



August 28, 2014

The Honorable Tom Harkin  
Chairman, Committee on Health, Education, Labor and Pensions  
United States Senate  
Washington, DC 20510

Dear Senator Harkin:

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), I write to share feedback on the Higher Education Affordability Act (HEAA) of 2014. NASFAA represents nearly 20,000 financial aid administrators at approximately 3,000 colleges and universities; nine out of every 10 undergraduates attend NASFAA member institutions.

As we expressed in our initial [letter of support](#), NASFAA commends your focus on increasing affordability, addressing loan debt, strengthening accountability, and improving transparency. We are particularly encouraged to see the inclusion of a number of proposals that the financial aid community has championed and that are part of [NASFAA's HEA reauthorization recommendations](#). These recommendations will increase and improve college access and affordability, particularly for those students who need federal assistance the most.

In response to your request for comments, we are writing to detail our specific support for those proposals, in addition to sharing some areas of concern that we see in the initial draft of this legislation.

### **Proposals Supported by NASFAA**

#### Reinstatement of Year-Round Pell Grants

NASFAA is very supportive of reinstating the ability for students to receive Pell year-round. Students are currently restricted to one scheduled Pell award for each award year, despite enrollment pattern trends that make this restriction disadvantageous for many students. Currently, a student attending college continuously throughout the fall, spring, and summer semesters would come to a point where they are temporarily restricted from access to Pell funds. In that so-called "gap" semester before Pell eligibility resumes, the student is faced with turning to student loans, attempting to work and attend school simultaneously, or perhaps stopping-out. Since temporary stop-outs often become permanent withdrawals, reducing the number of stop-outs would be a significant benefit of a return to year-round Pell.

Additionally, we appreciate the prohibition against the Department of Education (ED) regulating the attribution of cross-over summer periods, thereby allowing the institution the flexibility and discretion to make this assignment.

However, along with our support for reinstating the flexibility of this program, we also urge you to exclude any acceleration requirement. Acceleration requirements introduce significant complications, and do not recognize the needs of students who have life circumstances that may warrant some modification of full-time expectations. A narrowly tailored definition of acceleration works against flexibility. For example, a single working parent who cannot afford to attend more than three-quarter time in the fall and spring and half-time in the summer might be able to “accelerate” her personal timetable to full-time with additional grant funds. Or, a student who experienced a hardship late in the spring term and had to withdraw could be readmitted to summer term with continued access to Pell even though he is making up coursework to stay on schedule. The Pell Grant Protection Act (S. 2194), introduced by Sen. Hirono, provides a good model for flexible statutory language.

Pell exists within a larger, more diverse student and learning environment than in its early days. A number of contemporary issues have put pressure on the Pell Grant Program: the growth of nontraditional students; inadequate college preparation; the expansion of innovative learning models; an increasing need for vocational education; and a renewed focus on persistence and completion. While the program should be strengthened so that it may better meet the needs of today’s students, we must remember that over the course of its history the Pell Grant Program has offered millions of Americans the hope for a better future and upward mobility. We are hopeful that throughout this next reauthorization, and for years to come, the Pell Grant will remain the cornerstone of the federal student aid programs.

#### Limited Restoration of Ability to Benefit Eligibility Criterion

For a short period of time in 2011 and 2012 students could receive Title IV funds if they demonstrated the ability to benefit (ATB) from a postsecondary education by successfully completing six credits. This eligibility change was instituted following the result of a successful Experiment Sites project; however the provision was short-lived and subsequently eliminated through a budget bill.

We are heartened to see restoration, albeit limited, of this important student eligibility criterion. While students with no high school diploma would undoubtedly benefit from a career pathways program, we believe students who do not have access to such programs or who have different academic goals can demonstrate their ability to succeed through completion of six credits applicable to a degree or certificate, with a minimum grade of “C” or equivalent.

#### Mandated Use of Prior-Prior Year (PPY) Income Data

By using income data from two years prior in the need analysis formula, students would be able to file the Free Application for Federal Student Aid (FAFSA) much earlier than the date the FAFSA currently becomes available—January 1. In fact, under PPY it would be possible to align the admissions and financial aid application processes, offering more time for students and

families to evaluate award offers from institutions and make an informed decision about where to attend college.

