Senate Committee on Health, Education, Labor, and Pensions

"Improving For-Profit Higher Education: A Roundtable Discussion of Policy Solutions"

July 21, 2011

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(AACRAO)

Chairman Harkin, Ranking Member Enzi, and 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 appreciate the opportunity to participate in this discussion of institutional eligibility for participation in federal student aid programs authorized in Title IV of the Higher Education Act of 1965, as amended. The Senate HELP Committee's oversight investigation of the for-profit sector during the past year has demonstrated significant shortcomings and failures in the current federal gatekeeping framework. I hope that this brief summary of my views on some of the underlying defects in the current Title IV institutional eligibility triad system might be useful to the Committee in its deliberations about how to improve outcomes for students and the taxpayers.

AACRAO is a non-profit association of more than 2,500 institutions of higher education and some 10,000 campus enrollment services officials. Our members play a central role in protecting and maintaining the academic integrity of their institutions as admissions gatekeepers and as enforcers of the institutional academic policies on the basis of which academic credits and credentials are earned. As key stakeholders on behalf of their own institutions, they also have a systemic interest in the academic integrity of other institutions because they rely on credits and credentials granted by high schools and previously attended colleges and universities.

Over the course of the past decade, our members have become increasingly alarmed by a dramatic rise in the number of diploma mills—from fake "high schools" to phony "doctoral" institutions—and the proliferation of applications based on fraudulent and questionable credentials. The constant battle against ever more sophisticated fraud and abuse now occupies a major aspect of our members' professional responsibilities.

While the detection of document fraud and identification of outright diploma mills are difficult enough tasks, a third and more systemic threat to academic integrity has emerged in the form of questionable schools that have managed to establish eligibility for participation in federal student aid as collegiate institutions. These institutions often combine multiple indications of potential trouble, such as high-attrition/low-graduation rates, non-transferability of academic credits to other institutions, low licensure pass-rates for programs in licensed professions, low job-placement rates for their vocational programs, high-debt/low-income characteristics for the vast majority of their students, high default-rates, and very high levels of dependence on federal dollars. The ability of subpar and often predatory institutions to game the federal gatekeeping triad (i.e., non-governmental accreditation, state licensure and federal certification) undermines public support for federal student aid programs and devalues all academic credentials, even those that have been earned at legitimate institutions.

To successfully establish eligibility for participation in federal student aid, institutions must be accredited by an accrediting body that is recognized by the U.S. Secretary of Education; they must be licensed by the state(s) in which they operate; and they must be deemed eligible and certified to participate in federal student aid programs by the Department of Education. While this triad is procedurally difficult, burdensome and expensive to navigate, structural shortcomings in every one of its three layers allow for abusive and fraudulent operations to get through. Given the enormous sums of federal funding that are available for the taking upon establishing full eligibility, it should come as no surprise that there has been no shortage of investment capital to pay for upfront expenses of breaching the system. Over the course of the past decade, and particularly since 2006, when all limitations on distance education delivery by the for-profit sector were lifted, numerous new "institutions" have cropped up on the internet and many established institutions have seen enrollment growth figures, along with Title IV utilization rates, that are difficult to reconcile with genuine academic quality and even a modest probability of reasonable outcomes for their students or the taxpayers who foot the bills.

Accreditation

In offering the following critique of accreditation as it is currently configured, I should emphasize my own strong commitment to institutional autonomy and the American tradition of political non-interference in the academic affairs of colleges and universities. I certainly agree with those observers who believe that our current practices in accreditation are so abstract, so subjective, so procedural and so self-referential as to border on being substantively meaningless in assuring institutional quality or integrity. Just about the only worse way of doing things would be to adopt governmental recognition as an alternative.

I should also explicitly acknowledge that quality assurance through peer-review has been a historically successful model by which institutions that are truly interested in maintaining high standards can continually improve. The problem we face is that the quality assurance scheme that once worked magnificently well has failed to keep pace with the transformational changes in the industry it is supposed to oversee, and that it is increasingly reduced to a vestigial structure with little relevance or effect.

Conditioning eligibility for federal funding on accreditation is at the root of most, if not all, of the latter's present shortcomings. Accreditation worked best when it was entirely voluntary and non-governmental. The very act of tying eligibility for federal financial aid to accreditation created powerful incentives that altered accreditation as it had existed until then. With billions of federal funding at stake, accreditation has to be able to competently confront well-funded or well-connected operations that only pay lip service to the historical orthodoxies of institutional mission, self-evaluation, and peer review. It does an abysmal job of it today for a number of fairly obvious reasons.

First, accreditation is dominated by the very entities that it is supposed to oversee. Not only is the National Advisory Committee on Institutional Quality and Integrity (NACIQI) disproportionately composed of officials from institutions, accrediting bodies themselves and their association are also dominated by and financially dependent on institutions. Rarely do regulated entities have such overt and overwhelming control of their regulators. A clear legislative solution here would be to require appropriate conflict of interest rules to exclude individuals with fiduciary obligations to or financial interests in any regulated entity from positions or appointments that influence the federal recognition process. Such individuals should also be legislatively barred from serving as officers or employees of any Secretarially-recognized accrediting body. Legislation could also mandate broader representation in all tiers of accreditation by other significant stakeholders.

