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U.S. Department of Education
400 Maryland Ave., SW, Room 6E231
Washington, D.C. 20202

September 19, 2017

Re: Evaluation of Existing Regulations [ED-2017-OS-0074-0001]

Dear Ms. Malawer,

Thank you for the opportunity to comment on the Department's regulatory reform agenda. We hope that these comments provide useful information as you consider possible approaches to regulatory reform.

Most importantly, the federal government invests billions of dollars each year in federal financial aid, servicemember, and veterans benefits to colleges and universities. Yet too often, neither students nor taxpayers get much bang for their buck. Poor-quality postsecondary education offerings often leave students with too much debt, no or a low-value degree, and time wasted trying to get the skills needed to improve their opportunities. Meanwhile, taxpayers continue to fund those programs with few checks or balances, and will pay for such programs' failures in borrowers' inability to repay their student loans and discharges granted by Congress to students at schools that close or commit violations of the law.

Some of the Department's most important regulations are designed to--and effectively do--protect students and taxpayers from waste, fraud, and abuse in the higher education programs. The value of those regulations must be carefully weighed against complaints of burden or accusations that they drive up costs for students.

Moreover, many of the "regulations" that institutions have raised concerns about in a task force report from the American Council on Education, a lobbying association that represents institutions of higher education, are not simply regulations--they are requirements in the law. And a study from Vanderbilt University found that the most burdensome and costly regulations are, in fact, not connected to the federal financial aid programs -- they are connected to research requirements by other federal agencies.

We strongly urge the Department of Education to take these factors into consideration as it develops a regulatory reform agenda. Any such agenda must include legislative recommendations directed at Congress; must take note of the burden applied by other federal agencies that has a more substantive

impact on many institutions; and must fairly and with an eye toward consumer protection weigh the need for basic baseline protections for students against the relatively minor reductions in burden to institutions if those requirements were removed.

Thank you for your consideration of these comments. Please do not hesitate to reach out if you have questions or if we can provide any further information.

Sincerely,

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Regulations and Requirements Designed to Protect Students and Taxpayers	4
Protect Key Elements of the Borrower Defense Rule	4
Ensure Accountability in the Gainful Employment Rule	5
Retain Minimum Requirements for State Authorization of Brick-and-Mortar and Distance-Education Institutions	6
Protect Students from Aggressive Recruiting Through the Incentive Compensation Rule	7
Crack the Credit Hour, Without Gutting the Credit Hour Rule	8
Preserve Regular and Substantive Interaction Requirements for Non-Competency-Based Online Programs	10
Regulations and Requirements That Could Reduce Burden, While Protecting Students	12
Substitute a Student-Level Data Network for Aggregate IPEDS Data Reporting Where Applicable	12
Update R2T4 Requirements to Protect Taxpayer Dollars	14
Reconsider Certain Verification Requirements	15
Evaluate the Effectiveness of Entrance Loan Counseling Requirements	16
Streamline Clery and Fire Safety Annual Reporting	17
Promote the Application of Risk-Based Accreditation and Differentiated Recognition of Accreditors	17
Better Align Data Definitions	18
Regulations and Requirements That Exert Unnecessary Burden	18
Eliminate the 150% Rule for Subsidized Stafford Loans	18
Eliminate Constitution Day Requirements	19
Eliminate Drug Convictions Limitations and the Drug Policy Notification	19
Eliminate File-Sharing Requirements	19
Eliminate Requirements for Verifying Selective Service Registration	20

Regulations and Requirements Designed to Protect Students and Taxpayers

Any regulatory process must consider a balance: costs and burden to institutions, against protections for students and taxpayers. In fact, this cost-benefit analysis is required of all regulatory processes. The rules in this section all respond to a specific and egregious history of abuses by institutions, to the detriment of students and taxpayers; and on balance, the need for these protections to reduce harm done to students and taxpayers far outweighs any costs to institutions.

Protect Key Elements of the Borrower Defense Rule

(34 CFR 668.14, 668.41, 668.171, 668.175, 682.211, 682.402, 685.222, 685.300; 20 USC 1087e(h))

In 1994, Congress added to the Higher Education Act a provision directing the Secretary of Education to establish rules to allow students who were misled by their colleges to present a defense against repayment. While it was largely dormant for many years, the collapse of Corinthian Colleges sparked an influx of many borrower defense claims. The Department lacked the infrastructure to process and resolve claims in a fair and timely manner, so it developed the borrower defense rule to streamline the process of resolving claims.

Given the substantial backlog of outstanding claims--and the fact that the Department has failed to process a single new claim since the Administration change in January 2017--it's clear that the Department needs such a streamlined process to speed its process of adjudicating claims quickly. Meanwhile, the Department needs to balance the fact that borrowers are owed this relief when they have been misled by their institutions with the reality that taxpayers will bear the brunt of the cost. To ensure a responsible, reasonable rule, any new regulation needs to retain three key pillars:

- **Streamlined Process:** Any standard, process, and calculation of relief for borrowers must ensure the Department is able to manage the logistics of processing claims in a fair and timely manner. Without such a process, there is no way to handle the outstanding backlog of more than 64,000 outstanding claims, or the impending claims from many more institutions that are sure to follow.
- **Taxpayer Protections:** Taxpayers should not be left holding the bag for cases of misrepresentation, breach of contract, or state court judgments. Any new regulation should account for the best ways to ensure institutions are held responsible for their poor behavior, including requiring financial protection as soon as risky behaviors are detected and collecting funds for paid-out borrower defense claims.
- **Protect Students' Right to Obtain Relief in Court:** Students cannot receive a fair opportunity to hold colleges responsible for their illegal acts if they are required to enter into arbitration proceedings, where colleges have the upper hand, when complaints arise. Nor can the

Department effectively oversee the institutions within their jurisdiction unless they have access to information about the problems students are reporting in a timely manner. Arbitration is a necessary protection to ensure effective monitoring and provide borrowers with the right to have their day in court.

