U.S. House of Representatives

Committee on Education and the Workforce

Hearing on H.R. 4283

"College Access and Opportunity Act"

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Introduction

Chairman Boehner, Ranking Member Mr. Miller, members of the committee, my name is Barmak Nassirian and I am Associate Executive Director with the American Association of Collegiate Registrars and Admissions Officers. I am honored to have this opportunity to share the views of our members with the Committee regarding certain provisions of H.R. 4283, the "College Access and Opportunity Act of 2004."

AACRAO is a nonprofit association of more than 2,300 institutions of higher education and more that 9,000 campus enrollment services officials. The campus administrative officials that comprise our membership range from front-line administrative staff to senior administrators with primary responsibility for enrollment planning, records management, administrative computing and other important operations central to the smooth and efficient administration of colleges and universities. Our membership includes public and private non-profit institutions as well as for-profit collegiate institutions.

Today's hearing focuses on the characteristics of for-profit schools participating in Title IV programs and considers whether students attending such institutions receive equitable treatment under current law. The question as framed is somewhat strained. Current law treats all eligible students identically and does not make distinctions among students on the basis of the type of eligible institution they attend. In contrast, participating institutions are treated differently under the Higher Education Act, as they are under a variety of other federal statutes, most notably the tax code. As it deliberates on H.R. 4283—pending legislation to reauthorize the HEA—the Committee is understandably interested in eliminating disparate treatment of eligible institutions that it deems inappropriate, while retaining differences in the law that can be justified on the basis of real differences among schools. Clearly identical treatment of different entities can be as inappropriate as different treatment of identical ones. The Committee is quite rightly interested in striking a proper balance and I hope the following comments prove helpful to the members as they consider possible changes. We believe the bill as currently drafted removes some of the most important safeguards for students and taxpayers. In addition to provisions that would weaken federal financial aid program integrity measures, the bill would shift significant additional costs to students by failing to authorize adequately increased Pell Grant maximum awards, eliminating low-cost consolidation interest rates, and increasing the rate cap on student loans. Regretfully, we oppose this bill as it currently is written.

Background

The for-profit sector's participation in Title IV was first authorized in 1972. At that time, the majority of proprietary schools were small privately-held trade-schools that provided vocational training. Today, the for-profit sector's participation in Title IV programs has grown to 2,215 schools, some 789 of which are degree-granting institutions. Among these are a number of publicly-traded institutions with large enrollments and multiple campuses. While the for-profit sector accounts for a significant percentage of the total number of institutions participating in Title IV, the percentage of students enrolled in the sector is quite small: students in this sector represent about 4 percent of the total student population, and only 2.1 percent of those enrolled in degree-granting schools (Attachment 1). The small size of the population served by this sector should not detract from a number of trends within higher education that can be substantially credited to the proprietary sector. For example, for-profit schools were at the forefront of innovations such as flexible course scheduling, convenient locations for working adults and accelerated programs. In addition, their model of student services—a model that treats students as consumers—has been significantly adopted by the collegiate sector.

Proprietary schools' track-record of flexibility and innovation is directly tied to their market orientation and the relative autonomy typically afforded owners and managers to administer the schools. In contrast, traditional collegiate institutions in the United States have a long tradition of shared governance, requiring active faculty involvement and broad consensus with regard to program offerings and academic policies. The profit motive that drives proprietary schools' responsiveness to market conditions has certainly been the primary force behind many of the positive innovations associated with this sector. Realistically, the same profit motive can, unless constrained by reasonable protections for consumers and taxpayers, induce schools to engage in practices that harm their students and the federal fisc. Sadly, federal student financial assistance programs have had too many instances of waste, fraud, and abuse associated with the for-profit sector. The worst of these was amply documented more than a decade ago by the Permanent Subcommittee on Investigations of the Senate Government Affairs Committee under the chairmanship of Senator Sam Nunn. The range of problems discovered by the Subcommittee included[1]:

- Deceptive recruitment practices;
- False claims and representations to prospective students;
- Falsification of admissions and financial aid records;
- Disbursement of aid to ineligible students;
- Schools that consisted of significant recruitment and financial aid operations, but non-existent or inadequate teaching infrastructure.

In response, the 1992 reauthorization of the Higher Education Act included a series of program integrity measures that, together with more robust enforcement by the Department of Education,

[1] Senate Hearings 101-659; Parts 1-4, February 20 and 26, September 12 and 13, September 25 and 26, and October 10, 1990. See also Senate Hearings 102-58 (1991) and 103-491 (1993).

significantly curbed the most egregious instances of fraud and abuse. Since 1992, components of the program integrity measures have been modified, relaxed or undone and some of these measures are under review by the Committee today. It is these provisions that I will discuss.

