Comments of the American Association of Community Colleges and Association of Community College Trustees

Docket ID: ED-2021-OPEPD-0077

The American Association of Community Colleges (AACC) and the Association of Community College Trustees (ACCT) are pleased to submit comments in response to the Department of Education's (ED) announcement in the May 26, 2021 *Federal Register* of its intent to establish negotiated rulemaking committees for programs under Title IV of the Higher Education Act (HEA).

AACC and ACCT represent the nation's 1,044 community colleges, which educate a disproportionate share of historically underserved students. We strongly support efforts for equitable postsecondary outcomes and welcome ED's stated intentions to "address, through its title IV regulations, gaps in postsecondary outcomes such as retention, completion, loan repayment, and student loan default by race, ethnicity, gender, and other key student characteristics."

AACC and ACCT will not comment on all 14 proposed topics, but only on those that are priorities for community colleges and their students. They are not in order of importance.

In making changes to regulations, whether driven by new laws or to address the fairness and effectiveness of existing regulations, we support using the guiding principles for regulations identified by the Task Force on Federal Regulation of Higher Education. The task force, whose members consisted of college and university presidents and chancellors, was created in 2013 by a bipartisan group of U.S. Senators and charged with examining federal regulation of higher education and making recommendations for improvement.

As a reference for reading our comments, here are the Task Force's principles:

- Regulations should be related to education, student safety, and stewardship of federal funds.
- Regulations should be clear and comprehensible.
- Regulations should not stray from clearly stated legislative intent.
- Costs and burdens of regulations should be accurately estimated.
- Clear safe harbors should be created.
- The Department should recognize good faith efforts by institutions.
- The Department should complete program reviews and investigations in a timely manner.
- Penalties should be imposed at a level appropriate to the violation.
- Disclosure requirements should focus on issues of widespread interest.
- All substantive policies should be subject to the "notice-and-comment" requirements of the Administrative Procedure Act.
- Regulations that consistently create compliance challenges should be revised.
- The Department should take all necessary steps to facilitate compliance by institutions.

34 CFR Subpart B – Standards for Participation in Title IV HEA Programs

(1) Program participation certificates under 34 CFR 668.14

Many institutions have informed AACC and ACCT about the extended delays they have experienced in getting approval by the Office of Student Financial Assistance for revisions in Program Participation Agreements (PPA). Institutions have waited for many months, in some cases for more than a year, to have revisions to their PPAs approved by ED for program changes and additions.

The protracted processing of revised PPA submissions has two serious consequences. First, pending approval, many colleges have been unable to disburse financial aid to students, creating tremendous hardships and preventing some students from enrolling. (While colleges may disburse Title IV funds pending approval under certain circumstances, many are unwilling to do so because of potential liabilities.) A compounding problem is that institutions are often not able to submit any further revisions to their PPA while a previously reported change is pending, creating a further backlog and denying many more students the ability to access student aid.

These communications to AACC and ACCT over the years by community colleges were reinforced by a survey conducted in 2016 by the National Association of Student Financial Aid Administrators (NASFAA), which found that respondents reported substantial delays in the required approval of PPA renewals and revised PPA submissions. Campus officials have reported that this problem appears to be getting worse. This is particularly problematic for community colleges as one of their strengths is an ability to respond promptly to the emerging needs of their local economies. This necessarily means adding new programs, revising programs, and eliminating programs no longer in demand.

Students and institutions cannot afford to have ED be a bottleneck in the full launching of new academic programs. We note that the substantive review of new programs is conducted by accrediting bodies and state licensure agencies, and in the overwhelming majority of cases ED will have no reason to take a substantive review of these new offerings.

Consequently, we recommend that ED propose relevant regulatory provisions and related procedures for improving this process.

(2) Ability to benefit under 34 CFR 668.156;

Few states have applied and been approved for a state-determined alternative process, other than testing or successful completion of six college credits, for determining which individuals have the ability to benefit (ATB) from higher education and thus may qualify for financial aid despite not having earned a high school diploma or GED. The negotiated rulemaking process should be used to make any modifications to the regulations that are proving to be an unwarranted barrier to states pursuing this option. These may include the requirement that ATB students under a state plan must complete at 95% of the rate of students who have a high school diploma. The regulations also give ED six months to approve or reject a state's application, an inordinately long time.

Outside of this aspect of the ATB regulations, community colleges have expressed frustration with the requirement that access to a GED program must be part of the program offered to ATB students. This is because ATB students are only Title IV eligible if their program is part of a career pathway, as defined in the Workforce Innovation and Opportunity Act. To the extent possible through regulation, we urge ED to make this requirement as flexible as possible. ATB students, by definition, are seeking to attend college without having first attained a high school diploma or GED. To require that programs offered to ATB students include a GED component is antithetical to purpose behind the HEA's ATB provisions.

