Reforming Higher Education Regulations

Comments in accordance with
the Department of Education's Call for Comment
and
Executive Order 13777, "Enforcing the Regulatory Reform Agenda"
Docket ID: ED-2017-OS-0074
Comments Due: September 20, 2017

Please accept these comments in response to the U.S. Department of Education's June 22, 2017 call for comment regarding unnecessary and overly burdensome regulations.

In the United States, higher education has long been deemed an important fiscal investment for the prosperity of the nation. Postsecondary education continues to contribute to social and economic mobility for individuals and families. As the steward of the Federal government's investment in higher education, the Department of Education (ED) provides procedures and guidance for institutions' to comply with federal laws established for the eligibility of Title IV Federal Student Aid programs. However, since its inception, ED's oversight has expanded and become overly burdensome for students, institutions, and the Department. Students struggle to accurately complete the FAFSA, institutions struggle to effectively follow and comply with inconsistent Federal regulations, and the Department struggles to process applications and complaints and enforce regulations. The onslaught of Federal regulations has caused the entire education system to spend more time and resources on compliance and risk management rather than education, students, and continuous improvement.

Today's higher education systems are struggling to modernize under increasing regulatory burdens. Modernization is crucial for serving our nation and continuing to change the lives of students. Our traditional views of who attends postsecondary education, what is taught there, and who pays for it are shifting. The Department of Education has an opportunity to support the modernization of American education so that all institutions focus on student success, have the flexibility to innovate, and provide education that meets the needs of our changing economy. The expansion of ED's regulatory oversight has significantly changed the higher education landscape and, without intervention, will continue to progress toward excessive federal oversight and threaten the opportunity of higher education itself.

In accordance with the Department's Call for Comment [FR Doc. ED-2017-OS-0074], the following regulations are highlighted for reform due to their impediment to higher education and the nation, and being overly burdensome and costly for institutions. The regulations are categorized in alignment with the areas identified in EO 13777.

Eliminate Jobs/Inhibit Job Creation

- **Gainful Employment Regulations (34 CFR 668 Subpart Q)**

The Department's regulation of "gainful employment" began with complex rulemaking in 2010 and the complexities continue through the Department's Dear Colleague Letters, Electronic

Announcements, and Q&A documents today. There have been numerous bipartisan and partisan letters from various members of Congress written to the Department and Secretary of Education since 2010 requesting the Department to cease the promulgation of the gainful employment rule. These Congress members expressed the desire to ensure that federal financial aid dollars were spent wisely and that students were not misled; however, the gainful employment rule was ill-conceived and its consequences have not been fully considered.

The Department's focus on defining and regulating the criteria for determining whether a program of study leads to "gainful employment" has clearly been directed toward vocational and career education programs at for-profit institutions—the very programs needed for today's evolving economy. The phrase "gainful employment" had existed in the Higher Education Act for more than 40 years without the need for an overly complex attempt to define it. Unfortunately, the previous administration's focus on regulating this phrase without Congressional input has created flawed, costly, complicated and overly burdensome requirements for institutions.

There were approximately 95,000 public comments to the last Call for Comment regarding the proposed Gainful Employment rule. The overwhelming majority of the comments and suggestions, although answered by the Department in the Federal Register, were ignored.

Many of the 95,000 past commenters felt that the Department was clearly focusing the rule at programs offered by for-profit institutions. The Department's response in the Federal Register was:

> *"The regulations establish an accountability framework and transparency framework for GE programs, whether the programs are operated by for-profit institutions or by public or private non-profit institutions. However, we are particularly concerned about high costs, poor outcomes, and deceptive practices at some institutions in the for-profit sector."*

Only non-degree programs offered by public or private non-profit institutions are included in the Gainful Employment rule while all programs offered by for-profit institutions are included in the rule with very few exemptions.

