
U.S. DEPARTMENT OF EDUCATION

34 C.F.R. Parts A & B

Docket ID ED-2017-OS-0074-0001

COMMENTS

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“[T]ransfer students are one of the most abused [groups of] students.”

Davis Jenkins, senior research scholar at Community College Research Center at
Columbia University's Teachers College

***“Some institutions continue to deny credits from institutions with
national accreditation without reviewing student coursework despite the
fact that these institutions are accredited by federally recognized
national accrediting bodies. ...***

***Consequently, qualified students could be denied credit for comparable
coursework, leading them to incur further educational costs that they
may need to offset with additional federal financial aid.”***

“Transfer Students: Postsecondary Institutions Could Promote More Consistent
Consideration of Coursework by Not Basing Determinations on Accreditation,”
GAO 06-22 (October 2005).

I. INTRODUCTION

Hallmark University is a not-for-profit institution of higher education and was founded in 1969 as Hallmark Aero-Tech, an institution offering programs in aeronautics and aviation maintenance. Hallmark’s first campus was located at San Antonio’s historic Stinson Municipal Airport. By 1982 Hallmark became the first private career school in the State of Texas to be awarded Associate degree-granting authority. Today Hallmark also offers bachelor and master degree programs and its academic offerings include Aviation, Accounting, Business, Information Systems, Global Management, Medical Assisting, and Registered Nursing at two campuses in San Antonio.

Hallmark University is accredited by Accrediting Commission of Career Schools and Colleges (ACCSC), a national accreditor¹. Hallmark is proud of its longstanding

¹ There are three types of accrediting organizations: regional, national, and specialized. Regional accrediting organizations operate in six different regions of the country and review entire institutions. National accrediting organizations operate throughout the country, without regional restrictions, and also review entire institutions. Specialized accrediting organizations also operate throughout the country, but review primarily programs and not institutions. **To be recognized by the U.S. Department of**

reputation for academic and technical excellence and places student outcomes above all else. A recent study published January 18, 2017 in the New York Times identifies Hallmark University as number one in San Antonio for income mobility, *i.e.*, raising the income of graduates by two or more brackets. <https://www.nytimes.com/interactive/projects/college-mobility/hallmark-college-of-technology>.

Despite its enviable outcomes, students of Hallmark have difficulty transferring their credits to institutions accredited by regional accreditors, Southern Association of Colleges and Schools Commission on Colleges (SACS), Accrediting Commission for Community and Junior Colleges (ACCJC) Western Association of Schools and Colleges, Higher Learning Commission (HLC), Middle States Commission on Higher Education (MSCHE), New England Association of Schools and Colleges (NEASC-CIHE) Commission on Institutions of Higher Education, and WASC Senior College and University Commission (WSCUC). The difficulty stems from the well-known practice of regionally-accredited schools to categorically reject transfer credits from nationally-accredited schools.

Both the U.S. Department of Justice (DOJ) and the U.S. Government Accounting Office (GAO) have condemned this practice. This practice, in fact, is forbidden or discouraged even by regional accreditors. Yet categorical rejection of credits of nationally-accredited schools endures causing students of nationally-accredited institutions to unnecessarily repeat courses, extend the time it takes to complete their

Education, all three types of accreditors are subject to the *same* federal requirements found at 34 C.F.R. Part 602.

programs, incur additional tuition and other expenses, and be deprived of employment opportunities. This, in turn, takes its toll on the taxpayer by increasing the student financial aid disbursed to such students under Title IV of the Higher Education Act of 1965, as amended (Title IV).

On February 24, 2017, President Trump signed Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” which established a Federal policy “to alleviate unnecessary regulatory burdens.” Section 3(a) of the Executive Order directs Federal agencies to establish a Regulatory Reform Task Force (RRTF). In accordance with this Order, Robert S. Eitel and Elizabeth A.M. McFadden were named co-chairs of the Regulatory Reform Task Force for the U.S. Department of Education (ED).

The RRTF is charged with evaluating existing regulations and making recommendations to ED Secretary, Betsy DeVos, regarding their “repeal, replacement, or modification.” To guide these recommendations, the Executive Order requires the RRTF to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Executive Order 137771, Section 3(d). To that end, ED published a request for comments on June 22, 2017 seeking recommendations from the public on regulations “appropriate for repeal, replacement, or modification.” 82 Fed. Reg. 28,431 (June 22, 2017).

In response to this request, Hallmark University recommends the modification of 34 C.F.R. § 602.16 to include a requirement that accreditors’ standards will not be considered to “effectively address the quality of the institution or program” unless they address *specifically* the fairness of credit transfer policies of their member institutions, including that such policies do not on their face, or in application, categorically deny transfer credit on the basis of the kind of accreditation of the sending institution. As explained in these comments, the current ED accreditation recognition regulations in 34 C.F.R. Part 602 are ineffective in protecting students from anti-competitive and unfair credit transfer policies of regionally-accredited institutions. The ultimate outcome of this regulatory deficiency is wasted federal dollars and massive job loss to a large sector of postsecondary students. Consequently, modification of 34 C.F.R. § 602.16 will improve the efficacy of ED accreditation recognition regulations and boost job availability to students and graduates of nationally-accredited institutions.

II. ED SHOULD PROMULGATE REGULATIONS REQUIRING REGIONAL ACCREDITORS TO ENSURE THAT THEIR MEMBER INSTITUTIONS INSTITUTE AND APPLY FAIR TRANSFER OF CREDIT POLICIES

The problematic credit transfer system in this country is well known and transfer students have been recognized as “one of the most abused [groups of] students.” *See* <https://www.insidehighered.com/news/2017/09/14/reports-highlight-woes-faced-one-third-all-college-students-who-transfer>. For decades, two independent federal entities,

the DOJ and the GAO, have called for credit transfer reform stemming from the categorical rejection of credits from nationally-accredited institutions. While regional accreditors have responded by discouraging or even barring such categorical rejection, they have not enforced these policies and this unjust practice continues. Without ED's modification of federal accreditor recognition regulations, the practice will continue to unfairly cause massive disruption to transfer students of nationally-accredited institutions.

A. Historical Concerns Regarding Anti-Competitive Conduct of Accreditors

For decades, the DOJ has recognized the potential for postsecondary accreditors to engage in anticompetitive activity as a result of their power to exclude market participants, *i.e.*, institutions of higher education. DOJ, most significantly, has targeted accreditor restrictions on credit transfer.

Perhaps the best known DOJ anti-trust enforcement action in the higher education realm is *United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996). After receiving complaints from the Massachusetts School of Law at Andover, the DOJ investigated the American Bar Association's (ABA) accreditation process and subsequently filed suit against it. As a result, the parties entered into a consent decree that, *inter alia*, prohibited the ABA from adopting or enforcing a standard whose purpose "or effect" is to bar the acceptance of transfer credits from a non-ABA-accredited law school. *Id.* at 436.

The DOJ's concern over the ABA's anti-competitive credit transfer activities, prompted ED in 1997 to raise similar concerns with the regional accreditor for the south, SACS. Consequently, in July 1997 ED invited public comment on SACS standards and its compliance with the federal recognition criteria in 34 C.F.R. Part 602. The DOJ submitted comments opining that SACS's new credit transfer standards made it difficult

for its member institutions to accept credit from anything other than other regionally-accredited institutions. *See* Comments from J.I. Klein, DOJ to K. Kershenstein, ED (Sept. 9, 1997) [hereafter “DOJ 1997 Comments”], Ex. 1. The DOJ further noted that the SACS revisions effectively barred the transfer of credit from institutions accredited by nationally-recognized accreditors, the Council on Occupational Education (COE), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT) [now ACCSC], and the Accrediting Council for Independent Colleges and Schools (ACICS). Specifically, DOJ stated:

SACS is the only regional accrediting agency requiring, as a general matter, that "Coursework transferred or accepted for credit . . . **must be completed** at an institution accredited . . .by a regional accrediting body. ." [bolded emphasis in the original], and it is the only regional accrediting agency that requires the receiving institution to document extensively exceptions to the transfer criteria.

Id. at 6, Ex. 1.

DOJ concluded that SACS’s credit transfer restriction amounted to an apparent unlawful “boycott of institutions accredited by competing accrediting agencies.” *Id.* at 8. DOJ reached this conclusion noting the geographic restrictions by which regional accreditors are constrained, but by which national accreditors, such as COE, ACCSCT, and ACICS are not. *Id.* at 9. DOJ also observed that institutions accredited by these national accreditors were located within SACS’ geographic boundaries and, thus, were “a natural market for SACS’ expansion.” *Id.* In other words, DOJ viewed SACS’s effective bar of credit transfer from *nationally*-accredited institutions as a means of forcing such institutions to seek *regional* accreditation in order to provide their students the ability to transfer their credits to regionally-accredited institutions.

DOJ also pointed out that SACS's regional accreditation bias was in contradiction to the 1978 Joint Policy Statement on Transfer and Award of Academic Credit. *Id.* at 5.² This Joint Policy Statement permitted institutions to use national accreditation (as well as regional accreditation) to serve as a proxy for the quality of the credit-sending institution. *See id.* The current Joint Policy statement even more clearly condemns denial of transfer credit acceptance based on the kind of accreditation of the sending institution:

Balance in the Use of Accreditation Status in Transfer Decisions. Institutions and accreditors need to assure that transfer decisions are not made solely on the source of accreditation of a sending program or institution. While acknowledging that accreditation is an important factor receiving institutions ought to make clear their institutional reasons for accepting or not accepting credits that students seek to transfer. Students should have reasonable explanations about how work offered for credit is or is not of sufficient quality when compared with the receiving institution and how work is or is not comparable with curricula and standards to meet degree requirements of the receiving institution.

