

August 11, 2022

Mr. Jean-Didier Gaina  
U.S. Department of Education  
400 Maryland Avenue SW  
Room 2C172  
Washington, DC 20202

**Re: Docket ID ED-2021-OPE-0077**

Dear Mr. Gaina:

Thank you for the opportunity to provide input to the U.S. Department of Education (Department) regarding the Notice of Proposed Rulemaking (NPRM) released on July 13 in the Federal Register. These regulations are of great importance to the National Association of Independent Colleges and Universities (NAICU) as they impact our nation's private, nonprofit sector of higher education and the students that attend these institutions.

NAICU serves as the unified voice for the more than 1,700 private, nonprofit colleges and universities in our nation. Founded in 1976, NAICU is the only national membership organization solely focused on representing private, nonprofit higher education on public policy issues in Washington, DC. NAICU's membership reflects the diversity of private, nonprofit higher education in the country and includes major research universities; faith-based colleges; Historically Black Colleges and Universities; Minority-Serving Institutions; art and design colleges; traditional liberal arts institutions, science institutions, women's colleges, work colleges, two-year colleges and schools of law, medicine, engineering, business and other professions. Each year, private, nonprofit colleges and universities graduate more than 1.1 million students.

NAICU appreciates the Department moving forward on the issues of total and permanent disability discharge; closed school discharge; false certification discharge; public service loan forgiveness; borrower defense to repayment; and interest capitalization. On behalf of the undersigned associations and organizations, I offer the following comments on several of these topics.

#### Closed School Discharge

We strongly support ensuring students receive the discharge they deserve. When institutions close, students are entitled to their loans being discharged if they are unable to complete a teach out agreement.

Current regulations define a closed school as an institution that has closed **all** of its programs, and the Department has operated with this definition for the last several years. However, the Department is proposing to change the definition of a closed school to consider a school closed if it closes **most** of its programs. This creates a concern for those smaller institutions in our sector that only have a few programs on their campus.

Our sector has slightly under 1,000 institutions that have under 1,000 students enrolled and a median endowment of \$8 million.<sup>a</sup> These institutions have fewer programs and could potentially be considered a closed school if they restructure their programs. Institutions add and discontinue programs regularly in order to remain competitive and ensure they can offer current programs for an everchanging labor market. It is in the best interest of institutions, and the students they serve, to be innovative in their programming. Because smaller institutions, like the ones mentioned above, are generally more under-resourced, we are concerned that the change in definition will discourage innovation.<sup>b</sup>

### Borrower Defense to Repayment

NAICU has been closely involved with both the 2016 and 2019 borrower defense to repayment regulations, and we support the underlying intent of the regulations to protect both students and taxpayers from fraudulent institutions. There are several other aspects of the proposed borrower defense to repayment regulations that we support, including the ability of state requestors, such as state attorneys general, to request group claims; the ability of institutions to provide a response when a claim is submitted; the adjudication process for borrowers; and the ability of a borrower to have their claim reconsidered if initially denied.

However, we remain most concerned regarding the process to recover funds from an institution. The proposed regulations suggest a six-year period that would allow the Secretary of Education (Secretary) to collect the amounts of the various discharges from an institution. This six-year period would begin after the borrower's last date of attendance at the institution and would be paused if a claim is submitted during the six-year period. We are appreciative of the changes made by the Department in the negotiated rulemaking sessions that would allow for the six-year period to be paused instead of starting over completely. However, we were surprised to see newly added language in the proposed rule that would eliminate any limitation period to collect from an institution if the borrower has obtained a favorable judgement based on state or federal law in a court or administrative tribunal of competent jurisdiction against the institution.

For an institution to comply with this aspect of the regulation, it would need to retain any necessary records on behalf of the student far beyond the three-year period outlined in the General Education Provisions Act. While we understand that the regulations interpret this three-year period as a minimum period, it is still arguably not the intent of Congress that records be maintained after three-years.<sup>c</sup> It becomes extremely burdensome for institutions to ensure that they are compliant with regulations when they are not given a concrete and reasonable timeframe, and it becomes difficult for institutions to defend themselves in any borrower defense to repayment proceeding.

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<sup>a</sup> Data calculations conducted by NAICU using data in IPEDS.

<sup>b</sup> Data calculations conducted by NAICU using data in IPEDS. 34 CFR 600.300(b)(13) requires institutions to accept responsibility and financial liability stemming from losses incurred by the Secretary for repayments of amounts discharged through a closed school discharge process when seeking to participate in Title IV programs.

<sup>c</sup> 34 CFR 668.24 sets record retention at a minimum of three years.

