



May 20, 2011

Dear Secretary Duncan:

On behalf of the nearly 3,000 postsecondary educational institutions and others with related interest who are members of the National Association of Student Financial Aid Administrators (NASFAA), we offer the following suggestions for issues that should receive consideration during the Department of Education's upcoming negotiated rulemaking sessions.

We appreciate the Department's solicitation of agenda items. This process will yield regulations that will help institutions deliver student aid funds to eligible students in a timely manner while fulfilling the purpose of negotiated rulemaking: to develop procedures that work in the institutional setting and remain within statutory boundaries.

Sincerely,

Justin Draeger
President

**Statement of The National Association of Student Financial Aid Administrators on
NASFAA Submitted Negotiated Rulemaking Topics
Washington, DC
May 20, 2011**

In General

One of our most pressing issues is the regulatory and administrative burden faced by student financial aid administrators and how that burden ultimately impacts student services. In the fall of 2010, NASFAA conducted a survey that polled financial aid administrators on whether recent increases in regulatory and administrative burden have adversely affected students or the administration of the financial aid programs. [Survey findings](#) indicate that students attending institutions from all sectors of higher education are receiving diminished student services due to a combination of increased administrative burden and stagnant or even reduced financial aid operating resources.

As such, we offer the following regulatory items for your consideration, all of which fall within the purview of streamlining and reducing regulatory burden and encourage the Department to include them as discussion topics in any upcoming rulemaking sessions.

Return of Title IV Funds: 668.22

When a student withdraws from school, the institution must determine whether any of the student's federal financial aid must be rescinded and returned to Department. This determination is simple in principle, but complicated in execution. Essentially, the law allows a student to retain aid based on the percentage of the payment period completed, through the first 60% of the period (once the 60% point has been passed, the student is permitted use of all of the aid disbursed for that payment period). Since aid can be disbursed either by crediting the student's account to pay institutional charges or by direct payment to the student to use for non-institutional educational costs, the return process includes a mechanism for determining how the responsibility for paying "unearned" Title IV funds is attributed between the school and the student. Returned funds are credited to the Title IV programs from which the student was aided in an order specified by law and regulation.

This fairly straightforward theory has grown in complexity and difficulty. The administrative burden associated with the Return of Title IV Funds is partly due to the proliferation of program formats and partly due to the specificity of the law and regulations. The complexity of the process results in parallel complexity in keeping students apprised of their rights and responsibilities. The specificity of the law and regulations impedes the ability of the aid community from adjusting policy quickly to altered circumstances. For example, the order in which funds must be returned to the Title IV programs seeks to protect student interests by requiring programs be repaid in the following order: unsubsidized Stafford student loans, subsidized Stafford loans, Perkins loans, PLUS loans, Pell Grants, FSEOG, other Title IV assistance. This statutory order did not take into account the possibility of new programs being authorized that might fit better in the order than at the end. The TEACH Grant Program, for example, becomes a loan if the recipient is unable to fulfill the service agreement, which is more likely to occur for

students who withdraw, yet regulations require funds to be returned on PLUS loans and the Pell Grant and FSEOG programs before being returned on TEACH.

The Return process includes such diverse functions as readmission of students, leaves of absence (drawn in such a way as to exclude traditional schools), and school policy decisions such as defining the withdrawal process and when it starts, and documentation of attendance. A school's discretion over whether to make late disbursements of loans to students who have withdrawn before receiving all of the aid calculated as "earned" based on time enrolled was also removed as a regulatory interpretation of statutory language.

We recognize that some of the regulations and sub-regulatory guidance is a result of questions asked by institutions and their representatives. However, the degree to which guidance increases specificity rather than allows institutional discretion has become overbalanced in the Return of Title IV Funds rules.

Nontraditional Program Formats: throughout regulations

The treatment of nontraditional program formats is scattered throughout the regulations; historically, they have had the unfortunate fate of being square pegs forced into round holes. Although the Department had over several years been receptive to efforts to construct principle-based rules that can be extrapolated to cover the many creative structures of educational formats, no satisfactory approach was uncovered. We believe it is time to pull out and separately examine regulations that deal with non-standard-term and non-term formats to review them as a whole to see if a more suitable set of rules can be designed.

