MEMO

To: Members of the GE Negotiated Rulemaking Committee
From: Barmak Nassirian
Subject: New (and Transitional) Program Approvals
Date: September 24, 2013

I decided to take a stab at responding to the Department's questions in writing before our scheduled conference call tomorrow. You'll note that the following framework explicitly states—and implicitly suggests—assumptions about how other pieces of the puzzle might have to be rearranged for this approach to work.

As I have previously suggested, the underlying statute requires some form of upfront review for all programs seeking to access Title IV funding through the GE provisions of Sections 101 and 102 of the Higher Education Act. The Department, for reasons that I understand but continue to respectfully disagree with, has chosen the administrative convenience and procedural safety of using actual, but lagging, indicators of whether various GE programs actually meet a set of substantive criteria, in this case, ED's proposed debt-service-to-income and debt-service-to-discretionary income ratios. (I'll note my hope that we will all coalesce around some way of additionally factoring in the fate of non-completers into whatever *post facto* metrics for establishing eligibility we devise.) The most troubling aspect of this approach, as many of you have pointed out, is that it relies on actual harm to multiple cohorts of borrowers in low-performing GE programs before it definitively determines that such programs should not be allowed to participate in Title IV. The Department's assertion that it would not consider false certification discharge as a remedy for the borrowers that would be used as the regulatory equivalents of canaries in the coal mine only make matters worse for students. (I'll note my hope that we can reconsider allowing borrowers whose plight is used by the Department to terminate their program's eligibility to raise that federal determination as a defense against the repayment of the loans they took out to enroll in that program.)

Despite my reservations about the use of lagging indicators, I realize that it is unlikely that we can agree on a completely different conceptual approach. I am therefore prepared to tentatively accept it, but hope that we could create a generally self-administered upfront process that would simplify GE for high-quality/low-risk providers, weed out the worst programs, and create safeguards for students and the taxpayers for programs that cannot be placed in one of the two previous categories until such time as they generate actual data.

Outline of the Proposed Approval Process

All GE programs would have to apply for approval at least 120 days before they can publicly announce or advertise the program. (I would argue that existing programs should also be plugged into this same analysis, except that they could report actuals where appropriate. The D/E and D/dE estimates might have some diagnostic value to them and the Department and might be worth collecting, but the Department would use actual ratios obtained from SSA.)

All programs whose instructional expenses exceed 50% of tuition and fees, and all GE programs offered by institutions with a median annual borrowing amount of $0 would be automatically approved.

These institutions may have to provide general programmatic information (CIP and SOC codes, narrative explanations of how the program was developed, etc.) but could skip the more detailed financial calculations.

All other programs would submit complete applications that would demonstrate that the proposed program will meet the requirements of a *fully* eligible program as defined in 34 CFR 668.8.

As part of their application for program approval, institutions would provide:

- A description of the proposed GE program, including CIP codes and program length. The description should also specifically indicate whether the proposed program meets all state-mandated programmatic and specialized accreditation requirements for employment in the associated profession, whether it provides guaranteed placement for such non-academic pre-licensure requirements as clinical placements, internships, and apprenticeships, and whether it would otherwise fully qualify graduates to take any licensure or community/industry standard examinations and meet any other pre-conditions of professional employment in the state in which the student is enrolled. The description should also provide information on how the institution developed the program, including all relevant internal and external reviews
- The specific occupation for which the program will prepare students for gainful employment, including SOC code and any required state licensure or community/industry-standards or certifications for practitioners. The institution should also include information on how market needs, professional qualifications, and starting salaries for the occupation were determined, including all relevant internal and external surveys, studies, or reviews
- *Actual* tuition and fees (changes to these data after approval may trigger Secretarial review)
- Projected per FTE instructional costs as defined in IPEDS
- Projected enrollments, including projected attrition and completion rates
- Projected annual percentage of students who will borrow
- Projected federal and private loan volumes
- Description of any institutional or private loan financing, including upfront fees and interest rates
- Projected starting income, including detailed description of how the institution arrived at the estimate
- **Projected debt-service-to-income and debt-service-to-discretionary income of graduates**
- **Projected estimate of whatever we decide is the appropriate metric for non-completers**
- Actual dollar amounts of *institutional* expenditures on advertising, marketing and recruitment activities, and what percentage of *institutional* expenditures these activities represent
- Institutions must report any material changes in the assumptions and/or projected numbers within 30 days of learning of them.
- The CEO and CFO of the institution (and its parent company if applicable) would be required certify the accuracy of the submission, and attest that the submitted information is true and complete, and that there are no substantial contrary internal information or relevant and material planning documents on any of the requested data points that are being withheld. Institutions and parent companies (and any agents they use to prepare for or conduct any of the required submissions) shall retain any material evidential matter for two years after the date when each cohort's data have been used to calculate actual GE compliance. The CEO and CFO would assume personal liability for a percentage of the Title IV aid inappropriately disbursed based on any omissions or distortions that prove to have been willful or grossly negligent.

As already stated, high quality/low risk programs would be automatically approved, and programs that by their own institution's projections would fail to *fully* qualify (i.e., in the zone or failed, or not preparing graduates for licensure/certification due to lack of necessary accreditation or non-academic placements) would be automatically denied. All other programs would be allowed to participate pending the collection and analysis of their actual data based on representations made in their applications, except that the Secretary would review that subset of providers whose application or other data places their programs in a high-risk category. (I would add that, to the extent that institutions would be self-certifying their eligibility, they'd be required to disclose some of their projections—starting salaries, debt-to-income, debt-to-discretionary-income, non-completer metrics—in all communications with prospective applicants.)

Characteristics of high risk would include:

High loan dependency
High cost
Low instructional expenditures
High advertising recruiting expenditures
Questionable or inadequate data provided in support of projections
Low starting wages (i.e., earnings>X% of poverty or minimum wage)

In addition to risk-based reviews, the Department would be well-advised to conduct a small number of randomly selected reviews for compliance purposes.

Programs whose self-certified application is denied based on Secretarial review would be allowed to conditionally participate until such time as their actual GE data becomes available if they post an irrevocable letter of credit payable to the Secretary and intended for a borrower restitution fund in the amount of total pre-approved loan volume. This same conditional approval would be applied to any existing programs that land in the zone or that fail based on their actual D/E and D/dE ratios. (This would do away with the odd transition proposal about attributing earnings of more recent borrowers to past cohorts' debt.) In addition, the Secretary may impose programmatic enrollment caps, limitations on various expenditures including specific restrictions on advertising, recruitment, marketing, executive compensation, bonuses, award of stock options, insiders' sale of stock, payment of dividends, or stock buy-backs during the period when any institution's GE program is conditionally approved. Conditional approval and these same limitations may also be triggered upon institutional notification of material changes to an original GE application, as well as during any year in which an institutional GE offering is in the zone or failing.

This is intended as a general reaction to the Department's questions, and will certainly need to be modified in numerous respects, but I thought it might help speed up the conversation.