Council of
Regional Accrediting Commissions

September 12, 2018

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

Dear Mr. Washington:

Re: Docket ID number ED-2018-OPE-0076, Intent to establish negotiated rulemaking committee.

On behalf of the Council of Regional Accrediting Commissions (C-RAC), a collective of seven regional organizations responsible for the accreditation of roughly 3,000 of the nation's colleges and universities, I am writing in response to the notice of "**Intent to establish negotiated rulemaking committee,"** published in the Federal Register by the U.S. Department of Education on July 31, 2018.

C-RAC welcomes this opportunity to provide comments on the topics proposed by the U.S. Department of Education to be considered for action by the negotiated rulemaking committee. We look forward to working closely with the Department and other higher education stakeholders throughout this entire process as we work toward the shared goals of encouraging greater student success and protecting taxpayer resources.

Overall, we believe the list of proposed topics captures many areas of opportunity for reassessing regulatory burdens and enhancing accreditors' ability to promote institutional improvement while also supporting the innovation necessary to effectively serve and protect students. However, given the breadth of issues under consideration, we believe that a single committee and two separate subcommittees cannot sufficiently enable the full and meaningful discussion necessary for consensus. This is especially true for complex issues that we believe warrant their own committee altogether, such as regulations related to state authorization. **We therefore, strongly urge the Department to consider establishing at least three separate committees over the course of the next year, thus providing the means to adequately consider each of these important topics.**

Below, we have provided our initial thoughts on each of the specific topics proposed in the notice that relate to accreditation:

Proposed Regulations on the Core Functions of Accreditation:

1. "Requirements for accrediting agencies in their oversight of member institutions."

Title IV, Part H of the *Higher Education Act* includes several provisions related to accrediting agencies' oversight of member institutions. For example, Sec. 496(c), "*Operating*

Procedures Required", lists several areas of oversight to be undertaken by accreditors, including on-site inspections with a "*particular focus on educational quality and program effectiveness,"* as well as the monitoring of institutions experiencing significant enrollment growth. In addition, this section describes the oversight that must take place when an institution opens a branch campus or changes ownership (which the accompanying regulations refer to as "substantive changes").

While these regulations can be necessary to provide clarity in the implementation of the law, in some cases they are overly prescriptive. For example, the current "substantive changes" regulations often require institutions to seek approval from accreditors before making any changes, even in cases where such approval is simply not warranted. We believe that a more flexible, risk-based approach should be established that assures quality while reducing unnecessary administrative burdens for institutions and accreditors.

In addition, the "Enforcement of Standards" requirements under 34 CFR 602.20 describe the steps accreditors must take when an institution or program is not in compliance. The authority of these regulations stems from the Secretary of Education's broader authority to establish recognition criteria. However, the specific provisions, such as the time periods within which institutions must act and come into compliance, are not in statute; at times, the prescription added by the regulations may constrain accreditors' ability to implement appropriate actions based upon an institution's specific circumstances.

Therefore, we agree with the Department's proposal that regulations related to oversight of member institutions be among those included for negotiated rulemaking.

2. "Requirements for accrediting agencies to honor institutional mission."

The *Higher Education Act* and corresponding regulations address the issue of institutional mission, as it relates to accreditation, in several specific places. For example, the Act calls for accreditors to consistently apply and enforce standards *"that respect the stated mission of the institution of higher education, including religious missions".* Accreditation standards must also assess an institution's *"success with respect to student achievement in relation to the institution's mission".* The current regulations under 34 CFR 602.16 mirror this language.

In addition, Sec. 496(k) of the *Higher Education Act* includes a "religious institution rule" that permits the Secretary to allow an institution that has otherwise lost its accreditation to remain certified while seeking alternative accreditation, if such loss is related to its religious mission and not to the accreditation criteria. There are currently no regulations associated with this section of the law.

The Department's specific interest in regulating on these matters is unclear. The respect for institutional mission is deeply rooted in regional accreditation, a fact borne out in each of our commissions' longstanding standards, which highlight institutional mission as a cornerstone of institutional reviews, and reflected by the wide variety of institutions accredited by each regional commission across the United States. In light of that lack of clarity, we question the inclusion of this topic in the list of issues to be taken up by the negotiators.

