



**ADVISORY COMMITTEE
ON STUDENT FINANCIAL ASSISTANCE**



**HIGHER EDUCATION REGULATIONS STUDY:
FINDINGS AND RECOMMENDATIONS**

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OUTLINE OF PRESENTATION

- About the Advisory Committee on Student Financial Assistance (ACSFA)
- Study Approach
- Background Issues
- Context
- Study's Five Research Questions
- Findings and Recommendations
- Community's Specific Proposed Solutions
- Q&A and Discussion

ABOUT THE ADVISORY COMMITTEE

- Established in the Higher Education Amendments of 1986 and reauthorized in each subsequent set of amendments
- Serves as an independent and objective source of advice and counsel to Congress and the Secretary of Education on student financial aid matters, including access and persistence issues
- 11 appointed members serve terms of 4 years
 - 3 appointed by the Secretary of Education
 - 4 appointed by the U.S. Senate
 - 4 appointed by the U.S. House of Representatives

ACSFA MEMBERS APPOINTED BY THE SECRETARY OF EDUCATION

- **Allison G. Jones**
(Immediate Past ACSFA Chair)
Senior Fellow for Postsecondary Engagement
Achieve, Inc.
- **John F. McNamara**
Vice President for College Development
Rockford College
Rockford, Illinois
- **Ms. Kathleen Hoyer**
Student Member
University of Maryland - College Park

**ACSFA MEMBERS APPOINTED
BY THE U.S. SENATE**

- **Norm Bedford**
(ACSFA Chair)
Director, Financial Aid
and Scholarships
University of Nevada,
Las Vegas
- **William T. Luckey**
President
Lindsey Wilson College
Columbia, Kentucky
- **David L. Gruen**
Past National Chair of
NASFAA
- **Sharon Wurm**
Director of Financial
Aid, Scholarships,
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and Veterans Services
Truckee Meadows
Community College
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**ACSFA MEMBERS APPOINTED BY THE
U.S. HOUSE OF REPRESENTATIVES**

- **Helen Benjamin**
(ACSFA Vice Chair)
Chancellor
Contra Costa Community
College District
Martinez, California
- **Anthony J. Guida, Jr.**
Senior Vice President of
Strategic Development and
Regulatory Affairs Education
Management Corporation
- **Deborah Stanley**
Director of Financial Aid
Bowie State University
Bowie, Maryland

STUDY METHODOLOGY

A P P R O A C H

- Congress directed the Advisory Committee to determine which regulations are “duplicative, no longer necessary, inconsistent with other federal regulations, or overly burdensome”
- Pursuant to this mandate, the Committee took the following steps:
 - convened **two review panels** comprised of 16 individuals with relevant experience and knowledge to review the regulations under the HEA and make recommendations for streamlining, improvement, or elimination
 - developed and maintained a **website** to provide information on the regulations, including an area for community suggestions of burdensome regulations
 - held **two public hearings** designed to identify the most burdensome aspects of individual regulations and the overall regulatory system, and comment upon proposed improvements