Also, we believe that institutions should have the ability to appeal any final decision made on a borrower defense claim. The Department is proposing to only allow the individual borrower, or the state requestor of a group claim, to submit a reconsideration request if the claim is denied in full or in part. We are thankful that institutions would be given the opportunity to provide any necessary evidence during this process but remain deeply concerned that an institution is unable to also submit a reconsideration request. Per the proposed regulations, a reconsideration request will only be processed if there are administrative or technical errors, a state law standard applies, or new evidence is presented. Institutions should be allowed to submit a reconsideration request on the same grounds.

As it relates to aggressive recruitment, we believe that institutions should be held accountable to those acts that are truly egregious. Students should never be subject to actual and intentional abuse of institutions as it can cause significant harm. However, we want to ensure that the proposed regulations do not leave too much room for interpretation as to what would constitute an egregious act. The proposed regulations indicate that the use of threatening or abusive language, or behavior, toward the student or prospective student would be considered an aggressive and deceptive recruitment tactic. While we agree that this truly abusive behavior is unacceptable, there could be many instances where such behavior does not actually take place but is claimed to have taken place based on the perspective of the student. When attempting to adjudicate a standard that can largely be seen as subjective, we ask that the Department consider all concrete evidence relating to the claim.

In addition, a misrepresentation on behalf of the institution is a serious act that should never take place. However, we have concerns around the proposed language that deals with any institution omitting facts that a student otherwise would have relied on in making their decision to enroll or continue enrollment. While we appreciate the proposed text stating that an omission of fact has to relate to the nature of the institution's educational programs, financial charges, or the employability of its graduates, we believe the Department should describe the specific conditions under which it would consider an institution to have violated this standard instead of leaving it up to the interpretation of a Department official.

### Public Service Loan Forgiveness

The Public Service Loan Forgiveness (PSLF) program is an important initiative that allows a borrower to qualify for forgiveness after 10 years of 120 qualifying payments. Unfortunately, this program has not served borrowers well and has created challenges for those who are seeking forgiveness. We are supportive of the proposed changes in the regulations, such as those that clarify who can be considered a "qualifying employer," allow for increased ways of borrower payments to be counted toward forgiveness, expand the types of forbearances that would count toward forgiveness, and would create a reconsideration process.

However, we remain concerned that the proposed regulations do not attempt to include the borrowers who are performing public service duties (such as nursing) at for-profit entities. While we can understand the Department's rationale that it is just too difficult to perform an in-depth and individualized review of employers and job descriptions, we still firmly believe that it increases equity when a person's actual job is considered.



We are pleased that the Department is considering allowing a qualifying employer to attest on behalf of certain health care workers who are contracting with the qualifying employer but are ineligible for PSLF because state law prohibits them from being hired directly. We are also pleased that the Department is considering the eligibility of borrowers who work for for-profit early childhood education employers.

In addition, we support the removal of the requirement that a borrower needs to be employed by a qualifying employer at the time of forgiveness. We believe this change is extremely important and will benefit borrowers tremendously.

Now that an NPRM has been released, we look forward to our continued work to further improve the regulations. We thank you for your consideration of NAICU's views and would be pleased to provide any additional information that might be helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "Barbara K. Mistick".

Barbara Mistick, D.M  
President

Submitted on behalf of the undersigned associations and organizations:

Alabama Association of Independent Colleges and Universities  
Association for Biblical Higher Education  
Association of Advanced Rabbinical and Talmudic Schools  
Association of Catholic Colleges and Universities  
Association of Chiropractic Colleges  
Association of Independent California Colleges and Universities  
Association of Independent Colleges and Universities in Pennsylvania  
Association of Independent Colleges and Universities of Ohio  
Association of Independent Colleges and Universities of Rhode Island  
Association of Independent Colleges of Art & Design  
Association of Jesuit Colleges and Universities  
Association of Presbyterian Colleges and Universities  
Association of Vermont Independent Colleges  
CCCU - Council for Christian Colleges & Universities  
Commission on Independent Colleges and Universities in New York  
Conference for Mercy Higher Education



Connecticut Conference of Independent Colleges  
Council of Independent Colleges  
Council of Independent Colleges in Virginia  
Federation of Independent Illinois Colleges and Universities  
Georgia Independent College Association  
Independent Colleges of Indiana  
Independent Colleges and Universities of Florida (ICUF)  
Independent Colleges and Universities of Missouri  
Independent Colleges and Universities of Texas  
Kansas Independent College Association  
Louisiana Association of Independent Colleges and Universities  
Michigan Independent Colleges & Universities  
Minnesota Private College Council  
NAAMSCU  
New American Colleges and Universities  
North Carolina Independent Colleges and Universities  
Oregon Alliance of Independent Colleges and Universities  
South Carolina Independent Colleges and Universities  
Tennessee Independent Colleges and Universities  
The Consortium of Hospital-Affiliated Colleges and Universities (CHACU)  
Transnational Association of Christian Colleges and Schools - TRACS  
Wisconsin Association of Independent Colleges and Universities  
Work Colleges Consortium