NASFAA
NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

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Thank you for this opportunity to contribute considerations for the upcoming negotiations on behalf of the National Association of Student Financial Aid Administrators and our nearly 3,000 member postsecondary institutions.

Gainful Employment

On the topic of gainful employment, NASFAA believes that Congress should define what it means for a program to lead to gainful employment. However, given that Congress has forfeited multiple opportunities to do so, we acknowledge generally that administrations have a right to regulate.

In renegotiating gainful employment, we implore the Department to develop regulations that lend to a smooth, efficient implementation, in order to avoid the botched implementation from the 2014 regulations. The last implementation process was unrealistic, unreasonable, and left schools in an untenable position. Using the history of GE regulation as our guide, it is clear that establishing policies that require brand new data and reporting structures will lead to implementation hardship, as was the case with the 2014 regulations.

Initial implementation of those rules, including the data collection supporting them, was beset with problems. Lessons gained from that experience can serve to improve any revised regulations, both during the re-negotiation and in any future implementation. Effective dates must be realistic, and must afford sufficient time for thorough testing with schools. We urge ED to share with negotiators any issues encountered during past implementation, and to invite comments from schools specifically on implementation problems that should be avoided. Said differently, while it's true that regulation development and implementation are two separate processes, the thought and care of the former directly impacts the latter.

To avoid a repeat of these mistakes, if we create new metrics, reporting structures, or an entirely new schema to determine program eligibility under the definition of gainful employment, it must come with an accompanying implementation period that is not based on the whims of unrealistic political timelines but, rather, in reality.

Finally, we wish to note that gainful employment is constrained in statute to non-degree programs at public and non-profit institutions, and almost all programs at proprietary institutions. We would not

support a regulatory expansion of GE beyond its statutory limitations, because we believe that would require Congressional action.

Income-contingent repayment plans

Through the regulatory process over the past several years, ED has used its ability to define income-contingent repayment (ICR) to create new plans, with only minor differences, layered upon one another. This has added to borrower confusion about repayment, and also makes it difficult for those counseling them.

In this negotiation, we urge the Department to stop tinkering with ICR and, instead, revisit ICR terms and conditions with an eye toward streamlining the number of ICR plans. Of paramount importance is exploring whether the Secretary can use emergency authority to streamline the terms and conditions of all ICR loans that will most benefit students. While not regulatory, we also urge Congress, along with cooperation from ED, to streamline the entire income-driven repayment structure.

Public service loan forgiveness

While the entire Public Service Loan Forgiveness (PSLF) program could benefit from a legislative overhaul, there are improvements that can be made through the regulatory process. For example, the statute requires that borrowers make 120 qualifying payments while completing public service in order to receive forgiveness. However, current rules force borrowers to make *more than* 120 payments, by requiring that they continue to be employed in public service both when they apply for forgiveness, and at the time forgiveness is granted. Requiring just 120 payments, consistent with the law, will ensure that more borrowers who have dedicated a decade of their lives to public service receive the forgiveness they earned.

Broadly, we urge Congress and the administration to revisit PSLF program design with an eye toward ensuring the program is equitable, fair, and achieving its desired goals.

Prison education programs

Completing the FAFSA and navigating the aid application process can be particularly challenging for incarcerated students, who often lack access to personal files and records they need to apply for federal student aid. This negotiated rulemaking should examine the totality of the student aid lifecycle, with an ultimate goal of providing as much flexibility as possible to ensure that the process of applying for and determining eligibility for Title IV aid is as smooth as possible for incarcerated students.

Beyond the aid application process, the negotiated rulemaking should consider issues such as articulation of course between institutions, student access to course materials, availability of student support services, and student privacy protections, just to name a few.

Administrative Capability

While evidence of a lack of administrative capability can lead to sanctions, there are very few incentives to reward institutions that have proven they are administratively capable. Indicators of administrative capability, such as a history of clean compliance audits or program reviews, should be used as metrics for granting administrative burden relief to institutions.

Parent PLUS underwriting

As to the Department's request for input on student loan default by race, ethnicity, gender, and other key student characteristics, we suggest that the adverse credit criteria for parent PLUS loans be re-examined. A lack of proper Parent PLUS loan underwriting standards has led to unintended and perverse consequences for some of our nation's most vulnerable populations, saddling many low-income, and especially minority families, with unsustainable levels of debt. As structured, the program is a moral hazard.

The PLUS credit criteria look only at past repayment history without any regard for a parent's ability to repay the loan based on their current income or existing debt obligations. Past payment history alone is insufficient to judge a borrower’s ability to repay.

Adding a simple debt-to-income ratio to the PLUS loan credit criteria will ensure that parents are not burdened into retirement age with debts they cannot afford to pay. We should be prioritizing additional grant funding for low-income families, not shirking our responsibilities by providing almost unfettered access to loan financing.

Responsible borrowing

Institutions should be permitted to create additional loan counseling requirements for their entire student population, or for individual students or groups of students, provided whatever criteria they use to identify populations for additional counseling do not discriminate on the basis of race, national origin, religion, sex, income, age, or disability. Such targeted loan counseling is preferable to requiring all borrowers to complete ED’s Annual Student Loan Acknowledgment, because it can be customized and allows schools to provide needed services to their borrowers without adding unnecessary barriers for other borrowers.

Schools should also be allowed to set lower loan limits for specific student populations (with a prohibition on creating groups based on protected categories), academic programs, credential levels, or other categories established by the school, with the authority to increase a particular student's loan from the school's imposed limit, up to the regular applicable statutory limit, on a case-by-case basis under professional judgment.

Both of these flexibilities are needed, given that currently schools have scant control of borrowing at their institutions, but are held responsible for their cohort default rate through institutional eligibility requirements.

Negotiated rulemaking process

We agree with the Department's decision to convene multiple negotiating committees, given the large number and scope of the topics to be negotiated. We recommend separate consensus votes for each committee, as opposed to the 2018 approach that used a single committee comprised of multiple subcommittees. This will ensure that the Department can select negotiators who are experts in certain topic areas. For example, we cannot reasonably expect an expert in prison education programs to also have enough expertise on financial responsibility to be able to negotiate on both topics in good faith. Multiple committees consisting of relevant subject matter experts also assures that any consensus language agreed to by negotiators takes into account the history and nuance of the topic.

We urge the Department not to develop draft regulatory language prior to the convening of the first session, as it did in 2018. Allowing negotiators to brainstorm and discuss the issues in depth, and to finalize the negotiating agenda during the first session are a vital part of the process, whereas drafting regulatory language in advance deprives all negotiators and ED staff of a thorough, thoughtful discussion of the issues, and undermines the goals of the negotiating rulemaking process.

Thank you for your time and consideration of our comments. We look forward to participating in the process.

Regards,

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