Joint Statement on the Transfer and Award of Credit (October 2001), Ex. 2.

In response, SACS ultimately did change its credit transfer standards. SACS now permits institutions to exercise "autonomy" in assessing whether to accept credits from another institution and expressly states that it does not require that its member institutions accept credit only from regionally-accredited institutions. SACS Transfer of Academic Credit: A Position Statement (Approved, June 2003; Reformatted, Sept. 2016), Ex. 3. More significantly, SACS prohibits the exclusive reliance on regional accreditation as the means of determining whether to accept transfer credit. *Id.* And it bars its member

² COPA, the American Council on Education/Commission on Educational Credit, and the American Association of Collegiate Registrars and Admissions offices adopted the Joint Policy Statement. The American Association of Community and Junior Colleges adopted it in April 1990 and CORPA adopted it on January 16, 1994.

institutions from representing that SACS mandates regional accreditation for transfer credit acceptance. *Id.* The Statement states in relevant part:

SACSCOC supports institutional autonomy in determining its own standards for transfer of academic credit while also encouraging institutions not to impose artificial impediments or meaningless requirements on the transfer process. Many systems and institutions have taken positive action such as negotiating articulation agreements, common course listings, common core curricular, and automatic acceptance of credit arrangements to facilitate the transfer of academic credit. These kinds of proactive approaches, involving qualified faculty in the decisions, ease the way toward resolving transfer of credit problems while maintaining curricular coherence and academic and institutional integrity.

The accreditation standards of SACSCOC require member institutions to analyze credit accepted for transfer in terms of level, content, quality, comparability, and degree program relevance. The accreditation standards do not mandate that institutions accept transfer credit only from regionally accredited institutions. When an institution relies on another institution's regional accreditation as an indicator for acceptability of credit, it should not be the only criterion used for acceptability nor should it be represented as a requirement of this accreditation agency, which it is not.

Id. (emphasis added).

Despite SACS's credit transfer reform, the practice of blanket rejection of credits from nationally-accredited institutions continues without abatement. Hallmark University provides specific evidence of this practice later in these comments.

B. GAO's Historical and Current Indictment of Institutional Rejection of Transfer Credit Based on National Accreditation

The detrimental impact of this unjustifiable credit transfer practice is well-known not only to the DOJ, but also to the GAO. For over a decade, the GAO, the federal

government’s auditor, has condemned institutional blanket rejection of course credit from nationally-accredited institutions. In 2005, the GAO recommended that Congress amend Title IV to bar Title IV-participating institutions from rejecting student course credit from nationally-accredited institutions. “Transfer Students: Postsecondary Institutions Could Promote More Consistent Consideration of Coursework by Not Basing Determinations on Accreditation,” GAO 06-22 (October 2005) [Hereafter “2005 GAO Report”]. In this 2005 report, the GAO denounced the practice of wholesale rejection of credits from nationally-accredited institutions by regionally-accredited schools. *Id.* The GAO observed that while accrediting agencies generally embrace the concept that acceptance of course credit should *not* depend on whether the sending institution is regionally accredited, approximately 84% of the institutions they interviewed considered the kind of accreditation of the sending institution in determining whether to accept transfer credits. *Id.* at 3, 9³. Many of these institutions would accept transfer credits *only* from regionally-accredited schools.

About 84 percent of institutions consider whether the sending institution is accredited, and many consider the type of accreditation—national or regional—when determining which transfer credits to accept. Many institutions’ transfer policies specify that they only accept credits from a regionally accredited institution. As a result, students from nationally accredited institutions may have their credits denied on the basis of their previous institution’s type of

³ In this regard, the GAO stated:

The six regional accrediting agencies that we reviewed generally encourage their member institutions not to accept or deny transfer credit exclusively on the basis of the accreditation of the sending institution. Some accrediting agencies have incorporated this criterion into their standards; others have issued policy or position statements.

Id. at 15; *see also id.* at 20, Table 1.

accreditation.

Id. at 3 (emphasis added).

In fact, the GAO found that it was commonplace for institutions to categorically accept credits from regionally-accredited institutions but to categorically deny credits from nationally-accredited institutions.

About 63 percent of these institutions specified that accreditation from any regional accrediting agency was acceptable, and about 14 percent specified that they accepted national accreditation. . . . Several officials from postsecondary institutions with regional accreditation told us that *as a rule*, they did not accept credits earned at institutions with national accreditation. . . . One reason given by regional accrediting agency official for the incomparability of credits earned at nationally accredited institutions was that these institutions follow less stringent⁴ standards regarding such factors as faculty qualifications and library resources.

Id. at 9 (emphasis and italics added).

Moreover, representatives from national accreditors verified to the GAO that regionally-accredited schools routinely reject credit transfer requests from students at their institutions. *Id.* at 10. The GAO reported that the problem is so severe these representatives advise students to assume regionally-accredited institutions will not transfer credit from their member institutions. *Id.* And, significantly, this wholesale rejection of credit has led institutions with national accreditation to seek regional accreditation.⁵

⁴ The GAO pointed out the flaw of assuming that national accreditors impose “less stringent standards” stating that federal recognition requirements for regional and national accreditors are the same. *Id.* at 6 (“Education applies the same requirements to both regional and national accrediting agencies”).

⁵ The GAO summarized these discussions with national accreditors as follows:

They told us that regionally accredited institutions did not

Consequently, this rejection of credits from nationally-accredited institutions has had precisely the anti-competitive impact of which the DOJ warned by driving institutions to regional accreditation. In other words, the failure of the regional accreditors to enforce their standards preventing categorical rejection of credits from nationally-accredited schools has resulted in an unlawful “boycott of institutions accredited by competing accrediting agencies.” *See* 1997 DOJ Comments at 8, Ex. 1.

The GAO explained that the practice of blanket rejection of credits from nationally-accredited schools comes at a great cost to students and to the taxpayer in the form of longer enrollment, additional federal financial aid, and likely a decrease in the likelihood of successful completion of the academic program. *Id.* at 21-22. The GAO concluded that this practice is so harmful to students’ interest, the federal fisc, and the public interest that it recommended that Congress amend Title IV to prohibit Title-IV participating institutions from denying credit transfer on the basis of the sending institution’s type of accreditation. *Id.* at 4, 23.

While the GAO issued this report in 2005, the problem has clearly not been resolved. Just days ago, the GAO issued another report presenting more data to elucidate the issue. “Higher Education: Students Need More Information to Help Reduce Challenges in Transferring College Credits,” GAO 17-574 [hereafter “2017 GAO

always accept courses taken at the nationally accredited institution. They advised students to assume that credits would not transfer to regionally accredited institutions. Two nationally accredited institutions we visited have responded to the credit transfer difficulties by attaining, or seeking to attain, regional accreditation in order to improve their students’ ability to transfer credits.

Id. at 10.

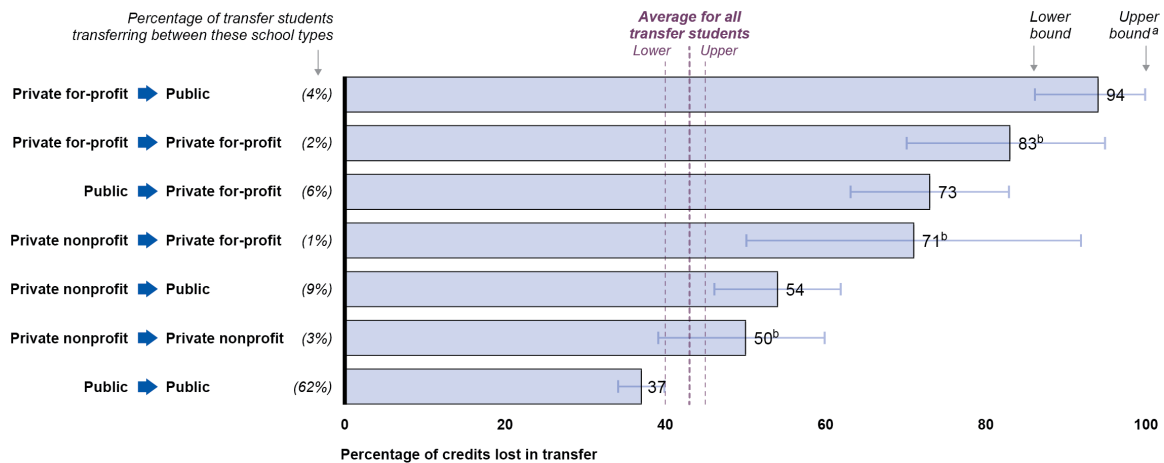
Report”]. In this report, the GAO presented data showing the degree of difficulty students from for-profit institutions, which it notes are typically nationally-accredited, have in transferring their credits to other institutions⁶.

The type of school is also a factor in successfully transferring credits between schools, according to stakeholders we interviewed from 18 of 25 higher education organizations and schools. For example, according to stakeholders, transferring credits from private for-profit schools can be more difficult than transferring credits from other types of schools. Private for-profit schools are typically nationally accredited whereas public and private nonprofit schools are historically regionally accredited, and we previously reported that regionally accredited schools usually prefer to accept credits only from other regionally accredited schools. [Footnote citing 2005 GAO Report omitted]. Stakeholders from several higher education organizations and schools said national accreditation is seen as less stringent than regional accreditation, though Education recognizes and applies the same standards to both types of accreditors.

