



**Comments submitted by Legal Aid Foundation of Los Angeles and
The National Consumer Law Center to the U.S. Department of Education**

Re: Proposed Regulations on Distance Education and Innovation

Docket: ED-2018-OPE-0076-0845

May 4, 2020

On behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA) and the National Consumer Law Center (NCLC), we submit these comments in support of the Department’s proposed distance education regulations, including the credit hour, regular and substantive interaction, and outsourcing provisions.¹ Our support is informed by our work as legal aid practitioners. NCLC² and LAFLA³ strive to meet the legal needs of individuals and families with limited economic means, who otherwise would be without legal assistance. We provide direct legal services to low-income student loan borrowers—including veterans, single mothers, first generation students, people of color, and immigrants—many of whom have been harmed by deceptive and fraudulent practices of the for-profit college industry. We also consult with civil legal services organizations across the country that represent student loan borrowers in their local communities.

Robyn Smith, of LAFLA and NCLC, served as a negotiator representing legal aid organizations on the rulemaking committee that worked on this set of proposed regulations. As such, we submit these comments consistent with the negotiating committee’s protocols, which require that “[i]f the committee reaches consensus on regulations . . . committee members and the organizations whom they represent will refrain from commenting negatively on the consensus-based regulatory language”⁴

¹ 85 Fed. Reg. 18538 (April 2, 2020).

² NCLC is a nonprofit organization specializing in consumer law and consumer protection issues on behalf of low-income people since 1969. NCLC has nationally recognized expertise in student loan law and publishes a widely used treatise, *Student Loan Law* (6th Ed. 2019), updated at www.nclc.org/library. As relevant here, NCLC has particular expertise on state authorization reciprocity agreements, consumer protections for online students, and debt relief options for student borrowers harmed by fraudulent schools.

³ LAFLA is a non-profit public interest leader on student loan work and seeks to achieve equal justice for low-income people. It provides critical outreach and education, self-help clinics, and quality direct legal assistance to financially distressed student loan borrowers. LAFLA’s policy and advocacy efforts are grounded in the legal assistance it has provided to the thousands of low-income students in Southern California for over thirty years.

⁴ U.S. Dept. of Educ., Negotiating Committee—Accreditation and Innovation 2019, Organization Protocols, IV.B, available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/finalprotocols.pdf>.

In this negotiated rulemaking, the Department stacked the committee with industry negotiators from schools and accrediting agencies, while limiting the number of negotiators representing states, consumers and students, including by vetoing the participation of state attorneys general. It also overwhelmed the committee, at the very first meeting, with hundreds of pages of proposals. Those initial proposals, if adopted, would have drastically reduced oversight of distance education, exposing taxpayers and students to increased risk of costly institutional fraud.

Despite this, Ms. Smith and the other negotiators worked hard to achieve consensus on the proposed regulations. We believe that, unlike the Department's initial proposals, the consensus proposals strike an appropriate balance between oversight and flexibility, providing a level of oversight necessary to protect taxpayers and students from unscrupulous schools while allowing institutions of higher education to offer innovative distance education programs. We strongly recommend that the Department maintain the consensus language—including the credit hour, regular and substantive interaction, and outsource provisions. Reneging on this consensus and weakening oversight provisions and student protections would ignore the long history of for-profit school fraud and the risks associated with online education. Weakened regulations would have extraordinary potential to cause massive financial harm to students and taxpayers.

We urge the Department to adopt the proposed distance education regulations as final regulations based on both data and our own experiences with the for-profit higher education industry. In our comments regarding the final state authorization regulation, we cited numerous studies showing that distance education schools pose greater financial risks for both students and taxpayers.⁵ We also cited to many government actions for illegal and deceptive practices against for-profit companies that offered (and some continue to offer) distance education.⁶ These studies and actions show that online for-profit (and sometimes nonprofit and public) colleges often cut corners in the services provided to students in order to increase their profit margins—at the expense of federal student loan borrowers and taxpayers.

While the majority of student borrowers we have represented were enrolled in brick-and-mortar programs,⁷ these studies and actions confirm that online schools, as much or more so than brick-and-mortar schools, often limit spending on educational services and engage in deceptive enrollment practices. These studies also show that students who enroll in online programs have poorer outcomes than students enrolled in brick-and-mortar programs, as well as higher drop-out rates due in part to lack of interaction with faculty. The likelihood that a school will cut education costs and engage in deceptive recruiting practices is higher in the distance education context, where it is easier for schools to limit the time and quality of interactions between instructors and

⁵ The comments are included as Attachment A.

⁶ *Id.*

⁷ Legal services organizations' clients often do not seek help until they are experiencing wage garnishment, tax refund seizures, or federal benefits offsets for defaulted federal loans. Our clients do not seek assistance until this time because they are not typically aware of the causes of action they have against schools for misconduct, nor are they aware of their potential eligibility for debt relief. Because distance education programs are relatively young, we are only now starting to see clients who have experienced fraud in online education and need help with their defaulted federal loans.

students, engage in credit hour inflation, and outsource instruction and other services to businesses that are not subject to oversight by states, accreditors or the federal government.

Our comments are also based on our long-term experience assisting student loan borrowers harmed by online education’s precursor—correspondence schools. Widespread and long-term abuses by correspondence schools include deceptive recruiting practices, poor student outcomes, and substandard programs with little to no interaction between instructors and students.⁸ These problems led Congress to limit federal financial aid eligibility for correspondence schools and enact debt relief programs for a portion of the harmed students.⁹ To this day, LAFLA sees new clients who have faced decades of debt collection for useless correspondence school diplomas. To prevent similar abuses and long-term harm from occurring in the online education sector, it is crucial that the Department maintain the requirements it has proposed, including: (1) the definition of credit hour, the fundamental unit for measuring higher education; (2) the requirements for “regular and substantive interaction” between students and instructors; and (3) the 50% ceiling on the outsourcing of educational programs to non-accredited education businesses.

