ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES

OFFICE OF THE PRESIDENT
J. NOAH BROWN
ACCT PRESIDENT & CHIEF EXECUTIVE OFFICER

1233 20th STREET, NW, SUITE 301, WASHINGTON, DC 20036
1.866.895.ACCT (2228) 202.775.4667 FAX: 202.223.1297
www.acct.org

November 4, 2014

Ms. Wendy Macias
U.S. Department of Education
1990 K Street NW, Room 8017
Washington, DC 20006

Re: Docket ID ED-2014-OPE-0124 Intent to Establish Negotiated Rulemaking Committee

Dear Ms. Macias:

The Association of Community College Trustees (ACCT) submits these comments in response to the September 3, 2014 Federal Register notice soliciting input on topics to be included in the U.S. Department of Education's upcoming negotiated rulemaking on the William D. Ford Direct Loan (Direct Loan) Program and expansion of the President's Pay as You Earn (PAYE) Repayment Plan.

ACCT represents the trustees of the nation's more than 1,100 community colleges, which collectively enroll over 42 percent of all postsecondary students in the United States and play an essential role in increasing educational opportunity and developing the nation's workforce. The PAYE expansion is necessary to ensure that students who need help repaying their loans are not caught up in an unnecessary web of eligibility requirements. In addition to the PAYE expansion, we believe there are many other federal student aid issues of significant priority for community colleges and their students that need further attention through the rulemaking process. We suggest seven topics for rulemaking to:

1. Improve the utility of Participation Rate Index (PRI) appeals;
2. Increase assistance to families of deceased borrowers through federal data matching;
3. Allow defaulted borrowers to pay accounts in full during the loan rehabilitation process;
4. Continue to provide CDR adjustments to institutions with split-serviced borrowers;
5. Provide additional assistance and relief to borrowers with split-servicing issues;
6. Revisit burdensome regulations regarding the 150 percent subsidized loan limitation; and
7. Prevent 90/10 rule manipulation through disbursement delays or the consolidation of campus OPEIDs.

Improve the utility of Participation Rate Index (PRI) appeals

At community colleges across the country, relatively low tuition and fees have limited the need for student loan borrowing even as states have dramatically reduced their support of higher education. Large numbers of students have been able to cover their costs of attendance with state or federal grants, work-study, scholarships, savings, and part or full-time employment. The Higher Education Act (HEA) specifically protects colleges with low rates of student borrowing from federal sanctions based on Cohort Default Rates (CDRs) through the Participation Rate Index (PRI) challenge or appeal. The PRI is designed to reflect that, when only a handful of students borrow federal loans, a college's default rate does not accurately represent institutional performance. Colleges can generally avoid sanctions with a PRI appeal when fewer than 21 percent of enrolled students borrow federal loans. However, the current PRI appeals process as constructed by the U.S. Department of Education (ED) is arbitrarily constrained, overly complex, contrary to Congressional intent, and actively denying the benefit it was intended to provide to low-borrowing institutions. The PRI appeals process denies low-cost colleges with the assurance that they are not at risk for sanctions when that assurance is most needed.

Most problematically, colleges are forced to wait to file a PRI challenge or appeal until the third consecutive CDR leading to sanction (a rate at or above 30.0 percent), which is entirely too late in the process. After "walking the plank" to the precipice of sanction, colleges are also unable to impact prior cohorts should their PRI appeal be rejected for any reason. Even the challenge issued on the third draft rate still allows for substantial exposure to institutional risk.

Without any assurance in years one or two, many community colleges have faced political and media scrutiny over their unrepresentative CDRs—with some individuals falsely claiming that the high default rates among a limited pool of borrowers will lead to these low-borrowing institutions losing eligibility for federal student aid.

Representatives of colleges that have stopped offering federal loans—even at low-borrowing institutions—point to concerns about CDR sanctions. Consider the example of Yuba College in Marysville, California, which decided to stop offering federal student loans last year. Although the college had an overall borrowing rate of just 3 percent and was potentially eligible for an eventual PRI appeal, the college faced significant criticism over a default rate that climbed above 30 percent in both FY 2010 and 2011.[1] In FY 2010, just 62 defaulters out of nearly 7,000 enrolled students contributed to this unfair scrutiny—less than one percent of all students. The college chose to leave the federal loan program to avoid the make-work and significant costs associated with default management for a small population of borrowers. An earlier PRI challenge process could have provided Yuba College much-needed reassurance so that it would be able to continue to provide federal financial aid access to the students who rely on it. The disclosure of program-level CDRs in new gainful employment regulations may exacerbate the concern with default rate metrics, even though it is not being used formally as an accountability mechanism.

