January 11, 2018

Dr. Arthur E. Keiser, Ph.D.
Chairman
National Advisory Committee on Institutional Quality and Integrity
U.S. Department of Education, Office of Postsecondary Education
400 Maryland Ave., SW., Room 6W250
Washington, DC 20202

Mr. Frank H. Wu, J.D.
Vice Chairman
National Advisory Committee on Institutional Quality and Integrity
U.S. Department of Education, Office of Postsecondary Education
400 Maryland Ave., SW., Room 6W250
Washington, DC 20202

Dear Dr. Keiser and Mr. Wu,

We write to urge the Department of Education's National Advisory Committee on Institutional Quality and Integrity (NACIQI) to address at its upcoming meeting the recent troubling pattern of for-profit institutions converting to, or attempting to convert to, non-profit entities in order to avoid regulatory scrutiny.

On February 7th, 2018, NACIQI will convene for its biannual meeting to consider the recognition of various accreditation agencies and to discuss advisory actions related to the accrediting process.[1] Currently, there is no discussion planned around these sector conversions by institutions based on the meeting agenda supplied to the Federal Register.[2] Given NACIQI's unique ability to recommend guidelines and practices for federally recognized accrediting agencies in accordance with their responsibilities under the Higher Education Act,[3] NACIQI has a responsibility to address how agencies should consider changes in ownership and other such transactions at its February meeting.

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[1] Office of Postsecondary Education; Call for Written Third-Party Comments. Federal Register Vol. 82 No. 141, July 25, 2017.
[2] "National Advisory Committee on Institutional Quality and Integrity Meeting." (2018, January 3). *Federal Register*. Online at: https://www.federalregister.gov/documents/2018/01/03/2017-28406/meetings-national-advisory-committee-on-institutional-quality-and-integrity.
[3] 20 U.S.C. § 1011c.

A prerequisite of Department of Education ("the Department") approval of a change in ownership is the relevant and federally recognized accrediting agency's approval of the conversion.[4] While the underlying predatory conduct of many for-profit schools is already cause for concern, a request for a change to non-profit status raises additional alarms and should be approached with extreme caution by accreditors.

Additionally, NACIQI should make clear that it will closely scrutinize accreditors that do not carefully review such potentially fraudulent deals and create guidelines requiring increased scrutiny when these deals are brought to accreditors. NACIQI should create guidelines that prioritize the best interests of students and safeguard academic quality.

This issue is urgent, given recent applications for sectorial changes currently pending before accrediting agencies. For example, Grand Canyon University, a large for-profit institution, recently announced plans to seek non-profit status for the second time, which the school unsuccessfully attempted to do in 2015-16.[5] Their application to convert to non-profit status is again before the Higher Learning Commission, which previously denied Grand Canyon's attempted conversion, citing its concern that the institution would be outsourcing too much of its academic operations.[6]

Another troubling example is the Dream Center Foundation's ("Dream Center") plans to purchase Education Management Corporation's ("EDMC") for-profit college portfolio (including 31 Art Institute schools, and the Argosy University and South University systems), despite no experience managing a higher education institution. The Dream Center also seeks to convert these institutions to "non-profit" status with funding from a private equity investment firm. Although the Department issued a pre-approval notice for the sale, we believe this sale warrants additional scrutiny. The sale has the potential to impact tens of thousands of students and requires careful examination by accrediting agencies to ensure the sale is in the best interest of students.

For example, the conversion to non-profit status would allow EDMC schools to skirt for-profit oversight from the Department and continue to operate in a manner that has attracted multiple alleged violations of federal and state laws meant to protect students. In 2015, the Department and U.S. Department of Justice fined EDMC nearly $100 million for illegal and predatory recruiting practices, and 40 state Attorneys General also went after EDMC for deceptive and misleading recruiting practices.[7] In addition to legal troubles, a staggering number of EDMC programs have saddled their students with high levels of debt while producing graduates earning poverty-level wages, calling into question EDMC's ability to prepare students to be gainfully

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[4] 34 C.F.R. § 600.31

[5] Fain, P. (2016, March 7). "Stuck with Profit." *Inside Higher Ed.* Online at: https://www.insidehighered.com/news/2016/03/07/accreditor-blocks-grand-canyon-us-attempt-become-nonprofit.

[6] Fain, P. (2016, March 7).