The proposed regulations are especially critical now, in light of the unexpected and rapid expansion of online education necessitated by the COVID-19 pandemic. The Department’s temporary relaxation of online program approval requirements has appropriately allowed many impacted students to complete their terms online. But this mass movement to online education, though unavoidable in the short-term, is likely to lead to a long-term expansion of distance education, underscoring the need for regulations that will ensure that online students receive affordable, high-quality education. Indeed, many students who have suddenly been forced by the pandemic to complete their in-person programs online have noticed the inferior quality of their online educations.¹⁰

We therefore urge the Department to adopt the proposed, consensus regulations promptly and without any weakening to prevent unscrupulous schools from exploiting the current emergency conditions and skyrocketing unemployment by deceptively increasing enrollments—and profits—in low-quality online programs. The 2008 recession led to increased for-profit school enrollments that disproportionately left students with debt they could not repay.¹¹ Just over a month into this pandemic, we are already seeing a troubling increase in marketing capacity by for-profit schools and related businesses. As just one example, Zovio, a parent of Ashford University, announced that it is hiring 200 “enrollment advisors.”¹² As another example, lead

⁸ See David Whitman, “The Cautionary Tale of Correspondence Courts,” *New America* (Dec. 2018), available at <https://www.newamerica.org/education-policy/reports/cautionary-tale-correspondence-schools/introduction/>.

⁹ *Id.*

¹⁰ See Nick Anderson, “College students are rebelling against full tuition after classes move online,” *Washington Post* (April 16, 2020), available at <https://www.washingtonpost.com/education/2020/04/16/college-students-are-rebelling-against-full-tuition-after-classes-move-online/>.

¹¹ See Aaron Ament and Debbie Cochrane, “OPINION: As the coronavirus speeds colleges’ move online, what happens to oversight?” *The Hetchinger Report* (April 14, 2020) (citing data regarding for-profit college enrollments after the 2008 recession and the default rates of for-profit school students), available at <https://hetchingerreport.org/opinion-as-coronavirus-speeds-colleges-move-online-what-happens-to-oversight/>.

¹² See “Zovio to Hire 200 Enrollment Advisors as Unemployment Soars in Wake of Coronavirus Pandemic,” *Cision PR Newswire* (March 26, 2020), available at <https://www.prnewswire.com/news-releases/zovio-to-hire-200-enrollment-advisors-as-unemployment-soars-in-wake-of-coronavirus-pandemic-301030561.html>.

generators are using the sudden expansion of online education to steer students to for-profit colleges.¹³

These regulations are also important to minimize harm that will be caused by the Department's recent adoption of a regulation that allows interstate reciprocity agreements to shield unscrupulous online schools from the enforcement of state consumer protection laws specifically designed to prevent for-profit school fraud. In doing so, the Department reneged on consensus language that it had agreed to and proposed.¹⁴ Because 49 states have signed onto a reciprocity agreement that requires the waiver of state higher education laws, strong approval and oversight requirements of online programs at the federal level have never been more important.

We hope that the Department will not similarly renege on its proposal to finalize the consensus regulations it now proposes. Doing so would not only undermine the consensus rulemaking process, but reduce critical protections for the growing numbers of online distance education students across the country and put taxpayer dollars that fund such education at risk of waste and abuse.

Thank you for considering these comments. Please feel free to call Robyn Smith at rsmith@nclc.org or (213) 640-3906 with any questions.

¹³ See David Halperin, "Scam Website, Promising COVID-19 Advice, Steer Students to Predatory College," Republic Report (April 15, 2020), available at <https://www.republicreport.org/2020/scam-websites-promising-covid-19-advice-steer-students-to-predatory-colleges/>.

¹⁴ See 84 Fed. Reg. 27404 (proposing consensus state authorization regulation) (June 12, 2019) and 84 Fed. Reg. 58834 (Oct. 31, 2019) (publishing final, non-consensus state authorization regulation).

ATTACHMENT A



July 11, 2019

Mr. Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave. SW, Mail Stop 294-20
Washington, DC 20202

Submitted electronically via: <http://regulations.gov>

Re: Proposed Regulations on Recognition of Accrediting Agencies and Recognition Procedures for State Agencies, 84 Fed. Reg. 27,404; Docket ID ED-2018-OPE-0076

Dear Mr. Gaina:

On behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA), the National Consumer Law Center (NCLC), and New York Legal Assistance Group (NYLAG), we submit the following comments regarding the Department of Education's proposed regulations regarding the state authorization of distance education programs and teach-outs, 84 Fed. Reg. 27,404 (June 12, 2019).

We write specifically to identify and provide factual support for certain provisions regarding state authorization of distance education programs, requirements for teach-outs, and certain other protections for students at closing institutions and institutions at risk, that are important to protecting low-income student borrowers from unnecessary harm. We urge the Department to ensure that these provisions are included in any final rules.

Thank you for consideration of these comments. We welcome any opportunities to work with the Department in preserving and strengthening protections for low-income student loan borrowers. If you have any questions about these comments, please contact Robyn Smith (rsmith@lafla.org) or Abby Shafroth (ashafroth@nclc.org).

Sincerely,

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I. Introduction

On behalf of the low-income clients of the Legal Aid Foundation of Los Angeles (LAFLA), the National Consumer Law Center (NCLC), and New York Legal Assistance Group (NYLAG), we submit these comments in response to the Department of Education’s proposed regulations regarding the state authorization of distance education programs and teach-outs, 84 Fed. Reg. 27,404 (June 12, 2019).

Robyn Smith, of LAFLA and NCLC, participated on the negotiated rulemaking committee that worked on the set of proposed regulations on which the Department seeks comment. As such, we submit these comments consistent with the negotiating committee’s protocols, which require that “[i]f the committee reaches consensus on regulations . . . committee members and the organizations whom they represent will refrain from commenting negatively on the consensus-based regulatory language”¹

These comments are therefore focused on providing further support for certain provisions regarding state authorization of distance education programs, requirements for teach-outs, and certain other protections for students at closing institutions and institutions at risk, that are important to protecting low-income student borrowers from unnecessary harm. The need for such protections is supported by our experience working with low-income student borrowers, by recent, well-documented problems with school closures and losses of accreditation, and by ample research and data. We urge the Department to ensure that these provisions are included in any final rules.

Our comments are informed by our work as legal aid practitioners. We strive to meet the legal needs of individuals and families with limited economic means, who otherwise would be without professional legal assistance. Descriptions of the relevant backgrounds of our organizations follow below.

NCLC is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC has nationally recognized expertise in student loan law and publishes a widely-used treatise, *Student Loan Law* (5th ed. 2015), updated at www.nclc.org/library. NCLC’s Student Loan Borrower Assistance Project provides information about student borrowers’ rights and seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education and lessen student debt burdens.² As relevant here, NCLC has particular expertise on state authorization reciprocity agreements, consumer protections for online students, and options for student borrowers in the event of school closures. NCLC’s Student Loan Borrower Assistance Project also provides direct representation to low-income student loan borrowers, and consults with civil legal services organizations across the country that represent borrowers in their local communities.

¹ U.S. Department of Education, Negotiating Committee— Accreditation and Innovation 2019, Organizational Protocols, IV.B, available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/finalprotocols.pdf>.