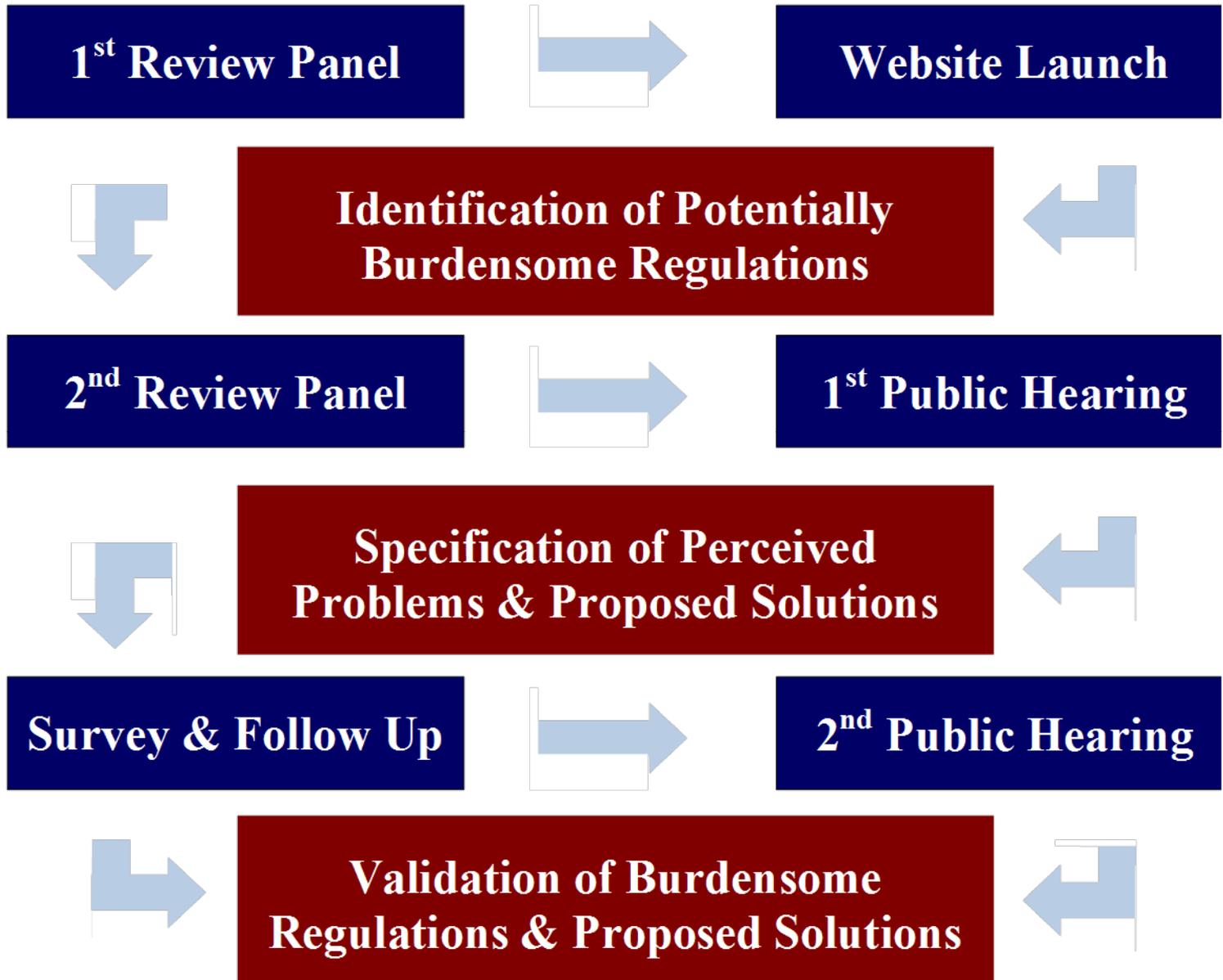
STUDY METHODOLOGY

A P P R O A C H

- designed and conducted an anonymous and confidential **web-based survey** (which generated over 2,000 responses, from over 700 institutions with over 4,000 written suggestions) to confirm and validate the findings of the review panels, public hearings, and website interaction
- identified a set of community-driven **perceived problems and proposed solutions** for both the individual regulations cited in the study and the overall system of regulation
- in the survey's follow-up activities, **validated** the perceived problems and proposed solutions with over 100 volunteers from the higher education community
- In addition, the Committee used numerous meetings, conference calls, and presentations to solicit feedback on regulatory burden

OVERVIEW OF THE STUDY

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BACKGROUND

- **Why did the Advisory Committee conduct the study?**
 - In the *Higher Education Opportunity Act* of 2008, Congress charged ACSFA to conduct the study
- **How many individuals from the higher education community were involved in the study, in what capacity, and were they knowledgeable and experienced?**
 - More than 50 individuals with a total of over 1,000 years of experience in financial aid and the HEA regulations served as members of the review panels, consultants, and/or field testers, or provided testimony at the two public hearings
 - Five Advisory Committee members are/were, directors of financial aid, and have a total of over 100 years of experience in financial aid and the HEA regulations
 - Four Advisory Committee members are campus senior executives (presidents, chancellors, vice presidents) and have over 100 years of experience working in higher education

BACKGROUND

- **What were the methodologies used in the study? Were there any limitations or other implications?**
 - The Committee used the same protocols that ED uses in developing and implementing regulations under HEA:
 - Expert review panels (two), public hearings (two), and website interaction with the community
 - In addition, an anonymous, confidential survey was conducted to confirm and validate the findings of the review panels, public hearings, and website interaction
 - The survey had over 2,000 responses from at least 700 institutions with over 4,000 written comments
 - More than 1,200 financial aid officers (including over 800 directors) from all sectors responded to the survey
 - Limitations and the implications for findings and recommendations are clearly spelled out in the report