Additionally, the use of PPY could enhance the use of the Internal Revenue Service's Data Retrieval Tool (IRS-DRT). The IRS-DRT has been a great step forward in application simplification as it allows applicants to import their tax information from the IRS, saving time and reducing errors. A move to PPY would significantly increase the number of applicants who are able to utilize the IRS-DRT and help families skip other burdensome application requirements such as income verification. In order to minimize confusion, we would specifically request an effective date at the beginning of an application year.

#### Early Notification of Potential Pell Grant Eligibility

An early Pell Grant notification program will likely encourage college-going behavior by introducing a level of certainty for students and incentivizing them to start planning, saving, and completing the necessary coursework early in their high school career. Further, it could help maximize the benefits of PPY. We support inclusion of a demonstration program to explore this initiative.

#### Consolidation of Repayment Plans

The federal student loan program provides numerous borrower protections for struggling borrowers, including the ability to repay student loans based on income. These income-based repayment options, however, are optional and require borrowers to take proactive and cumbersome steps to enroll. Borrowers must: know about the plans; assess which plan, if any, will benefit them; complete paperwork and income verification; and provide ongoing documentation of eligibility. The proposal to collapse the different income-related repayment plans into one single income-based repayment plan should immediately benefit student loan borrowers.

#### Title XI Reports and Studies

We are generally supportive of the studies and reports listed in Title XI of the bill. Knowing the effectiveness of loan counseling, for example, is crucial to improving it. Understanding the causes of default is vital to formulating public policy. We are especially concerned with the state of graduate student aid; graduate study is key to upgrading and maintaining our ability to compete globally and these student populations require additional attention.

#### Private Student Loan Bankruptcy Protections

Private student loans remain an important resource for some students and families to meet unfunded gaps between other aid received and the cost of attendance at their institution. Yet there is a clear need for additional protections for private student loan borrowers, such as the ability to discharge private student loans in bankruptcy, following a reasonable period of good-faith attempt at repayment. By ensuring proper consumer protection, the HEAA's proposal will allow private student loans to persist as a sensible option for students seeking to finance educational costs when federal funds are insufficient.

### Elimination of Origination Fees

NASFAA supports the elimination of origination fees and appreciates the provision to do so in the HEAA. They are essentially a tax on students collected by withholding a portion of the loan proceeds, but requiring repayment of the full loan amount before deduction of fees. Loan fees thereby mask the borrower's true loan cost and effective interest rate: After taking into account loan fees, the annual percentage rate on federal loans is higher than the advertised interest rate. In addition, eliminating origination fees would simplify the loan process. Student loan borrowers are often confused that the net amount—after origination fees—of their loans is less than the amount they have requested.

### Automatic Enrollment in IBR for 150 Days Delinquent Borrowers

NASFAA has conducted extensive research on making income-based repayment (IBR) the “automatic” repayment option for federal student loan borrowers. NASFAA's Task Force on Student Loan Indebtedness recommended that the federal government consider options for replacing front-end in-school interest subsidies with better-targeted subsidies, with particular focus on exploring an automatic IBR program. The intermediary step in the HEAA of enrolling certain at-risk borrowers is an encouraging development. We are supportive of this provision and look forward to working with the committee in answering some key implementation questions, such as: how will this work for non-tax filers; is looking at last year's tax information to calculate this year's IBR payment still appropriate; how are changes in income addressed; and, what if the IBR payment is higher than it would be under a standard 10-year plan?

### Provision of Funds for DREAM Eligible Students

The DREAM Act affords certain individuals who were undocumented minors when they entered this country the opportunity to become educated and productive members of our society. Nearly all of these students are in this country due to a choice made for them by their parents. NASFAA continues to be supportive of a fair and reasonable gateway to U.S. citizenship for these students. Despite their clear role in working toward the president's goal of having the world's highest proportion of college graduates by 2020, many of these students still face limitations in available funding for postsecondary education. More broadly, there are innumerable societal benefits to providing productive opportunities for these students—opportunities that will likewise serve our nation's desire and imperative to be nationally competitive in an increasingly global economy. NASFAA strongly supports passage of the DREAM Act as part of HEA reauthorization, immigration reform, or as stand-alone legislation.

