

NAICU Comments August 28, 2014

Keyed to Harkin Draft June 2014

Revenue Resource Requirement for Proprietary Institutions (pp. 6-12 and p. 384)

These provisions would reduce the percentage of revenue a proprietary institution could receive from HEA Title IV funds and other federal agency financial assistance from 90% to 85%, as it was in the past. It also describes which other funds can and cannot be used in determining the 15 percent of non-federal funds and requires that a report be provided to Congress annually on institutional revenue and its sources.

Comment: We support these provisions.

Default manipulation (p. 12)

This provision defines strategies, such as restructuring campuses, that are undertaken to avoid sanctions due to an institution's low cohort default rate.

Comment: We support this provision.

Foster Care Children and Youth (pp. 13-14)

This provision defines foster care children and youth as those under the responsibility of the State or Tribal agency.

Comment: Foster care children may also be the responsibility of other private agencies. If so, these children should also be included in the definition.

Recruiting and Marketing (pp. 14-16)

This provision defines institutional recruiting and marketing activities very broadly, excepting only those activities that are required under HEA Title IV, or by another federal agency.

Comment: We are not opposed to the goal of this provision, but do have reservations about how it will be implemented. We are also concerned about the broad additional authority for the Secretary to expand the definition to include "any other activity."

Code of Conduct in Affiliated Consumer Financial Products or Services (pp. 18-26 and pp. 675-684)

These sections provide definitions related to an institution of higher education's affiliation with a consumer financial product or service and require such institution to have, follow, and publish a code of

conduct regarding such relationship in order for its students to be eligible to receive federal student financial aid. Revenue-sharing arrangements would also be banned.

Comment: We agree that schools, and particularly the individuals at those schools who deal with financial matters related to students' federal financial aid, should act in the best interest of their students. However, the requirements in these sections should not be crafted in such manner that precludes schools from exercising the flexibility needed to negotiate arrangements that provide a range of benefits to students. We would be happy to discuss this issue further to consider an approach that is ultimately in the best interests of students.

Restrictions on Sources of Funds for Recruiting and Marketing Activities (pp. 14-16, 26-28 and pp.676-677)

An institution of higher education would not be permitted to use revenues from federal educational assistance funds for recruiting or marketing activities. In addition, under these provisions, a college is required to report annually to the Secretary of Education and to Congress on its advertising, marketing, and recruiting expenditures and include verification by an independent auditor that the institution is in compliance with the law.

Comment: While we are not opposed to the goal of these provisions, we have some concerns about how they would be implemented. Our concern is related to our more than four years of work to correct the continuous accounting errors being made by the Department in implementing the [Financial Responsibility Standards](http://www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf) (http://www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf) for non-profit institutions. We believe this marketing provision needs to be as tightly drawn as possible. It is also critical to ensure that accurate accounting principles are followed.

Minimum Requirements for Net Price Calculators (pp. 29-36)

The bill makes several major changes in the current net-price calculator requirement:

- It includes more prescriptive requirements related to links to the net-price calculator on college websites, including matters such as labeling and placement.
- It moves general information regarding overall price and median aid to all students into the individual calculator results.
- It would require the Department of Education to create a universal net price calculator that would produce net price calculations for all colleges in the country, based on responses to a single set of questions. Currently, the Department has developed a net price calculator, but schools are not required to use it. They may instead develop their own calculators, provided that several required items are included.

Comment: In general, NAICU member institutions have embraced net-price calculators. We have an excellent record of implementation and creativity with this requirement. Some colleges have put extensive resources into creating calculators unique to their particular methods of awarding aid.

For this reason, we are particularly concerned about the requirement that the Department of Education create a universal net price calculator. We believe this would undermine the very reason net price calculators were mandated in the last reauthorization—namely, to encourage families to consider colleges for which aid reduces price by providing them with a more accurate picture of the institution’s aid policies. While most colleges use the federal model that is already available, many private colleges that give out large amounts of aid have invested considerable resources to build their own models to ensure students have a better sense of what their actual net-price will be. A single national calculator simply won’t account for the many forms of aid available at private colleges and may well lead low-income students away from their “best-fit” institutions.

In addition, we understand the concern about those few colleges that have buried their calculators on their websites, but believe it is a mistake for the federal government to begin micromanaging institution sites.

Finally, we believe that providing students with the sticker price for attendance, the median amount of aid for all students, and the percentage of students receiving such aid will be confusing. For clarity purposes, net price calculators should remain personalized to each student.

Data Improvements for College Navigator (p. 41)

The bill would require that additional information about faculty be collected and posted on College Navigator. This information includes the number of returning faculty, disaggregated by full-time and part-time status, tenure status, and contract length.

Comment: IPEDS currently collects extensive (85-page survey) information about college employees, including faculty. Rather than continuing to add to current information-collection requirements, we suggest that Congress provide funding for the National Study of Postsecondary Faculty (NSOPF).

In the past, the NSOPF provided a great deal of information about full- and part-time faculty and instructional staff. It was a nationally representative sample survey conducted in school years 1987-88, 1992-93, 1998-99, and 2003-04. There is interest in conducting it again, but the funding to do so has not been made available. (For more information, see <http://nces.ed.gov/surveys/nsopf/>.)

College Scorecard (pp. 41-52)

The bill calls for the development of a College Scorecard website, where information about colleges would be presented in a standard format. The format will be based on recommendations from students, families, educators, and others. The content of the Scorecard is specified in the proposal and includes information about net price; completion, persistence, and transfers; loans; debt; repayment; and institutional type.

Comment: We support the intent of this proposal, which is to provide prospective students and their families with basic information about an institution that can assist them in finding an institution that best fits their needs and interests. However, we are concerned that the proposed College Scorecard will not achieve this goal. Specifically—

- The proposal calls for consultation with representatives of students, families, and others in developing the format of the Scorecard—but not for its contents (which are specified in the legislation). We believe it is important to determine *what* prospective students and families want to know and that should be determined with their participation, rather than being specified in legislation in advance. The measure does provide for the inclusion of additional content information; however, that information is determined in consultation with other Federal officials rather than with students and families.
- A related concern is that the proposal does not take into account the importance of qualitative information about an institution. We suggest that there be a place on the Scorecard where students and families can easily access qualitative information of an institution’s choosing.
- The proposal calls for the use of data that is already available to develop the Scorecard. We greatly appreciate this effort to assure consistency with other sources and to minimize collection burdens on institutions. However, many of the data elements specified in the legislation are not currently collected in the manner described—so it is not clear how this provision would work.