[7] Gough, P.J. (2015, November 16). "EDMC to pay $95M to settle Department of Justice lawsuit." *Pittsburgh Business Times*. Online at: https://www.bizjournals.com/pittsburgh/news/2015/11/16/edmc-to-pay-95m-to-settle-department-of-justice.html.

employed.[8] Moreover, a recent survey of "borrower defense claims" – applications for loan relief from defrauded students — found that EDMC registered the third most claims of any for-profit institution.[9]

We are also concerned that former EDMC colleges are converting themselves to non-profit status while maintaining key elements of for-profit governance, including a predatory operating and recruiting model, forced arbitration agreements as a condition of student enrollment, a practice of spending more on marketing and recruitment than on instruction, and a financial arrangement that allows institution leaders to personally profit from the institution's operations. For example, the subsidiary created to manage the institutions is set to be run by Brent Richardson, who happens to be the former chief executive officer of Grand Canyon University. We are concerned that Mr. Richardson and other investors still have strong personal financial interests in this conversion, since Mr. Richardson would provide a portion of the financing for the transaction through a family trust. This arrangement raises questions about whether Mr. Richardson or other investors stand to personally profit from this transaction and the governance of these schools.

Proactively addressing sectorial conversions would further a number of NACIQI's internal policy goals. In 2012 and 2015, NACIQI released a report on Accreditation Policy Recommendations to the Department of Education.[10] NACIQI should consider issuing new guidelines for accrediting agencies that are considering institutions' sectorial conversions in order to best protect students.

Given these concerns, we ask that NACIQI consider a comprehensive review of the guidelines accrediting agencies must consider for conversion proposals. We believe the following steps are worth considering:

1) **Ensure that conversion approval processes are significant factors in NACIQI's qualitative reviews of accrediting agencies.** As the 2015 Policy Report points out, reviews need to direct greater attention to assessing the role of an accrediting agency in evaluating the health, well-being, and quality of institutions of higher education, rather than mere technical compliance with the criteria for recognition. Given that non-profit conversion could significantly impact the well-being and quality of these institutions, NACIQI should evaluate agencies' approach to evaluating those conversions during the reviews.

[8] "Gainful Employment information." *U.S. Department of Education.* (Accessed 2018, January 2). Online at: https://studentaid.ed.gov/sa/about/data-center/school/ge.
[9] Cao, Y. & Habash, T. (2017, November 8). "College complaints unmasked." *The Century Foundation.* Online at: https://tcf.org/content/report/college-complaints-unmasked/.
[10] Phillips, S.D. (2015, July). "Higher Education Act Reauthorization: 2015 accreditation policy recommendations." *U.S. Department of Education, National Advisory Committee on Institutional Quality and Integrity.* Online at: https://www2.ed.gov/about/bdscomm/list/naciqi-dir/2015-spring/naciqi-finalpolrecom-jul222015.pdf; Studley, J.S. (2012, April). "Higher Education Act Reauthorization: Accreditation Policy Recommendations." *U.S. Department of Education, National Advisory Committee on Institutional Quality and Integrity.* Online at: https://sites.ed.gov/naciqi/files/naciqi-dir/2012-spring/teleconference-2012/naciqi-final-report.pdf.

2) **Conduct briefings or forums on the dangers of non-for-profit conversions.** As part of NACIQI's role of fostering dialogue and exchange with the Department and the Secretary of Education on pertinent accreditation matters, NACIQI staff should conduct a briefing on conversions and highlight the negative effects conversions may have on students and institutions.

3) **Advise the Secretary on setting specific standards that accrediting agencies must apply when approving conversions in order to be recognized.** One of the central goals expressed in the 2015 report was to make the accreditation process less rigid, with standards that are tailored to specific institutions and practices. This is an excellent justification for specific, risk-based standards related to sectorial conversions, where the risk to students and taxpayers is especially high. It also fits with NACIQI's recommendation from its 2012 Policy Report to "develop standards to meet changing realities in education."[11]

We look forward to working with NACIQI to develop ways for accrediting agencies to improve educational quality for millions of students in American higher education. Thank you for your attention to this matter.

Sincerely,

ELIZABETH WARREN
United States Senator

SHERROD BROWN
United States Senator

PATTY MURRAY
United States Senator

RICHARD J. DURBIN
United States Senator

RICHARD BLUMENTHAL
United States Senator

[11] Studley, J.S. (2012, April).