

July 12, 2017

Kathleen Smith
Acting Assistant Secretary for Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: ED-2017- OPE – 0076; Negotiated Rulemaking on Gainful Employment and Borrower
Defense to Repayment

Dear Ms. Smith:

On behalf of the Career Education Colleges and Universities I want to commend the Department for reviewing both of these regulations. Quite simply, we can and we must do better! These rules were crafted as part of an ideological agenda that has no place when defining how we best serve the students seeking to create their professional future.

Let us begin with the basics:

- Our sector looks forward to working with you, and all parties, to constructively seek a consensus policy that can guide the work of higher education in serving students. The last rulemaking process was a charade from the make-up of the panels, to the decisions made by the Department to advance an agenda rather than develop real public policy.
- Let me begin by making clear we support good public policy advancing the interests of both Gainful Employment outcomes for our students and a Borrower's Defense to Repayment when fraud occurs.
- Every student should be able to gain employment in their area of academic preparation. Any regulation seeking to define outcomes for gainful employment must serve all career programs across all of higher education. Otherwise, we fail to protect approximately 90 percent of the students.
- Gainful Employment must first be defined. It is much more than a metric calculating debt to earnings in the 3rd year of a graduate's professional career! It begins with a student becoming what they aspired to become through their studies.
- Likewise, we have always supported a Borrower's Defense to Repayment whenever academic fraud has occurred. We have even drafted legislative language to make such protections a more permanent part of our statutes because we believe such protection is that important. We will share that draft with the rulemaking panel at the appropriate time.
- But the current regulation goes far beyond protecting students from academic fraud to include many provisions that, simply, do not belong in such a rule regarding student loan forgiveness or refund.

- This is a chance for all of us to work constructively. We look forward to working with the panels and the Department to see if this time we might be able to achieve consensus through a new set of regulations that are fair to everyone.

As you begin to develop the agenda for these panels, we encourage the following topics:

Gainful Employment:

1. Define the goal of a Gainful Employment Rule. Is the goal to assure that all students gain employment in their field of study? Is the goal to inform all students of the likely return on their investment? Or, something else?

If the goal of a Gainful Employment regulation is to protect students engaged in career preparation academic programs, then the rule must be broadly implemented to cover all students in all career programs at all institutions of higher education. Anything less leaves 90 percent of all students at risk of no protection for their career education.

If the goal of a Gainful Employment regulation is to protect students from excessive debt compared to the incomes of their new profession, then the rule must also provide schools with the authority to control a student's debt.

A properly constructed rule can guide schools in the design and costs for career programs based upon the average salaries earned in such fields. A properly constructed rule should enhance a student's knowledge of their career choices and enhance a school's sensitivity to market demands.

2. Define Gainful Employment. If gainful employment applies only to career programs, then how does one ensure that the same career programs offered by different schools are all covered? How do you ensure that all career programs in all schools are covered? These words have existed in the Higher Education Act approved by multiple Congresses through the years. What is the history and intent for the use of these words since they became a part of federal statute? How do we use such a regulation to protect the greatest number of students?
3. Design Consistent Application to all Career Programs. If the goal is to define a baseline of acceptable outcomes for career-focused education (i.e. "GE Programs"), how can we define and implement such baselines in the clearest way possible for students and the schools?

All programs receiving Title IV funds should be required to provide the same comparable disclosures – such as retention, completion, and placement in their field of study.

We must also make sure that comparable (if not identical) programs at different institutions provide the same level of information and/or protection to the students at both institutions. For example, Nursing students at School A have the exact same vocational goal as those at School B, regardless of differences in accreditation, ownership, or tax-exempt status of those schools. Can we justify providing the students of school A access to outcomes information while denying it to students attending school B?

4. Determine if the rule is meant to provide students important information; or if it is meant to be a regulation determining a school's access to Title IV. The answer to this question will lead us forward in the design of a new rule.
5. Determine the metric that provides the best, fairest and most accurate assessment of current career programs. Is there a good, yet simple, way to provide students with such information while reducing the bureaucratic and paperwork requirements? Imagine if a rule existed where no appeal process was needed because the same information was available to all.

Equally important, any metric must reflect the graduate's long-term benefits from their education. No career program should be judged by a graduate's income in their 3rd year of working. Rather, we should look at life-time earnings, or BLS average incomes for a given profession in a given economic region.

6. Develop an appropriate timetable going forward. Rules must be prospective, giving all schools appropriate time to design programs to comply with such criteria. Rules built upon data from previous years are inherently unfair to both schools and prospective students.
7. Design a rule that recognizes economic and income disparity across the nation. How do we design a rule that best serves those who most depend upon access and opportunity to career programs as a bridge to better economic times for them and their families? This may be the greatest fault of the current rule. We know that the very same academic program results in dramatically different annual incomes across the nation depending upon the economics of a given region. Identical programs at identical costs result in dramatically different economic outcomes.