² The Project’s website includes more information, see www.studentloanborrowerassistance.org.

LAFLA seeks to achieve equal justice for low-income people through direct representation, systematic change, and community education. LAFLA is a public interest leader on student loan work in California, having developed student loan and for-profit school expertise over the last 30 years. It provides critical outreach and education, self-help clinics, and quality direct legal assistance to financially distressed student loan borrowers. It also serves as a resource for other organizations carrying out this important work in California. LAFLA's policy and advocacy efforts are grounded in its direct legal assistance work. Every year, LAFLA helps hundreds of low-income students from Southern California who struggle with student loan debt, the vast majority of whom have been harmed by deceptive for-profit schools.

NYLAG provides free civil legal services to New Yorkers who cannot afford a private attorney across a wide variety of issue areas, including consumer protection. NYLAG has extensive expertise representing low-income student loan borrowers in New York City and across the country. NYLAG's attorneys and financial counselors assist student loan borrowers on a variety of issues, including securing affordable repayment plans and statutory discharges, affirmative and defensive student loan litigation, and assistance with problems arising from third-party student loan debt relief companies.

II. Comments in Support of Maintaining Rules Regarding State Authorization of Distance Education

We support the Department's decision, based on a consensus of the negotiating committee, to maintain regulatory provisions regarding state authorization of distance education, including the definition of "state authorization reciprocity agreement," currently in effect pursuant to the 2016 State Authorization of Distance Education Rule (the "2016 Rule").³ These provisions set out requirements regarding participation in federal student aid programs that require that distance education providers meet state authorization requirements in states where they operate and ensure that states can enforce their own laws to protect students who attend school through online programs.

These provisions, which are supported by findings in the 2016 rulemaking as well as by the current committee consensus, are of critical importance to the individuals we serve. In addition to being of limited economic means, our clients are often the first in their families to pursue higher education. They include people of color, immigrants, non-native English speakers, single mothers, veterans, and the formerly incarcerated. They are increasingly targeted by unscrupulous and predatory out-of-state for-profit schools that offer online distance education programs, attracted by the same types of false promises of stable high-paying careers made by brick-and-mortar schools offering in-person classroom courses. Preserving the 2016 Rule is necessary to ensuring that these low-income students receive the same consumer protections as students attending traditional brick-and-mortar schools in the same state.

³ 84 Fed. Reg. 27,404, 27,413 (34 C.F.R. § 600.9(b)), hereinafter referred to as the "2016 State Authorization of Distance Education Rule" or "2016 Rule."

Distance education programs should have to meet any state authorization requirements in the states where they enroll students. The proposal to preserve the 2016 Rule continues to allow them to do so through a reciprocity agreement, provided that states are still able to enforce their relevant consumer protection laws. The proposal also requires institutions to notify impacted students whether their educational programs meet the requirements for licensure across states. Many representatives from across constituencies have proposed prohibiting schools from enrolling students for which licensure would not be possible, and the Department should at a minimum retain these notification requirements if it does not go further.

Below, we address several discrete sources of support for the proposal to preserve the 2016 rule on state authorization of distance education: statutory support under the Higher Education Act and the need to ensure that online distance education programs are not left out of the program integrity triad; the record of illegal school conduct demonstrating the need for state oversight and enforcement of consumer protections in online education; data illustrating the special risk to students and taxpayers posed by distance education; data demonstrating the size of the online distance education student population that would lack state law protections if not for the 2016 Rule; and the absence of data supporting diminishing protections.

A. 2016 State Authorization of Distance Education Rule is Required by the HEA

Congress enacted state “legal authorization” requirements in order to place the key responsibility for consumer protection from unscrupulous for-profit school practices on the states.⁴ To be eligible to participate in student financial aid programs, the Higher Education Act (HEA) requires an institution to be “legally authorized within [the] State to provide a program of education beyond secondary education.”⁵ The HEA further specifies that states have a substantial role in licensing or authorizing schools, monitoring them, revoking licenses and reporting to the Department violations of the federal student assistance provisions. 20 U.S.C. § 1099a(a). As can be seen by reviewing the section in depth, the HEA requires that:

- each state’s authorization process be part of the “integrity program,” suggesting that something more than mere reliance on another state’s oversight or licensure is required;
- each state have a process for “licensing or other authorization for institutions of higher education to operate;”
- each state have authority to revoke the license or authority of institutions of higher education to operate; and
- each state is to oversee schools offering higher education such that it can notify the Secretary when there is “credible evidence” of fraud or other violations of the HEA.

⁴ Rebecca Skinner, *Institutional Eligibility in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, Congressional Research Service Report RL33909 at CRS-11 (Mar. 9, 2007).

⁵ 20 U.S.C. § 1001(a)(2); (b)(1); 20 U.S.C. § 1002(a), (b)(1)(B) and (c)(1)(B).

All fifty states therefore have statutes that provide for the approval and oversight of private higher education institutions, and many states have enacted substantive legal protections against predatory and unfair practices in the for-profit sector.⁶ These laws and regulations include important disclosure requirements, regulation of the contents of key documents provided to students such as enrollment agreements, prohibited practices, refund rights, cancellation rights, student protection funds or bonds to cover student economic losses in the event of school closures, private causes of action, and student complaint standards and procedures.

But many schools that offer distance education in states where they lack a physical presence are not legally authorized by those states or are not adequately covered by those states' oversight schemes. These schools fall into two categories in terms of state authorization:

1. **Schools covered by state authorization reciprocity agreements:** Regionally accredited degree-granting schools that are based in a state that is a member of a unified state authorization reciprocity agreement (“Unified-SARA”) may offer distance education programs in other member states after obtaining authorization from their home states; and
2. **Other schools:** Schools not covered by SARA offering programs in distant states that do not require approval for institutions without a physical presence. Schools not covered by SARA include those that are either (i) are not based in SARA member states, (ii) wish to offer programs in states that are not SARA members, or (iii) do not meet institutional eligibility requirements for SARA.

The vast majority of students who attend out-of-state distance education schools in either of these two categories are currently *not* covered by critical state consumer protections that would be available to them if they attended brick-and-mortar schools or a distance education program based in their own state. For distance education students who attend institutions that are *not* authorized through Unified-SARA, most state higher education statutes explicitly do *not* apply to out-of-state schools that lack a physical presence.⁷ For the students in 49 states who attend institutions authorized through Unified-SARA, this agreement has historically explicitly required states to waive higher education-specific consumer protection statutes and oversight of out-of-state distance education schools.⁸ The crucial consumer protections and oversight responsibilities that are explicitly preempted by SARA are identified in a 2015 report, which is attached to these Comments as Exhibit A.⁹

⁶ See National Consumer Law Center, Student Loan Law, § 13.6.3.2 and App'x E (5th Ed. 2015), updated at www.nclc.org/library.