Id. at 11 (emphasis added). The GAO presented its data on the pattern of student loss of credit resulting from transferring from a for-profit institution in the following chart. This chart graphically shows the lopsided loss of credits students of for-profits bear in comparison with their public and non-profit peers.

⁶ As mentioned above, Hallmark University is a non-profit institution, but it is nationally accredited. The GAO data on for-profits reflects the impact on all nationally-accredited institutions regardless of tax status given that the GAO has identified the barrier to credit transfer being not tax status but the possession of national accreditation.

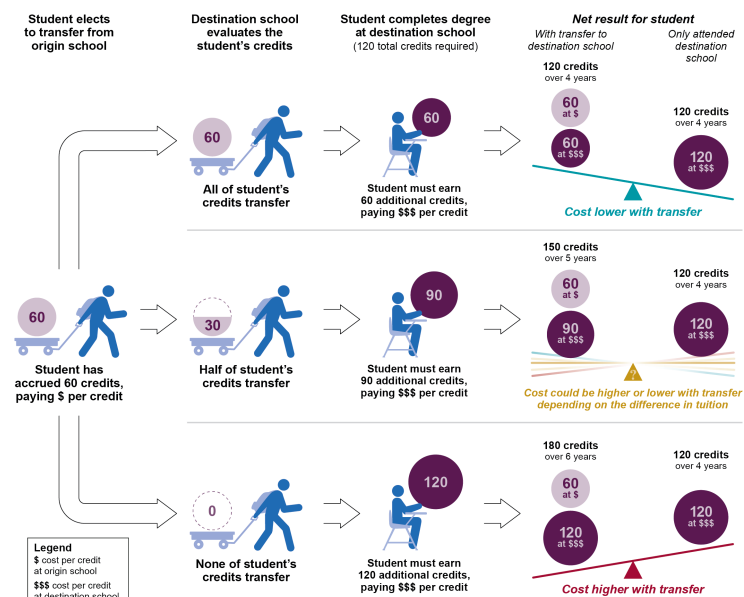
Estimated Percentage of Credits Lost in Transfer, on Average, by School Type, Academic Years 2003-04 to 2008-09



Source: GAO analysis of 2004-2009 Beginning Postsecondary Students Longitudinal Study. | GAO-17-574

In this most recent report, the GAO points out the devastating economic impact to students when institutions reject transfer credit particularly when students attempt to transfer credit from a less expensive institution to a more expensive institution. *Id.* at 20.

Examples of Potential Outcomes for Students Transferring from a Less Expensive to a More Expensive School



Source: GAO analysis of transfer process. | GAO-17-574

The cost of lost transfer credit is the burden not only of students, but also of the taxpayer when the federal government ends up footing the bill for students who must now take additional time to complete their programs and obtain additional Title IV student aid.

Credits lost in a transfer also can result in additional costs for the federal government in providing student aid. The government's costs may increase if transfer students who receive financial aid take longer to complete a degree as a result of retaking lost credits. Education's data do not identify whether particular funding sources, such as Pell Grants or other financial aid, are used to pay for credits taken or to pay for other costs. Therefore, we used an example to show how lost credits can result in potential additional costs in student aid to the federal government. . . .

Id. at 26. The cost to the taxpayer is compounded, the GAO notes, when an institution rejects course credit from a student who had attended a closed school. *Id.* at 28. This is because federal closed school discharge regulations permit the discharge of a Title IV student loan in cases where students were unable to complete their program because of school closure and did not complete their program through credit transfer or a teach-out.

34 C.F.R. § 685.214(c).

When a school closes, students must decide whether to complete their degree at another school—which can include transferring credits—or stop pursuit of that degree and, according to Education policy, apply for a discharge of their federal student loans. Education policy states that students are eligible to discharge (i.e., not pay) 100 percent of their federal student loans if they (a) did not complete their program because of a closure, and (b) did not continue in a comparable program at another school. [footnote omitted] Education officials said some students who have requested discharges of their student loans after their private for-profit school closed said they were unable to transfer their credits. For students who transfer to a comparable program at another school, their existing Direct Subsidized Loans continue to count in calculating eligibility (150 percent of published program length). Students with Pell Grants who are unable to complete their program at the closed school

can restore the portion of their lifetime eligibility for grants used at the closed school, according to a December 2016 Education announcement. Closures can pose a financial risk for the government and taxpayers to the extent that federal student loans are forgiven and students reset their Pell Grant eligibility.

Id.

Thus, twenty (20) years after the DOJ first sounded the alarm about the anti-competitive nature of blanket credit rejection and over ten years after the GAO called for credit transfer reform, the GAO finds itself still doggedly calling out for reform. This call for evaluation of existing ED regulations is an opportunity to finally reform this longstanding injustice once and for all.

C. Hallmark University's Own Experience is of Widespread Rejection of Transfer Credits from Nationally-Accredited Institutions By SACS-Accredited Institutions in Texas

In the course of critiquing SACS's regional accreditation bias, the DOJ noted that SACS's credit transfer language should be considered not only on its face, but also in its *application*. DOJ 1997 Comments at 8, Ex. 1. In this regard, the DOJ described the experience with SACS-accredited institutions by the 14 Art Institutes operated by Educational Management Corporation (EMC). *Id.* DOJ discussed EMC's experience with SACS as an entity that had institutions accredited by SACS and one institution accredited by national accreditor, ACCSCT. *Id.* In EMC's experience, SACS was so restrictive that its ACCSCT institution was effectively prevented from obtaining articulation agreements with SACS-accredited schools:

Not only are SACS' transfer of credit criteria different from the standards of the other five regional accrediting agencies and the Joint Policy Statement, SACS' application of its criteria may also be more restrictive. Educational

Management Corporation ("EMC"), which operates 14 Art Institutes throughout the United States, believes that SACS is more restrictive. Local Art Institutes have applied for accreditation from five regional accrediting agencies. Because EMC deals with five-of the six regional accrediting agencies, it is well situated to assess the differences between SACS and the other regionals. EMC has observed that the SACS' criteria have the practical effect of causing SACS-accredited institutions to deny transfer credit because of the burden of complying with SACS' documentation requirements. While EMC operates Art Institutes that have SACS accreditation, its Fort Lauderdale Art Institute is accredited by ACCSCT. The Fort Lauderdale Art Institute has 31 articulation agreements with regionally-accredited institutions, but only one is with a SACS-accredited school. EMC is not even certain that one institution will honor the agreement because of SACS' revised, more restrictive transfer of credit criteria. [footnote omitted].

Id. (Emphasis added).

Similarly, today despite the fact that SACS's credit transfer Position Statement bars member institutions from using regional accreditation as the sole basis for deciding whether to accept credit from another school, SACS-accredited institutions in Texas are doing precisely that. *See* Declaration of Joe Fisher, Chancellor of Hallmark University, Ex. 4. To provide the most current evidence of this practice, Hallmark representative, Christopher Short, called several SACS-accredited colleges and universities in Texas asking admissions personnel whether they would accept for transfer credit from Hallmark University. *See* Declaration of Christopher Short, Ex. 5.

In every case, the representative from the SACS-accredited institution stated that it would not accept Hallmark University credit. And in every case the reason provided was because of its national accreditation (ACCSC). *Id.* These conversations were

recorded and will be made available to ED if it wishes to obtain its own copy.⁷ The relevant transcribed portions of five of these conversations follow. In each case the caller, Christopher Short, stated he had completed credits at Hallmark University and asked whether the institution would accept his credits for transfer.

University of Texas at Austin- VN 620079⁸

UT: “Hallmark University does not have regional accreditation. So any courses that you take through that program will not transfer to UT Austin.”

Amberton University-VN 620082

AU: “They have to be regionally accredited in order for Amberton to accept them... Unfortunately we’re not gonna... We’re accredited through the Southern Association College and Schools underneath the higher education. We’re not going to accept it because it’s, um, it’s career schools and colleges. It’s not regionally accredited.”

Texas A&M-San Antonio-VN 620083

TA&M: “Is it regionally accredited?”

C. Short: “I think it is national; it is ACCSC.”

TA&M: “OK, so, uh, after speaking with my colleague, uh, she indicated, uh, the same thing about how it has to be regionally accredited. But since it’s nationally accredited, um, the courses wouldn’t transfer over.”

Our Lady of the Lake University-VN 620065

OLLU: “So I just double checked and no it doesn’t look like we accept credit from Hallmark.”

C. Short: “OK and is that because they are not accredited the right way or they are or?”

⁷ These conversations were lawfully recorded. Under Texas law, only one party need consent to the recording of a telephone communication. Tex. Penal Code 16.02(c)(4). This is also the case under federal law. 18U.S.C. § 2511(2)(d); *see also Reporter’s Recording Guide*, Reporters Committee for the Freedom of the Press (Summer 2012) at <https://www.rcfp.org/rcfp/orders/docs/RECORDING.pdf>.

⁸ The numbers and letters next to each institution correspond with the audio file name.

OOLU: “They’re not accredited, I believe, it is regionally. I want to say that it is nationally but it is the regional accreditation that we require.”

Baylor University-VN 620085

BU: “OK. Yeah we, um, unfortunately we do not take that accreditation.”

C. Short: “OK, and why is that? Is there a difference?”

BU: “We are regionally accredited.”

C. Short: “OK, so regionally versus?”

BU: “Nationally.”