For example, information about net price and completion rates is currently collected for first-time, full-time undergraduates. The wording of the data requirements included in the draft bill suggests that a broader population of students should be included in both these calculations.

Complaint Tracking System (pp. 59-66)

This provision establishes a complaint tracking system for complaints against institutions and provides details on how the system would work. The system, reachable by phone or on-line, would collect, monitor, and respond to complaints regarding “the educational practices and services, and the recruiting and marketing practices” of all institutions of higher education. A complaint could be made by a student, family member of a student, third party acting on behalf of a student or a staff member of an institution of higher education. Procedures would be established to ensure the timely handling and recording of complaints and their resolution. Within limits, institutions receiving Title IV aid will have to provide a response to the Secretary’s inquiries. This complaint system should be carried out in compliance with the complaint tracking systems established under Executive Order 13607, the principles of excellence, which involves coordination with other agencies. Data on complaints will be published on the Department’s website.

Comment: The proposed complaint tracking system is exceptionally broad, and it is not clear how it would either improve upon or interact with existing state and accreditation agency complaint processes. “Educational practices,” for example, could include grades, course content, and other academic issues that an institution’s accreditor is in a better position to evaluate. In addition, the broad language of the proposal holds a real risk that Department officials will need to wade through a large volume of trivial complaints. The Department should focus on those things for which it has clear and direct authority, particularly issues related to the integrity of Title IV programs, rather than becoming bogged down in dealing with a range of issues best handled by other entities.

Educator Quality Partnership Grants (pp. 117-154)

The proposed Educator Quality Partnership Grant program would support partnerships between institutions of higher education and high-need local school districts to provide induction, residency, and school leadership programs for their teachers. Partnerships would have to assure meaningful collaboration between educator preparation programs and schools; issue follow-up surveys with graduates and employers; increase student achievement at the partner school; meet early learning standards, challenging academic K-12 standards, and work with students in special education. The grant requires a 100% match, as in current law, and an evaluation of the program that is made available to the participants.

Comment: NAICU generally supports this proposal and believes it should be the sole teacher preparation program included in the Higher Education Act. Among the key components of effective change are accountability based upon valid and reliable research, evaluations based upon multiple measures, data for improvement rather than punitive purposes, and the active participation of states that are principally responsible for teacher preparation. This proposal would push colleges to make the types of program changes that are revolutionizing teacher education on many campuses. However, we oppose the value-added metric (VAM) used in the evaluation of residency programs. VAM's reliability and validity as a quality indicator is increasingly coming into question.

State Innovation in Educator Preparation (pp. 154-176)

This proposed grant program reflects the approach taken by the Department of Education in the teacher preparation negotiated rulemaking sessions that concluded in 2012. It would provide competitive grants to states or consortia of states that have an Educator Preparation Program Accountability and Improvement System. Such a system establishes four performance levels based on value-added student growth; student and employer satisfaction surveys; employment and retention rates; and pass rates on licensure exams. It would be used to reward high-performing programs, and to improve low-performing programs. Low-performing programs would be given 1-2 years for improvement, but after three years of a low-performing rating, a program would not be eligible for TEACH Grants.

Priority would be given to states with data systems in place and evaluation systems that include value-added student growth measures. All educator preparation programs in a state would be required to participate. Grant funds would be used to recruit top talent into programs; demonstrate selectivity of admissions; prepare all teachers to teach all types of students; and ensure content mastery and classroom management. States may use funds to incentivize programmatic accreditation.

Comment: NAICU does not believe these provisions should be enacted. Top-down, prescriptive metrics from Washington will not only weaken institutional and state commitments to program improvement, but will also prevent institutions and states from responding to new evidence in such diverse areas as brain science, instructional technology and pedagogical methods which will continue to change the field.

State Identification of Low-Performing Programs (pp. 192-194)

Among the program reporting and improvement provisions included in the proposed Part C of Title II is a requirement that State identify low-performing programs based, at a minimum, on candidates' academic strength as measured by GPA or on scores on standardized tests for admissions.

Comment: We oppose this provision, as we believe it is inappropriate to evaluate institutions or programs on the basis of the test scores of individuals they admit as opposed to the level of learning acquired by those that they graduate. We know of no standardized tests that measure the skills needed to be a good teacher. Rather, cutting-edge assessments of teaching capacity include such things as first-hand observation of work with children, and the ability to both plan lessons and adapt those lessons to the needs of students.

Year Round Pell (pp. 222-224)

An additional Pell Grant would be provided to students to accelerate progress toward degree completion. To be eligible, a student would have to be enrolled full-time in a program of study for at least one additional payment period, in the same award year, not covered by the student's Pell Grant. The student would have had to complete at least a full-time course load prior to receiving an additional Pell Grant. The combined Pell Grants could not exceed 150 percent of the total maximum grant for such award year.

Comment: NAICU supports this provision as a way of providing Pell to students in a way that helps them further their progress toward completion. Providing additional funding for full-time students who have successfully completed at least a full-time course load and are advancing toward their degrees more quickly than they are gaining eligibility for Pell Grants is a good first step in this direction. We also encourage the Committee to consider equitable Pell eligibility for students in other circumstances who would be helped toward completion with additional funding. NAICU recommended the establishment of a [Pell Flex](#) system that would allow students to draw down Pell Grant awards based on their progress toward a degree. Presuming the total amount of Pell Grant aid would be limited to 150%, as it currently is, students could regulate their annual demand based on their attendance and progress toward degree. We ask the Committee to consider this proposal.

Notification of Pell Grant Eligibility (p.225)

Once a year, colleges must notify enrolled students who receive a Pell Grant of their remaining period of eligibility. For students with 2 years, or less, of eligibility remaining, the college must notify the student at least once a semester or its equivalent. Pell recipients who have borrowed Stafford Loans must also receive annual notifications.