⁷ See National Consumer Law Center, Student Loan Law, § 13.6.3.2 and App'x E (5th Ed. 2015), updated at www.nclc.org/library.

⁸ This should be changing as a result of the 2016 Rule, though the Rule delay and actions states previously took as a condition of joining SARA—including passing laws exempting SARA members from student protection laws—have complicated the current status.

⁹ National Consumer Law Center, “[Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud](#)” at 2 (Dec. 2015), included as Exhibit A.

The Department enacted the 2016 Rule to close this loophole, which left at least “5.5 million distance education student at degree-granting institutions”¹⁰ unprotected by states:

State authorization is a longstanding requirement in the Higher Education Act that requires institutions to be authorized in the state in which they are located as a condition for eligibility to receive Title IV Federal student aid. While all higher education institutions must have state authorization in the states in which they are physically located, there are no federal regulations for distance education providers in states where the institutions are not located.¹¹

Further, the 2016 Rule is necessary to ensure that state authorization reciprocity agreements do *not* allow states to abdicate their oversight and consumer protection roles by passing the buck to other states. Instead, the 2016 Rule makes it clear that reciprocity agreements are valid for state authorization purposes *only* when they do not prohibit states from enforcing consumer protection laws, including laws that apply only to institutions of higher education. In this way, each state’s “legal authorization” of out-of-state distance education schools, when provided through a reciprocity agreement, will only be recognized for purposes of participation in federal student aid programs when the state maintains its power to actively supervise institutions operating in that state and protect students located within that state from violations of its laws.

B. Schools that Offer Distance Education Programs Engage in Unlawful and Deceptive Practices that Harm Taxpayers and Students

The record of misconduct by predatory schools demonstrates that online education programs are at least as likely to be involved in the types unlawful practices that state laws are designed to protect against as traditional brick-and-mortar programs, and there is no reason to suspect that online students need fewer consumer protections than their in-person counterparts.

As detailed in NCLC’s 2015 report, a majority of the largest online education schools are owned and operated by the same for-profit companies that have been the subject of multiple law enforcement investigations and actions.¹² Here are just a few examples of government actions and investigations involving for-profit companies that offer distance education:

¹⁰ Press Release, U.S. Dep’t of Educ., “Education Department Announces Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations (Dec. 16, 2016), available at <https://www.ed.gov/news/press-releases/education-department-announces-final-rule-state-authorization-postsecondary-distance-education-foreign-locations>.

¹¹ *Id.*

¹² See National Consumer Law Center, “[Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud](#)” at 2 (December 2015), included as Exhibit A. Notably, a 2012 investigation by the U.S. Senate Health, Education, Labor and Pensions Committee detailed extensive misleading practices at schools owned by all of the corporations identified in NCLC’s December 2015 report. See U.S. Senate, Health, Educ., Labor and Pensions Comm., “[For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success](#),” S. Rpt. 112-37 (July 30, 2012).

- In November 2015, Education Management Corp. agreed to a \$100 million settlement with the Department of Education and 39 states for engaging in illegal recruiting and other illegal practices.¹³ The Consumer Financial Protection Bureau has sued ITT Educational Services for unfair and deceptive business practices,¹⁴ and the Department of Education has been monitoring the company’s financial status since the fall of 2015. Both of these schools offer extensive online education programs that are protected by reciprocity agreements or are exempt from state oversight.¹⁵
- In September 2016, Ashford University (owned by Bridgepoint Education), which is an exclusively distance education school, entered into a consent order with the Consumer Financial Protection Bureau (CFPB) regarding unlawful acts or practices related to advertising, marketing, and origination of private student loans. The CFPB found that Bridgepoint “engaged in deceptive acts and practices,” ordered it to discharge all outstanding institutional private loans, totaling over \$23.5 million in loan forgiveness and refunds to students, and ordered the school to pay \$8 million in penalties.¹⁶
- In March 2018, the New England College of Business and Finance settled with the Massachusetts Attorney General based on allegations of failing to make proper disclosures to prospective students and engaging in excessive recruitment calls.¹⁷
- In August 2018, American Military University, an exclusively online school, settled with the Massachusetts Attorney General, based on allegations of failing to disclose mandated job placement rates, using predatory enrollment tactics, and failing to provide loan repayment information 72 hours before enrollment as required by state law.¹⁸
- In January 2019, Career Education Corporation settled with 49 state attorneys general and agreed to cancel \$493 million in student loans based on allegations of misleading students and predatory enrollment tactics.¹⁹ CEC enrolls online-only education students through American InterContinental University and Colorado Technical University.
- Both Corinthian Colleges and ITT Tech, which were subject to multiple actions by state attorneys general and the Department of Education, operated online education schools.

¹³ Press Release, [U.S. Dep’t of Educ., “For-Profit College Company to Pay \\$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations”](#) (Nov. 16, 2015); Press Release, Office of the Kentucky Attorney General, [“Attorney General Conway Announces Agreement with EDMC”](#) (Nov. 16, 2015).

¹⁴ Paul Fein, [“Problems Deepen for ITT,”](#) InsideHigherEd.com (May 13, 2015).

¹⁵ See [www.aionline.edu](#) (EDMC Art Institute of Pittsburg Online); [www.itt-tech.edu/onlineprograms](#) and [www.dwc.edu/onlineprograms](#) (ITT Education Services online programs).

¹⁶ Press Release, [Consumer Financial Protection Bureau, Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices](#) (Sep. 12, 2016).

¹⁷ Press Release, Massachusetts Attorney General, [“AG Secures \\$900,000 to Help Students of Online Education Company”](#) (April 12, 2018).

¹⁸ Press Release, Massachusetts Attorney General, [“American Military University Pays \\$270,000 for Alleged Failure to Disclose Job Prospects, High-Pressure Enrollment Tactics”](#) (Aug. 8, 2018).

¹⁹ Press Release, Pennsylvania Attorney General, [“Attorney General Shapiro Announces For-Profit College Company Will Provide \\$493 Million in Debt Relief for Over 179,000 Students Nationwide”](#) (Jan. 3, 2019).

- The California Attorney General is currently prosecuting Ashford University, a distance education school, for alleged widespread illegal and deceptive practices.²⁰

The allegations of misconduct in online programs in these enforcement actions are consistent with our experience working with student loan borrowers. LAFLA and many other legal aid offices are increasingly seeing clients who were harmed by out-of-state for-profit distance education schools, and have attached some of their stories as Exhibit B.