### Expansion of the National Student Loan Data System (NSLDS)

Students need an accessible “one-stop shop” where they can manage their student loans. Many borrowers have multiple loans with different loan holders that may be in various stages of repayment. Both NASFAA's Reauthorization Task Force and Indebtedness Task Force recommended a universal loan portal for students.

Having a central website, as this bill requires, where borrowers could access information about all of their loans would significantly help students as they manage their borrowing and repayment. The current practice of pulling information together in a piecemeal fashion creates

opportunity for important information to fall through the cracks. Your proposal to require private education loans and Title VII and VIII loans to be included in NSLDS is most welcome.

#### Required Consumer Testing of Consumer Information Products

We agree with your determination that new consumer information requirements should not be implemented without prior consumer testing. The need for such testing was clearly demonstrated in [a study conducted by NASFAA in 2013](#) in which consumer testing was performed on three different types of financial aid award letters; all three letters received less than satisfactory scores from the study participants. The feedback from this study conclusively showed the need for required consumer testing; had any one of these three letters been mandated, it likely would have been met with confusion, dissatisfaction, and otherwise unnecessary customer service contacts at institutions.

Required testing of consumer information disclosures provides an opportunity to improve the final product based on the input of the very consumers the disclosures are meant to assist. While we are very supportive of the consumer testing provision, we also encourage you to be mindful of the level of prescriptiveness that exists in the current bill, which could inhibit the Department of Education's ability to modify the disclosures based on the results of the consumer testing.

#### **Areas of Concern**

##### Proposed Language for Year-Round Pell

To underline a concern addressed above, we again urge you to eliminate any acceleration clauses or requirements from the reinstatement of year-round Pell. Acceleration requirements work against the stated goal of flexibility, and do not recognize the needs of students who have life circumstances that may warrant some modification of full-time expectations. If one is included, the language must be crafted very carefully to avoid implementation pitfalls. We would like to reiterate our preference for the legislative language for year-round Pell found in the Pell Grant Protection Act (S. 2194), introduced by Sen. Hirono.

##### Pell Usage Notifications

We agree that information about Pell usage would benefit students; however, the Department of Education (ED), and not the institution, should be obligated to provide it. For example, ED already does this via comments on the Student Aid Report (SAR), which is sent to all FAFSA filers.

##### Award Letters

We remain skeptical of the value of specifying format and content of financial aid award letters to the level of prescription in this bill. We are supportive of the call for consumer testing, but it seems that the efficacy and purpose of such testing is undermined by rigidly mandated award letter language. A more practical concern is the feasibility of fitting all of the required "first page" content onto a single page. In parsing the bill language, it does seem that ED will be permitted to modify the award letter requirements based on the outcome of consumer testing;

we would stress the importance of preserving and reinforcing this condition. Our own analysis through member task forces and consumer focus groups has repeatedly yielded the conclusion that there is no “one size fits all” award letter. We must allow for the possibility of different models for different students and institutional types.

In addition, NASFAA members recently updated their own ethical Code of Conduct, to include specific award letter guidelines. NASFAA members’ award letters and accompanying materials must: clearly identify each award and indicate the type of aid (e.g. grant, loan, etc.); display a cost of attendance that breaks down individual components and indicates all potential billable charges; provide renewal requirements for each award; and use standard terminology and definitions found in NASFAA’s glossary of award letter terms. Our expectation is that in abiding by these guidelines, institutions will create consistent and comparable award letters – addressing the concerns of the committee - while still preserving the degree of flexibility necessary to highlight institutional strengths and differences and to serve differing populations.

#### Complaint Resolution and Tracking System

It is unclear from the initial draft language how this process will be executed, and two immediate questions come to mind: 1) will due process for schools be addressed; and 2) if a complaint is deemed unfounded, will said complaint still be tracked and made public? A balance must be struck between protecting students from unscrupulous practices and protecting schools from unjustified or malicious accusations. At a minimum, we believe the law should permit publication on ED’s website of only substantiated complaints.

