



September 14, 2018

Docket ID ED–2018–OPE–0076

Response to Intent to Establish Negotiated Rulemaking Committee

The National Association of Student Financial Aid Administrators (NASFAA) submits these considerations for the upcoming negotiations on Title IV regulations. NASFAA represents nearly 20,000 financial aid professionals who serve 16 million students each year at approximately 3,000 colleges and universities in all sectors throughout the country. NASFAA member institutions serve nine out of every ten undergraduates in the U.S.

Innovative Learning Models

We appreciate that the Department of Education (ED) is examining innovative learning models such as competency-based education and direct assessment, as a possible way to curb rising costs and better serve the growing numbers of nontraditional students, by expanding access, speeding time to degree completion, and reducing reliance on student loan borrowing.

Much of the federal financial aid system was designed years before many of these learning models were developed. Attempting to cultivate and implement innovative learning models within the confines of the existing federal student aid system has led to regulatory and legislative challenges, not to mention concerns over opportunities for fraud and abuse. The Higher Education Act and Title IV regulations look at “seat time” – students completing a certain number of courses and hours within a defined academic period with certain requirements on instructional time - rather than evidence of student learning. Ultimately, the federal student aid system must be updated to allow for greater access to programs offered in formats that are not based on traditional credit or clock hour models. While we applaud ED’s efforts to modify regulations with this goal in mind, this is fundamentally an issue that must be tackled by Congress in the pending reauthorization of the Higher Education Act.

While legislative restrictions prevent ED from making broad scale changes to regulations to eliminate barriers to innovation, we encourage ED to consider regulatory flexibilities in other areas of Title IV administration that present challenges for non-traditional program structures due to their time-based constraints. For example, the law requires both a qualitative and quantitative component to measure satisfactory academic progress (SAP). The rules governing SAP offer flexibility to address qualitative measures in non-traditional programs. In 2015, NASFAA’s task force on innovative learning models, consisting of practicing aid administrators, recommended increased flexibility regarding measurement of the quantitative component to

eliminate time-based constraints within innovative learning models.¹

State Authorization for Distance Education

NASFAA appreciates the Department of Education's (ED) efforts to clarify state authorization rules for distance education. Despite legitimate concerns over the quality and integrity of some distance education providers, it is important to recognize the value of distance education in providing access to higher education. While it is imperative to ensure that these distance education programs provide the same level of quality as brick-and-mortar institutions of higher education, regulations intended to guarantee quality should not be so onerous as to jeopardize the existence of high-performing distance education programs.

The higher education community has undertaken its own very successful self-regulating initiative on this topic, with the creation and rapid expansion of the National Council for State Authorization Reciprocity Agreements (NC-SARA), spearheaded by the Western Interstate Commission for Higher Education (WICHE). NASFAA believes strongly that ED should continue its recognition of this well-designed project, as demonstrated through the addition of institutional participation in state authorization reciprocity agreements as acceptable criteria in meeting state authorization requirements for distance education programs in the delayed Sec. 600.9 (c)(1)(ii), and should defer wholly to NC-SARA for member states and participating institutions. For institutions that do not participate in a reciprocity agreement, ED should use NC-SARA as a model for reasonable and effective regulation of distance education with regard to state authorization, with rules that are no more onerous for individual institutions than for those that operate under SARA or other reciprocity agreements, and, where possible, no more onerous for distance education than for brick-and-mortar operations.

On the general topic of state authorization, we urge the Department to tread lightly in matters that are related to state purview, and to find reasonable alternatives that do not price a program out of existence or add such administrative burden as to compound rather than resolve any true problem that may exist.

TEACH Grants

A 2015 report from the Government Accountability Office² found that 63% of TEACH grant recipients had grants converted to loans in the year they studied, 86% of which were

¹ NASFAA. (2015). *Expanding Educational Opportunities for Students: Innovative Learning Models and Student Financial Aid*. Retrieved from NASFAA web site

https://www.nasfaa.org/uploads/documents/Innovative_Learning_ModelsTFRReport.pdf

² U.S. Government Accountability Office. (2015) *Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes*. Retrieved from U.S. Government Accountability Office web site <https://www.gao.gov/assets/670/668634.pdf>

involuntary conversions. Another report³ found that, at the time they first received their grant, 89 percent of recipients indicated that they were likely or very likely to fulfill the service requirements, leading us to believe that failure to complete the service requirement is not the primary driver of the shockingly high loan conversion rate. Instead, we should be looking to improve the administrative processes involved in documentation of the service requirements. Suggested areas that could be addressed through regulatory change include:

- Increased flexibility on administrative processes and deadlines given the severity of the consequences for failure to comply
- Ability for ED to “un-do” an erroneous loan conversion
- Creation of a simple, publicized loan conversion dispute or appeal process

General Comment and Conclusion

Broadly speaking, we are concerned that the number and complexity of the topics that this single negotiating team will be expected to negotiate is unrealistic. ED proposes eleven topics for negotiation; several of these, such as accreditation issues, are expansive enough to support their own dedicated team of negotiators. Concentrating many diverse issues into one negotiating committee renders the consensus approach near impossible and creates time management issues.

ED appears to acknowledge these challenges by stating its intentions to provide draft proposed regulatory language to the negotiating committee and the subcommittees prior to the first meeting of the committee or subcommittees. This is a departure from previous negotiated rulemaking procedures, where the first meeting was generally structured as a brainstorming session where participants finalized the negotiating agenda, and discussed the issues in depth. In the past, ED considered all feedback from the first meeting and distributed draft proposed regulatory language prior to the second meeting.

ED’s approach of distributing regulatory language prior to the first meeting deprives all negotiators and ED staff of a thorough, thoughtful discussion of the issues, and undermines the goals of the negotiating rulemaking process.

We therefore strongly urge the Department to establish multiple negotiating committees, so that each team may, to the extent possible, focus on related issues in depth.

³ American Institutes for Research. (2018). *Study of the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program*. Retrieved from U.S. Department of Education web site <https://www2.ed.gov/rschstat/eval/highered/teach-grant/final-report.pdf>

We appreciate the opportunity to offer these comments and we look forward to working with you on these important issues.

Sincerely,

A handwritten signature in black ink that reads "Megan Coval". The signature is written in a cursive, flowing style.

Megan Coval
Vice President, Policy & Federal Relations