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U.S. Department of Education

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The University Professional and Continuing Education Association (UPCEA) is composed of the nation's leaders in delivering quality professional, continuing, and online education to adult and nontraditional learners who now represent the majority of today's postsecondary students. Our members have been front and center as almost all postsecondary learning rapidly shifted to a remote format in the last year due to the pandemic. Our members have been designing, developing, and delivering quality online degree and non-degree programs for decades. On behalf of UPCEA, we wish to thank you for the opportunity to comment on the Department's Notice of Proposed Rulemaking (NPRM) posted in the Federal Register on May 26, 2021.

We appreciate the efforts the Department has taken to encourage innovation in online higher education and student access to affordable, high-quality educational opportunities. We encourage you to strengthen the work of the triad, with accreditors, the federal government, and states all working together to enforce accountability. On the topic of state authorization and distance education, consider including the important work of those associations and organizations helping the community (such as critical organizations like NC-SARA) as part of any discussions. We also appreciated the thoughtful work of the negotiators on the 2018-19 negotiated rulemaking to come to a consensus on updating the distance education definitions. This moved the regulations into a more modern representation of the modalities and uses for

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technology-assisted education. We look forward to being part of the conversation to change the regulatory landscape to meet the needs of today's students and weighing in on proposed changes to any distance education regulations.

UPCEA recognizes the importance of regulating distance education to protect students and the general public, especially in light of significant changes to educational programs due to the COVID-19 pandemic. The last year has done much to focus attention on the great scalability and successes of distance education units as well as the innovative and almost immediate changes undertaken by many universities to deliver education to students with minimal interruption. But unfortunately, it also highlighted how the rapid change to emergency remote learning could be done poorly, and we wish to stress upon you and negotiators that this experience should not be considered representative of the quality online educational programs offered by most institutions, whether public or private.

We opposed the Trump administration Education Department's work to rescind, instead of revise, the existing gainful employment regulations, and did not believe that simply replacing them with additional disclosures on the College Scorecard at some point in the future served the interests of students, institutions, or the public. Neither do we believe that the Obama-era gainful employment regulation should be returned to its original status. We believe it is critical that the Department uses statutory authority to take administrative actions to curb documented patterns of abuse to protect taxpayer dollars, but also the public trust and perception of institutions of higher education. While data and transparency are useful tools and have the potential to improve the higher education marketplace, they are not a substitute for the sanctions provided by the gainful employment rule.

One of the other regulatory considerations is the Financial Responsibility Composite Score as a measure of how economically stable an institution may be. Almost all colleges and universities took a significant financial hit last year, through no fault of their own. The Score should be modified to meet this incredibly unique moment. This is a timely opportunity to review the

efficacy of the Score itself, as we believe it is both outdated and insufficient when addressing the immediate economic feasibility of most institutions in the way the Department intends.

We are pleased that the Department has encouraged the “[e]quitable outcomes of all students.” Modern learners do not always interact with the campus and pursue education in a linear progression to degrees as presumed by the authors of the 1965 Higher Education Act. While we believe additional reforms that protect consumers while still enabling institutions to offer more accessible, flexible, and lower-cost pathways to credentials are needed, we appreciate where progress has been made, particularly with regard to competency-based education programs and direct assessment opportunities through recent rulemaking efforts. Certificates, badges, and other forms of non-degree alternative credentials are becoming more prevalent and are increasingly sought and accepted by both students and employers as valid representations of a quality education. We believe that laws and regulations, in addition to accreditation standards, must keep pace to ensure such credentials are recognizable and, where appropriate, obtainable through the assistance of federal aid. Students of all types striving for better opportunities should be treated similarly, and as such federal regulations should treat all students in an equal way. Part-time, distance education, veteran, DACA recipients and incarcerated students receiving Pell grants (something we will hopefully see implemented as soon as possible), all have unique needs which must be considered to make their outcomes equitable.

As part of this negotiated rulemaking, we hope that the Department includes voices of distance education students, adult, and working learners and the units and administrators who serve them to provide a modern, and insightful approach to today’s education landscape and to make long-lasting policy changes for the future of higher education. UPCEA looks forward to being such a voice and providing recommendations towards these efforts, and we thank you for the opportunity to weigh in. We are hopeful that the upcoming negotiated rulemaking session will provide clarity in regulation and change the course of how the federal government interacts with both students and institutions in a positive way.

If you have any questions, feel free to reach out to me at jdimaggio@upcea.edu or 202-400-2689.

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