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January 30, 2015

Docket ID ED-2014-OPE-0057

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the Hispanic Association of Colleges and Universities (HACU), the only national education association that represents Hispanic-Serving Institutions (HSIs), please accept our response to U.S. Department of Education's (the Department) proposed regulations for teacher preparation programs released in the Notice of Proposed Rule Making (NPRM) on December 3, 2014 (Docket ID ED-2014-OPE-0057). Today, HACU represents more than 400 colleges and universities committed to Hispanic higher education success in the U.S., Puerto Rico, Latin America and Spain. Our member institutions in the U.S. are home to more than two-thirds of all Hispanic college students, the nation's youngest and fastest-growing population. HACU is headquartered in San Antonio, Texas, and maintains a Western Regional Office in Sacramento, California, and a Government Relations office in Washington, D.C.

HACU counts in its membership some of the schools of education most productive of new teachers in the country. For example, the California State University system graduates approximately 7,500 new teachers annually. Likewise, between 2008 and 2012, the University of Texas System reported 16,234 graduates who held teaching certificates in Texas. In addition, the Texas A&M system graduated 15,595 teachers between 2007 and 2011, averaging 3,119 new teachers per year, while the University of New Mexico reports 368 teacher graduates per year. While differing in their geography and state requirements, these HACU member institutions, like other teacher preparation programs throughout the nation, are committed to educating high quality teachers. They regularly seek opportunities to enhance the effectiveness of their graduates in the classroom and are actively engaged in continuous program improvement. For example, these institutions continually use valid and reliable research, feedback from their K-12 partners, data on workforce demands and State program approvals, among other measures, to reform and enhance their programs.

HACU supports accountability mechanisms that are fair, transparent, valid, reliable, feasible, and useful for program improvement. Unfortunately, the regulations proposed by the Department fall far short of meeting these criteria. In fact, if these proposed regulations were adopted, they would interfere with the goal of producing profession-ready teachers for each and every child. Overall, the stated benefits of either improved accountability or transparency would not materialize and the undue time and cost burden imposed on institutions would place the focus and attention on testing and compliance, and divert it from the innovation and the rich program improvement work already occurring organically in teacher preparation programs across the country.

HACU's specific concerns include:

Concern #1: Disproportionate Impact on HSIs, HBCUs, TCUs, other MSIs and High-Need Districts and Fields.

The proposed regulations would have a disproportionate impact on institutions whose mission includes providing access to students from underrepresented groups. In addition, the mandated entry requirements could compromise the mission of those MSIs who welcome disadvantaged students and develop them into profession-ready teachers. MSIs could further be impacted by connecting the eligibility for TEACH grants to the programs' rating via the mandated performance assessment system. Most students attending MSIs require financial aid, and this potential restriction would affect students' access to higher education.

HACU is particularly concerned that programs preparing candidates to teach in high-need schools or high-need fields like special education and English as a Second Language would be assessed in large part on the results of K-12 student standardized tests. Standardized test scores are routinely lower for these populations of students for reasons unrelated to teacher preparation. Compounding the problem is the fact that, in these proposed regulations, student learning outcomes are weighted more heavily than any other indicator to determine a program's rating (NPRM, p. 71830). A foreseeable unintended consequence would be a tendency for programs to place their graduates in less challenging environments where test scores are higher.

The resulting effect of these proposed regulations is clear: an exacerbation of the existing racial and ethnic diversity gap within the teacher workforce and increased shortages in high-need fields. Because preparation programs that serve high-need schools will be disadvantaged and because many such programs prepare significant numbers of teachers of color, these proposed regulations may result in the training of fewer teachers of color, widening the disparity between the U.S. teacher and student populations. At this point, the question becomes an institution's likelihood of utilizing TEACH grants were these regulations in place. Finally, the proposed regulations make it more likely that teacher preparation programs whose graduates teach in high-need schools will receive lower ratings not only on student growth, but also on employment measures. This in turn creates strong disincentives for programs to train teachers to work in such schools.