C. Short: “OK, so you guys are regionally accredited so therefore you wouldn’t take my credits because of that?”

BU: “Because we only take regional accreditation [inaudible] national accredited. We would take that so you would have credits. So like you could still um. You could have; you could like still come to Baylor it’s just none of your courses would. We would evaluate them for admission but none of the courses would actually evaluate.”

Clearly, the widespread practice of SACS-accredited institutions is to ignore SACS’s prohibition of using regional accreditation as the sole criterion for credit transfer decisions. *See* SACS Transfer of Academic Credit: A Position Statement (Approved, June 2003; Reformatted, Sept. 2016), Ex. 3. Likewise, it is plain that SACS is not enforcing this prohibition.

D. ED Can Effectively Address Unfair Credit Transfer Policies by Modifying its Accreditor Recognition Regulations to Specifically Require that Accreditors Ensure That Their Member Institutions Do Not Categorically Reject Transfer Credit Based on the Kind of Accreditation of the Sending Institution

As mentioned, the GAO recommended that Congress amend Title IV to prohibit institutional rejection of transfer credit based on the kind of accreditation of the sending institution. 2005 GAO Report at 4, 23. Hallmark University agrees with this

recommendation. Hallmark notes, however, that ED does not need to wait for Congress to act. It is within ED's rulemaking authority to promulgate a regulation requiring recognized accreditors to enforce such rules. In fact, current ED regulations *require* that recognized accrediting agencies "[i]mmediately initiate adverse action" against its member institutions or require them to come into compliance when such institutions violate *any* of their standards. This regulation reads as follows:

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

34 C.F.R. § 602.20(a). Despite this regulation's mandate to accreditors to enforce their standards, regional accreditors, such as SACS, are not doing so with respect to its credit transfer standards. It is clear that the current regulatory scheme has failed.

For this reason, Hallmark recommends that ED amend 34 C.F.R. § 602.16 to include a requirement that its standards will not be considered to “effectively address the quality of the institution or program” unless they *effectively* address *specifically* the fairness of credit transfer policies of their member institutions,

including that such policies do not on their face or in application categorically deny transfer credit on the basis of the kind of accreditation of the sending institution.

Hallmark suggests that the current regulation be amended as follows, with the italicized language modifying the current language of 34 C.F.R. § 602.16(a)(1):

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that 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. The agency meets this requirement if—

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) *Transfer of credit policies, which fairly assess whether to accept credit and do not expressly or effectively base acceptance of credit on the kind of accreditation of the sending institution.*

(xi) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.

Hallmark also recommends that ED likewise promulgate regulations under 34 C.F.R. Part 668 making it a condition of Title IV participation for institutions to not engage in this kind of blanket transfer credit rejection.

III. CONCLUSION

John Wooden, famed head coach for UCLA basketball said: “Failure is not fatal, but failure to change might be.” The standards of regional accreditors, such as SACS, barring regional accreditation as the sole criterion for credit transfer has failed to modify institutional practice. Accreditors cannot be relied upon to reform the credit transfer system of regionally-accredited institutions. In these circumstances, ED must be the change agent by revising the recognition standards of 34 C.F.R. § 602.16 to require accreditors to ensure fair credit transfer policies.

UNITED STATES OF AMERICA



DEPARTMENT OF JUSTICE
Washington, DC 20530

September 9, 1997

Dr. Karen W. Kershenstein
Director, Accreditation and
Eligibility Determination Division
United States Department of Education
600 Independence Avenue, S.W.
Room 3915, ROB-3
Washington, D.C. 20202-5244

Re: Interim Report, Southern Association of Colleges
and Schools - Commission on Colleges ("SACS")

Dear Dr. Kershenstein:

The Department of Justice is responding to the request for comments that was published in the Federal Register in July, 1997. This comment is directed to SACS' Interim Report to the Secretary of Education regarding its compliance with Criteria for Recognition 602.22(b)(3) and its "update" on bringing SACS' practice with regard to the transfer of credit into conformance with its stated policy.

In late 1994, SACS revised the language of its transfer of credit criteria and, apparently, the manner in which its transfer of credit criteria were applied. These changes have greatly increased the difficulty of obtaining credit at SACS-accredited institutions for coursework completed at institutions accredited by three Department of Education-recognized national accrediting agencies - the Accrediting Commission of Career Schools and Colleges of Technology ("ACCSCT"), the Accrediting Council for Independent Colleges and Schools ("ACICS"), and the Council on Occupational Education ("COE"). SACS' 780-member institutions constitute nearly all of the likely "receiving" institutions for the transfer of postsecondary coursework in the South. The consequence of SACS' unreasonably restricting the transfer of credit for coursework completed at ACCSCT, ACICS, and COE accredited institutions may be to foreclose continuing higher education for students at those institutions; the one immediate effect is to restrict competition among accrediting agencies.

The Justice Department submits these comments because of our concern that SACS' restrictive transfer of credit criteria may unreasonably injure competing Department of Education-recognized accrediting agencies, institutions accredited by those agencies, students attending or who have attended those institutions, and the federal and state governments that subsidize the education of those students. Accordingly, we urge the Department of Education to require SACS to adopt less restrictive transfer of credit criteria and practices.

The Justice Department's Interest

For 107 years since the enactment of the Sherman Antitrust Act, the Justice Department has sought to promote competition in all sectors of the American economy. Unreasonable restraints on competition impose unnecessary costs on consumers. Accordingly, such restraints concern us, whether they are imposed in a traditional "smokestack" industry or in a learned profession. The Justice Department's criminal and civil litigation enforcement programs are directed at eliminating unreasonable restraints on competition. Additionally, we support competition through participation in regulatory matters and by submitting competition advocacy letters such as this one.¹ This is not the first Justice Department involvement in accreditation matters. Two years ago, we filed suit against the American Bar Association, challenging, among other practices, its unreasonably restrictive transfer of credit standard. U.S. v. American Bar Association, Civ. No. 95-1211 (CR) (D.D.C., filed June 27, 1995). The ABA agreed to less restrictive practices in the consent decree, including liberalizing its transfer of credit standard.

Our interest in this matter was anticipated by the Department of Education whose staff recognized SACS' transfer credit criteria and practices as a possible "major problem" in the Staff Analysis of SACS' petition for continued recognition (p. 27) and who hoped for no "recurrence of what happened with the American Bar Association" during the November, 1995 National Advisory Committee hearings on SACS' petition. (Tr. 118.) At the hearing, the Department of Education staff described the intent and effect of SACS' revised transfer of credit criteria as follows:

¹ Earlier this year, the Justice Department filed another competitive advocacy letter opposing a proposed Unauthorized Practice of Law opinion before the Virginia Supreme Court that would have eliminated competition from lay residential real estate settlement services in Virginia. Subsequently, the Virginia legislature enacted legislation preserving that competition. Va. Code Ann. §§ 6.1-2.19-6.1-2.29 (Michie 1997).

MR. PORCELLI: The intention is not to exclude the transfer of credit but to make it as difficult as possible, asking registrars to take time out of their busy schedules to justify [the acceptance of transfer credit with] written documentation. It would be easier for them to just say let's exclude and use the written policy of the Southern Association as an excuse. That's the unintended effect or possibly intended effect.

(Tr. 22.) At this hearing, one National Advisory Committee member also appeared to view SACS' revised transfer criteria as replacing an institutional prerogative with a prohibitory restraint:

DR. ADAMANY: . . . I agree that there is an institutional prerogative to accept [or] to not accept transfer credits, but that's not what we're discussing here. What we're discussing is an agency policy that has prohibitory language and then imposes burdens on institutions if they fail to follow the prohibitory language and consequently deprives institutions of the latitude they have historically had to accept or not accept transfer credits.

(Tr. 121.)

SACS' Transfer Of Credit Criteria

Prior to 1994, SACS' transfer of credit criteria required that coursework "must be completed at an institution accredited as degree-granting" by one of the six regional accrediting agencies to be accepted for transfer credit. The enumerated exceptions included one for coursework completed at an institution accredited by an accrediting agency recognized by the Council on Postsecondary Accreditation ("COPA").² Another exception permitted the transfer of "block" credit from non-degree-granting institutions accredited by an accrediting agency recognized by COPA, if the receiving institution reviewed the "block" on a course-by-course basis.³ The transfer of credit

² COPA ceased existence on December 31, 1993 and was immediately succeeded by the Commission on Recognition of Postsecondary Accreditation ("CORPA"). CORPA was succeeded this year by the Council on Higher Education Accreditation ("CHEA"), albeit with a more limited membership.

³ SACS' pre-1994 criteria for accepting coursework for credit toward a graduate degree also required its completion at a regionally-accredited institution and also allowed an exception for coursework completed at an institution accredited

(continued...)

criteria required "documentation" to justify each enumerated exception. We believe, however, that the documentation requirement was generally waived for the enumerated exceptions prior to the 1994 revisions.

In 1994, SACS revised its transfer of credit criteria. Initially, we understand that SACS proposed to drop the "COPA" exceptions and not replace them. Following complaints by the Accrediting Association of Bible Colleges ("AABC") and a number of its members, SACS adopted revisions replacing the two "COPA" exceptions with an exception for undergraduate coursework completed at a "degree-granting institution accredited by a professional accrediting body responsible for free-standing institutions within a specialty," and an exception for "block" credit from "non-degree-granting institutions accredited by a professional accrediting body responsible for free-standing institutions within a specialty." The "COPA" exception for the acceptance of graduate school credits was also replaced by SACS with an exception for the transfer of coursework completed at a "degree-granting institution accredited by a professional accrediting body responsible for free-standing institutions within a specialty." The effect of the revision was that COE, ACICS, and ACCSCT member institutions were no longer within an enumerated exception, but, among others, AABC-accredited schools were.

