

May 4, 2020

Gregory Martin
U.S. Department of Education
400 Maryland Ave., SW
Mail Stop 294-42
Washington, DC 20202

Re: Comments to the Department of Education Regarding Proposed Rules for Distance Education and Innovation, Docket ID number ED-2018-OPE-0076

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

Dear Mr. Martin:

Thank you for the opportunity to comment on the Department of Education’s proposed regulations governing distance education and innovation. Since 1968, UnidosUS—formerly known as the National Council of La Raza—has been committed to building a stronger America by creating opportunities for Latinos. In this rich 50-year history, UnidosUS has remained a trusted nonpartisan voice for Latinos, serving the community through research, policy analysis, and state and national advocacy. We also work closely with a network of nearly 300 community-based organizations across the United States and Puerto Rico, to serve our community in a variety of areas including housing, workforce development, health care, immigration, and education.

As a leading advocate on education policy encompassing the perspectives of Latinos and English learners, UnidosUS has a long and significant history working toward equity in education including the reauthorization of the Every Student Succeeds Act and the Higher Education Act. UnidosUS respectfully submits these comments in response to the proposed rule posted on the Federal Register on April 2, 2020. We strongly urge the Department of Education to maintain regulatory definitions governing distance education to ensure that institutions of higher education are providing students with a high-quality education that leads to a meaningful credential. It is imperative that we strengthen rather than weaken regulations, particularly at a time when many institutions of higher education are confronting the need to move all instruction online quickly due to the COVID-19 pandemic.

Online education has provided an important avenue for students to continue their education in this challenging time. However, this mass migration from the classroom, and the potential for a prolonged trend toward online programs, underscores the need to ensure that all students—particularly high-need students—enrolled in online education receive an equitable and high-quality education. COVID-19 has made it more important than ever to maintain strong oversight of distance education programs and the use of taxpayer dollars. Significantly changing or weakening the protections included in the proposed rule presents a serious risk to all students—and Latino students in particular, who now make up one in five undergraduate students and are projected to comprise 30% of the nation’s workforce by 2050.¹ While some flexibility is needed during this pandemic, it should be short-term in nature, and should not overshadow the need for safeguards for students in the long-term.

The quality of online education varies greatly, and the Department should do more, not less, to protect students, particularly those who are disproportionately targeted by unscrupulous actors and suffer the most if protections are weakened. For example, for-profit colleges disproportionately offer online education, including exclusively online, and on average produce worse outcomes for students. Latinos are overrepresented at for-profit colleges; while they represent 20% of all undergraduates, they comprise 25% of those enrolled in for-profit institutions.² Latinos at for-profit colleges are less likely to graduate and more likely to acquire a low-quality degree, making it difficult to repay their student loans and more likely to default. Latinos in the 2003–2004 entering cohort attending for-profit institutions were nearly four times as likely to default within 12 years compared to Latinos who did not attend a for-profit institution.³ Research has found severe equity gaps in online education success.⁴ Latino students enrolled in online classes had lower completion rates and grades relative to their outcomes in face-to-face courses and compared to White students.⁵ Interviews with Latino students point to the absence of a meaningful student-instructor relationship as an important difference between online and face-to-face courses.

We appreciate that the Department has maintained some basic student and taxpayer safeguards regarding the definition of a credit hour, the definition of distance education programs, and rules for outsourcing education to unaccredited providers. However, in each case, Department officials participating in negotiated rulemaking suggested weaker language that would put students at risk. These regulations should ensure that students have access to and are paying for high-quality distance education. Without such regulations, we will see—as we have repeatedly over decades—Latino students suffer. Therefore, we urge you to maintain the proposed language for these critical student protections, which earned consensus among participants in those negotiations in the final rule.

Credit Hour

We support the consensus language that the Department agreed to in the NPRM and urge you to maintain this language. The credit hour rule helps create a common language for awarding taxpayer dollars to students and programs, because it's how colleges and the Department determine students' enrollment and assess program eligibility. While the credit hour is not a perfect measure, we do not yet have a replacement. With the absence of a replacement to the credit hour, institutions can charge students for more work and learning than they received. The high cost of college already burdens low-income Latino students as they are responsible for filling a larger gap between college costs and grant aid.⁶ Moreover, the largest increases in borrowing among Latinos has occurred by those attending a for-profit institution.⁷ The potential for Latino students to be charged more for a lower-quality education will only make it more difficult for Latino students to pay for college and complete their degree.

Investigations by the Office of Inspector General have documented past abuses by schools and shown that accreditors have not reliably defined the credit hour, demonstrating the imperative for the Department's existing definition.^{8 9} The definition in the regulations—which allows institutions multiple ways to define a credit hour, based on time, evidence of student achievement, and/or the amount of work represented by learning outcomes—has proved workable for the hundreds of colleges operating competency-based education programs. Institutions may choose to exercise the flexibilities already in the definition if it believes the time-based metric is inaccurate to represent its students' workloads. The consensus definition includes this flexibility and we urge the Department to maintain the consensus language.

Distance Education

While we support the Department's proposed language on regular and substantive interaction, we urge the Department not to change the definitions further, including the definition of an instructor. This definition is key to differentiating between distance education programs and correspondence courses. The requirements on regular and substantive interaction exist in law because of a history of abuse in correspondence education programs.¹⁰ Institutions must provide students with a qualified instructor who provides real and meaningful interaction related to the content of their course. Research shows that Latinos enrolled in online education have lower academic and attainment outcomes than in face-to-face courses, and interviews with Latino students highlight the absence of a meaningful student-instructor relationship as a contributing factor.¹¹

The language in the NPRM reflects a hard-fought compromise among negotiators, and the Department should not diverge from the proposed definition in its final rule. If regular and substantive interaction is weakened, it will only be a matter of time before students are taking on debt to do little more than watch YouTube videos in exchange for college credit. If this happens, we are likely to see inequities grow between those who have access to real, meaningful, substantive interaction with instructors and those who do not. This is even more critical now that institutions are moving to online education due to the COVID-19 emergency.