This is no time for the federal government to contribute to the ever-widening diversity gap between students and teachers. HSIs prepare 90% of Hispanic teachers, and along with other MSIs, constitute a vital pipeline to maintain diversity among our nation's teachers. Given that 25% of all schoolchildren in the U.S. are Hispanic (and this number continues to grow), compared with 7% of teachers, it is time for the federal government to be responsible and propose regulations that constructively respond to the ongoing racial/ethnic shifts in student enrollment within our nation's public schools and the persistently low supply of Hispanic teachers.

HACU stands in support of those member institutions who have expressed similar concerns in their comments. *"The second concern is that the approach may quickly create institutional incentives that are counter to national needs. For example, it is widely recognized that the regulations may create disincentives to increase diversity in teacher preparation programs, reducing efforts to recruit students who themselves are from the nation's highest need schools and communities."* (The California State University System) *"Most fundamentally, CSU is concerned about the teacher*

candidates who will be adversely affected by the proposed regulations, which are likely to disproportionately be students in Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) - the latter group including the majority of CSU campuses. Graduates of these institutions often return to the high poverty, ethnically diverse communities where they resided as youth and wish to serve as teachers. The frequent pattern of poor test scores among low-income students and those of color on standardized achievement tests will, based on the proposed institutional rating criteria in the NPRM, disproportionately jeopardize TEACH funding for candidates at HBCUs and HSIs." (The California State University System)

Concern #2: Federal Overreach

This proposal represents a significant expansion of federal authority into what is currently state-level and institution-level decision-making. This is an unnecessary and dangerous shift made without deep and meaningful consultation with the many stakeholders affected. Essentially, the federal government would be defining the profession's quality standards. In addition, these proposed regulations constitute an intrusion into academic matters by the federal government that would impede the timely and fluid adjustment of teacher preparation program activity in response to local needs. By mandating that states that receive funding under the Higher Education Act create a new accountability system for teacher preparation, and by imposing on states the use of a four-tier federally dictated rating system and the indicators by which teacher preparation programs must be rated, the proposed regulations become prescriptive and insert the federal government into jurisdiction now held by states and institutions of higher education. Section 207(a) of the Higher Education Act is clear and definitive on this point: "Levels of performance [for teacher preparation programs] shall be determined solely by the State." The development of "standards" which do not offer some flexibility and prerogative to local conditions, concerns or constituents is contrary to longstanding principles of "local control." In addition, the oversight of scholarly work by the Department constitutes an intrusive violation of academic freedom. This is highly troubling to HACU and the over 400 institutions we represent. HACU stands in support of those member institutions who have expressed similar concerns. *"Most fundamentally, the proposed regulations represent a dramatic shift in the responsibilities of the federal and state governments in teacher preparation. The regulation of teacher preparation is a function that is performed by the states. It is far too complex for the federal government to impose one size fits all requirements. Rather than leading to the encouragement, identification, and recognition of excellent programs, the regulations would impose a minimum level of acceptable performance. They fail to build on the momentum toward world-class programs that has been gained in California and elsewhere and in fact would interfere with these important movements."* (The California State University)

Furthermore, the proposed regulations would extend the federal requirements of the Department of Education's Elementary and Secondary Education Act (ESEA) waivers to states that do not have federal waivers. Should these proposed regulations be implemented, all non-ESEA waiver states would be required to assess all students in non-tested grades and subjects (NPRM, pp. 71861-71862). Currently, such extensive testing is required only in states with ESEA waivers granted by the Department or in states that have chosen to participate in the Race to the Top program. This use of higher education policy to further expand K-12 policy sets a dangerous precedent.

By linking students' access to federal financial aid to the program effectiveness rating of their teacher preparation program, the proposed regulations would set a precedent to alter federal financial aid

policy through regulation rather than through the legislative process. The financial aid in question—the Teacher Education Assistance for College and Higher Education (TEACH) grants—supports high-performing teacher candidates who are committing to teach in a high-need school or a high-need field (NPRM, p. 71843). Programs identified as “at risk” or “low performing” for two out of any three years will not be eligible to enroll students who are receiving funding under the HEA TEACH grant program.