Subsequently, at the November 1995 National Advisory Committee hearing, SACS' representative stated that the "COPA" exception was not replaced by a "CORPA" exception because CORPA was a "fledgling organization" (Tr. 99).⁴ SACS did not replace the "COPA" exception with one for Department of Education recognition because new Department regulations were not yet in effect and SACS preferred to "identify" with another private entity (Tr. 102). SACS claimed that the revisions to its transfer of credit criteria were not motivated by anticompetitive considerations, stating:

It was not motivated by competitive market considerations or the defection of the COE institutions, as some have alleged. The commission has no need to market its services or quash competition. The decision was motivated by academic responsibility. Certainly it was not the intent to make transfer as difficult as possible simply for the purpose of making transfer as difficult as possible.

³(...continued)
by a COPA-recognized accrediting agency.

⁴ On December 12, 1993, three weeks before COPA's demise and CORPA's succession to it, SACS' Commission on Colleges agreed to join and pay dues to CORPA.

(Tr. 43.)

SACS' Revised Transfer Of Credit Criteria Appear
More Restrictive Than The Standards Of The
Other Regional Accrediting Agencies And The
Policy Recommended By COPA And CORPA

In general, SACS' accreditation criteria are generally more detailed and prescriptive, and rely more on the executory "must" (bolded in their text), than the accreditation criteria of the other regional accrediting agencies. Although SACS' Interim Report states that its revised transfer of credit "policy and criteria are comparable to all other regional accrediting bodies" (p. 13), we disagree.

SACS' prohibitory transfer criteria are contrary to the principle of institutional autonomy set forth in the 1978 Joint Policy Statement on Transfer and Award of Academic Credit:⁵

Basic to this statement is the principle that each institution is responsible for determining its own policies and practices with regard to the transfer and award of credit. Institutions are encouraged to review their policies and practices periodically to assure that they accomplish the institution's objectives and that they function in a manner that is fair and equitable to students. Any statements, this one or others referred to, should be used as guides, not as substitutes, for institutional policies and practices.

The Joint Policy Statement recognizes that, for reasons of social equity, educational effectiveness, and the wise use of resources, institutions should adopt policies and procedures that "provide maximum consideration for the individual student who has changed institutions or objectives." It sets forth three general considerations to guide the receiving institution: the quality of the sending institution; the comparability of the earned credit to that offered by the receiving school; and the appropriateness and applicability of the earned credit to the receiving institution's program and the student's goals.

The Joint Policy Statement lists as proxies for the quality of the sending institution its accreditation by CORPA-recognized regional, national, or certain professional accrediting agencies.

⁵ The Joint Policy Statement was adopted by COPA, the American Council on Education/Commission on Educational Credit, and the American Association of Collegiate Registrars and Admissions offices. It was subsequently adopted by the American Association of Community and Junior Colleges in April, 1990 and by CORPA on January 16, 1994. It is attached as Exhibit 1.

In its revised criteria, SACS maintains the proxies for the regional and professional accrediting agencies, but not for the national accrediting agencies recognized by CORPA and the Department of Education. Oddly, perhaps, SACS' revised criteria appear to accept the proxy for quality afforded by the New England regional association's Commission on Vocational, Technical, Career Institutions, but not COE's, even though the two agencies accredit similar postsecondary institutions, and both originated as commissions within regional accrediting associations.

In addition to departing from the Joint Policy Statement, SACS' revised transfer of credit criteria appear to be a more restrictive outlier when compared to those of the other five regional accrediting agencies.⁶ SACS is the only regional accrediting agency requiring, as a general matter, that "Coursework transferred or accepted for credit . . . **must be completed** at an institution accredited . . . by a regional accrediting body. . . ." [bolded emphasis in the original], and it is the only regional accrediting agency that requires the receiving institution to document extensively exceptions to the transfer criteria.

Moreover, the transfer of credit criteria of the other regionals are neither so prescriptive nor so prohibitory as SACS'. For example, Middle States' transfer of credit criteria state that:

It is important for all institutions to develop reasonable and clear policies and procedures for acceptance or non-acceptance of transfer credit. Transfer of credit is a concept that may involve transfer between similar or dissimilar institutions and curricula. It may also involve recognition of extra-institutional learning, as well as transfer between institutions and curricula of similar characteristics. As their personal circumstances and their educational objectives change, students seek to have their learning recognized by institutions where they apply for admission. An institution's policies and procedures should provide appropriate consideration, consistent with good educational practice, for the individual student who has changed institutions or objectives. To facilitate the smooth transition of students from one institution to another and the transfer of their credits, colleges should make clear the process and manner by which such transfer credits will be accepted.

⁶ SACS' transfer credit criteria and those of the other regionals are attached as Exhibit 2.

Colleges should work towards establishing articulation agreements where appropriate with other institutions.

The North Central Association's transfer credit standard states that:

Commission policy holds that each institution determines its own policies and procedures for accepting transfer credits, including credits from accredited and non-accredited institutions, from foreign institutions, and from institutions that grant credit for experiential learning and for non-traditional adult learner programs.

The Northwest Association's transfer credit standard is nearly as simple:

2.C.4 The institution's policies for the transfer and acceptance of credit are clearly articulated. In accepting transfer credits to fulfill degree requirements, the institution ensures that the credits accepted are comparable to its own courses. Where patterns of transfer from other institutions are established, efforts to formulate articulation agreements are demonstrated.

* * *

3.C.4 Transfer credit is accepted from accredited institutions or from other institutions under procedures which provide adequate safeguards to ensure high academic quality and relevance to the students' programs. Implementation of transfer credit policies is consistent with 2.C.4 as well as Policy 2.5 - *Transfer and Award of Academic Credit*, pages 41-44. The final judgment for determining acceptable credit for transfer is the responsibility of the receiving institution.

The New England Higher Education Commission also has a simple transfer of credit accreditation standard. It cautions that the "institution does not erect barriers to the acceptance of transfer credit that are unnecessary to protect its academic quality and integrity, and it seeks to establish articulation agreements with institutions from which and to which there is a significant pattern of student transfer" (§ 4.36). Similarly, the Western Association's Senior Colleges Commission transfer of credit standard only requires that:

4.B.8 The institution has clearly articulated policies for the transfer of credit to ensure that students who

transfer in with general education course credits meet its own standards for the completion of the general education requirement. Where patterns of transfer from specific community and junior colleges are established, efforts are undertaken to formulate articulation agreements regarding general education.

The Western Association's Junior College Commission has a similar transfer of credit standard.

Not only are SACS' transfer of credit criteria different from the standards of the other five regional accrediting agencies and the Joint Policy Statement, SACS' application of its criteria may also be more restrictive. Educational Management Corporation ("EMC"), which operates 14 Art Institutes throughout the United States, believes that SACS is more restrictive. Local Art Institutes have applied for accreditation from five regional accrediting agencies. Because EMC deals with five of the six regional accrediting agencies, it is well situated to assess the differences between SACS and the other regionals. EMC has observed that the SACS' criteria have the practical effect of causing SACS-accredited institutions to deny transfer credit because of the burden of complying with SACS' documentation requirements. While EMC operates Art Institutes that have SACS accreditation, its Fort Lauderdale Art Institute is accredited by ACCSCT. The Fort Lauderdale Art Institute has 31 articulation agreements with regionally-accredited institutions, but only one is with a SACS-accredited school. EMC is not even certain that one institution will honor the agreement because of SACS' revised, more restrictive transfer of credit criteria.⁷

SACS' prohibitory transfer of credit criteria are contrary to the Joint Policy Statement. The plainly restrictive language of SACS' revised transfer of credit criteria and its apparent restrictive effect also distinguish SACS from the other regional accrediting associations. This strongly indicates that SACS' policy is inconsistent with accepted educational policy and is a departure from the policy of the other regionals and the accreditation community.

Under Antitrust Analysis, SACS' Transfer Of Credit Criteria And Practices Appear To Be A Boycott Of Institutions Accredited By Competing Accrediting Agencies

SACS and the other five regionals accredit all or nearly all of the traditional, non-profit colleges and universities. The regionals have historically operated in contiguous but separate

⁷ EMC's letter to the Department of Justice is attached as Exhibit 3.

geographic areas. Department of Education recognition is now essential to the regionals for students at their member institutions to retain eligibility for Title IV funding. The regionals seek recognition to operate in their traditional areas. Hence, their exclusive territories are now enforced, as a practical matter, by Department of Education recognition that limits each regional accrediting agency to its historic geographic area. Many of the 780 postsecondary institutions accredited by SACS do not have a real choice of accrediting agencies because the other regionals lack recognition to operate in the South, and the various national and specialized accrediting agencies may not be qualified (and also lack recognition) to accredit many or most of SACS' institutions.

