N·A·S·F·A·A
NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS
★ FROM THE OFFICE OF THE PRESIDENT ★

Docket ID ED–2012–OPE–0008

May 31, 2012

NASFAA's Written Comments for Fall 2012 Negotiated Rulemaking

Thank you for this opportunity to comment on proposed negotiated rulemaking issues. NASFAA has always believed that negotiated rulemaking remains the best process for promulgating regulations, and appreciates the history of collegiality that ED has developed in its approach to this statutory requirement.

The biggest procedural problem we have seen with negotiated rulemaking is the tendency to overload a single team with more issues than it can reasonably and effectively cover. We urge ED to invest sufficient resources in this endeavor to maximize its effectiveness.

The Department has suggested three areas for this negotiation: campus-based programs, fraud issues, and certain disbursement functions.

Campus-Based Programs

We appreciate ED's ongoing efforts to meet the President's directive to conduct a retrospective analysis of regulations. The campus-based program regulations are generally well-constructed, but have not been given a comprehensive review for some time. With Reauthorization in the offing, however, it may be prudent to hold off on substantial changes. If ED elects to proceed, we offer the following suggestions.

In the FWS program, we suggest a review of timesheet and recordkeeping rules to determine whether changes are needed to allow or maximize use of current technologies. We also suggest reviewing the program-specific disbursement rules in 675.16 to determine whether they can more efficiently be incorporated into the general provisions cash management rules. We have also received questions about the ability of schools to require direct deposit as a security measure.

In the FSEOG program, one of the persistent issues that institutions find difficult is the order of awarding. We acknowledge that the law requires priority for Pell Grant recipients and that within that priority, awards must be made to students with the lowest EFCs. However, the requirement to award strictly in lowest EFC order is an interpretation of the law. We would like to see more flexibility in how the institution could identify the lowest EFCs, including a reasonable cut-off that the school can set based on its experience in packaging its student population. This could be

PHONE: 202.785.0453 FAX: 202.785.1487 WEB: www.nasfaa.org
1101 CONNECTICUT AVE NW, SUITE 1100, WASHINGTON, DC 20036-4303

accomplished under 676.10(a)(1) by specifying selection of students with the lowest expected family contributions "as determined by the institution."

ED should also review the necessity of reporting information on the FISAP. Many schools have suggested that ED already has most of the information elsewhere, and should compile it rather than ask the school to report it again on the FISAP. Even pre-populated FISAP data that schools could confirm would be helpful. We recognize this is not strictly a regulatory issue, but we have had numerous comments on it.

R2T4

In the program integrity negotiated rulemaking, two issues related to Return of Title IV funds were on the agenda but got short shrift due to lack of time. Our members continue to express confusion over the treatment of modules and the definition of withdrawn. We believe those issues should be revisited and given the opportunity for fuller discussion than occurred at that previous negotiation.

Fraud

With regard to fraud, we believe that due diligence is more common than indifference on the part of schools. It is important to bear in mind that fraud does not look the same everywhere, and one school's indicator of fraud may be another school's normal student characteristic. We urge ED to parallel the principles of its Quality Assurance program, where schools use an analysis of their particular student populations to determine how best to proceed. This analysis ensures the most efficient approach at each individual institution, and acknowledges that a one-size-fits-all approach is inappropriate.

At the same time, ED can help support and expand institutional efforts in a number of ways. Providing training in recognizing fraud and facilitating best practices based on institutions of similar type would be very useful. A relevant provision of law that seems often overlooked because of its location in the General Provisions, is in HEA section 484(l)(2), **Reductions of financial aid**: "A student's eligibility to receive grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be reduced if a financial aid officer determines under the discretionary authority provided in section 1087tt of this title that distance education results in a substantially reduced cost of attendance to such student." Many schools are fearful of invoking professional judgment; ED could more strongly support school use of this provision. Since the law is directive, it would seem that once a school has made a decision about the effect of distance education on students in an academic program, ED could allow application of that decision across the board to all distance education students in that program.

A report on fraud in distance education by the OIG, released on September 26, 2011, pointed out other actions that ED could take to assist schools in identifying possible fraud. OIG suggested that ED establish Computer Matching Agreements with prison systems to identify applicants that are incarcerated and thereby ineligible for most forms of federal student aid; inmates are apparently a target or source of fraud rings.

The OIG report also observed that ED "has the ability to collect and analyze web server logs for IP information in its own systems, as well as examine and correct vulnerabilities in its systems that create opportunities for the fraud rings to operate." Centralizing the effort to identify potential fraud as much as possible would greatly improve the efficiency of those efforts.

ED also needs to improve its own response to reported fraud from schools. One of the biggest frustrations we have heard from schools is that when they report suspected fraud, nothing happens. Schools should not be expected to act as enforcement agencies, but should be able to rely on the government agencies that are responsible for investigation and enforcement.

We also urge ED to consider carefully where risk can be shared. In trying to improve the availability of aid early to students, schools take on more risk of liability if the student does not follow through with attendance as expected. Expanding the circumstances in which schools can elect to refer overpayments to ED for collection would be welcome.

Distance education is here to stay; it is a fixture of our modern world. It will get more sophisticated and we don't want to inhibit innovation or the ability to react to new threats (abusers are just as clever as legitimate innovators). President Obama's goal of raising the educational levels of the American population would be hard to achieve without distance education.

Audits and Program Reviews

The burden of increased and increasingly detailed regulatory and statutory requirements has been a subject of repeated study in recent years. One of the comments we received from a NASFAA member in response to a survey sums up our current state: "The HEOA/TILA added so many requirements it would be nearly impossible to fulfill all. A program reviewer could find something on any school." We urge ED to consider revising the audit and program review approach to de-emphasize liability where possible and make this process more of a cooperative effort between schools and the Department to find inadvertent compliance errors.

Application of Rulemaking Process

The experience that ED and the financial aid community have gained over the years with the negotiating process serves all parties involved in the administration of federal student aid. For that reason, NASFAA is concerned that matters related to student financial aid have recently been routed through other entities that are not subject to negotiated rulemaking. An example is the development of a financial aid award notification model. While we welcome outside expertise and recognize that other agencies have shared authority in some areas, we encourage ED to make as much use of the negotiated rulemaking process as much possible under its own auspices. When attempts to improve award notices rested on the concept of a *model*, formal negotiated rulemaking would not necessarily have been involved. However, we are seeing more of a push towards required standardization; while we do not believe that complete standardization is desirable, any movement towards it should be in the realm of negotiated rulemaking.

Please do not hesitate to contact Megan McClean (202.785.6942; mccleanm@nasfaa.org) or Joan Berkes (202.785.6970; berkesj@nasfaa.org) if you have any questions about this submission.

Sincerely,

Justin Draeger
President and CEO