The Voice for Blacks in Higher Education

September 14, 2018

Mr. Aaron Washington, U.S. Department of Education
400 Maryland Avenue, SW
Room 294-12
Washington, DC  20002

Re: Docket ID: ED-2018-OPE-0076

To Whom it May Concern:

On behalf of over 105 Historically Black Colleges and Universities (HBCUs) and roughly 80 Predominantly Black Institutions (PBIs), I write to offer comments in response to the Notice of Proposed Rulemaking (NPRM) posted by the Department of Education (Department) in the Federal Register on July 31, 2018 Docket ID ED-2018-OPE-0076 to address the agency’s regulations on Title IV of the Higher Education Act (HEA).

The National Association for Equal Opportunity in Higher Education (NAFEO) is the umbrella organization of the nation’s Historically Black Colleges and Universities (HBCUs) and Predominantly Black Institutions (PBIs). Founded in 1969, NAFEO is the only membership association of its kind, representing the presidents and chancellors of all public, private, land-grant, two-year, four-year, graduate and professional, historically and predominantly black colleges and universities. NAFEO’s mission is to champion the interests of historically and predominantly black colleges and universities; to provide services to NAFEO members; to build the capacity of HBCUs, their executives, administrators, faculty, staff and students; and to serve as an international voice and advocate for the preservation and enhancement of historically and predominantly black colleges and universities for Blacks in higher education. The organization represents 105 HBCUs and 80 PBIs, over 750,000 students, nearly 72,000 faculty members, more than 7 million alumni.

General Observations

First, we commend Secretary DeVos for initiating the process to convene a negotiated rulemaking committee (and two subcommittees), and we note our paramount and overarching commitment to working with the Department to ensure a continuation of the essential capacity of our institutions. We further commend the Secretary for hosting three field hearings, especially the hearing on September 11th on the campus of Xavier University in Louisiana. Recognized as a national leader in both the sciences and the liberal arts, Xavier University is ranked number one in the United
States in awarding bachelor’s degrees to African-American undergraduate students in physics and the physical sciences, and biology and the biomedical sciences; number one in the United States in graduating African Americans who continue to and complete medical school; and among the universities which rank highest among colleges graduating African Americans who earn Ph.D.s in the science and engineering disciplines.

**Proposed Issues Areas and Negotiated Rulemaking Committee**

The Department has proposed an ambitious agenda with twelve distinctly comprehensive topics. We believe that each area is vitally important. We are concerned, however, that a single negotiated rulemaking committee (and two subcommittees) cannot do justice to the breadth and scope of the numerous issues proposed by the Department for deliberation. In order to ensure a robust exchange regarding all of the proposed issues to be negotiated, we urge that the Department consider establishing additional committees to address the various issues and to realize the stated goals of the negotiations. The areas to be negotiated require unique expertise and experiences most often not found in one person or one department on a college campus.

We urge, also that the Department select negotiators with different expertise; many of the proposed subsets need time to drill down on important and complex issues. NAFEO looks forward to nominating negotiators from among leading experts in the fields identified for negotiations from the nation’s public, private, land-grant, two-year, four-year, graduate and professional, Historically Black Colleges and Universities and Predominantly Black Colleges and Universities, as well as our partners and professional associations, including the constituencies enumerated in the comments submitted by New America,¹ and those recommended by Public Citizen² for a separate TEACH Grant committee.

**The Triad**

The accreditation process is used in higher education to establish and evaluate colleges, universities, and educational programs for quality and to support their efforts to attain and maintain academic programs that meet acceptable levels of quality. The principal purpose of regional accrediting agencies is to address the process in which a particular college engages to improve its educational offerings. A fair and equitable higher education accountability system should respect and align with regional accrediting standards. Thus, in evaluating the current policies and practices, we want to ensure the protection of the distinct separation of the relationship among accrediting agencies, states, and the federal government, commonly referred to as the higher education “triad,” by supporting the role of the regional accrediting agencies as preeminent in the

