

Testimony of Sanford Ungar, President of Goucher College
Advisory Committee on Student Financial Assistance
September 30, 2011

Thank you for holding this hearing today, and for inviting me to testify on behalf of Goucher College, where I have served as president since 2001, and on behalf of the National Association of Independent Colleges and Universities (NAICU), with which I have been actively involved at the state and national levels.

Goucher College is an independent, selective, coeducational institution located in Baltimore, Maryland, dedicated to the interdisciplinary traditions of the liberal arts and a broad international perspective on education. Through internships, community service, and our unique study abroad requirement – which builds on a first-rate academic program in the arts and sciences – Goucher teaches its students to engage the world as true global citizens. As of the Fall 2011 semester, the college has approximately 1,500 full-time undergraduate students enrolled from 47 states and 27 countries, plus the full-time equivalent of 400 graduate students in seven master’s degree programs and several certificate programs.

The National Association of Independent Colleges and Universities (NAICU) serves as the unified national voice of independent higher education. With more than 1,000 institutional members nationwide, NAICU reflects the diversity of private, nonprofit higher education in the United States. Members include traditional liberal arts colleges, major research universities, church- and faith-related institutions, historically black colleges and universities, women's colleges, performing and visual arts institutions, two-year colleges, and schools of law, medicine, engineering, business, and other professions. NAICU is committed to celebrating and protecting this diversity of the nation's private colleges and universities.

The Effort to Deregulate

The effort to deregulate colleges has been on-going since the 1990s. In general, this effort has been a miserable failure, as more and more requirements are placed on colleges, even in the very legislative vehicles that seek to deregulate them. During the past two reauthorizations of the Higher Education Act (HEA), Congress has set deregulation as a clear goal, yet each of these bills has brought with it many more regulations than it has removed. The 2008 reauthorization, which sanctioned the very study we are reviewing today, is an excellent case in point.

In that bill, Congress set as a clear goal the concept of identifying -- with an eye toward removing -- regulations that were duplicative, no longer necessary, inconsistent with other requirements, or overly burdensome. Two studies were commissioned: this one by the Advisory

Committee, and another by the National Research Council of the National Academy of Sciences. Each was authorized to receive funds for this purpose, although this study has been *underfunded* and the National Research Council project has never been funded at all.

Ironically, the same legislation added many more unfunded mandates on colleges that were well-intentioned but expensive. Included are new requirements related to textbook selection, net price calculators, missing students, campus emergencies, fire safety, lobbying certification, post-graduate information, retention rates, disaggregated graduation data, peer-to-peer (P2) file sharing disclosures, readmission for service members, hate crime reports, teacher education report cards, loan sunshine, consumer information for College Navigator, net price by income groups, transfer of credit policies, drug and alcohol abuse, and drug penalty violations notices.

In all, more than 200 pages of legislative language were added to the Higher Education Act, and more than 200 pages of more detailed regulatory guidance followed. This list includes only Department of Education requirements in the HEA. Colleges are also subject to regulation by numerous other agencies under a variety of statutes.

Past Efforts

The 2008 Act follows the Sisyphus-and-the-rock pattern of the past 20 years. In the 1990s, the Clinton administration largely ignored a mandate from Congress to review all existing regulations with an eye toward simplification. Recognizing the federal government might need a jump-start, NAICU set up its own task force to think about how to approach the growing morass of regulations. That task force's work is described in more detail in the excellent testimony (attached) given last March by my colleague Christopher Nelson, president of St. John's College in Annapolis, Maryland, before the House Committee on Education and the Workforce. His testimony summarizes a three-category framework for looking at college regulations developed by NAICU, which is still useful today:

- 1) regulations directly related to the administration of HEA programs;
- 2) regulations providing for appropriate accountability by recipients of HEA assistance; and
- 3) regulations that are not related to program administration or accountability, but are applied by virtue of the fact that Title IV assistance is provided to an institution.