Ensure Accountability in the Gainful Employment Rule

(34 CFR 668.405, 668.406, 668.410, 668.411, 668.412, 668.413, 668.414, 668.504, 668.509, 668.510, 668.511, 668.512; 20 USC 1001(b))

The Department of Education launched its gainful employment rulemaking process to address concerns among experts in the field that tens of thousands of students were enrolled in career-focused (vocational) programs at which, even if they graduated with a degree or certificate, borrowers would have taken on more debt than they could pay back given the low value of their credentials in the labor market. Although higher education should increase a student's chances of economic mobility—and certainly does on average—these poor-performing programs have left millions of students worse off than they would have been had they not gone to college at all. They have also had significant implications for taxpayers, who are often left footing the bill for higher loan defaults and other financial aid costs. Students have had especially poor outcomes at many for-profit institutions and in certificate and associate degree programs; according to Department of Education data, more than one out of every six students in a less-than-four-year program defaults on his loans. And at for-profit institutions, the costs to students are much higher: tuition at a two-year for-profit program is more than four times that of a public two-year program. All told, for-profit institutions produced more than 35 percent of all defaulters, despite enrolling only about 10 percent of students in the higher education system.

After negotiating, and renegotiating, the rule, with the input of experts in the field and over 90,000 public comments, the Department published the first iteration of official debt-to-earnings rates in January 2017. While no institutions lose access to federal student aid, the data revealed over 800 programs failed the first year of the test, with graduates owing loan payments that exceeded 12 percent of their total earnings and 30 percent of their discretionary income--a low bar for programs to meet.

There is evidence that the current rule is having promising results. A survey of failing programs that did not appeal their results showed that many of those programs have been discontinued by their institutions, or the institution has closed altogether. Thanks to these actions taken by institutions, thousands of students can choose from among programs and institutions that will offer them opportunities to improve their lots in life, rather than being funneled into poor-performing programs.

Given this early indication of success, we urge the Department to ensure that any new regulation of gainful employment retain two key pillars:

1. **Transparency:** Students have the right to accurate, comprehensive, and program-specific information. While the metrics might differ depending on the type of credential, all students

want answers to critical questions like how much they can expect to borrow for the program; whether they can expect to find a well-paying job; and whether they can expect to comfortably repay their loans. Moreover, the statute clearly notes that vocational programs must lead to gainful employment, requiring the Department to take labor market outcomes into consideration as it evaluates whether or not career college programs meet a minimum bar for inclusion in the federal financial aid programs.

It is especially important to note that programs can differ considerably from college to college, and within institutions; and they frequently differ from the regional or national averages published by the federal government. To that end, it is essential that the Department of Education continue to utilize actual, program-level earnings information; averages simply aren't reflective of reality in many cases. Students have the right to know what *their* likelihood of success is, based on the outcomes of their peers who came before them.¹

2. **Accountability:** Transparency is not enough to ensure institutions take action. Institutions already have access to information about high debt levels among their students, yet have typically not taken action on those programs. While the Gainful Employment rule has provided far better information about the labor market outcomes of career college programs, institutions have often failed to make needed improvements that would better align their programs with the realities of the labor market, absent real sanctions from the Department and other oversight bodies.

Retain Minimum Requirements for State Authorization of Brick-and-Mortar and Distance-Education Institutions

(34 CFR 600.2, 600.4, 600.5, 600.6, 600.9, 668.43, 668.5; 20 USC 1001(a)(2))

For more than half a century, oversight of federally funded institutions of higher education has relied on the triad: a division of labor for monitoring and holding accountable postsecondary institutions across states, accreditors, and the federal government. Yet for too long, states largely shirked their obligation to ensure consumer protection, deferring to accrediting agencies. Moreover, for too long, the Department of Education itself sanctioned this deference. In one case, California elected to eliminate the state authorization body with oversight and regulatory authority over the state's proprietary postsecondary institutions in 2007 because the Department acknowledged it would not revoke federal financial aid eligibility for institutions despite the fact that they would no longer meet the requirements of the Higher Education Act. It is clear that, without some minimal definition of what constitutes "state authorization," many states would decline to exercise *any* oversight. That undermines the intent of the

¹ Dancy, Kim. "Averages Aren't Enough: Students Deserve Program-Level Outcomes Information." *EdCentral*. 24 May, 2017: <https://www.newamerica.org/education-policy/edcentral/averages-arent-enough-students-deserve-program-level-outcome-data/>.

triad to balance each member's institutional oversight obligations, and places the burden of states' failures on the Department of Education and accrediting agencies instead.

Moreover, state authorization rules are an effective tool for states to exercise their oversight authority as they so choose. Eliminating the rule makes it more difficult for states to play a role in what happens with respect to higher education within their borders and to the students and taxpayers they represent.

The state authorization regulations, both for brick-and-mortar and distance-education institutions, establish these minimum standards to define what Congress put forth in law. And states have risen to meet those basic obligations; despite initial concerns from institutions when the Department began to enforce the state authorization rule, the agency worked closely with states and ensured that all were able to come into full compliance. Moreover, the rule as applied to distance-education institutions built off the existing framework of state reciprocity agreements, which should ensure smooth implementation of those provisions, as well. We strongly urge the Department to retain these requirements to ensure states continue to fulfill their statutory responsibility to remain engaged in ensuring consumer protection.