Recommendation: allow low-borrowing colleges to submit a PRI challenge or appeal in any year during which its published CDR exceeds the sanction thresholds and thereby assure that Title IV program participation is secure.

There is no statutory reason that ED must withhold PRI challenges or appeals until an institution is facing an immediate sanction, and doing so is currently preventing colleges from using a valuable tool. We believe ED has the authority to implement such a challenge process administratively, but should ED believe current regulations need to be changed, then the topic should be added to this negotiated rulemaking panel's agenda.

In previous Federal Register communications, ED has stated that annual PRI appeals would impose an "unmanageable workload" on its staff with a "time-consuming, labor-intensive process."[2] However, the burden on ED would in fact be minimal, as few schools with borrowing rates low enough to qualify for the PRI appeal also have CDRs that could trigger sanctions in the first place. To assist colleges in

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[1] Pender, K. (2014, June 19). Amid student loan defaults, aid threatened. SFGate. Retrieved November 4, 2014, from http://www.sfgate.com/business/networth/article/Amid-student-loan-defaults-aid-threatened-5633148.php

[2] Federal Register Notice, Docket ID ED-2013-OPE-0063. Friday, November 1, 2013. https://www.federalregister.gov/articles/2013/11/01/2013-25331/student-assistance-general-provisions-federal-perkins-loan-program-federal-family-education-loan#p-71

participating in the federal student loan program, ED must improve the PRI process and permit annual PRI challenges and appeals.

Increase assistance to families of deceased borrowers through federal record data matching

The HEA contains provisions intended to fairly treat borrowers who have died—and their next of kin—by discharging outstanding federal student loan debt. The loan(s) will be discharged if a family member or other representative of the borrower provides a certified copy of the death certificate to the institution (for a Federal Perkins Loan) or to the loan servicer (for a Direct Loan or FFEL Program loan).

Under previous rulemaking, new regulations were adopted[3] to govern the process for submitting death verification; these rules gave the Secretary increased authority to discharge a loan based on documentation other than original or certified copy of the death certificate *only under exceptional circumstances and on a case-by-case basis.* However, these rules are incomplete and the case-by-case authority is rarely used. Verifying death is putting unnecessary burden upon grieving next of kin, misses many eligible loans, and is unfairly ensnaring institutions through default calculations. All when the federal government often already has the documentation of death necessary to provide relief.

In recent years, many community colleges have begun to more closely examine the list of borrowers included in their CDR cohorts by checking these cohorts against public records, and in the process, have identified many deceased borrowers who have not yet received a loan discharge or whose records are incorrect. Some of these deceased borrowers are incorrectly indicated on NSLDS to have defaulted *before* they died (and are thus counted in CDR numerators), while others do not show up on federal records because they had no death notice submitted.

A great number of community college students fail to keep current contact information on file, and next of kin or a borrower's representative may not be aware than an outstanding loan exists or receive any notice that could prompt them to initiate the discharge process. There is also little incentive for a servicer to submit such documentation, as they are reimbursed for accounts that remain in default status—not loans that have been fully discharged. Institutions are unlikely to receive any notice of death of a former student given no existing relationship to the college. ED regulations stipulate that proof of death must be submitted in a "timely" manner for the purposes of removing a student from a default cohort; however, death records are sometimes not discovered until official CDRs are released, which is outside the monitoring window. For example, Lane Community College in Oregon is currently struggling with this issue and has not yet received clarification from ED on whether its data challenges will be accepted.

Recommendation: ED should continually verify all borrowers of outstanding Direct Loans against the Social Security Administration's death master file. Furthermore, ED should remove all borrowers who died before default from an institution's cohort calculation, regardless of when proof of death was provided. Regulations on this topic should be added to this negotiated rulemaking panel's agenda.

