

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

March 1, 2018

The Honorable Elisabeth DeVos
United States Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
United States Department of Education
400 Maryland Avenue, SW, Rm. 270-01
Washington, DC 20202

RE: Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools

Dear Secretary DeVos and Mr. Bounds:

I am writing to express my strong opposition to the Accrediting Council for Independent Colleges and Schools' ("ACICS") application for initial recognition. I write in response to the Department's call for written comments regarding ACICS's application, as published in the Federal Register on January 24, 2018, and I fully support and echo the comments of my fellow State Attorneys General from across the country¹ that ACICS is ineligible for recognition and urge the Department to reject its application.

¹ See *Multistate Letter Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools*, February 16, 2018, attached.

As the chief law enforcement officer of the State of New Mexico, it is my top priority to protect the health and wellbeing of New Mexican students. This duty includes holding every member of the regulatory environment accountable to those students, and so I am greatly concerned with this application. As my colleagues point out, ACICS has a pattern and practice of disregarding the best interests of our students, which is unacceptable. Their lax oversight standards have resulted in severe harms and hardships to thousands of New Mexican students who have been harmed by for-profit colleges in New Mexico.

Like Corinthian, ITT Tech ("ITT")---which my office has sued to hold accountable for harms to our students---misled and deceived students to increase their bottom line and fraudulently qualify for increased federal funding. ACICS accredited ITT until the day it shut its doors due to widespread fraud against its students. From at least 2009, ITT was accredited by ACICS to operate nationally including in New Mexico as a for profit institution. During this time (and most likely earlier), ITT had engaged in significant and blatant fraudulent practices that affected potentially hundreds of students in New Mexico, as well as throughout the country. The fraudulent and systematic acts committed by ITT should have been identified by ACICS in their regular review of its applications. ACICS traditionally has had the lead obligation to monitor, on a rolling basis, the programs and the schools for the purpose of ensuring fairness by those institutions that were accrediting. It is fair to say that students of ITT relied on the accreditation process and overview by ACICS to make the decision to enroll and attend the schools (namely ITT) that were held out by ACICS as achieving its blessing.

Further, I am highly concerned about ACICS' practice of allowing representatives of the schools it was supposed to oversee to serve on its board. Such a glaring conflict of interest is unacceptable to the students of New Mexico. Not only does ACICS have a history of ignoring glaring misconduct at the schools it accredited, ACICS allowed representatives of these schools to serve on its Board of Directors/Commissioners (the "Board") and Board committees, calling into question ACICS' incentive structure and ability to fulfill its gatekeeping function with impartiality. For example, representatives from both Corinthian and ITT Tech served on ACICS' Board while those schools were committing or being investigated for misconduct.

For these reasons, and for the reasons expressed by my colleagues, I strongly urge you to deny ACICS application. Students across America need strong leadership that will ensure that the proper oversight entities are regulating schools and ensuring that they get the education they need.

Sincerely,

(b)(6)

Hector Balderas
Attorney General

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February 16, 2018

The Honorable Elisabeth DeVos
United States Department of Education
400 Maryland Avenue, SW Washington, DC 20202

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
United States Department of Education
400 Maryland Avenue, SW, Rm. 270-01
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RE: Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools

Dear Secretary DeVos and Mr. Bounds:

We, the undersigned Attorneys General of Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington, and the Executive Director of the Hawaii Office of Consumer Protection, write to express our opposition to the Accrediting Council for Independent Colleges and Schools' ("ACICS") application for initial recognition. We provide this letter in response to the Department's call for written comments regarding ACICS's application, as published in the Federal Register on January 24, 2018. Having carefully reviewed the Criteria for the Recognition of Accrediting Agencies, we believe that ACICS is ineligible for recognition and urge the Department to reject its application.

Accreditors serve a critical role in ensuring that schools provide students with an education that meets minimum standards of quality. In this role, accreditors function as gatekeepers, protecting students from abuse by profit-seeking institutions that offer education of little-to-no value. When accreditors shirk their crucial responsibilities, they enable abusive schools to engage in misconduct with impunity. ACICS's previous stint as a nationally recognized accreditor provides a stark illustration of the damage done to both students and taxpayers when accreditors fail to fulfill their oversight responsibilities. During these years, ACICS willingly accredited predatory schools that left students across the country mired in debt and without the quality education they were promised. Despite being aware of these schools' misconduct, ACICS continued to accredit the institutions, in some cases up until the day the schools closed and filed for bankruptcy.

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On the basis of ACICS's extreme and far-reaching oversight failures, the Department took the extraordinary step of denying ACICS's petition for renewal of its national recognition just over one year ago. Given the gravity of ACICS's recent dereliction and the magnitude of the harm ACICS caused to students and taxpayers, any attempt by ACICS to become nationally recognized once again should be treated with great skepticism by the Department. The Department's own regulations establish as a threshold recognition requirement that an agency demonstrate effective compliance with the Department's recognition criteria for at least two years prior to seeking initial recognition. Since ACICS was found to be noncompliant with the Department's recognition criteria less than two years ago and, in fact, conceded its continued noncompliance with recognition criteria as recently as February 2017, it is simply impossible for ACICS to currently meet this basic recognition requirement. ACICS's application for initial recognition, therefore, must be denied by the Department.

Furthermore, to date, the Department has not made public ACICS's application for initial recognition, depriving the public of an adequate opportunity to participate in the recognition process. We urge the Department to make public ACICS's application and all accompanying documents and to extend the third party comment period to provide commenters with a meaningful opportunity to offer their input. By withholding ACICS's application, the Department has not fulfilled its requirement to provide an opportunity for public input.

ACICS's Recent Oversight Failures Caused Serious Harm to Students Across the Country

The undersigned Attorneys General are charged with enforcing consumer protection laws in our respective states. We have seen firsthand the damage caused by ACICS's dereliction of its responsibilities as an accreditor. As we described in comments submitted to the Department in 2016, numerous investigations initiated by our offices uncovered a fundamental lack of substantive oversight by ACICS. ACICS's lapses include its utter disregard for student outcomes at ACICS-accredited institutions, its inaction after regulators concluded that multiple ACICS-accredited institutions had reported fabricated job placement rates to ACICS, its failure to verify job placement statistics even after findings of fabricated job placement rates were made public, and its concerning lack of transparency or cooperation with investigations into student outcomes at ACICS-accredited institutions.

Among ACICS's most glaring oversight failures is its decision to extend accreditation to a large number of campuses operated by the now-defunct Corinthian Colleges ("Corinthian"). ACICS continued accrediting Corinthian even after upwards of twenty state and federal agencies initiated investigations into Corinthian's fraud. In fact, ACICS continued to accredit Corinthian up until the day Corinthian declared bankruptcy. Because of ACICS's accreditation, thousands of Corinthian students are mired in onerous student loan debt that they incurred to finance useless educations while Corinthian obtained approximately \$3.5 billion dollars from U.S. taxpayers in the form of student loan revenue.

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Career Education Corporation (“CEC”), whose Sanford Brown schools were ACICS-accredited, settled with the New York Attorney General’s Office for \$10.25 million based on findings that CEC fabricated job placement rates. ACICS failed to identify the placement rate inaccuracies and, when CEC’s misconduct came to light, failed to terminate or suspend its accreditation of any Sanford Brown schools. ACICS also failed to identify serious compliance problems at Education Management Company (“EDMC”), which settled with thirty-nine State Attorneys General to resolve allegations that the school misled prospective students about program costs, graduation rates, placement rates, and programmatic accreditation. As part of that settlement, EDMC agreed to forgive over \$100 million in outstanding loan debt.

These are merely examples of ACICS’s egregious oversight failures. In its recent review of ACICS, the Department identified 245 ACICS-accredited campuses that were subjects of state and federal investigations and lawsuits concerning fraud, recruitment abuses, and falsification of job placement rates, all while maintaining their ACICS accreditation. As the Senior Department Official (“SDO”) who denied ACICS’s application for renewed recognition in 2016 explained: By and large the state and federal actions against these schools had been pending for years, and culminated in large consumer protection settlements, and sometimes closing of the institutions. Nonetheless, according to ACICS, none of these 245 campuses had faced withdrawal of accreditation, and only three had been placed, belatedly, on the public sanction of probation. Brief on Behalf of Senior Department Official in Opposition to Accrediting Council for Independent Colleges and Schools’ Appeal, and in Support of Decision to Deny Renewal of Recognition (“SDO Brief”) at 13.