(3) Discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402, and 685.213;

The regulations for discharging debt for borrowers with a total and permanent disability are cumbersome. In particular, veterans have experienced on-going problems with having their debt discharged. In 2014, for example, the Consumer Financial Protection Bureau identified problems with servicing and discharging loans that veterans and servicemembers were experiencing. In 2018, ED identified 40,000 veterans who qualified for debt discharge but found that only 8,500 had applied and 25,000 were in default. In response to the pandemic, in 2020 ED waived paperwork requirements affecting about 230,000 borrowers, including veterans and others.

Many advocate for streamlining the process, by determining eligibility based on a declaration of disability by a physician, the Social Security Administration or Department of Veterans Affairs.

Community colleges educate a disproportionate number of veterans (5% of student population) as well as persons with a disability (20%). We recommend that ED proposes discharges for borrowers with a total and permanent disability that eliminate the barriers for those who are eligible to benefit.

(4) Loan repayment plans under 34 CFR 682.209, 682.215, 685.208, and 685.209;

The lack of HEA reauthorization notwithstanding, over the years there have been many bipartisan and bicameral proposals to simplify the financial aid application process and streamline loan repayment. AACC and ACCT support ED taking whatever actions it can within its existing statutory authority to achieve these two objectives. (The former is addressed in the comments on verification below.)

A 2020 Pews Charitable Trusts report on the experiences of student loan repayment encapsulates the array of challenges that borrowers face. Besides the financial challenges, borrowers who participated in focus groups said that they had difficulty understanding, enrolling in, and remaining in income-driven plans. Not all borrowers reported having negative experiences with their servicers, but those who did said that they had to make multiple phone calls to make repayment changes and servicer responses were confusing, complex or inconsistent.

The report offered several recommendations for improvement, some of which ED is currently pursuing as part of its five-year strategic plan. The StudentAid.gov website has a section on repayment that includes information on making a payment, a loan simulator, loan consolidation, and how to apply/recertify/change income driven payment plans, among other topics.

Servicer communications could be refined by requiring the evaluation of outcomes and using that as feedback for making improvements in the process. In addition, ED could establish clear standards for servicing and provide oversight to ensure proper implementation.

AACC and ACCT urge ED to review the loan repayment plans regulations to address the challenges experienced by students. While only a small percent of community college students borrow federal loans (13%), they are disproportionately represented in the ranks of borrowers who default. We support making appropriate changes to the regulations to facilitate borrowers' ability to repay their loans.

(5) The Public Service Loan Forgiveness program under 34 CFR 685.219;

Progress is being made with respect to the Public Service Loan Forgiveness (PSLF) program. A PSLF help tool was launched in 2018. A new form was created in November 2020 that combined PSLF questions with those from the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) opportunity provided in the consolidated Appropriations Act of 2018. In April 2021, the PSLF report was redesigned to accommodate these changes. According to that report, of 391,333 forms, representing 321,986 borrowers, of the combined PSLF forms submitted, 168,702 forms (161,725 borrowers) have had their forms processed and another 145,965 forms (129,704 borrowers) have forms in active processing.

The PSLF portfolio, however, depicts a much less positive picture, with only 5,467 unique PSLF and 2,962 TEPSLF borrowers having discharges processed out of more than one million (1,250,375) cumulative PSFL borrowers with eligible employment.

This situation was documented in a 2018 Government Accountability Office (GAO) report that found that of the 1 million borrowers who applied for public service loan forgiveness (PSLF), only a few had their loans forgiven in the 2007-2017 decade. The report found that ED has been lacking in several areas, including providing key information to the PSLF servicer and borrowers; providing effective guidance and instructions to the PSLF servicer; providing the PSLF servicer and borrowers with a definitive source of information for determining which employers qualify a borrower for loan forgiveness; and ensuring the PSLF servicer receives consistent information on borrowers' prior loan payments.

Subsequently, a consumer rights organization and teachers union requested information from the Department, and released an August 2020 report, calling the PLSF program a "failure." Several of the findings related to employment that constitutes public service. These included borrowers whose employment had been certified as eligible for PSLF, only later to be reconsidered and rejected; borrowers employed by the same organization who received different answers when seeking to certify their employment; no standardized process for certifying employers; and lack of a formal right to appeal if their employer is rejected. The report also identified poor recordkeeping as a problem.

Community college students, who are disproportionately low income and first generation, seek postsecondary education to improve their and their families' lives. Many pursue programs that prepare them for occupations that are listed as public service eligible for loan forgiveness, including public safety and law enforcement, early childhood education, nursing, and other healthcare practitioners. It is imperative that the program works effectively. AACC and ACCT urge ED to propose regulations that achieve the intended purpose of the statute.