Ensuring that online schools are subject to state consumer protection laws, including those specifically applicable to for-profit schools, is critical to deterring and preventing abusive conduct that wastes billions in students' and taxpayers' dollars. The 2016 Regulation is critical to ensuring that state consumer protection and oversight laws are applicable to all distance education providers.

C. Extensive Data Shows that Distance Education Schools Are Greater Risks for Students and Taxpayers

Available studies regarding distance education show that distance education is a risky proposition for taxpayers and students, far riskier than in-person, brick-and-mortar education. In January 2019, Spiros Protopsaltis and Sandy Baum published a paper summarizing all such studies to date.²¹ Rather than repeating their findings, we have attached the study as Exhibit C. Overall, their review of all existing data and studies demonstrated the following, among other things:

- Online education is the fastest growing sector of higher education²² and growth is primarily occurring in the for-profit sector.
- Students in online education experience poor outcomes, especially disadvantaged students. “Gaps in educational attainment across socioeconomic groups are even larger in online than traditional coursework.”²³
- “Online education has failed to improve affordability, frequently costs more, and does not produce a positive return on investment.”²⁴

²⁰ Press Release, California Attorney General, “[Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students](#)” (Nov. 29, 2017).

²¹ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy” (Jan. 2019), available at <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> and attached as Exhibit C.

²² *Id.*; see also Doug Lederman, “[New U.S. data show continued growth in college students studying online](#),” Inside Higher Ed (Jan. 5, 2018).

²³ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy” at 2 (Jan. 2019), available at <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> and attached as Exhibit C. See also Eric Bettinger and Susanna Loeb, Economic Studies at Brookings, “Promises and pitfalls of online education” (June 9, 2017), available at <https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/> (finding that online students enrolled at for-profit colleges did substantially worse than students in same face-to-face course; they earned lower grades, were less likely to succeed in subsequent courses, and more likely to drop out).

A recent survey of approximately 6,000 two-year college students highlighted the many challenges that cause low-income students to drop out of their online programs.²⁵ Over twenty percent reported problems with their online classes, including difficulty learning on their own, lack of interaction with faculty, difficulty keeping up because they do not have specified class times, difficulty using course technology, and lack of interaction with other students.²⁶ These types of problems are specific to online courses and cause worse outcomes for students than occur in traditional classroom programs.

One of the reasons that disadvantaged or low-income students have poorer outcomes in distance education is the digital divide. According to a number of recent studies, low-income people have more difficulty accessing and maintaining access to online education. Among other things, they do not always have sufficient internet connections at home or a dependable computer.²⁷ Legal aid offices often see clients who withdraw from their online programs for these reasons.

D. Data Shows that the Portion of Students Enrolled in Risky Online, Out-of-State Education Programs is Growing and Urgently Needs Protection, and No Data Supports Diminishing Protections

Students of for-profit schools are increasingly enrolled in out-of-state online distance education programs, meaning that leaving such students out of state consumer protection law will cause an increasingly large portion of students at risky schools to go unprotected.

Online education is the fastest growing sector of higher education.²⁸ In 2016, nearly half (47%) of all for-profit college enrollment was exclusively distance education (compared to only 10% at public schools).²⁹ Of these for-profit school distance education students, 83% enrolled at schools outside of their home state (compared to less than 2% of distance education students at public schools).³⁰ In total, 39% of all for-profit college enrollments were students enrolled

²⁴ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy” at 2 (Jan. 2019), available at <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> and attached as Exhibit C.

²⁵ Stephen R. Porter and Paul D. Umbach, “What challenges to success do community college students face?” (2019), available at https://www.risc.college/sites/default/files/2019-01/RISC_2019_report_natl.pdf.

²⁶ *Id.* at 7.

²⁷ See, e.g., Monica Andersen, Pew Research Center, “Nearly one-in-five teens can’t always finish their homework because of the digital divide” (Oct. 26, 2018), available at <https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>.

²⁸ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live up to Its Promise? A Look at the Evidence and Implications for Federal Policy” (Jan. 2019), available at <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> and attached as Exhibit C. See also Doug Lederman, “New U.S. data show continued growth in college students studying online,” www.insidehighered.com (Jan. 5, 2018).

²⁹ The Institute for College Access & Success, “Going the Distance: Consumer Protection for Students Who Attend College Online 9 (Aug. 29, 2018), available at https://ticas.org/sites/default/files/pub_files/going_the_distance.pdf.

³⁰ *Id.*

exclusively in distance education in schools outside their home state.³¹ Strong state oversight of out-of-state distance education is particularly necessary for for-profit schools.

This data, along with the data on the risk distance education poses for students and taxpayers, and the evidence of illegal conduct that harms students in the for-profit school industry, including those attending distance education schools, supports the need for more state consumer protection and oversight.

Despite this, during the negotiated rulemaking meetings the Department indicated that it wished to revise the 2016 Regulation, possibly by allowing state authorization reciprocity agreements to prohibit states from enforcing their higher education-specific laws. The legal aid negotiators, and others, submitted extensive data requests to the Department seeking to understand its underlying reasons for possibly repealing the 2016 Regulation. These data requests are attached as Exhibit D.

The Department never produced any responses to these requests. Given lack of data supporting repeal of the 2016 Regulation, and the existence of extensive evidence showing the higher risk that online education poses to students and taxpayers, we support the negotiating committee's consensus that the Department should maintain the 2016 Regulation, as provided for in the proposed rules.

III. Comments in Support of Rules that Help Protect Students at Closing Institutions and Institutions at Risk from Further Harms Related to Misrepresentations, Teach-outs, and Other Risky Conduct

A. Support for Definition of "Teach-out" in § 600.2

We support the proposed addition of language to protect the rights, interests, and choices of students at closing schools in the definition of "teach-out" in 34 CFR § 600.2. Below we discuss the importance and factual support for two sentences within this definition.

1. Eligible borrowers should never be prevented from accessing closed school discharge, as provided in 34 CFR 685.214, instead of a teach-out

First, we support the language in the proposed regulations specifying that "Eligible borrowers should never be prevented from accessing closed school discharge, as provided in 34 CFR 685.214, instead of a teach-out." 34 CFR § 600.2 ("*Teach-out*"). This addition is important in light of recent, unwise and unsupported arguments that students should lose access to a closed school discharge merely because a closing school offers an approved teach-out plan. This argument was at least temporarily entertained by the Department, which proposed to cut off

³¹ *Id.*

closed school discharge access in such situations in proposed regulations issued July 31, 2018.³² The Department is correct to back away from its 2018 proposal, which was inconsistent with the HEA³³ and would unwisely and unfairly limit student choice in the event of closure.³⁴ The new proposal makes plain that access to a teach-out should not and does not prevent access to a closed school discharge.