Comment: It is a good idea to advise students of their level of Pell Grant eligibility. This information should continue to come from the Department, which puts out Pell usage information on student SARs. Similar information could also be provided by the Department for student loans.

Early Awareness of College Financing Options (p. 226)

This provision would establish a demonstration program providing 3-year grants to 15 state educational agencies to provide information to students in grades 8-12 about college access and financial aid. Priority would be given to states with high percentages of students benefiting from means-tested programs. Grantees must agree to provide an "information form" developed by the Secretary to students in those grades. The form would include information about Pell Grants and other aid, a link to the FAFSA website, and state grant information. Local educational agencies must agree to provide

detailed report of annual surveys of students taken before and after receipt of the information form and provide the results to the Secretary, in order to determine the effectiveness of provision of the information. The Director of the Institute of Education Sciences would develop performance measures, evaluate the program, identify and make public, best practices. No funding level is specified.

Comment: We support this provision.

Simplification of Income-based Repayment (IBR) Options for Federally Insured Student Loans and Improvement to Military Loan Deferment; Clarification of SCRA Protections: Simplification of Income-based Repayment Plans (pp. 242-246)

Except for borrowers currently using them, these provisions would eliminate the FFELP income-sensitive and Direct Loan Program (DLP) income-contingent repayment options. They would be replaced by the Direct Loan IBR repayment option limited to those whose annual repayment amount on a standard, 10-year repayment plan exceeds 15% of the difference between their Adjusted Gross Income (AGI) and 150% of the poverty level. Also, the Secretary may require borrowers who have defaulted on FFELP loans to repay them under an IBR plan.

Comment: Income-sensitive repayment is a relic of the FFELP and can be eliminated as long as FFELP borrowers, as allowed in this draft, are permitted to remain in current income-sensitive repayment plans or have a comparable repayment option through DLP. We support the effort to rationalize the income-driven repayment plans to reduce confusion and optimize usefulness.

Improvements to Military Loan Deferment (p. 243)

This provision changes military categories eligible for a delay in repayment of loan principal and provides a 180-day delay for spouses of members of the Armed Forces who are under-a-change of station order.

Comment: This seems reasonable and beneficial to service members.

Simplification of income based repayment options for Federal Consolidation Loans (p. 247)

This provision allows a borrower to obtain a subsequent consolidation loan for the purposes of IBR repayment.

Comment: It is useful to provide flexibility for borrowers in the repayment of their student loans.

Reasonable Collection Costs and Rehabilitation Payments (p. 249)

This provision would limit collection costs on FFELP Loans to those associated with the *bona fide* collection of the loan, but no higher than 16 percent. A reasonable monthly payment is defined as equivalent to that which would be paid by such borrower on the IBR repayment plan in Section 493C.

Comment: We support limiting collection costs on defaulted loans to a reasonable amount, but are not sure what is meant by the restriction to "*bona fide*" collection costs.

Improvement to Credit Reporting for Federal Student Loans (p.252)

This provision requires additional reporting by consumer reporting agencies on the status of federal student loans that have been rehabilitated, or are being repaid using IBR or income contingent repayment.

Comment: It seems beneficial to students that their credit reports reflect the true nature and status of their student loan debts.

Reduced Duplication in Student Loan Servicing (p. 254)

In seeking recommendations for improvement in the administration of Title IV programs by third-party servicers, this adds “reducing duplication in”.

Comment: Seeking ideas for administrative improvement and reduction of unnecessary duplication is useful.

Improved Determination of Cohort Default Rate (CDR); Publication of Default Prevention Plan (pp. 255-256)

This bill adds a provision that an institution’s CDR will be recalculated if the institution has engaged in default manipulation. (*Provision is labeled “(D),” but “(D)” already exists.*) It also requires institutions that have received technical assistance from the Department on default prevention to make a summary of the plan available to the public and provide it to their students.

Comment: While NAICU has long supported reasonable efforts to ensure program integrity, it is not clear why an institution that makes a good-faith effort to avoid defaults should have to publicize its plan.

Improved Disability Determinations (p. 256 - 262)

This provision provides eligibility for discharge of a borrower’s loan obligations, based on determinations of disability by the Department of Veterans Affairs, Defense Department, or the Social Security Administration. The loan obligation of borrowers determined to be disabled by these agencies cannot be reinstated. Borrowers who receive such determination from the Department of Education may have their obligation reinstated for a number of reasons, including earning income in excess of the poverty line. The Secretary must collect data related to these discharges and report to Congress on them.

Comment: It makes sense to have reciprocal determinations among federal agencies, but under this provision there is still differential treatment for borrowers whose disability determination is made by the Department of Education.

Elimination of Origination Fees and Other Amendments to Terms and Conditions of Loans (pp. 262 - 269)

This section makes numerous changes to student loan processes and considerations of loan repayment for service members. Loan origination fees are eliminated. The income-contingent repayment option is

phased out. Loan collection costs are limited to an amount that does not exceed *bona fide* collection costs. Eligibility for a deferment of loan repayments is expanded from war-related service to a more general eligibility based on “military service.” A short deferment period is provided for spouses of certain service persons who are being relocated. Interest will not be charged on loans of military persons when they are serving in areas of hostilities eligible for special pay. A lump sum payment from a military loan forgiveness program can be considered as meeting monthly payment requirements. Borrowers’ defenses are changed from being determined by the Secretary to being defined as acts that give rise to a cause of action against the institution based on federal or state law. In addition, the Secretary is provided authority to pursue such actions on behalf of a group of borrowers.

Comment: We support the elimination of the loan origination fee. This was imposed as a cost cutting mechanism some years back. Increasing loan costs to students is not a responsible way to rectify federal budget deficiencies. We also support the other provisions in this part that benefit students or borrowers and provide special consideration to service personnel.

We are, however, concerned that the changes made in the language regarding borrower defenses may unduly, and perhaps irrelevantly, broaden the reasons a borrower may use against an institution in order to avoid repaying a student loan.