Single Definition of Institution

Currently, the Higher Education Act includes two distinct definitions of institution of higher education. The definition contained in Section 101 is limited to public or private non-profit institutions and is used to establish eligibility for non-Title IV programs. An expanded definition is used in Section 102 for purposes of establishing institutional eligibility for Title IV only. This definition of institution of higher education was modified in 1998 to include proprietary institutions, postsecondary vocational schools and certain institutions outside the United States. The bill pending before the Committee would adopt a broader definition that is substantially similar to that contained in Section 102 to establish a single definition of institution of higher education under the Higher Education Act.

AACRAO joins the rest of the higher education community in objecting to the proposed change and respectfully urges the Committee to consider the following concerns.

First, the public policy goals motivating a change are not compelling or clear. It is difficult to justify providing federal gift aid to profit-maximizing institutions unless the Committee believes that the provision of such federal funding will bring about a public good. We are unaware of the outcomes that federal subsidies to for-profit entities would allegedly effectuate. Where the for-profit sector might have advantages in efficiency or productivity, we believe federal contracts—not outright grants—would be the proper mechanism of availing the public of these advantages.

Second, the proposed change is likely to have severe redistributive consequences that could dilute the effectiveness of meager federal funds. Such important programs as those funded under Titles III and V of the Act are already under strain and would be further weakened by the sudden influx of newly eligible schools with unproven track records. For example, there currently are 165 grantees in the Hispanic Serving Institutions program. If the proposed single definition is approved, an additional 110 schools would become immediately eligible for the program.

Third, the Higher Education Act's definition of institution of higher education is relied upon in numerous other federal and state laws, as well as private contracts and agreements and any radical changes in definition would likely have significant unintended consequences. Even if the substantive arguments against the creation of a single definition were to be dismissed, the sudden change could cause chaos for the many other parties relying on the current Section 101 definition. We respectfully urge the Committee to carefully analyze the effects of a change in definition before making any significant changes.

The 90/10 Rule

The 90/10 rule is a modified version of a program integrity provision originally inserted into the 1992 Amendments. At that time, the rule required that at least 15 percent of a proprietary school's revenues come from non-Title IV sources. The 1998 amendments reduced that share to 10 percent. The bill pending before the Committee would eliminate the rule altogether.

We believe that the proposed elimination of the 90/10 rule is ill-advised, and that the elimination of this important market-based provision would significantly harm the interests of students and taxpayers.

To better explain our concern, we respectfully ask the Committee to consider exactly what type of for-profit school would gain eligibility if the rule were eliminated. Only schools that would be funded entirely (or nearly entirely) with Title IV dollars would stand to gain under the proposed changes. The most telling characteristic of such schools would be not only student bodies entirely consisting of students with Expected Family Contributions of zero, but also tuition and fees that mathematically equal the maximum Pell grant plus the maximum loan limit. As mentioned above, schools fitting this description did enjoy Title IV eligibility before 1992, with disastrous consequences for their students and the taxpayers.

By way of background, we point out that the original rule – the 85/15 rule – arose from the desire of Congress to protect veterans. In 1952, as it extended the GI Bill after the Korean conflict, Congress was concerned that the educational benefits not end up funding courses of little value that flourished only to capture veterans' educational benefits.

More than 25 years ago, when the 85/15 rule was challenged, the Supreme Court upheld it per curiam.[2] The Court's decision described the 85/15 rule as based on a "rational assumption" that allowing the free market mechanism to operate would weed out those institutions which could survive only by the heavy influx of Federal payments.[3] The Veterans Administration still operates under the 85/15 rule today.[4]

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[2] *Cleland v. National College of Business*, 435 U.S. 213 (1978).

[3] Id. at 218. The Supreme Court points our that Congress continually extended the reach of the 85-15 Rule:

First version – Applied only to non-accredited courses not leading to a college degree, that were offered by proprietary institutions. 435 U.S. at 216.

1974 – The 85/15 requirement was extended to courses not leading to a standard college degree but offered by accredited institutions. 435 U.S. at 216, citing to sec. 203(3) of Pub. L. 93-508, 88 Stat. 1 582.