BACKGROUND

- **Are proposed solutions identified in the report, and were those solutions validated with knowledgeable members of the higher education community?**
 - For every perceived problem associated with a specific regulation, or the overall regulatory system, at least one solution is proposed that has been validated with over 100 senior executives and office administrators on campuses nationwide
 - Further, those individuals agreed that the survey results and solutions were characteristic of the problems encountered on their campuses
- **Are the study's findings consistent with the findings of previous studies?**
 - Findings are consistent with a 2010 NASFAA survey of financial aid administrators regarding administrative burden

LIMITATIONS OF THE STUDY

- The study was unable to collect the data necessary to conduct detailed calculations of burden hours and costs
- Thus, the study was unable to determine the exact extent to which regulations are quantifiably burdensome
- Determining with statistical certainty exactly how burdensome a particular regulation or set of regulations is, and the changes necessary to either reduce or eliminate that burden, requires significant time and resources
 - Measuring precisely the level of burden, cost savings, and adverse effects requires case studies at institutions
 - Such analyses should be utilized by ED in conducting the required retrospective review of regulations
- These limitations rule out ACSFA making legislative recommendations regarding specific regulations

LESSONS LEARNED

- **About Perceptions of Burden**
 - Regulatory agency management and staff often have a very different view of regulatory burden and overall system weaknesses than those who are regulated
- **About Assessing Burden**
 - Basing the assessment of regulatory burden and cost estimates, and evaluation of overall system effectiveness, on internal regulatory agency surveys alone will:
 - significantly underestimate burden and cost, and
 - overestimate system net benefits

LESSONS LEARNED

- **About Eliminating Bias**
 - Identifying potentially burdensome regulations must begin with a survey of those being regulated – one that is anonymous and confidential to avoid serious selection bias
 - Review panels assembled by the regulating authority are also susceptible to selection bias unless participants and institutions are provided with hold harmless guarantees
- **About the Need for Case Studies**
 - Identifying and measuring regulatory burden, cost savings, and adverse effects requires independent, in-depth case studies at institutions of higher education that are held harmless against adverse effects

THE IDEAL APPROACH

- Determining level of burden, cost savings, and potential adverse effects would require at least the following steps:
 - develop a detailed model of how regulations impact institutions, by type and control, and other characteristics
 - derive from the model the data required to measure burden, cost savings, and possible adverse effects
 - choose an adequately large and representative sample of institutions from which the data will be collected
 - prepare a data analysis plan consistent with the detailed model of how regulations impact institutions
 - design case study protocols and instruments necessary to collect the data from the sample of institutions
 - conduct the case studies and collect and analyze the data

EXTERNAL COMPLEMENT TO THE STUDY

President's Executive Order 13563 of January 18, 2011

- ... propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs ...
- ... tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations ...
- ... select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits ...
- ... specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt ...
- ... identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior ...

FIVE RESEARCH QUESTIONS

- **Regulatory Burden** – How burdensome does the higher education community consider the HEA regulations? Which regulations are perceived as most burdensome?
- **Regulatory Improvement** – Can HEA regulations be streamlined or eliminated without adversely affecting program integrity, accountability, and student access/success?
- **System of Regulation** – Are key components of the system of regulation under the HEA perceived as needing change?
- **Cost Savings** – Would streamlining or eliminating individual regulations reduce costs for institutions and students? Would modifications to the system of regulation reduce such costs?
- **Future Regulatory Reform** – What should be the focus of future regulatory reform efforts for higher education? How should such efforts proceed?

OVERALL FINDINGS

FINDINGS

- The overarching finding is that the higher education community perceives regulations under the HEA to be **unnecessarily burdensome**
- The majority view is that most of the specific regulations cited in the study **can be improved without adverse effects** on accountability, program integrity, student access, or student success
- There is a strong sense in the community that the overall, one-size-fits-all **system of regulation requires improvement**
- Most important, the majority opinion is that improvements to individual regulations and the system will not only lower regulatory burden without adverse effects but also **generate savings** which can be used to expand student access and success

RECOMMENDATIONS

- Based on the findings and methodological limitations of the study, the following recommendations were made:
 - **Legislative.** The Committee recommended that Congress direct the Secretary of Education to convene at least two review panels of higher education representatives to provide advice and recommendations on:
 - the 15 individual regulations cited in the report
 - the feasibility of alternative approaches to the current system of regulation
 - the feasibility of providing regulatory relief based on appropriate performance measures

The Advisory Committee recommended that the panels be incorporated into current and future retrospective reviews.

