July 12, 2017

Ms. Wendy Macias
U.S. Department of Education
400 Maryland Ave. SW
Room 6C111
Washington, DC 20202

Dear Ms. Macias:

The American Association of Community Colleges (AACC) and the Association of Community College Trustees (ACCT) appreciate the opportunity to provide comments on the U.S. Department of Education's proposed negotiated rulemaking process on gainful employment and borrower defense to repayment. Docket ID ED-2017-OPE-0076. We represent the chief executive officers and trustees of the nation's more than 1,100 community colleges.

Community colleges supported the U.S. Department of Education's (ED) initial rulemaking on gainful employment (GE) in 2009 and will do so moving forward, if the regulation demonstrably benefits students and is narrowly tailored to achieving its ends. Community colleges have the most GE programs of any sector of higher education, though for-profit institutions enroll more GE students.

At its heart, the GE regulations are about accountability. Community colleges remain highly accountable through a multi-layered, time-tested system of public support and oversight. This accountability is derived through state and local funding sources, boards of trustees (also at both the state and local level), and other public regulatory bodies. The institutions also are accredited by agencies whose existence long preceded the establishment of the federal student aid programs and were designed solely for the purpose of ensuring and enhancing educational quality. Furthermore, as recipients of direct public funding, community colleges are required to exhibit a high degree of transparency.

Ideally, Congress would specify its policy preferences on the entire GE statutory construct and concept, rather than leaving the Department the responsibility to establish policy. The GE statutory definition was developed 45 years ago in a radically different higher education environment and clearly needs updating. For example, the notion that at non-profit institutions only Title IV-eligible certificate programs are what should be termed a GE program is highly debatable. However, with the short-term prospects for completion of HEA reauthorization legislation being uncertain, it is incumbent on the Administration to regulate in this area.

The last Administration was right to focus its GE eligibility metrics on whether students who complete GE programs are subsequently able to repay their student loans without undue burden in a reasonable time period. These debt-to-earnings measures are far more meaningful for holding institutions accountable for the programs they offer, and impactful for students, than the HEA's cohort default rate-related penalties. The early evidence is that numerous programs that did not provide good value to students were voluntarily terminated by institutions because of the regulation that took effect last July.

For their part, community colleges strive to minimize student debt. They do this primarily through their low tuition and fees – in the fall of 2016, two-year public institutions charged, on average, $3,520 for a full-time, full year student, in contrast to $9,650 at four-year public colleges and $16,000 at for-profit institutions. Fewer than one out of five community college students take out a federal loan, while college officials continue to report that many of their students who previously attended other colleges, particularly for-profit colleges, carry heavy debt loads.

Because the vast majority of community college GE programs were never in any danger of failing the previous metrics (and, in fact, none did), campus officials have repeatedly communicated that the cost of implementing GE, relative to corresponding student benefits, was far out of proportion. Specifically, the extensive reporting requirements for all GE programs, regardless of size of the cohort of students that forms the basis of the metric calculation, often resulted in instances in which the reported data were not used either for determining the failure or passing of the GE program or student disclosures. One reason for this is that very small technically-focused programs are common at community colleges, often because of program delivery costs, and because they are provided on a customized basis for industries.

Unfortunately, we cannot quantify overall expenditures of this multi-faceted regulation to more than 1,100 community colleges, which involves work across a series of institutional departments. The administrative burden was reflected by the 106 formal ED communications issued to date on this single regulation.

We hope that the Trump Administration will adopt measures that will better reflect these realities and exempt outright institutions and/or programs that have a history of low borrowing. Most community college GE programs have well below 50% of their students borrowing federal loans, therefore their median loan amount is $0. These programs should be exempted from any new GE regulations, other than some basic program disclosures referred to below.

Furthermore, AACC and ACCT propose that ED set a threshold of the number of Title IV students needed for reporting on GE programs to align with confidentiality and other rules. Programs that are clearly too small to generate student-related disclosures should not have to report these data.

In addition to complications associated with small programs, another difficulty in capturing, and indeed measuring, community college student behavior and performance on the program level is the often non-linear education path that students take. Any GE regulatory framework and other related ED policies that are structured around an individual program, particularly when it involves a time to completion, needs to reflect the fact that students do not always take a straight path to completing a college credential. Some students enroll concurrently in more than one program, only one of which may be subject to the current GE regulations. In these cases, the certificate level program should not be subject to the regulations. Community colleges offer career ladders and stackable credentials and often award credentials on the path to longer credentials; student behavior does not always dovetail with the GE framework's assumption that a student has moved directly from enrollment to the credential that they receive. Any new GE regulations should be sensitive to these different pathways and be conservative in how GE program definitions are operationalized.

Also, it has been well documented that the vast majority of postsecondary students – far more than those enrolled in 'technical' or 'career' or 'professional' programs – invest in a college education to substantially enhance their employment prospects, in the short-term or later in their careers. For this reason, we believe that GE regulations are fundamentally not the right vehicle for addressing many of the disclosure items that were required under the last set of GE regulations.

Certainly, all GE program-related disclosures should be integrated into existing information systems, such as the College Navigator or College Scorecard. AACC and ACCT have long supported a student unit-record data system to improve the quality of this information. Consumer testing of the data elements is essential to ensure not only relevance but clarity and, by extension, usability. A few salient data points about program cost and post-completion earnings are what most prospective students will be interested in knowing before making an enrollment decision. Under certain circumstances, AACC and ACCT would nevertheless support limited disclosure requirements within the GE regulations. Only relevant information that truly helps students make informed decisions about their GE program selection should be disclosed.

Borrower Defense to Repayment

After the collapse of Corinthian Colleges, community colleges across the country worked with ED and other parties to offer impacted students a pathway back to higher education. Given this experience, we strongly believe that students should have a transparent and streamlined process to secure discharges and refunds on their student debt if they are defrauded or unreasonably and intentionally harmed by an institution. Relief from fraudulently-issued debt will allow students to move on academically and provide them with additional student aid eligibility necessary to succeed. The Department should provide relief to these students as soon as possible to support their ongoing education. We hope the rule will retain a path to relief for groups of students, without always requiring individual applications. Students should have the ability to get relief on their debt when the fraud that was committed was clearly widespread in nature.

The Department should focus its effort on improving Title IV oversight and hold institutions responsible if they are acting in bad faith. Therefore, we believe the borrower defense rule should also focus on preventing future abuses. Community colleges generally do not use forced arbitration clauses, class action bans, or gag orders that allow misconduct to proceed in secret, and can ultimately increase the negative impact on students if and when any fraud is ultimately disclosed. Eliminating forced arbitration and other limitations on students' legal rights will help states fulfill their consumer protection roles and better police bad acts.

Thank you for your attention to these views. Community colleges are eager to participate in the upcoming negotiated rulemaking sessions.

Sincerely,

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