Protect Students from Aggressive Recruiting Through the Incentive Compensation Rule

(34 CFR 668.14; 20 USC 1094(a)(20))

The incentive compensation rules grew out of scores of abuses in higher education, particularly in the for-profit sector, uncovered throughout the 1980s and 1990s. A report from then-Sen. Sam Nunn and the Senate Committee on Governmental Affairs' investigations subcommittee found that colleges were misrepresenting the schools to students, illegally recruiting ineligible students, and even falsifying information.² In the most egregious cases, recruiters blatantly, openly lied to prospective students to persuade them to enroll. In other cases, recruiters enrolled ineligible students or failed to document students' ability to benefit.

The successor to the Nunn hearings of the 1990s, hearings conducted by Sen. Harkin (D-IA), chair of the Senate HELP Committee that ended in 2012, found the situation hadn't improved much, despite Congressional efforts to rein in such recruiting. Bad actors violated the rule in multiple ways, all in service of getting students in the door as quickly as possible--and raking in the thousands of taxpayer dollars for which each was eligible in federal grants and loans.

The incentive compensation regulations--while insufficient to capture every instance of illicit recruiting practices--at least forbade the schools from establishing formal structures that placed the school's revenue goals above all else. The incentive compensation rule provides a critical deterrent to institutions

² "Abuses in Federal Student Aid Programs." Senate Committee on Governmental Affairs. Senate-R-102-58. 1991: <http://files.eric.ed.gov/fulltext/ED332631.pdf>.

whose recruiters might otherwise be tempted to aggressively pressure prospective students, violate other laws and policies, or even lie to incoming students about their odds for success.

Crack the Credit Hour, Without Gutting the Credit Hour Rule

(34 CFR 600.2; 20 USC 1088(a))

The credit hour has become the bedrock of virtually all calculations of students' enrollment intensity -- a critical measure that affects the amount of aid for which they are eligible. Traditionally, how credit hours are defined rested solely in the hands of colleges and their accreditors. But reports in 2009 and 2010 by the Inspector General of the Department of Education found insufficient oversight by the three regional accrediting agencies--in fact, none of them had established a definition for a credit hour.³ Those three accreditors, which accounted for one-third of all Title IV-participating institutions⁴, exercised inadequate oversight on credit hour assignment processes for their institutions, according to the reports. The IG documented several egregious abuses that grew out of the accreditors' failures to establish minimum standards. For instance, one accreditor approved an institution that granted nine credits for a 10-week course -- far inflated beyond traditional colleges' usual three credits for 15-week courses. The accreditor raised concerns about the excessive granting of credits for the course; but approved the institution's subsequent proposal of breaking the course into two four-and-a-half-credit, 5-week courses without further question. This and other cases elevated concerns that colleges were abusing taxpayer dollars and students were wasting their limited federal financial aid dollars in poor-quality or wasteful courses.

In response to the IG's reports and recognizing the potential scope of the problem, the Department of Education developed a regulatory definition of a credit hour that would both protect the integrity of the

³ "Review of the Middle States Commission on Higher Education's Standards for Program Length." U.S. Department of Education, Office of the Inspector General. 14 December 2009:

<https://ed.gov/about/offices/list/oig/aireports/i13j0005.pdf>; "Review of the Southern Association of Colleges and Universities' Standards for Program Length." U.S. Department of Education, Office of the Inspector General. 24 November 2009: <https://ed.gov/about/offices/list/oig/aireports/i13j0004.pdf>; "Review of the Higher Learning Council of the North Central Association of Colleges and Schools' Standards for Program Length." U.S. Department of Education, Office of the Inspector General. 24 May 2010:

<https://www2.ed.gov/about/offices/list/oig/aireports/x13j0003.pdf>. For more information, see: "Statement of Kathleen Tighe, Inspector General, Department of Education, Before the Committee on Health, Education, Labor, and Pensions." 24 June 2010: <https://www2.ed.gov/about/offices/list/oig/auditreports/stmt06242010.pdf>;

"Statement of Kathleen Tighe, Inspector General, Department of Education, Before the Committee on Education and Labor." 17 June 2010: <https://www2.ed.gov/about/offices/list/oig/auditreports/stmt06172010.pdf>; "Statement of Kathleen Tighe, Inspector General, Department of Education, Before the Committee on Education and Labor, Subcommittee on Higher Education and Workforce Training." 11 March 2011:

<https://www2.ed.gov/about/offices/list/oig/auditreports/tighestate03112011.pdf>; and "The Higher Learning Commission of the North Central Association of Colleges and Schools' Decision to Accredite American InterContinental University." Memorandum from Wanda A. Scott, Assistant Inspector General, to Daniel Madzellan, Delegated the Duties of the Assistant Secretary of Postsecondary Education." 17 December 2009: <https://www2.ed.gov/about/offices/list/oig/auditreports/AlertMemorandums/i13j0006.pdf>.

⁴ "Statement of Kathleen Tighe, Inspector General, Department of Education, Before the Committee on Education and Labor." 17 June 2010: <https://www2.ed.gov/about/offices/list/oig/auditreports/stmt06172010.pdf>.

federal financial aid programs and allow for emerging non-time based innovations in higher education. It does this by allowing for three distinct ways of defining a credit hour. The first effectively restates historic practice: Credits are awarded based on time—time spent in class and time spent on work. The second is “evidence of student achievement,” which can mean many things, but should be the foundation of any process for awarding grades and credits. The third method is estimating the “amount of work represented” in achieving learning outcomes. This method nods toward the logic of asynchronous courses offered at a distance; colleges can’t very well base credits on the length of time students spend in class if students are not meeting in a classroom to learn. In the last part of the definition, the Department acknowledges that the amount of work spent learning and the time spent attending class aren’t the same thing, suggesting that traditional 15-week semesters can be translated into “the equivalent amount of work over a different amount of time.” Work turned out to be the Department’s middle ground between time, an easily measured but poor proxy for quality, and learning, difficult to measure but a true indicator of quality.

