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Macias, Wendy

From: [redacted]
Sent: Tuesday, June 23, 2009 4:05 PM
To: negreg09
Cc: [redacted]
Subject: Comments from Corinthian Colleges - Fed. Reg. Notice of 26 May 2009
Attachments: Comments of Corinthian Colleges - Fed. Reg. Notice of 26 May 2009.pdf

Dear Ms. Macias:

Attached are Corinthian Colleges' comments in response to the notice in the 26 May 2009 Federal Register concerning the Department's intention to establish one or more negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965.

If there are any questions concerning the submission of these comments please contact me by reply e-mail or at [redacted]

Thanks for your assistance with this matter.

[redacted]

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VIA INTERNET

23 June 2009

Ms. Wendy Macias
U.S. Dept. of Education
1990 K Street, NW
Room 8017
Washington, DC 20006

Dear Ms. Macias:

Attached are Corinthian Colleges' comments in response to the notice in the 26 May 2009 Federal Register concerning the Department's intention to establish one or more negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965.

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Respectfully,

[redacted]

COMMENTS OF CORINTHIAN COLLEGES ON PROPOSED ISSUES FOR REGULATION

I. **Introduction** – Founded in 1995, Corinthian Colleges is one of the largest postsecondary education and training companies in North America. Our mission is to prepare students for careers in demand or for advancement in their chosen field. We offer diploma programs and associate's, bachelor's and master's degrees in a variety of high-demand occupational areas, including healthcare, business, criminal justice, mechanical-technical and information technology. To better serve students, we invest millions of dollars each year in new programs, facilities, and support services. We also make alternative financing available to students to help make our education and training programs more affordable. We have over 84,000 students at 106 campuses in the United States and Canada. We have approximately 10,000 employees, including 3,500 full-time and part-time faculty.

II. **Regulatory Issues** – We support the Department's goals for this regulatory proceeding. We believe that the interests of students, not institutions, should be paramount in the student financial aid and other funding programs administered by the Department. Too many regulations focus on the ownership structure of institutions and not on whether they are producing quality outcomes for students. We agree with Deputy Under Secretary Shireman's recent comments that the key considerations should be whether students get the information they need to choose the right institution and whether institutions, irrespective of type, are effective in producing quality results for students.

This is especially true now as the country deals with a severe economic recession and high unemployment. The financial aid programs supporting access to postsecondary education can be a critical component in a national strategy for workforce development and economic recovery – but only if the regulations support those aims instead of the status quo.

This proceeding will succeed if it leads to practical steps to achieve the President's goal that "every American … commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma." And, we would add, all of those institutions should be measured against whether they are effective in producing graduates with the skills that our workforce and economy need.

With those over-arching points in mind, we offer the following comments on the topics listed in the Federal Register notice:

A. **Satisfactory Academic Progress** – We participated in the recent neg reg to implement the changes made by the HEOA. This subject was highlighted for reform during the discussions on year-round Pell Grants, which allow for two grants to students in a single award year if the students are accelerating their progress toward a certificate or degree. We support a re-examination of SAP standards to ensure that students are not simply being carried by institutions when all reasonable efforts to help them succeed have failed. This will not only facilitate the implementation of the year-round Pell Grant provision – a provision that can help get students more quickly into the workforce – but also ensure that financial aid funds are being efficiently used. We believe that the rigor with which our institutions have had to monitor and implement SAP standards can be a useful guide in this regard.

B. **Incentive Compensation** – We have no objection to a review of the regulations in this area in light of the experience gained since the regulations were substantially amended in 2002. It is important, however, to recall why the basic incentive compensation rule was clarified at that time. All postsecondary institutions had lived under the basic rule since the Higher Education Amendments of 1992. In the wake of that legislation, however, ambiguities, confusion, and interpretive problems abounded. There was no vehicle for getting definitive clarifications from the Department about whether the rule applied to a given set of facts. E-mails, letters, and verbal indications from a variety of Department officials of what was, and was not, permissible proliferated. It was unclear whether institutions could rely on these communications. And the Inspector General's office had its own ideas about how the rule should apply.

These problems were encountered not just by proprietary institutions; a number of other institutions, including small liberal arts schools, were surprised to learn that they were deemed in violation after IG reviews. A mistaken interpretation could be catastrophic, as the Computer Learning Centers discovered when their salary adjustment practices were found effectively to have violated the rule, and the Department asserted that all of the financial aid they had processed for years should be forfeited. Those institutions were forced into bankruptcy and the education of thousands of students was disrupted as a result.

Thus, there was an acute need for detailed clarification of the basic incentive compensation rule. During a neg reg, 12 clarifications were formulated which dealt with actual problems with the rule's application. The clarifications were extensively reviewed and debated and then adopted in a rulemaking process in which all interested parties had their say. Even with those clarifications, interpretive problems have continued because the Department has declined to provide additional interpretive rulings on how the regulations apply to specific factual circumstances.

As the Department considers these regulations, it must provide clear rules of the road, and an improved process for obtaining interpretive clarification of the rules to specific practices. Our institutions will comply.

