



August 26, 2022

Mr. Brian Schelling  
U.S. Department of Education  
400 Maryland Avenue SW  
Second Floor  
Washington, DC 20202

Dear Mr. Schelling,

On behalf of the undersigned organizations, we write to offer our comments on the proposed changes addressing prison education programs (PEP), the 90/10 rule and changes in ownership (CIO) under Title IV of the Higher Education Act (HEA) offered by the Department of Education (Department), as detailed in Docket ID ED-2022-OPE-0062.

The changes proposed in the NPRM will implement important statutory changes that have been long sought by the higher education community, or provide greater clarity for how the Department will handle changes in ownership. We are supportive of the goals of these regulations, and offer limited comments below to reflect areas where we believe the NPRM language could be improved.

### **90/10 Rule**

Our members, reflecting the consensus reached by negotiators, are supportive of the changes proposed to the 90/10 rule in the NPRM, and believe these changes will strengthen the underlying measure.

### **Change in Ownership**

We are generally supportive of the proposed revisions related to CIO and appreciate the Department's appropriate focusing of the regulations on circumstances in which proprietary institutions seek to convert to nonprofit institutions. Similarly, tightening the rules around change in control as it pertains to relationships with former owners or affiliated persons or entities serves to draw clear lines around the areas of concern that merit additional oversight.

However, we are concerned by the Department's proposed expansion of the definition of a nonprofit institution as barring any net earnings going to "any private entity." While the NPRM clearly states that this is intended to provide flexibility in oversight authority and is not intended to address more traditional contractual relationships institutions have with third-party vendors, the lack of a definition of "entity" opens this language to broad interpretation. Given the importance of this definition to thousands of private nonprofit

institutions, it is essential to make sure that the definition of “entity” is clear, narrowly focused and excludes standard practices of institutions.

### **Prison Education Programs**

The reinstatement of Pell Grant eligibility to prisoners is a landmark development. The Department has an important responsibility in implementing the statute restoring Pell Grant eligibility to incarcerated individuals. It must ensure that quality educational programs are offered in settings that commonly present significant challenges. Prison education programs vary widely, making it important that the new rules extending Pell Grant eligibility to prisoners be sufficiently flexible to accommodate those different situations, fortunately, the authorizing statute provides a clear and logical quality control framework.

The proposed regulatory requirements often exceed those in the statute, and could hamper the ability of institutions to offer Pell-supported programs within correctional facilities, at a time when there is broad public support and a moral imperative for increasing educational offerings in this setting. The comments submitted independently by the American Association of Community Colleges discuss areas in which the regulations exceed statute or hamper the goal of expanding access to incarcerated individuals in greater detail, and we wish to reinforce those point.

The area of greatest concern is the Department’s requiring Oversight Entities (OE) to make specific assessments of educational programs beyond those envisioned in the law. Furthermore, the NPRM proposes that OEs manage and assess comprehensive educational data such as job placement rates or the experience and credentials of instructors, which are not roles that state or federal corrections agencies can always do well. It is also duplicative of existing assessments made by accreditors, state licensing or oversight agencies and the Department. Protecting students is rightfully a top priority in the NPRM, and some redundancy in reviewing programs may be desirable, but the approval process must not become so burdensome as to deny incarcerated individuals access to programs that benefit them.

For similar reasons, the absence of any appeals process in the event that a PEP does not meet the OE’s “best interest” determination precludes the possibility of improvement or revision while allowing the possibility of quality programs being denied or forced to reapply. Allowing for an appeal would provide a way to fully examine the merits of a program, with as little interruption to students as possible and we recommend the Department add such a process to the final rule.

We appreciate your attention to these comments, and the thoughtful effort put into designing these proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell".

Ted Mitchell  
President

On behalf of:

ACPA-College Student Educators International  
American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Association of University Professors  
American Council on Education  
Association of Catholic Colleges and Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
CCCU - Council for Christian Colleges & Universities  
College and University Professional Association for Human Resources  
Council for Higher Education Accreditation  
NASPA - Student Affairs Administrators in Higher Education  
National Association of College and University Business Officers  
National Association of Colleges and Employers  
National Association of Independent Colleges and Universities  
UPCEA