Notably, while ignoring glaring misconduct at the schools it accredited, ACICS allowed representatives of these schools to serve on its Board of Directors/Commissioners (the “Board”) and Board committees, calling into question ACICS’s incentive structure and ability to fulfill its gatekeeping function with impartiality. For example, representatives from both Corinthian and ITT Tech served on ACICS’s Board while those schools were committing or being investigated for misconduct.

ACICS’s Pervasive Violations of Departmental Recognition Criteria Cost ACICS Its National Recognition

Following an extensive review of ACICS’s accreditation history and oversight failures, the Department made the rare decision to deny ACICS’s petition for renewed recognition in late 2016. Every stage of the review process resulted in the recommendation that ACICS’s recognition should be terminated. This recommendation was made both by the National Advisory Committee on Institutional Quality and Integrity (“NACIQI”) and Department Staff. Ultimately, the SDO found that ACICS had failed to comply with numerous recognition criteria and denied its application for recognition. The Secretary of Education (“Secretary”) reached the same conclusions as the SDO following a de novo review of the record, finding that “ACICS has

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exhibited a profound lack of compliance with the most basic Title IV responsibilities of a nationally recognized accreditor.” Decision of the Sec’y at 8. In fact, both the SDO and the Secretary concluded that, not only had ACICS engaged in “pervasive noncompliance” with the Department’s recognition criteria, but ACICS’s failure “to develop and effectively implement a comprehensive scheme necessary to establish, apply, effectively monitor, and enforce the required standards” indicated that ACICS could not come into compliance with these requirements in 12 months. Id.

21 In particular, the SDO and the Secretary found that ACICS was out of compliance with recognition criteria:

- 1) Acceptance of ACICS by Others (34 CFR § 602.13)
- 2) Staffing/Financial Resources (34 CFR § 602.15(a)(1))
- 3) Competency of Representatives (34 CFR § 602.15(a)(2))
- 4) Academic/Administrative Representatives (34 CFR § 602.15(a)(3))
- 5) Public Representatives (34 CFR § 602.15(a)(5))
- 6) Conflicts (34 CFR § 602.15(a)(6))
- 7) Student Achievement Standards (34 CFR § 602.16(a)(1)(i))
- 8) Fiscal/Administrative Capacity (34 CFR § 602.16(a)(1)(v))
- 9) Recruiting and Other Practices (34 CFR § 602.16(a)(1)(vii))
- 10) Student Complaints (34 CFR § 602.16(a)(1)(ix))
- 11) Title IV Responsibilities (34 CFR § 602.16(a)(1)(x))
- 12) Mission and Objectives (34 CFR § 602.17(a))
- 13) On-Site Reviews (34 CFR § 602.17(c))
- 14) Reasonable Assurances of Accurate Information (34 CFR § 602.18(d))
- 15) Monitoring (34 CFR § 602.19(b))
- 16) Enforcement Timelines (34 CFR § 602.20(a))
- 17) Enforcement Action (34 CFR § 602.20(b))
- 18) Systematic Review of Standards (34 CFR § 602.21(a), (b))
- 19) When New Evaluation Required (34 CFR § 602.22(a)(3))
- 20) Teach-out Plan Triggers (34 CFR § 602.24(c)(1))
- 21) Fraud and Abuse (34 CFR § 602.27(a)(6)-(7), (b))

These widespread failures allowed abusive institutions to defraud students across the country while benefiting from billions of taxpayer dollars. The Department’s findings revealed a deeply flawed and inadequate oversight system, and they highlighted ACICS’s willful disregard for the abuses perpetrated by its accredited institutions and the severe consequences for the students subjected to these abuses. As the SDO explained, the Department found that “ACICS avoids taking significant enforcement action even when it is well aware of violations of its standards.” SDO Brief at 14. Notably, the Department Staff, the SDO and the Secretary found that ACICS’s policies “permit[ted] accreditation of non-compliant institutions, and provide[d] multiple

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opportunities for [ACICS] to continue that status indefinitely, particularly with respect to non-compliance with [ACICS's] student achievement standards." SDO Brief at 15. ACICS's deficiencies not only manifested in its own failure to take action against abusive institutions, but also hindered the Department's ability to take any such actions itself because ACICS "has a history of failing to apprise the Department of clear evidence it uncovers of consumer and federal student aid fraud occurring at institutions it accredits." Id. at 19.

In addition to laying bare ACICS's grave noncompliance with numerous recognition criteria, the Department also found that ACICS lacked coherent plans to fix its serious deficiencies. For example, with respect to monitoring student achievement, the Secretary found that ACICS's policies were deeply deficient and, moreover, that its "progress in developing and effectively implementing student achievement standards was entirely lacking or incoherent." Decision of the Sec'y at 6. As the SDO explained, even during its attempts to secure renewed recognition, ACICS failed to "accurately describe what its student achievement standards look like [], or what they will look like in the future. The content of the standards, and who decides what that is, appears to fluctuate for convenience" SDO Brief at 17.

Even in those instances when ACICS has identified and promised to implement policy changes, ACICS has repeatedly broken its commitment to do so. Many of the problems identified by the Department during ACICS's previous recognition process were first identified by the Department in 2013. At that time, ACICS represented to the Department that it was initiating new policies and processes—including those related to student achievement and verifying employment data. See Final Staff Analysis at 29. Nonetheless, during the 2016 recognition proceeding, the Department discovered that ACICS had not implemented the changes it had promised to make. Id.; SDO Brief at 30. ACICS's history of neglecting its commitments to the Department and ignoring its existing policies raises serious concerns about its fitness to serve as a nationally recognized accreditor.

ACICS's renewed bid for recognition is particularly troubling in light of the institutions that ACICS would likely oversee were it to regain recognition. While many of the institutions that ACICS accredited at the time it lost its recognition have either closed, obtained a new accreditor, or are well on their way to obtaining a new accreditor, a number of ACICS-accredited institutions—with combined enrollment in the tens of thousands—have been unable to progress successfully in the search for a new accreditor.¹ If ACICS is successful in obtaining national recognition, it will be responsible for overseeing the very institutions that have been least able to convince other agencies to accredit them. This is deeply problematic given ACICS's history of enabling some of the most abusive and unethical institutions.

ACICS Is Ineligible for Recognition under the Department's Criteria for Initial Recognition

ACICS's recent failures to comply with the Department's recognition criteria disqualify ACICS from obtaining initial recognition at this time and require the Department to deny ACICS's pending application. The Department has articulated requirements that accreditors must meet in order to be eligible for initial recognition. Under the regulations governing the Department's recognition of an accrediting agency, an agency's recognition requires a determination by Department officials that the agency "complies with the [enumerated] criteria for recognition . . . and that the agency is effective in its application of those criteria." 34 CFR § 602.3 (emphasis added). The enumerated criteria for initial recognition include the requirement that the agency seeking recognition must demonstrate that it has "[c]onducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition." 34 CFR § 602.12(a)(2) (emphasis added). By the terms of these regulations, an accreditor can only be eligible for initial recognition if it can demonstrate that it has been effective in conducting accrediting activities in accordance with the Department's recognition criteria for at least two years prior to seeking initial recognition. ACICS cannot meet this threshold requirement.

Based on the unambiguous timeline of ACICS's prior loss of recognition, ACICS could not possibly demonstrate that it has been an effective accreditor in compliance with the Department's recognition criteria for two years. On December 12, 2016—less than 15 months ago—the Secretary determined that ACICS was not in compliance with the Department's recognition criteria and that, "because of the nature and scope of ACICS's pervasive noncompliance," it would be impossible for ACICS to become compliant within 12 months. Decision of the Sec'y at 1. In other words, the Department previously concluded, following an extensive review of the record, that ACICS could not enter compliance before December 2017. Given this previous Departmental determination, the earliest ACICS could satisfy the Department's threshold requirement of demonstrating effective accreditation for at least two years is December 2019.