That definition, with its consideration both for time-based and learning-based measures, has proved workable for many institutions that have launched competency-based education (CBE) programs in recent years. And while there are other laws that may present some barriers to the efficient disbursement of federal aid in competency-based programs that the Administration may want to work with Congress to address, the elimination of the credit hour rule would do little to accommodate new programs that seek to innovate responsibly. In 2012, there were about 20 competency-based programs in the U.S.; today, there are more than 500.⁵ The credit hour rule, which took effect in July 2011, has not restrained the development of innovative programs; in fact, it has been in effect during an explosive period of growth for such programs. Moreover, until the Department of Education established a floor for the definition of the credit hour, the Department had effectively no ability to stop unscrupulous institutions from abusing the way federal aid is prorated by enrollment intensity. The rule has established a minimum standard for the amount of time or learning expected to represent a credit hour. Its presence dramatically reduces the risk that taxpayer dollars are wasted in programs that charge more for less learning, and protects students from enrolling in programs that quickly run through their lifetime Pell Grant and federal student loan eligibility without providing them a quality education.

New America has long led the charge to “crack the credit hour,” pushing the federal government to allow federal dollars to go to high-quality, non-time-based programs through direct assessments and experimental sites. However, we do not believe the credit hour regulation should be repealed. In an outcomes-based, accountability-heavy system federal financial aid world, time and delivery model wouldn’t necessarily matter. Unfortunately, in today’s environment, which is not outcomes-based and has virtually no accountability, the credit hour serves as an important (yet insufficient) buffer against fraud and abuse. And while we continue to push policy solutions for both the Administration and Congress to encourage high-quality, outcomes-based CBE programs--this is not the answer.

⁵ “The Competency-Based Education Ecosystem Framework.” Public Agenda. December 2015: http://www.cbenetwork.org/sites/457/uploaded/files/CBE_Ecosystem_Report.pdf.

CBE programs can exist--and have grown substantially in numbers--under this regulation. Eliminating the credit hour rule in this environment would present a clear and unacceptable risk to students and taxpayers. Instead, we would be happy to help identify real barriers and real outcomes- and accountability-based solutions that help promote the growth of high-quality CBE programs and find alternatives to time-based proxies for learning that can truly meet the needs of students, without putting students, taxpayers, and the broader CBE landscape at risk.

Preserve Regular and Substantive Interaction Requirements for Non-Competency-Based Online Programs

(34 CFR 600.2; 20 USC 1007(7)(A)(ii); DCL GEN-14-23)

There has been a robust conversation about the need to update the requirements for “regular and substantive interaction” for CBE programs. New America has been deeply engaged in these discussions, working to carefully and thoughtfully assess opportunities to envision the regular and substantive interaction requirement for high-quality CBE programs.

However, while it’s tempting to just say “throw it out,” we must remember the origins of and intent behind the original requirement. It came in response to rampant fraud and abuse stemming from the increase in correspondence programs in the 1980s and 1990s (which came a few decades after rampant abuse in correspondence programs aimed at veterans returning from war with GI Bill dollars to use). These programs promised flexible options for working adults, but the availability of federal dollars--with no strings attached to student outcomes--proved too tempting for unscrupulous providers to resist. Many students were taken for a ride, taxpayers were left on the hook, and Congress took action. To reduce the risk of abuse, Congress created a definition for correspondence education and established additional restrictions for those programs, such as limiting the amount of federal financial aid for which they were eligible. The 1992 HEA amendments defined correspondence education as follows:

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

[(3) A correspondence course is not distance education. *This provision was added during negotiated rulemaking in 2009-2010.*]

In 2005, Congress moved to make distance education programs eligible for federal financial aid. The statutory definition of distance education programs, revised again in the 2008 Higher Education Act

reauthorization, established a requirement that distance education programs including “regular and substantive interaction with faculty,” effectively the sole distinction between distance education and correspondence programs, to prevent the recurrence of the kinds of abuses seen during the 1980s and 1990s.

The regulations governing regular and substantive interaction, promulgated first by the Bush Administration in 2006, sought to clarify the distinction between distance education and correspondence education. They have effectively helped to prevent many of the abuses spotted in correspondence education, in conjunction with the credit hour and other rules. Meanwhile, the regulations do not appear to have hindered growth in distance education; between 1998 and 2012, enrollment in distance education has quintupled. And isolated problems with individual institutions can be resolved on a case-by-case basis. Therefore, we feel strongly that flexibilities for regular and substantive education must *not* be applied to all distance education programs, writ large.

However, the rise of competency-based educational programs that make use of new models for faculty, and technological advancements that allow CBE programs to design personalized, supported learning programs with proactive support from faculty, have raised new questions about regular and substantive interaction in the context of CBE programs in particular. While being separated from the instructor in a self-paced program today can still mean students are largely left to learn on their own, it doesn’t *have* to mean that.

Moreover, the CBE community--unlike the distance education community in general--has spent several years thinking about how to fix (and not throw out or gut) the regular and substantive interaction requirement in a way that enables high-quality, cutting-edge outcomes-driven programs that serve students well to thrive. Gutting or throwing out this requirement would be harmful to the field of CBE, as it could open the floodgates to unscrupulous actors that call themselves “CBE,” take students money and provide shoddy education, and ruin the reputation of the good actors in the field--and ultimately destroy the credibility of CBE itself. This must be done thoughtfully, and in consultation with CBE leaders and consumer protection advocates.

