



September 20, 2017

Hilary Malawer
Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Room 6E231
Washington, DC 20202

Re: Docket ID ED-2017-OS-0074

Dear Ms. Malawer:

The National Association of College and University Business Officers appreciates the opportunity to respond to the Department of Education's request for comments on regulations that may be appropriate for repeal, replacement, or modification, as published in the *Federal Register* on June 22, 2017 (and again on August 11, 2017). NACUBO represents college and university business officers at more than 1,900 public and nonprofit colleges and universities. We are dedicated to sound fiscal and administrative practices at institutions of higher education.

Our members include chief financial officers as well as other college and university business officers including student financial services (SFS) staff, tax directors, controllers, accountants, and others responsible for administration and compliance. They approach their responsibilities with an understanding that many federal rules and requirements were instituted with a goal of protecting students, families, and taxpayers from unethical or fraudulent actions.

These responsibilities are many. Compliance costs for colleges and universities are largely human resource costs. For most federal regulations, an employee, or a team of employees, must be responsible for numerous compliance tasks: understanding and remaining informed about new rules, interacting with regulators, reporting required information, training and monitoring staff (and recruiting and retaining skilled staff), seeking best practices, fulfilling audit requirements, reviewing and responding to audit findings, and more.

The cumulative impact of a growing set of rules, executive orders, and subregulatory guidance creates layer upon layer of compliance requirements, which has a real cost in terms of human, technological, and administrative resources. As we told the Honorable Howard "Buck" McKeon in 2001, "We have become increasingly disheartened by the expansion of the federal student aid regulations as well as the growth in complexity of the rules every campus faces."

NACUBO believed then, as we do now, that the negotiated rulemaking process has improved the quality of proposed rules issued by the Department of Education; however, the process needs further refinement. Key stakeholder groups should be consulted prior to the promulgation of

major guidance, including “Dear Colleague” letters and other forms of subregulatory guidance. Most importantly, the complex and burdensome Title IV regulations need to be streamlined to help institutions effectively and efficiently manage the federal student aid programs.

Washington lawmakers tend to approach issues one-by-one and agency-by-agency without regard to the cumulative administrative impact on the regulated community. College and university business officers—from those who handle student accounts to those responsible for tax compliance—face regulatory and reporting requirements not just from ED, but from many other federal agencies including the Departments of Treasury, Defense, and Veterans Affairs, the Federal Communications Commission, the Federal Trade Commission, and the Consumer Financial Protection Bureau. And this list leaves out all the other federal and state agencies that regulate other areas such as research, facilities, employee benefits, and transportation.

Thus, NACUBO appreciates this opportunity to outline several areas where we believe ED can streamline, including, but not limited to:

- Financial Responsibility
- Credit Balance Refunds
- Return of Title IV Funds
- Single Audit Act Compliance
- Consumer Information
- ACG and SMART Grants

Financial Responsibility

NACUBO is particularly concerned with revisions to the financial responsibility standards as part of the 2016 borrower defense to repayment rulemaking and applauds ED for deciding to convene a separate negotiated rulemaking subcommittee to address needed changes to the financial responsibility standards for nonprofit institutions (34 CFR 668 Subpart L).

NACUBO stands by comments we expressed during the initial rulemaking. We firmly believe student borrowers should be protected from misleading, deceitful, and predatory practices of institutions. Students who may have been victims of fraud or were left in the lurch by the sudden closure of an institution should not be without recourse. The existing rules addressing borrower defense to repayment provisions in the Higher Education Act were skeletal and seldom used. We support efforts to establish borrower defense standards and to define the evidence former and current students must provide to show that a college’s misconduct warrants debt relief.

However, under the auspices of the 2016 borrower defense rulemaking, ED introduced onerous new accountability and financial responsibility requirements. Colleges and universities were already held to the current standard to ensure they are not at risk of precipitous closure. Even before the new rules were issued last year, ED’s current financial responsibility practices needed to be addressed and the standards should not have been expanded until existing flaws were fixed.

NACUBO believes the pressures for the financial responsibility updates relate primarily to nonprofit institutions. Financial reporting standards are different for nonprofit and for-profit

entities. It has been our experience that many of the issues schools have encountered over the years with ED's administration of the standards relate to the items that are unique to nonprofits such as endowments, pledges and restricted funds, investment in physical plant, and pension plans. Further, recent changes in accounting standards for nonprofit organizations will render current formulas for calculating institutions' composite scores obsolete.

ED also needs to resolve the conflict between its current financial responsibility regulations in Subpart L, promulgated in 1997, and its earlier regulation, that remains codified at §668.15, Factors of Financial Responsibility. The latter should be deleted and any portion that is still necessary moved elsewhere.