#### Annual Counseling for Borrowers

It is likely that some institutions might want to perform annual counseling for some or all borrowers, and those institutions should be allowed to do so. To require it for all institutions, however, seems needlessly burdensome and challenging to implement for under-resourced institutions or for institutions that already have low or virtually non-existent cohort default rates. Additionally, the required involvement of academic advisors for certain at-risk students may prove to be logistically unrealistic at some institutions. What’s more, as the results of several experimental sites have proven, the efficacy and value of annual loan counseling is very much in question. Before we embark on wholesale changes to the structure and nature of loan counseling, we should pursue a more comprehensive and conclusive review of what sort of counseling can, and cannot, add value to the student experience.

#### Repayment Rate and Speed-Based Repayment Rate

Repayment rates based on loan volume may well be preferable to cohort default rates (CDR); NASFAA requests clarification on whether the HEAA intends for these new rates to replace the CDR as a metric of institutional quality? As currently written, that does not seem to be the intention, as they are described as disclosures. We appreciate the inclusion of the methodology for comparing schools using the speed-based rate in required consumer testing, and we also support the provision giving the Secretary latitude in adjusting the speed-based rate formula to achieve a more informative and accurate measure. We believe the bill should specify that a determination by the Secretary that adjustments are necessary must be based on consumer

testing or expert advice by qualified stakeholders, and that adjustments be subject to the negotiated rulemaking process.

In addition, the loan repayment rate should be subject to the same consumer testing, and the Secretary should have the same latitude to adjust the formula. Without such a provision, the level of detail prescribed by the bill would limit the effectiveness and contributions from the negotiated rulemaking process, which is a more responsive process for exploring the pros and cons of specific implementation details and is more agile than prescribed law for overcoming unforeseen difficulties. We also recommend allowing the Secretary to address the proper use of repayment rates for schools with very low loan volume. The Secretary should also report the findings of any consumer testing to Congress and the public, and, based on the findings, make a recommendation regarding the replacement of default rates with repayment rates.

#### Student Default Risk

We appreciate that the “student default risk” measure takes into account the level of participation in loan programs among an institution’s students, which the current cohort default rate measure does not. It’s unclear from the current legislative text, however, whether the default risk measure includes all federal loans or just Direct Loans.

We understand some of the reasons for imposing the waiting period requirement for a student to enroll if the risk is 0.1 or greater. For example, we currently have delayed *loan delivery* requirements based on the school’s default rate; a student who enrolls but withdraws before the end of the delay period may find that he has incurred costs that he would have used the loan to pay but now has no resource to cover those costs. If the level of risk warrants extending a significant protection to the student, it may be better to delay enrollment rather than disbursement, so that the student would be less likely to have incurred any costs. However, the rules requiring delayed disbursement should be eliminated if schools are required to delay enrollment.

For a student who has already weighed all of the institution’s factors and decides to enroll, the default risk penalty may be more detrimental to the student than it is to the institution, especially if the student cannot waive the delay.

We appreciate that the additional annual counseling requirement imposed on students when the risk factor is higher than the national average would be subject to consumer testing. However, the national average seems like an arbitrary measure, and somewhat meaningless, given the diversity of institutions and students. It should be recognized that one of the possible outcomes of that testing is that the additional counseling does not have a discernible positive impact.

#### Counseling for Parent PLUS Borrowers

While well intentioned, this proposal seems untenable and would almost certainly involve a labor-intensive process on the part of financial aid administrators to contact parents and attempt to persuade them to complete the counseling. Moreover, there is a long-held

understanding that parents are in the best position to determine and make financial decisions for their family; many parents would refute the notion that institutions have the standing to give parents counseling, or if they are even qualified to do so. If the committee feels strongly about the value of pursuing this proposal, we would suggest linking a voluntary counseling session provided by ED to the signing of the Master Promissory Note (MPN), which would serve to meet the needs of those parents who do feel that they would benefit from additional advice and guidance.

### Mandatory Program Reviews

We urge caution in this particular area and encourage you to make all efforts to ensure that there is recognition of institutional mission or types of students being served before mandating specific criteria or mandatory, annual program reviews. We strongly believe ED should have discretion in determining the risk factors used in establishing when and how often reviews occur. We are not aware of any evidence that ED's current process is not succeeding in ensuring program integrity and compliance.

