

Reducing Burdensome Federal Regulations that Create Barriers to Assisting Student and Parent Borrowers

Over the last 50 years, the role of the federal government has expanded to many facets of the nation's higher education system, culminating in the development and issuance of thousands of pages of federal regulations, a number of Dear Colleague Letters, and other non-regulatory guidance with questionable impact in assisting students and families access and complete college. There is growing concern among federal policymakers that the cumulative impact of the regulatory schema is stifling innovation, creating barriers to assisting student and parent borrowers, and increasing administrative costs for colleges and universities, which pass these expenses on to students through tuition and fees.

Several years ago, a bipartisan group of U.S. senators created the Task Force on Federal Regulation of Higher Education to examine how institutions of higher education are regulated and identify ways to streamline and simplify regulatory policies and practices. In February 2015, the task force released its report, "Recalibrating Regulation of Colleges and Universities," which found that many federal rules are unnecessarily voluminous and too often ambiguous, and that the cost of compliance has become unreasonable. It identified 59 specific regulations that are a major concern to higher education institutions, including the preferred lender list rules that it stated "are overly prescriptive and create barriers to providing information about non-Title IV loan programs with favorable terms for students." The report outlined recommendations that included creating clear safe harbors for compliance, the recognition of "good faith" efforts to comply, and several proposals for better practices by the Department.

While the Senate's task force report has been seen as the premier guide for identifying burdensome and unnecessary federal regulations, it is largely focused on their impact on colleges and universities. The adverse impact of such regulations to state, nonprofit, and for-profit organizations that promote access to postsecondary education and help borrowers who are struggling to repay their student loans is not covered, even though a number of the federal requirements have an excessive reach, are unnecessarily costly and difficult to implement, and have unintended negative consequences for students, families, and the administration of financial aid. Congress should work to repeal or, at the least, limit the impact of those rules that hinder a student's ability to access and attend college, increase college costs, or hamper organizations from working with recipients of student financial aid and postsecondary institutions.

NCHER Reform Proposals

The National Council of Higher Education Resources (NCHER) believes that the federal government plays an important role in increasing access to and completion of postsecondary education, and that program accountability is necessary to prevent waste, fraud, and abuse. However, the nation's higher education system - a system that includes states, lenders, loan holders, servicers, guaranty agencies, collection agencies, and colleges and universities - is overburdened with complicated rules. One example would be the preferred lender list restriction, which has proven to be harmful and unnecessary. Under the Higher Education Opportunity Act (HEOA) enacted in 2008, colleges and universities choosing to maintain a list of preferred lenders for private education loans must comply with a set of complicated disclosures and reporting requirements. Because of the new rules, many schools have shied away from having preferred lender lists and largely ended counseling students and parents on various sources of financial aid, with the result being that students and parents do not learn about the availability of private education loans that may be less costly than federal education loans, particularly Grad PLUS and Parent PLUS loans. The preferred lender list restrictions are causing unintended and unnecessary costly outcomes for many borrowers and should be repealed during the upcoming reauthorization of the Higher Education Act.

Given other HEOA reforms (such as gifting prohibitions), this can be accomplished without sacrificing important consumer protections.

NCHER also recommends that Congress expand its current list of burdensome regulations by encouraging a more comprehensive compilation of unnecessary regulations and guidance in order to reduce regulatory burdens that stifle innovation and create barriers to assisting students, borrowers, and parents.

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