Given these shifts, we believe this provision of the law should be carefully considered by Congress, but *for CBE programs only*. And, importantly, this isn’t something the Department has the authority to do through guidance. Currently there is no statutory definition for CBE, which means that the Administration would have to change regular and substantive interaction for *all* of distance education (rather than just for CBE programs) if it decided to make changes.⁶ This would be a huge threat to quality, program integrity, and to the CBE community, which has worked diligently over the past few years to hold itself up on its outcomes, not just on its delivery method. The CBE community has been willing to (and has wanted to) be held to a higher standard. The broader field of distance education has not yet done the same, meaning that any definition that would be acceptable to the broader field would need to appeal to the lowest denominator and would most likely provide even less quality assurance

⁶ The Advancing Competency-Based Education Act of 2017, H.R. 2859.

than we have now. We would not support changes to the current DCL that provides flexibility to regular and substantive interaction, redefines that interaction, or limits enforcement of that provision, because we do not believe such changes should apply to all distance education programs.

However, the Department can play a critical role in moving this conversation forward through its CBE experiment under the Experimental Sites Initiative, which is allowing CBE institutions to experiment with flexible definitions of regular and substantive interaction. Participating institutions should provide, and the Department should compile, additional information to help Congress better understand the educational support and resources students need to progress through their programs, the content, activities, support, and resources needed to help students attain and demonstrate competency; to understand and address the role of faculty and faculty involvement in CBE programs, including how they effectively provide functions traditionally assigned to faculty using other staff; and to identify additional resources that may be needed for adequate oversight of CBE programs. All of this, of course, should be within the broader context of looking at the student outcomes (not inputs) in these programs. This could be critical information that Congress could use as it considers changes in HEA reauthorization that enable innovation in the service of--rather than at the expense of--students.

Regulations and Requirements That Could Reduce Burden, While Protecting Students

As the Department considers possible options for streamlining regulatory burden on institutions of higher education, it should evaluate opportunities to improve, clarify, and refine existing regulations to ensure they protect students while reducing burden. The following regulatory requirements are viable examples of those efforts.

Substitute a Student-Level Data Network for Aggregate IPEDS Data Reporting Where Applicable

(34 CFR 668.14; 20 USC 1094(a)(17))

Institutions have raised concerns about the burden required to comply with federal data reporting requirements through IPEDS. We agree there is a simpler, less burdensome way to report data that can result in better, more comprehensive data available for students and policymakers. A federal student-level data network, which would require an act of Congress to implement, could provide greater flexibility to answer questions about today's students, without forcing institutions to produce yet another set of data metrics. Moreover, bipartisan legislation to implement such a system has already been introduced by education committee members in both the House and the Senate.⁷ Even Dr. William "Brit" Kirwan, Chancellor Emeritus of the University System of Maryland and co-chair of the ACE task

⁷ College Transparency Act, S. 1121.

force on regulatory relief, has said he believes establishing a student-level data network “would be an important tool for improving the performance of higher education.”⁸

We urge the Department to work with Congress to ensure that bill passes in a timely manner. Doing so will allow institutions to replace the student-specific IPEDS surveys, which form some of the most burdensome reporting for colleges and universities. In IPEDS, schools report aggregate data for multiple cohorts: first-time full-time for graduation rates; all students for enrollment; Title IV recipients for net price; and all four combinations of first-time/non-first time and part-time/full-time for the new Outcome Measures completion survey, among others. All told, schools now spend more than a million burden hours a year, collectively, responding to IPEDS.⁹ To answer each new question raised by policymakers, institutions must spend thousands more hours each year. However, institutions already have the underlying data needed to calculate those cohorts. By instead reporting the minimum necessary amount of underlying, student-level information, the federal government can calculate metrics like completion rates, taking some burden off of institutions without sacrificing the amount of information available for policymakers and students. In total, nearly two-thirds of IPEDS reporting burden could be eliminated and then replaced with more streamlined, student-level reporting.¹⁰

A student-level data network will also permit data matches with other federal agencies to calculate otherwise incalculable data, like program- and institution-level earnings using federally held tax records and the likelihood of graduating on-time for veterans enrolled at particular colleges and universities. It will ensure prospective students can access the information they have a right to know before they enroll in a particular college, including what they can expect to owe; whether they will be able to repay their loans; and whether they can expect to earn a decent living.

Absent legislative change to improve the reporting structure for institutions of higher education, however, the Department must preserve the existing data in IPEDS. The IPEDS data serve as the foundation for many consumer tools. They also form the basis for much of the Department’s own policy development and institutional oversight work, as well as legislative proposals from Congress. Without these data, students would be left even further in the dark about their institutions; colleges would lack critical points of comparison to help inform institutional improvement efforts; and taxpayers and policymakers would be left without key information about how their dollars are being spent. We encourage the Department to look at and align itself with comments submitted by the Postsecondary Data Coalition, which highlight the importance of IPEDS and other data collections in providing key consumer information and data for policymakers.

⁸ Kirwan, William. “Testimony: Challenges and Opportunities in Higher Education.” U.S. House of Representatives Committee on Education and the Workforce. 7 February 2017: https://edworkforce.house.gov/uploadedfiles/kirwan_written_testimony.pdf.

⁹ “Information Collection Request: Integrated Postsecondary Education Data System.” 81 FR 80049. 15 November 2016: <https://www.federalregister.gov/documents/2016/11/15/2016-27426/agency-information-collection-activities-comment-request-integrated-postsecondary-education-data>.

¹⁰ Laitinen, Amy. “Schools spend nearly 1,000,000 hours complying with IPEDS. Let’s cut that by 2/3!” *EdCentral*. 5 May 2015: <https://www.newamerica.org/education-policy/edcentral/onemillionhours/>.