A closed school discharge is a Congressional imperative to alleviate some of the harm that students experience when schools close. These students waste months or years of their lives and often give up job opportunities to pursue a credential they cannot obtain. They typically incur not just federal student loan debt, but also significant out-of-pocket expenses, opportunity costs, and non-dischargeable private student loans and other consumer debt to finance and support their education. The closed school discharge regulations, which only offer federal loan relief, do not and cannot make these students whole.

But the closed school discharge regulations are a bright light in a situation over which students have no control. They return some control to students by ensuring that they can choose their path forward. Under correct interpretations of current law, students presently have the right to decide what is best for them and their families after a school closure, based on many individual factors. They can choose to complete their program through a teach-out, if one is offered; to transfer some credits and complete the program at a school of their choice, if it will accept those credits; or obtain a closed school discharge to start fresh at a new school, in a new program, or by foregoing higher education altogether.

Teach-outs are not always the best option for closed school students, and therefore students impacted by closures should never be prevented from accessing a closed school discharge instead of a teach-out. In the past, the Department correctly concluded that although “teach-outs can be beneficial to borrowers . . . , a closed school discharge may be a better option for some students.”³⁵ Our organizations have assisted students impacted by school closures for many years. Students often do not get to choose between teach-out options because they are usually presented to students as a last resort, and we have seen many teach-outs offered by low-quality schools with high cohort default rates, low job placement rates, and low completion rates.

³² Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, 83 Fed. Reg. 37,242 (July 31, 2018) (proposed 34 C.F.R. §§ 674.33(g)(4)(i)(B), 682.402(d)(3)(ii)(C) and (iii), and 685.214(c)(1)(i)(C) and (ii)).

³³ 20 U.S.C. § 1087(c) (mandating that the Department grant a closed school discharge whenever “the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student **is enrolled** due to the closure of the institution”) (emphasis added); *see also* Comments of the Legal Aid Community to the Department of Education re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, Docket ID ED-2018-OPE-0027 at 63-64 (Aug. 30, 2018), *available at* https://www.nclc.org/images/pdf/student_loans/comms-proposed-rule-arb-closed-sch-false-cert.pdf.

³⁴ *See generally* Comments of the Legal Aid Community to the Department of Education re: Proposed Regulations on Borrower Defenses and Use of Forced Arbitration by Schools in the Direct Loan Program, and Proposed Amendments to Closed School and False Certification Discharge Regulations, Docket ID ED-2018-OPE-0027 at 64-75 (Aug. 30, 2018), *available at* https://www.nclc.org/images/pdf/student_loans/comms-proposed-rule-arb-closed-sch-false-cert.pdf.

³⁵ 81 Fed. Reg. at 39,369.

Further, many teach-outs differ in key respects from the programs that students originally signed up for at the institution that closed.

When aware of their options, students often decide that it is better to opt for discharge over participating in a teach-out, including for the following reasons:

- The teach-out school has lower job-placement rates than the original institution, has a worse reputation in the industry in which the student wishes to work, or otherwise has a reputation for offering low-quality education or job placement that makes it unlikely the program will provide sufficient financial gains to afford the student's loans or justify the total financial and opportunity costs.
- The teach-out program will not offer the type of education experience students signed up for and want, such as in-person classes, externship programs, or hands-on training. For example, a recent teach-out only offered online programs to students whose closing institution had provided in-person education in physical classrooms.³⁶
- The teach-out program is not reasonably accessible to an individual student due to differences in schedule or location and accessibility by public transit.
- The teach-out program may not offer a sufficiently comparable program or programmatic accreditation needed to work in the field the student desires.
- Some students find the same program is less costly or free at community colleges or other institutions that will not accept the transfer of any credits from the closed school. In addition, these institutions may have far better graduate outcomes. These students prefer repeating the classes taken at the closed school in order to reduce their level of student loan debt and increase the likelihood that they will earn a valuable credential that will lead to employment.
- The closing school provided low quality education and, as a result, the students did not obtain the knowledge or skills they needed from classes they took *before* the school closed. Even if the students manage to complete the teach-out program, they are appropriately skeptical that they may not have the skills or knowledge necessary to obtain or keep the job for which they were trained and to pay for the loans.
- Some students prefer not to continue their educations at all. We often hear from students that, because the school experience and closure undermined their faith in the higher education system, they prefer to move on with their lives without a postsecondary education and without student loan debt.

Forcing students to complete teach-outs in any of these circumstances serves neither students nor taxpayers, and therefore the availability of a teach-out should never prevent students from instead accessing a closed school discharge.

³⁶ See discussion of ICDC teach-out *infra* III.A.2.

For all of these reasons, we support the above-quoted proposed language in § 600.2, which would make students' choices in the event of a school closure clear, and would help guard against any confusion, misrepresentations, or actions on the part of officials, servicers, agencies, institutions or other actors that might seek to unfairly curtail a student borrower's choices and their access to a closed school discharge.

2. Any institution is prohibited from engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit

Second, we support the language in the proposed regulations specifying that “Any institution is prohibited from engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit.” 34 CFR § 600.2 (“*Teach-out*”). While it should be common sense to prohibit institutions from making misrepresentations to students, making this bar explicit here is important in light of the unique vulnerability of students when their school closes, the failure of the education system they have already endured, the financial incentives for institutions to inflate the value of teach-outs or transfers, and facts demonstrating the existence and harm of misinformation during school closures.

When a school closes, students' lives are suddenly upended by the failure of their institution and they are often left scrambling to figure out how to proceed. Students may already be dealing with incomplete or confusing information about their options. Therefore, misrepresentations about their options by their schools compound the harm of the closure by making it more likely that students will make critical decisions about their education and finances based on an inaccurate understanding of their available options.

Further, because closing institutions may be on the hook financially for closed school discharges, there are economic incentives for closing institutions to misrepresent teach-out and transfer options to dissuade students from pursuing closed school discharges. Similarly, while some receiving institutions act as good Samaritans and agree to take on students of closing institutions at a loss or considerable inconvenience to the institution, we have seen other institutions eager to profit from teach-out or transfer students' tuition and federal aid dollars, giving them financial incentives to misrepresent teach-out or transfer options.