ACICS has repeatedly conceded its noncompliance with recognition criteria and reiterated its noncompliance as recently as February 21, 2017. At ACICS's previous NACIQI hearing in June 2016, ACICS admitted that it was not in compliance with the Department's recognition criteria. Tr. of NACIQI Hearing (June 23, 2016), Test. Of Lawrence Leak, Chair of ACICS Bd. Of Dirs. At 71:12-15. Furthermore, in arguing for a temporary restraining order to enjoin the Secretary's termination decision, ACICS's attorney conceded that ACICS was not yet in compliance with all of the required recognition criteria, explaining that with respect to "the [] remaining approximately ten or so criteria [ACICS] has indicated it can come into compliance [] over the next 12 months." ACICS v. DeVos, No.16-2448, TRO Hr'g TR. 8:8-15, Dec. 20, 2016. Among those "ten or so" unmet criteria, ACICS admitted that it had not yet approved a process

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for auditing job placement rates that it had promised to adopt in 2013. Id. at 45:4-8. The absence of such auditing procedures contributed to ACICS's previous failures to function as an effective accreditor and to its facilitation of the misconduct that destroyed the lives of thousands of students. Less than a year ago, on February 21, 2017, ACICS Interim President Roger Williams again conceded ACICS's noncompliance, explaining that he "still believe[s]" that "[ACICS] could come into compliance within 12 months." ACICS v. DeVos, No.16-2448, P.I. Hr'g. Tr. 56:11-20, February 21, 2017.

Critically, demonstrating compliance with recognition criteria would require more than simply pointing to new policies. As the Department previously explained, "ACICS would have to provide evidence of effective application and implementation of [any] new policies, practices, and governance structures." SDO Brief at 9 (emphasis added). Department staff have already expressed concern about the actual effectiveness of a number of ACICS's proposed changes, noting that "the ultimate utility of at least some of these [proposed reforms], if actually implemented, appears problematic." Id. at 26. In any event, ACICS implemented a number of its new accreditation standards as recently as September 14, 2017—less than sixth months ago. Accordingly, based solely on the timeline of ACICS's policy changes, it would be impossible for ACICS to demonstrate that its new policies are effective any earlier than September 14, 2019. ACICS's current application for initial recognition is, therefore, premature and must be denied.

The Department Has Not Provided an Adequate Opportunity for Public Comment Regarding ACICS's Application for Recognition

Despite soliciting public comments on ACICS's application for initial recognition, the Department has withheld the application itself from the public. As outlined above, ACICS would be incapable of meeting the Department's threshold requirement for recognition at this time under any circumstances. Nonetheless, the Department's failure to make public ACICS's application materials during the public comment window denies the public a meaningful opportunity to comment fully on ACICS's application. Withholding these materials negates the purpose of the public input process that the Department is required to undertake in considering an accreditor's application for recognition under the Higher Education Act, 20 U.S.C. § 1099b(n)(1)(A). We, therefore, urge the Department to make public ACICS's application materials immediately and to provide third parties with a meaningful opportunity to comment on the materials.

ACICS's systemic accreditation failures and refusal to fulfill its obligations to students and taxpayers have enabled predatory schools to ruin the lives of hundreds of thousands of students while enriching themselves at taxpayers' expense. Given the gravity of these failures, the Department should not grant any application for recognition made by ACICS without verifying that ACICS has corrected every deficiency and complied with all Departmental requirements effectively and consistently. ACICS simply could not, under any circumstances,

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demonstrate effective compliance with the Department's recognition criteria for the requisite minimum two-year time period. Accordingly, we urge the Department to deny ACICS's application for initial recognition, as necessitated by the Department's regulations.

Sincerely,

Maura Healey
Massachusetts Attorney General

Xavier Becerra
California Attorney General

George Jepsen
Connecticut Attorney General

Karl A. Racine
Attorney General for the District of Columbia

Stephen H. Levins
Executive Director
State of Hawai'i, Office of Consumer Protection

Thomas J. Miller
Iowa Attorney General

Janet T. Mills
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Lori Swanson
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Matthew P. Denn
Delaware Attorney General

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Peter
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Bob
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Ferguson

To whom it may concern:

The attached comment (included below) regarding the Accrediting Council for Independent Colleges and Schools' (ACICS) application for "initial recognition" is from Senators Elizabeth Warren, Patty Murray, Richard Durbin, Sherrod Brown, and Richard Blumenthal.

Please direct any questions to:

Joshua Delaney
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Best regards,

Paul Rubin
Education Fellow
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February 15, 2018

Mr. 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

Professor 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 Mr. Keiser and Professor Wu,

The Department of Education (“the Department”) announced that at the May 2018 National Advisory Committee on Institutional Quality and Integrity (NACIQI) meeting, NACIQI will review the Accrediting Council for Independent Colleges and Schools’ (ACICS) application for “initial recognition” as a federally recognized accrediting agency.^[i] In 2016, the Department terminated ACICS’s status as a federally recognized accreditor, following a history of negligence on the part of ACICS to safeguard taxpayer funds from predatory institutions that were deceiving students. There is no evidence that ACICS has sufficiently and substantially improved the policies and practices that resulted in their termination only 14 months prior. We remain concerned that ACICS will again indiscriminately accredit colleges at the expense and harm of students and taxpayers. We, therefore, strongly urge NACIQI to reject ACICS’s application.

ACICS’s failure to ensure institutional quality has harmed students and veterans in our home states and across the country. For example, there were 90 instances where colleges or individual campuses under investigation by state or federal government agencies that were, at the same time, named by ACICS to its honor roll between 2010 and 2015.^[ii] These cases included FastTrain College, which used exotic dancers to recruit students, was raided by the FBI in 2012, and was required to pay more than \$20 million back to the federal government for fraudulently drawing federal financial aid money for ineligible students.^[iii] Westwood College, another ACICS-accredited school, settled with the attorneys general of Colorado and Illinois, as well as the Department of Justice for \$11.5 million for deceptive marketing practices and false claims for federal student aid.^[iv]

Although both of these colleges have since closed, they provide clear evidence of a systemic lack of oversight by ACICS over its institutions. For example, between the two of them, for-profit giants Corinthian Colleges and ITT Technical Institute were investigated or sued by more than 20 state attorneys general, the Consumer Financial Protection Bureau, the U.S. Securities and Exchange Commission, the Department of Justice, and the Department of Education for misrepresenting job placement rates and attendance records, suspect recruitment practices, and deceptive advertising between 2011 and 2014.^[v] Nevertheless, ACICS continued to accredit both Corinthian Colleges and ITT Tech until their respective closures despite this history of legal issues at the state and federal level.^[vi] The closure of these for-profit colleges affected more than 51,000 enrolled students and countless graduates and former students, who were left deep in debt with meaningless degrees and credits.^[vii]

Even before ITT Tech closed, the Department recommended the termination of ACICS’s federal recognition in June 2016, concluding that the agency had failed to comply with more than 20 areas of federal regulation and that “the agency could not remedy its compliance issues” with the Department’s Criteria for Recognition.^[viii] The Department’s decision followed calls for ACICS’s termination as a federally recognized accrediting agency by 13 state attorneys general,^[ix] nine veterans groups,^[x] 23 advocacy groups (representing students, consumers, and educators),^[xi] and members of Congress.^[xii] NACIQI affirmed the Department’s decision and voted to de-recognize ACICS one week later.^[xiii]

Following appeals by ACICS, former Secretary of Education John King announced the Department’s official and final decision to cease recognition of ACICS as an approved accrediting organization on December 12, 2016.^[xiv] In Secretary King’s decision letter, he cited ACICS’s lax oversight and

“pervasive noncompliance” with regulators’ criteria and concluded “[ACICS] is not capable of coming into compliance within 12 months or less, even if I renewed its recognition for an additional 12 months.”^[xv] ACICS is now suggesting it has changed its ways and will be compliant despite its history of failure, a mere 14 months after it was de-recognized by the Department.

Since ACICS lost its recognition, the 269 institutions formerly accredited by ACICS were given 18 months to find a new accrediting agency. The vast majority have either already gained accreditation elsewhere, are in the final steps to be accredited before the June 2018 deadline, or have closed or announced their intention to close.^[xvi] In fact, accreditation status is unknown for only 19 former ACICS institutions. This likely suggests that these are bottom-of-the-barrel colleges that are unable to gain accreditation from a different agency due to the poor quality controls permitted under ACICS’s watch.