(6) Gainful employment (formerly located in 34 CFR subpart Q);

Community colleges have a major stake in gainful employment (GE) regulations. Thousands of community college programs serving hundreds of thousands of students are subject to GE regulations.

When in effect, the GE regulations promulgated by the Obama Administration were effective in holding institutions accountable for program quality. Even prior to the implementation of the GE regulations, the number of GE programs declined substantially, from 39,000 to 27,000, demonstrating that institutions chose to eliminate many programs that likely would have failed the debt to earnings ratio test at the heart of the regulations.

Community colleges urge ED to use its regulatory authority to focus on programs that serve students poorly. In particular, regulations should remove Title IV eligibility from programs that leave their graduates with significant debt and low earnings; students should expect and attain a positive return on their investment. If only a small percentage of the students in a program take out loans, that program should be exempt from regulation.

AACC and ACCT's comments on previous GE regulatory proposals urged ED to recognize the complex educational paths that many community college and other mostly non-traditional students follow in their college experience. The program of study that a student initially selects is often not the one from which they ultimately graduate. Community college students often take courses in different areas as they cultivate their academic and career interests. This would make program outcomes unrepresentative if students' actual progress through a program, or changes in that program, are not tracked accurately.

We urge ED to be mindful of the administrative burden and associated costs that implementing GE regulations imposes on community colleges. The previous GE regulations were tremendously expensive to implement and diverted resources from activities that would have benefited students. We hope that any new GE rules will reflect this trade-off.

The GE regulations produced some valuable data, but not enough because many programs were too small. This issue should be handled with deliberation in any new regulations. Furthermore, much of the data required under the GE rules should probably be generated for all higher education programs. The GE statute creates an artificial distinction between those that fall under its regulation and those that do not. Thousands of degree programs can be said to prepare students for gainful employment.

(7) Pell Grant eligibility for prison education programs under 34 CFR part 690;

AACC and ACCT have long supported reinstating Pell Grant eligibility to prison education programs. Community colleges have a history of educating prisoners with state funds, however limited. They were able to expand existing or start new programs through the Second Chance Pell Experimental Sites Initiative. There were two rounds of the initiative that began in 2015, with community colleges representing the majority of about 130 participating institutions in 42 states and the District of Columbia, according to a Vera Institute report.

The FY 2021 Consolidated Appropriations Act restored Pell Grants to incarcerated students, lifting the 1994 ban. AACC, ACCT, and others have advocated for this action, buttressed by a RAND report showing the effectiveness of prison education programs in reducing recidivism and other benefits.

This allows all eligible postsecondary institutions to offer prison education programs for eligible inmates, under prescribed conditions. In turn, ED is charged with promulgating regulations that govern how this eligibility will be implemented. The Experimental Sites Initiative delineated certain requirements, which will need to be revisited and informed by the evaluation that was conducted. We are committed to helping shape regulations that ensure that incarcerated persons receive their second chance by earning valuable credentials offered at eligible institutions.

(8) Verification regulations 34 CFR 668.51–61 (Subpart E)

A 2019 ED Inspector General Office's report identified lack of analysis as the most problematic aspect of the verification process. The report found that ED had not evaluated which income data items used to verify the accuracy of financial aid applications were most likely to introduce errors in a student aid award. Moreover, ED was found neither to have evaluated whether the 30% of flagged aid applications was appropriate nor whether the target was overly burdensome for colleges and students.

While some of these have been addressed, we support ED proposing methodical changes to the verification regulations. A 2018 NASFAA brief on verification specified changes to the Free Application for Federal Student Aid (FAFSA) as the most effective means of improving the verification process. ED recently announced that its implementation of the FAFSA Simplification Act will be staggered and the revisions to the FAFSA form will take longer than expected. Rather than being ready for the 2021-22 academic year, as statutorily required, the changes will be finalized in 2022-23.

Verification imposes costs on students and institutions. Community colleges and their students are disproportionately affected by verification, according to a 2018 NASFAA survey, which found that they had an average selection rate for verification of 37%, and all of the responding public 2-year colleges reported a selection rate over 30%. Even more troubling was the finding that verifications had almost no impact on the award. More than nine out of ten (91%) "applications at 2-year public institutions had either no EFC change, or an EFC change that was insignificant enough as to have no impact to the student's Pell Grant award." More than 70% of financial aid administrators agreed that verification placed undue burdens on low-income students and families.

The data sharing between IRS and ED required by the Futures Act is intended to reduce the need for verification. It is opportune now, in view of these new laws, to revisit verification regulations.