These concerns are reinforced by our experience with recent closures, in which schools have emphasized teach-out or transfer options, downplayed or completely omitted mention of students' rights to pursue closed school discharge, or provided inaccurate information about students' rights and options. For example, ICDC College in California closed and arranged for a teach-out with an online distance education provider, including for brick-and-mortar students.³⁷ In its letter to students, it emphasized the teach-out, did not even mention students' rights to closed school discharges of their federal loans, and provided confusing information to them about the state tuition recovery fund at the end of the letter. Many of the students that the Legal Aid Foundation of Los Angeles assisted were unhappy that they could only complete a teach-out

³⁷ Letter from Rene C. Nunez, Vice-President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached to these comments as Exhibit E.

through an online program and did not know they could instead seek a closed school discharge until they were so informed by legal aid staff. Of course, most students impacted by school closures each year never receive the assistance of legal aid and rely on their schools for information about their educational options.

Similarly, Westwood College provided the attached letter to students when it closed.³⁸ The letter emphasized students' transfer options without mentioning discharge options until the second page. In addition, it provided inaccurate information by stating, "If you apply for and receive a Federal discharge, you will **forfeit** any Westwood credits earned and these credits **will not** be transferable to a partner school." In fact, students may transfer credits to a different program at a different school and still be eligible for a closed school discharge.³⁹

Further, we have seen students of closing schools face aggressive solicitations by other for-profit schools. Closing schools have hosted "school fairs" where all or most of the attendees are other for-profit schools eager to convince students of closed schools to transfer in. Such fairs may be helpful if the schools are honest and fair about the students' options, but misrepresenting transfer options and alternatives would unfairly lead many students to make suboptimal decisions based on misinformation and create further harm. For example, Corinthian's Heald College invited for-profit schools onto its closing California campuses to recruit. These schools aggressively pushed students to transfer credits rather than seek closed school discharges. Many former Heald students transferred to other suspect for-profit schools because of this misinformation, exchanging their discharge eligibility for a valueless degree and unknowingly exposing themselves to still more debt and predatory practices. DeVry College, which our clients have told us was ubiquitous in its on-campus recruiting during Heald's closure, was itself sued by the FTC for predatory practices less than a year later.⁴⁰

We therefore support the inclusion of proposed language in 34 CFR § 600.2 explicitly prohibiting institutions from "engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit."

B. Support for Guardrails to Protect Students from Further Harm When their Schools Close

We support the addition of certain proposed language in § 602.24(c)(6), (7), (8), and (10) that would provide necessary guardrails to protect students when their schools close from further

³⁸ Letter from Lou Pagano, Chief Operating Officer, Alta Colleges, to Westwood students (Jan. 25, 2016), attached to these comments as Exhibit F.

³⁹ See 34 C.F.R. § 685.214(c)(1)(i)(C); www.studentaid.gov/closedschool ("Q. I transferred credits from a closed school and enrolled in a completely different program of study at a new school and completed the new program. Are the previous loans from the closed school dischargeable? A. Yes, because the program of study at the new school is completely different than that of the closed school, for which the loans were intended.").

⁴⁰ Press Release, Federal Trade Commission, [FTC Brings Enforcement Action Against DeVry University](#) (Jan. 27, 2016) (alleging that DeVry misled prospective students about employment and income Prospects that were central to school's advertising and marketing). The complaint resulted in a \$100 million settlement. See Press Release, [DeVry University Agrees to \\$100 Million Settlement with FTC](#) (Dec. 15, 2016).

harm by requiring that certain minimal standards be satisfied during the closure and teach-out process.

1. Proposed § 602.24(c)(6) provides basic requirements for teach-out agreements

Proposed § 602.24(c)(6) would set out a series of requirements for teach-out agreements, including that the agreement must include a complete list of enrolled students and the program requirements each has completed, a plan to provide all potentially eligible students with closed school discharge and state-based tuition refund information, a record retention plan to be provided to all students, information on the number and types of credits the teach-out institution will accept prior to the student's enrollment, and a clear statement of tuition and fees.

These are all basic requirements that must be satisfied for the agency to be able to make a baseline assessment of the agreement and for students to begin to make informed choices about whether to pursue a teach-out, other credit transfer, or closed school discharge in the event of a closure. Further, a record retention plan is critical to ensuring that students will be able to access necessary records to pursue credit transfers, verify their academic records for educational, employment, or licensing purposes, verify financial aid records in the event of uncertainty or dispute, and access records if needed to pursue discharge or refund programs.

2. Proposed § 602.24(c)(7) requires teach-outs to offer online students opportunity to complete their program online, and in-person students opportunity to complete in person

Proposed § 602.24(c)(7) would modify approval requirements regarding teach-out agreements by providing that a teach-out by an alternative delivery modality is not sufficient unless an option via the same delivery modality as the original educational program is also provided.

We support requiring that teach-outs provide an option for students to complete their programs using the same delivery modality as used in the original educational program they signed up for. This would, for example, mean that a teach-out agreement should not be approved if it would only allow students who had been taking their classes in-person in traditional classroom settings to complete their program using online courses, or vice versa.

Students have valid and important reasons to strongly prefer or exclusively desire in-person or online education. A student may exclusively want in-person education if they lack computer skills or reliable access to a computer or the internet, if their program is hands-on in nature (e.g., culinary or massage school), or if they know or anticipate that they will be more likely to complete or will learn better in an in-person environment. Indeed, a recent study found that students "from low-income and under-represented backgrounds consistently underperform

in fully-online [education] environments;”⁴¹ this is the population that is disproportionately impacted by school closures. Thus, when ICDC College closed and arranged a teach-out with an online distance education provider, including for brick-and-mortar students,⁴² students LAFLA worked with found this to be an inadequate option for them. On the flip side, a student without access to transportation, without access to childcare, or with mobility impairments may need to continue an education she began online through online courses, or not at all.

While it is fine to offer students the option to complete their programs in a different modality, a reasonable opportunity to complete the program students signed up for must ensure they may do so in the modality they chose when they enrolled.

3. Proposed § 602.24(c)(8) helps prevent teach-outs from shuffling students from one failing school to another

Proposed § 602.24(c)(8) would prohibit agencies from allowing an institution to serve as a teach-out institution if it is under investigation or facing an action or prosecution for an issue related to academic quality, misrepresentation, fraud, or other severe matters, or if it is subject to the conditions that would require submission of a teach-out plan under proposed § 602.24(c)(1) or (2). This provision is important to ensure that teach-out arrangements do not merely shuffle students from one sinking ship to another.