Improved Student Loan Servicing and Debt Collection Practices (pp. 269-281)

The bill would add restrictions to the marketing activities of servicers and prohibit pre-dispute arbitration clauses. The Department would do a study of the effectiveness and cost of using servicers for collecting student loans, and other provisions.

Comment: We support these provisions.

Simplification of Military Deferment Eligibility (pp. 282-283)

This provides the same benefits for military persons and spouses with Perkins Loans as those receiving Stafford Loans.

Comment: We support this provision.

Forgiveness of Loans for Eligible Military Service (p. 283)

This provision extends student loan forgiveness broadly to most military personnel.

Comment: We support facilitating higher education for service personnel and their families. It is important to insure that the various provisions offered are well-integrated with each other so as to avoid confusion or conflicting benefits.

Increased Income Protection Allowances (pp. 283-285)

This provision would increase the income protection allowance (IPA) by \$4,000 for each borrower category except for parents of dependent students as of July, 2015

Comment: NAICU has been concerned by the growing disparity in the income protection allowance between that provided for parents of dependent students and that provided for independent students with dependents. Traditionally, the IPA for both groups was the same as the IPA is a basic food and housing allowance based on family size. This policy changed in 2007-2008 with the Higher Education Reconciliation Act of 2005 (HERA).

The disparity has continued to grow. [Between 2009-2010 and 2012-2013](#) the IPA for independent students with dependents grew at an average rate of 10 percent per year, while the IPA for parents crept along at CPI, which in one year meant no increase at all. While we support increasing the IPA for the various categories of students by \$4,000, as proposed in the draft; we strongly object to NOT providing this same protection for parents. We would also like to see additional efforts to bring the IPA for parents up to that of independent students with dependents.

Updated Tables and Amounts for Income Protection Allowance (pp. 286-287)

For academic years after AY 2015-16 the Secretary will update IPA tables based on CPI.

Comment: We support this change, assuming the income disparity for dependent student families is fixed.

Prior, Prior Year (pp. 287-288)

Under this provision, data from the second preceding tax year may be used to estimate and determine financial aid eligibility. The section also eases the requirements for making a homelessness determination, and considering such student as independent. It expands the types of payments and services provided by the Social Security Act that can be considered “excludable income” in determining eligibility for student aid.

Comment: Using earlier available financial data to determine student aid eligibility has a number of advantages for students and schools. Earlier determination provides students information that helps them make their college decisions in a more rational fashion. It also eliminates much of the work that student aid offices have to undo if they must first determine awards based on estimated financial information. Many presidents at private, nonprofit colleges believe that knowing federal award amounts earlier helps them to more accurately budget for institutional awards. However, we believe this provision should be carefully monitored during implementation to ensure it does not lead to excessive gaming.

While we have no objections to considering students who are homeless as independent students, we are somewhat concerned about the very broad expansion of who can make a determination of homelessness.

Mandatory Financial Aid Award Letter (pp. 17 and 299-313)

These provisions amend Part B of Title I, by requiring that all schools use a financial award letter developed by the Department of Education, and Part B of Title IV, by describing the prescribed elements

and format of the letter in very specific detail. The requirement would be implemented 12 months after the Secretary develops the letter. The letter would be developed with input from other federal agencies and representatives of affected interested parties.

Comment: We support a role for the federal government in ensuring students have clear and sufficient information to make prudent decisions about college choice and financing. However, the format, level of detail, and timing of the information should be determined based on its usefulness to a student's decision making. The mandatory financial award letter seems to require too much information, and is unlikely to fit the page constraints prescribed. Such overload of information could undermine the very purpose it purports to serve. In many cases a limited amount of critical information, with readily available sources for answering additional questions, may be more useful.

In addition to the danger of overwhelming students, the strict requirements do not provide schools with the flexibility to provide information in ways that best serve their students and applicants. The form may not be appropriate for graduate and professional students whose aid may be from other federal agencies and have special conditions, such as service requirements. We hope to continue to work with you to advance this section.

Consumer Testing (pp. 310-313)

The bill would establish a standard consumer testing process to be used in reviewing a number of the initiatives included in the proposal that deal with consumer information, forms, and procedures. Depending on the initiative to be tested, participants in the consumer testing will include: students, families, representatives of institutions of higher education, counselors, financial aid officers, and nonprofit consumer groups. Based on the results of the testing, the Secretary may modify the definitions, terms, formatting, and design of any of the products tested before they are finalized.

Comment: We believe it is important to test in advance new forms and information displays with the individuals who will need to use them. Such testing can help clear up areas of potential confusion and lead to a better understanding of what is useful and what is not.

We can appreciate the potential need for modifications based on the results of the testing, but are concerned that the grant of authority to the Secretary to make modifications may be too broad—particularly regarding the definitions or terms related to the products. We suggest that the language be revised to provide that the Secretary identify any modifications that the testing has shown to be needed and request any statutory changes required to accommodate them. If statutory changes are not needed, there should still be a process for giving appropriate notice of the modifications to the authorizing committees and to the public.

Loan Repayment Rate and Speed-based Repayment Rate (pp.313-326)

The legislation defines a process for determining a college's student loan repayment rate. The formula calculates what has been repaid by the two-year cohort of borrowers at three/four years since initiating repayment. The Department of Education would publish these rates on College Navigator and the website for the National Center for Education Statistics (NCES).

The Department would also be required to calculate a “speed-based repayment rate” for each institution. This rate would be included on an institution’s College Scorecard. The Secretary would also establish a method to compare the rates of similar institutions, but not disaggregate the data by sector. Also, the Secretary would annually have to publish each institution’s default rate risk (undefined at this point) on the NCES site. Students seeking enrollment in a school with a default risk of 0.1 or greater, must be provided a waiting period between their acceptance and their enrollment and given other information regarding the risk designation.

Comment: Recently, new measures of assessment have been proposed to address the shortcomings of the cohort default rate, which has been used as a surrogate for quality in the past. Before changing or adding new measures, in this case of loan repayment, the metric needs to be fully tested and modeled before being enacted. This is particularly important if the federal government is going to create expedited pathways to income-based repayment that may put more borrowers into negative amortization, or create an incorrect impression of problematic institutions.

