

# United States Senate

WASHINGTON, DC 20510

July 20, 2018

Dr. Arthur E. Keiser, Ph.D.  
Chairman  
National Advisory Committee on Institutional Quality and Integrity  
U.S. Department of Education, Office of Postsecondary Education  
400 Maryland Ave., SW., Room 6W250  
Washington, DC 20202

Mr. Frank H. Wu, J.D.  
Vice Chairman  
National Advisory Committee on Institutional Quality and Integrity  
U.S. Department of Education, Office of Postsecondary Education  
400 Maryland Ave., SW., Room 6W250  
Washington, DC 20202

Dear Dr. Keiser and Mr. Wu,

We appreciate the National Advisory Committee on Institutional Quality and Integrity's (NACIQI) recent robust discussion on sectoral conversions and the establishment of a subcommittee to investigate this problematic issue. We write to underscore the urgency of the subcommittee's work in light of the clear oversight gaps in how these conversions are being evaluated and the U.S. Department of Education's ("Department") plans to revisit accreditation regulations. We urge the subcommittee to work expeditiously and urge NACIQI to release the subcommittee findings and report within the next three months so that its recommendations can inform the Department's intended rulemaking in this area.

As we expressed in our last letter to NACIQI, there is a troubling pattern in recent months where for-profit institutions are converting to, or attempting to convert to, non-profit entities in order to avoid regulatory scrutiny and to market themselves to prospective students as if they have nonprofit accountability and control. This past May, NACIQI heard 18 public comments that cautioned against conversions occurring in name only, from stakeholders including researchers, faculty members, state attorneys general, teacher unions, state leaders, civil rights groups, and veterans groups. These experts reminded NACIQI that the difference between for-profits and non-profits is a matter of incentives and governance<sup>1</sup> – *not simply tax structure* – and that

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<sup>1</sup> Statement from Robert Shireman, Senior Fellow, Century Foundation,  
<https://sites.ed.gov/naciqi/files/2018/06/052418NACIQI-Bookmarks1.pdf>.

NACIQI must be cognizant of efforts that simply “put lipstick on when it’s still a pig underneath.”<sup>2</sup>

NACIQI also heard from Ms. Diane Auer Jones, Senior Adviser to the Assistant Secretary for Postsecondary Education, at that meeting, who briefed the panel on the Department’s plans to reduce regulatory burden in accreditation. Ms. Jones outlined the Department’s interest in simplifying the recognition criteria and reforming substantive change requirements faced by accreditors.<sup>3</sup> This briefing follows the Department’s publication in May in the Unified Agenda that it intends to commence negotiated rulemaking on accreditation and related issues, as well as on regulations “relating to credit hour, competency-based education, direct assessment programs, and regular and substantive interaction between faculty and students in the delivery of distance education programs.”<sup>4</sup> Those notice of intents were scheduled to be published in June 2018, with the expectation that rulemaking would likely commence in the fall.

Since NACIQI’s meeting at least one accrediting agency has revised its policies to begin to address this issue. The Accrediting Commission of Career Schools and Colleges (ACCSC) – the largest national accrediting agency in the United States – released new standards of accreditation for its over 700 member institutions on July 1, 2018. Among their announced changes, ACCSC prohibited “an individual/entity/group (owner or manager) that has any financial interest in the non-profit organization/corporation... [to] serve as a board member, have a seat on the Board, or be a member of the corporation”<sup>5</sup> and gave its members until July 1, 2019 to come into compliance.

Given this backdrop of forthcoming action from the Department, growing interest from accreditation agencies themselves, and the robust discussion on sectoral conversions, we are heartened that NACIQI took the concerns presented seriously and immediately established a subcommittee to investigate and issue recommendations on sectoral conversions and broader substantive change issues. We are also encouraged that NACIQI was open to considering changes to its own prior recommendations on substantive change policy in light of the subcommittee’s work, particularly those that would allow accreditors to waive certain types of “substantive change procedures” that require accreditor approval.<sup>6</sup> We recommend NACIQI, at a minimum, consider the position that in no instance should any substantive change regulations be waived when there is “any change in the legal status, form of control, or ownership of the

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<sup>2</sup> Statement from Christopher Madaio, Office of the Attorney General of Maryland, Consumer Protection Division, <https://sites.ed.gov/naciqi/files/2018/06/052418NACIQI-Bookmarks1.pdf>.