Additionally, programs identified as “low performing” can lose state program approval and state funding, a loss which would mean that a program cannot enroll any students receiving any Federal student aid. This concern has been clearly articulated by HSIs and HACU stands in support of its member institutions’ concerns. *“From the time of the Negotiated Rule-Making in 2012, CSU has expressed its deep reservations about the categorizing of programs for determining which programs are eligible for TEACH grants—the purpose of the categories in the NPRM. CSU does not think that federally mandated ratings should be used for withholding federal financial aid in the form of TEACH or any other federal grants. CSU has several deep concerns about this intended process. The first concern is about this as a precedent. Withholding financial aid from qualified students based on federally prescribed institutional report cards is not sound policy in general, but especially in a case like this in which the measures to be used are unproven or, in some cases, proven to be faulty. Another concern relates to fairness. States vary in their accreditation standards and will have varying cut-off levels associated with TEACH eligibility. Some may designate a number of programs as being ineligible to receive TEACH grants while others may not designate any.” (The California State University)*

The current proposal is very similar to what was previously offered a year or so ago and changes little from that effort which was not pursued at that time. It is unclear why the same failed proposal would be acceptable when it was not before. HACU remains committed to the practice of establishing student aid eligibility on the basis of student need and existing *institutional* eligibility and questions the soundness of reverting to a previously failed and flawed approach.

Concern 3: No Evidence of Efficacy

Currently, no state fully implements the performance rating system proposed by the regulations for teacher preparation programs. A more feasible approach to developing new evaluation systems would be to subject the new standards to pilot assessment and evaluation of impact prior to implementation. The program requirements mandated in this proposal are not supported by research or common and long term professional practice. To mandate such unproven and untested methods is unreasonable, counter to purpose and unlikely to result in improvement. What we know with a high degree of certainty is that, if promulgated, these regulations will produce unintended consequences (as previously outlined) that will do little, if anything, to address continuous program improvement. Some of the measures of program effectiveness mandated by the Department in these regulations are still being tested for validity and reliability, and attaching high-stakes consequences at this point would be ill-advised. HACU stands in support of those member institutions who have expressed similar concerns. *“The proposed regulations would not add value to the teacher preparation accountability process. In order to add value, new approaches need to be tried that go beyond those currently available. Those in the proposed regulations are based on outdated models. They have repeatedly been demonstrated to be unsound scientifically. They are discredited approaches that*

yield erroneous findings and are completely unreliable in any effort to assess teacher preparation.”
(The California State University)

HACU is committed to policy based on empirical data, not ideology or politics. In this case, evidence is lacking that the indicators prescribed by this regulation actually represent program effectiveness. The Department's erroneous assumption that there exists agreement about what constitutes a successful teacher preparation program demonstrates a remarkable lack of information and regard for current practice. While teacher preparation programs routinely seek information for feedback and program improvement, the proposed models are not specifically informative and are unlikely to generate a rating number that would accurately or substantively reflect program effectiveness. HACU is also concerned about the absence of guarantees of data quality. At the heart of this proposal is the collection and utilization of massive amounts of data from both K-12 and higher education. Ensuring that the data are valid and reliable is of paramount importance and a laborious task that takes ongoing resources not readily available in institutions or states.

The Department indicates that one of the goals of this proposal is to provide prospective teachers and employers as well as policy makers with accurate data for informed decision-making. The proposed regulations will not meet that goal. Considering that states will calculate the rating for each teacher preparation program using processes that assign different weights to the same indicator, data comparison across states would not be possible. This concern also applies to the Department's determination that alternative-route programs could have different weightings applied for employment outcomes at the state's discretion (NPRM, p. 71835). In essence, the regulations give advantages to alternative certification programs. For example, programs which train teachers on-the-job get significant advantages. They will be allowed to count all of their participants as employed – even while they are still learning to teach. Traditional programs, which train teachers before they are licensed and hired, can only count graduates who get jobs. By not holding all teacher preparation programs to the same standards and levels of accountability, stakeholders will be misinformed and misled regarding program quality.