To quote President Nelson, *"it is the third category where most concerns about regulatory burden have been raised. It is not a question of the good intentions behind these requirements, but that they continue to accumulate with no paring back or review of what is already on the books. Just a couple of examples—*

- *Colleges have been required to include in their annual campus crime reports “arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession. (HEA Section 485(f)(1)(F)(i)(IX). Under the Higher Education Opportunity Act (HEOA), enacted in 2008, colleges now have to include similar (but not quite identical) information in a biennial drug and alcohol abuse prevention report. (HEA Section 120(a)(2)).*
- *Likewise, colleges have long been required to certify compliance with restrictions on lobbying at the time of applying for federal support and after receiving it. However, under HEAO, an institution must annually “demonstrate and certify” to the Secretary of Education that it has not used any HEA funds to attempt to influence a member of Congress in connection with any Federal grant, contract, loan, or cooperative agreement, or to secure an earmark.”*

The Exception

There is one significant exception – an area where deregulation has been accomplished -- but I hesitate to call it a success. In 2002, a negotiated rulemaking panel was assembled to study deregulation. Although the panel did not come to a consensus, rules were later issued that finally did deregulate – but only a little, and in the wrong areas. By loosening the fraud-and-abuse rules in distance education and incentive compensation, we started down a path that helped usher in the current round of abuses by some for-profit colleges. In combination with subsequent legislative action to weaken the “90-10” restrictions, we have found ourselves in a situation where, in order to try to correct problems in the for-profit sector, even more onerous regulations are being imposed on *all* colleges. Some of the new rules put in place this year are needed, such as a re-tightening of the regulations on incentive compensation. However, others – such as the rules on state authorization and the new federal definition of a credit hour--are maddeningly complex. They have set off a cottage industry of expensive regulatory compliance activity that threatens to stifle innovation, without having a clear effect on reducing fraud and abuse.

The Challenge

With this “more-frustrating-than-not” history of deregulation of higher education, let me applaud the Advisory Committee for taking on the task of again trying to come up with a framework for remedying the problem. Your preliminary outline is a good starting point for helping to identify at least some ways to make the current regulatory morass less expensive and less complex for colleges and students alike. Let me offer a few observations on your work to date, and also offer a caution:

Trying to disentangle federal requirements on campus is very difficult. For example, a federal statute might place a specific requirement on campus police. That requirement might come on top of state and municipal requirements. Professional standards for good policing also come into play, along with campus policies. So, if campus security officers are asked how

burdensome *federal* campus safety rules are, they may have a hard time answering; they are likely to know *all* the rules they must follow, but may not be aware of the origin or source of every aspect of those rules. The same principle applies to other regulatory areas such as information technology, campus research, and student affairs, making it very difficult to document which rules are less necessary than others, never mind how to improve them.

The massive volume of federal rules on colleges has, in itself, become an obstacle to deregulation. As rules become more pervasive, there is rarely a single person on each campus who knows which rules affect whom. In response to the 2008 HEA reauthorization bill, NAICU produced a series of educational tools for campus presidents on the new requirements. While the details were housed on a website, one of the key tools for presidents was a mini-guidebook to help them manage implementation. (I have provided copies of the booklet, *HEA 101: President's Quick Guide to the New Law*, for each for each member of the Advisory Committee). This education effort also included implementation seminars in various states that brought together key campus officials to learn about the new rules. One of the most interesting take-aways from these sessions was that few campus officials understood the large number of requirements imposed on other divisions within their own institutions. In short, there is such a large number and variety of regulations on colleges, that no single official on campus can judge which are the most costly, duplicative, or burdensome.

I would also observe that there are some rules that, while appropriate, are extremely burdensome. The federal government provides nearly \$160 billion annually in Title IV aid to students and parents. The Department of Education has a responsibility to protect those funds, even if the process for doing so is expensive for colleges. The trick is to regulate in the most efficient and effective manner possible, and to do so on matters that are appropriate to the task at hand. A NAICU task force, formed in 1994 to consider questions of accountability, dubbed this principle “appropriate accountability,” and I think that concept can still serve us well today.

In relation to the concept of “appropriate accountability,” the Advisory Committee’s survey contained a question that runs a particularly high risk of sending your work off on the wrong track. That question explored the concept of providing relief from regulatory burden based on meeting one or more performance measures. The precise form and level of relief was not specified in the question, but respondents were given a choice of possible performance measures—such as job placement and competency-based learning assessment benchmarks.

This concept merits further consideration, but needs to be carefully focused if it is to have any success in alleviating the regulatory burden. We would caution the Advisory Committee to avoid getting sidetracked from its focus on regulatory relief into broader education reform controversies, such as national measurements of student learning.