Disclosures, Counseling, and Financial Assistance Information (pp. 330-360)

This section of the bill includes various provisions to increase disclosures about students’ and parents’ eligibility for federal student aid.

Comment: The Department already provides some of this information and should be responsible for providing such data since they have the most direct access to the financial figures. It might even carry additional weight coming from the Department. Information directly from the Department might also be more influential.

Sexual Harassment (pp. 332-337, 359-360, 591-595)

The bill would expand the Clery Act campus safety requirements to address issues of sexual harassment. Institutions would be required to include policies regarding sexual harassment in their campus security reports. These policies must: prohibit harassment of students; establish procedures to address alleged harassment; describe possible sanctions; provide information about existing counseling and related services; and designate an employee or office to receive and track reports of harassment.

It would also authorize grant support for programs to prevent harassment of college students, to provide counseling or redress services when harassment occurs, and to support education or training about ways to prevent or address harassment.

Comment: Sexual harassment should not be tolerated on college campuses. Attention to this and related issues of sexual assault have led to numerous proposals for change in campus policies and procedures. For example, the Department of Education will soon issue new regulations to incorporate changes made to the Clery Act by amendments to the Violence Against Women Act. Any further requirements should be considered in the larger context of these issues to help assure that expectations are clear and consistent.

Competency-Based Education Demonstration (pp. 363-382)

The bill would establish a demonstration program to examine educational programs based on competencies rather than credit hours. The program is modeled on the distance education demonstration program included in the 1998 amendments to the Higher Education Act.

Up to 15 entities, with enrollments between 100 and 2,000 students, would be chosen to participate in the demonstration. The goals of the program are to help determine:

- Which regulatory and statutory requirements should be modified to increase access to competency-based programs;
- The most effective means of delivering these programs; and
- The appropriate level and distribution methodology of federal student assistance for enrollees.

Comment: Just as the 1980's innovation of "correspondence courses" became a major area of fraud and abuse in the student aid programs, so too can innovations in the measurement of learning present new opportunities for unscrupulous school operators to take advantage of students and taxpayers. We therefore believe that establishing a demonstration program offers a good approach for examining issues related to competency-based education and the appropriate level of federal involvement with it. Information gathered through this type of experimentation would offer a valuable analysis of these new educational offerings before a full-scale federal investment is made.

Incentive Compensation (pp. 382-384)

The ban on incentive compensation would be expanded to include third parties acting on behalf of an institution and paying for success in nearly every phase of the academic process (not just enrollment and financial aid). An institution must acknowledge that provision of incentive compensation at any point in the recruitment, enrollment, education, or employment placement of students is prohibited. An institution must provide new employees and contractors, on a form developed by the Department of Education, the statutory and regulatory requirements in Sec. 487 – program participation agreements (PPA).

(Although the word "section" is used, the intent may be to provide only information about incentive compensation, not all the PPA requirements.)

Comment: NAICU has been supportive of the existing ban on incentive compensation. However, the expanded coverage and new requirements of acknowledging the prohibition and providing information about it to all new employees will be an added cost to institutions that are unlikely to have engaged in the prohibited activities. It is also difficult to see how such provisions might prevent the problematic practices that do exist unless it is accompanied by strict departmental enforcement.

Coordinator for Homeless Children (pp. 385-386)

This provision adds to the program participation agreement requirements an institution must certify that it: 1) that it has designated an appropriate staff person, as a single point of contact, to assist homeless children/youth and foster care children/youth in "accessing and completing postsecondary education; 2) posts a public notice about financial aid available to these children/youth, including their eligibility to be considered independent students; 3) has developed a plan for how such children/youth

may access housing resources during and between academic terms; and 4) has included in its admission application questions regarding such status which applicants may answer for the purpose of financial aid.

Comment: Institutions should be prepared to address certain needs of their students and prospective students. Some of the requirements for homeless or foster children seem to go beyond the reasonable role and responsibilities for education into areas more akin to social work. Many schools already do outreach and address many nonacademic needs of students, but applying such specific requirements to all institutions is overly prescriptive. *(Also, the use of the terms “children” and “youth” open a college’s area of responsibility beyond that of its students and applicants.)*

Certification of Private Loans (p. 59, pp. 386-391, and pp. 660-672)

The self-certification of a student’s attendance at an institution would be replaced by the requirement for mandatory institutional certification. However, certification would no longer be restricted to the student’s attendance at the school, but would include student-specific information that the institution must provide to the lender. It would also require that an institution review the conditions of each private loan. An institution would be prohibited from certifying a private loan, if it did not provide certain benefits, such as loan-forgiveness for death and disability.

Comment: The current self-certification of private loans has proven problematic for all parties involved. NAICU supports the replacement of the process of self-certification of private loans with institutional certification that simply verifies the loan applicant attends the institution. The legislation’s new program participation agreement requirements put untenable burdens on institutions to review loan terms and conditions that are best done through bank regulation. Institutions should not be put in the position of denying private loans to students based on banking practices they don’t control and have limited power to change.

Program Participation Agreements – Veteran Students (pp. 394-395)

The bill would require institutions that enroll more than 100 veteran students in an academic year to develop and implement a plan for helping veterans succeed at the institution. It describes the elements that must be included in the plan, including designating points of contact, establishing a veterans issues working group, and describing available disability services. The plan must also include means for determining how to identify students who are veterans and describe how the institution will evaluate and maximize the number of credits that students can receive from military training and service.

Comment: NAICU institutions are proud to serve many veteran students and recognize there are many areas in which specific supportive services are needed to help assure a good educational experience. Institutions take different approaches aimed at ensuring veterans’ success, so we would caution against efforts to micromanage those approaches. For example, we believe the requirement that institutions establish a veterans issue working group is unnecessarily prescriptive.

Our most serious concern about the proposal, however, is the requirement that institutions “maximize” the number of credits that students can receive from military training and service. We understand the interest in seeing that military experience and education is properly evaluated when a servicemember

or veteran seeks to build academic credit at an institution. However, we are extremely concerned about having the federal government get into the middle of a process that is fundamentally an academic one. In addition, servicemembers would not be well served if credit were granted for work in a related field that did not fully prepare them for higher level academic coursework.