If the Department has concern about high costs, then a true net taxpayer cost analysis needs to be completed and published. The analysis should detail the true net cost to the taxpayer to educate a student through an entire program within each sector of higher education: public, private non-profit and for-profit. This analysis should include all grant funds; local, state and federal appropriations; defaulted student loan amounts; defaulted collected student loan amounts; local, state and federal tax exemptions and other local, state and federal tax benefits; and local, state and federal tax payments. This information should be accurately calculated and disclosed to all taxpayers. Additionally, true net costs should be considered when enacting any new rules rather than isolating rules toward one sector that is inaccurately perceived to have high costs. The disproportionate cost per student in the public sector vs. the for-profit (taxpaying) sector was commented on in the last Call for Comment for the proposed gainful employment rule. The Department decided to focus their answer on the tuition charged by the various sectors, specifically the higher tuition at for-profit institutions. Appropriations and tax exemptions afforded to other sectors were disregarded. In conclusion, the Department stated:

"The Department acknowledges that funding structures and levels of government support vary by type of institution, with public institutions receiving more direct funding and public and private non-profit institutions benefiting from their tax-exempt status. However, as detailed in ''Discussion of Costs, Benefits, and Transfers'' in the Regulatory Impact Analysis, we do not agree that the regulations will result in significant costs for State and local governments. In particular, we expect that many students who change programs as a result of the regulations will choose from the many passing programs at for- profit institutions or that State and local governments may pursue lower marginal cost options to expand capacity at public institutions."

These funding structures and level of government support need to be clearly and transparently disclosed to taxpayers and considered when negotiating new or revised rules. The for-profit, taxpaying sector has been unfairly represented as having high taxpayer costs.

When considering the impact of the renegotiated rules, the Department should consider the outcomes of each sector. The for-profit sector has better outcomes, on average, than other sectors. The average graduation rate from the 2008 IPEDS data, within 150% normal time, of all institutions in each sector is highest among for-profit institutions. And, it should be noted that over 50% of the students enrolled in public institutions are at institutions that have a graduation rate, within 150% normal time, that is under 40%.

Average of all institutions graduation rates				
Graduation rates within 150% normal time, latest cohort available on IPEDS, 2008				
	Average			
Public, all institutions	39%			
Non-Profit, all institutions	55%			
For-Profit, all institutions	**60%**			

Additionally, the Department should consider other indicators of institutional and graduate success, such as cohort default rates. The average cohort default rate for all for-profit higher education institutions is lower compared to the average cohort default rate for all higher education institutions in the public sector. Even with the public sector having access to local, state and federal appropriations and tax exemptions while the for-profit sector pays taxes, all impacting the tuition amount ultimately charged to students along with the respective amount of Title IV loans needed by the students.

2013 Cohort Default Rates (NSLDS.ed.gov)	
Average Cohort Default Rate by Sector	
	Average
Sector	Rate
Public institutions	13.43
Non-Profit institutions	6.33
For-Profit institutions	12.83

The Gainful Employment rule as it currently exists has led and will continue to lead to fewer institutions being able to offer vocational and career-focused programs. The Department released a statement on January 9, 2017 that stated:

> *"The Department previously estimated there were over 37,000 distinct GE programs in 2014. Today, there are fewer than 29,000."*

Clearly, the Gainful Employment rule has already had a significant impact on the programs available to students. Students and communities that rely on the training provided by these programs (e.g., cosmetologists, pilots, welders, mechanics, HVAC technicians, medical technologists, computer technicians, etc.) will lose valuable opportunities under the current gainful employment rule. The erroneous metrics for determining debt-to-earnings ratios and obtaining earnings data exemplifies the need for re-evaluating this regulation.

The Gainful Employment rule essentially identifies the career and technical programs, and occupations, that non-traditional, and minority students typically pursue. The for-profit education sector educates a diverse population with a high percentage of student enrollments comprised of women, adults, and black or African-American and Hispanic students.

Fall 2015 Demographics, IPEDS			
	Public Institutions	**Non-Profit Institutions**	**For-Profit Institutions**
Total men	45%	42%	35%
Total women	55%	58%	65%
Students under age 25	69%	60%	31%
Students age 25 and over	31%	40%	69%
American Indian	1%	0%	1%
Asian	6%	5%	3%
Black or African American	12%	11%	25%
Hispanic	18%	12%	18%
Hawaiian or other Pacific Islander	0%	0%	1%
White	52%	53%	37%
Two or more races	3%	3%	3%
Race / ethnicity unknown	4%	7%	12%
Nonresident alien	4%	8%	2%