ACICS has claimed that it has “fundamentally changed as an organization,”^[xvii] but this claim is impossible for us or the public to verify because the Department has not made public ACICS’s application for renewal. Based on what is in the public record, recognition of ACICS as a Department approved accreditor could allow schools that no other agency would accredit a lifeline to more students and taxpayer dollars. It could also allow countless new predatory colleges to game the federal student financial aid system and cause continued damage to thousands more students on the taxpayers’ dime. We do not see the value of bringing back an accreditor that has such a poor track record on accrediting fraudulent institutions and has not provided us nor the public with enough information to verify their claims that it has improved.

We request the Department make ACICS’ application public. Given recent history and the status of their previous institutions, however, we see no reason to again grant ACICS gatekeeper power to federal student aid dollars. The Department and NACIQI have a responsibility to ensure that federally recognized accrediting agencies are effective quality assurance mechanisms and strong gatekeepers to federal aid dollars. ACICS has failed at this task, and we neither see a need nor a reason for the Department to again reward their negligence with this incredible power. We therefore strongly urge NACIQI to reject ACICS’s application as a federally recognized accreditor.

Sincerely,

Elizabeth Warren, United States Senator
Patty Murray, United States Senator
Richard J. Durbin, United States Senator
Sherrod Brown, United States Senator
Richard Blumenthal, United States Senator

^[i] Mahaffie, L.B. (2018, January 24). “Solicitation of third-party comments concerning the performance of accrediting agencies.” *Federal Register*. Online at: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-24/pdf/2018-01220.pdf>.

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- ^[iv] Smith, A.A. (2016, January 29). "For-profit Westwood College announces closing." *InsideHigherEd*. Online at: <https://www.insidehighered.com/quicktakes/2016/01/29/profit-westwood-college-announces-closing>.
- ^[v] "Government investigations and lawsuits involving for-profit schools (2004-May 2014)." *National Consumer Law Center* (2014). Online at: <https://www.nclc.org/images/pdf/pr-reports/for-profit-gov-investigations.pdf>.
- ^[vi] ACICS threatened to withdraw accreditation from ITT Tech about one month before its closure, but did not do so officially.
- ^[vii] Smith, A.A. (2016, September 7). "The end of ITT Tech." *InsideHigherEd*. Online at: <https://www.insidehighered.com/news/2016/09/07/itt-tech-shuts-down-all-campuses>; "U.S. Department of Education fines Corinthian Colleges \$30 million for misrepresentation." *U.S. Department of Education*. (2015, April 14). Online at: <https://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>.
- ^[viii] "Staff report to the Senior Department Official on recognition compliance issues." *U.S. Department of Education, Accreditation and State Liaison*. (2016, June). Online at: <https://opeweb.ed.gov/aslweb/finalStaffReports.cfm?aID=15&mid=68>.
- ^[ix] Letter opposing the application for renewal of recognition of ACICS. *Commonwealth of Massachusetts, Office of the Attorney General*. (2016, April 8). Online at: <http://www.mass.gov/ago/docs/policy/2016/ag-multistate-ltr-to-usdoed-040816.pdf>.
- ^[x] Letter to National Advisory Committee on Institutional Quality and Integrity. (2016, April 8). Online at: <https://www.republicreport.org/wp-content/uploads/2016/04/Final-NACIQI-Ltr-from-veterans-orgs.pdf>.
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- ^[xii] Blumenthal, R., Durbin, R.J., Brown, S., Warren, E., & Murray, P. (2016, June 16). Letter to National Advisory Committee on Institutional Quality and Integrity. Online at: <https://www.help.senate.gov/imo/media/doc/2016%2006%2016%20Letter%20to%20NACIQI%20%20re%20ACICS.pdf>.
- ^[xiii] Fain, P. (2016, June 24). "Accreditor on life support." *InsideHigherEd*. Online at: <https://www.insidehighered.com/news/2016/06/24/federal-panel-votes-terminate-acics-and-tightens-screws-other-accreditors>.
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- ^[xv] King, J.B. (2016, December 12).
- ^[xvi] Miller, B. & Flores, A. (2018, February 6). "A second status update on ACICS colleges." *Center for American Progress*. Online at: <https://www.americanprogress.org/issues/education-postsecondary/news/2018/02/06/445946/second-status-update-acics-colleges/>.
- ^[xvii] "ACICS submits application to Department of Education for recognition as a national accreditor. *ACICS*. (2017, October 4). Online at: <http://www.acics.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=7048&libID=7042>.

From: Chancellor Hill [<mailto:paul.hill@wvhepc.edu>]
Sent: Wednesday, February 07, 2018 2:13 PM
To: Third Party Comments
Subject: Recognition of ACICS

Department of Education,

We understand ACICS has petitioned the US Department of Education for recognition as an accrediting body. If so recognized, ACICS must comply with WV Code requirements and the Higher Education Policy Commission's Series 52 rule. Link to Series 52: Annual Reauthorization of Degree-Granting Institutions:

<http://www.wvhepc.edu/wp-content/uploads/2017/07/Series-52-Reauthorization.pdf>

Chancellor Hill

Paul L. Hill, Ph.D.

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March 1, 2018

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U.S. Department of Education
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Delivered via email to: ThirdPartyComments@ed.gov

This comment is in response to the Federal Register Notice published on January 24, 2018, as updated on February 22, 2018, by the U.S. Department of Education (Department) Office of Postsecondary Education titled "Solicitation of Third-Party Comments Concerning the Performance of Accrediting Agencies." The Century Foundation is a nonprofit organization that works to advance students' rights with respect to educational opportunity. As part of our mission, we advocate on behalf of enhancing student protections and file comments in rulemaking and federal regulatory proceedings to inform the public and policymakers on past practices of accreditors and institutions of higher education.

Introduction

The Century Foundation submits this comment in response to the Solicitations while noting that it maintains the objection to the Department's closing of the public comment period before The Century Foundation and other members of the public had the opportunity to adequately review and comment on the Accrediting Council for Independent Colleges and Schools' (ACICS) application and exhibits of approximately 20,000 pages. The Department also maintains the position, as indicated in responses to FOIA requests, and by Counsel in oral arguments before the U.S. District Court for the Southern District of New York, that ACICS's application is not in final form and that The Century Foundation has only received "the most recent" version of the application. The Century Foundation has the right to comment on the final version of the application for the administrative record, and the staff report that is sent to NACIQI should reflect the comments on the final application, not an incomplete submission.

A declaration regarding The Century Foundation's efforts to review the material provided by the Department is attached.

This comment is focused on the ACICS application for "initial recognition," and whether it shows that ACICS has come into compliance with its standards since being terminated on December 25, 2016. The Century Foundation thus submits this abbreviated analysis of ACICS's application and not of the severe non-compliance of its past performance, which has been well-documented in the Department's 2016 Staff Report and decisions by the Senior-Designated Official (SDO) and the Secretary.

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I. ACICS Accreditation Is Not Widely Accepted

For an accrediting agency to be recognized by the Secretary, it “must demonstrate that its standards, policies, and decisions to grant or deny accreditation are widely accepted in the United States” by (1) educators, (2) educational institutions, (3) licensing bodies “in the professional or vocational fields” trained by ACICS institutions, (4) practitioners in those fields, and (5) employers in those fields.¹

Our findings regarding each category are below, based on a review of some of the exhibits released by the Department.

Educators: As far as we can tell, the ACICS application does not point to support from a single educator who does not have a formal affiliation with ACICS.

To demonstrate that its decisions are “widely accepted in the United States” by educators, ACICS should provide evidence that educators who have *not* been employed by ACICS or by ACICS-accredited institutions rely on the agency’s decisions or otherwise approve of its policies. In our review of the evidence presented to the Department by ACICS, we found no educators without ties to ACICS-accredited institutions or to ACICS as an evaluator employed by the agency.²

ACICS claims to have submitted “more than 65 letters of support from educators at ACICS-accredited institutions and from educators outside of the agency’s accredited programs or institutions.”³ Our examination of those 65 letters, in Exhibit G, indicates that they come from just thirteen domestic institutional brands, and each brand is accredited by ACICS. Twenty-eight of the letters alone come from the ACICS-accredited Brightwood College and Virginia College, both owned by Education Corporation of America. Another sixteen come from Miami Regional University and California International Business University, both ACICS-accredited institutions. There are four letters from faculty at foreign schools accredited by ACICS (which, even if not accredited by ACICS, would not meet the requirement that they demonstrate acceptance “in the United States.”)

