

National Association of Student Financial Aid Administrators
Submission of Topics for Negotiated Rulemaking
June 23, 2009

The National Association of Student Financial Aid Administrators (NASFAA) submits the following comments in response to the Department's request for suggested subject matter on upcoming negotiated rulemaking committees announced in the May 26 Federal Register. NASFAA represents nearly 20,000 financial aid administrators at more than 3,000 postsecondary schools throughout the country.

NASFAA staff and many of our members have participated in the negotiated rulemaking in the past. While we have not always seen eye to eye on every issue, we view this collaborative process as an essential component of the development of workable regulations that will promote access to higher education.

NASFAA operates under certain assumptions about how regulations should be drafted. Those assumptions include that the Department of Education will:

- Regulate only where necessary to ensure understanding of and compliance with the law and the integrity of the student aid programs
- Negotiate all regulations that impact institutional operations and student decisions
- Minimize diversion of institutional resources to fulfill meaningless requirements at the cost of serving students

We appreciate the Department's willingness to examine not only new provisions implemented by the HEOA, but to also to convene a committee to develop proposed regulations to maintain or improve the integrity in other Title IV programs. The following are subject matters we believe require additional regulatory scrutiny.

Return of Title IV Funds

The shared emphases by the higher education community and the Administration on simplicity does not apply to just the application process. The principle of simplification also applies to other areas of regulation such as Return of Title IV Funds (R2T4). Many of our members are increasingly concerned with the administrative burden related to R2T4 procedures.

Return of Title IV funds has gone from a straightforward, easily understood concept to an overly complicated set of regulations with a great deal of sub-regulatory guidance. When that concept was first proposed, most schools believed that the principles were vastly easier to explain to students. The process has instead become difficult for both schools and students to understand, and is fraught with sub-regulatory guidance. This situation is partially due to the proliferation of nontraditional program formats and alternate modes of attendance, making input from practicing financial aid administrators, bursars, and registrars all the more necessary.

Although the entire process should be reviewed, some of the more difficult aspects of R2T4 that could benefit from reconsideration are:

- The notification/confirmation processes associated with post-withdrawal disbursements.
- Title IV leave of absence (LOA) policy and its restricted applicability to certain types of programs.

- Treatment of withdrawals from standard term and nonstandard term programs using modules, mini-sessions, or mini-terms.
- Treatment of re-entering students.
- The determination of unofficial withdrawals.

Prior Year Charges

Based on guidance released by the Department of Education in a position paper in fall 2008, some schools were suddenly surprised to learn that they were not in compliance with certain aspects of these cash management regulations with respect to the treatment of prior year charges. The main area of concern was ED's interpretation of the term "year."

During negotiated rulemaking on Title IV general provisions in 2007, federal and nonfederal negotiators agreed to increase the amount of Title IV funds that could be used to pay for minor prior year charges from \$100 to \$200. Nonfederal negotiators also agreed to ED's proposal to eliminate the regulatory provision in Section 668.164(d)(1) that allowed schools to exceed the dollar cap of current Title IV funds that could be used for prior year charges as long as those expenses did not prevent students from paying their current educational costs. There was no discussion in negotiated rulemaking of the implications described in ED's position paper and the effect it would have on students and schools.

Nonfederal negotiators raised this issue again during the latest rounds of negotiated rulemaking, but the Department deferred the issue because of an impending Dear Colleague Letter (DCL) that was to be released. To date, that DCL has yet to be released.

ED currently advises schools to use a "reasonable interpretation of the regulation" until more definitive guidance is issued by way of a DCL or some other official notice. There are currently two interpretations of the term "year" as it related to prior year charges. We believe this issue should be discussed and fully vetted through the negotiated rulemaking process.

Satisfactory Academic Progress (SAP)

For the most part we would be pleased to partner with the Department to examine and improve the rules related to the topics listed in the May 26, 2009, *Federal Register*. However, we are concerned about the assumptions underlying one of those issues, namely satisfactory academic progress (SAP). The Department seems to believe this issue "came to light" as a problem during the recent unsuccessful deliberations on the implementation of year-round Pell Grant. We feel compelled to point out that the non-federal negotiators repeatedly suggested relying on SAP measures to determine whether a student was moving forward in his or her program of study. The Department rejected this concept based on an apparent belief that the existing SAP measures are ineffective and unreliable.

We disagree. We believe that the SAP regulations tread a precarious path between responsible stewardship of public funds and unwarranted and legally unsupportable intrusion into an institution's academic purview. The regulations as currently constructed provide effective parameters within which an institution may fit progress expectations to its mission and student body. We would like to see more regulations take this approach rather than a one-size-fits-all standard that rarely addresses individual institutional needs to ensure the success of their students.

Pell Grant Program

The Pell Grant payment formulas were constructed when fewer deviations from “traditional” programs existed. These formulas now also serve as the model for other programs—ACG, SMART, and TEACH Grants. We believe they could be further reduced and simplified.

We also believe the participation link between Pell Grant and ACG/SMART should be deleted.

Miscellaneous Areas

There are some other areas that we believe could benefit more from a careful review for effectiveness and currency:

- FWS job descriptions (which institutions have been cited for lacking, in the absence of a clear regulatory obligation)
- Tracking enrollment and the basis and timeframes for recalculation of aid or determination of unofficial withdrawal (expectations in this area seem to be developed by audit rather than by fairly constructed regulation)
- Monitoring GPA where it is an eligibility criterion, specifically for ACG, SMART, and TEACH Grants, and the interpretation of an “equivalent” measure where no grades exist in cases where a student is classified as second-year as a result of AP and/or IB credits
- Standardizing the definition of estimated financial assistance in one place, improving clarity of the meaning and treatment of “employment” as that term relates to fellowship and assistantship stipends, residence assistantships, noncash compensation, etc.(this topic is a source of continual confusion for schools)
- Overaward tolerances, which could be made more relevant to today’s values and more consistent across programs
- Areas in which no agreement was reached in the most recently concluded negotiations (for example, year-round Pell Grants)
- Cohort default rate exceptions, appeals, and other procedures, in light of today’s economic realities and changes to the calculation
- Examining the need for experimental sites regulations, specifically to define what would be deemed a “successful” experiment.

We also wonder why the regulations continue to contain two sets of financial responsibility regulations, at 668.15 and in subpart L. We believe that if there are differences in applicability, they should be noted, or else there should be one consolidated set.