Data matching can be achieved simply by comparing the Social Security Numbers of federal loan borrowers with Social Security Administration (SSA) records. There is strong precedent for this process: when a student or dependent's parent fills out the Free Application for Federal Student Aid, ED currently collects Social Security Numbers run against the SSA's death master file and ensure that no federal

[3] 34 CFR: 674.61 (Perkins), 682.402 (FFEL), and 685.212 (Direct Loan).

student aid recipient that is deceased can fraudulently receive student aid. In other words, if aid eligibility is verified on the front end, ED should verify the burden of repayment on the back end. The SSA can also provide a date of death for the applicant or borrower in most cases.

ED can reduce the pain experienced by the grieving families or representatives of deceased borrowers to ensure that the federal government is not attempting to collect on loan debt that should otherwise be discharged. A periodic crosscheck between Direct Loan and the SSA death master file should be established at a period no less than every six months. The rulemaking committee could choose whether to automatically process a loan discharge for students matching these death records, or to place any such accounts in administrative forbearance while they direct the servicer to locate the borrower's next of kin or designated representative to request further verification.

Allow defaulted borrowers to pay accounts in full during the loan rehabilitation process

New regulations were adopted last year to provide for smoother and more consumer-friendly rehabilitation of defaulted loans when a borrower makes nine consecutive, voluntary, on-time monthly payments. Borrowers must agree to a "reasonable and affordable" payment plan and monthly amounts can be calculated using income-driven formulas to provide relief to low-income or unemployed borrowers. The intent of these consecutive payments was to provide an "on-ramp" to re-enter active repayment and for borrowers to demonstrate their commitments to paying down their loan debts. ACCT applauds these changes to loan rehabilitation regulations, but they need refining.

Many community college borrowers have very low loan balances, and therefore defaulters who take the step to get back on track with repayment may also be able to pay their loans in full in one lump sum. Servicers and third-party default management providers report that it is common for defaulted students to take significant action to eliminate debts and often wish to do so as quickly as possible. For various reasons, these defaulters may have chosen not to confront the reality of their loan obligations until the account has reached the point of collections or wage garnishment, or until the borrowers are facing an immediate consequence in their lives from default.

Rehabilitation rules should recognize that this point of contact with the borrower can be improved. Current rehabilitation rules prevent students from paying their loans in full as part of a rehabilitation agreement. It is nonsensical that a student could have a loan that is simultaneously paid in full, but also in default. Such paid-in-full loans also continue to count against an institution's cohort default rate.[4] This process must be changed.

Recommendation: the rehabilitation process should allow students to pay off the entire outstanding loan balance as a means by which to remove the default from the borrower's record. Furthermore, the default should no longer count in the numerator of an institution's CDR if the loan is paid in full during the monitoring period. If a defaulter's loan debt is paid in full, he or she will pose no further risk to the taxpayer and should no longer bear the record of default. This topic needs further regulatory refinement and should be added to the committee's agenda.

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[4] U.S. Department of Education. Cohort Default Rate Guide, September 2014. Special Circumstances Involving Repayment. Section 2.1, Page 12.

Continue to provide CDR adjustments to institutions with borrowers who have split-servicing issues

In the September 23, 2014 IFAP communication, ED announced the adjustment of the calculation of official CDRs for institutions subject to the potential loss of eligibility based on borrowers who have "split-servicing" issues. The adjustment to the calculation excludes from the CDR numerator certain borrowers who defaulted on a loan but who had one or more other Direct or FFEL Program loans in a repayment, deferment, or forbearance status for at least 60 consecutive days and that did not default during the applicable CDR monitoring period. These adjustments were made for all three of the most recent official CDRs (FY 2009, FY2010, FY2011) for any institution that otherwise would have been subject to potential loss of eligibility.

ACCT applauds this CDR adjustment. A great number of community college borrowers were affected by the acquisition of loans under the Ensuring Continued Access to Student Loans Act of 2008, as well as the transition to 100 percent Direct Lending. For example, students who stopped out prior to the end of the FFEL program in 2010 and re-enrolled in 2011—a common occurrence—would have been subject to split-servicing without subsequent loan consolidation.

ACCT has long called on ED to thoroughly examine all federal data on the numerous loan-servicing issues experienced by students, and especially before making decisions to end institutional Title IV eligibility. As stated by ED in the IFAP communication, "the impact of split-servicing for borrowers will diminish over time." Split-servicing issues remain common for borrowers who entered repayment in FY 2012 and 2013.