A separate Exhibit H includes four letters from educators who work at non-ACICS accredited schools. However, all indicate that they have been engaged by ACICS as evaluators (a role that is paid), and two of them have been ACICS commissioners (one of them did describe herself as “an educator unaffiliated with an ACICS-accredited institution”).

¹ 34 CFR 602.13.

² Evaluators participating on visiting team receive, in addition to reimbursement of travel expenses, an honorarium of \$250 or \$350 per day “to cover travel time, time on the premises, and time involved in preparing the formal report to the Council.” See “Honorariums,” ACICS website, <http://www.acics.org/evaluators/content.aspx?id=2432>.

³ Appendix A.

Educational institutions: Support for ACICS is demonstrated only from ACICS schools.

In the narrative statement, ACICS claims to have provided “letters of support...from accredited institutions stating that they acknowledge ACICS policies, procedures and accreditation decisions.” The list, however, includes only institutions accredited by ACICS, while the federal requirement is clearly seeking evidence of acceptance beyond the agency’s own membership.

Further, the “letters” that ACICS claims were provided in Exhibit 27 were actually just requests to be added as signers onto a form letter. And the list of sixty-four signers actually represents only a few institutions. Two individuals from Education Corporation of America signed thirty-four times between them. Twelve signers are from a single college chain, Florida Career Colleges; three are from Southern States University, and two from San Diego Global Knowledge University (one by President and another by Chief Academic Officer, father and son, respectively). And, again, they are all ACICS-accredited institutions.

“To augment Exhibit 27,” ACICS later submitted “additional letters of support.”⁴ But all of the additional letters provided in Exhibits J and K are from institutions with recent or current affiliations with ACICS: twenty-one of the letters from currently-accredited schools and nineteen from institutions that recently withdrew their recognition in order to gain new accreditation. There is no evidence of acceptance of ACICS by institutions that do not have a recent or current relationship with ACICS.

ACICS also points to articulation agreements as evidence of support from educational institutions (Exhibit M). While we have not had time to analyze those agreements in detail, some of them appear to be agreements between two ACICS-accredited institutions, such as an agreement between Sumner College and the California International Business University. Others involve entities that are not Title IV institutions, such as international language institutes. There is a twenty-four page list of colleges that have articulation agreements with the University of Phoenix, with no detail about the content of those agreements. And some documents are lists of courses from non-ACICS schools accepted for credit by ACICS schools, but with no indication if there is any reciprocal treatment.

Licensing bodies: We found only one occupational licensing body that supports ACICS.

The regulations require an accrediting agency to demonstrate that its decisions are accepted by licensing bodies in the professional or vocational fields for which the accredited institutions provide training.

For ACICS, relevant licensing bodies would include those for cosmetologists, occupational therapists, physical therapists, nurses, dental assistants and hygienists, pharmacy technicians, and many more. Across fifty states and the District of Columbia, therefore, there must be hundreds of occupational licensing agencies that should be familiar with the ACICS role in accrediting institutions. In the documents we have been able to review, we found only one licensing body that supported ACICS, the Court Reporters Board of California. It was not, however, a letter supporting the current application but

⁴ Appendix A, ACICS Application for Initial Recognition.

instead was a letter to the Senior Department Official regarding re-recognition of ACICS by the Secretary in 2016.

In lieu of licensing body support, ACICS is asking the Department to consider programmatic accreditation as evidence, since “[p]rogrammatic accreditation is required for some educational programs offered by ACICS-accredited institutions in order for graduates of those programs to sit for state licensing exams and to obtain licensure/employment in the field.” ACICS says that “[s]everal of such programmatic accreditors accept ACICS as an accrediting agency for purposes of accreditation of such programs because ACICS is recognized by the Council for Higher Education Accreditation (CHEA) as an alternative to recognition by the U.S. Department of Education (ED).”

The idea of counting the programmatic accreditors as evidence of wide acceptance because they rely on CHEA, which recognizes ACICS, is a bridge too far. It is also a bridge without a foundation, because CHEA decisions relating to ACICS have been under advisement or deferred by its Board of Directors four times, dating back to April of 2016.⁵ ACICS was last approved for recognition by CHEA in 2012 for a three-year period, meaning that ACICS is, at best, recognized by CHEA in a provisional capacity.

ACICS also provided other letters that relied on CHEA as a bridge: the American Council for Occupational Therapy Education (ACOTE) in Exhibit Q; the Commission on Accreditation in Physical Therapy Education (CAPTE) in Exhibit R; the Accrediting Bureau of Health Education Schools (ABHES) in Exhibit S; and the Accrediting Commission for Education in Nursing (ACEN) in Exhibit T. ACICS also included a letter of support from the American Registry of Radiologic Technologists (ARRT), which is neither recognized by the Department or CHEA (Exhibit U).

ACICS also sought support from state authorizing agencies, which do not likely meet the definition of “licensing bodies...in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.” There, too, however, ACICS has come up nearly empty-handed. One agency in Ohio provided a supportive letter, while others refused.⁶ One of the letters submitted to the Department by ACICS, from the Illinois Board of Higher Education, was actually a refusal to submit any sort of letter supporting ACICS (Exhibit X).

***Practitioners:** Nearly every letter of support seems to have been written by someone on the ACICS payroll.*

To gain recognition by the Secretary, ACICS must demonstrate that its decisions are relied upon by “practitioners...in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.”

⁵ “Accrediting Council for Independent Colleges and Schools (ACICS): Recognition Decision Summar,” Council for Higher Education Accreditation, September 25, 2017, <http://www.chea.org/userfiles/Recognition/ACICS.pdf>

⁶ David Halperin, “Discredited Accrerator ACICS Fails to Get Many State Endorsements”, Republic Report, February 27, 2018, <https://www.republicreport.org/2018/discredited-acrerator-acics-fails-to-get-many-state-endorsements/>

In Exhibits AA, AB, AC, AD, and AE, ACICS includes lists of or letters from practitioners who work on ACICS committees and as evaluators, as well as some people who are employed by ACICS-accredited schools. For example, the owner of a massage salon includes in his bio on his website that “Since 2006, [he] has been enlisted by the Accreditation Council of Independant [sic] Colleges and Schools (ACICS) to visit massage programs around North America for evaluation and accreditation purposes.” Previously he was the director of the Massage Therapy Program at the ACICS-accredited Salter College.

It is possible that there are people on the list who are not paid evaluators or employees of ACICS schools, but if that is the case, ACICS has not indicated who they are.

ACICS’s accreditation decisions cannot be considered “widely accepted” if the only evidence of such acceptance is people who are involved in those decisions.

Employers: *Except in relation to a canine studies program, we could not find a single employer who is attesting to the rigor of ACICS’s standards or to its oversight of quality.*

To gain recognition by the Secretary, ACICS must demonstrate that its decisions are relied upon by “employers in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.” ACICS references six exhibits as evidence of wide acceptance by employers. Under Exhibit 43, ACICS references five letters from employers, four supporting Brightwood Colleges, and one supporting Virginia College, all schools owned by Education Corporation of America. While these institutions are accredited by ACICS, there is no mention of the accreditor in the letters, nor is there any indication of acceptance of ACICS as a reliable authority regarding the quality of education, other than support of these institutions.

Exhibit AG includes dozens of pages of sign-in sheets of advisory board meetings for different programs, many dating back to before loss of recognition. There are dozens of pages of Powerpoint slides, advisory board member info, meeting minutes, but no explicit letters of support from employers who happen to sit on Advisory Boards for different programs/schools. One specific communication relates to a dispute regarding employer representation on a school’s advisory committee; it is not clear how that relates to demonstration of employer support for ACICS.

Exhibit AH shows that four participants in a survey conducted by ACICS identified themselves as employers. There is no indication of who the employers are, or what views they have of accreditation or of ACICS.