An unintended consequence of this effort could be enabling unscrupulous institutions to prey on service members. Unfortunately, such institutions would be the most likely to award credits as a means to draw service members and veterans into expensive programs that do not offer quality education. Certainly, the best way to “maximize” award of credit is simply to grant it whether or not it is appropriate to do so. This is not a good outcome for anyone if, in fact, the award of credit is not appropriate.

Public Availability of Financial Audit Results and Conforming Changes Related to Penalties (pp. 396-397)

The draft bill requires that financial audits that must already be provided to the Secretary and made available to certain agencies must also be made public.

Comment: There doesn't seem to be a good reason for financial audits to be made public when institutions must already make them available to those who have responsibility for information contained in them. Nonprofit institutions already make 990 forms publically available. 990s condense key financial information and are at an appropriate level of detail for the general public.

Secretary's Requirement to Regulate (pp. 396-397)

The draft bill removes the requirement that the Secretary regulate in the areas of limitation, suspension, or termination of participation in Title IV programs, as well as for emergency action to withhold funds from an institution. It also removes language providing the Secretary with authority to suspend or terminate an institution for misrepresentation. (See section on *Substantial Misrepresentation*)

Comment: The intent of this section is not clear. It seems to eliminate the requirement that the Secretary write regulations (and conduct negotiated rule-making?) in this area and instead provides the Secretary with very specific direction to impose penalties based only on notice and a hearing. Although the Secretary is allowed to “compromise” penalties, it is not clear what the benefit and possible consequences of this drastic change are.

Substantial Misrepresentation (pp. 397-400)

The draft bill expands the definition of “substantial misrepresentation” to include a long list of items, including those that are other types of violations, e.g., failure to comply with the program review process or space availability. (Current regulatory definition: “misrepresentation on which the person to whom it was made could reasonably be expected to rely...to that person's detriment”)

Comment: We are concerned that this section defines nearly every sort of infraction of a Title IV provision as a substantial misrepresentation. This is overkill, especially with the statutorily designated penalties.

Civil Penalties and Other Remedies (pp. 398-414)

This section provides a confusing array of penalties for a variety of categories of violations of Title IV. The Secretary may limit, suspend, or terminate an institution's participation in a program for violation of any provision in Title IV. In addition, the Secretary may impose a civil penalty on an eligible institution for substantial misrepresentation or serious violations. The penalty for the first significant misrepresentation violation is \$1 million, multiplied by an institution's default rate risk. Second and third offenses are increased proportionately.

The Secretary may impose civil penalties for other violations of not more than \$100,000. The Secretary may also impose civil penalties on the officers of the institution, including both monetary fines and a ban on the person's employment at the institution *or any other institution that participates in Title IV programs*.

Up to 50% of the fines collected by the Secretary may be used to carry out program reviews and activities related to program integrity. At least 50% of recovered funds will be deposited into the Student Relief Fund. The fund will be used to provide financial relief to student enrolled in an institution of higher education that have failed to comply with certain eligibility requirements. These funds are not to be considered government funds and can remain available past the fiscal year in which they were obtained. Additional appropriations are authorized for the fund.

Violations of the civil penalties imposed by the Secretary are a cause of action enforceable by a state's attorney general in any U.S. district court or state court with jurisdiction over the defendant. The court must provide notice to the Secretary before initiating action.

Comment: In combination with the section on *Program Participation Agreements*, the Secretary seems to be severely restricted in exercising discretion on a range of infractions. It appears the Secretary might be forced to impose punishments in excess of the seriousness of the offense. Also, the Secretary could shut down an institution for *any* Title IV infraction.

In addition, it is not at all clear why the states should be involved in assuring that federal penalties are carried out. This is a dangerous precedent.

Disclosure of Credit Balance (pp. 434-436)

This provision requires that all schools establish a process for the disbursement of credit balances through electronic payment to a deposit account or a general use prepaid card with specified protections.

Comment: This requirement seems unnecessary for schools where tuition and other costs may exceed the amount of federal grant aid provided. This has mainly been an issue at community colleges and should not be an added regulatory burden where it is unnecessary.

Disclosure of Cohort Rates Based on Repayment Plan and Deferment Status (pp. 436-443)

This provision requires annual publication of a report on cohort rates and the underlying data used to calculate them, including calculation for Stafford and unsubsidized loans, and various other declensions, including delinquencies. It also requires calculations of cohort rates for Graduate PLUS and parent PLUS borrowers.

Comment: We have no objection to the calculation of cohort *default* rate, including for PLUS Loans. It is not clear if this is what is meant by “cohort rate.” The value of some of the additional calculations is of questionable usefulness.

Accreditation (pp. 444-447)

The proposal would require the public disclosure of a broad range of accreditation documents. These documents would be published on an accreditor’s website for each institution it accredits. They would also be submitted to the Department of Education as part of an institution’s program participation agreement and made available on the Department’s website. These reports include—

- Self-study report by the institution, including information related to educational quality and efforts to improve;
- Accreditation agency’s report of each on-site review—including the responses of the institution;
- Accreditation agency’s written report assessing the institution’s compliance with the standards;
- All supporting documents for any adverse action taken by an accreditor—including final denial, withdrawal suspension or termination of accreditation, placement on probation, or other adverse action.

Comment: It is NAICU’s view that general disclosures of accreditation findings will substantially change the nature of the accreditation process and undermine the frankness and candor that help make the process successful – leading to a more watered-down process. Few students or parents would actually read this material. Far more likely is a scenario where negative information from a review will be reported out of context—a prospect that can have particularly devastating consequences for small institutions.

To the extent that the committee wishes to increase public understanding of the accreditation process itself, we stand ready to help find ways to increase that understanding in ways that will not undercut the frank exchanges that are critical to continued improvement.

Financial Responsibility Standard

This important subject is not included in your 2014 HEA draft.

Comment: In a final version of HEA 2014, we urge you to include the recommendations from our November 2012 *Report of the NAICU Financial Responsibility Task Force*.

(http://www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf)

Because the Department of Education does not always use proper and up-to-date accounting standards when determining the financial well-being of nonprofit colleges, a number of colleges have received

inaccurate failing scores and are being required to purchase letters of credit, wasting precious resources in order to maintain student aid eligibility for their students.

