

November 22, 2017

The Honorable Betsy DeVos, Secretary
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Docket ID ED-2017-OPE-0112

Dear Madam Secretary:

On behalf of the approximately 450 higher education institutions represented by the Career Education Colleges and Universities, I write to support the Department's proposed implementation delay that was published in the *Federal Register* October 24, 2017 (Docket ID ED-2017-OPE-0112). For the reasons explained below, we encourage the Department to further delay until at least **July 1, 2019** select provisions of the final regulations entitled Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program (the final regulations), which were published in the *Federal Register* November 1, 2016 ("the 2016 Rule") (Docket ID ED-2015-OPE-0103).¹

We best serve students, institutions, and the American taxpayer when we create a regulatory system that is clear, clean, and concise. Neither the 2016 Rule nor the delays and uncertainty caused first by litigation and second by the current Department's correct decision in delaying implementation make that possible today. The Department has often stated that its primary obligation is to protect students. We encourage you to protect students from the chaos and confusion that would result if the 2016 Rule were implemented in the current environment.

Although we believe that under the Obama Administration the Department developed the 2016 Rule with the intention of protecting students and preventing untoward actors from taking advantage of borrowers, the final regulations simply missed the mark.² As a result of a deeply partisan process, the 2016 Rule created an unnecessarily complex and costly system that is confusing to students, unfair for institutions, and puts the American taxpayer on the hook for significant costs. Therefore, we commend Secretary DeVos for delaying the 2016 Rule (82 FR 27621) and undertaking a new rulemaking process (82 FR 27640) to develop a better set of regulations that promise to create a system that is clearer, fairer, and strikes a balance between efficiency and predictability.

¹ We support delaying those select regulations cited by the Department in its October 24, 2017 Notice of Proposed Rulemaking (82 FR 49156). Appendix A includes those citations, as they are codified in title 34 of the Code of Federal Regulations, for which we support a further delay until at least July 1, 2019.

² In the Regulatory Impact Analysis that accompanied the 2016 Rule, the Department acknowledged that, "...there is uncertainty about the potential impact of the regulations" (81 FR 76048).

Since the aforementioned rulemaking process is already underway to create a new set of regulations, we believe that further delaying the 2016 Rule until at least **July 1, 2019** and maintaining the regulatory status quo under the 1994-95 standard is critical to the public interest and aligns with the regulatory reform priorities of the Trump Administration.³

In the Department's analysis of the 2016 Rule, it stated that, "[i]nsitutions will bear many of this regulation's costs..." (81 FR 76052). Notwithstanding funds transferred between institutions and the Federal government as reimbursement for successful claims, *significant costs* would be, and to some extent have already been, incurred in terms of paperwork associated with compliance with the 2016 Rule, other compliance costs as institutions adapt their business practices and training to ensure compliance with the regulations, and costs associated with obtaining letters of credit, if required by the institution's performance under a variety of triggers.⁴

Requiring institutions to expend the time and money necessary to implement such a complex and costly rule all the while a new rulemaking process is already underway is overly burdensome and contrary to Section 1 of [Executive Order 13777](#), titled "Enforcing the Regulatory Reform Agenda." This provision explicitly states that, "[i]t is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people."

Further delaying the 2016 Rule will mitigate the uncertainty about the potential impact of the regulations, reduce the regulatory burden on institutions, and maintain an easily understood process by which students may still seek redress under the current State-based standard.

We look forward to working with the Department as it undertakes the important steps of developing fair, effective, and improved regulations that ensure accountability across all institutions of higher education and protects borrowers and taxpayers.

Thank you for the opportunity to comment on the further delayed effective date. We appreciate your attention to the concerns described herein.

Sincerely,



Steve Gunderson
President and CEO

³ We remain committed to ensuring, under a further delay, borrowers may still assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.

⁴ The Department estimated annual quantified costs for institutions of \$9.8 million exclusively related to the paperwork burden (81 FR 76046).

Appendix A

- § 668.14(b)(30), (31), and (32) Program participation agreement.
- § 668.41(h) and (i) Reporting and disclosure of information.
- § 668.71(c) Scope and special definitions.
- § 668.90(a)(3) Initial and final decisions.
- § 668.93(h), (i), and (j) Limitation.
- § 668.171 General.
- § 668.175(c), (d), (f), and (h) Alternative standards and requirements.
- Part 668 subpart L, Appendix C.
- § 674.33(g)(3) and (g)(8) Repayment.
- § 682.202(b)(1) Permissible charges by lenders to borrowers.
- § 682.211(i)(7) Forbearance.
- § 682.402(d)(3), (d)(6)(ii)(B)(1) and (2), (d)(6)(ii)(F) introductory text, (d)(6)(ii)(F)(5), (d)(6)(ii)(G), (d)(6)(ii)(H) through (K), (d)(7)(ii) and (iii), (d)(8), and (e)(6)(iii) Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.
- § 682.405(b)(4)(ii) Loan rehabilitation agreement.
- § 682.410(b)(4) and (b)(6)(viii) Fiscal, administrative, and enforcement requirements.
- § 685.200(f)(3)(v) and (f)(4)(iii) Borrower eligibility.
- § 685.205(b)(6) Forbearance.
- § 685.206(c) Borrower responsibilities and defenses.
- § 685.212(k) Discharge of a loan obligation.
- § 685.214(c)(2) and (f)(4) through (7) Closed school discharge.
- § 685.215(a)(1), (c)(1) through (c)(8), and (d) Discharge for false certification of student eligibility or unauthorized payment.
- § 685.222 Borrower defenses.
- Part 685 subpart B, Appendix A Examples of borrower relief.
- § 685.300(b)(11), (b)(12), and (d) through (i) Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.
- § 685.308(a) Remedial actions.