Comments on Review of U.S. Department of Education Regulations

By Lanae Erickson Hatalsky

Hillary Malawer
400 Maryland Ave, SW.
Room 6E231
Washington, DC 20202

RE: Request for Comment on Review of U.S. Department of Education Regulations (ED-2017-OS-0074)

Ms. Malawer:

Thank you for the opportunity to comment on the Department's recently published Federal Register notice seeking input on the Department's review of regulations that may be appropriate for repeal, replacement, or modification (ED-2017-OS-0074). As you move forward with your review of the current regulations in place, we hope that you will take our comments into consideration. It's imperative that our federal government works to increase the success of low-income and middle-class Americans in our higher education system, as gaining a credential beyond high school has become a necessity in our changing economy. We see several opportunities to update regulations to better achieve this goal, specifically through modifying the rules around accreditation to focus on student outcomes, updating the Cohort Default Rate (CDR) to capture schools where students cannot repay their loans, and broadening the Gainful Employment rule to hold all institutions accountable for the value they provide to their students.

Accreditation: Each year, the federal government invests $130 billion in federal aid to colleges and universities—including $30 billion in Pell Grants for low- and moderateincome students alone—as a way to equip all Americans with the skills they need to succeed in the new economy.[1] If institutions do not increase opportunities for their students, we should not use taxpayer dollars to fund them. However, the current accreditation system is not structured to adequately protect our students from low-performing institutions or to assure minimum guarantees of quality when students and families write their tuition checks. Instead of focusing on institutional compliance, the Department should examine its current regulations and work with Congress to better incorporate student outcomes into the accreditation process.

The *Higher Education Act* (HEA) provides a number of standards that accreditors must incorporate when determining which institutions should or should not have access to federal funding. This includes the assessment of an institution's curricula, faculty, facilities, fiscal and administrative capacity, recruiting and admissions practices, student support services, and measure of program length.[2] While many of these inputs can prove helpful, the HEA includes no information about how or what accreditors should measure in regards to student achievement as part of the accreditation process. This means that regardless of how poorly students are doing after attending a specific institution, this information is not required to be taken into account when determining whether or not that institution receives an official stamp of approval from the federal government.

To fix this, the Department should continue its work with the National Advisory Committee on Institutional Quality and Integrity to ensure that the accreditors are not approving low-performing institutions to participate in Title IV programs. Additionally, it should work with Congress to allow for a greater focus on institutional quality and student outcomes for accreditation approval, rather than continuing with the checklist approach that is currently in place. A number of higher education stakeholders and legislators from both sides of the aisle see accreditation reform as one of the few federal levers that exists to improve college quality. The Department should work to encourage legislation that not only requires accreditors to take student outcomes into account, but removes some of the compliance-based activities that do not protect student interests or focus on student success. As these watchdogs heavily control access to the billions in taxpayer dollars that flow to institutions each year, it's important that they have the statutory language in place to help them better focus on student achievement.

Cohort Default Rate:

The Cohort Default Rate (CDR) originally put in place in the 1980s to limit federal funding to low-performing institutions has now become an ineffective quality assurance mechanism. As you know, when students enter forbearance or deferment on their federal loans, they are able to avoid official "default" within the current CDR calculation. All institutions are now aware of this loophole, and many have learned how to "manage" their CDR by encouraging their former students to enter such repayment status in order to avoid the federal sanctions associated with a high CDR rate. This in turn leads to a low CDR for that institution, yet, does little to exemplify whether or not that institution is actually preparing students to become financially secure and repay their loan after attending. Last year, only 10 out of the more than 5,000 institutions that participated in the student loan programs lost their eligibility to receive federal student aid due to CDR sanctions.[3] Those ten institutions are extremely small – they only enrolled 619 of the more than 16 million students that attended an institution of higher education last year.[4]

It's time for an update, and the Department should promote policies that better capture students' ability to pay down their educational debt after attending an institution. For one, there are many students not captured in the CDR measurement who struggle to repay their loans every month but manage to barely stay out of default. While those students may be in financial hardship and not actually paying down their loans, their inability to do so is not reflected in an institution's CDR, which only measures defaults. Additionally, CDR fails to take deferment or forbearance (two options that allow students to temporarily reduce or delay payments on their loans due to special circumstances like financial hardship or enrollment in graduate school) into account. So, while there were $25.4 billion in federal loans that were in deferment due to economic hardship in 2016 alone, the students deferring on these loans are still shown as a success within an institution's CDR.[5]

The Department should do everything in its power to make CDR a more effective measure of student and institutional success. Some in Congress are already working on existing legislation that would do just that. For example, Senators Jeanne Shaheen (D-NH) and Orrin Hatch's (R-UT) released the S*tudent Protection and Success Actin 2015*, which would update the CDR to instead measure the loan repayment rate at a given institution over a period of time. This would require the federal government to look at the percentage of students able to pay down at least $1 on the principal of their federal loan over a certain period of time as opposed to just the number of loan defaults. Updating the CDR to repayment rate would be a more robust and reflective measure of students' financial health than just the students in dire straits. Not only can the repayment rate act as an effective performance indicator for policymakers to protect student borrowers, it can also provide information to institutions to promote timely and successful repayment among their students. If implemented effectively, this measure can lead to stronger student outcomes.

