THE CENTURY FOUNDATION | CAP 20 | THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS | NEW AMERICA

December 8, 2023

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW, Fifth Floor
Washington, DC, 20202

Re: Request for Written Comment on Agencies Undergoing Review for Continued Recognition by the U.S. Secretary of Education

Dear Director Bounds:

We, the undersigned, represent a diverse group of higher education researchers and consumer protection advocates committed to heightened transparency and accountability in the accreditation space.

Unfortunately, the public has too little opportunity to meaningfully participate in the process, particularly during sessions such as the upcoming winter 2025 NACIQI meeting, when all agencies undergoing Department review are providing compliance reports, but those reports are not available to the public in advance of the comment period. The lack of access to relevant materials and the fact that written third-party comments are due a full calendar year before the meeting impede our ability to participate in the process.

Our comments focus on specific issues that the agencies appearing at this meeting should have addressed to be considered in compliance. Additionally, we are providing comments related to accreditor oversight of institution's arrangements with Online Program Managers (OPMs). Given the long lead time for these comments and the parlous state of the OPM market, we believe it is important that NACIQI and the Education Department require accreditors to rigorously review OPM contracts to ensure that institutions are engaging in due diligence and meeting all Department and accreditor requirements when entering into such arrangements.

Online Program Managers and Third Party Servicers

Accreditors have generally adopted a hands-off stance regarding their members' arrangements with OPMs. In the absence of accreditor guidance, the burden has largely fallen on colleges to ensure that OPMs–and the contractual terms they offer–align with accreditor and federal standards. This hands-off approach exposes institutions to the risks associated with a constantly transforming and often-volatile industry with minimal support and oversight. Accreditors should apply a more hands-on approach to overseeing college-OPM arrangements.

In 2022, the Government Accountability Office estimated that hundreds of institutions had outsourced functions like student recruitment, advertising, student retention, course development, and instruction to for-profit companies commonly referred to as online program managers (OPMs).[1] In many OPM contracts, the institution compensates the OPM on a revenue-sharing basis. Revenue-sharing arrangements create financial incentive for OPMs to increase enrollment. This incentive can lead to predatory recruiting practices by OPMs. It can also lead to inflated tuition costs and higher debt burdens for students. OPMs also have access to sensitive student and school data and therefore present reputational and legal risks to their client institutions. These risks are also financial, since institutions or programs could face penalties or even lose access to federal funds if their OPMs don't comply with regulations. Finally, OPMs are deeply involved in academic processes, and depending on contract details, institutions could lose ownership of program materials if they terminate the partnership. Despite such numerous risks, OPMs are not currently subject to the same direct oversight as institutions. Accreditors must step up their oversight of such arrangements.

The Department of Education reiterated the importance of accreditors in the oversight of written arrangements between institutions and third parties like OPMs when it issued new guidance last year.[2] That guidance clarified the parameters of academic program outsourcing and reminded accreditors that they are charged with ensuring the institutions they oversee are operating in accordance with agency standards and are complying with regulatory limits on such partnerships. Accreditors are charged with taking a proactive role in gathering information about OPM contractors and what services they are tasked with providing.[3] Further, they should verify the amount of each program that has been outsourced to an OPM and not merely take institutions' calculations at face value. Increased involvement by accrediting agencies would help institutions identify arrangements that would pose significant financial risks to the institution and consumer protection risks to students.

---

[1] Government Accountability Office, *"Higher Education: Education Needs to Strengthen its Approach to Monitoring Colleges' Arrangements with Online Program Managers,"* (2022), https://www.gao.gov/products/gao-22-104463

[2] Federal Student Aid, *"Written Arrangements Between Title IV-Eligible Institutions and Ineligible Third-Party Entities Providing a Portion of an Academic Program,"* (2022), https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program#

[3] Clare McCann and Amy Laitinen, "*The Bermuda Triad: Where Accountability Goes to Die,"* New America, November 19, 2019, https://www.newamerica.org/education-policy/reports/bermuda-triad/.

There are instances of accreditors drawing on past experiences and adjusting their policies to safeguard institutions from risky agreements with OPMs.[4] For instance, just last month, the Middle States Commission on Higher Education (MSCHE) attempted to improve its policy on OPMs through concrete guidelines for the review and approval of written arrangements and the review of arrangements that include recruitment services.[5]

Accreditors, as the main entities responsible for ensuring quality in higher education, are best suited to assess the details of OPM arrangements, set high standards for contractual agreements, and monitor institutional compliance and performance. To that end, we encourage all agencies to improve their policies by issuing concrete guidelines for the review and approval of written arrangements and the review of arrangements that include recruitment services.

