



National Association for
College Admission Counseling

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February 15, 2018

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor and Pensions
US Senate
Washington, DC 20510

Dear Chairman Alexander:

On behalf of the National Association for College Admission Counseling, we appreciate your commitment to helping our nation's students reach their full academic potential. We also appreciate the opportunity to weigh in on the white paper the Committee on Health, Education, Labor and Pensions ("HELP Committee") released on February 1, 2018 regarding the reauthorization of the Higher Education Act ("HEA").

Founded in 1937, NACAC is an association of more than 16,000 members, including school counselors and college admission staff, who work with students making the transition from high school to postsecondary education ("college"). NACAC is committed to maintaining professional standards that foster ethical and social responsibility among those involved in the college application and enrollment process, as outlined in the NACAC's SPGP: Code of Ethics and Professional Practices, which may be accessed on our [website](#). Through our advocacy efforts, we are also dedicated to ensuring that all students have access to high quality school counseling to help them make informed decisions as they prepare for and pursue college or career.

Accountability Overview

Over the past century, there has been a regular pattern of unscrupulous, primarily proprietary, colleges seeking to exploit federal financial aid programs. Perhaps the first and most comprehensive effort to understand these deceptive practices occurred about thirty years ago, when in response to reports from the GAO and the Department of Education's Office of the Inspector General, Senator Sam Nunn (D-GA) held a series of hearings (the "Nunn Commission") to educate



Congress and the public about persistent fraud and abuse. Throughout these hearings, it became clear that within the for-profit sector, unscrupulous schools' efforts were focused on enrolling as many students as possible to obtain their Title IV aid. At the time, there were few federal regulations that prohibited this type of behavior. The Nunn Commission provided numerous recommendations about how to thwart bad actors in Title IV programs.

Subsequently, Congress enacted several pieces of legislation meant to curb this behavior in order to protect students and taxpayers, who footed the tuition for millions of students but saw little return on their investment. Unfortunately, since these original reforms were implemented, there has been an equally robust effort to undermine these accountability measures.

The Committee's white paper concludes, "Congress has a responsibility to ask tough questions about how the federal government is protecting both taxpayers and students." However, NACAC is concerned that some of the ideas contained in the white paper fail to live up to that aspiration and may undermine Congress' efforts to reign in unscrupulous institutions and ensure responsible stewardship of taxpayer dollars.

For example, during the discussion on cohort default rates (CDR), the white paper noted "only 10 institutions – out of approximately 6,000 schools – were sanctioned for rates that exceeded federal thresholds, and over the preceding 3 years a total of only 46 were sanctioned." While we agree that this statistic is confounding, we believe the problem lies not in the CDR measure itself, but in Congress' and successive administrations' inability to effectively enforce it. Rather than eliminating this provision, NACAC believes that Congress should provide the Department of Education ("Department") with the resources necessary to conduct adequate oversight and investigations into colleges and universities. In addition, Congress should expand the Department's ability to impose stiffer penalties, including the maximum financial penalty, on colleges that use high pressure sales tactics, aggressive recruiting methods and/or fail to graduate their students.

In recent years, as evidence of fraud and abuse has been widespread and manifest for anyone to see, Congress has further constrained enforcement by cutting Department's budget, perpetuating the substandard oversight of the nation's institutions of higher education. Members of Congress have also criticized and threatened to penalize the Department through legislation or hearings when it attempts to hold colleges accountable, undermining these efforts.



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The 90/10 Rule

The white paper also criticizes the 90/10 rule, which requires that at least 10 percent of a for-profit institution's revenue come from non-Title IV sources. We are concerned that the white paper provides an incomplete treatment of the legislative history of this rule. For instance, the paper does little to shed light on the underlying principle of the rule – that for-profit entities provide token proof that their product can generate demand from the private market. In some ways, this rule is a fundamental “skin in the game” provision. In prior reauthorizations, this provision has generated bipartisan support, particularly the notion that a private, for-profit entity should be able to make 10 cents on the dollar from the free market. The most urgent problem Congress must address is that the rule allows institutions to count other taxpayer funds, such as Department of Defense and Veterans Affairs tuition benefits in the 10 percent of “private” (non-Title IV) revenue. Instead of scrapping the rule, NACAC recommends strengthening it to require colleges derive more revenue from *non-federal* sources, and potentially expanding the non-federal share to an amount greater than 10 percent.