Improved Targeting of Program Reviews (pp. 447-467)

The bill establishes criteria to be used by the Secretary in conducting mandatory annual program reviews and provides a different set of criteria for the conduct of additional risk-based reviews. These additional reviews are to be conducted for at least 2% of institutions that are not subject to the annual review.

Comment: We agree there is a need to target program reviews so that Department resources can be focused on examining institutions that are most likely to be in violation of federal requirements.

However, the criteria for review specified in the legislation are far too broad to accomplish this goal. In general, the criteria should be narrowed and should focus on quantitative factors that can be reliably measured, such as default rates, large fluctuations or increases in loan or Pell Grant volume, and sharp enrollment increases.

We are also concerned about the requirements for institutions that are subject to the mandatory reviews to post program review information on their websites and to provide this information to prospective students. These requirements imply that the conduct of a program review is an indication of guilt. Although we support the idea of better targeted program reviews, we do not believe that a program review in and of itself should imply there is a problem—particularly if the review finds that an institution is well-managed.

In addition, several of the review criteria are particularly problematic and should not be included. Specifically—

- **Federal financial responsibility scores:** Following a two-year study, a NAICU task force in November 2012 produced a report recommending a number of changes in procedures the Department of Education uses in carrying out its financial responsibility regulations. The report detailed various accounting problems in the Department’s approach. Because the problems identified in the report have not been resolved, we believe it is unfair and inappropriate to use these scores in assessing program risk. Also, because of the department’s refusal to correct their accounting mistakes, it is likely that an institution that is on the list would continue to be on the list, making repeated program reviews a waste of time.
- **Graduation rates, as determined by the Secretary:** Substantial work is being done to identify graduation rate measures that take into account students who are not included in the current calculation based only on first-time, full-time students. Any use of graduation rates in flagging institutions for additional review should be based on the measure that Congress chooses to substitute for the current calculation, and not left to the discretion of the Secretary.
- **Accreditation agency actions:** The focus of Departmental reviews should be on issues related to federal requirements with respect to student financial aid. Accreditors focus on a different set of issues, and an accreditation action is not necessarily an indication that student financial aid issues are at stake.

- **Failure to comply with other Federal or State laws:** Again, these criteria are too broad. Federal requirements regarding student financial aid need to take priority in the review process.

State-Federal College Affordability Partnership (pp. 467-477)

The bill provides a block grant to each state that provides at least \$2,865 (half of the maximum Pell Grant) for “net operating support” for each FTE student in public higher education in the state. “Net operating support” does not count a state’s expenditures on such things as buildings, R&D, or their own state student aid funds.

- 100% of the money must go to the public colleges and be used by them to reduce in-state tuition, or to mitigate tuition increases, and to “support the enrollment of low-income students.” The use of funds for such things as endowments, athletic or commercial venues is prohibited.
- The amount of federal money provided to colleges for each FTE increases as state expenditures per FTE increase above \$2,865 and maxes out at \$1,651 per FTE (for states whose investment per FTE is \$8,595 or higher). “Such sums as may be necessary” are authorized for the grants.

Comment: NAICU strongly opposes this provision and is concerned it will detract from the federal government’s long commitment to need-based student aid. Many years ago, the federal government decided to invest its funds in students according to need, rather than in institutions according to sector. This policy decision has had remarkable success in democratizing American higher education, and in encouraging states and institutions to provide their own aid to make college affordable to those of moderate means. This provision, more than any other in the draft proposal, will split the higher education community apart and lead college leaders to advocate for aid to their institutions instead of aid to the poorest students. We strongly urge that this proposal be removed from the legislation.

Correctly Recognizing Educational Achievements to Empower Graduates Act (CREATE Graduates Act) (pp. 483-498)

The bill would authorize grants to states to increase the number of postsecondary degrees awarded by:

- Locating and conferring degrees on students who have accumulated sufficient credits to qualify for an associate’s degree, but have not received one;
- Providing outreach to students who are within 12 credits of earning an associate’s degree; and
- Establishing partnerships between 2- and 4-year institutions to facilitate transfer.

Comment: The goal of the CREATE Graduates Act is to increase the number of students who receive college credentials. As noted in our comments in support of the First in the World grant program, we recognize the importance of obtaining a college degree and have promoted this goal through our once a year once a year [Building Blocks to 2020 website](#) initiative.

We particularly appreciate that in crafting this provision, the bill recognizes the difference between accumulation of a certain number of credits and meeting the requirements of a degree. The bill also recognizes the final authority of the issuing institution to determine that all degree requirements have been met.

We are concerned about the requirement that a state include in its grant applications a description of the capacity of its longitudinal data system to “include all postsecondary educational institutions in the State, including public, private nonprofit, and private for-profit institutions.” We believe this requirement is unnecessary and inappropriate and ask that it be removed.

First in the World Competitive Grant Program (pp. 498-507)

The bill would authorize the establishment of a First in the World competitive grant program aimed at increasing postsecondary access, persistence, and completion.

Comment: NAICU supports the First in the World Initiative as an appropriate way to build on the successful work of many in higher education to innovate and to improve postsecondary education and encourages Congress to incorporate it into HEA reauthorization legislation. Private nonprofit colleges take pride in their four-year completion rates, which surpass those of all other sectors – even when controlling for risk factors such as poor academic preparation and poverty.

To better understand the reasons behind this success, NAICU asked member institutions to submit short summaries of their programs targeted to helping students complete college. The resulting collection is available on our [Building Blocks to 2020 website](#). The common thread across these programs is that they have been developed at the ground level, where transformative change takes place. As such, they are tailored to the mission of the particular college and the needs of its students. These are valuable and effective models.

State Competitive Grant Program for Reforms to Improve Higher Education Persistence and Completion (pp. 550-574)

These provisions would offer incentives for states to implement comprehensive reforms and innovative strategies that are designed to lead to significant improvements in postsecondary outcomes for traditionally underrepresented students, including enrollment, persistence and completion, by 2020; reductions in the need for remedial education for college students; increased alignment among K12, postsecondary, and workforce systems; and innovations in postsecondary education.

