AUGUST 2, 2010

Comments on Department of Education Proposed Regulations on Program Integrity

Measures Should Improve Postsecondary Outcomes for Low-Income Adult Students

The following comments were submitted to the Department of Education in response to the June 18, 2010 Notice of Proposed Rulemaking and prepared by Amy Ellen Duke-Benfield, Senior Policy Analyst, CLASP.

We appreciate the opportunity to offer comments on the Notice of Proposed Rulemaking (NPRM) posted in the Federal Register on June 18, 2010, Docket ID ED-2010-OPE-0004. The Center for Law and Social Policy (CLASP) develops and advocates for policies at the federal, state and local levels that improve the lives of low-income people. In particular, we focus on policies that strengthen families and create pathways to education and work. We approach these proposed regulations through the lens of improving postsecondary outcomes for low-income adults.

We want to thank the Secretary and the Department of Education for proposing rules that will help strengthen the integrity of the Title IV student financial aid programs and protect low-income students from being taken advantage of by unscrupulous institutions. We appreciate the Department's efforts to limit fraud and abuse in Title IV programs. Given the President's goal of increasing the number of college graduates while resources for postsecondary education become scarcer, it is important that the government and institutions be good stewards of these resources. While we support many of the proposed rules, we also offer ways to strengthen them.

Gainful Employment (§§ 686.6(a), 686.6(b))

We laud the Department's efforts to ensure that gainful employment programs are meeting Title IV requirements. We believe such efforts are necessary to provide potential students with more accurate and substantive data so that they may determine if the program is worth pursuing.

Although we are sympathetic to institutions concerned about increased reporting requirement burdens, we support the Department's list of information an institution would be required to disclose on its website, as outlined under proposed §668.6, because greater transparency will help potential students make more educated decisions about which programs to consider pursuing and at what institutions. While we support the web-based approach, we urge the Department to require that institutions provide this information in a clear, prominent, user-friendly and easily understood manner. Otherwise, this information will not serve one of its original purposes—to provide consumers with the information necessary to make informed decisions. We also recommend that this information be given directly to perspective students for acknowledgement prior to enrolling or making a verbal or written commitment to enroll.

We want to make two points about items to be included on such a website. First, subsection (2) refers to an "on time graduation rate" as a data point institutions should disclose on their websites. This term has no reference in existing law or regulation. Therefore, to provide commonly used information, we recommend that the current graduation rate calculation used to comply with the "Student Right to Know" requirements be employed for this purpose. Second, under subsection (4), the commonly used terminology in the workforce system is not "placement

rate" but "entered employment." This is an important concept to note if the Department would like institutions to link with workforce systems for these data.

Incentive Compensation (§ 668.13(b))

We strongly support the Department of Education's proposed rules to bring its regulations back in line with federal law prohibiting "any commission, bonus, or other payment based on success in securing enrollment or financial aid."

The regulatory "safe harbors" adopted in 2002 were neither necessary nor appropriate given the clarity of the law. In the eight years since their enactment, there has been widespread evidence of disregard for the incentive compensation statute.

We agree with the Department that the regulatory safe harbors have obstructed the goals intended by Congress and permitted institutions to circumvent the law, and support the Department's proposed regulations on incentive compensation. We believe such changes will help ensure fewer low-income students are exploited.

Written Arrangements (§§ 668.5 and 668.43)

When institutions enter into written arrangements with one another, we urge the Department to ensure that all communication institutions have with students about the arrangement is clear, user-friendly and easily understandable. The recent credit card reporting language is a good model for clarity.

Verification (subpart E of §668)

The Department has proposed significant changes to verification regulations in a variety of areas. We applaud the Department's efforts to better align verification regulations with the goal of simplifying the financial aid application process. We support the Department eliminating the need to verify data that students and parents electronically transfer from the Internal Revenue Service (IRS) to the Free Application for Federal Student Aid (FAFSA) (§668.57).

However, we have significant concerns about one aspect of the proposal in particular, which we believe will have the unintended and unnecessary consequence of *increasing* the verification burdens for low-income students and the schools that serve them. This issue is the removal of the 30 percent cap on the number of applicants colleges are required to verify (§668.54(a)). In the preamble to the NPRM, the Department explains that removing this cap will increase the number of students subject to verification, but that selected students will generally have fewer items required for verification. The preamble indicates that the Department expects these changes— the increase in the number of students to be verified and the decrease in the number of items to be verified—to offset each other in terms of the administrative burden on schools and students. However, for several reasons explained below, this is unlikely to be the case for at least several years.

The preamble states that fewer items per student will require verification due, at least in part, to proposed changes to align the regulations with the FAFSA's new IRS Data Retrieval process. In its current pilot state, this process allows some aid applicants to draw their own income data directly from the IRS, and then electronically transfer it into the FAFSA. Because pre-populating the FAFSA is only in pilot stage, we are concerned that it is not yet available widely enough to result in a substantial decrease in verification burdens. For the 2010-11 FAFSA, IRS Data Retrieval will only be an option for students who both apply for aid starting September 12, 2010 *and* filed a federal income tax return for 2009 (some other restrictions also apply).