Update R2T4 Requirements to Protect Taxpayer Dollars

(34 CFR 668.22; 20 USC 1091b(a))

The Return to Title IV (R2T4) requirements, while complex, are designed to prevent institutions from keeping unearned taxpayer money. It's a key control that prevents improper payments, the subject of a heated hearing by the House Oversight Committee earlier this year. It creates incentives for institutions to help students complete their programs. And its design limits student loan debt for the most vulnerable borrowers: those who withdraw from college without a degree.¹¹

The deregulation task force convened by the higher education lobby included a number of recommendations around R2T4. While many of those would place a notable additional cost on taxpayers, some are viable opportunities to improve the calculation and return of federal dollars when students fail to complete a program. The Department should not consider limiting R2T4 to undergraduate students only; allowing institutions to establish post-withdrawal disbursement policies rather than following federal requirements; eliminating rules around intent to withdraw or rescinded decisions to withdraw; or further limit attendance-taking obligations.

That said, some elements of R2T4 could be updated to better protect students, ensure taxpayer dollars are well-spent, and streamline the process of R2T4 for financial aid administrators.

- First, institutions asked in the ACE-led task force report that they be given more time to process R2T4. While the current timeline already provides well over a month to do so, and while any additional changes mean greater losses to the taxpayer, we recognize the burden placed on financial aid offices responsible for administering the increasingly complex financial aid programs. An extra 15-day extension, in exchange for other improvements to financial aid, may therefore be a tolerable loss to the taxpayer.
- Second, institutions would like to amend the “order of return language.” We agree. The Department should work with Congress to ensure that TEACH Grants are the first type of grant to be returned, and that Grad PLUS loans are the first type of aid, overall, to be returned. These are less advantageous loans for students, given that TEACH Grants frequently convert to loans and Grad PLUS loans carry higher interest rates than other types of student loans. Moreover, the current order exists not by any active decision by Congress, but rather because the law requires any programs not mentioned in the law to come last. The Department and Congress should also work to ensure that problem doesn't recur, by granting the Secretary discretion to determine where a new financial aid program falls in the order of return unless and until Congress states otherwise.

¹¹ Borrowers with debt but no degree are three times more likely to default on their loans than borrowers who graduate before leaving school. Duncan, Arne. “Toward a New Focus on Outcomes in Higher Education.” Speech. 27 July 2015: <https://www.ed.gov/news/speeches/toward-new-focus-outcomes-higher-education>.

- Third, the Department should revise the R2T4 regulations to exclude fee waivers from the calculations. Under the current rule, tuition waivers are considered a form of scholarship, and aren't factored into calculating how much a student owes under R2T4. But because tuition waivers are simply price reductions offered by the institution itself, rather than revenue received by an outside scholarship organization, the school is required to return aid that it never actually received in the amount of the tuition fee waiver.

Moreover, the Department of Education currently does not track, and cannot say, how much money is returned each year as a result of R2T4 requirements. As stewards of taxpayer dollars, and policymakers considering potential changes to the policy, the Department has an obligation to track federal dollars more closely. Thus, we urge you to begin collecting better data on R2T4 dollars and providing analysis on this information to the public.

As we said earlier, we recognize that the R2T4 calculations can be complex and are influenced by many outside factors. But we also believe that, as stewards of taxpayer investments in higher education, the Department of Education must continue to protect the integrity of the federal financial aid programs. These reasonable changes can improve the operation of R2T4, without abandoning the Department's responsibility to safeguard taxpayer dollars. Any future changes should seek to simplify the process of calculating R2T4 amounts, but must keep in mind and must not subvert three goals of the policy as it currently stands: limiting loan debt for students who withdraw; encouraging students to keep attending their program through a term and earning credits; and safeguarding taxpayer funds by ensuring that students and institutions do not unnecessarily receive federal financial aid dollars for instruction or other costs of attendance.

Reconsider Certain Verification Requirements

(34 CFR Part 668; 20 USC 1091, 1094)

The Department places requirements for verification on students applying for federal financial aid to ensure it properly disburses federal dollars to students and institutions and to minimize the risk of waste, fraud, and abuse in the programs. However, the effect of those verification requirements has been serious and disproportionately has fallen on low-income applicants to the program, sometimes with devastating consequences.

According to the National College Access Network,¹² only 56 percent of Pell-eligible applicants who were selected for verification ultimately received a Pell Grant, compared with about 78 percent of Pell-eligible students not selected. The gap suggests that there is a possibility that the verification process is itself a significant contributor to low-income students opting not to submit the documentation required for

¹² DeBaun, Bill. "On Declines and Verifications: Insights from the Annual Pell Report." 13 July 2017: <http://www.collegeaccess.org/BlogItem?dg=d6aa53e665a14c46a4f32a6f64614482>.

verification. Moreover, data from the prior year¹³ suggest that nearly 5.2 million of the 5.3 million financial aid applicants were Pell-eligible students--a shocking 98 percent of all students flagged for a more burdensome and invasive process of confirming income information.

To alleviate some of the potential harm done to students, especially low-income students, the Department should reconsider the requirement that non-tax-filers prove they did not file their taxes; allow a copy of a tax return to be used to confirm tax information in place of an official tax transcript, which can be challenging for applicants to access; and the Department should consider limiting the number of low-income students required to undergo verification each year.

Finally, the Data Retrieval Tool, established by the Department of Education in conjunction with the Internal Revenue Service, is a critical tool to help borrowers accurately import their tax information and avoid any issues with their information. While the tool was taken down earlier this year due to security concerns, we urge the Department to ensure it is restored not later than October 1, 2017; and to do everything within its control to ensure a similar problem does not happen again, including allowing FSA staff to coordinate and communicate with the IRS staff, ensuring sufficient monitoring, and engaging at a principal level to assess and resolve any future situations.