Some categories of postsecondary institutions in SACS' 11-State territory do, however, have a choice among institutional accrediting agencies. Degree-granting public and proprietary technical and occupational colleges, offering an applied associate degree, may be accredited by SACS, COE or ACCSCT. Similarly, degree-granting private business colleges may be accredited by SACS or ACICS.⁸

ACICS, COE, and ACCSCT accredit a large number of degree-granting institutions in SACS' 11-State territory. ACICS accredits 86 degree-granting institutions in SACS' territory, COE accredits 69, and ACCSCT accredits 68. These institutions enroll over 100,000 students and have thousands more graduates. Many of these institutions appear to be the type that are eligible or could become eligible to seek SACS accreditation, thereby representing a natural market for SACS' expansion.⁹ While some of these institutions may decide on their own to seek SACS accreditation, institutions should not be forced to seek SACS accreditation to ensure that their students' credits will transfer to a SACS institution.¹⁰

⁸ Unlike COE and ACCSCT, ACICS accredits a number of four-year institutions and even a few that grant masters degrees.

⁹ The 781 members of SACS' Commission on colleges are divided into six groups, according to the highest level of education offered by each group. Level I has 313 members awarding the associate degree. Level II has 140 members awarding the baccalaureate degree. Level III has 140 members awarding a masters degree. Level IV has 35 members awarding a masters and an education specialist degree. Level V has 93 members awarding a doctorate in 3 or fewer disciplines, and Level VI has 60 members awarding a doctorate in 4 or more disciplines.

¹⁰ Mathtech, Inc. has been commissioned to conduct a study reviewing accreditation standards for AAS degrees customarily offered by technical colleges and comprehensive community colleges. Mathtech concluded that COE, ACCSCT, and ACICS accredited institutions seek regional accreditation in order to enhance their status or credibility and to improve transfer of credits for students. Mathtech, Inc., Phase II Report, p. IV-9 (June, 1997).

As students and workers in SACS' region seek to continue their education and raise their educational qualifications, many more will seek to transfer credits from non-SACS institutions to SACS institutions than the reverse because SACS accredits all of the higher-level institutions and all of the comprehensive public universities and community colleges in the South. Consequently, the inability of students at non-SACS institutions to transfer credits for coursework completed at those institutions to SACS institutions seriously diminishes the value of non-SACS accreditation. This injures non-SACS institutions, and imposes costs on students and on entities who subsidize the students. Furthermore, the imposition of unnecessary restrictions on the transfer of credit produces inefficient mismatches of students with institutions. Such mismatches occur when transfer of credit restrictions prevent students from pursuing an education at institutions that best match their talents, goals and financial resources, and prevent institutions from enrolling the students.

A refusal to accept coursework completed at another institution is equivalent to a refusal to deal or a boycott. In situations where there is industry self-regulation, as exists here, courts will generally look to see whether the refusal to deal or boycott is intended to accomplish a justifiable goal, and whether the action is reasonably related to that goal. National Society of Professional Engineers v. United States, 435 U.S. 679, 687-90 (1978). Expressed another way, the court will look at the purpose of the challenged conduct and whether the challenged conduct reasonably accomplishes the purpose or whether it imposes undue economic harm. Associated Press v. United States, 326 U.S. 1 (1945). Boycotts have also been challenged as illegal monopolizations. In Lorain Journal v. United States, 342 U.S. 143 (1951), the Supreme Court inferred an intent to monopolize where a local monopoly newspaper refused to accept advertising from customers who also placed advertisements with a local broadcast station. Additionally, a refusal to deal may represent an unlawful attempt to extend monopoly power from one market to another. Otter Tail Power Co. v. United States, 410 U.S. 366 (1973).

SACS is the only institutional Department of Education-recognized accrediting agency for many of its members, accrediting all of the most prestigious postsecondary institutions, public universities, four-year colleges, and comprehensive community colleges in its region. Its "prohibitory" transfer criteria should not be the means to force those institutions in SACS' territory which have a choice of accrediting agencies to choose SACS. If SACS intends to preserve the integrity of the degree and otherwise maintain educational quality, it can accomplish this through much less restrictive criteria and policies. Antitrust doctrine cautions that the breadth of a restriction should be in relation to its legitimate

need, meaning it should be the least restrictive measure necessary to accomplish the quality objective. In this regard, the Joint Policy Statement and the transfer standards of other accrediting agencies indicate that quality can be achieved in a far less restrictive manner than that pursued by SACS.

The timing of SACS' revised transfer criteria suggests that the changes may have been motivated by anticompetitive considerations, rather than by quality considerations. The revisions were proposed and approved in 1994 during the time that COE's predecessor, then one of SACS' four commissions, had announced its plan to separate from SACS. The SACS-COE schism was a result of SACS' refusal to permit COE to continue to accredit technical institutions once they became technical colleges.¹¹ The division of accrediting responsibilities proposed by COE resembles the division of accrediting responsibilities between the two commissions of the New England association. Throughout 1994, while SACS was considering the revised transfer of credit criteria, CORPA had succeeded to the accreditation functions of COPA and SACS was a member of CORPA. Had the 1994 revisions instead replaced the "COPA" exception with a "CORPA" (or Department of Education-recognized) exception, then COE (as well as ACICS and ACCSCT) member institutions would have remained within the exception.

The timing and nature of the revised transfer credit criteria are not the only indication of SACS' possible opposition towards COE. When COE sought Department of Education recognition in 1995 to accredit technical colleges, SACS' executive director solicited opposition to COE's petition. Nearly all of the opposing comments and appearances came from SACS or its membership.¹²

Support for the conclusion that SACS' transfer credit restrictions are unreasonably broad is also found in Mathtech, Inc.'s report on accreditation standards for AAS degrees. Mathtech's study states that the general education accreditation requirements of SACS, COE, the North Central regional association, ACICS, and ACCSCT do not differ significantly. It

¹¹ Aside from whether COE or SACS is better qualified to accredit technical colleges, the decision determined whether COE's market would shrink and SACS' would grow.

¹² Attached as Exhibit 4 is the solicitation that SACS' executive director circulated to SACS' members. Petitioning for government action is, of course, protected constitutional activity and cannot be the basis of an antitrust violation under the so-called Noerr-Pennington doctrine (Eastern Railroad President's Conference v. Noerr Motor Freight Inc., 365 U.S. 127 (1961), and United Mine Workers v. Pennington, 381 U.S. 657 (1965)). Such conduct, however, may be admissible to demonstrate the purpose and character of other conduct. Pennington, 381 U.S. at 670 n.3.

noted that the program length and general education offerings of all the schools in its survey satisfied the standards of all five accrediting agencies. (Mathtech, supra, p. III-13.) Thus, SACS' restrictions on transfer of credits for coursework completed at non-regionally accredited technical colleges are not justified by differences in the standards applied by the national accrediting associations.

**SACS' Revised Transfer Credit Criteria Derogate
Accreditation By Other Recognized Accrediting Agencies**

Pursuant to 34 CFR § 602.22(b), the Department of Education directed SACS to submit an Interim Report "to strengthen its response to the requirements of this section by engaging in dialogue with the accrediting agencies adversely affected by its policies on the transfer of credit." The Department of Education staff's report on SACS' petition for continued recognition noted that the Justice Department may have concerns that accreditation agencies' policies, such as SACS', may "have the effect of restraining trade" (p. 27).¹³ It further observed that other accrediting agencies were concerned that SACS has unnecessarily restricted the autonomy of its member institutions to decide for themselves whether or not to accept transfer credits.

In its Interim Report, SACS denies that it made "substantive changes" in the text of the transfer credit criteria and claims that it created "no new expectations" in its revised transfer criteria. SACS also states that it has informed its membership that exceptions to its transfer credit criteria are allowable and that the enumerated five examples of possible exceptions are not all-inclusive. (Interim Report, p. 11.) SACS claims that its goal "is to facilitate transfer of credit in a manner which ensures that appropriate controls are observed so as to protect the academic integrity of the degree" (p. 12). SACS further claims that its "policy and criteria are comparable to all other regional accrediting bodies" (p. 13), and that the reason it has not required member institutions to document the basis for accepting credits from institutions accredited by the regionals is that the regionals accredit similar types of institutions and generally have similar accreditation standards. SACS also points out that no new applicant, candidate or member institution has been sanctioned for failure to meet its revised transfer criteria

¹³ This concern was stated well before SACS' revised transfer credit criteria came to the attention of the Justice Department.

and that many SACS members accept transfer credit from non-regionally-accredited schools.¹⁴

Despite SACS' representations to the Department of Education, SACS' member institutions appear to understand that SACS' revised transfer of credit criteria require a boycott of credit earned at non-regionally-accredited schools. On August 5, 1997, the admissions director of Daytona Beach Community College ("DBCC"), which enrolls over 12,000 students on its 5 campuses, wrote the president of Jones College that DBCC refused to accept Jones College credits "in order to maintain our regional accreditation" since "Jones College is not accredited by SACS."¹⁵ Jones College opened in 1918 and is ACICS-accredited. Its Corporate President informed the Justice Department that SACS' revised transfer of credit criteria is threatening the continued existence of at least one of its campuses because of the refusal, since 1994, of SACS-accredited institutions to accept Jones College credits, and because students are being told by SACS' members that Jones College is not accredited.

Earlier, we explained that SACS' revised transfer of credit criteria appear different from the transfer of credit standards of the other regionals. Prior to 1994, SACS had the most restrictive transfer of credit criteria of any regional accrediting agency. The 1994 revisions tightened SACS' standards further. SACS has offered no justification for its more restrictive transfer of credit criteria, instead denying that the 1994 changes are significant.