Additionally, the occupations pursued by some of the gainful employment programs, regularly have tip-based or independent contractor incomes and are often misreported to the IRS. This further faults the institution when the gainful employment ratios are based on annual earnings reported by the IRS. The annual earnings data, which only further demonstrates the Department's flawed GE methods, is information that institutions cannot verify or contest but only may appeal through an onerous, nearly impossible, process. Furthermore, this most recent GE debt-to-earnings results were based on the cohort of students who graduated into the worst economy that the majority of U.S. citizens have encountered in their lifetime. Institutions are being penalized for the types of students they serve (or served years ago), the types of programs they offer, the misreporting of incomes by graduates, the volatility in the economy, the misrepresentation of the costs to taxpayers and the misrepresentation of student outcomes—this

type of consequence will only lead to institutions being more selective and offering fewer career and technical programs—a result that could be catastrophic for our citizens and economy.

The Gainful Employment rule also entails disclosure requirements, which are overly complicated and confusing for consumers. We agree that prospective students should have the information necessary to make an informed decision regarding their program of study. However, the current disclosure template provides little clarity in terms of program outcomes, loan information, and employment. Consumers cannot adequately compare similar programs at various higher educational institutions because the data provided in the template varies based on the type of institution, the number of students in the cohort, and the reporting requirements of the institution's state and/or accrediting body. Should the disclosures remain, the information in the disclosure templates should be streamlined, provided by all institutions of higher education for all programs offered, and only provide fundamental information needed for students' decision making.

The current Gainful Employment regulation was promulgated to attack vocational and career-focused programs specifically offered at for-profit institutions. Should it be deemed by the Negotiators that "gainful employment" is a term needing regulation, we encourage the Department to consider the impact of such a regulation on students and the economy. Any higher educational program that is eligible for Title IV funding should lead to "gainful employment." Any "gainful employment" rule should apply to all higher educational programs that offer Title IV funding. Our Federal government should be focused on providing more of the best opportunities for all citizens to pursue a higher education that leads to personal academic and economic improvement. It should not be in the practice of eliminating opportunities and choice for students.

We are encouraged that the Department has delayed portions of the gainful employment rule and plans to renegotiate the gainful employment regulations. We encourage the Department to appoint Negotiators who will represent all stakeholders of the gainful employment regulations in a fair and balanced manner. We recommend that the Department reconsider the entire rule. Specifically, the Department should re-evaluate and consider the undue burden on institutions for reporting gainful employment data, that there should be comparable disclosures across all higher education programs, that all programs receiving Title IV funding should lead to gainful employment, the economic impact of eliminating gainful employment programs within certain communities or within socio-economic classes, the Department's ability to effectively administer the gainful employment regulations and the cost of doing so.

- **Definition of a Credit Hour (34 CFR 600.2)**

The Department's decision to define the credit hour as "seat time," has had a drastic effect on innovation and improving educational delivery models for the 21st century. Emerging competency-based programs offer students the ability to progress at their own pace by demonstrating competency in the prescribed learning outcomes. This model allows students to complete their programs sooner, often for less money, and enter the job market more quickly. However, the Department's definition prohibits competency-based programs from participating

in Federal Student Aid programs. The issue was later recognized by the Department when it launched the Competency-Based Education (CBE) Experiment and the Prior Learning Assessment (PLA), Competency-Based Education (CBE), Limited Direct Assessment (LDA) and FWS for Near-Peer Counseling Experiments in which it provided statutory and regulatory waivers for select institutions to experiment with the awarding of Federal Student Aid in competency-based programs. Additionally, the Department also launched the Educational Quality Through Innovative Partnerships (EQUIP) Experiment where it again provided waivers for non-traditional providers (boot camps) to partner with participating institutions in order to participate in Title IV programs. Obviously, the Department has re-considered the need for the definition of a credit hour through these experiments. The idea that students must complete their education within a prescribed definition of credits is fading. Knowledge and skills aren't demonstrated at the end of 3 credit hours, but when the student can demonstrate competency in the learning outcomes. If students are able to do this more quickly, for less money, and enter the job market—the federal government shouldn't interfere with that progress by maintaining an archaic definition for awarding Federal Student Aid.

We recommend that the Department remove the definition of a credit hour. Institutions must be allowed to meet the changing needs of students and employers by innovating in their delivery methods and learning modalities.

