

**House Subcommittee on Higher Education and Workforce Training
Hearing on Education Regulations: Federal Overreach into Academic Affairs
March 11, 2011**

Context: On March 11, the House Subcommittee on Higher Education and Workforce Training held its first hearing to examine U.S. Department of Education (USED) regulations for institutions of higher education and accrediting bodies. Specifically, the Subcommittee focused on two regulations – a state-authorization rule (requiring that states follow certain federal guidelines to authorize all institutions operating within the state) and a federal definition of credit hour. While Chairwoman Virginia Foxx (R-NC) opened by recommending that the regulations be delayed, and possibly withdrawn, Ranking Member Rubén Hinojosa (D-TX) indicated that he would work to ensure the regulations are implemented.

Testimony Summary: In opening remarks, Chairwoman Foxx noted that the United States boasts the finest system of higher education in the world but warned that the strain of federal regulations undermine that strength. She contended that the new state-authorization regulation would create a hurdle particularly for distance education and that the federal definition of a credit hour encroached on an inherently academic function. Ranking Member Hinojosa countered that the definition of a credit hour and criteria for authorization were greatly needed to strengthen higher education, noting the USED Office of the Inspector General's (OIG) May 2010 review of the Higher Learning Commission's (HLC) accreditation of an institution that found serious concerns with oversight of credit hours.

The hearing witnesses were John Ebersole (President, Excelsior College), Dr. G. Blair Dowden (President, Huntington University); the Honorable Kathleen Tighe (Inspector General, U.S. Department of Education Office of Inspector General); and Ralph Wolff (President, Senior Colleges and Universities of the Western Association of Schools and Colleges).

- Mr. Ebersole described the regulations as "unnecessary" and reflecting "a lack of forethought." He discussed the exponential growth of online/distance education and argued that the state-authorization rule would place an incredibly onerous burden – both financial and time – on states (in which officials are indicating they will be unable to comply with the regulations by July 1) and institutions. He warned that the uncertainties presented by the state-authorization rule will force not-for-profit institutions either to withdraw distance education offerings from certain jurisdictions or put their Title IV eligibility at risk.
- Dr. Dowden agreed that the two most concerning regulations were those identified by Chairwoman Foxx. On the state-authorization rule, he expressed concern on behalf of religious institutions, noting the danger of politically-motivated bias against religious colleges. He further stated that the credit hour was a sacrosanct element of higher education and that one-size-fits-all would undermine the U.S. higher education system's strengths.

- Inspector General Tighe indicated that the regulations reflected the guidance provided to USED by OIG following its investigation on accreditors, which revealed that many regional accreditors did not define or set minimum requirements for credit hours. Inspector General Tighe argued that the credit hour serves as the most basic proxy for student learning and that a consistently-applied definition would help ensure that students are receiving the proper amount of learning to receive federal funding.
- Mr. Wolff criticized both regulations. On the state-authorization rule, he stated that it represented the first time the federal government has imposed specific criteria rather than respecting state judgment; that the impact of the regulation is unclear with as many as 37 states needing to change licensing laws; that the rule will have a particularly severe impact on distance and religious education; and that it includes no provision for enforcement, leaving states and institutions confused and concerned. He referenced the American Council on Education's March 3 letter, which urges USED to rescind the rule. On the credit hour regulation, Mr. Wolff suggested that a federal definition intrudes on the work of faculty, that its emphasis on seat time is outdated, and that the cost of implementation would be significant, both financially and in terms of the redirection of focus from student outcomes.

Discussion focus: Following the witnesses' testimony, members of the Committee participated in a question and answer session.

- Chairwoman Foxx and Rep. Susan Davis (D-CA) asked the panelists how the regulations might be made clearer, perhaps with USED guidance. The panelists observed that USED has released no guidance, yet the regulations will go into effect in 100 days. Although a Dear Colleague letter is anticipated to provide guidance on the new regulations, Dr. Wolff warned that these letters often result in additional need for interpretation.
- Chairwoman Foxx and Rep. Glenn Thompson (R-PA) requested that the panelists discuss the costs associated with the new regulations. Mr. Ebersole suggested that annual state and institutional costs due to the state-authorization rule could be \$500 million, which eventually would be passed down to students.
- Committee Chairman Kline (R-MN), Ranking Member Hinojosa, and Reps. Timothy Bishop (D-NY) and Robert Andrews (D-NJ) discussed the federal definition of credit hour and possible alternatives.
 - Chairman Kline asked why the regulation's definition's "equivalent" language was insufficient. Mr. Wolff noted that the regulatory definition included too many unclear terms and further undermined a focus on student outcomes. Dr. Dowden added that it would require extensive time for institutions to review all courses.
 - Ranking Member Hinojosa asked the panelists about current problems with credit hour verification and alternatives to credit hours. Inspector General Tighe noted that it is hard to make judgments about school quality without a definition and guidance on program length, particularly as certain accrediting agencies do not provide these definitions and guidance. Mr. Wolff countered that many accrediting agencies, including his own, provide a definition and explained that accreditors examine course catalogues, course syllabi, and student work samples to assess school quality.

- Rep. Bishop pressed the panelists on their distress over the credit hour definition, contending that it predominantly affected only nontraditional modes of instruction, like distance education, because the definition's inclusion of "equivalent" provided the flexibility the panelists sought with regard to traditional modes of delivery.
- Rep. Andrews pressed Inspector General Tighe on the extent of evidence regarding credit hour abuse (as uncovered in the HLC investigation). Inspector General Tighe suggested that the incident was not isolated, but could not provide the exact number of institutions that raised USED concerns over credit hours. Rep. Andrews requested that the OIG provide the Subcommittee with concrete information on USED's investigations and indicated his concern that the regulation might be "a solution in search of a problem."
- Chairman Kline and Rep. Thomson remarked on the insider trading allegations aimed at USED regarding its release of the gainful employment regulations in advance of their publication. Inspector General Tighe noted that OIG is investigating the claims and agreed that it would make sense to work with the Securities and Exchange Commission.
- Rep. John F. Tierney (D-MA) asked the panelists to opine on the best evidence that taxpayer money is being spent wisely. Mr. Ebersole promoted a focus on learning outcomes, arguing that inputs (like credit hours) do not adequately inform stakeholders about school quality. Inspector General Tighe responded that focuses on student outcomes and credit hours are not inconsistent and further contended that the USED definition provides adequate flexibility to consider student outcomes.

Analysis: As Chairwoman Foxx expressly noted at the conclusion of the hearing, Committee members on both sides of the aisle, to varying degrees, expressed concern about the two proposed regulations. Ranking Member Hinojosa was the most vocal advocate of the regulations. The USED's 14 program integrity regulations are scheduled to take effect July 1, 2011.