It is important to remember that the whole purpose of the incentive compensation rule, as enacted by Congress in 1992, was to encourage the provision of accurate information to students prior to their enrollment and application for financial aid. A related aim was to encourage a good match between students and institutions. Deciding whether compensation practices are appropriate or not under the rule should be guided by those considerations. Accordingly, compensation based on successful completion should continue to be permitted, as it has almost from the inception of the rule. Neither aim of the regulation is undermined by compensation based on successful completion.

Likewise, the rule should remain focused on those who have direct contact with students and their immediate supervisors. Upper level campus or corporate officials who don't directly deal with students are not in a position to mislead them. Their compensation packages also typically are based on a variety of factors and should continue to be outside the sphere of regulation.

In addition, the Department should proceed carefully in reconsidering the clarification in the regulations on compensation paid for Internet-based recruitment and admissions activities. The Internet didn't even exist when Congress enacted the rule in 1992. Moreover, the circumstances surrounding student-institution interaction via the Internet are very different from the face-to-face interactions upon which the rule was based. Generation Y is very savvy in its use of the Internet. It isn't credible that recruiting practices that may have motivated the enactment of the rule in 1992 could be effective or even operative in most Internet-based interactions. And, all institutions are making use of the Internet to attract, provide information to, and communicate with potential students – not just proprietary institutions. In short, Internet-based activities are very complicated to regulate.

A final comment: incentive compensation would require less regulation and scrutiny if the Department placed more focus on student outcomes for all institutions. If institutions are producing good, measurable outcomes, it follows that the student enrollment process is functioning as it should.

C. **Gainful Employment in a Recognized Occupation** – At first blush, this topic appears to speak to what we advocate: a greater focus in the regulations on the effectiveness of institutions in preparing students to be productive members of the workforce and the economy. However, the

statutory provisions on this point have been in place for many years, and we are unaware of any Congressional intent that they be used to judge institutions by the outcomes they produce in terms of, for example, placement rates or income in relation to student debt. Rather, the provisions are a threshold requirement focused on the aim of the programs offered by institutions.

In addition, it is inaccurate to state that Congress completely re-wrote the definition of a proprietary institution in the HEOA. All that Congress did was to add a provision to the proprietary school definition that permitted such institutions, under certain conditions, to provide liberal arts programs. That provision was addressed in the just-concluded neg reg and will be handled in the forthcoming Notice of Proposed Rulemaking on those and other HEOA changes. The gainful employment provision was simply carried forward from the previous law, with no indication that any change in its meaning was intended.

Finally, the gainful employment provision does not pertain only to proprietary institutions. The same provision appears in section 102(c) of the Act, the definition of postsecondary public and nonprofit vocational institutions, in section 101(b)(1) of the Act, which permits public and nonprofit institutions to participate in HEA programs other than Title IV, and in section 481(b)(1)(A)(i), which defines an eligible program for Title IV and pertains to all institutions. Thus, if the Department elects to pursue elaboration of the gainful employment provision in this proceeding, any such elaboration will have ramifications for public and nonprofit institutions as well as proprietary institutions.

D. **State Authorization** – We understand that the inclusion of this topic as a potential area of regulation was prompted, in part, by the expiration of the licensing regime in California for proprietary institutions. We would welcome a clarification of how the HEA and the Department's regulations operate in this area.

Any institution – public, nonprofit, or proprietary – must, under the HEA, be in a State and be "legally authorized within such State." Section 495 of the HEA establishes state responsibilities in relation to the Title IV programs. Those responsibilities are, in sum, informational regarding, among other things, the process for "licensing *or other authorization*" for institutions to operate within the State.

We respectfully request that the Department consider three points before revising regulations on this topic. First, Congress did not alter this provision in the HEOA, and, indeed, it has been a fixture of the HEA for many years. Thus, there is no statutory basis for striking out in a new direction. Second, the statute does not require licensure. It simply calls for

institutions to have such authorization as the State elects to require. That may be a full-blown licensing regime or something else or less. The state's only real responsibility under the HEA is to establish state points of contact to share information with the Department. And third, if the Department is going to require some type of actual state oversight as it re-interprets the state authorization requirement, it will have to come to grips with the exemptions that many institutions, usually regionally accredited, get from any state oversight. WASC-accredited institutions, for example, had a complete exemption from the now-expired California law, and proposed legislation in California for a new licensing regime would exempt them again. If state authorization is to mean something more that it has previously, in what sense would these exempt institutions meet the test?

E. **High School Diploma** – We support regulations that would bring greater clarity in this area. Many campuses have struggled with the proliferation of high school diploma mills, especially those operating online, and bogus high school credentials. We have no interest other than in admitting qualified students, either because they have earned a legitimate high school credential or because they have passed an approved ATB test. We recognize that this subject touches on an area traditionally reserved to the states, so care must be exercised. But perhaps some type of national registry could be developed of high schools that have appropriate authorization to award diplomas upon which postsecondary institutions could rely. The registry need not be exclusive; a student bearing a credential from a high school not on the register could have the burden of proof that the credential is legitimate.

We appreciate the opportunity to present our views, and look forward to working with the Department constructively as this process moves ahead.