



June 20, 2023

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

Re: Docket ID ED–2023–OPE–0089

Dear Secretary Cardona,

As presidents of higher education associations representing public two and four-year institutions and State Higher Education Executive Officers, we write specifically about the financial responsibility component of the Department of Education’s (ED) proposed regulations and its application to public colleges and universities. While our associations have individually commented on the Notice of Proposed Rulemaking (NPRM) and/or joined the higher education community letter submitted by the American Council on Education, we join together to address the one area of the proposed regulations that are both new and uniquely applicable to public institutions. In the separate communications, we convey association positions on the many other areas of interest and concern within the NPRM.

As you are aware, the Department proposes to amend § 668.171(g) to require public colleges and universities to provide documentation from a government entity that confirms the institution is a public institution and is backed by the full faith and credit of that government entity to maintain the exemption from some aspects of financial responsibility standards. Additionally, the Department proposes to apply financial responsibility standards to public institutions if certain discretionary and mandatory triggers are met.

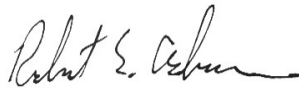
We urge the Department to reconsider and withdraw the proposal. There is no documented history of any risk of precipitous closure or financial collapse of a public institution of higher education to merit new requirements. The exemptions that have existed for public institutions in the financial responsibility regulations have worked well for many years, neither creating a problem for the Department, students, taxpayers, or institutions. Therefore, it is unclear what problem the proposed language is attempting to solve. While we believe the Department should simply withdraw the proposal, if the rationale stems from concerns related to change of ownership, ED could simply craft a much narrower regulation that addresses that unique, rare, and extremely limited circumstance.

As proposed, we are concerned the regulation creates unnecessary bureaucratic hurdles that will needlessly distract public institutions from their core mission of serving students and redirect

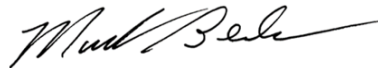
resources devoted in furtherance of their public mission. We caution the Department against any presumption that these are frequent and pro forma areas of communication between institutions and states that have smooth processes for all involved. The proposal will fuel the redirection of resources to administrative bureaucratic tasks without generating additional protections for students and taxpayers. At worst, the requirements could exacerbate challenging dynamics between states and public colleges and universities.

We appreciate your consideration of our concerns on behalf of our associations' members and respectfully request your reconsideration of the Department's proposal. Please do not hesitate to let us know how our organizations can be a resource as you work to improve and finalize the regulations. Thank you.

Sincerely,



Robert E. Anderson, Ph.D.  
President, SHEEO



Mark Becker, Ph.D.  
President, APLU



Walter Bumphus, Ph.D.  
President, AACC



Mildred García, Ed.D  
President, AASCU