To maintain the 90/10 rule the Committee need not rely solely on the rationality of the assumption that a modicum of market value serves to ensure program integrity. In 1997, at the request of the Subcommittee on Human Resources of the House Committee on Government Reform and Oversight, the General Accounting Office initiated "a study to address the core of the issue: Is there a clear relationship between reliance on Title IV revenues and school performance?"[5] The GAO did find such a relationship. The title summarizes its conclusions: *Proprietary Schools: Poorer Student Outcomes at Schools that Rely More on Federal Financial Aid."*.[6]

The 50 Percent Rule

The advent of the Internet has revitalized interest in distance education within the traditional collegiate sector and promises to bring tremendous benefits as web-based delivery technology improves over time. By far the vast majority of colleges and universities have embraced distance education and are actively contributing to the creation of next-generation distance education models and technologies. The great interest in distance education is combined with concerns about security and integrity that parallel other deployments of the Internet. As with all things virtual, our enthusiasm for the great potential of the Web should be tempered with realistic safeguards against the greater risks associated with cyber-transactions.

1976 – The 85/15 requirement was further extended to courses leading to a standard college degree. 435 U.S. at 216.

4 38 CFR 21.4201. "Except as otherwise provided in this section the Department of Veterans Affairs shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the Department of Veterans Affairs pursuant to Title 38 U.S.C. This restriction may be waived in whole or in part."

5 *Ensuring Quality Education from Proprietary Institutions,* GAO/HEGS-96-158 (June 6, 1996).

6 GAO/HEHS-97-103. Henceforth *Poorer Student Outcomes*.

The Committee's interest in promoting utilization of new technologies in distance education is shared by our members. We are, however, quite concerned about the potential for abuse if an important provision of current law that limits the percentage of courses offered entirely through distance education is eliminated. The fifty-percent rule limits the number of courses offered via distance education, as well as the number of students enrolled in distance-delivered courses only, to fifty percent of the total for each category. The provision dates back to the 1992 reauthorization's efforts at curbing documented abuses associated with distance education. We believe this safeguard continues to be necessary and should be maintained, a conclusion with which the GAO agrees. In February of this year the GAO concluded "[o]ur analysis of several factors including the extent to which any changes would improve access to postsecondary schools, the impact that changes would have on Education's ability to prevent institutions from conducting fraudulent or abusive practices, and the cost of implementation indicates that eliminating the restrictions without ensuring some form of management accountability would likely incur a higher risk for fraud and abuse than currently exists." The GAO continues by pointing out that the Department of Education recognizes that elimination or modification of the 50 percent rule would cost federal student aid programs.

While we agree that the rule may inadvertently limit the participation of some providers, we believe, as does the GAO, that continuation of the Demonstration Program, which allows for waivers to the 50 percent rule and provides monitoring and technical assistance on a routine basis is the most prudent approach to the federal financing of entirely distance-delivered programs.

Transfer of Credit

Since today's hearing focuses on H.R. 4283 and proprietary institutions, I would be remiss if I did not comment on transfer of credit proposals in the legislation. The bill contains numerous transfer-related provisions, virtually all of which address portability of credits earned at nationally accredited institutions—typically, proprietary schools—to regionally accredited colleges and universities. As the national association of transfer practitioners on campus, AACRAO believes that the proposed legislative language would have significant adverse consequences for students, taxpayers and the American tradition of federal non-interference with academic judgments of colleges and universities. Historically, the federal government has wisely allowed colleges and universities to autonomously determine the terms and conditions their students must meet to earn various academic degrees. H.R. 4283 would, for the first time, create a new federal mandate on a fundamentally academic issue, i.e., transfer of credit, and as such, would undermine the ability of institutions to safeguard the integrity of their own credentials.

The United States has the world's most mobile system of higher education. The Department of Education's Office of Educational Research and Improvement has found that the proportion of undergraduates attending multiple institutions of higher education grew from 40 to 54 percent (and among bachelor's degree recipients, from 49 to 58 percent) during the 1970s and 1980s. These data suggest that the proportion of transfer students surpassed the 60 percent mark in the 1990s. In addition, OERI found that the number of institutions attended by students had no effect on degree completion.

Not only is there every evidence that student mobility is at an all-time high without *any* documented adverse impact on degree completion, state policymakers and the higher education community are actively working on improving credit portability and making transfer even more seamless. AACRAO, for example, maintains a centralized database of transfer credit practices. The National Transfer and Articulation Network is working to improve inter-institutional articulation agreements. A number of states have put various mechanisms in place to help facilitate inter-institutional portability of academic credit. In view of all these positive developments, a one-size-fits-all federal mandate could not have been proposed at a less propitious time. Congress mandated that the U.S. Department of Education study the transfer issue during the last reauthorization of the Higher Education Act in 1998, yet the Department has not fulfilled its mandate. We fear that federal intrusion into academic prerogatives of the world's best higher education system will cause irreparable harm to the nation if Congress acts before it has adequate facts at its disposal. We are alarmed because the transfer-related provisions of H.R. 4283 are too blunt an instrument to address any shortcomings in the credit evaluation procedures, and would certainly harm transfer students, institutions of higher education and the public.