In an informal survey of a small group of prominent and highly experienced NASFAA members, we found a high level of concern that the mandated program reviews proposed by the draft bill would place a significant burden on institutions, especially if program reviews must be repeated annually. Time, effort, and cost are already incurred during the federally required independent annual audit and during state audits. One of our members, for example, reports spending 200 – 250 hours on the financial aid portion of the annual A-133 audit. Some of our members have reported to us that a program review, even one limited in scope, typically takes at least a week on site; one of our members currently undergoing a program review has already expended 650 – 700 hours. While only a few requests for data and documentation may be contained in an initial program review notification letter, requests for additional documentation is ongoing once the review commences. Another member has told us that the Department of Education wants the majority of student files printed rather than in electronic form.

There is also concern that mandatory program reviews would overtax ED's current resources and budget. Several members stated bluntly that this workload would be an unmanageable recipe for system failure for ED. Even now, ED is unable to produce program review reports in a timely manner (months and even years have gone by before a final report was issued), prompting our 2012 Reauthorization Task Force to recommend an addition to the statutory Master Calendar in section 482 of the HEA, imposing a deadline for issuance of a final report. Delays beyond that deadline due to reviewers awaiting ED guidance should not result in any additional liability or punitive actions against the institution.

We are also concerned that the required posting on websites of an institution's susceptibility to review, before the final review report indicates whether there are in fact any violations or problems with the school's Title IV administration, is unnecessarily punitive and void of due process. For example, a school would be subject to mandatory review if it has a 20% default rate based on 15% of its students borrowing Title IV loans. A school is not in danger of losing eligibility to participate in the Direct Loan Program until their default rate hits 30%, and is

sustained at that level for three years. A school with a 15% participation rate and a 30% default rate—50% higher than the 20% trigger in the bill—would be well within the parameters of a participation rate index appeal under current regulations. The bill would similarly penalize proprietary institutions with 80% of revenue derived from federal funds, even though no penalty regarding institutional eligibility would be imposed under the bill unless the percentage of the institution's revenue from federal sources reaches 85% (tightened up from the current 90%). Institutions caught by these program review triggers may have done nothing wrong at all, and yet the implication of the required website postings, including on the institution's own website, would be that they have engaged in suspicious activity.

### **Additional Provisions for Inclusion**

Finally, we would like to provide comment on several provisions that were not included in the HEAA, but that we think should be considered for inclusion in future drafts.

#### Federal Student Loan Refinancing

Extending to borrowers in repayment the opportunity to refinance their existing loans at the lower interest rates that resulted from last summer's bipartisan agreement is an important measure in addressing ongoing concerns about student debt.

#### Elimination of Taxability on Loan Forgiveness

We have supported elimination of taxing loan forgiveness. Taxing borrowers on the amount of forgiveness received is counterintuitive, as it both provides a disincentive for high-debt borrowers to take advantage of the program and creates a sudden financial hardship for borrowers receiving forgiveness. At the moment they should finally be emerging from their debts, they are abruptly faced with a significant lump-sum cost. It could be argued that in certain cases, this is a more calamitous financial event than simply remaining in repayment. It is likely that many borrowers would need to pay this cost in installments, meaning they will have simply moved from making monthly payments to a student loan servicer to making monthly payments to the IRS, who does not offer the borrower protections and benefits found in the student loan program.

#### Authorization of a Limited Student Unit Record

A federal student unit record would allow student-level data to be sent to ED, rather than the current system of aggregated institutional data captured in the Integrated Postsecondary Education Data System (IPEDS). For purposes of postsecondary education, a student unit record would allow for the assessment of, among other things, student success (including transfer rates), completion rates, and salaries by major or program. It could also follow students as they move through and between postsecondary institutions and into the workforce, in the process generating data on the effectiveness of the student aid programs, and hopefully eliminating duplicative and burdensome institutional reporting. More importantly, it would address current well-known shortcomings with IPEDS related to the scope of student type and experiences.

We appreciate this first step of reauthorization and look forward to working with you in future on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Justin Draeger, NASFAA President

CC: The Honorable Lamar Alexander