Evaluate the Effectiveness of Entrance Loan Counseling Requirements

(34 CFR 685.304; 20 USC 1092(l))

Currently, new borrowers are required to complete entrance counseling for students. Yet many institutions have created their own versions of loan counseling, necessitating greater burden on the parts of school officials; and still, borrowers receive relatively little front-end information on their debt and what to expect when they enter repayment. The Department should work with Congress to alleviate that institutional burden and improve the effectiveness of loan counseling by requiring institutions to instead direct students to a Department-created tool, like the now-voluntary Financial Awareness Counseling Tool (FACT), to help students complete their mandatory counseling.¹⁴ Doing so would ensure borrowers receive consistent information across colleges and reduce the institutional burden of developing and administering a loan counseling program, often a very intensive process.

Fortunately, the Department already has an experiment ongoing to assess the effectiveness of the FACT tool and of other types of counseling when administered annually rather than just once, as many schools have proposed. The loan counseling experiment has been designed to allow for rigorous evaluation. The Department should support that evaluation by ensuring the experiment is carefully administered with fidelity to the agreed-upon design; identifying opportunities to fund researchers'

¹³ Warick, Carrie. "NCAN Members Contribute to Report Illustrating FAFSA Verification Complexities." 18 November 2016: <http://www.collegeaccess.org/BlogItem?dg=e3bc0e74-9e8d-4cc2-8091-5603b0aa93a0>.

¹⁴ Fishman, Rachel and Ivy Love. "2015 College Decisions Survey: Understanding Student Loan Debt." New America. September 2015: <https://static.newamerica.org/attachments/9575-understanding-student-loan-debt/UnderstandingStudentLoanDebt%208.31.33212a52357948928decb0e983c7d97c.pdf>.

evaluation of the project; and publicly reporting all information to help the field understand the lessons learned and coalesce around promising activities.

Streamline Clery and Fire Safety Annual Reporting

In the 2008 reauthorization of the Higher Education Act, Congress enacted the Campus Fire Safety Right-to-Know Act. The bill, which was written in response to a horrific fire in 2000 at Seton Hall University in which three students died and dozens more were injured, established new requirements for reporting on fire safety.¹⁵ The new requirements added on to the existing campus safety reporting requirements established in 1990.¹⁶ Together, the Clery and fire safety requirements were the most commonly cited by institutional experts as burdensome requirements. These requirements can be streamlined and simplified to reduce burden, without reducing the utility of the reporting. In particular, the Department should work with Congress to eliminate the requirement for annual reporting on campus and fire safety, while retaining the logs of those incidents for continued use by local police and fire departments.

Promote the Application of Risk-Based Accreditation and Differentiated Recognition of Accreditors

Federal law requires accreditors to periodically review and approve institutions for their continued participation in the federal student aid programs; and the Department of Education to review accreditors themselves for recognition proceedings. However, this process is largely focused on inputs; presents a significant burden both for institutions and for accreditors; and fails to recognize that some parties may require a less-intensive review while others clearly require more-intensive proceedings.

The Department of Education should sharpen its review proceedings for accreditors to ensure the highest-risk accreditors get the closest review, while fulfilling the statutory and regulatory minimum observations, at least, for other accreditors. High-risk accreditors tend to be those with the largest amount of federal financial aid volume in their portfolios; those that accredit the largest number of schools with compliance issues or state or federal investigations; and those whose institutions have the poorest outcomes for their students. Accreditors that appear notably worse than their peers--or that have objectively poor outcomes among their institutions--should be subjected to a more rigorous review, a deeper investigation, and more thorough and frequent inquiries. While the Department's Accreditation Group began some early efforts to do so, it should further enhance and systematize those efforts to improve their identification of high-risk accreditors and strengthen the quality of those focused reviews.

Accreditors should also implement differentiated review processes for the institutions they accredit. Limiting the reviews of high-performing institutions--those without a history of compliance concerns,

¹⁵ Lou, Cary. "Stop, Drop, and Measure Institutional Outcomes." *EdCentral*. 19 November 2013: <https://dev-edcentral.pantheon.io/stop-drop-measure-institutional-outcomes/>.

¹⁶ Lou, Cary. "Reporting Burden in Higher Education: The Case of the Clery Act." *EdCentral*. 16 October 2013: <https://dev-edcentral.pantheon.io/reporting-burden-in-higher-education-the-case-of-the-clery-act/>.

without reported complaints against the school, and with good outcomes for their students--will allow more time and focus to be placed on the worst-performing institutions within a portfolio. Many accreditors have very large portfolios of institutions, so their need for focused and risk-based reviews is substantial. Moreover, doing so could reduce burden on high-performing colleges and universities. The Department has previously issued guidance notifying accreditors of their ability to perform such focused reviews of poor-performing colleges;¹⁷ this Administration should continue to support those efforts and work with Congress to further clarify that authority.

Better Align Data Definitions

The task force on deregulation led by the American Council on Education identified concerns that data definitions for the same metric may differ across different Department of Education data systems. For instance, the report noted reporting on students in accelerated adult programs may be “full-time” when reporting in IPEDS, but “part-time” on the Fiscal Operations Report and Application to Participate (FISAP) due to the time period of the coursework. We agree that, wherever possible, definitions should be made consistent. We recommend that the Department of Education convene a working group of staff in FSA, OPE, and NCES to evaluate current definitions and opportunities to improve and better align data definitions.

Regulations and Requirements That Exert Unnecessary Burden

Some regulations require excessive burden on students and institutions, without providing any substantive educational benefit or without improving student outcomes. The following regulations should be eliminated to reduce that burden.