Complaint Processes

Research conducted by New America showed that the complaints processes used by all of the large former regional accreditors are severely lacking.[6] While that research did not assess the complaint processes of programmatic accreditors, an initial scan of the complaint processes used by programmatic accreditors suggests that many of them impede students and college staff from lodging complaints about institutions. Thankfully, the Department of Education released improved guidance for accreditors in August 2023 to help them improve their complaints processes.[7]

By the time of this meeting, the new guidance for accreditors will have been available for almost eighteen months. Eighteen months should have provided all accreditors ample time to implement the new complaint process, and NACIQI should ensure that all agencies up for review, and all agencies that were required to submit monitoring reports, have updated their complaint processes to abide by the new guidance. Some agencies had already implemented new and improved processes before the Department guidance was issued, further making it clear that by the time of

---

[4]Taela Dudley, Stephanie Hall, Alejandra Acosta, and Amy Laitinen, *"Outsourcing Online Higher Ed: A Guide for Accreditors,"* The Century Foundation, June 28, 2021, "https://tcf.org/content/report/outsourcing-online-higher-ed-guide-accreditors/#easy-footnote-bottom-22

[5] MSCHE Policy Call for Comments, Third-Party Providers and Procedures, October 4, 2023, https://www.msche.org/2023/10/04/msche-policy-call-for-comments-third-party-providers-policy-and-procedures/; Stephanie Hall, Madison Weiss,*"Comment to Middle States Commission on Higher Education Regarding Third-Party Providers Policy and Procedures,"* Center for American Progress, October 20, 2023, https://www.americanprogress.org/article/comment-to-middle-states-commission-on-higher-education-regarding-third-party-providers-policy-and-procedures/

[6] Edward Conroy, *Higher Education Accreditors Don't Want to Hear Your Complaints*, (Washington, DC, New America, February 2023), https://www.newamerica.org/education-policy/briefs/higher-education-accreditors-dont-want-to-hear-your-complaints/

[7] United States Department of Education, Guidance for Ensuring Complaint Procedures for Accrediting Agencies are Timely, Fair, and Equitable, (Washington DC, August 2023), https://www2.ed.gov/admins/finaid/accred/guidance-for-ensuring-complaint-procedures.pdf

this meeting, all agencies coming up for review by NACIQI should have brought themselves into compliance.[8]

The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), which accredits more than 750 institutions with a combined undergraduate population of over 4 million, at the time of writing, has not updated its complaint policy, even though that policy was listed as an issue to be corrected as part of the compliance report required of the agency. Currently, the agency will not consider a consumer complaint unless the student submits two signed copies of the written complaint form by mail and includes a reference to the specific SACSCOC accreditation standard allegedly violated by the school. By the time of this NACIQI meeting, SACSCOC must have a new policy in place that aligns with the Department's guidance to be considered as having met the requirements of the compliance report.

Adverse Accreditation Actions

One fundamental criticism of the accreditation process is that agencies, even when armed with the requisite information to do so, rarely take adverse action against institutions that fail to meet their standards. While policies differ, most require written notification of adverse actions be made to the institution or program, followed by a notice to the Secretary and any state licensing or authorizing agency. This notice should include the adverse action taken and the reason the board made this decision. The notice to institutions is especially crucial because it notifies them an action has been taken, outlines any steps for appeal, and informs them of any public information updates needed (i.e. website updates or student communications about probation or loss of accreditation).

The Accreditation Council for Pharmacy Education (ACPE) was found noncompliant with the standard regarding notification of accrediting decisions because the agency didn't state why the adverse action decision was made. Given how critical this information is, we urge the Department to take it seriously, and not to find the agency in compliance simply if it provides brief documentation summarizing its past decisions.

For instance, information about the nature and reasons for an accreditor action can provide critical details necessary for the Department's oversight of recognized accreditors. During the same period ACPE was found noncompliant, it was also engaged in litigation with a formerly accredited institution, Hampton University, over an adverse action. Hampton University's federal civil rights lawsuit asked the court to find ACPE's withdrawal of accreditation null and void. Hampton University School of Pharmacy, at one time the top producer of African American

[8] Edward Conroy, *Dissesension in the Ranks? Some Accrediting Agencies Embrace Guidance to Improve Complaint Processes, Others Push Back*, (Washington DC, New America, October 2023), https://www.newamerica.org/education-policy/edcentral/middle-states-agency-shows-accreditors-can-create-students-centered-processes/

pharmacists in Virginia, was initially placed on probation in 2017 for failure to meet standards related to student progress and curriculum design, delivery, and oversight.[9] In early 2020, the institution was notified its accreditation would be withdrawn, but the doctor of pharmacy program was briefly reinstated and placed on probation while Hampton appealed the decision. The institution's accreditation status was formally withdrawn in summer 2020 due to continued noncompliance and inability to meet standards related to educational outcomes. Following this decision, Hampton University filed the July 2022 lawsuit, which asserted ACPE violated its due process rights and that the accreditation process itself was "rife with bias."[10]

Hampton's lawsuit would be dismissed in 2022,[11] but it prompted important discussion about accrediting agencies as neutral decision-makers. When accrediting agencies provide the Department with even brief descriptions about the adverse actions that are taken, it allows the Department to identify emerging patterns in the kinds of institutions or programs that face particularly high incidents of probation and/or accreditation withdrawal. While the *Hampton University v. Accreditation Council For Pharmacy Education* lawsuit is unique, questions have been previously raised regarding the treatment of Historically Black Colleges and Universities (HBCUs) by accreditation agencies.[12] For example, some have posited that standards around peer review,[13] institutional debt and financial mismanagement[14] may disproportionately impact small, under-resourced institutions and programs. SACSCOC, in particular, has been the subject of claims that HBCUs are overrepresented among those institutions that received sanctions.[15] Inconsistencies persist in the ways that accreditors sanction their member institutions, as well as the language they use to describe this noncompliance. [16] ACPE and other accrediting agencies should also continuously review their previous decisions and consider whether policy changes are needed to address unintended consequences to institutions and programs that have faced sanctions.