Members of Congress, including Senator Alexander, have often lauded the benefits of a “free market” arguing that economic forces and/or consumers will determine the quality of a product¹; eliminating the 90/10 rule runs counter to that belief, as many for-profit colleges would be unlikely to be able to keep their doors open without federal funding. Indeed, many derive more than three-quarters of their revenue (often more) from federal financial aid programs.

Gainful Employment

The Gainful Employment (“GE”) rule is also an important tool to ensure that students enroll in colleges that will help them become “gainfully employed.” We are concerned that the white paper fails to address the fact that Congress itself designed a special eligibility for programs designed to train students for gainful employment. Congress was explicit in carving out this special eligibility to ensure that students could access career and technical postsecondary education and training, as distinct from an associate's, bachelor's, or graduate/professional degree. Should the HEA reauthorization follow the contours of the white paper, we would oppose it for the following reasons:

¹ A review of the Congressional Record found that Chairman Alexander used the term “free market” at least 17 times since 2009. For example, on [June 18, 2009](#), he said, “It has been our tradition to rely on decentralism of government and a free market to build our country, and it has given us the best colleges and universities, and a standard of living that produces 25 percent of all of the money in the world for just 5 percent of the people in the world, the Americans who live here.”



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- Congress must acknowledge that while students deserve access to and financial support for career and technical postsecondary education, the fundamental tenet of eligibility for career and technical postsecondary education is that such programs provide education for *gainful employment in a recognized occupation*. We do not believe that circumstances have changed in a manner that warrants revisiting this tenet. Rather, repeated cycles of fraud and abuse warrant strengthening and further refining the gainful employment measure.
- As a coalition of organizations, including NACAC, has noted, “[t]he mere threat of sanctions under this rule prompted many colleges to eliminate their worst performing programs, to freeze tuition and implement other reforms to improve outcomes for their graduates. In part due to these reforms, nine in ten colleges with rated gainful employment programs have no failing programs, and even among for-profit colleges eight in ten have no failing programs. At the same time, the gainful employment rule has uncovered scores of failing programs that taxpayers are currently subsidizing—programs like the Art Institute of Fort Lauderdale’s associates degree in video production, which is still actively recruiting new students and charging \$44,010 in tuition and fees despite abysmal outcomes, including a 17% on-time completion rate, a 25% job placement rate, median graduate earnings of only \$14,264, and median debt of \$29,074.” Removing this critical measure would severely restrict students’ ability to assess the value of a program, be given required disclosures, and would further expose students to predatory programs.

An Updated Accountability Framework

We appreciate the Committee’s perspective of wanting to ensure that a 21st century Higher Education Act reflects 21st century realities in postsecondary education. We also agree that outcomes are increasingly of concern to students, families, institutions themselves, and policymakers. However, as the Committee breaks new ground in evaluating the public investment in higher education, **we wish to warn the Committee that jettisoning decades of Congressional precedent risks perpetuating the cycle of fraud and abuse that this Committee is responsible for preventing.**

Accordingly, we offer these four summary points as considerations for the Committee:

1. *Modernizing accountability does not mean disregarding decades of well-known patterns of fraud and abuse, as well as consistent recommendations from previous Congressional inquiries.*



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Recommendations included in the white paper, including those addressed above, run counter to decades of Congressional experience. The white paper suggests that some regulations are “dated, poorly focused, or ineffective.” We do not believe that the paper has presented sufficient arguments to suggest that any of the regulations addressed in the paper fit these descriptions in and of themselves, considering repeated Congressional and administrative efforts to thwart enforcement of the regulations, dilute both regulatory and statutory language, and create loopholes through which unscrupulous institutions are able to operate without regard for or fear of punishment.