Only data from the 1040, 1040A, or 1040EZ tax forms can be transferred to applicants' FAFSAs. But most Pell-eligible applicants—the vast majority of those required to undergo verification—are not required to file these tax forms because they do not earn enough to owe federal income tax. As a result, the removal of the requirement to verify transferred IRS data will not reduce the verification burdens on these students or the schools that serve them.

Recent research by The Institute for College Access & Success (TICAS) documents how the verification process can keep students from getting the aid they need and would otherwise qualify for.[1] We appreciate the need to ensure funds are spent appropriately, and we understand that the verification selection process has been developed over time and is a risk-based approach involving rigorous data analysis. At the 13 community colleges TICAS analyzed, most students who were selected for and completed verification had no change in their EFC, and only two percent became ineligible for Pell Grants. However, students selected for verification were notably less likely to receive grants than those who were not selected. This indicates that the verification process itself may be limiting access to aid in unintended ways, and the changes under consideration may exacerbate such unintended consequences.

We therefore strongly recommend retaining a modified cap on the number of applicants that colleges must verify, at least until such time as all or nearly all applicants are able to electronically transfer their IRS income data into their FAFSA. One possible approach would be to set the cap at 60 percent of all recipients of federally subsidized aid at a given school. Further, we recommend that the Department codify the risk-based approach to verification selection to protect against future sub-regulatory changes to verification policy that could adversely affect eligible students.

The Department has also suggested a need for greater flexibility in the selection of information that applicants may be required to verify, and has proposed publishing a list of potential verification requirements in the Federal Register in advance of each award year (§ 668.56(a)). In the interest of transparency and accountability, we recommend that there be opportunity for public comment on Federal Register notices outlining the information that may be required for verification.

Disbursing Funds (§ 668.164(i))

While many colleges currently disburse Title IV credit balances to students before or within the first few days of classes, some wait weeks into the term before giving students the aid they need to buy books and supplies and start

[1] The Institute for College Access & Success. 2010. *After the FAFSA: How Red Tape Can Prevent Eligible Students from Receiving Financial Aid*. Oakland, CA: TICAS. Available online at http://ticas.org/files/pub/AfterFAFSA.pdf.

classes prepared. We applaud the Department's efforts to ensure that Pell Grant recipients receive credit balances in time to purchase books and supplies—an important purpose of federal student aid and particularly important for low-income students who often lack excess disposable income. However, we are concerned that the regulation allows colleges to provide funds for books and supplies via campus bookstore vouchers, which may not be the most affordable option for students. According to current guidance, colleges that provide bookstore vouchers in lieu of cash refunds are required to demonstrate that they provide students a "real and reasonable opportunity" to obtain materials from other vendors. Otherwise, they must consider the bookstore voucher as an institutional charge in any subsequent calculations of Return to Title IV.

The Department should clarify that colleges must provide students with alternative ways of purchasing books and supplies from a "convenient unaffiliated source" within the seven-day period. If colleges are unwilling or unable to do so, they should retain full liability for funds restricted to use in the campus bookstore.

Misrepresentation (subpart F of § 668)

We commend the Department's efforts to protect students from misrepresentation made by an institution regarding the nature of its educational program, its financial charges, or the employability of its graduates. The proposed changes will help give students additional protections against misleading and overly aggressive advertising and marketing tactics. Regarding all of the types of potential misrepresentation, we encourage the Department to require institutions to clearly and prominently disclose on their website or other materials the relevant information students need to make informed decisions.

Ability to Benefit—Student Eligibility (§ 668.32(e))

We support the Department's interpretation of section 484(d) of the Higher Education Act of 2008. As noted during reauthorization, experimental pilots conducted by the Department showed that students without high school diplomas who were allowed to receive financial aid after successfully completing six credits went on to have higher grade point averages and to complete more credits than students with high school diplomas. The Department has determined fair equivalencies to six credits in its proposed regulation, as well as in other areas of interpretation in this matter.

Ability to Benefit—Criteria for Approving Tests (§ 668.146)

We support the Department's efforts to increase transparency and disclosure throughout these proposed rules. Therefore, we believe it is important that all students who are given an Ability to Benefit test by a decertified test administrator be notified. In addition, all potentially affected institutions and prospective students should be notified, as well, when a test administrator is decertified. This should be the case regardless of whether there has been a determination that the tests given to those students or prospective students were improperly administered.

Satisfactory Academic Progress (§§ 668.16(e), 668.32(f), 668.34)

We appreciate the Department's efforts to strengthen the effectiveness of institutions' satisfactory academic policies. We support the Department's efforts to require institutions to be more explicit about their policies, including the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe and the appeals process. We are optimistic that these proposed regulations, particularly by encouraging institutions to engage in more early warning activities, will help ensure students avoid repeated probations that lead to them exhausting their financial aid eligibility before completing their studies. We also believe the Department's proposed definitions of financial aid probation and financial aid warning will help clarify where the student is in the process.

CLASP appreciates your consideration of our comments and would be happy to discuss further any of our concerns and recommendations.