



*Testimony of*

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*Before the U.S. Department of Education, Office of Postsecondary Education*

*In Response to the September 8, 2008 Notice of Negotiated Rulemaking for  
Programs Authorized Under Title IV and Title II of the  
Higher Education Act of 1965, as Amended*

*Malibu, California*

*October 2, 2008*

The Institute for College Access & Success is a nonprofit, nonpartisan policy research organization working to make higher education more available and affordable for people of all backgrounds. Thank you for the opportunity to suggest issues that the negotiating committees should consider in developing proposed regulations for the Higher Education Opportunity Act (Public Law 110-315) (HEOA), in particular Title IV.

The HEOA is the first full reauthorization of the Higher Education Act in 10 years. Over the past decade, many new programs have been created and funded, the higher education sector itself has grown and changed, college costs have outpaced family incomes and available grant aid, and loans – both federal and private – have become much more central to the way Americans pay for college. While higher education is more important than ever for today’s students and families, and for our economy as a whole, figuring out how to pay for college is also more complicated than ever.

This regulatory process is an important opportunity to consider not only the specific provisions in the HEOA, but also how well the amended HEA as a whole fulfills the overarching purpose of our nation’s financial aid programs. That purpose is to give all Americans a fair shot at a college education, regardless of their income or family background.

The way our financial aid programs are administered makes a tremendous difference in whether they actually achieve the goals of educational opportunity that Congress intended. The timing, quality, and accessibility of information about financial aid – who is eligible, what is available, what it can pay for, and how to get it – affect critical decisions about whether to go to college at all, what kind of college to go to, and how to

pay for it. These decisions – including whether to borrow, how much, and from whom – can make the difference between getting ahead and falling behind for a lifetime.

We ask the Department to approach this rulemaking process from the perspective of the students and families who will be affected by their recommendations. These include not only today’s high school juniors and seniors and their parents, but also fifth-graders who have yet to start thinking about college, students who are in college already and struggling to pay the bills, and millions of borrowers who are trying to pay off their student loans without knowing if they will be able to put their own kids through college.

While this is a regulatory process, what families hear and see is the result not only of regulations but also sub-regulatory guidance and the actions, materials, words—and sometimes silence—of the agency. Allowing some discussion of those related issues would contribute to a clearer picture of the influences on institutions, students, and most importantly, potential students. How do the various pieces work together in ways that promote opportunity and the choices that lead to student success?

Below are suggestions for several issues that the Department should address in the rulemaking process. Some are relevant to specific provisions in the HEOA, while others are more general to Title IV. We have limited our comments to areas in which we have expertise and the stakes for students and families are particularly high, recognizing that many other important issues will be raised by others here today.

*Improve the rules for financial aid information that colleges are required to provide -- CFR668.42 and 668.43*

Since the Department already requires colleges to provide a wide range of financial aid information to current and prospective students, it should review those requirements with an eye to what students and families really need to make informed decisions. For example:

- The current regulations require colleges to provide information about the “general categories” of financial aid that are available to their students. This should be amended to require colleges to list gift aid separate from loans, distinguish federal from nonfederal loans, and if nonfederal loans are listed, to make clear that they do not come with the same borrower protections as federal loans.
- Colleges are also required to publish and “make readily available upon request to enrolled and prospective students” the institution’s total cost of attendance. Students should not have to request this figure – however, our own examination of financial aid award letters from a variety of colleges indicates that many students would have to do just that. Instead, it should be provided as a matter of course in all financial aid award letters, and in such a way that students can see how grant and federal loan aid, separately and together, affect their net cost.

- We also recommend drawing a distinction between grant aid that is only available for covering tuition at that particular institution as opposed to state or federal grants that are portable and can cover the full range of college costs.
- The regulations require disclosure of terms for any loan included in the financial aid package, including a sample repayment schedule. The required disclosures should be updated to include Income-Based Repayment and Public Service Loan Forgiveness.

*Protect students from direct-to-consumer private loans – HEOA Title IV, Part B, Sec.1021(a)(b)*

In addition to maximizing the opportunities to distinguish private from federal student loans in information provided by colleges and through loan counseling, the Department should aggressively monitor the “self-certification” process established in the HEOA. There is a significant risk that this process will encourage excessive borrowing and enable fraud by both lenders and borrowers.

*Integrate information about Income-Based Repayment and Public Service Loan Forgiveness into existing regulations -- CFR682.604 and 682.205*

The current rules governing entrance and exit counseling for federal loans, as well as disclosure requirements for lenders, must be reviewed in light of the availability of two new programs that expand repayment and forgiveness options. Just one example is the requirement that entrance counseling include “sample monthly repayment amounts.” Such samples should include income as well as indebtedness as a factor in potential payment levels. Entrance counseling is also an opportunity to warn students about the hazards of private student loans and the availability of Parent PLUS loans. (The proposed rules for the College Cost Reduction and Access Act of 2007 do not adequately address the need for information about the new programs to be integrated into the full range of required communications regarding federal loan terms.)

*Reduce the potential for gaming by proprietary schools – HEOA Title IV, Part G, Secs. 493(d)(1)(B)(iii)(I), (II), and (III)*

The Department should carefully review, in consultation with experts in consumer protection, the changes to the “90/10” rule for proprietary institutions. For example, the provisions allowing some additional revenue to be counted within the 10% are open to wide interpretation and create the potential for dangerous loopholes. For example, a college could inflate its published tuition by \$5,000 and give all students a \$5,000 “grant,” then claim it as a discount that qualifies as non-Title IV revenue. The rules should define qualifying discounts in such a way that prevents this form of gaming.

*Limit conflicts of interest between lenders and colleges – HEOA Title X, Part A, Sec.1011*

While the HEOA goes a long way towards limiting conflict of interest between colleges and student loan providers, it does not eliminate the potential for abuse. Students and their families turn to campus financial aid offices to help them make wise borrowing decisions, and they expect to get full and fair information about all available types of aid. Instead of encouraging colleges to include lenders and guarantee agencies in the loan counseling process, as the HEOA could be interpreted to do, the Department should set clear parameters about appropriate levels of involvement. The Department should also

develop and disseminate tools and information that give colleges good, independent alternatives to lender-sponsored information.

*Indicate the significance of cohort default rates – HEOA Title IV, Part B, Sec.427*  
Agency review and public scrutiny of cohort default rates should focus on institutions where the rate is most likely to represent a real problem with institutional quality and compliance. This is not the case at colleges where a low proportion of students has federal loans. We recommend that the Department more clearly distinguish between the institutions that are subject to the minimum sanction levels and those that would likely be exempt due to low participation rates.

Thank you for this opportunity to provide input into the negotiated rulemaking process. As we review the current regulations and the recent legislative changes, we may identify and submit additional recommendations to the Department. Please do not hesitate to contact me if you have any questions regarding our recommendations.

Sincerely,

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