



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

September 14, 2018

Mr. Aaron Washington  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, Dc 20202

**RE: Comment on NPRM on recognition of accrediting agencies**

Dear Mr. Washington:

I am writing on behalf of the Council for Christian Colleges & Universities (CCCUC) to comment on the Department of Education's notice that it intends to convene a negotiated rulemaking committee regarding regulations related to the recognition of accrediting agencies (Docket ID ED-2018-OPE-0076). The CCCUC was pleased to receive this notice.

While peer accreditation is undoubtedly an imperfect system, our institutions recognize the value and merit of the system and agree that it serves to improve higher education and helps protect taxpayers by establishing standards that reduce fraud, waste, and abuse. While believing in the mission and contributions of the accreditation system, we also recognize the ways in which it can be improved.

Likewise, as our institutions are unified by their Christian faith reflected in their institutional missions, the CCCUC was especially gratified to see the special focus listed and committee proposed to ensure that religious institutions and their faith-infused missions receive equal treatment under the law compared to their secular counterparts. The first higher education institutions in the country were religious, and religious higher education today continues to play an important role in contributing to the diversity and excellence of the US higher education system.

The CCCUC represents 183 institutions around the world, including 143 in the United States. Our institutions are affiliated with 35 Protestant denominations and the Catholic Church. Christian colleges pursue faith and intellect for the common good.

**1. The Department should clarify what it means for accrediting agencies to respect institutional mission.**

One of the proposed topics for the negotiation is "Requirements for accrediting agencies to honor institutional mission." Current law requires that an accrediting agency or association "consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions," among other requirements (20 USC 1099b(a)(4)(A)). The requirement regarding religious mission was added during the 2008 reauthorization of the Higher Education Act. This requirement is appropriately reflected in regulation in 34 CFR 602.18 – "Ensuring consistency in decision-making."



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

However, both statute and regulation suffer from a lack of clarity around the central question: what does it mean for an accrediting agency to respect an institution’s religious mission? The answer to this question is not obvious from the text, yet clarity is vital for ensuring consistent and fair reviews, both across institutions sharing an accrediting agency and across accrediting agencies. For example, would respecting religious mission include such areas as curriculum? Housing? Employment? Governance? We believe it does. Increased clarity would help ensure this Congressional mandate is applied consistently within and across accrediting regions.

The House Education and Workforce Committee recognized this need for additional clarity, as evidenced by the PROSPER Act’s (HR 4508) inclusion of a definition for “religious mission”<sup>1</sup>:

The term ‘religious mission’ includes an institution of higher education’s religious tenets, beliefs, or teachings, and any policies or decisions related to such tenets, beliefs, or teachings (including any policies or decisions concerning housing, employment, curriculum, self-governance, or student admission, continuing enrollment, or graduation).

Although the PROSPER Act is not law, it evinces the important need for clarification so that accreditors can fulfill their obligation to “ensure consistency in decision-making.” In the absence of legislative clarification on this point, we believe the Department should use this rulemaking to give clarity to accreditors by defining the breadth of “religious mission.” We believe the definition above from the PROSPER Act accurately and reasonably encompasses the myriad of ways in which religious institutions are guided by their religious missions. We urge the Department to adopt this definition.

In addition, we also recommend that the Department give further clarity to accreditors regarding whether the final determination regarding the scope of an institution’s mission would lie with the institution or the accrediting agency. The PROSPER Act proposed to add the phrase “as defined by the institution” after “stated mission of the institution of higher education.”<sup>2</sup> Replicating this idea in any regulations addressing this matter would help bring clarity all throughout higher education that it is the institution that defines the scope and breadth of its mission, not the accreditor.

## **2. The Department should create a clear, certain, and proportionate enforcement mechanism for failures to respect institutional mission.**

Current regulations fail to offer a clear, certain, and proportionate enforcement mechanism by which the Department could take action should an accrediting agency or organization fail to respect an institution’s religious mission. Despite the statutory requirement for accreditors to respect institutions’ religious missions described above, the religious exception in 20 USC 1099b(k) makes it clear makes it clear that the law contemplated scenarios where religious institutions could have their accreditation challenged due to their accrediting agency’s failure to respect their religious mission. Yet, this religious exception is little comfort as it has not been paired with a regulatory structure that creates a true deterrent. Currently, there are two inadequate options available for an institution who has had its

---

<sup>1</sup> See Sec. 118 of the PROSPER Act (HR 4508).