Outdated/Unnecessary/Ineffective

- **Verification (34 CFR 668.51-668.61)**

The verification of information provided on the Free Application for Federal Student Aid (FAFSA) is essential in the appropriate processing of Federal Student Aid loan and grant applications. However, the Department's revised verification regulations expanded the data elements for verification, which placed an undue burden on institutions and students. Additionally, the Department's timing and poor application of the IRS Data Retrieval Tool and subsequent removal of the tool, led to additional issues for both students and institutions when trying to verify the increased set of data elements. The expanded verification process and issues with the IRS Data Retrieval Tool point to the ineffective outcome of this expanded regulation and the Department's inability to effectively administer the rule.

We recommend that the Department re-launch the IRS Data Retrieval Tool to assist students and institutions with populating the FAFSA with their tax return data and eliminate the need for verification of this data item. Or, alternatively, the Department could itself validate data elements it has the capability of verifying rather than placing the burden on students and institutions.

- **Return to Title IV (R2T4) (34 CFR 668.22)**

The Return to Title IV (R2T4) process has become overly complex. With a prorated system for calculating R2T4 amounts based on attendance, the Department obligates institutions to meet federally mandated definitions of attendance. Most institutions do not take attendance, and when

students don't follow the institution's policies for withdrawal, it is difficult for institutions to calculate the "last date of attendance" for return to Title IV purposes. Possible delays in processing R2T4 refunds can have adverse consequence for both the student and institution. Students may accrue additional interest on loan funds and institutions may be penalized for not following the Department's return timeframe.

The Return to Title IV process and calculations have become overly complicated and ineffective. We recommend that the Department consider a more streamlined approach for return calculations based on the end of a semester or quarter period.

- **Accreditation (34 CFR 602 Subpar B)**

Accreditation plays a vital role in establishing quality assurance for consumers. However, in recent years, accrediting agencies have morphed into pseudo regulatory auditors and enforcers for the Federal government. In contrast to the Department's own publication regarding accreditation:

> "The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality….Under the HEA the Department 'recognizes' (approves) accreditors that the Secretary of Education determines to be reliable authorities as to the quality of education or training provided by institutions of higher education, and the Department publishes a list of nationally recognized accreditors. The Department does not accredit individual educational institutions and/or programs and is not directly involved in the institutional or programmatic accrediting process."

the Department has increasingly encroached on the role of accrediting agencies through its recognition process. Rather than recognizing accrediting agencies for their independent, institutional review activities, which are supposed to focus on student learning and academic quality, the Department has focused their recognition on the accrediting agencies' abilities to enforce federal requirements, such as refund calculations, financial stability, the definition of the credit hour, misrepresentation, and other Title IV regulations.

This regulation has become ineffective in properly outlining the role of accrediting agencies as separate, independent reviewers who are not a part of the Federal government. We recommend that the boundaries between accrediting agencies and the Department need to be more clearly formed. Accrediting agencies and the peer-review process should remain student and academically focused. Educators may not be the best suited professionals for auditing compliance with Federal regulations. Professionals within the Department are the most appropriate subject-matter experts for reviewing compliance with Federal regulations. If the Department does not have the capacity to adequately perform these reviews, this only serves as further justification for the reduction in growing Federal regulations.

- **State Authorization (34 CFR 600.9)**

Under the Program Integrity rules, the Department expanded the requirement of state authorization from the state in which the institution was physically located to all states in which it operated. With so many emerging online programs, which are offered to students all over the country, this rule had a profound impact on students, institutions, and states. Many states were not prepared to expand their approval process to thousands of institutions all over the country. States were burdened to create regulations and guidelines for processing out of state authorizations. Institutions have had to expand their compliance efforts to meet each state's regulatory requirements for approval, which are often inconsistent with their own state's requirements. The Department even recognized the complexity this rule had caused when it stayed the effective date of the regulation from July 1, 2011 to July 1, 2015 in order to "allow schools to come into compliance and States to prepare for the requirements."

The Department should not be involved with state authorization requirements. Each state has the authority to create its own authorization regulations, and the Federal government should not be involved with the enforcement of such rules. This rule is overly burdensome and unnecessary. We recommend that the Department vacate this rule and should be prevented from publishing future state authorization regulations.