ACICS is seeking to include, as employer support *of ACICS*, thirty-eight mostly positive comments that employers made about employees who had graduated from ACICS-accredited institutions. The comments appear to have been generated from the ACICS Placement Verification process, which involved 55,000 graduates in the 2016-2017 reporting period.⁷ It is unclear whether this reflects a response rate from employers of less than 0.007 percent, or if this is the rate of satisfied employers, or something else.

⁷ Appendix A, ACICS Application for Initial Recognition.

The 110 pages labeled Exhibit AK is mostly comprised of employer assessments of specific graduates hired from Empire College. Some other letters support schools, but without referencing accreditation. Three letters, all employers of graduates from a school that specializes in canine studies, mentions a concern about the school's potential loss of accreditation due to ACICS's lack of federal recognition.

II. ACICS Does Not Have Public Members as Required by Law

To be recognized by the Secretary of Education, an accrediting agency must be able to demonstrate that it has "Representatives of the public on all decision-making bodies,"⁸ and that at least one-seventh of the agency's decision-making body "consists of representatives of the public."⁹

On its website, ACICS lists a total of ten board members, of which it identifies five as either "public" or "public/academic." None of the five qualify as "representatives of the public." Instead, the exhibits provided to the Department, along with other sources identified below, indicate that all five are frequent part-time consultants to ACICS, engaged as evaluators,¹⁰ and therefore are not representatives of the public. Some, in addition, have long histories as industry stakeholders.

One board member identified as a "Public" representative spent an entire career as a school owner and operator, and in retirement is now serving as a frequent participant in ACICS visiting teams. She co-founded the American Business & Fashion Institute in 1973, selling it in 1999 and then serving as president of Education Management Corporation (EDMC)'s Art Institute of Charlotte for the next seven years, from which she retired in 2006. According to the resume submitted to ACICS (Exhibit 33), she "Completed ACICS evaluation team chair training October 2006 and since that time have [sic] led teams, completed reports, and worked with the Accreditation Coordinators as required."

A second board member identified as "Public" has done evaluator work for ACICS since 1992. According to the resume she submitted to the Department, she has participated "in over 500 site visits as specialist evaluator and/or team leader." She lists no other jobs or roles: her entire paid profession is as an evaluator on accreditation teams.

A third board member, identified as "Public/Academic," says she is a frequent evaluator consultant to ACICS, participating on "multiple ACICS site team visits." Further, she submitted a letter of support of ACICS (Exhibit 30), describing her role as "educator," not as a representative of the public.

A fourth board member, listed on the ACICS website as "Public, Academic," is identified on her LinkedIn profile as ACICS "Evaluator/Commissioner," indicating that she, too, views the role as a part-time contractor position involving her in accreditation site visits. Her other past and current employment is not clear because the resume provided to the Department does not match with other sources. Her current employment, according to the resume, is as "Associate Vice President of Talent Management & Director of Leadership Development" at Montgomery County Community College (MCCC) in

⁸ 34 CFR 602.15(a)(5).

⁹ 34 CFR 602.14(b)(2).

¹⁰ According to the ACICS website, evaluators participating on visiting teams are compensated at a rate of \$250 to \$350 a day.

Pennsylvania, starting in March 2014. The MCCC website, however, says she is “director of leadership development and talent management,” and her hiring was announced a year after her resume says it began. If that was a typo, there are multiple. The LinkedIn profile shows her starting a job in June 2012 as Associate Faculty in the Finance Department at Post University (a for-profit college in Connecticut). The resume provided to the Department does not appear to list Post University as an employer at all (there are some redactions, so we cannot be sure). Both the LinkedIn profile and the resume show prior employment as an associate faculty member with Rosemont College. However, the LinkedIn profile says this employment was between 2006 and 2009, while the resume says it began in 2009 and ended in 2011.

The fifth board member, described as “Public/Academic,” is a former provost at a public university. Now retired, he has earned several thousand dollars from ACICS, according to the ACICS Form 990s filed with the IRS and available on Guidestar.org.

III. ACICS Does Not Have Effective Mechanisms for Evaluating Institutions

To be recognized by the Secretary, an agency must demonstrate that its “standards...are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits.”¹¹ In addition, the agency “must have effective mechanisms for evaluating an institution’s or program’s compliance...”¹²

There is evidence in the exhibits and in the public record that ACICS frequently takes action when it receives notification from a government agency about a possible problem. However, to have “effective mechanisms” and to be a “reliable authority” means that the agency must be able to ferret out problems itself and then take action, not wait for a government agency to act. In our review of the evidence so far we do not find that ACICS has demonstrated that it is capable of leading rather than following, and it certainly has not done so for the past two years.

When ACICS the accrediting agency has taken adverse actions over the past year, it has been too late and well after federal and state agencies moved to bring charges or enforcement actions against institutions. For example, on April 20, 2017, ACICS brought an action to withdraw accreditation by a suspension action against the main campus and seven branch campuses of Illinois-based Computer Systems Institute (CSI). This was over a year after the Department announced its decision to deny recertification to CSI on January 29, 2016.¹³ The Department even noted at the time that its decision to end CSI’s eligibility for Title IV Federal Student Aid funds was due to the Department’s findings that “CSI submitted false job placement rates to its students, ED, and its national accreditor, the Accrediting Council for Independent Colleges and Schools.”¹⁴ Even after these findings were released, ACICS did not end CSI’s accreditation for over a year while it had knowledge that students were defrauded.

¹¹ 34 CFR 602.16(a).

¹² 34 CFR 602.17.

¹³ “U.S. Department of Education Takes Enforcement Against Two School Ownership Groups,” U.S. Department of Education website, February 1, 2016, <https://www.ed.gov/news/press-releases/us-department-education-takes-enforcement-against-two-school-ownership-groups>.

¹⁴ “Notice of Intent to Deny Recertification to Computer Systems Institute (CSI), Federal Office of Student Aid, <https://studentaid.ed.gov/sa/about/announcements/csi>.

ACICS also made the decision on August 4, 2017 to renew accreditation of three American National University campuses in South Bend, IN, Pikeville, KY, and Florence, KY. This was even after ACICS had full knowledge that in 2016, the Kentucky Court of Appeals upheld a \$147,000 sanction by the Franklin Circuit Court against American National University for failing to comply with a subpoena issued by the Kentucky Attorney General during an investigation of the Kentucky Consumer Protection Act.¹⁵ The Kentucky Attorney General brought civil fraud charges against American National University for violating the Kentucky Consumer Protection Act by advertising misleading information about the job success of its graduates. ACICS has still failed to take any meaningful action to address these issues while it continues to accredit American National University, other than issuing a “compliance warning.”

Globe University and the Minnesota School of Business were sued by the Minnesota Attorney General in 2014 for advertising programs that lacked the credentials graduates needed to qualify for jobs in their fields and for misrepresenting the transferability of credits to other institutions. These legal violations occurred even while ACICS placed the company on its “Honor Roll” in 2012. Remarkably, ACICS waited until September 14, 2016 to even issue a show-cause directive to ACICS.¹⁶ The Hennepin County District Court ruled in September, 2016 that Globe University in Minnesota and the Minnesota School of Business committed fraud and the Department denied recertification of Globe University and the Minnesota School of Business’s participation in Title IV Federal Student Aid programs on Dec. 21, 2016. However, even after the court ruling of fraud and the federal government denial of recertification, ACICS continued to accredit Globe and the Minnesota School of Business. On December 21, 2016, ACICS merely continued the show-cause directive for review during the Winter 2017 cycle.¹⁷

Exhibit 135 provides a sobering window into the inadequacy of ACICS’s accreditation mechanisms. The Bay Area College of Nursing (BACN) was initially accredited by ACICS in 2013. ACICS made that decision despite problems that had been raised by the State Board of Vocational Nursing (SBVN), a licensing agency, ever since the school’s opening in 2007.¹⁸ In February 2016, the SBVN prohibited any new enrollments in BACN’s nursing program due to problems that it had identified in the program. The very next month, in March 2016, an ACICS visiting team reported nothing about the licensing board’s actions or its finding, but instead faults BACN for having an inadequate advisory board. In May, ACICS took action to *continue* BACN’s accreditation until August. By August, the licensing board had decided

¹⁵ Tom Kenny, “AG Wins Appeal Upholding Sanctions Against American National of KY,” ABC36 News, October 19, 2017, <https://www.wtvq.com/2017/10/19/ag-wins-appeal-upholding-sanctions-american-national-ky/>. (The U.S. Supreme Court denied American National University’s petition for certification in October 2017.)

