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NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS
★ FROM THE OFFICE OF THE PRESIDENT ★

May 27, 2014

Docket ID ED-2014-OPE-0039

Response to NPRM on Gainful Employment
U.S. Department of Education

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), I am responding to your request for comment on the Notice of Proposed Rulemaking addressing gainful employment programs, published on March 25, 2014. NASFAA represents more than 20,000 financial aid professionals at nearly 3,000 colleges, universities, and career schools across the country. NASFAA member institutions serve nine out of every ten federal student aid recipients.

Certificate and non-degree programs where a large percentage of students are unable to earn wages adequate to manage their educational debt do not serve students or taxpayers well. That is why we support fair, reasonable, and well-targeted regulations that ensure Title IV funding for programs that lead to gainful employment.

We offer the following comments in the spirit of cooperation and believe they will enhance and improve the proposed rules. They have been built on feedback received from NASFAA member institutions, committees, and task forces. If you have any questions on any of the following comments, please do not hesitate to contact me or Karen McCarthy at mccarthyk@nasfaa.org or 202.785.6974.

Sincerely,

Justin Draeger
President

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Exemptions for Low-Risk Programs

Our primary concern with the proposed regulations is the insufficient regulatory accommodation for those GE programs that are considered low-risk, i.e, programs where the total number of borrowers or amount of debt is relatively low. Subjecting low-risk programs to the full array of these proposed regulations is a tremendous waste of school and Department resources. The Department should focus its oversight efforts on those programs that are seen as higher risk and provide exemptions to those programs that meet certain standards.

We are particularly concerned about the administrative burden of these proposed regulations on low cost, open access institutions, whose numerous GE programs are widely regarded as low-risk due to their low cost and low borrowing rates. Because so few students borrow, these programs will be evaluated not based on typical, non-borrowing students, but based on the much smaller group of students who borrow. These institutions serve high numbers of low-income students, and generally have the fewest resources to meet new, administratively burdensome regulations. Since the NPRM provides no up-front regulatory relief for these programs, it appears likely that many of these schools will simply opt to close needed programs or remove them from Title IV eligibility just to avoid these new requirements.

The Department rejected several proposals for regulatory exemptions based on cost and borrowing rate during negotiations, stating that such exemptions are unnecessary because programs with a median debt of zero automatically pass the debt-to-earnings ratios and the existing CDR participation rate index appeal process would apply to the pCDR metric. However, the participation rate index process is administratively burdensome and is not an option until the program is on the verge of losing its Title IV eligibility.

Further evidence that the participation rate index appeal process will not be a viable option for low cost, open access programs can be found in the burden estimate in the NPRM on page 16501:

> Based on previous history with institutional-level participation rate index appeals, the Department anticipates that it will receive just four participation rate index challenges, all from programs at for-profit institutions.

We make the following recommendations for simple and straightforward allowances in the pCDR metric for GE programs with low borrowing rates:

1. Using existing data, the Department should determine which programs have low borrowing rates and automatically exempt those programs from the pCDR metric

without forcing schools to jump through the hoops of a burdensome challenge/appeal process.

2. The Department should determine exemptions from the pCDR metric on an annual basis, rather than only when the program is on the verge of losing Title IV eligibility.
3. For default rate challenges and appeals other than participation rate index, the Department should combine the pCDR and institutional CDR (iCDR) processes so schools are not required to duplicate their efforts.

We understand that the Department has intentionally structured the pCDR process to mirror the existing iCDR process, presumably to bolster its standing in the face of possible legal challenges. However, that should not preclude the Department from making the above suggested changes to avoid likely unintended consequences on low cost, open access institutions.

Timelines on Metrics

Page 16462 of the NPRM includes a description of the timeline of the debt-to-earnings metrics. The CDR process operates on an independent schedule and it is not clear how the debt-to-earnings and CDR schedules overlap, or don't, for purposes of gainful employment.

Public Availability of Calculated Metrics

The NPRM refers generally to public disclosure of final calculated metrics for programs, but provides no details, nor was this topic discussed to any length during negotiations. Although arguably an operational process that would not be appropriate in regulation, we encourage the Department to take great care in the presentation of the final program-level metrics to the public by soliciting input by stakeholders.

New Programs

The regulatory scheme as proposed in this NPRM represents a back-end assessment on GE programs without the added benefit of anything other than a cursory front-end gatekeeping assessment. While we would not want an overly burdensome front-end approval process that hinders schools' ability to respond timely to local employment needs or duplicates the work of accreditors, a reasonable front-end approval process would place appropriate responsibility on schools to conduct research and due diligence before creating a new GE program. Most importantly, a front-end approval process would serve to protect students from risky programs before they assume unmanageable debt, rather than after.

We empathize with the Department's concerns about increased administrative burden associated with any active approval process at the federal level. To address this, the Department should design an approval process with exemptions, whereby potential programs that are determined to be more risky by some objective measures would undergo a more rigorous review than others. For example, we recommend exemptions from up-front approval if the program is similar to, or builds on, an approved program currently offered by the school, analogous to exemptions currently provided in 600.10(c)(2). For the sake of student protection, the Department's reluctance to assume a reasonable amount of administrative burden is unacceptable, especially since that same argument has almost universally been rejected when used by schools.

Debt Attribution

It is unclear how debt is attributed in situations where students may be enrolled in multiple GE programs simultaneously and may be awarded multiple credentials simultaneously, especially where the credential levels are the same.

Disclosures

The 2011 final rules have five disclosures; yet these proposed regulations contain 16 possible disclosure items, representing in total 36 possible data items due to possible disaggregations. This many possible disclosures are overwhelming and not particularly helpful, especially considering that different disclosures apply to different groups of students, and the school is also making additional disclosures that are required at the institutional level. We encourage the Department to view the GE disclosures within the larger framework of disclosures to students to determine which disclosures are helpful to students and which only confuse and overwhelm them.

For example, median loan debt is a possible disclosure item under the proposed rules. For this purpose, median loan debt includes only Title IV recipients enrolled in the GE program. The Shopping Sheet discloses median loan debt for all borrowers enrolled at the institution. During loan counseling, borrowers may be informed of sample monthly repayment amounts based on the average indebtedness of other borrowers in the same program at the same school as the borrower. In addition, another possible disclosure item in these proposed rules is a link to the College Navigator, where one can find even more data about student debt, using different measures and different populations of students.

Repayment rate, another possible disclosure item, does not account for borrowers who are enrolled in an income-dependent repayment plan and, although in good standing, are not making sufficient payments to reduce their loan principal by at least one dollar. This would include many borrowers who are intending to seek public service loan forgiveness. While we appreciate the Department's concern that a borrower whose loan is negatively amortizing is clearly struggling to repay, we believe that allowances should be made for a certain percentage of borrowers in income-dependent repayment plans, which are valid repayment plans offered by the federal government. The income-based and income-contingent plans were established in recognition that for some borrowers, an income pattern that is lower in early years of repayment but increases over time should result in a corresponding sliding repayment scale, even if that means no repayment of principal might occur at first. To exclude these borrowers from the repayment rate may provide a disincentive for schools to encourage borrowers to enroll in income-dependent repayment plans when appropriate.

Repayment rate includes the total number of borrowers who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the program. It is not clear if there is an associated minimum n-size, or if the two-year period is different for programs that require a medical or dental residency.

It is important that the rules specify exactly how students are counted for the various disclosures and include minimum n-sizes where appropriate to protect student privacy and prevent misleading disclosures based on small numbers of students.

Thank you for the opportunity to comment. Please to do hesitate to reach out with further questions.