

Commission on Regulation of Postsecondary Distance Education

Mission and Scope of Work

Mission:

The Commission on Regulation of Postsecondary Distance Education (The Commission) will develop and provide recommendations on appropriate government oversight and consumer protection for distance education. The Commission's primary aim is to address the costs and inefficiencies faced by postsecondary institutions that must comply with multiple (often inconsistent) state laws and regulations because they provide educational opportunities to students in multiple state jurisdictions.

The Commission's working definition of "distance education" will focus on those education opportunities provided for credit by postsecondary institutions across state lines through on-line education services, as well as those opportunities provided for credit that postsecondary institutions provide outside their primary campus in multiple states.

Background:

The Need for Action.

The regulation of distance education is of growing significance as distance education providers work in more than one state—and often in many states. Complexity, confusion and costs of compliance would be reduced if there were some commonality to state regulation or if institutions only had to comply with the rules of a single jurisdiction.

At the same time, concerns persist regarding possible abuses in the delivery of distance education that require government oversight not now being comprehensively provided. Among others, states seek to protect their citizens as consumers and the U.S. Department of Education continues to be engaged in protecting its investments in Pell Grants and student loans.¹

¹ On July 1, 2011 U.S. Department of Education (USED) issued "Program Integrity Rules" promulgated under the Higher Education Act. Among other things, these Rules require that institutions of higher education offering distance education comply with requirements in each state in which their students are located. In *Career College Ass'n v. Duncan* (796 F.Supp.2d 108 (2011)), the Career College Association (aka Association of Private Sector Colleges and Universities (APSCU)) sued USED in the U.S. District Court for the District of Columbia on several grounds related to regulations, including 600.9(c), which established this particular requirement. It was vacated on the grounds that the Department did not provide proper notice-and-comment as required by the Administrative Procedure Act. The ruling is currently on appeal to the DC Circuit. If the district court's ruling is upheld, USED would have to reissue the regulation for a new notice-and-comment period.

Core Principles.

- ◆ Distance education, which is a fast growing and dynamic component of postsecondary education for the future of the country, must be fostered and not unreasonably burdened by regulation.
- ◆ Academic quality and achievement is important for *all of* postsecondary education.

Key Points.

- ◆ A shared commitment to quality education is a core underpinning of this effort.
- ◆ Reaching non-traditional students and developing creative, non-traditional education strategies are significant national priorities.
- ◆ The explosive growth of on-line, and blended on-line, face to face instruction has stretched the quality assurance and regulatory capacities of accreditors, states, and the Department of Education.
- ◆ The core issues of quality involve student achievement and student loan default rates related largely to inadequate student achievement.
- ◆ The core regulatory issues involve burden and costs: the nation lacks a coherent, systemic approach to issues of quality and consumer protection, and multiple, inconsistent legal regimes increase both burdens and costs.
- ◆ The core role of states, traditionally and appropriately, is consumer protection.
- ◆ The core role of accreditors, traditionally and appropriately, is ensuring quality and facilitating continuing improvement.
- ◆ The core role of the federal government, traditionally and appropriately, is providing access to educational opportunity and averting and correcting practices which abuse or contravene the purposes and effectiveness of federal student financial aid programs.

Issues of Focus:

The Commission will make recommendations regarding cost- and inefficiency-reducing strategies and action steps that are designed to preserve and/or enhance the quality of distance education services. Several approaches to achieving commonality of state regulation toward these ends include:

- ◆ Model state laws and regulations, which could be adopted by individual states;
- ◆ Reciprocal agreements:
 - Among individual states pursuant to which states would agree that the regulation of any one state, which is the primary residence of the education provider, would be accepted as fulfilling the regulation requirements for other states in which it provides services for credit; or
 - Among the states as members of existing regional higher education compacts, and among the compacts themselves; and
- ◆ Accreditation certifications, which would be accepted by states in which education providers provide services for credit.

Given this principal focus, it is contemplated that The Commission will address roles and responsibilities of state regulatory bodies; U.S. Department of Education-recognized accreditors; and, more broadly, other issues associated with the U.S. Department of Education and the federal government. In addition, relevant evaluation and data-gathering efforts that should inform policy and practice regarding distance education effectiveness, cost, and burden may be addressed.

The Commission Membership:

The Commission will be chaired by former U.S. Secretary of Education and former South Carolina Governor Richard W. Riley. The membership of The Commission is notable and diverse—reflecting major thought leaders and representing an array of perspectives important in shaping the Commission guidance and recommendations. Institutional/organizational perspectives reflected in the composition of the Commission include, but are not limited to: those of major higher education organizations and entities, both non-profit and for-profit; accreditors; and organizations representative of relevant government actors. Relevant government agencies will be invited to participate as non-member contributors and observers.

APLU and SHEEO will undertake principal management of the work of the Commission. EducationCounsel LLC, where Secretary Riley serves as senior partner, will provide legal, policy, strategic and convening support to The Commission.

The Commission Operations:

A draft background paper will be available at an early date for information and comment by the Commission members. The Commission will have one or two (if necessary) meetings where testimony will be sought from interested parties. The goal will be to broadly engage the interested communities so that The Commission's recommendations will be broadly adopted. It is understood that such adoption would require support from both the higher education provider community and from relevant government entities. The Commission will seek to have its work completed by January or February of 2013.

Preliminary Projected Timeline:

Timeline	Activity
June	FIRST MEETING: IN PERSON Focus on mission, scope and work ahead—reaching consensus regarding expected outcomes, timelines and core strategies for action.
June through August	Work to develop set of guiding principles, assemble relevant background research, and craft preliminary set of recommendations for Commission. Reach out to key thought leaders and constituents, and prepare for Commission to receive "testimony" on key issues; frame agenda in light of preliminary research conducted.
September	SECOND MEETING: IN PERSON Frame parameters regarding THE COMMISSION objectives and identify key, discrete issues to be examined. Hear "testimony" on key issues and engage in discussion regarding evidence presented.
October	Further develop relevant research base and frame strategy and action recommendations in light of meeting discussion and direction.
November	THIRD MEETING: REMOTE Discussion of revised working drafts of documents, in preparation for final meeting/release.
November through January	Final work on recommended strategies and action steps; outreach to Commission members and other key stakeholders regarding contemplated final action.
January	FOURTH MEETING: IN PERSON/REMOTE TO BE DETERMINED Discussion of final report and final Commission action endorsing recommendations.
February	Release of Final Report and outreach to key constituents regarding report recommendations, including the President/Administration; governors; federal and state legislators/legislative bodies; etc.