---

[9] Accreditation Council for Pharmacy Education, Accreditation Status: Hampton University School of Pharmacy (PharmD, https://www.acpe-accredit.org/faq-item/hampton-university-school-of-pharmacy-pharmd/ (last accessed December 1, 2023).
[10] WAVY Web Staff, Hampton University files lawsuit over pharmacy school's withdrawal of accreditation, WAVY, August 10, 2022,
https://www.wavy.com/news/education/hampton-university-files-lawsuit-over-pharmacy-schools-withdrawal-of-accreditation/
AND *Hampton University v. Accreditation Council for Pharmacy Education*, Case No. 4:20-cv-00118, March 3, 2022. EDVA at Norfolk (Young)
[11] Julius Ayo, Hampton University's Lawsuit Over Pharmacy School's Withdrawal of Accreditation Dismissed, WAVY, November 3, 2022
https://www.wavy.com/news/local-news/hampton/hampton-universitys-lawsuit-over-pharmacy-schools-withdrawal-of-accreditation-dismissed/.
[12] United Negro College Fund, Biases in Quality Assurance: A Position Paper on Historicallyl Black Colleges and Universities and SACSCOC, May 2019
https://www.uncf.org/wp-content/uploads/Biases-in-Quality-Assurance_UNCF-Accreditation-White-Paper-Updated.pdf
[13] Ibid.
[14] Oyin Adedoyin, "Race on Campus: Are Accreditors Unfair to HBCUs?", The Chronicle of Higher Education, May 24, 2022, https://www.chronicle.com/newsletter/race-on-campus/2022-05-24
[15] U.S. Senate Committee on Health, Education, Labor and Pensions Dr. Belle Wheelan, President of Southern Association of Colleges and Schools Commission on Colleges, Questions for the Record
April 25, 2019 . https://sacscoc.org/app/uploads/2019/09/QFR-Belle-Wheelan-Responses-5.1.19-2.docx
[16] Antoinette Flores, *Fact Sheet: What Happens When Accreditors Sanction Colleges*, Center for American Progress, November 27, 2018 https://www.americanprogress.org/article/fact-sheet-happens-accreditors-sanction-colleges/.

Minimum performance standards and definitions

The Association for Clinical Pastoral Education, Inc., Accreditation Commission (ACPEI) was found noncompliant with Section 602.16(a)(1)(i) governing the clear expectations of accreditors for their member institutions in the area of student success and achievement.[17] Unlike the former regional accreditors, programmatic accreditors generally have clearer bright lines governing student success measures and outcomes. ACPEI, for example, mandates a specific completion rate benchmark. However, questions remain about how these minimum standards are established and whether they are adequate measures of academic rigor.

As guarantors of academic quality, accrediting agencies are entrusted to create and enforce robust standards. While accreditors cannot be prescriptive, they are tasked with evaluating student outcomes in a way that allows institutions to create their own standards and simply meet those. NACIQI has previously considered the regulatory limits of the student achievement metric,[18] but more nuanced discussion is needed about the meaning of student success and the ways these standards can lead to adverse actions in some instances while allowing other underperforming institutions to remain accredited and continue drawing down Title IV aid. The Department should not consider an accrediting agency compliant with student achievement criteria unless the agency can demonstrate that its measures are well-defined and constructed, its standards for student achievement are consistently enforced, and data confirm that its standards are effective.

Conclusion

We urge the Department to condition acceptance of the compliance reports from the named agencies on their ability to adequately address the concerns outlined above. Our hope is that as the Department continues to encourage members of the public to provide comments on any of the agencies under review, all comments, including those that deal more generally with the state of accreditation and work of NACIQI, are given consideration. The public needs timely access to all relevant materials in order to meaningfully engage in the renewal of recognition process.

Thank you for allowing the submission of this comment. We continue to applaud the Department's commitment to ensuring that the accreditation recognition process includes participation from the public. Should you have any questions or concerns regarding the comments, please do not hesitate to contact us.

---

[17] Jordan Matsudaira, ACPEI Decision Letter, November 10, 2022, https://surveys.ope.ed.gov/erecognition/#/public-documents. PDF download. The agency's areas of noncompliance can be found under the Senior Department Official / Secretary's Decision Letter.

[18] Policy Subcommittee of the National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, "Policy & Process Recommendations", August 2023, https://sites.ed.gov/naciqi/files/2023/08/NACIQI-2023-Report_Regulatory-Recommendations-1.pdf.

Sincerely,

Center for American Progress

The Century Foundation Higher Education Team

New America, Higher Education Policy Program

The Institute for College Access & Success