



Filed Electronically

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Jean-Didier Gaina
Analyst
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue SW
Mail Stop 294-2020
Washington, DC 20202

RE: Notice of Proposed Rulemaking; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program (ID: ED-2019-OPE-0080-0001)

Dear Mr. Gaina,

On behalf of the Council for Christian Colleges & Universities (CCCUC), Association of Catholic Colleges and Universities (ACCUC), and United States Conference of Catholic Bishops (USCCB),¹ we offer the following comments on the above-captioned notice of proposed

¹ The CCCUC represents over 180 institutions around the world, including around 145 in the United States that enroll approximately 445,000 students annually. Christian colleges pursue faith and intellect for the common good. Our institutions require faculty and staff that uphold the institution's religious mission, while at the same time promoting the common good and seeking to serve the broader public. Our faith is what inspires us to serve our students and others in our communities.

The USCCB is a nonprofit corporation the membership of which are the active Catholic Bishops of the United States. The USCCB advocates and promotes the pastoral teaching of the U.S. Catholic Bishops in diverse areas of the nation's life, including education and religious liberty.

The ACCUC, founded in 1899, serves as the collective voice of U.S. Catholic higher education. Through programs and

rulemaking, published at 85 Fed. Reg. 3190 (Jan. 17, 2020). We are asking for one important change found on pages 3-4 of this letter.

But first, we thank the Department for the opportunity to comment on the proposed regulations. We believe they are important to ensure that religious entities, including colleges and universities, are treated fairly. We are grateful that the Department has decided to revise the current regulations “regarding the eligibility of faith-based entities to participate in the Department’s Direct Grant programs, State-Administered Formula Grant programs, and discretionary grant programs authorized under Titles III and V of the Higher Education Act of 1965, as amended (HEA), and the eligibility of students to obtain certain benefits under those programs.” 85 Fed. Reg. at 3190.

We are grateful for these proposed key changes that will be beneficial to faith-based entities, including member colleges and universities of CCCU and ACCU, and students of faith—changes that we support and that we hope the Department will retain in the final rule:

- Allowing faith-based organizations to compete on an even playing field with other private organizations for grants and subgrants through the Department of Education;
- Ensuring that faith-based groups can participate in Department-funded programs, while retaining their autonomy and ability to operate according to their religious missions;
- Removing regulatory burdens placed on faith-based entities; and
- Ensuring that religious student groups at public institutions are eligible for the same rights, benefits, and privileges that a public institution affords to other student groups. A religious group should not be singled out for campus exclusion or other detriments when, like any other group, it exercises the right to choose leaders and members who fit that group’s mission. For example, just as a Democratic student group should be allowed to choose a leader that values Democratic policies, a Jewish student group should be allowed to choose a leader who embodies Jewish practices and beliefs. Religious student groups have sometimes been the subject of

services, the association strengthens and promotes the Catholic identity and mission of its nearly 200 member institutions in the United States. Catholic higher education serves nearly 900,000 students through a large array of distinctive academic programs. It is committed to carrying on the Catholic intellectual tradition, which includes among its core principles the dignity of the human person. Embedded in its foundation, Catholic higher education also maintains a clear commitment to providing high-quality education to all students—especially those who may be of lower economic means.

discrimination because of the group’s beliefs or standards.² We appreciate the Department taking steps to ensure that public institutions treat religious and non-religious student groups equally.

We are grateful for the six added provisions that help explain the “controlled by” religious language in 34 C.F.R. § 106.12: Educational Institutions Controlled by Religious Organizations. We are thankful for the clarity added to this regulation by the Department, specifically § 106.12(c)(6): “to expressly acknowledge that a recipient can itself be a religious organization that controls its own operations, curriculum, or other features.” 85 Fed. Reg. at 3207. CCCU represents many different denominations as well as non-denominational schools. These schools are distinctly Christian, but the hierarchy and structure vary. The non-exhaustive factors represent an understanding that religious institutions may be controlled by religion in different ways, yet are no less religious.

We propose one important change. Please clarify that schools need only assert the religious exemption at any time, rather than having to apply for it. Accordingly, we suggest that the Department modify the existing section 106.12(b).

- *Current regulation: (b) Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of

²[*InterVarsity Christian Fellowship v. University of Iowa*](#): As a Christian group, InterVarsity reasonably asks that group leaders share its Christian faith. But on June 1, 2018, the University of Iowa threatened to derecognize this student group if it would not eliminate its leadership requirement, going so far as to say that the group could not even encourage its leaders to be Christians. Ignoring the group’s requests to reconsider, a month later the University deregistered InterVarsity, effectively eliminating it from relevant campus life. Almost 40 other religious student groups were also kicked off campus, including several minority religious groups.

[*BLinC v. University of Iowa*](#): Business Leaders in Christ (BLinC) is a Christian student organization, also at the University of Iowa. BLinC’s mission is to form future business leaders who will integrate their religious values into the workplace. In October 2017, the University of Iowa targeted BLinC and kicked them off campus because BLinC asks its leaders to share its religious beliefs—even though the university allows other groups to select leaders who share their mission and beliefs.

[*InterVarsity Christian Fellowship v. Wayne State University*](#): In 2017, Wayne State declared it was “discriminatory” for a religious group to require its leaders to embrace its faith and kicked the group off their campus.

[*Chi Alpha v. Cal State*](#): Cal State had a selective policy that deemed Chi Alpha to have engaged in religious discrimination for requiring its leaders to be Christian, but the school allowed other groups (feminists, Democrats, fraternities, etc.) to be selective of their leadership. In the end, Chi Alpha was reinstated as a student organization and allowed to choose leaders based on its standards and Christian faith.

the religious organization.

- *Our concern:* The “shall do so” language implies a mandatory application; whereas, the institution should be able to assert that they have the exemption when they meet the criteria proposed in § 106.12(c).
- *Suggested language: (b) Exemption.* An educational institution may assert the exemption set forth in paragraph (a) without written assurance from the Department. An educational institution may, if it wishes, request such written assurance from the Assistant Secretary but is not required to do so.

We share the Department’s goal of ensuring the eligibility of faith-based entities to participate in government programs, like other private entities, without discrimination. We stand ready to assist the Department however we can in furthering this goal.

Thank you for the opportunity to comment.

Respectfully submitted,

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