3. **"Criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality."**

   The current regulations related to the "Criteria for Recognition" are very broad and encompass many issues. With respect to "educational quality", the regulations include the "Accreditation and pre-accreditation standards" under 602.16, which largely mirror the provisions under law. In addition, regulations under 602.21, "Review of Standards," are related to the requirement for agencies to have a systematic program of review and also touch upon educational quality.

   C-RAC believes that any changes to these regulations must not restrict the scope of criteria accreditors may use to review an institution as part of their responsibility for validating a school's quality and performance while also protecting the interests of both students and taxpayers. We will support that position throughout the rulemaking process.

4. **"Developing a single definition for purposes of measuring and reporting job placement rates."**

   Consideration of job placement rates as a way to demonstrate success with respect to student achievement (in relation to the institution's mission) has long been a part of the accreditation standards under the *Higher Education Act*. However, to date there have not been regulations defining this and other terms associated with the required federal accreditation standards.

   We are aware that, for many years, the Department has been interested in developing a common definition for job placement rates, including through the creation of a technical review panel focused on this issue.

   C-RAC is not opposed to the Department adding this issue to negotiating rulemaking agenda because appropriate regulations could provide a better way for accreditors and students to compare an institution's definitions and outcomes, provided the tracking of such outcomes is appropriate, relevant, and meaningful.

5. **"Simplifying the Department's process for recognition and review of accrediting agencies."**

   The regulations related to the process for recognition and review of accrediting agencies were significantly expanded following enactment of the *Higher Education Opportunity Act of 2008*. The current regulations encompass application and review by Department staff, review by the National Advisory Committee on Institutional Quality and Integrity, review and decision by the "Senior Department Official," and appeal rights and procedures.

   While there have been some efforts already undertaken to simplify the recognition and review processes, we agree this is an issue which should be included as part of the negotiated rulemaking agenda

Proposed regulations to promote greater access for students to high-quality, innovative programs:

1. **"State authorization, to address the requirements related to programs offered through distance education or correspondence courses, including disclosures about such programs to enrolled and prospective students, and other State authorization issues (34 CFR 600.9 and 668.50)."**

   C-RAC agrees that the issue of state authorization related to distance education must be addressed by the Department as part of a negotiated rulemaking process. However, given the considerable time and energy that has been dedicated to this issue in the past, we are concerned it would detract from the other issues likely to be included on the agenda. Therefore, we suggest the Department hold a separate negotiated rulemaking process on this specific issue.

2. **"The definition of 'regular and substantive interaction,' as that term is used in the definitions of 'correspondence course' and 'distance education' in 34 CFR 600.2, 600.7, and 668.10."**

   There is currently a significant lack of clarity on the definition of "regular and substantive interaction.". Therefore, C-RAC supports inclusion of this issue as part of the rulemaking process and believes the definition must provide sufficient flexibility for institutions while also ensuring appropriate protections to prevent abuse of student financial aid.

3. **"The definition of the term 'credit hour' as it is used in 34 CFR 600.2, 602.24, 603.24 (state agencies recognized as accreditors), and 668.8."**

   C-RAC supports including this issue in the negotiated rulemaking process in order to evaluate these policies and explore with other stakeholders how this definition could be improved.

4. **"The requirement that an institution demonstrate a reasonable relationship between the length of a program and entry-level requirements for the recognized occupation for which the program prepares the student (34 CFR 668.8(e)(1)(iii) and 668.14(b)(26))."**

   C-RAC does not have a position on the inclusion of this issue as part of the negotiated rulemaking.

5. **"The arrangements between an institution and another institution or organization to provide a portion of an educational program (34 CFR 668.5)."**

   C-RAC recognizes and supports the continued interest in expanding financial aid options for students in programs, such as boot camps, that are not directly eligible to participate under Title I but can partner with eligible institutions. Efforts to provide student aid to students enrolled in these types of programs include the Department's Educational Quality through Innovation Partnerships (EQUIP) experiment, in which regional accreditors have been involved.

However, C-RAC recognizes the limitations of these prior efforts and supports inclusion of this issue as part of the negotiated rulemaking. If done right, we believe regulations can be promulgated that expand options for students, support innovation and institutional efficiencies, and ensure appropriate protections for taxpayers by preventing low-quality and fraudulent programs from participating.