Eliminate the 150% Rule for Subsidized Stafford Loans

(34 CFR 685.200(f); HEA Sec. 455(q)(3))

In recent years, Congress changed the eligibility requirements for Subsidized Stafford loans, in an effort to save money that would pay for lower interest rates on student loans and to incent on-time completion of higher education programs. Yet the rule, since its creation, has created new complexities in the program and made higher education less affordable for some students. For instance, the Pell Grant program has a similar lifetime limit that is capped at six years of enrollment, prorated for enrollment intensity; that means the same student needs to track two parallel timeframes. Moreover, Satisfactory Academic Progress requirements that limit students who fail to make progress in their programs accomplish generally the same goal and apply both to Pell Grants and Direct Loans; thus, this policy is of limited utility and creates significant confusion and complexity. Congress and the Department of Education should work together to eliminate the limit on Subsidized Stafford loans.

¹⁷ “Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness.” Letter from U.S. Department of Education to accrediting agencies. 22 April 2016: <http://www2.ed.gov/adms/finaid/accred/04222016-application-flexibility.doc>.

Eliminate Constitution Day Requirements

(HEA Sec. 111)

In 2004, Congress slipped a little-noticed provision into a spending bill that requires all institutions of higher education (and other federal funding recipients) to observe Constitution Day with their students. While the patriotism behind the law is admirable, the provision creates an unnecessary annual requirement on institutions--with the potential penalty being a complete loss of federal financial aid eligibility. And by requiring the Department of Education to enforce the observance of Constitution Day, it arguably puts the Department in the precarious position of assessing curricula -- something it is expressly disallowed to do. This is an outdated, unnecessary law, and the Department should work with Congress to clear it off the books.

Eliminate Drug Convictions Limitations and the Drug Policy Notification

(34 CFR 668.40; HEA Sec. 485(k))

Current law states that any student who receives a conviction for a drug-related offense while enrolled in higher education and receiving federal financial aid may not continue to receive federal aid. Logically, the law also requires that students be notified of this policy upon their initial enrollment and following any relevant conviction. However, the Department should work with Congress to eliminate both of these requirements. Aside from creating additional burden to assess student eligibility, these rules likely target low-income and minority students who are more likely to receive a conviction following a charge and create a class of crimes--drug-related offenses--that places undue importance on such matters. They are unfair, irrational, and ineffective at preventing problems in the federal student aid program.

Eliminate File-Sharing Requirements

(34 CFR 668.14(b)(30); HEA Sec. 485(a)(1)(P); HEA Sec. 493(a)(29))

In 2008, largely at the behest of former Sen. Chris Dodd (D-CT)--who later became a lobbyist for the Motion Picture Association of America--and industry stakeholders, Congress established a requirement that institutions establish plans to effectively combat piracy of copyrighted materials like music and movies--or forfeit access to federal financial aid dollars. Specifically, the provision required institutions to inform their students of the illegal nature of distributing copyrighted material, use technology to reduce piracy on the school's networks, and to encourage the use of other, legal methods of downloading music and movies. The requirements fell well outside the typical purview of colleges and universities--and they came at a significant cost. A survey of campuses in 2008 found that private institutions spent close to \$408,000 that year on piracy control efforts; public colleges spent nearly \$170,000.¹⁸ The costs of this requirement, and the burden it places on institutions to act as sheriffs of

¹⁸ Nagel, David. "What Are the Costs of P2P Compliance?" *Campus Technology*. 20 October 2008: <https://campustechnology.com/articles/2008/10/what-are-the-costs-of-p2p-compliance.aspx>.

the Internet, far outweigh any benefit to society. The Department of Education should work with Congress to eliminate the requirement in law.

Eliminate Requirements for Verifying Selective Service Registration

(HEA Sec. 484(n))

Currently, the Department of Education asks all federal financial aid applicants to identify their gender for the purposes of verifying compliance with Selective Service registration. These efforts complicate the federal aid application, trip up some students attempting to apply for and receive aid, and place an unnecessary burden on financial aid administrators to resolve concerns. The Selective Service falls well outside the Department of Education's jurisdiction, and colleges and universities should not be responsible for its implementation.

Moreover, as recently identified in our New America colleague Sabia Prescott's comments to the Department of Education on its 2018-19 FAFSA form,¹⁹ the question on the financial aid application presents challenges for a population of transgender students who identify as a sex or gender different from the one they were assigned at birth. A recent study from the Williams Institute estimates 6%, or 1.4 million people, to be transgender.²⁰ On the FAFSA, asking for students' sex at birth can out students as transgender to their peers, to their teachers, or to the administration, presenting physical safety concerns for some. We recognize that there is no phrasing of the FAFSA gender question that would eliminate these complex problems because it is nearly impossible to phrase demographic gender questions without either adhering to a strict and inaccurate gender binary, or offering so many options that the data become meaningless. Moreover, there is no substantiated reason the Department should be responsible for ensuring that students are enrolled to serve. Therefore, we propose that the Department work with Congress to stop requiring verification of SSS data in the federal aid process. Without this tie -- that is, without requiring Selective Service enrollment as a precondition for receiving federal aid -- there would be no need for a gender question at all. By detaching the gender question from SSS, the Department would send a strong message that it aims to help all students access higher education, not just the ones for whom the system was built.

¹⁹ For more information, please see comments from Sabia Prescott. "Comment Request: 2018-2019 Free Application for Federal Student Aid (FAFSA)." 14 August 2017: <https://www.regulations.gov/document?D=ED-2017-ICCD-0044-0041>.

²⁰ Flores, Andrew, Jody Herman, Gary Gates, and Taylor Brown. "How Many Adults Identify as Transgender in the U.S.?" The Williams Institute. June 2016: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.