Where this approach could make some headway is the extent to which the relief received is directly linked to an area in which the institution has demonstrated good performance. A good example of this is the longstanding concept of relief from the 30-day delayed-disbursement requirement for low-default schools. Since the 30-day delay was implemented to help cut down on loan defaults from students who dropped out, providing relief for low-default schools was directly linked to successful performance in the area in which relief was sought.

Possible Solutions

I would like to conclude by suggesting some approaches you might want to consider as your work continues. These are approaches that NAICU has developed or supported during the past 15 years, as it has sought to advance the conversation on deregulation. I have attached the relevant proposals to my testimony, as they were first put forward in 2002, or as they appear in the current HEA.

- 1) Create a “pay-go” system for deregulation. Any new requirement added on colleges would have to be balanced with the removal of an existing rule. (See attachment: *Regulatory Burden Commission*)
- 2) While we welcome the grocery list of burdensome regulations the Advisory Committee has developed to date, this effort will not truly deal with the layers and layers of regulatory activity that have built up since the 1990s. Congress authorized the National Academy of Sciences to undertake such a study in section 1106 of the 2008 HEA reauthorization. Funding has never been provided for this study, but it remains the only real method of doing systemic deregulation. (See attachment: *Section 1106, Higher Education Opportunity Act*)
- 3) If deregulation is impossible, systemic regulation helps. The master calendar provisions for student aid programs has provided a much needed timeline to help colleges implement complex new rules in an orderly fashion. A parallel system should be developed for the escalating number of reporting requirements in non-student-aid areas. In short, if colleges are required to gather information that has never before been collected on campus, they should be given time to set up reporting systems, before the collection period begins. (See attachment: *Master Calendar for Reporting Requirements*)
- 4) In a similar vein, it would be helpful if the Department of Education were to implement a provision included in the 2008 HEA reauthorization that requires the Secretary to provide institutions with a list of HEA reporting and disclosure requirements—along with the specific information institutions need to ensure compliance. No action has been taken on this provision of the law. (See attachment: *Compliance Calendar/Section 482(e) of the Higher Education Act.*)
- 5) Likewise, the Department of Education has information, goals, and experience that make any conversation about deregulation that does not involve the department itself doomed to limited success. When the reason the Department has certain regulatory requirements

is not known, it becomes impossible to find alternative proposals that might work better and cost less. Again, NAICU has long proposed that a comprehensive review of all federal regulations be led by the Department of Education, and even though law has required this effort since 1998 (Section 498B), the law has been largely ignored. (See attachment: *Section 498B of the Higher Education Act.*)

Conclusion

True deregulation will not happen without the active participation and commitment of both Congress and the Department of Education. Members of Congress have to be willing to write into law only those provisions most in the public interest, and not to invoke such a level of detail that the efficiency and effectiveness of those very regulations are sacrificed. A good example of this was an earlier effort to write in requirements on specific methods of cell-phone alerts to students after the Virginia Tech tragedy. Fortunately, the authors modified their proposals in a manner that allow new technological innovations to provide state of the art alert systems for students, many of whom do not keep their cell phones on while in class, or have moved beyond cell phones all together.

I realize that we cannot hope to develop a new, innovative system for higher education deregulation with the limited resources available to the Advisory Committee today, but the draft before you represents an important effort to do the best we can, in the hope that more comprehensive reform will follow.

Thank you for permitting me to appear before you today, and I wish you the best of luck in your work.

Attachments

1 – “Education Regulations: Weight the Burden on Schools and Students” – Testimony of Christopher B. Nelson, President, St. John’s College, Annapolis, Maryland, before the House Committee on Education and the Workforce, March 1, 2011.

2 – Regulatory Burden Commission. NAICU recommendation to Congress for reauthorization of the Higher Education Act, December 2002.

3 – Section 1106 of the Higher Education Opportunity Act (Public Law 110-315), calling for a National Research Council of the National Academy of Sciences study of all Federal regulations and reporting requirements with which colleges must comply.

4 – Master Calendar for Reporting Requirements, NAICU recommendation to Congress for reauthorization of the Higher Education Act, December 2002.

5 – Compliance Calendar. NAICU recommendation to Congress for reauthorization of the Higher Education Act, December 2002. (Recommendation was adopted and included as Section 482(e) of the Higher Education Act – also attached.)

6 –Section 498B of the Higher Education Act, directing the Secretary of Education to review regulations issued under Title IV of the Act.

In addition, a copy of *HEA 101: President's Quick Guide to the New Law* has been provided to each committee member.