



July 1, 2021

Dr. Michelle Asha Cooper  
Acting Assistant Secretary for Postsecondary Education  
U.S. Department of Education  
400 Maryland Ave. SW, Room 2C179,  
Washington, DC 2020

Attention: Vanessa Gomez, U.S. Department of Education  
RE: Docket ID ED-2021-OPE-0077

Dear Assistant Secretary Cooper:

On behalf of the Career School Private Education Network (CSPEN), a 501(c)(3) charitable non-profit educational organization, I write to you today to share comments in response to the Department of Education's May 26, 2021 notice in the *Federal Register* seeking comments on the development of proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans.

CSPEN commends the Department and the new Administration for taking steps to further review, refine, and revise the regulations on the fourteen areas detailed in the notice. In general, CSPEN supports the Department and the new Biden Administration's efforts to address issues of student access and debt (Student Affordability), the quality of education provided by all institutions of higher education (Institutional Accountability), and the administration and delivery of federal student financial assistance (Federal Student Loans).

While all three areas are of the utmost importance, CSPEN will touch only briefly on the issues of Student Affordability and Federal Student Loans near the conclusion of this document, and will focus the majority of our comments on Institutional Accountability.

In general, our comments with respect to the Department's decision to address potential revisions of the Institutional Accountability regulations fall into two categories:

- The Federal Negotiated Rulemaking Process; and
- Equitable Development of Institutional Accountability Regulations.

Within these two broad themes, CSPEN has attempted to provide brief, succinct, comments and recommendations that we hope that the Department will take into consideration as you make determinations on what topics and committees will comprise this most recent series of negotiations.



CSPEN will continue to monitor the Department's designated website and the *Federal Register* for additional information on the establishment of the committees and the topics to be considered. Detailed on the following pages are our written comments for your consideration.

### **The Federal Negotiated Rulemaking Process**

Having monitored all three days of the virtual hearings, CSPEN will not go into tremendous detail here, but would like to emphasize requests made by many of the commenters regarding key aspects of the negotiated rulemaking process.

First and foremost, CSPEN urges the Department to ensure that the committees established adequately represent the communities subject to the regulations. While all parties outlined in the statute, as well as others determined necessary by the Secretary, should be included, the distribution around the table, should, to the extent practicable, be fair and balanced.

CSPEN recommends that this includes separate representation from the following groups on behalf of our community:

A minimum of six private, for-profit representatives, must be included as Primary or Alternate Negotiators. The positions upon which representatives from our community must be represented include:

1. A representative on behalf of large, multi-campus institutions of higher education.
2. A representative on behalf of small, individual "mom & pop" institutions of higher education.
3. A representative on behalf of Proprietary State Associations – similar to requests for state representation from States Attorneys General, there should be equal represented to gain the collective information necessary to respond to the AGs.
4. A representative on behalf of Accrediting Agencies with a majority of institutions under their oversight that are proprietary.
5. A representative on behalf of Proprietary Students – with all due respect to the major student groups, none of them represent the interest of proprietary students, and in fact often times the proposals offered by these representatives is counter to the needs of this important community of students.
6. A representative on behalf of Military Servicemembers and Veterans.

(Note: There is past precedence for many, but not all, of the designated groups listed above.)

Second, and equally important, CSPEN urges the Department to take a leadership role in the construction of regulations that are equitable. This does not mean that every regulation may have to be applied exactly the same to all sectors and types of institutions of higher education. It does mean that there are similar, and equally reliable, measures of institutional quality and accountability for all programs and institutions – and to the extent practicable, all institutions of higher education should be held to the same standards and expectations, and should be subject to the same corrective actions when they fail to meet those standards and expectations.



We believe that this lends itself to further exploration of the use of more, not less, disaggregated information as outlined in the Department's *Federal Register* notice, and encourage the Department and all negotiators to determine how the information can help inform and promote differentiated, but impartial and objective regulations.

Third, CSPEN urges the Department NOT to hold these vitally important negotiations virtually. As many commenters noted, and CSPEN agrees, this deliberative process benefits greatly from the interaction that occurs not only at the negotiating table, but also as a part of the informal discussions that are held during breaks, lunches, and hallway conversations that occur spontaneously.

We recognize that our collective "universe" has been required to adapt to the use of virtual communications throughout the pandemic, and that all manner of negotiations have been completed using this format out of necessity over the past year and a half plus. However, we ardently believe that these deliberations are far too important to handle in this format, especially given that we appear to be so close to returning to more regular and routine, in-person, interaction.

Fourth, CSPEN urges the Department NOT to come to the first meeting of each committee with proposed regulatory language. Having been involved either directly, or indirectly, at every federal negotiations since the inception of the Federal Negotiated Rulemaking process, it has been our experience that, while admittedly time consuming, the ability to share information and recommendation with the Department prior to the development of initial draft proposals is highly beneficial.

Please do not take the ability for the community to provide thoughtful, regulatory suggestions and language for Department consideration prior to the presentation of initial draft regulatory language.

