Reducing Burdensome and Unnecessary Federal Regulations that Stifle Innovation and Create Barriers to Assisting Student and Parent Borrowers

The federal government, through the U.S. Department of Education, administers more than $135 billion annually through various grants, loans, and other programs that help students, borrowers, and families access and complete postsecondary education. Unfortunately, over the last 50 years, the role of the federal government has expanded to many facets of the nation's higher education system culminating in the development and issuance of thousands of federal regulations, Dear Colleague Letters, and non-regulatory guidance with questionable impact on assisting students and families access and complete college. There is growing concern from many federal policymakers that the cumulative impact of the regulatory schema is stifling innovation and creating barriers to assisting student and parent borrowers.

In the fall of 2013, a bipartisan group of U.S. Senators created a Task Force on Federal Regulation of Higher Education to examine how institutions of higher education are regulated and identify ways to streamline and simplify regulatory policies and practices. In February 2015, the task force released its report titled, "Recalibrating Regulation of Colleges and Universities," which found that many federal rules are unnecessarily voluminous and too often ambiguous, and that the cost of compliance has become unreasonable. It identified 59 specific regulations that are a major concern to higher education institutions, including preferred lender list rules that it stated, ""are overly prescriptive and create barriers to providing information about non-Title IV loan programs with favorable terms for students." Finally, the report outlined recommendations that included creating clear safe harbors for compliance, the recognition of "good faith" efforts to comply, and several proposals for better practices by the Department.

While the Senate's task force report has been seen as the premier guide for identifying burdensome and unnecessary federal regulations, it is largely focused on their impact on colleges and universities. The adverse impact of such regulations to state, nonprofit, and for-profit higher education assistance agencies that promote access to postsecondary education and help borrowers who are struggling to repay their student loans are not addressed. These organizations are also burdened with federal regulations that have an excessive reach, are unnecessarily costly, are vague or difficult to implement, and may have unintended negative consequences for students and families. Congress should work to repeal or, at the least, limit the impact of those rules that hinder student access to college, increase college costs, or hamper organizations from working with recipients of student financial aid and postsecondary institutions and/or providing financial aid to students and parents.

NCHER Reform Proposals

The National Council of Higher Education Resources (NCHER) believes that the federal government plays an important role in increasing access to and completion of postsecondary education, and that program accountability is necessary to prevent waste, fraud, and abuse. However, the nation's higher education system – including states, lenders, servicers, guaranty agencies, collection agencies, and colleges and universities - is overburdened with complicated rules. Congress should expand its current list of burdensome regulations by encouraging the compilation of a more comprehensive assessment of unnecessary regulations and guidance in order to reduce regulatory burdens that stifle innovation and create barriers to assisting or harm students, borrowers, and parents. As part of this effort, the following are four issues that should be on the top of the list and should be addressed early in the process:

- <u>Removing preferred lender list restrictions.</u> Under the Higher Education Opportunity Act (HEOA) enacted in 2008, colleges and universities choosing to maintain a list of preferred lenders for private education loans must comply with a set of complicated disclosures and reporting requirements. The result has been that many schools have shied away from having preferred lender lists and largely ended counseling students and parents on various sources of financial aid, including private loans. Given other HEOA reforms (such as gifting prohibitions), the preferred lender list restrictions are causing unintended and unnecessary costly outcomes for many borrowers and should be repealed during the upcoming reauthorization of the Higher Education Act (HEA). At a minimum, there should be an exemption for private education loan programs that offer rates and fees that are comparable to or better than those offered in the PLUS program. In these instances in particular, current law could well result in students and parents not learning about loan programs that might be better for them financially.

- Clarifying the applicability of third-party servicer requirements. Last year, the Department of Education released a Dear Colleague Letter expanding the definition of 'third-party servicer' (TPS) and the reporting requirements for those institutions and providers that manage parts of the financial aid system and provide specialized support services to students. Previously, the Department had limited its focus to third parties performing financial aid processing and other services required to be performed by institutions of higher education. However, the Department's new action means that hundreds of loan counseling and default management providers are going to be subject to the Department's regulatory authority and audits, driving up their compliance costs and creating barriers to helping student and parent borrowers. To make matters worse, the Department has not issued any guidance, such as an audit guide, that would explain who is a TPS and what is expected of them. During the upcoming reauthorization of the Higher Education Act, Congress should clarify that TPS requirements apply to direct services authorized under Title IV of the Act.

- Allowing state grant agencies to have access to the school list order. Last year, the Department of Education announced it would no longer share the tally or order of schools a student lists on the Free Application for Federal Student Aid (FAFSA) with institutions of higher education, addressing a widely-recognized problem that some institutions used the information in sizing financial aid awards and/or making admissions decisions. The Department announced in December 2015, that beginning with the 2017-18 FAFSA cycle, it would no longer share the school list order with state grant agencies. This policy will greatly complicate the financial aid process for students and disrupt the delivery of state grant aid in 15 states that provide approximately $2.5 billion in annual state student grant aid. The Department has provided no rationale or justification for discontinuing the sharing of this information with its state agency partners. Many states need the school order, which is a reliable predictor of where a student will go, to accurately project the size of state budget requests. Cutting off this flow of information to the states in the first year of the Early FAFSA (making the FAFSA application available on October 1, 2016, rather than January 1, 2017) will make providing awards to students that much more challenging when one of the stated goals of the initiative (and of using prior-prior year tax information) is to provide students with an earlier awareness of their eligibility for grant aid to pursue their postsecondary educational goals. Congress should require the Department to provide this information to state grant agencies.

- Providing authority to financial aid administrators to lower annual and aggregate student loan limits. The HEA includes specific annual and aggregate limits on the amount of loans that students can access for postsecondary education. Dependent students can take out $31,000, independent undergraduate students can take out $57,500, and independent graduate or professional students can take out $138,500. Currently, financial aid administrators can use 'professional judgment' to factor in special circumstances affecting a family's ability to pay for the student's education or to limit loan amounts. The process, however, is time-consuming. Congress should reverse this trend by providing institutions of higher education with authority to lower loan limits for certain students. The current lack of restrictions has led to students accumulating unnecessary loan debt without making progress toward their degree goals.

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