C-RAC believes one approach to addressing this issue is to amend 668.5(c)(3) by removing the 50 percent cap on the percentage of the education program that may be provided by the ineligible program at an eligible institution and allowing an accreditor to approve such programs if the arrangement meets the agency's standards for the contracting out of educational services. At the same time, we believe there is a role for the Department to monitor all institutional accreditors that provide this type of flexibility, which may include tracking how often accreditors provide it so as to ensure this practice does not open the door for bad actors.

6. **"The roles and responsibilities of institutions and accrediting agencies in the teach-out process (34 CFR 600.32(d) and 602.24)."**

   Teach-out plans provide a critical protection for students in the event an institution closes or ceases to provide educational programs. It is important that the roles and responsibilities of institutions and accreditors are clearly defined when a teach-out process is executed. Therefore, C-RAC supports the inclusion of this issue as part of the negotiated rulemaking in order to provide an opportunity for the identification of current regulations that could be strengthened to improve the process and better protect students.

7. **"The barriers to innovation and competition in postsecondary education or to student completion, graduation, or employment, including, but not limited to, those contained in the Department's institutional eligibility regulations (34 CFR part 600) and student assistance general provisions (34 CFR part 668)."**

   This issue reflects ongoing discussions among policymakers, scholars, institutional leaders, and others related to barriers to innovation and competition in higher education. Accreditors and accreditation are too often falsely identified as the sources of such barriers. In truth, higher education in America has flourished over the past 100 years; today, the U.S. is home to the most robust and diverse higher education landscape in the world.

   Nevertheless, too often, postsecondary programs are unaffordable or lack relevance for students who seek a practical education. C-RAC firmly believes this is a discussion that must be part of negotiated rulemaking in order to 1) facilitate an understanding of which specific innovations to improve program affordability and relevance are being blocked; and 2) identify the sources of such barriers; and 3) identify strategies (including regulatory changes, to the extent possible) for addressing those barriers in a way that also protects the interest of students.

8. **"The simplification and clarification of program requirements to minimize inadvertent grant-to-loan conversions and to improve outcomes for Teacher Education Assistance for College and Higher Education (TEACH) Grant recipients (34 CFR part 686)."**

   Given the limited role accreditors play with respect to the TEACH Grant program, C-RAC does not have a position on the inclusion of this issue as part of the negotiated rulemaking, although the simplification and clarification of these requirements is clearly necessary.

9. **"Direct assessment programs and competency-based education (34 CFR 668.10), focusing on the ability of institutions to develop, and students to progress through, innovative programs responsive to student, employer, and societal needs, including consideration of regulations that are barriers to the implementation of such programs, such as certain requirements for term-based academic calendars and satisfactory academic progress."**

   There is growing interest in expanding direct assessment programs and competency-based education. However, there is also a lack of clarity regarding the implementation of these programs which affects the ability of accreditors and institutions to be innovative. C-RAC fully supports including these issues in the negotiated rulemaking process especially in the context of other issues on the agenda including the definition of "credit hour" and "regular and substantive" as noted above.

10. **"In light of the recent United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017), and the October 6, 2017, Memorandum for All Executive Departments and Agencies issued by the Attorney General of the United States pursuant to Executive Order No. 13798, [(1)] the committee would consider revisions to the various provisions of the regulations regarding the eligibility of faith-based entities to participate in the title IV, HEA programs, including the Gaining Early Awareness and Readiness for Undergraduate Programs program, and the eligibility of students to obtain certain benefits under those programs (34 CFR 600.11 and parts 628, 674, 675, 676, 682, 685, 690, 692, and 694)."**

    C-RAC does not have a position on the inclusion of this issue as part of the negotiated rulemaking.

Again, C-RAC appreciates the opportunity to offer feedback on the myriad issues up for discussion in the negotiated rulemaking process. We encourage the Department to seriously consider our request to expand the number of committees to ensure the most complex issues receive appropriate attention and discourse.

Sincerely,

Barbara Gellman-Danley

Barbara Gellman-Danley, Ph.D.
Chair, Council of Regional Accrediting Commissions
President, Higher Learning Commission