

## Negotiated Rulemaking – Program Integrity and Improvement Committee

### Welcoming Remarks by Acting Under Secretary Jamienne S. Studley

Session 1; February 19-21, 2014

- Good morning. My name is Jamienne Studley, and I am the Acting Under Secretary for the U.S. Department of Education. Welcome to the Department and, on behalf of Secretary Duncan, thank you for agreeing to participate in our negotiated rulemaking sessions for Program Integrity and Improvement.
- The work you will do over the coming months is critical to the success of our students, and in turn, the nation as a whole.
- The outcomes of these negotiations have the potential to touch the lives of nearly every American who will pursue postsecondary education.
- The nature of higher education is always changing, and that is why regulatory work like this is so important. Thoughtful rules help institutions, industry and government keep pace with changing demographics and the evolving means of acquiring a higher education credential.
- One of the unique attributes of higher education policymaking at the Department is the use of the negotiated rulemaking process. Under this process, the Department works to develop a Notice of Proposed Rulemaking, or “NPRM” in collaboration with representatives of the parties who will be affected by the regulations.
- This process provides an opportunity to hear from a broad range of interests: from consumer advocates to public and private institutions of higher education to business groups in the initial drafting of a proposed rule. I know there are many alumni of prior negotiations here. As one who worked on neg regs from the beginning, including some that achieved consensus, I can attest to the value of what you are doing.

- Throughout this process, I urge you to keep the most important constituency –students – at the center of our conversations.
- The scope of these negotiations will cover six issues:

### **Clock to credit hour conversion**

- Since the publication of the 2010 Program Integrity regulations when we last regulated on this issue, the Department has received many questions and comments regarding the clock to credit hour conversion rule. These negotiations will help us determine where we can clarify and simplify the current rules to better serve students, institutions, and taxpayers.

### **State authorization for distance or correspondence education**

- Online programs have become more commonplace in recent years and provide another avenue toward expanding educational access, including for non-traditional students and those with disabilities.
- We are revisiting this issue in a negotiating rulemaking session in response to the 2012 D.C. Circuit Court ruling that remanded our previous regulations back to the Department on procedural grounds.
- The issue to be considered here is how to address States' rights, roles and responsibilities under the Higher Education Act to authorize institutions that provide distance education to their residents when an institution is not physically located in the state.
- We are asking you to consider how and in what ways the Department should address this statutory requirement for distance and correspondence education. We look forward to a thorough discussion.

### **State authorization for foreign locations of U.S. institutions**

- Similarly, many of our domestic institutions have foreign locations; however, our current regulations under the HEA do not specifically address such locations. Among the questions for all of you is how to apply statutory requirements to such locations.

### **Cash management**

- As the cost of a college education grows, students are increasingly having to rely on Federal Student Aid and they ought to be ensured of having safe, convenient, and free access to the aid to which they are entitled.
- Our cash management regulations have not been revised for some time and may not adequately reflect current technologies nor accommodate future ones.
- Moreover, students, Members of Congress, the Government Accountability Office (GAO), and others have recently raised concerns about the practice of disbursing Federal Student Aid via debit and prepaid cards and the extent to which such practices are in students' best interests.
- In some instances, we've heard that students incur excessive fees in accessing their funds or face barriers in locating fee-free ATMs.
- This has prompted us to ask you to consider how regulations should be revised to ensure that students can reasonably, conveniently, and reliably access their critical Title IV funds without fees or other costs. Issues for discussion will include timely delivery of students' credit balances and the methods by which this money is disbursed.

### **Repeated coursework for undergraduate and graduate programs**

- Through these negotiations, we also hope to gather information that will help determine whether the regulations on retaking coursework should be amended to limit applicability only to undergraduate programs of study.
- We also hope to gather input on whether a student can receive aid to repeat previously passed coursework if the student's program requires repetition of all of an academic year's coursework after failing a single class to progress toward program completion.

### **Definition of "adverse credit" for borrowers of the Federal Direct PLUS loan program**

- Under program regulations an applicant is considered to have an adverse credit history if a credit report shows an applicant:
  - 1.) Is 90 days or more delinquent on any debt; or
  - 2.) Has had a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt in the five years preceding the date of a credit report.
- Under our current regulations, the absence of credit does not constitute "adverse credit."
- What constitutes "adverse credit" was defined in regulations published 20 years ago--in 1994--when credit conditions and consumer markets were different and loans were made through two different programs.

- These conditions have changed. In particular, the President's student loan reform was enacted in 2010. As a result, all Federal student and parent loans are now made under the Direct Loan Program.
- In making the transition to 100% Direct Lending, the Department addressed a discrepancy in how the definition of adverse credit history was being applied in the Direct Loan program in comparison to practices that had been followed in the Federal Family Education Loan Program.
- Specifically, for the Direct Loan program, the Department was not counting debts in collection or debts that had been charged off as constituting adverse credit history, as required by the regulations.
- The Department took steps to address this inconsistency and, by November 2011, the Department's practices were consistent with the regulations, and with practices that had been followed in the Federal Family Education Loan Program.
- Unfortunately, the Department did not clearly communicate this change and it caught many students, parents, and institutions off-guard.
- We sincerely regret that the process was not more transparent.
- We believe this negotiated rulemaking provides an opportunity to revisit our regulations in an open and transparent manner.
- In these negotiations, we recognize the importance of access to higher education, while also acknowledging our legal obligation and duty to determine borrower eligibility as commanded by the statute.

- We look forward to discussing this very important issue and hearing your ideas.

## **CLOSING**

- We recognize that tackling these issues may not be easy. You were chosen because you represent stakeholders who are ultimately affected by these regulations and because you are all recognized as experts in your given fields.
- We believe that your collective knowledge and demonstrated dedication will help us reach consensus on these very important higher education issues.
- Thank you again for lending your expertise and time to this important work.