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May 2, 2016

Docket ID ED-2014-OPE-0057

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary King:

On behalf of the National Conference of State Legislatures (NCSL), we are responding to the Supplemental Notice of Proposed Rulemaking (NPRM), published in April in the Federal Register, which adds to the NPRM released in December 2014 that proposed a federal teacher accountability system under Title II of the Higher Education Act.

Both the accountability system proposed in the 2014 NPRM and the supplemental language proposed last month regarding distance education providers and their eligibility for TEACH grants pose challenges for many providers, especially to those that offer distance education programs in multiple states. The regulations would be very difficult for distance learning programs to comply with, given the degree of coordination that would be needed to assure accuracy and consistency among states in rating programs. This could have a very real and unfortunate impact on states that depend on the ability of distance learning to reach rural, working, and underrepresented students with the goal of diversity in the teaching profession.

NCSL appreciates that the department attempted to resolve some issues that states and distance learning programs had raised in comments on the original NPRM by clarifying that a state would only have to report on a state program if at least 25 graduates of the program are certified in that state. The Supplemental NPRM also states that a program would not be "high quality" for the purpose of being eligible to award TEACH grants if any state classifies the program as low-performing or at risk of being low-performing. Since each state would set the weighting of the four required metrics to determine its own program ratings, this would be problematic. One state could rate a distance education program as at-risk or low-performing while another rated the program as effective, but no student enrolled in that program in any state would be able to receive a TEACH grant.

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However, even if the distance learning language could be perfected, the underlying problems in the regulation that NCSL noted in February of 2015 still remain. In those comments, we argued that the NPRM went well beyond the statutory requirements of HEA. It would define the indicators states would use to assess the performance of teacher preparation programs, and it would define “high quality” for purposes of determining a program’s eligibility to award federal TEACH grants. NCSL argued that the proposed rule would create parallel accountability systems—the federal system and state accreditation and evaluation systems. Data collection is also a huge issue, as the new federal system would require reporting at the individual program, not institutional level, and about half the states are not currently capable of matching data between K-12 and postsecondary systems.

We also noticed a seeming discrepancy with the cost estimate of \$42.1 million in the NPRM when California reported that it estimated it would spend \$232,939,000 to implement the rule and have \$485,272,059 in annual ongoing costs to carry it out. Our comments also pointed out that the costs of the proposed regulation included having to conduct “customer satisfaction surveys,” determine which graduates of programs in a state have moved out of that state, and assess all grades and subjects to determine a program’s outcomes for all teachers (not just those in subjects currently tested by federally-required statewide assessments).

NCSL also believes that since Congress passed and the President signed the Every Student Succeeds Act (ESSA), some of the required metrics for determining program ratings no longer make sense. The new law eliminated the No Child Left Behind waivers that required states to conduct assessments in all grades and subjects as part of teacher evaluation; the proposed regulations would be in conflict with the law. As of this summer, no state will be required to test subjects and grade levels outside those currently required under ESSA. This would certainly add to the burden of the proposed regulations. In addition, President Obama’s budget proposal for FY 2017 requests that Congress fold the TEACH grant program into a single loan-forgiveness program. This means that the TEACH grant program may not exist for much longer and that part of the proposed rule would not even be applicable within a few years.

Furthermore, the proposed regulations are inconsistent with existing federal regulation in two very important ways related to equity for all students. ESEA requires that states work to change the disproportionate congregation of inexperienced teachers in high-need schools. Research suggests that having experienced teachers is especially important to children in these schools, and the department’s Office of Civil Rights is expecting states, through their equity plans, to ensure that disadvantaged and minority students are not being disproportionately taught by inexperienced teachers. Yet these proposed regulations incentivize preparation programs to place first-year teachers in high-need schools. There is an apparent inconsistency between the teacher preparation regulations and state plans to ensure equitable distribution of teachers.

In addition, Minority Serving Institutions (MSIs) could be further harmed by connecting the eligibility of programs for TEACH grants to the programs’ ratings via the mandated performance assessment system. Students attending MSIs often require financial aid, and this potential restriction would affect students’ access to higher education.

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As NCSL noted last February, "...there are problems with virtually every section of the NPRM. Given the depth and complexity of the shortcomings of the proposal, NCSL urges the department to withdraw it, work with the profession and with Congress to strengthen Title II and to develop meaningful and valid accountability measures that will incentivize the ongoing reform work of preparation programs." We reiterate this position and thank you for your attention to these comments.

Sincerely,



Representative Sharon Tomiko Santos
Washington House of Representatives
Co-Chair, NCSL Education Committee



Senator Howard Stephenson
Utah Senate
Co-Chair, NCSL Education Committee