NACUBO appreciates ED's plans to include on the financial responsibility subcommittee appropriate financial experts such as college or university business officers, independent auditors, stakeholders who regularly use higher education's financial information, and others with knowledge of public and nonprofit institutional finances. Just as national accounting standards bodies (the Financial Accounting Foundation, the Financial Accounting Standards Board, and the Governmental Accounting Standards Board) recognize the fundamental differences between public and private establishments, not-for-profit organizations, and state and local governments, so too should ED as it embarks on any major rulemaking efforts.

Credit Balance Refunds

Under the Title IV cash management rules, schools can only apply a maximum of \$200 of a Title IV credit balance refund to amounts a student owes from a previous year (34 CFR 668.164(c)). The institution must pay the credit balance to the student—and is not permitted to use the funds to cover any amounts due from the previous academic year. However, at the same time the institution must try to collect the amount due on the student's account. This is confusing to students, who can't understand why the school would issue them a refund if they actually owe the school money or why they can't simply authorize the school to use the money to pay the debt. Students often face registration holds and other sanctions if the debt is not paid.

For students and institutions alike, ED must come up with a better solution.

Return of Title IV Funds

The regulations on the return of Title IV (R2T4) funds (34 CFR 668.22) are excessively complex and impose undue administrative burdens on colleges and universities. Subregulatory guidance has been issued to "clarify" these rules but further confounds specific requirements. The result is a set of rules that stray significantly from the original intent of simplifying the student refund rules. ED's Student Financial Assistance Handbook takes more than 200 pages to explain to institutions how to comply with this one regulation.

NACUBO urges ED to revisit R2T4 with the goal of simplifying the approach and improving clarity of the regulations and endorses the National Association of Student Financial Aid Administrators' call for establishing a negotiated rulemaking committee dedicated only to R2T4.

Single Audit Act

We remain concerned about ED's 2016 announcement that it will be requiring a separate annual compliance audit of Title IV student aid programs, including the student financial assistance (SFA) cluster, regardless of whether the programs meet the criteria established by the Office of Management and Budget. ED issued its new policy position in a memorandum dated August 5, 2016, entitled "Applicability of Single Audit Act Regulations to the Title IV Student Aid Programs," citing section 487(c) of the HEA, as amended, and the implementing regulations at 34 CFR 668.23(a)(5). We believe ED's requirement for a separate annual compliance audit conflicts with the underlying principles of the Single Audit Act Amendments of 1996 and the more recently issued *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (UG).

Both the Single Audit Act and the UG are premised on effective and efficient use of scarce audit resources by targeting single audits on higher-risk programs. The UG was specifically designed to reduce both improper payments and administrative burden. For ED to now interpret its regulation as requiring a separate compliance audit on its Title IV programs, including the SFA cluster, when they may be low risk is an unjustified increase in cost and administrative burden for those nonfederal entities that have a proven record of being good stewards of federal funds.

Consumer Information

Providing students and families accurate and clear information helps them make informed decisions that could have serious financial implications. We are concerned, though, with the number of disclosures institutions are required to provide. Too much information can be as detrimental as too little. Students can feel like they are drowning in consumer information that they may or may not understand, and there is little evidence showing that these disclosures are effective. ED should review the many required disclosures and consider where it is possible to eliminate or streamline them, working with Congress as necessary.

ACG/SMART Regulations

The implementing rules for the American Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs found at 34. CFR 691 can be eliminated as the programs' authorization has lapsed.

Task Force on Federal Regulation of Higher Education

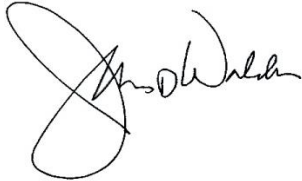
In closing, we wish to highlight the final report of the Task Force on Federal Regulation of Higher Education, issued by a bipartisan group of senators in 2013 to help inform their efforts to reauthorize the Higher Education Act. Made up of 16 college, university, and association presidents and chancellors, the task force's goals were broad: to summarize the increasing burden of federal regulations; identify regulations of particular concern and explain them, and recommend changes; and offer long-term process improvements. NACUBO provided input about the concerns of business officers.

We continue to support the 12 guiding principles for improving ED's regulatory scheme:

- Regulations should be related to education, student safety, and stewardship of federal funds.
- Regulations should be clear and comprehensible.
- Regulations should not stray from clearly stated legislative intent.
- Costs and burdens of regulations should be accurately estimated.
- Clear safe harbors should be created.
- The department should recognize good faith efforts by institutions.
- The department should complete program reviews and investigations in a timely manner.
- Penalties should be imposed at a level appropriate to the violation.
- Disclosure requirements should focus on issues of widespread interest.
- All substantive policies should be subject to the "notice-and-comment" requirements of the Administrative Procedure Act.
- Regulations that consistently create compliance challenges should be revised.
- The department should take all necessary steps to facilitate compliance by institutions.

If you would like more information or have questions about NACUBO's recommendations, please contact Liz Clark (202.861.2553, lclark@nacubo.org) or Anne Gross (202.861.2544, agross@nacubo.org).

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Walda". The signature is fluid and cursive, with a large loop at the beginning.

John D. Walda
President and CEO