---

¹ New America. “Comments on Intent to Form a Negotiated Rulemaking Committee.” September 5, 2018. Available at [https://www.newamerica.org/education-policy/public-comments/our-public-comments-us-department-education/comments-intent-form-negotiated-rulemaking-committee/](https://www.newamerica.org/education-policy/public-comments/our-public-comments-us-department-education/comments-intent-form-negotiated-rulemaking-committee/). Accessed on September 11, 2018. New America suggests the following constituencies be represented: “Students; Legal aid organizations; Consumer protection organizations and representatives; Faculty and instructors; Two- and four-year institutions of higher education; Systems of higher education; Financial aid officers; Veterans servicemembers and affiliated groups; Business/industry representatives; K-12 and teacher preparation organizations with expertise in the TEACH Grant program; Regional, national, and programmatic/specialized accreditors; State coordinating boards; and State attorneys general.”

² These include “Teachers whose TEACH Grants have been converted to loans, Teachers with ongoing service obligations under the TEACH Grant program, Teacher advocates, . . ., State attorneys general with an understanding of the TEACH Grant program and servicing issues, Institutions of higher education that train teachers, Financial aid officers at schools with experience administering the TEACH Grant program, . . ., and Student loan servicers.”
accrediting space, and the limiting the role of the Department to determining which institutions will receive Title IV funds. Since regional accrediting bodies serve to foster student learning outcomes and ongoing improvement through a universal standard of accountability, common practices and quality controls, we must ensure that they not overextend their reach beyond the standards spelled out in the Higher Education Act.  

Educational accrediting agencies were established to improve institutional effectiveness by setting standards for enhancement of educational quality and holding institutions accountable for attaining and maintaining certification of competency, credibility and excellence as defined by the higher education community. The standards of quality were derived by balancing the needs of society and students and understanding the fact that in higher education there are in excess of 3,000 not-for-profit higher education institutions with various institutional missions that engage in numerous approaches to student learning designed to yield “high quality degrees.”

Within the Higher Education arena there has also been the recognition that each institution has a constitutionally protected right to determine what to offer, who to teach, how to teach, and how to measure outcomes. The concept of Academic Freedom has, through the years been deemed a legal right, derived from the First Amendment to the U.S. Constitution. It was generally accepted that there were two protected freedoms under the Constitution: (1) Individual Academic Freedom, that protects an individual professor; and (2) Institutional Academic Freedom that protects universities from interference by government. Under this latter freedom, the Supreme Court indicated in several cases that higher education institutions had the right to determine who may teach, what may be taught, how it shall be taught, who may be admitted to study, and by extension how to assess outcomes.

While we support the very limited role of the Department of Education in the accreditation space to determining the fitness of higher education institutions to receive and properly administer Title IV funds, NAFEO believes that the country would be well served for the federal government to use its role in accreditation not only to make and enforce institutional eligibility requirements under the Higher Education Act including Title IV compliance, but also to make and advance institutional requirements under Title VI of the Civil Rights Act of 1964 regarding the efforts of the “Adams States” – those states which have systematically engaged in policies and practices that established and perpetuated a racially segregated system of higher education – to invest in their public Historically Black Colleges and Universities (HBCUs) such that they are comparable to and competitive with their historically White colleges and universities (HWCUs). We believe that a discussion among negotiators about this would be helpful for Members of Congress that we believe would need to ultimately make the adjustment.

NAFEO believes the Department of Education should, with congressional action, include in its accreditation reviews the gathering of data not only to determine whether the states are meeting the requirements of Adams v. Califano and its progeny, but that the Department, with

---

3 The accrediting organization must consider the institution’s curricula, faculty, facilities, fiscal and administrative capacity, student support services, recruitment and admissions practices, measures of program length, objectives of the credentials offered, and student complaints received directly by the agency or association or those that are available to the agency or association.