And finally, CSPEN respectfully requests that, once the Federal Negotiated Rulemaking meetings are complete that the entire community have—

- A minimum of 60 days for public comment if the committees are successful in achieving consensus on the regulatory proposals; OR
- A minimum of 90 days for public comment if the committees are unable to achieve consensus on the regulatory proposals.

Regardless of the outcome, all interested and effected parties will need adequate time to review and comment on these important topics and the determinations made by the negotiators and the Department. Please provide ample time for such public comment to inform the development of the Final Rules.



### **Institutional Accountability**

It will come as no surprise that the fundamental request of CSPEN is to urge the Department to ensure that the development of regulations in this area apply equitably to all institutions of higher education. All students and parents look to the Program Integrity TRIAD to ensure the delivery of a quality higher education from the institutions in which they choose to enroll.

CSPEN believes that the Department's primary role within the TRIAD is the administration of the FSA programs is compliance with the statute and integrity & support for all students. As the Department seeks to review, revise, and potentially establish new regulations, we hope that the focus will remain on the above tenants and the ability to limit complexity, administrative burden, and enforcement overreach.

With respect to the individual topics, our brief comments are detailed below.

#### Change of Ownership and Change in Control of Institutions of Higher Education

While CSPEN appreciates the concerns that have been raised by both Congress and external entities regarding changes of ownership and control, especially with respect to conversions from private, for-profit to non-profit status, we ask that the Department proceed with caution.

Proposals to prohibit or develop regulations which are overly complex and prohibitive could preclude future transitions which are in the best interest of the students, the institutions, and the surrounding community.

CSPEN respectfully requests that the Department work carefully in negotiations related to revisions or additions in this area.

#### Certification Procedures for Participation in Title IV, HEA Programs

CSPEN anticipates that at least a portion of these negotiations will focus upon assurances regarding personal financial guarantees from owners and that these negotiations may also include targeted requirements for eligibility of our sector proposed by various commenters during the virtual hearings.

With respect to personal financial guarantees – CSPEN welcomes the opportunity to explore all manner of reasonable protections for students – and all other ostensibly impacted parties as long as they are equitable and capable of being administered without undue hardship.

It is our understanding that recent requests for this information from some institutions with external support (venture capital) are finding it hard, if not impossible, to meet the Department's current expectations. We look forward to working with the Department on a workable compromise solution.



With respect to potential new regulatory eligibility requirements, CSPEN hopes that the Department will be fair and balanced in any efforts to seek “proof” of the value of an institution of higher education’s eligibility to participate in the FSA programs.

Current statutory and regulatory frameworks already exist to determine eligibility and participation in the FSA programs.

CSPEN is interested in learning what additional requirements the Administration and the Department may suggest and their justification for the addition solely with respect to our community. Our first two lines of questioning regarding any such proposals will be:

- A. Does the Department have the legal authority to establish the new requirements?
- B. Why such requirements, if established, should not be required of all institutions of higher education to provide equal protections for all students under the Title IV programs?

Standards of Administrative Capability & Financial Responsibility for Participating Institutions of Higher Education, Such As Events that Indicate Heightened Financial Risk

While CSPEN looks forward to engaging with the Department on these two highly important areas of institutional accountability, we must begin with another urgent request for immediate Department action prior to the start of any negotiations this Fall.

For almost three-quarters of a year, private sector institutions of higher education have been requesting guidance, and potential waivers, related to key Administrative Capability and Financial Responsibility requirements based upon unforeseen issues arising from the COVID-19 pandemic. Chief among these institutional concerns are issues related to institutions’ ability to meet the key metrics such as the 90/10 Rule (Administrative Capability) and the composite score requirements and other ratios (Financial Responsibility).

Thus, CSPEN urges the Department to take immediate steps to provide guidance on what steps the Department will be taking to provide relief in these areas. It is our hope that the Department will consider relief similar to already provide guidance in areas such as short-term program eligibility requirements (e.g. the 70/70 Rule).

With respect to the pending negotiations, CSPEN submits that the Department must ensure adequate representation from CPAs and other financial groups be included in any Financial Responsibility deliberations. This is in addition to the proprietary specific representation that has been shared earlier in this document.

Such individuals would be best served to discuss best practices in terms of the assessment of heightened financial risk and general discussions regarding any efforts to revise the current Financial Responsibility regs.



Borrower Defense to Repayment (BDR) & Mandatory Pre-dispute Arbitration and Prohibition of Class Action Lawsuits Provisions in Institutions' Enrollment Agreements and Associated Counseling About Such Arrangements

CSPEN agrees that any student who is defrauded by an institution of higher education must have a timely, equitable, and comprehensive process to seek relief. We support efforts by the Department to take steps necessary to ensure that such student protections are provided when circumstances arise at any institution of higher education.