Second, accrediting bodies often have insufficient resources to play the role that they are assigned. Some of the smaller accrediting bodies have budgets so small that they appear to be little more than sham operations. Clearer guidelines on factors of administrative capability and financial responsibility are desperately needed to ensure that accrediting bodies have resources commensurable with the resources of the institutions that they approve and the federal dollars they put at risk. In addition, rules should require all accreditors to have visible and accessible consumer complaint, fact collection, and due diligence processes, and require institutions to explicitly refer to these processes every time they invoke or advertise their accreditation status.

Third, our current system is biased in favor of erring on the side of granting, rather than denying, accreditation. Accrediting bodies have strong financial, political, and legal incentives to approve even the most questionable applicants. This is a function of the previous two attributes, and it is given additional impetus by the fact that there are no substantive adverse consequences for accreditors with a history of bad judgment. A legislative remedy here would be to impose requirements and liabilities similar to those imposed on auditors of accrediting bodies. The threshold for any liability should be calibrated in a manner that would impose penalties only on accreditors that display systemic poor judgment or a purpose of evasion. Another mechanism to create meaningful consequences for accrediting bodies would be to use cohort default rates much in the same way as they are used for institutions, and previously, lenders and guarantors.

Fourth, Secretarially-recognized accrediting bodies should be prohibited from engaging in accrediting activities outside the scope of their recognition, particularly with regard to foreign institutions. In our work on diploma mills at AACRAO, we have come across instances of troubling behavior by Secretarially-recognized accrediting bodies overseas, and have been concerned as well with some Secretarially-recognized entities' activities vis-à-vis high schools.

Fifth, accrediting standards need to be more explicitly tied to verifiable outcomes where practicable. The abstract and highly subjective review process historically associated with accreditation is laughably inappropriate for some fields. The self-evaluation/peer-review process, for example, would be a far less reliable and more complex measure of the quality of a truck driving school than the percentage of its students who pass the licensure exam. Where direct outcomes measures may not be available, reasonable proxies can often be put in place to ensure program integrity.

Sixth, accrediting standards should be appropriately tied to the incentives, internal structure, and capabilities of the institutions being accredited. Self-evaluation and deference to institutional academic judgment, for example, make perfect sense in settings where tenured faculty are in control of the curriculum through shared governance, but make no sense at all in settings where a group of business-minded executives determine academic policy and hand it to at-will instructors to execute.

Seventh, do away with referencing infinitely variable institutional missions as a significant determinant of a pass-fail accreditation system, and develop a more meaningful classification of institutions to codify judgments about institutional quality. Our current scheme is, on its face, counter-intuitive because of its grouping of clearly dissimilar institutions together. When confronted by the public's puzzlement at how some of the finest and some of the worst institutions in the land enjoy the same accreditation status—a feature that the latter often trumpet in their advertising—accreditation insiders refer to the uniqueness of institutional missions as central to all judgments about quality. This, in effect, means that we currently assess some 7,000 accredited institutions on a grading scale with 7,000 different grades. A far simpler, more meaningful and more enforceable grading system would be to recognize and explicate a more comprehensible set of possible missions, and create an accreditation system that evaluates institutions on the basis of the classification that they believe best represents them.

Finally, put an end to the current practice of buying and selling accreditation. Changes in ownership or control should trigger a new accreditation application and review.

State Authorization

The requirement for state authorization is a key component of the Title IV gatekeeping triad. The logic behind mandating state approval was partially a function of the fact that, by far, the vast majority of institutions—including private ones—issue degrees through a grant of authority from their respective state governments. Equally as important, states have long been primary providers of consumer protection for their residents, and the state authorization requirement further empowers them to enforce their rules in that capacity.

It should come as no surprise that the states vary tremendously in how actively they have performed this important function. Some states have implemented robust criteria for authorization and licensure, while other states mandate little more than basic incorporation requirements. There clearly are structural shortcomings with the current state authorization mandate.

It is not unreasonable to rely on the states when they have some of their own funds at risk, which they do with all public and many private institutions. But it is important to realize that in too many cases, because the states have none of their own resources at risk, they have no particular financial incentive to engage in meaningful oversight of institutions operating within their borders. Indeed, propping up such institutions solely to keep them operating may become a higher priority for some states than ensuring good outcomes or protecting students, particularly if the students in question happen to be out-of-state students enrolled through distance education. The Committee may wish to examine the following policy recommendations to improve the state authorization requirement of the triad.

First, the current minimalist state authorization requirement should be maintained only for institutions that receive significant amounts of state funding. On the theory that in such cases, the state already has a powerful incentive to conduct oversight, federal law should continue to rely on state approval without additional micromanagement. Furthermore, the Committee may wish to explore the idea of a state reciprocity arrangement under which institutions receiving significant funding from any state would be allowed to provide distance education in all states without multistate approvals, provided that they don't exceed certain ratios in revenues or enrollments outside their own state.