Examples of program administration affected by nontraditional program rules include Pell Grant payment calculation formulas (and payment calculations in other programs based on the Pell model – i.e., TEACH), Return of Title IV funds calculations, determination of payment periods, and disbursement rules.

Related to this area of concern is distance education. An eligible institution, other than a foreign institution, must be located in a state (600.4, .5, and .6). ED considers the determining factor to be the physical location of the main campus or place of instruction. However, the law does not seem to address whether the institution's "location" in a state has to be physical, or can be subsumed into the state licensing criterion.

Code of Conduct and Prohibited Inducements

In and of itself, a standard of acceptable behavior with regard to ethics is certainly not objectionable. A clear exposition of expectations and prohibited inducements that provides guidelines for institutions and other participants in the student aid process is a responsible way of safeguarding public funds.

However, the proliferation of differing standards at the state level, imposed on the administration of federal funds, carries the potential of schools being subject to 50+ individual codes of conduct. State codes should not be superimposed on federal law and regulations; a clear statement of precedence should clarify that federal rules supersede state rules, with respect to use and administration of

federally-funded student aid programs. This issue was raised during recent negotiated rulemaking sessions, but it was not taken up.

FSEOG Awarding Criteria: 676.10

The requirements to link FSEOG awards to Pell Grant eligibility and to use "lowest EFC order" in making those awards have been problematic since they were instituted. Although there is a statutory basis for these rules, the interpretation of the statutory language is quite narrow. The law requires FSEOG to be awarded first to "students with exceptional need" and defines that term as "students with the lowest expected family contributions at the institution." The Department interpreted that language as requiring schools to award FSEOG in strict order starting with zero EFCs and moving upward from there, rather than, for example, setting a cutoff encompassing low EFCs generally. This interpretation makes automation and customization very difficult. The statutory language itself places severe restrictions on the concept of a "campus-based" program and precludes any other consideration of what might constitute "need."

Student Consumer Information Requirements and Reporting Requirements

Information that must be provided to students has mushroomed to the point where it is more confusing, duplicative, and voluminous than helpful. Methods of distribution are inconsistent.

Total and Permanent Disability Discharge: 674.61; 682.402(c); 685.213

It takes several pages of regulations to detail the total and permanent disability discharge process, which includes a 3-year conditional period after which loan collection can be reinstated or permanently discharged. These provisions are not only administratively difficult, but burdensome to borrowers as well. These regulations should be streamlined.

Pell Grant Payment Formulas

When these formulas were designed there were more traditional and fewer nontraditional approaches to academic program formats. Although the Department has adjusted use of the formulas to ease constraints somewhat, the regulations remain complex, and it is time to review them with financial aid community input. Several other grant programs are modeled on this aspect of the Pell Grant Program, and a reduction in complexity would benefit those programs as well.

FFEL References

The May 5, 2011 Federal Register notice stated that as a result of the elimination of the Federal Family Education Loan (FFEL) Program, the Department intends to streamline the loan program regulations by repealing unnecessary FFEL Program regulations in 34 CFR part 682 and incorporating and modifying necessary requirements within the Direct Loan Program regulations in 34 CFR part 685, as appropriate. In addition to parts 682 and 685, there are several other sections of the regulations that should be streamlined due to the elimination of the FFEL Program, such as part 601, 668.167, and other FFEL program references in subpart K of part 668.

Change forgiveness period to 20 years for IBR and ICR for all borrowers

The Secretary has the authority to set the maximum repayment period for both Income-Based Repayment (IBR) and Income-Contingent Repayment (ICR) – the period after which remaining loan balances are forgiven – as long as it does not exceed 25 years. We ask the Secretary to set the maximum at 20 years for both programs, rather than the 25 years in current rules. Providing forgiveness after 20 years of responsible, qualifying payments would reduce the risk that student loan payments permanently displace critical savings for retirement and children’s education in households with little or no financial security. Indeed, after 20 years of qualifying payments any remaining balance would be only or mostly interest for the vast majority of borrowers. This change would also reduce considerable confusion and inequities among borrowers due to the 20-year IBR forgiveness period that is currently scheduled to go into effect only for students who borrow their first federal loan on or after July 1, 2014. In addition, and regardless of the length of the maximum repayment period, the rules should make clear that qualifying payments can accrue throughout the borrower’s lifetime.

Thank you for considering these recommendations. We look forward to providing you with any assistance you need during the upcoming negotiated rulemaking sessions.