We look forward to working with the Department on revisions to the existing BDR regulations. Key issues that we will look to preserve from the existing process will include:

- Institutional participation in the process of review and determination of appropriate relief of claims presented to the Department;
- Limits on potential overreach in the establishment and use of both the mandatory and discretionary triggers; and
- Institutional-specific requirements.

Unfortunately, we oppose efforts to meld the prior repeal of pre-dispute arbitration requirements and the establishment of class action lawsuits in the development of revisions to the BDR regulations and general regulations.

Gainful Employment

CSPEN urges the Department to once again proceed with caution in the development of yet a fourth round of negotiations related to determinations of “gainful employment in a recognized occupation.”

In general, we suggest that data already currently exists and is provided to the consumer and other interested parties that enable them to make informed decisions about their educational opportunities via the College Scorecard.

If the Department wishes to once again consider limitations on participation and/or eligibility based upon these subsets of data, we urge the Department to:

Ensure that all programs and institutions with programs subject to the regulations be held to the same broad eligibility standards;

- If waivers or other exemptions are to be considered, that such relief be equally attributable to all types of educational institutions and programs that meet criteria established under the regulations based upon identical criteria (in other words, all institutions offering the same/similar programs in a specific discipline are assessed equally and any variances offered to institutions/programs within the discipline are the same) and



- Where appropriate, the department be open to alternative means of assessment and flexibility in both the assessment tools, metrics, and determinations.

Moreover, we believe any earnings-based accountability measures must be based upon:

- Graduate earnings established after a reasonable period of time for the individuals to have established themselves in the professions in which they had previously sought an education;
- Should not penalize the institution for individuals who have chosen alternative career paths not directly, or even indirectly, associated with their prior education; and
- Differentiation not only in terms of labor market and socio-economic data by community, state, region, or educational discipline, but also based upon unique characteristics associated with various educational disciplines (e. g. underreporting of earned income within many service-related professions, including, but not limited to the Beauty & Wellness community).

### **Student Affordability**

CSPEN urges the Department to consider taking the two issues that are most closely aligned with student access --- Ability-to-Benefit and Pell Grant Eligibility for Prison Education Programs --- to be broken out as Subcommittees, for inclusion in the Federal Negotiated Rulemaking process under Institutional Accountability.

We believe that the level of institutional participation in these two programs is limited to a specific subgroup of interested parties that would benefit from having their own, concentrated negotiations, the results of which could be brought to a full committee for presentation and approval.

We would be remiss if we did not express our frustration with the determinations made by Congress not to enable institutions within the proprietary community from being eligible to participate in the Second Chance Pell Program for Prisoners, but understand that this is statutory and not regulatory and therefore out of the jurisdiction of the Department to consider our communities' inclusion.

As it relates to possible updates and revisions to the Ability-to-Benefit regulations, we urge the Department to once again select representatives from all sectors of the higher education community, as there are many proprietary institutions that participate in State established Career Pathways programs and believe that together with other representatives of the higher education community quality modifications to the regulations in this area are attainable.

### **Federal Student Loans**

CSPEN urges the Department to review and consider the following comments with respect to the student loan related topics detailed in the *Federal Register* notice and to combine the topics into a single negotiating committee.



Prior to the beginning of Federal Negotiated Rulemaking beginning later this year, we urge the Department to provide federal servicers, borrowers, and other stakeholders certainty on the date when the COVID-19 payment pause for federally-owned loans will end.

The September 30 deadline date is quickly approaching and every day that passes without certainty of the date when the payment pause will end is a detriment to the borrower and has implications for both the institution and the Department as previously noted as well.

There is an urgency here - outreach to these borrowers must begin many months before repayment begins, particularly to those who are at a high risk for falling into delinquency when payments resume.

Borrowers need time to budget, update their accounts, and become reacquainted with their servicers – providing them with any required documentation and updates.

Servicers also need time. It is our understanding that servicers will need to update IT systems, find and hire/re-hire staff, ensure staff pass background checks and receive FSA security clearance, and are given proper training to adequately assist borrowers in choosing their best repayment options and prevent defaults.

With respect to the five issues listed below, we support efforts to establish and develop regulations related to these key issues and recommend the establishment of a committee to fully vet them and make necessary revisions. These topics include:

- Discharges for borrowers with a total and permanent disability;
- Closed school discharges;
- Discharges for false certification of student eligibility;
- Loan repayment plans; and
- The Public Service Loan Forgiveness program.

### **Conclusion**

CSPEN thanks the Department for providing all interested parties with the opportunity to provide public comment on the topics the Department is considering for future negotiations. We hope that our recommendations will be helpful to the Department as you determine the complete list of topics, committees, and process ahead. In closing we wish to reiterate our support for routine review, assessment, and revision to the regulations. This is a needed and necessary part of the process and we welcome the ability to be a part of it. We simply request that above all else, the outcome be fair, balanced, and equitable for all involved.

Thank you for enabling CSPEN to present these comments.

Respectfully submitted,





Tom E. Netting  
Executive Director