We also must prevent using metrics that work in good economic times and fail in bad economic times. Such a result proves that outcome metrics tied to the economy of the moment do nothing to evaluate the academic quality of a program.

8. Design a Gainful Employment rule that will support efforts to meet today's and tomorrow's skill demands. How can we ensure that any regulation advanced does not impede individual opportunity, and regional/national skill demand in given occupations?

9. Design a Gainful Employment rule that evaluates the total cost of the program. It is blatantly unfair to compare the very same academic programs in two different schools if one is substantially supported by public-sector operating subsidies while the other school operates with no subsidies, and therefore places the full cost on the student. Today many evaluations look at total cost/graduate. This may be a place to begin such evaluation of all programs for their financial and academic value.
10. Achieve the right balance in benchmarks and outcomes to both protect students and prevent shortages of skills, access and opportunity. Ironically, GE1 advanced one set of standards. GE2 advanced a second set of standards. What is the right set of benchmarks and outcomes for all students in all sectors of higher education?

Borrower Defense to Repayment:

1. First, define the appropriate scope or purpose of a rule related to protecting a Borrower's Defense to Repayment of Title IV loans. The previous rule was hijacked by items not related to protecting borrowers from academic fraud. We cannot allow that to happen again.
2. Design a rule that protects all students in all schools. Unfortunately, academic fraud occurs in every sector of higher education. A rule must be constructed to ensure that any school with academic fraud is held appropriately accountable. The fact that taxpayer dollars underwrite certain institutions should not be the basis to exempt such institutions from the same liabilities placed on private non-profit and/or proprietary schools.
3. Articulate the basis for filing such claims. Should such claims be limited to claims relating directly to the education purchased through a student's grants and loans? The original regulation goes beyond claims related to a student's investment of Title IV dollars for a quality education to cover claims made for other reasons.
4. Design a process that can provide the cleanest, clearest, and quickest resolution of claims made by students while protecting the rights of both the student and their school. What process defines the appropriate and fair role of the department in protecting both students and their school in the consideration of claims? What rule can resolve such disputes in the most efficient way, and in providing students and schools with the quickest resolution?
5. Develop the processes for filing, and full consideration of, claims by individuals and/or groups. Individual claims and group claims represent significantly different requests for relief. Should there be a cleaner, quicker process for individuals while recognizing the potential cost of group claims requires a more comprehensive process?

6. State the appropriate Statutes of Limitation for filing such claims. The previous rule has placed no limits on certain claims and six-year limits on claims related to misrepresentation. I fear such dates were not designed to protect anyone. Rather, they were designed to promote additional claims.
7. Make clear such rule protects both the student's right to relief; and also the school's right to defense against such claims. There is a need to develop protocols that protect students in legitimate concerns. But, there is also a need to develop protocols that protect schools from harassment using such claims for ideological purposes.
8. Develop a clear and appropriate definition of misrepresentation. Should such a definition be broadly defined to cover both acts and omissions? Or, should it relate to specific acts intentionally used to misrepresent students as part of a broader enrollment strategy?
9. Structure the Department's role in managing the consideration of claims to protect the due process rights of both students and the school. Our goal must be one of conflict resolution in the most expedited, clean, clear and fair process. A new rule should be judged by its ability to resolve disputes; and nothing more.
10. Reconcile the use of arbitration in this regulation with the broader federal statutes encouraging the use of arbitration. We do not serve students well if we create a process where litigation prevails. This will delay both the resolution and the amount of relief students obtain.
11. Limit the rule to its intended purpose. Financial Responsibility requirements are already addressed in Title IV Program Participation Agreements. Any further need for revision of such standards should be addressed outside of this rule. Likewise, repayment rates may be the new metric for judging overall student success. But that is more appropriately a consideration for HEA Reauthorization than a part of any rule related to protecting students from academic fraud.
12. Again, we must design a regulation that is prospective in nature – providing both students and schools the opportunity to prepare for such a regulation before it becomes law. Our sector seeks to work constructively with the Department and all parties in developing a new set of guidelines. But when done, schools must have the appropriate time to make any adjustments in their operations – and even in their admissions of at-risk students – in order to move forward with policies that are fair and just for all parties.

We have learned much from both the process and the issues included within the current regulations. We can build on this process to constructively change those provisions which have been proven – by both data and court rulings – to produce dramatically different results than may have been intended. Goals and process matter. I would suggest that the goals and the process used in creating the original rules have created the controversy and problems leading to today's call for a new beginning.

We begin this process with two important goals with universal support. We all want to protect students. And we all want to meet the growing demand for skilled workers. Combined, these two goals should serve as an incentive for everyone to set aside the strident ideologies of the past and seek consensus in ways that both protects the students and enables the schools to continue advancing their academic programs to such students.

We look forward to working with you, and through the Negotiated Rulemaking Panels, to achieve these goals. We hope the agenda items suggested above are helpful in setting the roadmap towards successful negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

Steve Gunderson
President & CEO
Career Education Colleges & Universities