



1307 New York Avenue, NW • Fifth Floor • Washington, DC 20005-4701
202.293.7070 • fax 202.296.5819 • aascu.org

July 30, 2010

Ms. Jessica Finkel
U. S. Department of Education
1990 K Street, NW, Room 8031
Washington, DC 20006-8502

Dear Ms. Finkel:

On behalf of the American Association of State Colleges and Universities (AASCU) and its 430 member institutions and state systems of higher education, I write to comment on the June 18 Notice of Proposed Rulemaking (NPRM) announcing several items focused on improving the integrity of the federal student financial aid system. While AASCU has also contributed its support to the broader higher education community letter, we are submitting these additional thoughts.

In general, the Department should be commended for attempting to address emerging issues facing students receiving federal financial aid. However, we are concerned that the Department is moving forward without presenting concrete examples of abuse or data that supports additional regulation. It is arguable that the Department has sufficient regulation currently in place and therefore many of the concerns raised could be addressed with improved enforcement. Finally, it is our impression that some of the items included in the NPRM are a direct result of the Department's Inspector General investigations. While we recognize that the IG is an advisory source to the Secretary, is it appropriate for the office to force interpretations of law or create regulations based on that office's perceptions?

Credit Hour (34 CFR 600.2)

AASCU is concerned by the attempt to define the term "credit hour." While the Department is simply codifying the Carnegie Unit typically used throughout higher education, it is greatly limiting the opportunities for innovative delivery methods in the future. Higher education must adapt to changing consumer demands. As government at all levels demands higher levels of productivity, one of the strategies institutions will pursue to comply will be diversifying methods of delivery. Locking in the definition of credit hour as proposed by the Department could stifle this productivity. During the negotiated rulemaking sessions, the Department was presented with significant concerns about the possible impact of this pursuit. The Department seemed to understand these concerns by removing this provision in the final language agreed upon by the negotiators. While the proposed rule offers alternative options, the language is too tightly

July 30, 2010

Page Two

aligned with the definition to allow pursuit of creative delivery methods.

State Authorization (34 CFR 600.9)

AASCU has no significant concerns with the State Authorization language as currently written, but cautions the Department on mandating restrictive criteria on states.

Retaking Coursework (34 CFR 668.2)

AASCU believes that it would be useful for the effective date of this regulation to allow early adoption of this provision for two reasons. First, Retaking Coursework would amend the definition of “full-time student” to allow repeated coursework to count towards a student’s enrollment status in term-based programs. Second, the Department’s *Federal Student Aid Handbook* currently prohibits this.

Gainful Employment (34 CFR 668.6)

Included as part of the definition of Institutions of Higher Education (IHEs) in the Higher Education Act (HEA) is a concept of gainful employment related to student preparation within one-year certificate type programs. The Notice requires the reporting of several student-specific data points related to job placement and the cost of a program of study, as well as the debt incurred upon completion by students attending the program. AASCU has historically been supportive of transparency and has no significant objections to the provisions included in the NPRM; however, certain clarifications are needed. Specifically, AASCU encourages the Department to indicate that “on-time” refers to the same definitions currently used for Student Right-To-Know criteria.

Furthermore, the Department is requesting schools to provide debt amounts from private educational loans and institutional financing plans. AASCU suggests that information on private educational loan debt should only cover information known to the school regarding private loans for which the institution has a role in certifying or has an arrangement with a loan provider. Institutional financing plan data should cover only institutional loans, not budgeting plans permitting families to pay tuition and fees in multiple payments within a term for a nominal administrative fee and without finance charges.

AASCU will be commenting in a separate letter regarding the NPRM related to Gainful Employment that was printed in the *Federal Register* on July 26.

Incentive Compensation (34 CFR 668.14 (b))

AASCU is supportive of the Department’s efforts to eliminate the 12 Safe Harbors that previously existed in the regulations. We encourage the Department, however, to fully clarify in the preamble language that bonuses and other compensation are allowable for individuals or entities employed by an institution for admissions or financial aid purposes. Adjustments to the language should focus on the quality and composition of the enrollment rather than strictly on enrollment targets.

Return of Title IV--Modules Programs (34 CFR 668.22 (a) and (f))

AASCU believes that the attempted changes to the modules language around return of Title IV

July 30, 2010
Page Three

provisions may harm students and could cause disruptive change in course offerings at institutions. At a minimum, the Department needs to clarify how schools that have attached the January intersession to the spring term to form a payment period should implement this provision.