¹⁶ Letter to Mr. Terry Myre, “Show-Cause Directive,” September 14, 2016, <https://www.acics.org/%2FWorkArea%2FDownloadAsset.aspx%3Fid%3D6778&usg=AOvVaw1rBHLSu-fsT5MTeEhHE0DE>.

¹⁷ Letter to Mr. Terry Myre, “Continued Show-Cause Directive,” December 21, 2016, [acics.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=6827&libID=6821](https://www.acics.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=6827&libID=6821).

¹⁸ Memo of Donna G. Johnson to the members of the Board of Vocational Nursing and Psychiatric Technicians, California Department of Consumer Affairs, August 12, 2016, http://www.bvnpt.ca.gov/about_us/meetings/materials/20160825_18d1.pdf.

to withdraw approval for the school's nursing program. The school now appears on ACICS's list of closed institutions.¹⁹

The BACN is apparently not an isolated incident. In September 2017, less than six months ago, Department staff flagged that ACICS had, "just in the last day or two," approved new programs for a campus of the Delta Career Education Corporation location that had ceased taking new enrollments.²⁰

Moreover, ACICS cannot be considered an effective accrediting agency in its implementation of the regulations if it does not systematically consider external risks to its institutions that present possible existential threat. Its own loss of recognition presented such a risk for all of the campuses it accredited as of the date of the final decision. Yet we have been unable to find any documentation in the agency's application that it required all institutions to submit teach-out agreements immediately (beyond the Education Department's requirements to submit them to Federal Student Aid), that it evaluated which institutions would likely be unable to find accreditation with another agency in order to place them on heightened monitoring, or that it otherwise systematically reviewed all institutions with respect to this specific risk.

IV. The Department May Not Have the Legal Authority to Consider ACICS's Application

The Department grants two types of recognition for accrediting agencies of institutions of higher education, which are for "initial" or "continued" recognition.²¹ Institutions of higher education must be accredited by a recognized agency to gain eligibility for Title IV federal student aid funds. The Accrediting Council for Independent Colleges and Schools (ACICS) is an agency seeking initial recognition due to its loss of recognition by the Department in a decision letter dated September 22, 2016 that was appealed by ACICS and upheld by the Secretary in a December 12, 2016 letter. Any accrediting agency seeking initial recognition by the Department must demonstrate that it has been conducting accrediting activities in compliance with federal standards for recognition for at least two years prior to the application for initial recognition.²²

Upon denying ACICS's appeal, the Secretary conducted a de novo review and found that "Because of the nature and scope of ACICS's pervasive non-compliance, I further conclude that ACICS is not capable of

¹⁹ "Institution/Campus Closings," ACICS website, <http://www.acics.org/commission%20actions/content.aspx?id=1476>.

²⁰ Email from Mecca, Shari, Multi-Regional and Foreign School Participation Division, Federal Student Aid, to Rob Bennett, Michael Frola, and Julie Arthur, September 15, 2017. Included in emails released by Michael Stratford, "Inside a for-profit college accreditor's bid for new life," March 1, 2018. <https://www.politicopro.com/education/article/2018/03/inside-a-for-profit-college-accreditors-bid-for-new-life-372634>.

²¹ 34 CFR 602.30(a).

²² 34 CFR 602.12(a): "An agency seeking initial recognition must demonstrate that it has -- ... (2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition."

coming into compliance within 12 months or less, even if I renewed its recognition for an additional 12 months.”²³

ACICS acknowledged to the U.S. District Court for the District of Columbia in February 2017 that it was not in compliance,²⁴ and the agency did not finalize and submit its new standards for review to institutions until September 14, 2017. For this reason, the Department does not have the authority to consider an application for initial recognition by ACICS until at least September 14, 2019, the first date at which ACICS will have the opportunity to attempt to demonstrate that it will be in compliance for two years.

V. The Department May Have Violated Procedural Requirements

On December 1, 2017, the Department of Education’s Accreditation Group sent ACICS a letter indicating that it had “determined that ACICS had not yet provided sufficiently persuasive evidence from educators, educational institutions, licensing bodies, practitioners, and employers to demonstrate compliance with” the wide-acceptance criteria under 34 CFR 602.13.²⁵ When the staff make such a determination with respect to the regulations under 34 CFR 602.10, .11, .12, or .13,, the regulations require the staff to “return” the agency’s application and recommend that the agency “withdraw its application and reapply” with a stronger application.²⁶

From the exhibits that have been released by the Department, it appears that, contrary to the procedures laid out by regulation, ACICS has been given the opportunity to simply keep adding additional materials to its application. It is difficult to tell from the available record what process was followed, but it may be that ACICS has been treated preferentially and contrary to the established procedure.

Conclusion

It is clear from the record that ACICS does not meet the legal requirements for recognition by the Secretary. The agency has not demonstrated that its accreditation decisions are widely recognized by educators, schools and employers across the United States. The evidence shows that ACICS cannot be relied upon by the Secretary to make decisions that protect students and taxpayers. Further, not only has ACICS failed to show that it has effective mechanisms for evaluating institutions, the evidence indicates that the agency’s mechanisms have proven *ineffective*.

²³ “Decision of the Secretary in the Matter of Accrediting Council for Independent Colleges and Schools,” December 12, 2016, available at <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>

²⁴ “Attorneys General Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools,” February 16, 2018,” Office of the Attorney General, Massachusetts, February 16, 2018, available at http://www.marylandattorneygeneral.gov/news%20documents/Opposing_ACICS_Recognition.pdf.

²⁵ Appendix A, ACICS Application for Initial Recognition.

²⁶ Under 34 CFR 602.32(e), “If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff - (1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and (2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.”

We urge the Department's Accreditation Group staff to recommend denying ACICS' application for recognition at this time, and to remove ACICS from the upcoming NACIQI agenda in May 2018, in light of the agency's failure to meet multiple eligibility criteria for initial applicants.

Sincerely,

Robert Shireman
Senior Fellow
The Century Foundation

Tariq Habash
Senior Associate
The Century Foundation

Attachment: Declaration of Robert Shireman

March 1, 2018

Dr. Arthur Keiser
Chairman
National Advisory Committee on Institutional Quality and Integrity (NASIQI)
U.S. Department of Education, Office of Postsecondary Education
400 Maryland Ave, SW, Room 6W250
Washington, DC 20201

Dear Dr. Keiser:

In our higher education system, accreditors are a vital check on institutional quality. Strong accreditation standards not only protect the federal investment in higher education, but also ensure institutions meet the mandate to provide students with a meaningful degree or credential. Without strong and independent accreditation that ensures quality, institutions will struggle under an ever-changing federal statutory and regulatory framework that attempts to fill the void. Because of this important role that accreditors play, we write in opposition to any effort to re-recognize the Accrediting Council for Independent Colleges and Schools (ACICS) by the U.S. Department of Education (ED).¹ We have come to this conclusion after determining that not only was ACICS' failure to fulfill an accreditor's basic function to ensure institutional quality evident for some time, but such failure was also widespread and costly. ACICS did not rectify identified issues despite having ample time to do so. For the reasons outlined below, we find no compelling need or justification to restore ACICS' recognition.

First, ACICS has a long history of providing weak oversight of the institutions it accredits, particularly those in the for-profit sector. ED not only cited ACICS for setting lax standards for recruitment, admissions, and student outcomes,² but also for failure to adequately verify job placement data at many institutions. Unsurprisingly, ACICS-accredited institutions produce the worst combined student outcomes compared to rates of all other major accrediting bodies.³

¹ Department of Education. (February, 2018). *Notice to extend public comment period for the solicitation of third-party comments concerning the performance of accrediting agencies*. Online at <https://federalregister.gov/d/2018-03686>, and on <https://FDsys.gov>

² Emma Vadehra. (September, 2016). *Decision to withdraw and terminate the Department's recognition of ACICS*. Department of Education. Online at: <https://blog.ed.gov/files/2016/06/ACICS.pdf>.