4 18 states: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky Louisiana, Maryland, Mississippi, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia.
congressional action, should also include among its Title IV accreditation assessments, whether the public higher education institutions are making progress toward educating proportionately more of the increasing populations of the states and the nation – low-income, first generation students, and students of color. The institutions that are graduating proportionately more of the growing populations of the states and the nation in growth and high need disciplines should be rewarded in both the Title IV accreditation process and in the receipt of Title IV funds. We believe that such a discussion would be an extremely useful discussion to have at this time, and that a separate negotiation committee should be empaneled to have this discussion along with some of the others proposed by the Department.

The federal government has an important role to play in ensuring that the regional and specialized accreditors adjust their review criteria from time-to-time, and assess academic quality to reflect the shifts in the higher education landscape, the national demographics that will change, as they have done significantly, even since the most recent reauthorization of the Higher Education Act. There must be a national imperative to train and educate significantly more, and more diverse Americans to meet our national education, research, development, scientific innovation, employment, economic, enterprise, sustainability, security and civic goals. The Department of Education and the United States Congress must take this as seriously and must address this need with the same consideration as they do other important aspects of moving the nation to preeminence in education.

**Teacher Education Assistance for College and Higher Education (TEACH) Grant Program**

The Teacher Education Assistance for College and Higher Education (TEACH) Grant program was created by Congress in 2007 to provide a new and important grant program for students pursuing higher education to serve as teachers, especially in disciplines of high need and service areas of high need. Students participating in the program generally receive up to $4,000 in grants annually. They must commit to serve in high-need fields in high-need schools or districts for four years within eight years after graduation. Students who participate in the TEACH program must demonstrate, annually, to a Department of Education private servicing contractor that they meet the service requirements. Students who received a TEACH Grant who fail to make the annual demonstration of their eligibility, based on their service following graduation, have their grants converted to federal Direct Loans. The students must pay back the grants **cum loans** with interest. TEACH grant awardees understand this at the time they receive the grants.

This important program to assist in preparing and moving more excellent, diverse teachers into American classrooms and retaining them in these classrooms, has failed to realize it tremendous promise. According to a 2015 Government Accounting Office (GAO) report, over the course of just one year, the Department of Education and its service provider experienced anomalies and wrongful conversions of grants to loans for more than 2,200 grantees who either met or were in the process of meeting their service requirements.

Because HBCUs graduate roughly 50% of African-American public-school teaching professionals, and disproportionate percentages of students attaining teaching degrees who have unmet financial need and go on to teach in high-need fields in low-income areas, NAFEO is particularly interested in working with the Department of Education and/or Congress in remedying the shortcomings of the program or the administrative failings. The TEACH Grant program has tremendous potential for students attending one of the Nation’s 50 HBCU accredited schools of education, yet, the administrative failings of the program threatens to cast a cloud on the program. NAFEO has a unique and special interest in working with the Department and Congress to fix the current
challenges and eliminate or at a minimum, make negligible the inadvertent or wrongful, grant-to-loan conversions and improve outcomes.

A thorough examination of the causes, effects and remedies for the above noted challenges should be addressed by a separate panel and fast-tracked. According to a report by the Department of Education, even though teachers are complying with their obligation to teach math, science, and reading in high-need areas, 63% of the teachers’ TEACH Grants were converted into unsubsidized loans\(^5\). We urge the Department to establish a dedicated negotiating committee with negotiators who possess expert knowledge to ensure that the program benefits the teachers, schools, school systems, and communities it was intended to benefit, and to design and implement an immediate remedial plan to address this urgent problem.

As the Department proceeds with the rulemaking process, NAFEO looks forward to finding ways to share the perspectives of the HBCU community. We will submit the names of the leading experts from the HBCU community, its research centers, associations, and partners to fully engage in the negotiations process and provide the perspectives and a potent voice for America’s quintessential equal educational opportunity higher education institutions, that are educating disproportionate percentages of the growing populations of the states and the Nation in growth and high need disciplines. Again, thank you for the opportunity to offer comments on the Department’s regulations on Title IV of the Higher Education Act (HEA).

Sincerely,

Selena Mendy Singleton

Selena Mendy Singleton
Chief Operating Officer
NAFEO
(202) 552-3301
ssingleton@nafeo.org

---