Concern #4: Extension of K-12 “Test and Punish” Model into Higher Education

With a rating system, performance levels, and high-stakes consequences mirroring Department policy for K-12 education, these proposed regulations would extend the “test and punish” accountability model into higher education. HACU is deeply concerned about the extension of previous and problematic test-based accountability systems into higher education. These regulations build on the K-12 accountability systems established by No Child Left Behind (NCLB), Race to the Top, and the waiver process for the Elementary and Secondary Education Act (ESEA), bringing all of the concerns with these programs into the rating of teacher preparation programs.

In particular, student testing features in the first indicator discussed by the Department in the regulations. The NPRM states (p. 71837):

Specifically, under this measure as defined in proposed §612.2(d), States would calculate a program's student learning outcomes for each new teacher using (1) aggregate student growth data for students taught by new teachers, (2) a teacher evaluation measure that as defined in §612.2(d) must, in significant part, include data on student growth for all students, or (3) both. Where a State has already adopted measures of student growth as part of a

comprehensive teacher evaluation system, we would permit the State to build its indicators of academic content knowledge and teaching skills linked to student learning outcomes from data provided by these existing teacher evaluation systems. In this regard, we believe that comprehensive teacher evaluations provide richer and more accurate information on teacher quality than student growth data alone. Our proposed definition of "teacher evaluation measure" would ensure that these evaluations are meaningful by requiring that they (1) differentiate teachers on a regular basis using at least three performance levels, (2) use multiple valid measures in determining each teacher's performance level, and (3) include, as a significant factor, data on student growth for all students and other measures of professional practice. We recognize that not all State evaluation systems currently meet our proposed definition, and that States may prefer to use a stand-alone measure of student growth. Alternatively, or in addition, provided that a State's existing measures of student growth are part of a comprehensive teacher evaluation system, a State may use the results of its teacher evaluation system as its indicator of student learning outcomes.

In addition, HACU strongly believes that the use of these models as definitive evaluative measures for teacher preparation programs will produce poor data. K-12 test scores are not designed to rate teacher preparation programs. Furthermore, the data on program graduates will be incomplete, since states can exclude teachers who move across state lines, teach in private schools, take positions which do not require certification, or join the military or go to graduate school. The employment measures will include factors that programs cannot control, such as economic conditions and program graduates' decisions not to enter the teaching profession. Again, because the regulations utilize employment and retention numbers to measure program quality, they will punish teacher preparation programs that send students to high-need schools, where teacher turnover is higher. HACU stands in support of members who have articulated similar concerns in their comments. *"The fundamental issues that need to be addressed here are broader and relate to the validity of the data - as well as to the extent of sampling and the frequency of data collection. The validity issue is particularly important. Teacher hiring, placement, and retention are influenced more by the economy and by K-12 funding and budgets than they are by any program quality dimensions. Hence, using these measures of program quality does not make sense."* (The California State University)

Even more troubling than the continued overreliance on testing is the embedded use of value-added modeling (VAM) found in the determination of student growth and in teacher evaluations where student growth is among the measures used, as evidenced in the preceding language from the Department. The Department discusses VAM in the NPRM on page 71833. The research on the use of VAM-type models to evaluate teachers is mixed at best, and the states are currently working to address challenges involved with VAM and high-stakes testing. Many states are currently re-evaluating their use of K-12 standardized test scores. Building a teacher preparation accountability system on the structure of a crumbling K-12 accountability metric would perpetuate the problems, rather than informing a new system with lessons learned.

Concern #5: Working Against Equity in Education

The Elementary and Secondary Education Act (ESEA) requires that states work to change the disproportionate congregation of inexperienced teachers in high-need schools (PL 107- 110, Section 1111(b)(8) (C)). Yet these proposed regulations would promote that very practice by incentivizing preparation programs to place first-year teachers in high-need schools (NPRM, p. 71286).

In essence, these regulations run counter to the goal of equity in education. On the one hand, they incentivize programs to place graduates in better performing schools (typically not high-need schools) through the mandate that student learning outcomes be given the most weight among the indicators required to create a program rating. On the other hand, the proposed regulations incentivize the placement of graduates in high-need schools, as the employment rates in high-need schools would receive the next highest weight when calculating a program rating. This counteraction leads to not only confusion, but overall challenges in how the regulations could be implemented, and with high-stakes consequences for such ratings at hand.