Recommendation: until such time as students are no longer commonly split-serviced, ED should continue to adjust CDRs annually for all eligible institutions. We believe ED has the authority to implement this adjustment administratively, but should additional regulations be needed, the topic should be added to the rulemaking committee's agenda.

Provide additional assistance and relief to individual borrowers who have split-servicing issues

Similar to the adjustment made for institutional CDRs based on split-servicing, it is appropriate for ED to identify students who are experiencing unusual repayment patterns, principally having defaulted on a loan but who also had one or more other Direct or FFEL Program loans in a repayment, deferment, or forbearance status for at least 60 consecutive days. These borrowers have taken a step to stay in good standing on at least one loan, but the default on their record is leaving them subject to high collection and default fees and to damaged credit.

Recommendation: for defaults removed from schools' CDRs due to faulty servicing, the record of default should also be eliminated from borrowers' records and the defaulted loan(s) should be placed in administrative forbearance.

ED has authority to provide administrative forbearances to borrowers in default, and servicers can and do provide borrowers with retroactive forbearances to erase prior delinquencies. Neither statute nor regulations limit the number of forbearances that can be granted, or reversing determinations of default, as well as for updating reports to consumer credit agencies to reduce the harm of an earlier default determination. Administrative forbearance status could also give servicers the chance to follow up with these split-serviced borrowers to encourage consolidating the loans, which would provide further benefit to the institution and reduce the likelihood of future default. If ED believes that under current regulations defaults removed from colleges' CDRs cannot also be removed from borrowers' records, then this issue should be added to the negotiated rulemaking panel's agenda.

Revisit complex and burdensome regulations for the 150 percent subsidized loan limitation

In May 2013, the Secretary published interim final regulations related to the 150 percent subsidized loan limitation. These rules were promulgated without the benefit of negotiated rulemaking and have been administratively complex and unnecessarily burdensome.

As an example, the current reporting requirements include student-level data, such as CIP code, that are not needed for ED to monitor subsidized loan usage. CIP code reporting is very burdensome for institutions, and the amount of student-level information to be tracked by the federal government should be determined by Congress.

Recommendation: the reporting requirements for 150 percent subsidized loan limitations should be added to the negotiated rulemaking agenda rather than being issued through often-changing sub-regulatory guidance.

Prevent 90/10 rule manipulation through disbursement delays or the consolidation of campus OPEIDs

Community colleges are appropriately concerned with the stewardship of federal student aid dollars. All institutions should follow the law and help to direct limited resources to high-quality programs. The recent closure of some colleges has only elevated the need to provide smooth transfer to students—many of whom end up at community colleges—and proactive monitoring, oversight, and planning.

Under the "90/10" rule, proprietary colleges may not receive more than 90 percent of their revenue for academic activities from Title IV program funds. Some institutions have taken steps to circumvent the 90/10 requirements by delaying the disbursement of student aid in order to change how it is federally reported. When funds are arbitrarily moved into the next reporting period or fiscal year, an institution may avoid the 90 percent federal revenue ceiling. But subjective delays in student aid could be highly detrimental to students.

Recommendation: count any Title IV funds that institution disburses or could have disbursed to students in the 90/10 reporting period that includes the start of that payment period. This is a more reasonable method of federal accounting that is not dependent on widely varying institutional choices for disbursement, and would remove perverse incentives to delay disbursements for accounting purposes.

Additionally, some institutions have combined and consolidated campuses solely to avoid penalties, through the loosely-regulated Office of Postsecondary Education ID numbers (OPEIDs). Some for-profits have consolidated campuses that have revenue exceeding the 90/10 threshold with other campuses that are below the threshold, in order to lower their average ratios. **Recommendation: ED should prohibit changes in OPEIDs when institutional compliance is in question and require continued compliance under former OPEIDs for at least three years after any change.**

Thank you for the opportunity to share these thoughts regarding the intent to establish a negotiated rulemaking committee. If you have further questions, please feel free to contact Jee Hang Lee, ACCT Vice President for Public Policy and External Relations at (202) 775-4450 or jhlee@acct.org.

We look forward to working with the Administration to further refine the rules and procedures for federal student aid programs that remain of tremendous importance to creating access and opportunity for our nation's community college students.

Sincerely,

J. Noah Brown

J. Noah Brown
ACCT President and CEO