<sup>2</sup> See Sec. 496(2)(C)(i)(I) of the PROSPER Act (HR 4508).



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

accreditation illegally withdrawn, revoked, or terminated: 1) the institution can accept the accreditor's illegal determination and seek alternative accreditation, or 2) the Secretary can withdraw federal recognition of the accreditor. Both options are fraught with problems, and neither enforces nor fulfills the intent of the law.

Seeking new accreditation is inadequate for a number of reasons. First, that was not the intent of the law. The law intends for institutions to have their institutions respected by accreditors, not to have to bear the onerous time and financial burden of shopping for a new accreditor until they find one willing to accept their religious mission. Congress made it clear that they intend for religious educational institutions to have a full place within all aspects of the higher education system. Second, accreditation is not readily and fully interchangeable: if a regional accreditor withdrew accreditation, for example, obtaining accreditation from a national accrediting agency would not be an equivalent replacement. (Indeed, it is shocking that it is the institution—not the accrediting agency—that would end up worse off under such a scenario, even though it was the accrediting agency that failed to respect the institution's mission as required by law!) Finally, such an outcome leaves the law entirely unenforced. An accreditor violates the law but keeps operating in the normal course of business, while the burden of soliciting a remedy lies fully on the aggrieved institution. The institution should not bear any burden. Rather a proper outcome would lead to the institution being fully restored and the accreditor bearing any burden because of non-compliance.

Likewise, the Secretary acting to derecognize the accreditor is inadequate because it is discretionary and draconian. The fact that current regulations leave as discretionary the Secretary's enforcement of this law is deeply problematic. Institutions of higher education must be able to act, certain that the Higher Education Act will be enforced. New regulations should create a certain enforcement mechanism that does not leave to the Secretary's discretion whether or not to enforce the law. Additionally, currently the one option available to the Secretary—to derecognize the accreditor—is almost no remedy at all. It is no remedy for the aggrieved institution because it would leave it without accreditation anyway; it would also cause hundreds of other institutions to lose their accreditation, which is neither a reasonable nor desirable outcome. Good enforcement would lead to the law being enforced with certainty in a way that restores the institution to its former accredited status and leaves the accreditor bearing any burden due to their failure not to comply with federal law.

Recognizing these gaps with the current enforcement and implementation of 20 USC 1099b(a)(4)(A), the PROSPER Act looked to create an administrative complaint process that provides institutions true recourse in instances where an accrediting agency fails to respect their religious missions.<sup>3</sup> Likewise, we recommend the rulemaking committee consider what process could be put into place within the bounds of current law that would achieve the goals of (1) clarity, (2) timeliness, (3) certainty (i.e., by requiring the Department to make a determination rather than simply allowing it to), and (4) restitution. Put simply, an institution faced with the challenge of having its religious mission disregarded by its accreditor should have a remedy that results in its accreditation being fully restored in a clear, certain, and timely manner.

---

<sup>3</sup> See Sec. 496(7) of the PROSPER Act.



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

### **3. The Department should reestablish the religious exception for institutional accreditation.**

As articulated in the previous point, ultimately under the Higher Education Act, an institution that has its accreditation put into jeopardy because of its religious mission should receive restitution, and the accreditor should be penalized for violating the law. Nevertheless, the religious exception provision in 20 USC 1099b(k) does allow an institution who has had its accreditation withdrawn, revoked, or terminated because of its religious mission or affiliation additional time to procure alternative accreditation. While this is ultimately an inadequate and insufficient remedy for the reasons previously described, it is nonetheless one due to the institution under current law. Yet, Department regulations have narrowed the application of this provision in the manner described below to *de facto* eliminate institutions from being able to benefit from it at all. Since this additional time is granted by law, the Department should ensure that its regulations are corrected to offer an institution the full scope of this remedy as intended by law.