<sup>3</sup> Briefing from Diane Auer Jones, Special Assistant to the U.S. Secretary of Education, “Reducing Regulatory Burden in Accreditation,” <https://sites.ed.gov/naciqi/files/2018/06/052218NACIQI-Bookmarks.pdf>.

<sup>4</sup> Department of Education, “Agency Rule List – Spring 2018,” Office of Information and Regulatory Affairs, Office of Management and Budget, <https://www.reginfo.gov/public/do/eAgendaMain>.

<sup>5</sup> Accrediting Commission of Career Schools and Colleges, “Announcements and Revisions to the ACCSC *Standards of Accreditation*,” Michale S. McComis, July 1, 2018, <http://www.accsc.org/UploadedDocuments/1967/ACCSC-Accreditation-Alert-070118.pdf>.

<sup>6</sup> Arthur E. Keiser, “Report to the U.S. Secretary of Education: 2018 Accreditation Policy Recommendations on Regulatory Reform,” March 2018, U.S. Department of Education, National Advisory Committee on Institutional Quality and Integrity, <https://sites.ed.gov/naciqi/files/2018/02/Regulatory-Reform-Recommendations-FINAL.pdf>.

institution.”<sup>7</sup> Further, until the subcommittee completes its work, we urge NACIQI to revise those existing recommendations to clarify that it has established a subcommittee to further examine substantive change, and that the Department should not act on any prior recommendations from NACIQI until the subcommittee has completed its work.

We also remain concerned that the proposed timeline for the subcommittee’s work may diminish the efficacy and value of its final report and any proposed policy recommendations – particularly given the Department’s presentation at NACIQI about its interest to deregulate accreditation. Mr. Keiser had noted that “[NACIQI’s] budget only allows for two meetings a year, so we’re going to have [the next meeting] at the beginning of next year.”<sup>8</sup> But this timing presents a challenge, for if the subcommittee’s recommendations on sectoral conversions do not come out until 2019, then it will not align with the Department’s plans to reevaluate accreditation regulations in 2018.<sup>9</sup>


Given the high stakes involved and the critical protections for students and taxpayers that are on the line, we urge the subcommittee to work expeditiously and urge NACIQI to release the subcommittee findings and report within the next three months so that its recommendations can inform the Department’s intended rulemaking in this area. We would appreciate hearing from NACIQI by August 3, 2018 regarding its criteria for selecting members of the subcommittee and the identities of members, when available, and the timeline of the subcommittee’s work and the publication of its findings.

Sincerely,



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ELIZABETH WARREN  
United States Senator



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PATTY MURRAY  
United States Senator



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RICHARD J. DURBIN  
United States Senator



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SHERROD BROWN  
United States Senator

<sup>7</sup> Code of Federal Regulations 602.22(a)(2)(ii)

<sup>8</sup> U.S. Department of Education, Office of Postsecondary Education, National Advisory Committee on Institutional Quality and Integrity transcript of May 24, 2018 meeting, U.S. Department of Education, <https://sites.ed.gov/naciqi/files/2018/06/052418NACIQI-Bookmarks1.pdf>.

<sup>9</sup> Inside Higher Ed, “Signals on the Agenda for Accreditation,” Andrew Kreighbaum, May 23, 2018, <https://www.insidehighered.com/news/2018/05/23/trump-administration-says-it-will-re-examine-rules-higher-ed-oversight-bodies>.

*Richard Blumenthal*

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RICHARD BLUMENTHAL  
United States Senator