

NEGOTIATED RULEMAKING HEARING

TESTIMONY OF SUSAN K. HATTAN ON BEHALF OF THE NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES

MAY 21, 2013

Good afternoon. I am Susan Hattan and am testifying today on behalf of the National Association of Independent Colleges and Universities (NAICU).

NAICU serves as the unified national voice of independent higher education. With more than 1,000 members nationwide, NAICU reflects the diversity of private, nonprofit higher education in the United States. Members include traditional liberal arts colleges, major research universities, church- and faith-related institutions, historically black colleges and universities, women's colleges, performing and visual arts institutions, two-year colleges, and schools of law, medicine, engineering, business, and other professions. NAICU is committed to celebrating and protecting this diversity of the nation's private colleges and universities.

My comments today address the two topics related to state authorization and the gainful employment issue.

#1 – State Authorization for Programs Offered Through Distance Education or Correspondence Education

In response to a court decision issued last year, the Department is considering developing new regulations related to state authorization for programs offered through distance education or correspondence education. Given the substantial work being done across the country in this area, NAICU believes it would be premature to develop federal regulations in this area.

Although the prior distance education regulation was struck down in court, its issuance has had a marked effect in increasing awareness of the breadth and variety of state requirements affecting distance education providers. It has also underscored the complexity of addressing regulatory issues in a manner that is understandable to and affordable for institutions seeking to comply with state requirements.

The difficulties of navigating these various requirements have spurred conversation regarding ways in which compliance can be simplified. The most significant of these efforts is the work being done on the State Authorization Reciprocity Agreement – or SARA. The Presidents' Forum, Council of State Governments, regional education boards, APLU, and SHEEO – among others – have been engaged in this effort for some time now. A SARA framework has been developed, and work is beginning to flesh out how such an agreement might be implemented.

There is still a long road ahead. While being generally supportive of this effort, NAICU has concerns with some of its specific features and will continue to work on behalf of appropriate adjustments as the process continues.

So, in brief, there is a lot of work going on now by a variety of individuals with deep knowledge of state laws and practices. Given this high level of involvement, it does not seem to be an appropriate time to introduce new federal requirements into the mix. We suggest that the

Department defer regulatory action in this area in order to allow the current work to proceed in a manner that will maintain the ability to make adjustments. At this point, it may simply not be possible to develop uniform federal requirements that capture all the moving parts that will be required to establish a better means to regulate distance education providers.

#2 – State Authorization for Foreign Locations of Institutions Located in a State

The second state authorization issue raised in the April 16 notice relates to authorization for foreign locations of institutions located in a State.

Given the confusion that has been created by the general regulations related to state authorization (34 CFR 660.9 (a) and (b)), we urge that the Department not compound that confusion by trying to regulate foreign locations of US institutions via the States.

Experience with the existing state authorization regulation has shown that the States have chosen a variety of ways in which to recognize and regulate the institutions within their borders. Superimposing a vague set of federal requirements over this state activity has led to massive confusion—with no discernible impact on improving program performance or integrity. Equally troubling are the shifting and inconsistent interpretations of what the regulation requires. It is for these reasons that NAICU has advocated for the repeal of the existing state authorization regulation.

By the same token, we believe that attempts to expand this regulation to incorporate rules related to State regulation of foreign locations would only compound the substantial problems and confusion we're seeing today.

#3 – Gainful Employment

The gainful employment regulations are exceedingly complex and include significant reporting and disclosure requirements related to the employment and economic success of gainful employment program students. The Department's original intent was to publish regulations aimed at eliminating fraud and other deleterious practices in these programs. However, while sanctions under the final regulations were delayed and weakened, the substantial reporting and disclosure requirements required of all gainful employment programs remain in place. These requirements have been made more complicated by recent court decisions.

We urge the department to take a comprehensive look at the gainful employment regulations and target them more appropriately on areas of high risk. Specifically, we recommend that certificate programs which meet some "first-test" standard that does not require any additional reporting by institutions--such as a newly formulated repayment standard--be exempted from the burdensome collection, reporting, and disclosure requirements. Under this framework, only schools that fail this "first test" would be required to gather additional information or meet additional standards, such as a minimum debt-to-earnings level, in order to avoid negative action. This would be a simple way to deregulate satisfactorily performing institutions, while also targeting enforcement actions at programs that are performing under par.

I appreciate having the opportunity to present these views today.