Currently, 34 CFR 600.11(d) includes a religious exception allowing the Secretary to consider otherwise eligible institutions as accredited if their loss of accreditation is related to the “religious mission or affiliation of the institution” and not a “failure to satisfy the accrediting agency’s standards.” This differs from the protection that was codified by the relevant statute. Rather than referring to the accrediting agency’s standards, 20 USC 1099b(k) requires that the loss of accreditation instead be “not related to the accreditation criteria provided for in this section.” The standards “in this section” are enumerated in 20 USC 1099b(a)(5). Yet, an accreditor’s standards can include more than those enumerated in that section because 20 USC 1099b(g) expressly provides that “Nothing in this chapter shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section.”

To better understand this, imagine that accreditation criteria A, B, and C are enumerated in the relevant statute, and the accreditor’s criteria are A, B, C, D. If an accreditor revoked a religious institution’s accreditation for a reason related to its religious mission and related to criterion D, the current statutes and regulations would lead to different outcomes. Under 20 USC 1099b(k), the institution could be provided time to seek alternative accreditation because criterion D is not one of the accreditation criteria enumerated in statute. Under 34 CFR 600.11(d), however, the institution could *not* be provided time because criterion D is one of the accrediting agency’s standards. Thus, the Department’s current regulations fail to hew closely to the legislation and provide the protection intended by the law.

For the reason above, we recommend that the Department adopt the language “not related to the accreditation criteria provided for in [appropriate section reference(s)]” for the religious exception in 34 CFR 600.11(d).

### **4. The Department should ensure that religious institutions and religious students can access all federal benefits on equal footing with their peers.**

The rulemaking committee may also address “various provisions of the regulations regarding the eligibility of faith-based entities to participate in the title IV, HEA programs...and the eligibility of



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

students to obtain certain benefits under those programs.” We believe this is a topic worthy of the rulemaking committee’s attention, as religiously affiliated institutions represent more than 1 in 5 (22%) two-year and four-year institutions of higher education.<sup>4</sup> Yet, we have seen instances, such as in California with the introduction of SB 1146 in 2016, where state lawmakers have proposed legislation that would *de facto* limit financial aid for religious students and religious institutions. We are pleased that the Department is affirming—in accordance with the US Supreme Court’s decision in *Trinity Lutheran Church of Columbia v. Comer* and the Attorney General’s Memorandum for All Executive Departments and Agencies from October 6, 2017—that religious students and institutions ought to be able to participate in federal programs and receive financial aid on equal footing with their secular peers. We are eager to assist in this effort and hope that states will follow the Department’s example.

One example of this is the limitation on Public Service Loan Forgiveness (PSLF) for borrowers at certain organizations. Specifically, 34 CFR 685.219(b)(3)(ii) provides that borrowers are not eligible if the non-profit organization they work at is “an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.” Yet, the applicable statute (20 USC 1087e(m)(3)(b)) does not include this religious limitation. Indeed, this limitation was not included in the original October 2008 regulations implementing PSLF, but instead was only added in December 2012 as a “correction.”<sup>5</sup> Notably, its classification as a correction meant there was no comment period. We believe removing the religious limitation from 34 CFR 685.219(b)(3) would both better align with congressional intent based on the statutory language and better reflect *Trinity Lutheran* and the aforementioned Attorney General memo.

**5. The Department should clarify the Secretary’s authority to ensure that students at foreign institutions are not unfairly denied access to Title IV benefits because of the institutions’ religious mission or affiliation.**

The Trump administration brought a welcome spotlight to the issue of religious freedom by hosting the Ministerial to Advance Religious Freedom from July 24-26<sup>th</sup> in Washington, DC. The Potomac Declaration coming out of the ministerial noted that “[a]lmost 80 percent of the global population reportedly experience severe limitations on this right” and that “[d]efending the freedom of religion or belief is the collective responsibility of the global community.”<sup>6</sup> We agree. Faith-based institutions of higher education are an important part of advancing religious freedom around the world. From Haiti to Hungary, the US to the UK, faith-based institutions like ours not only train religious leaders, but instill among their students and communities a respect for religious beliefs and a civic conscience that promotes pluralism.

Unfortunately, current regulations regarding institutional eligibility to participate in title IV, HEA programs risk unintentionally excluding foreign faith-based institutions. Specifically, they require that

---

<sup>4</sup> Analysis of IPEDS data for religious affiliation of two-year and four-year institutions.

