Oral Testimony of John Ebersole, President, Excelsior College

Before the Subcommittee on Higher Education and Workforce Training

"Education Regulations: Federal Overreach into Academic Affairs"

March 11, 2011

Introduction

Good morning. I am John Ebersole, President of Excelsior College. I would like to thank Chairwoman Virginia Foxx, Ranking Member Ruben Hinojosa, and members of the Subcommittee on Higher Education and Workforce Training for the opportunity to testify on these unnecessary proposed regulations.

Founded by the State of New York Board of Regents as Regents College in 1971 and chartered as a private, nonprofit institution in 1998, the College was renamed Excelsior College in 2001. Excelsior College is based in Albany, NY and accredited by the Middle States Commission on Higher Education. We are a recognized leader in removing obstacles to the educational goals of the adult learner. We provide efficient and affordable access to higher education through multiple avenues to degree completion. Excelsior College provides distant learning opportunities to adult learners with an emphasis on those historically underrepresented in higher education. The College meets students where they are - academically and geographically, offering quality instruction and the assessment of prior learning.

We share the stated goals of this Administration and the previous Administration to increase degree completion over the next ten years to maintain our economy and be competitive in the global market. I believe that online learning institutions have the capacity to deliver that access to those students that would not receive a quality education under any other circumstances. This is a time when the traditional brick and mortar public institutions are cutting enrollment, reducing access and increasing their costs. In fact, The 2010 Sloan Survey of Online Learning reveals that online enrollment rose by almost one million students from a year ago. The report also found that:

- Three-quarters of institutions report that the economic downturn has increased demand for online courses and programs.
- Nearly thirty percent of higher education students now take at least one course online
- The 21% growth rate for online enrollments far exceeds the 2% growth in the overall higher education student population[1].
- 78.1% of College Presidents agreed that launching/expanding online education courses and programs provide a way for institutions to serve more learners[2].

State Authorization

Every institution is authorized to operate in its home state. In the case of Excelsior College, we are chartered by the New York State Board of Regents (one of the accrediting agencies recognized by the U.S. Department of Education), and the Middle States Commission on Higher Education. These new federal state authorization regulations would require Excelsior College to document that it is also authorized to operate in all 54 jurisdictions recognized by the United States Department of Education.

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[1] Allen, I. Elaine and Jeff Seaman. *Class Differences, Online Education in the United States, 2010*. Babson Survey Research Group, 2010.

[2] Green, Kenneth C., Scott Jaschik and Doug Lederman. *Presidential Perspectives: The 2011 Inside Higher Ed Survey of College and University Presidents*. Inside Higher Ed, 2011.

Federal Title IV regulations require all colleges to comply with individual state regulations related to distance learning in which they have enrolled one or more students receiving federal student financial aid. Failure of an institution to comply with these state authorization rules may result in institutional penalties ranging from return of all federal financial aid distributed while out of compliance up to removal of the institution's authorization to participate in Title IV funding.

Due to a lack of forethought, the proposed State Authorization regulation from the Department of Education would create a road block for online education, perhaps at a time when it is needed the most. Excelsior has led the Presidents' Forum, a consortium of public and private institutions with a shared mission of serving adult students at a distance, for seven years with the goal of advancing innovative practice and excellence in online learning. We continue to be at a loss as to why these regulations run directly contrary to the shared, stated goals of the Administration and thousands of higher education institutions across the country. As written, the regulation would unfairly target and stifle the growth of online education options for students.

We support the right and responsibility of states to regulate the quality and nature of the education being delivered within their borders. However, the regulation on State Authorization essentially places the federal government into the role of enforcing state statutes and would force a state to create a new regulatory regime and take on additional financial burden when some states do not have the funds, capacity or structure to comply with this regulation by July 1, 2011. One state has already indicated that it could take a year to determine how it will respond. Furthermore, there is no way to guarantee that an institution has met the department's interpretation of any state's regulations and no way for the institution to ensure it would satisfy these federal interpretations if audited. These uncertainties would stifle innovation and force accredited institutions with legitimate and creative distance education programs to withdraw from certain jurisdictions, leaving the students with the greatest need with little option to further their education.

It is impossible to predict the future skills that our workforce will need. In order to properly prepare our students for this ever-changing landscape, our higher education curriculums need to be innovative and adapt to those changes.

Impacts to Excelsior College

Excelsior represents at least one student in all 54 jurisdictions that are recognized by the Department of Education. The federal state authorization regulations would require Excelsior to review each individual state's rules and regulations and to document that Excelsior College is in compliance with those rules in each jurisdiction where it is serving Title IV recipients. In order to be fully compliant, we would have to either complete the authorization process within each state or produce documentation for states where this would not be necessary. We have estimated that the average cost for authorization is approximately $2,500 per state. There are some states that have a fee much lower than this number but there are also states where costs would exceed tens of thousands of dollars. In considering these demands, Excelsior College will have to budget $150,000-200,000 per year to comply with these federal mandates. When those costs are multiplied by nearly 3,000 institutions offering online education, this

sector is looking at least a half a billion dollars cost of compliance. These additional costs to institutions will undoubtedly be passed on to students in the form of increased tuition and fees. That will raise the cost of learning and deter access.

Arkansas is an example of a state that is very granular in its approval process. We are required to provide details on every program, course, faculty member, credit determination, and projected outcomes. For instance, in the case of our faculty members, Excelsior College was required to provide an individual form describing the qualifications of each faculty member teaching students in the state of Arkansas for review. All of these disclosures take time and man power. In the case of Arkansas, Excelsior spent in excess of 400 man hours preparing over 400 pages for submission.

As a result of these burdensome, costly and vague regulations, students from around the country will be denied access to the high-quality college programs as many reputable accredited institutions, such as Excelsior, discontinue their distance learning programs or limit them only to states with larger enrollments. As the delivery of online courses becomes limited and problematic for legitimate colleges, many students will turn to less reputable, locally based, non-accredited schools for their degree. This would clearly cheapen the education offered to those students in need.

Excelsior's student body is very diverse and we educate many students enlisted in the military. These students and their families are frequently transferred to different states based on their position. Currently, they are able to continue their education and not miss class time following a transfer. However, should this regulation take effect, those military spouses could be transferred to a state that has not authorized Excelsior and they would not be able to continue their coursework.

By explicitly defining a credit hour, our education system regresses by looking at the input rather than using a more forward looking approach that evaluates learning outcomes. The proposed definition of a credit hour will further block and limit innovation in higher education. President Obama recently applauded the creation of an accelerated learning program at Carnegie Mellon for its innovative online courses. They have found that students can learn more quickly with specially designed online courses. These regulations would have killed that program. By attempting to impose a single definition, the Department would be inserting itself in academic judgments made at the departmental and institutional level. It is of note that Federal law prohibits the Department from interfering in academic decisions without explicit Congressional authorization.

Impacts to Growth of Online Education Industry

For those institutions that are examining and creating online education programs, these regulations will give them great pause whether to continue that development or abandon the endeavor all together. These institutions will not want to risk their Title IV funding based on a confusing regulatory market for online programs. As the capacity for higher education decreases among the traditional sources of learning, we should be promoting online programs and services that can help those in need to further their education.

Conclusion

The resulting ambiguity and confusion over these requirements will limit responsible innovation by institutions at the very time that the Administration is seeking new routes to academic achievement.

It is our hope that you will ask the Department of Education to re-evaluate the rule it has adopted and to see how the rule can be amended to avoid the unintended consequences of the current approach.