New teachers, especially those in high-need schools, need strong, sustained support to remain not only in the school but in the profession overall. Without funding to build and maintain induction programs, new teachers too often leave the high-need school and the profession, and the cycle of new teachers serving in schools where students most need experienced educators continues. These regulations would add to the problem of congregating the least experienced teachers in high-need schools.

Concern #6: Unfunded Mandate

The proposed regulations would require statewide data systems to be designed, implemented, and refined in a year (NPRM, p. 71829), yet offer no federal funding to cover the costs—amounting to an unfunded mandate by the federal government.

As noted in the NPRM on page 71862, only nine states at this time can connect students' learning outcomes to their teachers' preparation programs, and the rest of the states, as well as the District of Columbia and Puerto Rico, are somewhere along the way to making this connection. The federal government has already invested over half a billion dollars toward the creation of these systems, yet these nine states have achieved just one piece of the data sharing and connection required by the proposed regulations. Clearly, to comply with the proposed regulations, states would have to invest heavily from their own coffers. In order to keep their budgets balanced, states would have to take funds away from other programs to implement this regulation or, alternatively, to raise taxes or fees to comply with this requirement. In addition, state aid to HSIs is likely to be impacted. Institutions would likewise need to develop capacity to comply with the regulations. The cost of implementing this unfunded mandate may be passed on to students via tuition increases and/or decreased state funding for higher education or to citizens of the state through higher taxes and/or reduced services. This reality would be particularly devastating to the many low-income students served by HSIs. The proposed regulations represent an economic hardship due to their exorbitant cost burden, estimated to be more than three times the \$100,000,000 associated with a significant regulatory action. This would place added stress on budgets that will be forced to seek relief in higher tuitions, disproportionately impacting low-income, minority students, for whom access remains a major barrier to entering the profession.

The Department estimates the cost of implementation to be \$42.1 million over 10 years (NPRM, p. 71858), a number that the Department concedes is imprecise and that many view as too low. In fact, in a recent response to the Office of Management and Budget request for feedback on the Information Collection Request, the State of California submitted its cost estimates for the implementation:

California's costs to implement the proposed amendments to Title II of the Higher Education Act in California are estimated at \$232,939,000 in development costs, and \$485,272,059 in annual ongoing implementation costs. No federal or state funding sources have been identified to support the activities outlined above which will be necessary in order to fulfill the requirements of these proposed regulations. These costs and investments are significantly higher than estimated in the proposed regulations calculations of development and implementation burdens.

<https://drive.google.com/file/d/0B8aik23koznFTFlWUVFZRHNTUmc/view?usp=sharing>

Concern #7: Unworkability of Proposed System

These proposed regulations create a “cookie-cutter” approach within the evaluation of teacher preparation programs process by mandating the indicators by which the nation’s 25,000 teacher preparation programs would be rated. The approach is a rigid one that constrains innovation and leaves very little room for potential alternatives responsive to local demands or student needs. The regulations make significant demands on states, which will have to adapt or create data systems and measures in order to be in compliance, all without additional resources. Given this challenge, the validity, reliability, feasibility and usefulness of any data collected will be suspect. Furthermore, this complex system would be used to determine eligibility for federal student financial aid by assessing the effectiveness of each teacher preparation program, extending an untested performance assessment into a high-stakes realm. Given these challenges and others cited throughout this letter, these proposed regulations are unworkable. Most states do not have the capacity to enact these assessments, as the requisite data systems are not in place. HACU believes that no standard should be promulgated which refers to outcomes which are beyond the ability of teacher preparation to affect.

As already noted, only nine states can connect student learning outcomes to the teacher's preparation program. The Department’s expectation that states will be equipped to implement the proposed regulations within one academic year as described on page 71829 in the NPRM is unrealistic and evidence of the Department’s lack of informed decision-making. State systems will not have the ability to track new teachers for up to 5 years in the workforce (NPRM, p. 71834)—including identification of whether or not the new teacher works in a high-need school—to ensure compliance with obtaining the second metric of employment outcomes (placement and retention rates).