<sup>5</sup> See *Federal Register* Document Number 2012-31230, <https://www.federalregister.gov/documents/2012/12/28/2012-31230/william-d-ford-federal-direct-loan-program>

<sup>6</sup> Potomac Declaration of the Ministerial to Advance Religious Freedom, <https://www.state.gov/documents/organization/284811.pdf>



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

foreign institutions, among other requirements:

- Be “legally authorized by the education ministry, council, or equivalent agency of the country in which the institution is located to provide an educational program beyond the secondary education level”<sup>7</sup>
- “Award degrees, certificates, or other recognized educational credentials in accordance with § 600.54(e) that are officially recognized by the country in which the institution is located”<sup>8</sup>

Because of this requirement, the withholding of legal authorization or official recognition by a foreign education ministry because of a foreign institution’s religious mission or affiliation would render students unable to access Title IV funds at that institution. While we understand eliminating or rendering these requirements inapplicable would raise questions of quality assurance and protecting taxpayer money, we believe the importance of protecting religious freedom around the world (as the Potomac Declaration calls for) makes the conversation nonetheless worthwhile.

We believe the Secretary may have authority to address this situation through 34 CFR 600.51(c)(1), which provides: “A foreign institution must comply with all requirements for eligible and participating institutions except when made inapplicable by the HEA or when the Secretary, through publication in the Federal Register, identifies specific provisions as inapplicable to foreign institutions.” Thus, the Secretary could, for example, render the legal authorization or official recognition requirements inapplicable for foreign institutions that were denied such authorization or recognition because of their religious mission or affiliation. We believe such action would underscore the equal treatment of religious organizations reflected in *Trinity Lutheran* and the aforementioned Attorney General’s memo, as well as further the goal of global religious freedom so eloquently stated in the Potomac Declaration.

## **6. The Department should give accrediting agencies and institutions the flexibility they need to innovate, reduce costs, and serve students in line with their unique missions.**

Per the Federal Register notice, this rulemaking committee will propose regulations to promote greater access to “high-quality, innovative programs” by addressing a wide variety of areas, such as state authorization, the definition of “credit hour,” the definition of “regular and substantive interaction,” arrangements between institutions to provide education, direct assessment programs, competency-based education, and barriers to innovation, among others. We believe these are valuable, timely topics for the committee to consider.

During those discussion, we urge the committee to pay particular attention to institutional autonomy. Institutions of higher education already have a strong incentive to innovate, because they recognize it is essential if they are to be competitive in a landscape of increasing higher education and non-traditional credentialing opportunities. Reducing regulatory burden for institutions and accreditors will pay positive dividends on multiple fronts. Reduced compliance costs will help mitigate the rising costs of higher education and allow institutions to put more resources towards their real mission: educating

---

<sup>7</sup> See 34 CFR 600.52(1)(iii)

<sup>8</sup> See 34 CFR 600.52(1)(iv)



COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES

and forming students. Greater flexibility will allow institutions to launch new initiatives without a disproportionately burdensome upfront investment of time and resources, facilitating the trial and (sometimes) error that is so essential for true innovation. While we recognize there may be concerns that this flexibility could amount to unaccountability, we believe this fear is misguided. If institutions create low-quality programs and fail to educate students, potential employers, the media, and prospective students will take note—and, of course, accrediting agencies would still play their crucial quality assurance role. Admittedly, there is a cost to taxpayers if students are able to attend low-quality programs, but there is also a cost if institutions are prevented from offering timely, innovative programs and approaches that are needed for our economy to thrive in the 21<sup>st</sup> century.

Institutional autonomy should also be recognized in terms of outcomes. While students often attend an institution of higher education in the hopes of later securing employment and increasing their earning potential, they also seek the personal and character formation that occurs at a particular institution, such as the spiritual development that occurs at faith-based institutions of higher education. This is the difference between a student choosing to go to college generally vs. choosing a particular college. Of course, students should weigh factors like graduation rates and financial aid in making their college decision, but we urge the Department not to overemphasize these metrics to the detriment of mission-related, institution-specific characteristics that students and the Department should also weigh.

We appreciate the opportunity to provide comment on this important undertaking. We stand ready to provide whatever additional assistance we can, and we will pray for a smooth, productive rulemaking process that advances our shared goal: educating and forming students for the common good.

Sincerely,

Shirley V. Hoogstra  
President  
Council for Christian Colleges & Universities