Second, for those institutions that the states are deemed to have insufficient financial incentives of their own to properly regulate, federal law could provide several options. The Committee may wish to spell out additional substantive requirements for state authorization in legislation for this subset, or it could delegate additional oversight responsibility to the Department of Education. Under either arrangement, this leg of the triad should primarily focus on traditional consumer protection activities to prevent predatory practices and waste, fraud and abuse.

Third, to minimize unnecessary duplication of effort and costs, multistate approvals should only be required for institutions that cross a threshold of presence in each state. Institutions that have already received appropriate approval from one state under any of the provisions discussed above should be required to obtain additional approvals in other states only if they enroll a sufficiently large number of students in those states.

Federal Certification and Program Participation Agreement

Like the other components of the Title IV gatekeeping triad, federal certification and the execution of a program participation agreement involve primarily procedural requirements on institutions. It is fair to describe the current federal regulatory approach as focusing on the means, but not the ends. There are extensive regulations on administrative capability and financial responsibility, but no concrete definition of good outcomes for students or the taxpayers. In short, the current federal framework fails to provide the most basic assurance that institutional interests align with the interests of the students that they enroll or the interests of the taxpayers who finance the system. The Committee may wish to explore the following policy recommendations for an altogether new federal oversight system that ties institutional eligibility to specific protections and outcomes for students and the taxpayers.

First, ensure market viability of participating institutions by restricting inappropriate reliance on federal funding by schools. A number of key policymakers have, for example, proposed changing the current “90/10 Rule” by limiting the total amount of federal funds received through Title IV, VA educational benefits, and the DoD tuition assistance program to no more than 85 percent of each institution’s total revenues for any given year. The rule should prevent the current gaming of the system by excluding all institutional aid including any private-label loans that have been made or are held by an entity that has had an origination relationship or any business arrangement with the school. Such a change would certainly be appropriate and it would ensure that no institution becomes exclusively dependent on federal funds.

Second, expand the current definition of cohort default rates to more accurately capture all defaults. It is odd and counterintuitive that defaults that occur outside the official window don’t “count” against the institutions where the loans were disbursed. Just as borrowers and taxpayers are stuck with defaults whenever they occur, schools should likewise have all defaults associated with them counted accurately, no matter when they occur.

Third, vest institutions in good outcomes through meaningful risk-sharing as an intermediate-sanction alternative to simple loss of eligibility. This is particularly necessary for institutions that generate egregiously large margins, because their internal incentives and rewards are tied to quarterly statements, while current federal metrics for each quarter’s enrollments are measured in years. If management is paid on the basis of last quarter’s financials, in other words, it may be willing to engage in risky behavior with disastrous outcomes that only register five years down the road. The Committee may wish to explore a mechanism to impose joint and several liability for a portion of actual defaults on institutions and insiders associated with each cohort of borrowers.

Fourth, simplify and rationalize the federal certification process where possible by linking eligibility to specific outcomes. Specifically, for programs that lead to licensure, programmatic eligibility should certainly be tied to licensure rates.

Fifth, to avoid gaming of the licensure system by schools, the certification process should weed out deceptive and abusive practices by schools offering phony programs that are intended to confuse students. The Committee has already heard testimony from a victim who did not realize she would not even be eligible to sit for the licensure exam because of her program's lack of proper programmatic accreditation. There are numerous examples of misleading and deceptive programs, odd and misleading degrees and major fields, all of which are designed to justify the high costs of such programs by confusing students into thinking that they would get jobs that the programs simply did not prepare them for.

Sixth, the federal certification process should ensure the veracity of career placement, representations about salaries, and other claims made by institutions in their advertising and recruitment efforts. This Committee's groundbreaking investigation of how institutional recruiters lied to prospective students should not have taken the Department of Education by surprise. Institutions and, more specifically, their management should be held responsible for misrepresentations and deceptive practices. The Committee may wish to examine some of the provisions of the Sarbanes-Oxley Act with regard to how upper management may be incentivized to ensure proper organizational behavior.

Finally, it is important to realize that much of the feeding frenzy associated with the new participants in Title IV is a direct result of the elimination of the "50 percent" rule in 2006. Prior to the enactment of the Budget Reconciliation Act of 2005, for-profit providers would not be eligible to participate in Title IV if more than 50 percent of their enrollments or 50 percent of their courses were entirely distance-based. It was the removal of that provision that created the gold-rush for federal dollars that the Committee has documented. I should emphasize that the issue here is not so much that distance education itself is suspect, but that fraud has always been easier to carry out and harder to detect from afar. The Committee may wish to examine the wisdom of the social experiment that Congress embarked on in 2006 when it eliminated this important safeguard for students and taxpayers without any hearings or any evidence for its necessity. In light of the already massive evidence of abuse and outright fraud, it would not be unreasonable to reinstate some variant of the original rule.

Mr. Chairman, I thank you for your distinguished history of leadership on higher education issues, and stand ready to assist the Committee in its efforts to protect students, taxpayers, and the integrity of federal student aid programs.