Outsourcing of Educational Programs

We support the consensus agreement to limit outsourcing of educational programs to no more than 50% of a program, with accreditor approval required above 25% of a program, but we urge the Department to restore the requirements that accreditors thoroughly review and approve such arrangements through their commissions. Students and taxpayers should be paying for a high-quality education that has gone through some level of oversight, and outsourcing programs allows for the bypass of the regulatory process. Raising the cap on the outsourcing limit could present serious risks for students.

The existing restrictions serve to ensure that education providers receiving federal aid have gone through quality assurances such as accreditation, obtaining state authorization, and passing a cohort default rate metric, which are all key checks on the higher education system. Historically, when federal accountability policies are weakened, for-profit programs engage in exploitative behavior allowing the industry to grow and negatively affect underrepresented students, including Latinos.¹² Data show that Latino students enrolled at for-profit institutions experience worse outcomes than those attending nonprofit institutions. Once Latinos enroll in a for-profit college, they are less likely to graduate compared to their White peers, leaving them with high loan balances and a higher likelihood of defaulting.¹³

Outsourcing more than 50% of a program essentially creates a back door to federal Title IV funds for unapproved education providers. The marketplace for unaccredited education providers is large and often volatile, and this is likely to be even more true in a post-COVID-19 world, in which many providers will seize on the opportunity to sell low-quality programs to colleges.

UnidosUS strongly encourages the Department not to weaken the credit hour, regular and substantive interaction, or outsourcing provisions. In these provisions, the Department must maintain the consensus language agreed to during the rulemaking process. The Department's primary role is to protect students and ensure that they benefit from access to high-quality

higher education. Weakening or eliminating these provisions would do the opposite and create the conditions that would harm students, particularly now, on a massive scale.

UnidosUS is available to discuss these comments in greater detail if you have questions or concerns. We look forward to continuing to engage the Department on ways to strengthen quality and consumer protection in the higher education system to ensure that colleges serve their students—and federal taxpayers—well.

Should you have any questions regarding these comments, please contact Roxanne Garza at rgarza@unidosus.org.

¹ U.S. Bureau of Labor Statistics (2015). The increasing importance of Hispanics to the U.S. workforce. <https://www.bls.gov/opub/mlr/2015/article/the-increasing-importance-of-hispanics-to-the-us-workforce.htm> (accessed May 2020)

² UnidosUS calculation using U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race Alone or in Combination, and Hispanic Origin for the United States and States,” 2016 American Community Survey 1-Year Estimates. Washington, DC, 2016, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2016_PEPASR5H&prodType=table

(accessed January 2019) and UnidosUS calculation using U.S. Department of Education, “Digest of Education Statistics,” National Center for Education Statistics. Washington, DC, 2017, https://nces.ed.gov/programs/digest/d17/tables/dt17_306.10.asp (accessed January 2019), Table 306.10.

³ Judith Scott-Clayton, The looming student loan default crisis is worse than we thought (Washington, DC: The Brookings Institution, 2018), <https://www.brookings.edu/wpcontent/uploads/2018/01/scott-clayton-report.pdf> (accessed January 2019).

⁴ Hans Johnson and Kevin Cook, *Online Learning and Student Outcomes in California’s Community Colleges* (San Francisco, CA: Public Policy Institute of California, 2014).

⁵ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live Up To Its Promise? A Look At The Evidence and Implications For Federal Policy,” <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> (accessed April 2020).

⁶ U.S. Department of Education, National Center for Education Statistics. (2019). *Digest of Education Statistics, 2017* (NCES 2018-070), Chapter 3. <https://nces.ed.gov/fastfacts/display.asp?id=76>

⁷ For-Profit Colleges are Harmful to Latino Students, (Washington, DC: UnidosUS, 2019), http://publications.unidosus.org/bitstream/handle/123456789/1954/unidosus_highereducationact_accountability.pdf?sequence=2&isAllowed=y (accessed May 2020)

⁸ U.S. Department of Education, *OIG Alert Memo: The Higher Learning Commission of the North Central Association of Colleges and Schools’ Decision to Accredit American InterContinental University*, Washington, DC, 2009.

⁹ U.S. Department of Education, *The Higher Learning Commission Could Improve Its Evaluation of Competency-Based Education Programs to Help the Department Ensure the Programs Are Properly Classified for Title IV Purposes*, Washington, DC, 2015.

¹⁰ David Whitman, *The Cautionary Tale of Correspondence Schools* (Washington, DC: New America, 2018).

¹¹ Spiros Protopsaltis and Sandy Baum, “Does Online Education Live Up To Its Promise? A Look At The Evidence and Implications For Federal Policy,” <https://mason.gmu.edu/~sprotops/OnlineEd.pdf> (accessed April 2020).

¹² Gainful Employment A Civil Rights Perspective (Washington, DC: Protect Students and Tax Payers, 2014), http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2014/10/Gainful-Employment-Civil-Rights-Perspective_WhitePaper_October2014.pdf (accessed April 2020).

¹³ Latinos in Higher Education: Enrollment and Completion, Statistical Brief (Washington, DC: UnidosUS, 2019), http://publications.unidosus.org/bitstream/handle/123456789/1937/enrollment_completion_brief.pdf?sequence=3&isAllowed=y