

September 14, 2018

Aaron Washington  
U.S. Department of Education  
400 Maryland Ave. SW, Room 294-12  
Washington, DC 20202

Docket ID ED-2018-OPE-0076

Dear Mr. Washington,

On July 31, 2018, the Department published a notice in the *Federal Register* of its intent to establish a negotiated rulemaking committee and two subcommittees to develop draft regulations on a broad range of topics. It also announced that interested parties would be able to submit comments on the topics it has identified at one of three public hearings or in writing.

I am pleased to write on behalf of the American Association of State Colleges and Universities (AASCU) to comment on the Department's proposed course of action. AASCU is a nonprofit Washington-based association of more than 400 public four-year colleges, universities, and state systems of higher education in the United States, Guam, and the Virgin Islands. Our membership ranges from smaller institutions with 1,000 students to universities with enrollments of more than 45,000. AASCU institutions include rural, urban, and suburban; HBCUs and MSIs; liberal arts colleges and polytechnics; range from primarily residential colleges to commuter and online institutions; and offer credentials that vary from certificates and associate's diplomas to doctoral degrees. The topics identified in the notice will clearly have significant consequences for our members.

Because we support the effort to develop effective regulations, we are concerned that the extensive list of diverse policy topics already identified by the Department may exceed the ability of one committee to address. We urge the Department to either narrow the topics or group them in more homogenous categories to be assigned to distinct committees. It may be prudent for the Department to delay regulatory action on topics that are too constrained by existing statutory language to be susceptible to effective resolution through regulations.

Second, the proposed creation of two subcommittees, while intended to lighten the burden on the committee, may pose challenges of its own. Specifically, to whatever extent the composition of the subcommittee fails to comport with the requirements of HEA Section 492, the ensuing rules could be subject to court challenge for noncompliance with applicable law. While it would add some complexity and cost to the process, it may be

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appropriate to designate the subcommittees as distinct committees with specific regulatory charges of their own as we propose below.

We strongly support a review of TEACH Grant regulations and believe the Department is right to revisit existing regulations in light of the 2015 Government Accountability Office report, which documented specific issues regarding improper conversions and servicer errors. In addition to addressing these problems, we urge the Department to develop protections for recipients and provide regulatory cures for minor errors. We view TEACH Grants to be sufficiently distinct from the other topics listed in the Notice to merit a separate committee. We also support a review of accreditation and state authorization regulations. In view of their complexity and the critical roles they play in the gatekeeping triad, however, we urge the Department to assign these two topics to a stand-alone negotiating committee.

The proposed topic of the participation of “faith-based entities” requires more extensive explanation from the Department, since faith-based institutions have been eligible to fully participate in Title IV programs since the latter’s inception. To whatever extent any desired modifications of current law can be accomplished through regulatory action, however, this topic should be addressed by a committee solely dedicated to the issue.

The remaining topics listed in the Notice represent an assortment of issues, which can constitute a workable and sufficiently homogenous subset of items to be handled by one negotiating committee.

AASCU looks forward to the next steps in the regulatory process and stands ready to assist the Department with the development of effective regulations that serve students, institutions, and taxpayers.

Sincerely,

A handwritten signature in cursive script that reads "Mildred García".

Mildred García, Ed.D.  
President