- **Misrepresentation (34 CFR 668.71-74 and 34 CFR 685.222)**

Substantial misrepresentation by an institution is wrong and should be included under the purview of the Secretary in accordance with the Higher Education Act (HEA). However, the Department's recent enforcement of misrepresentation and expansion of the definition under the Borrower Defense to Repayment rules, significantly altered the intent of the rule. Under the new definition, institutions would be held accountable for inadvertent mistakes made by staff members to prospective students. Institutions are also responsible for the misrepresentations made by third parties, which are not clearly defined by the Department under the current rule.

The rule should focus on the intent of the institution and fraudulent activity, not errors by well-intended staff members, faculty, and even Federal Work Study students. We recommend that the Department return to the original definition of misrepresentation and focus its enforcement on fraudulent actors who clearly intend to deceive prospective students.

- **School/Servicer Audit Guide: Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs (Audit Guide)**

The Department's recent release of the Audit Guide (September 30, 2016) creates significant expansion to the role of independent auditors of for-profit institutions. The Guide, which hadn't been updated since 2000, was clearly the last administration's final attempt to entrench their regulatory oversight of for-profit institutions. Under the new Audit Guide, auditors are required to test more student files, more non-student items, and the audit focuses on most of the last

administration's overly burdensome regulations (i.e. program integrity rules, disclosures, and gainful employment).

The new guidelines in the revised Audit Guide will increase audit fees and require more staff time for audits—again pulling essential resources from student learning and support.

The revisions to the Audit Guide were unnecessary and create overly burdensome requirements for institutions. We recommend that the Department rescind the current Audit Guide and return to the 2000 version, especially in light of the new negotiated rulemaking process for the Gainful Employment and Borrower Defense to Repayment regulations.

- **Borrower Defense to Repayment (34 CFR 685.222)**

We appreciate the Department's decision to delay the implementation and re-open the negotiated rulemaking of the Borrower Defense to Repayment regulations. We agree with the Department's evaluation that there should be a clear process for students to make a defense to repayment; however, there are several areas of the current rule that are unnecessary and ineffective. For example, the current rule's definition of misrepresentation, statute of limitations statement, determination of institutional accountability and financial responsibility, due process, and arbitration provisions are overly burdensome for borrowers, institutions, and the Department. The process for borrowers to make a claim of borrower defense to repayment and for the Department to process that claim should be transparent and easily navigated so that timely decisions can be made. The current regulations do not reliably focus on eliminating deceptive practices, but rather create further un-related burdens for borrowers, institutions, and the Department.

We first encourage the Department to review the unnecessary definition of misrepresentation. The expansion of this definition is too broad and goes well beyond substantial and fraudulent misrepresentations. Under the current regulation, any inadvertent or unintended misrepresentation regarding the nature of the educational program, financial charges or employability of graduates could lead to a claim and negative consequences for an institution. The rule allows for the Department to provide debt relief to groups of borrowers, the consequences of those inadvertent or unintended misrepresentations would then be multiplied without an opportunity for the higher education institution to make a correction. Before the Department begins to review the structure for processing claims, it should first review the the criteria under which claims can be made. If the intent of the rule is to stop fraudulent acts by institutions, then the crime should be fraud – not an unintended mistake. The most substantial criteria in this rule is the definition of misrepresentation. The current definition would lead to undue burden on both institutions and the Department for processing frivolous claims.

Borrowers should be required to make their own application regardless of the Department's determination that they should be included in a group claim. The Department should also be held to transparency standards regarding timeframes for processing claims. Without clear timeframes, students will have unknown amounts of interest accruing on their student loan debt while the Department processes their claims.

The inclusion of the institutional accountability and financial responsibility provisions is ill-placed and flawed in the current regulations. The Department may determine that these areas need further regulation, but the Borrower Defense to Repayment regulations are not the appropriate vehicle for these rules. Again, the Department should only focus on clarifying and simplifying the current structure for processing borrower defense to repayment claims—not on further regulating institutional operations that are solely focused against for-profit institutions.

We encourage the Department to review its procedural process in regard to institution's due process rights under the current rule. The regulations' lack of due process rights provides little opportunity for institutions to defend themselves against claims. For example, under the current rule, the Department is not required to supply evidence to schools, provide schools with written determinations, provide schools with a guaranteed timeframe for response, and affords institutions with no appeal opportunity. As written, the regulation is flawed and each party's due process rights should be considered during the rulemaking process.