³ Ben Miller. (April, 2016). *Comments on ACICS to NACIQI*. Center for American Progress. Online at: <https://www.republicreport.org/wp-content/uploads/2016/04/Center-for-American-Progress-Comments-on-ACICS-to-NACIQI.pdf>

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Second, ACICS' failure as an accrediting agency enabled low-quality institutions, some of whom engaged in fraudulent behavior, to gain and maintain access to billions of dollars in federal aid, thereby leaving hundreds of thousands of students (and the taxpayer dollars supporting them) prey to dysfunctional and poor quality institutions. ACICS also consistently neglected major problems with schools they accredited. For example, ACICS published an "honor roll" that routinely included many troubled schools. Between 2010 and 2015, close to 100 institutions undergoing state or federal investigation appeared on ACICS' "honor roll," including campuses of the now defunct and notorious Corinthian Colleges, Inc. and ITT Technical Institute (ITT Tech).⁴ Both schools appeared on the ACICS "honor roll" despite being under investigation by multiple state attorneys general.⁵ ITT Tech's "honor roll" status appeared even while being sued by the Consumer Financial Protection Bureau for predatory student lending practices.⁶ The sudden closures of these two schools alone left thousands of students in dire positions, saddled with loan debt and incomplete or useless degrees.

The problems of ACICS oversight are not limited to Corinthian and ITT Tech. In the face of strong evidence, ACICS took little to no public action against many of their institutions under investigation.⁷ For example, documented unscrupulous practices employed by ACICS-accredited institutions include hiring strippers to recruit ineligible students (FastTrain College), and lying to students about the transferability of credits (Daymar College).⁸ ACICS' lack of action against even these bad actors resulted in massive taxpayer losses. For example, from 2014-2016, 17 institutions that were under investigation yet approved by ACICS to operate, received \$5.7 billion from the federal government. That amount was more than half of all the federal funds received by ACICS-accredited institutions during that same period.⁹

Third, we note that the process that led to ACICS' loss of recognition was adequate, deliberate, and fair. ACICS twice received a negative review by the National Advisory Committee on Institutional Quality and Integrity (NACIQI), and failed over the course of five years to show any signs of significant improvement.¹⁰ ED finally rescinded ACICS' recognition in December

⁴ Ben Miller. (June, 2016). *ACICS must go*. Center for American Progress. Online at:

<https://www.americanprogress.org/issues/education-postsecondary/reports/2016/06/06/138826/acics-must-go/>

⁵ Michael Stratford. (April, 2015). *Corinthian dismantling continues*. Inside Higher Ed. Online at:

<https://www.insidehighered.com/news/2015/04/15/us-fines-corinthian-colleges-30-million-and-effectively-closes-head-chain>

⁶ Consumer Financial Protection Bureau. (February, 2014). *CFPB sues for-profit college chain ITT for predatory lending*. Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/>

⁷ Maura Healey. (February, 2018). *Letter to the Department of Education opposing the application for initial recognition of the Accrediting Council for Independent Colleges and Schools*. Commonwealth of Massachusetts Office of the Attorney General. Online at: <http://files.constantcontact.com/bfcd0cef001/251e7b56-543a-4433-879b-ccb6ba13f23e.pdf>

⁸ Office of Senator Elizabeth Warren. (June, 2016). *Rubber Stamps: ACICS and the troubled oversight of college accreditors*. Online at: https://www.warren.senate.gov/files/documents/2016-6-10_ACICS_Report.pdf

⁹ Ben Miller. (June, 2016). *ACICS must go*. Center for American Progress. Online at:

<https://www.americanprogress.org/issues/education-postsecondary/reports/2016/06/06/138826/acics-must-go/>

¹⁰ *Id.*

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of 2016 due to the overwhelming evidence that it could or would not correct its record of failure to serve as an effective gatekeeper to federal financial aid programs.¹¹ We supported NACIQI's recommendation to terminate the recognition of ACICS following extensive documentation of what ED accurately described as "pervasive noncompliance" on over 20 recognition criteria.¹²

Since its loss of recognition, ACICS states it has made significant changes to its standards and personnel, which will result in stronger institutions. They argue this warrants a reconsideration of their status.¹³ We submit that not only did ACICS act too late, but also ACICS' history of self-policing through improvement plans has produced nothing more than unfulfilled promises. Further, the sheer number of compliance issues ED identified leading to ACICS' de-recognition suggests 14 months is not enough time for ACICS to provide ED with demonstrable evidence of compliance. ACICS' claim of sufficient changes in such a short time period is also questionable when considering the fact that it was unable to come into compliance in the previous five year period, during which time it was under review by ED and at-risk of losing recognition.

Finally, there is also little need to reconsider ACICS' application now. There are enough reputable and recognized accreditors to accredit institutions formerly reviewed by ACICS. In a January 2018 letter to Members of Congress, the Career Education Colleges and Universities (CECU) asked Congress to extend the time for ACICS-accredited schools to secure a new accretor, claiming that 155 institutions "have not yet finalized transition" to new accreditors.¹⁴ Upon review of CECU's claims and consultation with experts in the field, we find these numbers misleading. Contrary to the claims in this letter, nearly all the institutions formerly accredited by ACICS that did not close or announce plans to close have already transitioned to alternative accreditation pathways. Between April of 2017 and January of 2018,¹⁵ more than half of the schools (108 institutions) have either already obtained accreditation elsewhere or in the final steps for accreditation with a new accretor. Of the remaining institutions:

- 16 have reached candidacy status with an accretor,
- 5 are working toward merging with other accredited institutions, and
- 44 institutions have applied to the Accrediting Commission of Career Schools and Colleges for accreditation, which will be reviewed in the coming months.

¹¹Secretary John B. King. (December, 2016). *Final decision letter on ACICS*. Department of Education. Online at: <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>

¹²Department of Education. (December, 2016). *Final notice of the Department's decision on ACICS*. Online at: <https://content.govdelivery.com/accounts/USED/bulletins/17929a7>

¹³Michelle Edwards. (February, 2018). *ACICS applies for initial recognition*. Accrediting Council for Independent Colleges and Schools. Online at: <http://www.acics.org/news/content.aspx?id=7003>

¹⁴Steve Gunderson. (January, 2018). *Letter to members of congress regarding ACICS*. Career Education Colleges and Universities. Online at:

https://www.career.org/uploads/7/8/1/1/78110552/letter_to_congressional_leadership_on_acics.pdf

¹⁵Ben Miller & Antoinette Flores. (February, 2018). *A second status update in ACICS colleges*. Center for American Progress. Online at: <https://www.americanprogress.org/issues/education-postsecondary/news/2018/02/06/445946/second-status-update-acics-colleges/>

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This leaves fewer than 20 formerly ACICS-accredited schools for which the path to accreditation remains unclear, and this lack of clarity is largely due to a lack of public information. A new accreditor denied accreditation to one school that may be now seeking an alternate accreditor;¹⁶ another school just reached a settlement with the U.S. Department of Justice over allegations that the school received financial aid for ineligible students;¹⁷ and ED identified four schools seeking accreditation with other accreditors as noncompliant with application requirements.¹⁸ Importantly, NACIQI should recognize that, as ACICS had significantly lower standards than did its fellow accreditors, there very well might be some schools incapable of meeting standards set by any other accreditor. This failure to find a new accreditor is not a fault in the system, but an important check on institutional quality. As such, any extension of the accreditation window for these institutions or re-recognition of ACICS to allow for re-accreditation, would allow continued access to federal aid likely at the expense of students.

We therefore join several other advocates for students, including Attorneys General from 20 states, nine veterans groups, and a coalition of 23 student advocacy groups who have highlighted the failure of ACICS to serve as a good accreditor,¹⁹ and strongly urge ED to reject ACICS' application for recognition.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member

SUSAN A. DAVIS
Ranking Member
Subcommittee on Higher Education and
Workforce Development

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ David Halperin. (April, 2016). *Departure of head of college accrediting group won't fix the problem.* Huffington Post. Online at: https://www.huffingtonpost.com/davidhalperin/departure-of-head-of-coll_b_9716968.html