- 2. Disregarding prior Congressional foresight on institutional definitions and oversight will perpetuate the cycle of fraud and abuse.*

Congress deliberately set up distinctions between institution and program types—not to discriminate against one sector or another, but to acknowledge critical differences in (1) the mission and accountability structures of different types of institutions (non-profit vs. for-profit), and (2) the educational objectives of different programs and institutions (associate’s/bachelor’s degree-granting vs. career/technical). Further blurring or eliminating these lines of distinction will effectively reset federal accountability measures to their original levels, negating the past five decades of Congressional oversight.

- 3. Building on existing accountability measures is the only way to provide responsible stewardship of taxpayer funds in the federal student aid programs.*

Given the predictable cycle of fraud and abuse in the federal aid programs, we believe strongly that an HEA reauthorization that eliminates existing protections is guaranteed to produce further losses to both students and taxpayers. While we are insistent that existing protections be preserved, we are also open to possible new approaches, such as those outlined in the white paper related to loan repayment rates. However, we strongly believe that any new accountability measure should be phased in as a pilot, while corresponding accountability measures are still in place, to prevent what would be inevitable exposure to fraud and abuse in the absence of existing protections and without certainty that new protections would work.

- 4. Prioritize information for prospective students.*

Generally, NACAC supports giving students and those that support them, such as counselors, parents, teachers and community organizations more information about a prospective college.



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While some may perceive this to be a burden to a college, unfettered access to billions of dollars of federal financial aid seems unreasonable. Tools like the Department’s College Navigator and College Score Card, the Consumer Financial Protection Bureau’s “Know Before You Owe” resource, and the Department of Veterans Affairs’ GI Bill Comparison Tool are useful for many prospective students (or those looking to transfer between colleges) and should be strengthened and better promoted.

Specific to the white paper, some concepts could be strengthened by including disclosure requirements. For example, the white paper noted a proposal by Senators Jeanne Shaheen (D-NH) and Orrin Hatch (R-Utah) that would move from a cohort default rate system to a loan repayment rate system. If Congress changes to this system, NACAC believes it is important for students to understand why students are unable to pay down at least \$1 of their principal loan balance within 3 years (i.e., default, deferment, insufficient income or some other reason).

Over the past several years, NACAC has supported numerous pieces of legislation that would provide additional information to students considering attending a college, especially an institution with high default rates, low graduation rates or other negative outcomes, in order to help them make informed decisions about where to attend and the likelihood of academic success. These bills seem to compliment the goals of this white paper and we would be happy to provide a list of them, if it would be helpful.

Additional Comments

We are concerned that the white paper contains a section describing the “generosity” of the federal student loan programs. As a matter of policy, it is difficult to reconcile loans—which by definition end up costing the student more than anyone else—with the concept of generosity, particularly when we reflect on the original intent of the Higher Education Act. Why should policymakers be “alarmed” at assisting students with access to postsecondary education? Isn’t facilitating student access to postsecondary education the purpose of the Higher Education Act?

NACAC supports a rededication to ‘first principles’ in this instance. Investing in need-based financial aid should be Congress’ first priority. As such, we would welcome a conversation about strengthening the federal Pell grant. However, NACAC would oppose measures to trim back the meager assistance that the federal government’s loan policies currently provide.

Lastly, NACAC is concerned about some Members of Congress, including House Education and the Workforce Chairwoman Virginia Foxx (R-NC), calling for the elimination of the Public



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Service Loan Forgiveness Program (PSLF), in part because of the cost to taxpayers. NACAC is concerned about the program's potential elimination and would argue that not every policy decision should be made on strictly financial terms. Without PSLF, thousands of individuals may not consider or pursue careers at qualified non-profit organizations and/or federal, state, local, or tribal governments, crippling the important work of school counselors, teachers, police officers and scores of other critical occupations. Our members would be negatively affected by the elimination of this important program.

Again, thank you for the opportunity to share our thoughts on the white paper. Please contact [Michael Rose](#), Director of Government Relations, with any questions regarding NACAC's public policy positions or advocacy.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hawkins", with a long horizontal flourish extending to the right.

David Hawkins
Executive Director, Educational Content & Policy

CC: The Honorable Patty Murray, Ranking Member
Members of the HELP Committee