First, the proposed legislation represents a congressional second-guessing of campus academic judgments about course-equivalencies. This imposition of the new transfer mandate represents an unprecedented federal intrusion on the academic autonomy of colleges and universities. Academic degrees are made up of credits and federal regulation of credit-equivalencies is tantamount to a federal degree recognition policy.

Second, credit evaluation is a complex and deliberate process of placing students in courses for which they have the necessary prerequisites. Today's voluntary system of inter-institutional transfer is based on principles articulated in the industry-recognized Joint Statement on Transfer of Credit (Attachment 2). AACRAO drafted this document along with the American Council on Education and the Council for Higher Education Accreditation. The Joint Statement recommends that institutions evaluate transfer credit on the basis of three criteria: quality, comparability and applicability. Specifically, the Joint Statement discusses the three criteria as:

> "(1) The educational quality of the learning experience which the student transfers**;**
>
> (2) The comparability of the nature, content, and level of the learning experience to that offered by the receiving institution; and

(3) The appropriateness and applicability of the learning experience to the programs offered by the receiving institution, in light of the student's educational goals."

Credit evaluation professionals on campus go to great lengths to correctly analyze transfer applicants' transcripts and provide fair and accurate equivalencies that avoid duplication of effort and that correctly place these students in the sequences of courses for which they are academically qualified. The proposed transfer provisions would do away with the subtleties of credit evaluation by federally reducing the task to course comparability and student performance. As such, legislation would undermine academic quality at the same time as it would cause many students to be misplaced in courses for which they are not academically prepared.

H.R. 4283 would require institutions to disclose a statement on their transfer policy and, more importantly, would dictate the substance of an institution's transfer of credit policy to at least include non-denial of credits solely on the basis of the agency or association that accredited the sending institution, so long as the agency or association in question is recognized by the U.S. Secretary of Education. This provision would essentially do away with specialized accreditation by explicitly requiring institutions to treat all agencies and association recognized by the Secretary as interchangeable—technical school credits with medical school credits, law school credits with cosmetology school credits. Indeed the legislation would require institutions relying on non-federal voluntary accreditation standards—like medical education—to substitute the Secretary's unrelated judgments for their own autonomous systems of peer recognition. Further, the proposed legislation would set Secretarial recognition of accrediting bodies—hitherto deemed to be the minimal threshold for participation in Title IV programs—as the de facto ceiling by denying institutions the right to be more academically demanding than the least rigorous of accrediting agencies recognized by the Secretary.

Third, the legislation would not only hurt students by distorting their qualifications and causing incorrect placements, it would outright deny Title IV eligibility for some transfer students. By mandating that schools award academic credits even for coursework that is not applicable to the students' academic program, the proposed language would push many students out of eligibility for federal financial assistance by penalizing them under federal Satisfactory Academic Progress regulations that cap the number of credit hours a student can take and maintain Title IV eligibility.

Fourth, the proposed legislation would set up new and cumbersome reporting requirements to generate information of dubious value. The bill would require production and publication of credit acceptance statistics based on the accreditation status of sending institutions. Yet the bill is unclear as to how reporting institutions would authoritatively determine the accreditation status of each sending institution to the satisfaction of the provision's enforcement authorities. In mandating this new data reporting burden, the provision only adds to the problem of escalating college costs that the Committee seeks to redress elsewhere in the legislation.

Fifth, the proposed legislation would require accrediting bodies to serve as federal agents in enforcing the transfer mandates by adding three new provisions to Section 496(c). Not only would this be a redundant distraction for accreditors, it would add significantly to the costs of accreditation and represents another costly federal mandate working at cross-purposes with the college affordability provisions. Additionally, the bill contains several additional references to transfer in various disclosure provisions amending Section 485(a)(1) of the Higher Education Act.

AACRAO believes that one-size-fits-all legislative mandates on a complex topic such as credit evaluation would result in poor student placements, diminished quality and wasted resources. Institutions of higher education have an obligation to their students, their graduates, employers, other institutions of higher education and the public to protect the integrity of the degrees they confer. In an age when fraudulent credentials are becoming a national and international security problem as discussed yesterday in the Senate, Congress should be strengthening, not undermining, the ability of colleges and universities to control the award of *their own* credentials.

AACRAO respectfully urges the committee to strike the transfer of credit provisions in H.R. 4283 and to instead engage in an objective study of transfer issues. We believe legislative action of this significance is not prudent before the findings of a properly conducted study are available to the Committee. AACRAO stands ready and willing to assist with such a study.

On behalf of the members of AACRAO, I thank you for your consideration of our views. We are mindful of your extraordinary contributions to the nation's students and look forward to working with you as you advance the cause of education.