NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

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PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division
U.S. Department of Education
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To whom it may concern:

On behalf of the National Association of Student Financial Aid Administrators (NASFAA) and our 3,000 member institutions, we respectfully submit to the U.S. Department of Education (ED) our comments on Student Assistance General Provisions—Non-Title IV Revenue Requirements (90/10) (Docket No.: ED-2021-SCC-0150).

NASFAA represents nearly 20,000 financial aid professionals who serve 16 million students each year at colleges and universities in all sectors throughout the country. NASFAA member institutions serve nine out of every ten undergraduates in the U.S.

The American Rescue Plan closed the so-called "90/10 loophole" which historically has excluded veteran's educational benefits from the calculation of institutional revenue from federal sources, which by law cannot exceed 90% of a postsecondary institution's revenue. Many supporters of this change cite the incentive for proprietary postsecondary institutions to enroll veterans and their dependents—at times using aggressive recruitment tactics and deceptive marketing practices—as a way to maintain compliance with the 90/10 rule.

While the 90/10 rule change in the American Rescue Plan may address that problem, it has the potential to give rise to unintended consequences that ED has the opportunity to address proactively through negotiated rulemaking.

First, a simple way for institutions to come into compliance with the 90/10 rule has always been—and will continue to be upon implementation of the law's changes—to increase tuition. Further, significant new investments in the Pell grant program have been proposed, which could take place between now and implementation of the new 90/10 rule. A dramatic increase to the maximum Pell grant award would exacerbate the impact of the 90/10 rule change, and could lead to even higher tuition increases. We encourage the negotiating committee to carefully consider these implications.

Second, the inclusion of veterans educational benefits in the 90% revenue calculation beginning in 2023 will likely cause a significant number of institutions to become out of compliance upon implementation. Existing statutory sanctions result in provisional eligibility to participate in the Title IV student aid programs after the first year, and lost eligibility for institutions that fail the 90/10 metric for 2 consecutive years. It is unlikely that an institution enrolling significant numbers of military benefits recipients that was at or close to the 90% threshold could bring federal revenues below that threshold under the new rule by 2025. At even more risk are schools that have already failed one year and are already on provisional status. With the potential loss of institutional Title IV eligibility looming, it is reasonable to anticipate that some institutions will close due to this statutory change.

A January 2019 Brookings Institution paper estimated that the impact of adding veterans educational benefits to the 90% revenue calculation would cause for-profit institutions serving nearly a quarter of all students enrolled in that sector to fail that metric. A February 2021 Veterans Education Project paper estimated that 87 institutions would fail the 90/10 rule if veterans educational benefits were added to the 90% revenue calculation. Those institutions enroll roughly 127,000 students.

Precipitous college closures harm students and taxpayers. This was brought to light on a large scale five years ago with the abrupt closures of Corinthian Colleges and ITT Tech and, more recently, with the closures of Education Corporation of America in 2018 and Dream Center Education Holdings in 2019. It is reassuring to see the ongoing Affordability and Student Loans negotiated rulemaking committee addressing the impacts of school closures on students, and examining ways to make closed school discharges easier to access.

It is important to remember, though, that taxpayers pay for closed school loan discharges. Unlike borrower defense claims, there is no process to recoup funds from institutions for approved closed school discharge claims because the school no longer exists.

While the Affordability and Student Loans negotiating committee is making great strides, there are several other implications of school closures. Students struggle to transfer credits from one school to another even under ideal circumstances. But students transferring from for-profit institutions to public institutions fare especially poorly, losing an estimated 94% of their credits according to a 2019 Government Accountability Office report. Even when students are able to transfer credits, those credits are often applicable only to elective courses, so students may still need to take additional classes to meet the requirements for their major. Not only do students incur additional costs when credits don’t transfer, they waste their lifetime Pell grant and veterans educational benefits eligibility on those credits that don’t transfer.

Further, there are barriers to transferring to a new institution beyond the transfer of credits already earned. Geography, work, and family commitments all factor into a student's ability to transfer from one school to another as well.

We ask the Department to consider how it can proactively prepare for the potential fallout of the 90/10 rule change that we have described here, in the interest of protecting students attending or planning to enroll at institutions that may be at risk of closure. To that end, the Department and the negotiating committee should consider examining the regulations in 34 CFR 602.24 on teach-out plans to ensure that institutions at risk of closure due to the new 90/10 rule have an alternative for their students to continue their education with minimal disruption. It may not be adequate to require a teach out plan only once these institutions are placed on provisional approval status. The committee might consider, for instance, requiring a teach-out plan for all institutions whose current federal revenues exceed 80%, considering that, according to the Brookings Institution, the 10 percent of for-profit institutions that receive the largest share of veterans education benefits receive 11 percent of their total revenues from that source, meaning that if they were at 80% now, they would be over 90% once their veterans benefits were added into the calculation.

Currently, when an institution fails the 90% federal revenue threshold for one year, institutions must disclose the failure to students, as well as whether they have been required to develop a teach-out plan. The Department also publishes 90/10 rule failures on its College Navigator website. We ask the Department to consider whether these disclosures are adequate to inform students of the potential for their school to close given the significant impact the 90/10 rule change might have on institutional finances and ability to continue operating. Possibilities for changes to disclosures include requiring disclosures for institutions whose federal revenues currently exceed 80%, for the same reasons described previously with respect to teach-outs, and/or strengthening disclosure language to ensure students understand the implications of an institution's failure to comply with the 90/10 threshold and why it might be more difficult to comply than it has been in the past.

The Department might also consider with this committee or with the ongoing Affordability and Student Loans committee offering some additional flexibility for the timeframe within which students can withdraw pre-closure and still qualify for closed school discharge—even if just for 2024 and 2025—to address the higher likelihood of closures in that timeframe due to the changes to the 90/10 rule.

Separate from regulations and negotiated rulemaking, we ask the Department to be proactive in anticipating potential closures as a result of the 90/10 rule changes, especially with respect to offering automatic closed school discharges. As noted in the ongoing negotiations, many students are unaware that the option for a closed school discharge exists. Granting those discharges automatically using data the Department already holds helps the greatest number of students and removes burden from them at a time when they may already be under considerable stress.

Finally, we urge the Department and negotiators to consider carefully the sources of funding that will fall under the definition of “federal education funding disbursed to or on behalf of the student.” Each source of funding that is included in this definition has the potential to push an institution out of compliance, so it is essential that the definition be thoughtfully and thoroughly crafted, and be clearly stated in the regulations so as not to leave room for ambiguity.

Regards,

Justin Draeger, President & CEO