Gainful Employment:

Similar to the impetus for implementing the CDR, the Department fully established what is known as the "Gainful Employment" rule in 2014.[6] This regulation was intended to address some of the rising concerns of poor institutional outcomes, specifically for those enrolled in career education programs across the country. The horrific outcomes at some of these programs are not only bad for those enrolling and looking to gain 21st century skills, but also for taxpayers who are footing the bill with little return on their investment. The Gainful Employment rule was put in place only to allow federal funding to flow to those programs with strong results for its students. If most of a career education program's graduates fail to make a high enough salary to comfortably repay their loans, that program can no longer receive taxpayer-funded grants or loans to help fund its operations. It's one of the only effective outcomes-based accountability regulations that the Department currently has in place.

This year, 803 programs failed the Gainful Employment metric due to their former students not earning enough to pay down their educational debt. Out of the programs that failed, 114 of these programs actually had the majority of its graduates earning below the federal poverty line. The median salary at the typical program was only $18,927. That's over $6,000 less than the salary of the average high school graduate. However, the typical debt taken out to attend one of the failing programs covered by Gainful Employment was even more than the median salary ($23,000).[7] It seems implausible that the U.S. Department of Education would allow the continued flow of federal dollars to college programs that leave students with such low salaries and insurmountable debt loads.

As Congress considers an update to the HEA, we encourage the Department to leave the current Gainful Employment regulations as is and, instead, work with Congress to ensure that all institutions are held to the same outcomes-based standards. Moving toward a more robust and comprehensive system will not only ensure that student interests are protected, but that our tax dollars are being used most efficiently. However, gutting the Gainful Employment rules now is equivalent to handing a blank check of taxpayer dollars to programs that bring no benefit to students, to the tune of an additional $4.2 billion over the next decade in the form of grants and loans to failing programs.[8]

We'd like to thank you for taking these comments into consideration as you work toward providing better postsecondary success for all students. It's important that we continue to build off programs that are shown to be effective, while limiting federal dollars flowing to those that are not. If you'd like to further discuss any of these issues in the future, you can reach me at LErickson@ThirdWay.org.

Sincerely,
Lanae Erickson Hatalsky
Vice President, Social Policy and Politics
Third Way

Endnotes

1. United States, U.S. Department of Education, “Performance Data by Accreditor,” Database. Accessed March 25, 2017. Available at: https://www.ed.gov/accreditation.

2. 20 USC Sec., 1099b, (a) (5) (A) 2011. Accessed on January 3, 2016. Available at: https://www.gpo.gov/fdsys/pkg/USCODE-2011-title20/html/USCODE-2011-title20-chap28-subchapIV-partG-subpart2-sec1099b.htm

3. United States, U.S. Department of Education, “National Student Loan Default Rate Declines Steadily, September 28, 2016, Accessed on Sugust 2, 2017. Available at: https://www.ed.gov/news/press-releases/national-student-loan-cohort-default-rate-declines-steadily.

4. Ben Miller and Beth Akers, “Designing Higher Education Risk Sharing Proposals,” Report, Center for American Progress, May 22, 2017. Accesses on August 2, 2017. Available at: https://www.americanprogress.org/issues/education/reports/2017/05/22/432654/designing-higher-education-risk-sharing-proposals/.

5. United States, U.S. Department of Education, “Federal Student Loan Portfolio,” webpage. Accessed on August 2, 2017. Available at: https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

6. United States, U.S. Department of Education. *Federal Reçister*, October 31, 2014, pp. 65081. The net budget impact of the regulations are estimates over the FY 2014 to FY 2024 budget window.

7. United States, U.S. Department of Education, “Gainful Employment Information,” Webpage. Accessed on August 2, 2017. Available at: https://studentaid.ed.gov/sa/about/data-center/school/ge.

8. United States, U.S. Department of Education. *Federal Reçister*, October 31, 2014, pp. 65081. The net budget impact of the regulations are estimates over the FY 2014 to FY 2024 budget window.