SACS' increased restrictions on transfer of credits are contrary to educational policies supporting institutional autonomy and recognizing that education is increasingly a life-long and continuing process.¹⁶ The other accrediting agencies adversely affected by SACS' revised criteria and their members are no more satisfied today by SACS' "dialogue" with them than they were two years ago. The coincidence between the timing of SACS' revision to its transfer of credit criteria and COE's departure from SACS suggests the likelihood the revisions were intended to injure a competitor. Finally, SACS' prohibitory

¹⁴ A great number of these arrangements appear to involve COE-accredited schools and date to the period when COE's predecessor was one of SACS' commissions.

¹⁵ The letter is appended as Exhibit 5.

¹⁶ Attached as Exhibit 6 is an article in the July 18, 1997 Chronicle of Higher Education describing the public interest in facilitating transfer arrangements. It notes the 280 arrangements now in place between the Georgia technical college system and Georgia's university system. Undoubtedly, there are situations where transfer credit is inappropriate, but an accrediting agency should not erect unnecessary obstacles.

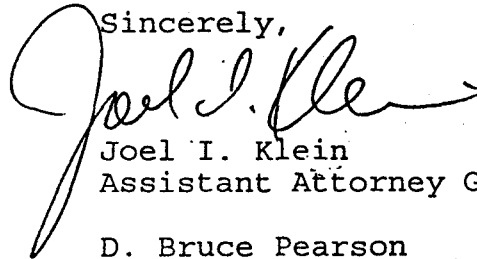
transfer of credit criteria indicate a lack of comity towards other recognized accrediting agencies.

Conclusion

The Department of Justice submits this comment because of its concern that SACS' revised transfer of credit criteria may injure competition, competitors, consumers, and government agencies funding postsecondary education. SACS' revised transfer of credit criteria stand apart from those of other Department of Education-recognized accrediting agencies. They most adversely affect technical, occupational, and vocational students who wish to continue their education, but who may be the least able to bear the burden of unnecessary and redundant courses. They may also cause the waste of educational resources by placing unnecessary restrictions on transfer credit that are bad competition, educational, and public policy. For these reasons, we urge the Department of Education to exercise its oversight of authority to require SACS to adopt more reasonable transfer of credit criteria and policies.

We appreciate the opportunity to file this comment and the courtesies your office has shown us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel I. Klein". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joel I. Klein
Assistant Attorney General

D. Bruce Pearson
Attorney

Joint Statement on the Transfer and Award of Credit

The following set of guidelines has been developed by the three national associations whose member institutions are directly involved in the transfer and award of academic credit: the American Association of Collegiate Registrars and Admissions Officers, the American Council on Education, and the Council for Higher Education Accreditation. The need for such a statement came from an awareness of the growing complexity of transfer policies and practices, which have been brought about, in part, by the changing nature of postsecondary education. With increasing frequency, students are pursuing their education in a variety of institutional and extrainstitutional settings. Social equity and the intelligent use of resources require that validated learning be recognized wherever it takes place.

The statement is thus intended to serve as a guide for institutions developing or reviewing policies dealing with transfer, acceptance and award of credit. "Transfer" as used here refers to the movement of students from one college, university or other education provider to another and to the process by which credits representing educational experiences, courses, degrees or credentials that are awarded by an education provider are accepted or not accepted by a receiving institution.

Basic Assumptions

This statement is directed to institutions of postsecondary education and others concerned with the transfer of academic credit among institutions and the award of academic credit for learning that takes place at another institution or education provider. Basic to this statement is the principle that each institution is responsible for determining its own policies and practices with regard to the transfer, acceptance, and award of credit. Institutions are encouraged to review their policies and practices periodically to assure that they accomplish the institutions' objectives and that they function in a manner that is fair and equitable to students. General statements of policy such as this one or others referred to, should be used as guides, not as substitutes, for institutional policies and practices.

Transfer and award of credit is a concept that increasingly involves transfer between dissimilar institutions and curricula and recognition of extra-institutional learning, as well as transfer between institutions and curricula with similar characteristics. As their personal circumstances and educational objectives change, students seek to have their learning, wherever and however attained, recognized by institutions where they enroll for further study. It is important for reasons of social equity and educational effectiveness for all institutions to develop reasonable and definitive policies and procedures for acceptance of such learning experiences, as well as for the transfer of credits earned at another institution. Such policies and procedures should provide maximum consideration for the individual student who has changed institutions or objectives. It is the receiving institution's responsibility to provide reasonable and definitive policies and procedures for determining a student's knowledge in required subject areas. All sending institutions have a responsibility to furnish transcripts and other documents necessary for a receiving institution to judge the quality and quantity of the student's work. Institutions also have a responsibility to advise the student that the work reflected on the transcript may or may not be accepted by a receiving institution as bearing the same (or any) credits as those awarded by the provider institution, or that the credits awarded will be applicable to the academic credential the student is pursuing.

Inter-Institutional Transfer of Credit

Transfer of credit from one institution to another involves at least three considerations:

- (1) the educational quality of the learning experience which the student transfers;
- (2) the comparability of the nature, content, and level of the learning experience to that offered by the receiving institution; and
- (3) the appropriateness and applicability of the learning experience to the programs offered by the receiving institution, in light of the student's educational goals.

Accredited Institutions

Accreditation speaks primarily to the first of these considerations, serving as the basic indicator that an institution meets certain minimum standards. Users of accreditation are urged to give careful attention to the accreditation conferred by accrediting bodies recognized by the Council for Higher Education Accreditation (CHEA). CHEA has a formal process of recognition which requires that all accrediting bodies so recognized must meet the same standards. Under these standards, CHEA has recognized a number of accrediting bodies, including:

- (1) regional accrediting commissions (which historically accredited the more traditional colleges and universities but which now accredit proprietary, vocational-technical, distance learning providers, and single-purpose institutions as well);
- (2) national accrediting bodies that accredit various kinds of specialized institutions, including distance learning providers and freestanding professional schools; and
- (3) professional organizations that accredit programs within multipurpose institutions.

Although accrediting agencies vary in the ways they are organized and in their statements of scope and mission, all accrediting bodies that meet CHEA's standards for recognition function to ensure that the institutions or programs they accredit have met generally accepted minimum standards for accreditation.

Accreditation thus affords reason for confidence in an institution's or a program's purposes, in the appropriateness of its resources and plans for carrying out these purposes, and in its effectiveness in accomplishing its goals, insofar as these things can be judged. Accreditation speaks to the probability, but does not guarantee, that students have met acceptable standards of educational accomplishment.

Comparability and Applicability

Comparability of the nature, content, and level of transfer credit and the appropriateness and applicability of the credit earned to programs offered by the receiving institution are as important in the evaluation process as the accreditation status of the institution at which the transfer credit was awarded. Since accreditation does not address these questions, this information must be obtained from catalogues and other materials and from direct contact between knowledgeable and experienced faculty and staff at both the receiving and sending institutions. When such considerations as comparability and appropriateness of credit are satisfied, however, the receiving institution should have reasonable confidence that students from accredited institutions are qualified to undertake the receiving institution's educational program. In its articulation and transfer policies, the institution should judge courses, programs and other learning experiences on their learning outcomes, and the existence of valid evaluation measures, including third-party expert review, and not on modes of delivery.

Admissions and Degree Purposes

At some institutions there may be differences between the acceptance of credit for admission purposes and the applicability of credit for degree purposes. A receiving institution may accept previous work, place a credit value on it, and enter it on the transcript. However, that previous work, because of its nature and not its inherent quality, may be determined to have no applicability to a specific degree to be pursued by the student. Institutions have a responsibility to make this distinction, and its implications, clear to students before they decide to enroll. This should be a matter of full disclosure, with the best interests of the student in mind. Institutions also should make every reasonable effort to reduce the gap between credits accepted and credits applied toward an educational credential.

Additional Criteria for Transfer Decisions

The following additional criteria are offered to assist institutions, accreditors and higher education associations in future transfer decisions. These criteria are intended to sustain academic quality in an environment of more varied transfer, assure consistency of transfer practice, and encourage appropriate accountability about transfer policy and practice.

Balance in the Use of Accreditation Status in Transfer Decisions. Institutions and accreditors need to assure that transfer decisions are not made solely on the source of accreditation of a sending program or institution. While acknowledging that accreditation is an important factor, receiving institutions ought to make clear their institutional reasons for accepting or not accepting credits that students seek to transfer. Students should have reasonable explanations about how work offered for credit is or is not of sufficient quality when compared with the receiving institution and how work is or is not comparable with curricula and standards to meet degree requirements of the receiving institution.

Consistency. Institutions and accreditors need to reaffirm that the considerations that inform transfer decisions are applied consistently in the context of changing student attendance patterns (students likely to engage in more transfer) and emerging new providers of higher education (new sources of credits and experience to be evaluated). New providers and new attendance patterns increase the number and type of transfer issues that institutions will address—making consistency even more important in the future.

Accountability for Effective Public Communication. Institutions and accreditors need to assure that students and the public are fully and accurately informed about their respective transfer policies and practices. The public has a significant interest in higher education's effective management of transfer, especially in an environment of expanding access and mobility. Public funding is routinely provided to colleges and universities. This funding is accompanied by public expectations that the transfer process is built on a strong commitment to fairness and efficiency.

Commitment to Address Innovation. Institutions and accreditors need to be flexible and open in considering alternative approaches to managing transfer when these approaches will benefit students. Distance learning and other applications of technology generate alternative approaches to many functions of colleges and universities. Transfer is inevitably among these.

