workforce issues. Understanding the unique barriers

that low-income students, particularly students of color and nontraditional students, face in acquiring a postsecondary education is vitally important to strengthening the nation’s accreditation and higher education system.

Thank you for the opportunity to comment. Should you have any questions regarding this letter, please contact Rosa M. García, Senior Policy Analyst, at rgarcia@clasp.org or by phone at (202) 906-8058.

Sincerely,

Rosa M. García
Senior Policy Analyst

¹ National Center for Education Statistics, Digest of Education Statistics, 2015 (NCES 2016-014), Chapter 3, U.S. Department of Education 2016. <https://nces.ed.gov/fastfacts/display.asp?id=98>

² National Center for Education Statistics, Digest of Education Statistics, 2015 (NCES 2016-014), Chapter 3, U.S. Department of Education 2016. <https://nces.ed.gov/fastfacts/display.asp?id=98>

³ National Center for Education Statistics, Digest of Education Statistics, 2017 (NCES 2017-051), Chapter 6, U.S. Department of Education 2017. <https://nces.ed.gov/pubs2017/2017051.pdf>

⁴ “College Students Aren’t Who You Think They Are,” Center for Law and Social Policy, June 2017.

<https://www.clasp.org/publications/fact-sheet/college-students-arent-who-you-think-they-are>

⁵ United States Government Accountability Office, *GAO-18-5 Higher Education: Expert Views of U.S. Accreditation*, December 2017. <https://www.gao.gov/assets/690/689171.pdf>

⁶ Lorelle L. Espinosa, Robert Kelchen, and Morgan Taylor, “Minority-Serving Institutions as Engines of Upward Mobility,” American Council on Education, June 2018. <https://www.acenet.edu/news-room/Pages/Minority-Serving-Institutions-as-Engines-of-Upward-Mobility.aspx>