In addition, the Department vastly underestimates the burden these regulations would impose on both the states and institutions of higher education, including the need to create new policies and procedures for compliance. As a result, the focus will be shifted to regulation compliance and away from innovation and the enhancement of teaching preparation programs and the profession. HACU stands in support of member institutions who have shared similar concerns in their comments. *“The regulations will interfere with the functioning of teacher preparation programs, requiring them to devote substantial added attention and resources to collecting and reporting data that will be of little benefit and may even lead to misunderstandings and erroneous conclusions.” (The California State University)*

Concern #8: Negative Effect on Affordability and Access to College

Because these proposed regulations would limit access to federal student financial assistance to teacher candidates, they would create a new barrier to college affordability for many students, particularly those attending HSIs, HBCUs, TCUs, and other MSIs. Since low- and middle-income students, as well as students of color, are disproportionately affected by changes in financial aid for higher education, they would likely be disproportionately affected by these regulations. Restricting access to financial aid would send the profession in a backward spin and turn back the clock on progress in support of an educator workforce that is culturally, racially, ethnically, and economically representative of communities served. Finally, given the current decline in teacher preparation program enrollment across the country and the continued increase in the cost of higher education, the instability created by these regulations to access student financial aid would likely exacerbate shortages. These regulations, as written, do very little, if anything, to incentivize students, particularly those representative of communities of color, to become teacher candidates.

HACU is gravely concerned about any attempt to tie federal student financial aid to a rating based on questionable metrics and data quality, as it opens the door to a dangerous precedent.

Conclusions

This letter does not address all the shortcomings of this proposal, but only those most important and troubling to our organization, our members, and our belief in the pursuit of excellence in the teaching profession. Indeed, virtually every section of the Notice of Proposed Rule Making runs counter to HACU's mission of "Championing Hispanic Success in Higher Education" and to our commitment to the preparation of profession-ready teachers for every child.

Given the certainty of adverse effects should these regulations be adopted and promulgated, I urge you, Mr. Secretary, to withdraw them and reformulate them with the mission and the values of the Department you lead as your compass: *"to promote student achievement and preparation for global competitiveness by fostering education excellence and ensuring equal access."* If you allow the mission of your Department to guide your new efforts, you will weigh heavily the lessons learned from previous attempts to make standardized K-12 student test results serve purposes for which they were not designed. You will also allow the present to inform the future for the purposes of developing a more efficacious approach to accountability for teacher preparation. Should these simple recommendations be considered, I trust that your end product will be a proposal that balances the pursuit of access and the pursuit of excellence, and not one built on the problematic foundation of "test and punish." I am also confident that at the end of the new comment period, you will read comments more supportive of the new NPRM and not overwhelmingly in opposition, as are the comments to the current NPRM.

As you lead this new and fresh effort, I urge you to work with the profession and with Congress to strengthen Title II and develop meaningful and valid accountability measures that will incentivize the ongoing reform work of preparation programs. Both the Elementary and Secondary Education Act and the Higher Education Act will be considered by Congress this year for reauthorization. Engaging with Congress and the legislative process on the important discussion of the reform of teacher preparation across this country is called for now. The process deserves no less than the full and

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public deliberation of Congress and the comprehensive and active inclusion of diverse members of the profession.

This proposal represents a major shift in higher education policy, affecting federal student financial aid, the equity work ongoing in education, with consequences for our K-12 school system, and the certainty of a disproportionate negative impact on HSIs, HBCUs, TCUs, and other MSIs. Given the remarkable lack of capacity across the nation to implement the varied aspects of these proposed regulations, substantial unintended consequences would follow their adoption, not the least of which would be misinformation that would taint important decision-making and the diversion of limited resources from the ongoing work of improving teacher preparation.

HACU is opposed to the proposed regulations, and sincerely hopes you will listen to our concerns and consider our recommendation to reformulate them. I request that the Department not proceed with the implementation of the NPRM. Should you have questions about these comments, please do not hesitate to contact me at 210-576-3214 or via e-mail at antonio.flores@hacu.net.

Sincerely,



Antonio R. Flores
President and CEO
Hispanic Association of Colleges and Universities