As the Department has reportedly found in its efforts to find teach-out partners, finding an institution happy to act as a receiving institution is not always easy.⁴³ There is an obvious risk that the institutions that will be most eager to sign on as receiving institutions will be institutions that are seeking an enrollment and cash infusion because they are themselves financially unstable or because they are pursuing aggressive growth targets—which have often been led to deceptive recruiting practices to boost their enrollment numbers. Indeed, as discussed above, clients have told us that when Corinthian’s Heald College campuses in California were closing amidst significant scandal and government investigations, DeVry College was aggressive in recruiting Heald students to continue their educations. Less than a year later, DeVry was itself sued by the FTC for predatory practices. Guardrails such as this proposal are important to protect against approval of teach-outs that reflect the interests of expediency in finding a receiving institution but not the interests of vulnerable students who, having gone through one school failure, should not be shepherded into another.

⁴¹ Spiros Protosaltis and Sandy Baum, Does Online Education Live Up to Its Promise? A Look at the Evidence and Implications for Federal Policy (Jan. 2019), available at <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> and attached as Exhibit C.

⁴² Letter from Rene C. Nunez, Vice-President Compliance/Student Relations, ICDC College, to ICDC students (May 20, 2016), attached to these comments as Exhibit E.

⁴³ See, e.g., Eric Kelderman, “Fallout From For-Profit College Chain’s Closure Could Have Been Prevented,” (Chron. Of Higher Educ., Dec. 6, 2018), available at <https://www.chronicle.com/article/Fallout-From-For-Profit/245278>.

4. Proposed § 602.24(c)(10) helps address the problem of closing institutions misleading students about their options

Proposed § 602.24(c)(10) would require the agency to obtain from the closing institution all notifications about the closure or teach-out options to ensure that the communications accurately represent students' ability to transfer credits and to make any necessary corrections. As discussed in detail above in III.A.2, this is important because students of closing institutions need accurate information about their options to make informed decisions about what to do when their school closes. Although the schools are often their primary source of information, the schools may intentionally or unintentionally misrepresent the options. Closing schools, on the hook for the cost of closed school discharges, have a financial incentive to make teach-outs or credit transfer options appear more appealing than closed school discharges and so may not represent the options neutrally and accurately. As discussed above, we have seen this problem again and again, with misleading communications from Westwood College and ICDC regarding their closures representing just a couple examples.⁴⁴

C. Students Should Be Promptly Informed Regarding Loss of Accreditation and Other Adverse Actions

We support the inclusion of the proposed language in § 602.26(b) and (e) that would provide for prompt notification and disclosures to current and prospective students regarding accreditor decisions to suspend, withdraw, revoke or terminate accreditation, place on probation, or take other adverse action against an institution. We note, however, that while these disclosures should be required, disclosures cannot take the place of substantive student protections from the harms associated with loss of accreditation or the institutional failures that lead to adverse accreditation decisions, and these provisions do not supplant the need for such protections.

When a school loses its accreditation or is otherwise subject to an adverse accreditation action, there are serious ramifications for students, who may no longer be able to access financial aid, transfer credits to other schools, qualify for licensure in their field, or get value in the employment market for a degree from an unaccredited institution. Further, adverse accreditation decisions are important signs of underlying school problems—such as financial instability, high risk of closure, and quality and value problems—that are of critical importance to students, and such decisions often precede school closures. Current and prospective students thus must be made aware of the action if they are to make informed decisions about whether to enroll or stay enrolled, to take on student loan debt, to pursue transfer opportunities, or to take other actions to protect or salvage their investment in higher education.

Recent history shows the need for these proposed disclosure requirements. For example, in January 2018, the Illinois Institute of Art was informed by its accreditor Higher Learning Commission that it had lost its accreditation.⁴⁵ According to news reports, students, and a federal

⁴⁴ See *supra* III.A.2 for discussion, and Exhibits E and F for the communications from these schools.

⁴⁵ Daniel Moore, "Deal Under Scrutiny as Art Institutes Face Accreditation Setbacks," Pittsburgh PostGazette (June 19, 2018), available at <https://www.post-gazette.com/business/career> FILED DATE: 12/6/2018 5:58 PM

lawsuit, the institution failed to disclose to students and prospective students that it was no longer accredited until after a news report highlighted the failure in June 2018, and in the interim the institution even posted false and misleading information in its course catalogs and enrollment agreements stating that “We remain accredited as a candidate school seeking accreditation under new ownership and our new non-profit status.”⁴⁶ During the January to June period, students continued to enroll at the institution, spent time and money on unaccredited classes/credits classes, took on student loan debt. Many graduated from a now-unaccredited institution, not realizing there was a significant and material change to the terms and value of the education offered by the institution.⁴⁷ A few weeks after the delayed disclosure, the institution announced that it was ceasing new enrollments and would close in December 2018. The delay in disclosure of the loss of accreditation meant that many students had taken actions they would not have otherwise and did not have the opportunity to take timely preparatory actions to avoid a bad situation or salvage their educational investment while they had a chance.

The Illinois Institute of Art example also provides a clear illustration of how disclosures that are hidden, inaccurate, confusing or misleading fail to provide students with the information they need to make informed decisions about how and whether to continue and to finance their education. In light of this, we further urge the Department to take steps to ensure that disclosures required under these proposed regulations provide actual, effective notice and information that is accurate, meaningful, and actionable to students who may be unfamiliar with the accreditation system and the meaning of accreditation decisions and terminology. We also urge the Department to ensure that the disclosures continue as long as the suspension or other adverse action is in effect so that the disclosures are more likely to reach all relevant students and prospective students.

[2018CH15216 14 workplace/2018/06/19/Deal-under-scrutiny-Art-Institutes-accreditation-setbacks-dreamcenter/stories/201806140022.](https://www.dreamcenter.com/stories/201806140022)

⁴⁶ See Dunagan et al. v. Illinois Institute of Art et al., Complaint, (Cir. Court of Cook County, Ill., Dec. 6, 2018), available at https://docs.wixstatic.com/ugd/60a689_33057fe59ed443288eaafa766ef67c8c.pdf; David Halperin, “Inside a For-Profit College Conversion: Lucrative Ties, Troubling Actions,” Republic Report (May 16, 2018), available at <https://www.republicreport.org/2018/inside-a-for-profit-college-conversion-lucrative-ties-troubling-actions/>.

⁴⁷ See Dunagan et al. v. Illinois Institute of Art et al., Complaint, (Cir. Court of Cook County, Ill., Dec. 6, 2018), available at https://docs.wixstatic.com/ugd/60a689_33057fe59ed443288eaafa766ef67c8c.pdf.