Finally, the Department does not have the authority or the directive to regulate pre-dispute arbitration agreements, and this provision should be removed from the current regulation. The Department cannot violate the Federal Arbitration Act. The current rules prohibit institutions from entering a pre-dispute agreement. However, these agreements are voluntary, often provide faster, more flexible resolutions, and provide a less hostile setting for both parties. The addition of this provision again goes beyond the scope of the Department and the purpose of regulating the Borrower Defense to Repayment structure for processing claims.

- **Eligibility and Certification Approval Report (ECAR) Timelines (34 CFR 600.20(c) and (d))**

In service to students, both schools and the Department must work cooperatively to timely ensure that students have access to in-demand programs and campuses. While institutions are held to specific timelines for updating the ECAR in order to add programs and/or locations, the Department is not held to any timelines for reviewing and approving these applications. This often leads to extreme delays with little communication from the Department. Because of this, institutions are often required to delay their academic offerings even when students and employers are requesting their services. Through defined processes and timelines for institutions *and* the Department, both can more effectively communicate program offerings and eligibility to the public while at the same time meeting today's fast-paced training needs.

- **Third Party Servicer Definition (34 CFR 668.2)**

The regulations define Third Party Servicer at 34 CFR 668.2. However, the Department's recent guidance regarding Third Party Servicers has substantially expanded the interpretation of this definition. Now, nearly all entities that interact with a Title IV institution are subject to Third Party Servicer requirements leaving institutions with high liability for the actions of these servicers. The Department should provide singular direction on the definition of Third Party Servicers that clarifies the school's responsibilities for these parties.

- **Recertification Timelines (34 CFR 668.13 and 600.20)**

As with many other regulations mentioned here, the Department should be required to process applications within clearly defined timeframes. Applications for Title IV Recertification should not be delayed without due cause. Delays to recertification without clear timeframes and justifications lead to uncertainty and hinder institutions from offering new academic programs. Recertification applications should be processed within 6 months of the date of the application.

- **Program Reviews (34 CFR 668, Subpart H)**

Program Reviews provide an opportunity for both the Department and institutions to review practices and ensure the stewardship of federal dollars. However, the imbalance of due process rights for institutions is especially burdensome. The Department often takes long periods of time to complete the Program Review process, which leaves schools without clear guidance or resolution. The Department should be required to complete the review process within 180 days of commencing the program review.

- **Composite Scores (34 CFR 668, Subpart L)**

The composite score methodology should be reviewed and updated for all sectors of higher education. The Department should review this methodology to ensure that the appropriate calculations are used for all institutions, not just non-profits. There are many factors which can determine a school's financial responsibility, and the composite score should be a reflection of those criteria.

- **Sales and/or Transfer of School Ownership/Operations (34 CFR 600.31)**

The sale or transfer of ownership of an institution with more than one location should not be hindered by the previous administration's "all or none" approach. Unaffiliated buyers should have the opportunity to invest in successful campus locations regardless of the main campus's performance. Under the previous administration, the reliance on the single OPEID number for transfer of ownership prevented the sale of successful Corinthian, Anthem, and other large campus locations, which further hurt students attending those campuses. Students and taxpayers would be better served if the sales and/or transfer of school ownership regulation were reviewed and updated to reflect a simplified regulatory processes for the acquisition of institutions.

Costly

The Department's overly aggressive regulation of the higher education community has had significant costs. Institutions have had to shift their resources toward compliance and risk management rather than focus them on student learning, student resources, and innovation. All of the regulations cited here carry significant costs to both students and institutions. For example,

the expanded verification process has led to students withdrawing from their academic programs altogether rather than completing the FAFSA verification process—leading to the worst student debt: debt with no degree. State agencies have spent thousands of dollars working to comply with the Federal state authorization requirements, and institutions expect a 50% increase in auditor fees due to the new Audit Guide. While these are just a few examples of the financial costs associated with the Department's excessive regulations, the academic and opportunity costs to students are the greatest. Students suffer when the Federal government over extends its authority. Through this era of escalating oversight, institutions have become regulatory bureaus rather than epicenters of learning and innovation. When institutions are pulled from their missions to educate and serve students, they are no longer highly focused on providing quality academic experiences, student support, and economic opportunities. The costs of these regulations go far beyond financial burdens and impact the higher education community's ability to effectively modernize and serve students and our economy.