The issue here is that schools with intersession terms do not view that intersession as a module to be attached to the fall or spring, but Department guidance in the *Federal Student Aid Handbook* suggests that the intersession be attached to either fall or spring for payment period determination. Therefore, these schools have merely complied with Department guidance in setting the payment period. This is not generally an issue when the intersession is attached to the fall payment period, since completion of the fall term would take the student past the 60% point where full eligibility is earned. Thus the request for guidance on how to handle an intersession attached to the spring term is appropriate. An alternative, now that year-round Pell is in place, is for the Department to permit handling the intersession as a stand-alone payment period in a term-based payment period structure.

Return of Title IV—Taking Attendance (34 CFR 668.22 (b))

NPRM contains a provision to further define current regulations related to the return of Title IV funds when an institution is required to take attendance. The language released in the Notice is extremely troubling. Current regulations place the focus on the institution when an institution, either due to its own requirements or that of an outside source, is required to take attendance. The proposed revision is problematic because paragraph (C) appears to shift the focus of the requirement to the student. The language as currently written would appear to require the entire institution to take attendance if a single student enrolled at that institution were required to take attendance by an outside entity, rather than applying the rule to just those students for whom attendance is required. This provision would have significant and widespread impact on institutional operations and costs. Any institution currently enrolling a member of the Armed Services would now be required to take attendance institution-wide, as the military requires its benefit recipients to self-report attendance. AASCU urges the Department to return to the language presented during the final round of negotiations that maintained the appropriate institution responsibility and required the institution to take attendance only for those students for whom attendance records were required.

Satisfactory Academic Progress (34 CFR 668.34 (c))

We understand that Sec. 668.34 (c) would permit a student to be in a warning status for more than one payment period provided that the student is essentially within “striking range” of being able to move up to the normal standard—that is, “should be able to meet the institution’s satisfactory progress standards by the end of the subsequent payment period.”

The Department should consider within the concept of warning/probation the necessity for minor or rigorous intervention. In the warning context, a student would be only slightly below the good standing requirement (3-6 credits) and the probation context would imply a greater deficiency. Thus, a student in a warning situation could, without a great deal of guidance other than better academic diligence, make up the deficiency by accruing credits at a rate slightly greater than the

July 30, 2010

Page Four

standard rate. However, the student who is significantly deficient would need more rigorous intervention provided by the necessity to formally appeal and have the institution help map an academic plan to restore good standing.

Thus, while the proposed warning procedures seem to permit only the next disbursement to be made, it is possible that a student may be making positive progress toward the Satisfactory Academic Progress (SAP) standard but will need two terms to actually meet the standard if they are reducing the deficiency by one course per payment period. AASCU suggests that it should be permissible for institutions to define a narrow band for warning purposes. If a student is in that band but does not drop below it, the language should not be interpreted so restrictively that it would suggest the student can only receive one more payment before having to be placed on probation or summarily lose eligibility.

In terms of regaining eligibility, the Department should consider instances where students have been out of school for a substantial period of time (such as two years or more) after falling out of SAP and treat these "readmitted" students on the same basis as transfer students where the credits attempted are set to the number of credits acceptable toward the degree after evaluation for readmission.

Verification (34 CFR 668.51)

We suggest that institutions be permitted to adopt early implementation of the change to permit students who complete verification after the end of enrollment to be paid according to the actual EFC rather than the lesser of the new EFC or the EFC prior to verification.

Misrepresentation (34 CFR 668.71)

AASCU is supportive of efforts to ensure that students and prospective students receive accurate information related to the institution of higher education that they are attending or interested in attending. We are encouraged by the Department's attempt to provide a threshold for this term. AASCU is slightly concerned with the broad set of characteristics that could place an institution in jeopardy of a violation. The language as written could subject an institution to punitive damages due to the actions of a volunteer tour guide or a disgruntled faculty member. While AASCU appreciates the effort of the Department to stop abusive, recurring practices, the proposed language could allow a single incident, either unintended or malicious in nature, to dramatically affect an institution. AASCU encourages the Department to accept the changes suggested in the higher education community letter while also evaluating the language according to this concern.

Other provisions included in the proposed rule, including High School Diploma, Ability to Benefit, and Disbursements of Title IV

The Department has appropriately claimed responsibility in assisting institutions on a number of these items and AASCU looks forward to providing support and feedback. As the Contract Administrator of the Servicemembers Opportunity Colleges (SOC) for the Department of Defense, we have carefully reviewed the language around Written Agreement and believe that its impact will not impair the current structure and relationships that SOC provides to members of the military.

July 30, 2010
Page Five

AASCU appreciates the opportunity to submit these comments. We look forward to working with the Department in the coming months on these and other issues of significant importance to higher education.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Elmendorf".

Edward Elmendorf
Senior Vice President
Government Relations and Policy Analysis