Grants would fund comprehensive state plans to increase access, persistence and completion at public colleges, and at private nonprofit colleges that choose to participate. These plans would be designed to: remove barriers to innovation; improve the transition from high school to college, and college to the workforce; and to increase persistence, transparency, and funding.

Comment: NAICU believes that colleges, states, and the federal government should continue to work together to ensure low-income students enroll in and complete college. These efforts will be the most effective when they are inclusive of all sectors, voluntary in nature, and are based on proven work in the field. With those criteria in mind, NAICU supports the general approach taken in the State Competitive Grant Program. We are particularly appreciative of provisions that make it clear that private nonprofit institutions may choose whether or not to participate in statewide articulation agreements.

National Data Center on Higher Education and Disability /Disability Data Submission (pp. 603-612)

This proposal would establish a National Data Center on Higher Education and Disability, which would collect student-level data about disabled college students and institutional information about the policies and services related to those students. This data and information would be posted on a public website, along with links to information about student financial aid.

Colleges would be required to collect and submit “de-identified, individual student-level data for every student who discloses a disability to, and seeks accommodation from, the institution of higher education that the student attends” Among the data to be collected is: the student’s disability category; the institution’s disability documentation requirements; the individual-level services and accommodations provided by the institution; the enrollment, persistence, and completion status of the student; employment or further education information about the student 5 years after completion; and the institution’s annual budget for disability supports, services, and accommodations.

This data is to be collected, organized, and submitted in a way that supports disaggregation by the 13 disability categories specified in the bill.

Comment: We believe that collecting data at this level of granularity will impose additional burdens on institutions without producing benefits for students. Because the data will be disaggregated by so many categories, it is likely that most of this information will be suppressed to avoid identifying individual students.

We are also concerned that this system establishes special tracking requirements for disabled students—information which those students may not want entered into such a tracking system. Students with disabilities should have the right to decide which information about them is included in a data system and who has access to that data.

Providing Accessible Instructional Materials to Students with Disabilities on College Campuses (pp. 644-652)

The bill would authorize the Architectural and Transportation Barriers Compliance Board to establish guidelines regarding the availability of electronic instructional materials to students with disabilities—particularly those who are blind. It would require institutions to ensure that instructional materials are provided in a manner that is “equally effective, integrated and timely, and provide for substantially equivalent ease of use” as are instructional materials for non-disabled students.

Comment: These provisions include a number of new standards that could potentially set the bar so high that they would be impossible to meet—which would be a disservice to all students. We believe it would be unwise to mandate these changes in the absence of a full and clear analysis of their impact.

Truth in Lending (p. 16 and pp. 659-733)

The draft corrects the mistaken categorization of Title VII and VIII of the Public Health Act loans as private loans.

The amendments to the Truth in Lending Act (TILA) provide consistency with proposed changes to HEA, such as the code of conduct, revenue sharing, and private loan certification. Amendments require that prior to issuing a private student loan, a creditor must obtain from the relevant institution of higher education certification that the student seeking the loan is enrolled at that school. The schools must also provide the student's cost of attendance, the difference between the cost of attendance and the student's estimated financial assistance. (Self-certification is eliminated and institutional responsibilities described elsewhere in the draft.)

A creditor may issue funds if it does not hear back from the institution in 15 business days. Private loans may then be disbursed without a certification. A creditor must provide the Consumer Financial Protection Bureau (CFPB) information concerning such loans. Creditors must also provide borrowers periodic updates on their loans.

Private education loan information would have to be submitted to the National Student Loan Data System. Private loan lenders must also establish an internet site on which financial agreements with institutions, their alumni groups, and related foundations, must be posted. These agreements must also be sent to the CFPB. A report on the compliance of institutions to the mandatory certification must be provided to Congress several years after regulations are issued.

Comment: A number of the issues here assure that the HEA and TILA are consistent. We support the correction of the definition of private loans to exclude Federal Public Health Loans. We would, however, note a special concern about the newly assigned role colleges would be required to play in determining that a private loan meets standards set by the department. This seems an inappropriate role for colleges and should be implemented instead through direct regulation of banks and private loans.

Internal Revenue Code (pp. 733-738)

This provision automatically puts borrowers who have financial hardship and are 150 days delinquent in repayment of their eligible student loan into income-based repayment.

Comment: NAICU appreciates the intent of this provision to save borrowers from going into default but has several concerns. First, this could eliminate any way, even if imperfect, of evaluating the repayment of student loans and which institutions are the most likely to produce students who default. It also eliminates a borrower's ability to rehabilitate his/her loan and return to the original payment plan. In addition, it does not provide the protection for borrowers who are 150 percent delinquent, but not in financial hardship.

Title 11 of the United States Code (Bankruptcy) (p. 738)

This provision would make private student loans eligible for bankruptcy.

Comment: We support this provision.

Consumer Protections for Students (pp. 742-745)

The bill would establish additional requirements related to the federal financial aid eligibility of any postsecondary education or training program designed to prepare students for occupations or professions that require licensing or related requirements as a pre-condition to entry to the field. Financial aid will be available for those programs only if their successful completion permits a student to take any required entry exams, be certified or licensed, or meet any other academically related requirements as established by the Metropolitan Statistical Area in which the student resides. The institution must also provide for timely placement in required clinical placements, internships, apprenticeships, or other academically related pre-licensure activities.

Comment: We share your concern about institutions that misrepresent their programs as fully satisfying all requirements for entry into an occupational or professional field, knowing that they do not. However, the proposal is written so broadly that it will be difficult to interpret and implement. Tying the requirement to the Metropolitan Statistical Area (MSA) in which the student resides raises additional issues, as students may move while enrolled in a program or may wish to work outside their MSA upon graduation.

Study on the Impact of Federal Financial Aid Changes on Graduate Students (pp. 780-785)

This study would examine recent and significant changes to federal student aid for graduate students.

Comment: We are greatly concerned about the increased costs of graduate loans, including the loss of the in-school interest subsidy. Increasingly, graduate degrees are required for many professions and there is a national interest in ensuring that qualified students have the means to finance post-baccalaureate education. We support this study as a first step in determining the effects of increased costs of these loans.