Inconsistent

- **Clery Act and Violence Against Women Act (VAWA) (34 CFR 668.41; 668.46)**

The Clery Act has served to provide valuable crime and safety information to students regarding their institutions. As part of the Clery Act requirements, each institution's Annual Security Report provides public disclosures and vital safety information for remaining safe while on campus. However, the reporting requirements have evolved over the years to include unclear crime definitions, inconsistent policy statements, and confusing data for students to make informed decisions. For example, many incidents that occur on campuses are not considered "crimes" by the Department of Justice's Uniform Crime Reporting (UCR) definitions, yet they must be reported in the institution's crime log and Annual Security Report. This only causes confusion for campus safety officers trying to report appropriate statistics and likely errors and inconsistencies in reporting.

The recent amendments to the Violence Against Women Act (VAWA), which amended the Clery Act, require institutions to report on sexual assault, stalking, dating violence and domestic violence and expanded staff and student training responsibilities. However, the Department's definition for these crimes does not align with the institution's state definitions of these crimes, which vary from state to state. The expanded training and policy statement language also overlaps with Title IX DCL guidance and again is inconsistent and causes confusion for institutions try to implement these laws.

We recommend that the Department review the Clery Act/VAWA definitions and requirements and align with the Department of Justice's UCR guidance for defining crimes. This would create consistency across all Annual Security Reports provided by institutions. Additionally, we recommend that the Department consider aligning VAWA policy and training requirements with its Title IX requirements.

- **Title IX (34 CFR Part 106)**

Title IX of the Education Amendment of 1972 prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance. This statute has been a vital rule for over 40 years in leveling opportunities in education and providing a safe learning environment for all. However, the past administration's focus on expanding the role and oversight of this rule through Dear Colleague Letters and enforcement actions has been inconsistent and concerning. The Department's Office for Civil Rights (OCR) has issued significant guidance that substantially changed institution's responsibilities under the law. Specifically, the Department's 2011 Dear Colleague Letter and subsequent guidance and comments in Resolution Agreements with institutions found to have violated the law has provided sub-regulatory requirements for institutions. The Department's April 24, 2015 letters to intuitions and specifically Title IX Coordinators, essentially designating them as pseudo Federal agents for the Department's enforcement of Title IX, clearly overstepped the government's authority to enforce this rule.

The ideals represented by Title IX are essential, but the Department's aggressive enforcement of Title IX has led to an imbalance in due process rights, unclear responsibilities for institutions, and rule-making without appropriate input. Additionally, the Department's pattern of overreach has created inconsistencies with Title IX guidance when compared to the Violence Against Women Act (VAWA) requirements—causing further confusion for students and institutions for properly complying with the laws. For these reasons, we encourage the Department to review the last administration's Dear Colleague Letters and guidance documents and consider a rule-making process that would address and clearly define Title IX's application and institution's responsibilities for processing Title IX complaints. This would provide the education community with clearer guidance on the Department's expectations for fairly and consistently complying with the law.

- **Consumer Information (34 CFR 668.41-49)**

Transparency is an important theme in today's society. We agree that institutions should provide consumers with information regarding their schools so that prospective students and families can make informed decisions about their education. However, the Department's disorganized approach to the type and source of required information institutions must disclose has only provided unclear information for consumers to decipher. Additionally, the Department's consumer information regulations require institutions to disclose information in a variety of sources. For example, the Gainful Employment Disclosure Template, Financial Aid Shopping Sheet, College Scorecard, and the Net Price Calculator, all of which use different metrics, cohorts of students, and timeframes for disclosing information about the institution. With so much inconsistent data available, consumers are left confused, and institutions must spend hours providing additional explanations.

We recommend that the Department revise the Consumer Information regulations so that all higher education institutions are disclosing the same information in one format. We also encourage the Department to study the type of information consumers find most helpful when choosing an institution. The Department should also study the user experience in accessing this data in order to provide the most appropriate format for this information.

We appreciate the Department's foresight and recognition of the devastating impact Federal overreach has had on education in the United States. Over regulation has been a growing concern in recent years and has stifled the education community. We look forward to the Department's Regulatory Reform Task Force's findings and the Department's overall recommendations for the President's Executive Order 13777.