Foreign Institutions

In most cases, foreign institutions are chartered and authorized to grant degrees by their national governments, usually through a Ministry of Education or similar appropriate ministerial body. No other nation has a system comparable with voluntary accreditation as it exists in the United States. At an operational level, AACRAO's Office of International Education Services can assist institutions by providing general or specific guidelines on admission and placement of foreign students, or by providing evaluations of foreign educational credentials.

Evaluation of Extra-Institutional and Experiential Learning for Purposes of Transfer and Award of Credit

Transfer and award of credit policies should encompass educational accomplishment attained in extra-institutional settings. In deciding on the award of credit for extra-institutional learning, institutions will find the services of the American Council on Education's Center for Adult Learning and Educational Credentials helpful. One of the Center's functions is to operate and foster programs to determine credit equivalencies for various modes of extra-institutional learning. The Center maintains evaluation programs for formal courses offered by the military and civilian organizations such as business, corporations, government agencies, training providers, institutes, and labor unions. Evaluation services are also available for examination programs, for occupations with validated job proficiency evaluation systems, and for correspondence courses offered by schools accredited by the Distance Education and Training Council. The results are published in a Guide series. Another resource is the General Educational Development (GED) Testing Program, which provides a means for assessing high school equivalency.

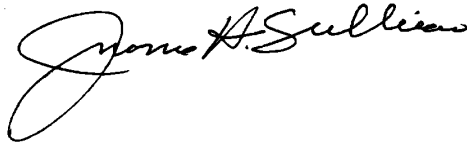
For learning that has not been evaluated through the ACE evaluation processes, institutions are encouraged to explore the Council for Adult and Experiential Learning (CAEL) procedures and processes.

Uses of This Statement

Institutions are encouraged to use this statement as a basis for discussions in developing or reviewing institutional policies with regards to the transfer and award of credit. If the statement reflects an institution's policies, that institution may wish to use these guidelines to inform faculty, staff, and students.

It is also recommended that accrediting bodies reflect the essential precepts of this statement in their criteria.

**American Association of Collegiate
Registrars and Admissions Officers**




**9/28/01
(date)**

American Council on Education



**9/28/01
(date)**

**Council for Higher Education
Accreditation**



**9/28/01
(date)**



*Southern Association of Colleges and Schools
Commission on Colleges
1866 Southern Lane
Decatur, Georgia 30033-4097*

TRANSFER OF ACADEMIC CREDIT

A Position Statement

The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), the regional accrediting body for the eleven southeastern states, recognizes that issues surrounding transfer of academic credit continue to generate debate nationally. The debate touches on questions of accountability, access, and equity in the higher education community. The Commission encourages its member institutions to review their transfer policies and procedures with a view toward making transfer of credit easier for students while continuing to honor their obligation to maintain academic quality and integrity. Institutions participating in self-regulatory, nongovernmental accreditation are responsible to the public for establishing transfer processes that address both views.

Transfer of academic credit is a public policy issue for several reasons: (1) an increase in student mobility, (2) the proliferation of distance learning programs and common acceptance of their legitimacy, (3) the economics of expending public money twice for the same course, and (4) consumer protection from expending private money twice for the same course.

SACSCOC supports institutional autonomy in determining its own standards for transfer of academic credit while also encouraging institutions not to impose artificial impediments or meaningless requirements on the transfer process. Many systems and institutions have taken positive action such as negotiating articulation agreements, common course listings, common core curricular, and automatic acceptance of credit arrangements to facilitate the transfer of academic credit. These kinds of proactive approaches, involving qualified faculty in the decisions, ease the way toward resolving transfer of credit problems while maintaining curricular coherence and academic and institutional integrity.

The accreditation standards of SACSCOC require member institutions to analyze credit accepted for transfer in terms of level, content, quality, comparability, and degree program relevance. The accreditation standards do not mandate that institutions accept transfer credit only from regionally accredited institutions. When an institution relies on another institution's regional accreditation as an indicator for acceptability of credit, it should not be the only criterion used for acceptability nor should it be represented as a requirement of this accreditation agency, which it is not.

Maintaining academic quality and integrity remains the primary responsibility of each institution accredited by SACSCOC. This position paper should not be interpreted as supporting any idea that would undermine that responsibility or as impinging on the institution's right to establish and enforce its own policies. At the same time, SACSCOC encourages member institutions to consider ways in which they might ease the acceptance of transfer of academic credit while maintaining an acceptable level of academic quality reflecting their unique missions.

*Approved: Commission on Colleges, June 2003
Reformatted, September 2016*

DECLARATION OF JOE FISHER


1. My name is Joe Fisher and I am Chancellor of Hallmark University in San Antonio, Texas. I have been the chief executive of Hallmark for 18 years.
2. As Chancellor of Hallmark, I am the chief executive responsible for responding to internal and external constituencies, managing the budget and employees, and I am the academic and thought leader for the University.
3. In this role, I have carried out extensive outreach to other institutions of higher education in Texas and around the country. I have carried out such outreach in negotiating articulation agreements, attending educational conferences at the national and state level, and generally as an advocate for Hallmark.
4. I have specific experience assisting Hallmark leadership in facilitating the acceptance of transfer credit for our graduates. The issue of credit transfer is a subject I know well as I have carried out my own studies on the subject.
5. A point of frustration for me has been that SACS-accredited institutions in Texas refuse to accept transfer credit from Hallmark University.
6. The rationale these institutions apply for this rejection has nothing to do with their opinion or assessment of the quality of education offered at Hallmark. Instead, Hallmark graduates and Hallmark representatives are consistently informed by SACS-accredited institutions that they will not accept Hallmark credit simply because Hallmark is accredited by ACCSC, a national accrediting agency, and not by a regional accrediting agency, such as SACS.
7. I am aware of the fact that SACS specifically forbids its member schools from rejecting credit transfer based solely on the lack of regional accreditation of

the originating institution. My experience, however, has been that SACS-accredited institutions seem to be completely unaware of this prohibition and unabashedly cite the lack of regional accreditation alone as the basis for refusing to accept Hallmark credit.

8. The failure of these SACS-accredited institutions to accept Hallmark transfer credit takes a toll on Hallmark graduates who might otherwise seek more advanced degrees at these institutions. Such graduates are faced with either relinquishing the goal of an advanced degree from such other institution or repeating coursework at great additional expense to them, their families, and/or the federal government. Some of those students seeking credit transfer may have moved to another city and simply want to complete their course of study and receive credit for coursework completed at Hallmark. These students also face the same loss.

9. This failure also takes a toll on Hallmark University because it impedes recruitment of students who understandably want the widest acceptance of their hard-earned credits at other institutions.

I PROVIDE THE FOREGOING UNDER THE PENALTY OF PERJURY.



JOE FISHER
Chancellor
Hallmark University

9/20/17
DATE

DECLARATON OF CHRISTOPHER SHORT

1. My name is Christopher Short and I am Executive Chief of Staff for Hallmark University in San Antonio, Texas. I have worked for Hallmark since January 2013. I started at Hallmark as Registrar at the Aeronautics campus and served in that position for 6 months. I was then promoted to Director of Student Affairs and served in that position for approximately three years. I was then promoted to Director of the Office of Institutional Effectiveness and later was named Executive Chief of Staff. I currently carry out responsibilities both as Director of the Office of Institutional Effectiveness and as Executive Chief of Staff.

2. As Executive Chief of Staff, I lead, coordinate, and administer certain staff activities including critical business events and I am responsible for project management across the University. I am the executive team's primary liaison with the University's Board of Trustees, management, and the stakeholder community.

3. As Director of the Office of Institutional Effectiveness, I am responsible for regulatory compliance, management of the Assessment Center and facilities, and generally assist and support University leadership in accomplishing institutional goals, objectives, and its mission.

4. In my role as Director of Student Affairs, I led teams to facilitate and maintain placement of Hallmark graduates in their chosen careers. I was also responsible for creating relationships between Hallmark and employers who had a business need and want for Hallmark University graduates.

5. In these positions, I have extensive and first-hand experience with the credit transfer policies of regionally-accredited institutions in Texas. In Texas, the regional accreditor is the Southern Association of Colleges and Schools (SACS).

6. It has been my consistent experience that SACS-accredited institutions refuse to accept transfer credit from Hallmark University solely because Hallmark is accredited by ACCSC, a national accrediting agency. In other words, most if not all, SACS-accredited institutions in Texas will not accept any credits from Hallmark or any nationally-accredited postsecondary school solely because they do not possess accreditation from a regional accrediting agency.

7. On or about September 5, 2017, I called several SACS-accredited institutions in Texas including University of Texas at Austin, Amberton University, Texas A&M-San Antonio, Our Lady of the Lake University, and Baylor University.

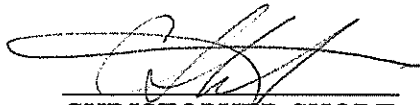
8. In each case, I called the admissions office of each of the SACS-accredited institutions asking whether credits earned at Hallmark University would be accepted at the institution. Each of these calls was recorded.

9. In every instance, the representative from the SACS-accredited institution informed me that Hallmark credits would not be accepted because Hallmark holds national accreditation.

10. I have read the September 20, 2017 comments Hallmark University is submitting in the request for comments of the U.S. Department of Education (Docket ID ED-2017-OS-0074-0001). Specifically, I have read the transcript of

excerpts from my recorded calls and I can confirm that they are accurate transcriptions of my conversations with these representatives from the SACS-accredited institutions.

I PROVIDE THE FOREGOING UNDER THE PENALTY OF PERJURY.



CHRISTOPHER SHORT

9-20-2017

DATE