RECOMMENDATIONS

➤ **Regulatory.** The Advisory Committee recommended that the Secretary of Education conduct a review of the 15 regulations cited in the report, including:

- An analysis of the feasibility of implementing the proposed solutions
- Identification of any potential adverse effects on program integrity, accountability, student access, student success, and costs of compliance

ED's existing retrospective review plan should routinely incorporate scientific, comprehensive reviews and analyses and occur no less frequently than biennially

PROPOSED SOLUTIONS

Regulation: Conflicting Information

Current regulations require an institution to have a system to resolve discrepancies, or conflicts, among all sources of information related to a student's application for federal student aid.

Perceived Problem(s):

- Members of the higher education community suggested that these regulations and related guidance are **overly-prescriptive**.
- Others suggested a successful IRS data match as a viable source of information that should serve as a final arbiter of accurate tax data, such as allowing the matched data to supersede a tax transcript or paper copy of a tax return that may differ from the match.

PROPOSED SOLUTIONS

Regulation: Conflicting Information

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways:

- Allow results from established data matches, recognized by ED, to serve as a source of resolution for conflicting information. Such matches include the existing match with the IRS, but should include other data matches as well
- Eliminate any requirement that a campus official must interpret and apply another federal agency's rules, unless specifically required under the HEA

PROPOSED SOLUTIONS

Regulation: Crediting Federal Student Aid to Non-Allowable Institutional Charges

Current regulations require an institution to obtain written authorization from a student (or parent borrower for Parent PLUS Loans) to credit federal student aid to certain charges defined as “non-allowable” institutional charges, such as student health center charges.

Perceived Problem(s):

- Many noted that students usually assume all charges can be paid with Title IV funds and can be **confused** about having to pay these charges out-of-pocket.
- Also, other students can ignore a balance due assuming a credit balance will cover non-allowable charges. Such students **may not be able to register** for courses for subsequent periods of enrollment until the balance is paid.

PROPOSED SOLUTIONS

Regulation: Crediting Federal Student Aid to Non-Allowable Institutional Charges

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Replace the written authorization requirement and permit institutions to use an opt-out system, whereby the institution would be authorized to automatically apply federal student aid funds to all charges a student incurs at the institution.
- However, if the institution chooses to do so, it would be required to notify the student at least annually of the right to opt-out. A change to legislative language may be necessary to accommodate this change.

PROPOSED SOLUTIONS

Regulation: Entrance Counseling for Student Borrowers

Institutions must provide entrance counseling before delivering a disbursement to a first-time student loan borrower in order to inform the student of rights and responsibilities.

Perceived Problem(s):

- Members of the community expressed concern that **format and timing** could be modified.
- Some members of the community suggested that the entrance counseling requirements **applied one standard to all students** and did not address the unique needs of different populations of students.
- Some felt that administrators should be allowed to determine when to fulfill this counseling requirement based on profiles of their student borrower population, and be able to require completion of financial literacy training.

PROPOSED SOLUTIONS

Regulation: Entrance Counseling for Student Borrowers

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Require entrance counseling as part of the master promissory note (MPN) process – to streamline the entrance counseling process, reduce student confusion, and tie loan rights and responsibilities more closely to actions authorizing and securing a federal student loan. Also allow administrators to supplement the MPN entrance counseling at subsequent points in time, rather than only before the first disbursement of a first-time student borrower, based on the needs of the institution's student borrowers.

PROPOSED SOLUTIONS

Regulation: FSEOG Priority Awarding Criteria

Statutory language requires Federal Supplemental Educational Opportunity Grants (FSEOGs) be awarded to students with the lowest expected family contributions (EFCs).

Perceived Problem(s):

- Some suggested the FSEOG awarding priority include students with the highest unmet need, not just those with the lowest EFCs, because significant numbers of students with the lowest EFCs receive grant aid such that their **unmet need is lower than students with higher EFCs**.
- However, several commenters requested priority awarding always go to Federal Pell Grant recipients first.
- Survey respondents perceived this regulation as having the lowest level of burden of the 15 regulations included in the study.
- Furthermore, respondents favored modifying certain criteria for the program, rather than eliminating it.

PROPOSED SOLUTIONS

Regulation: FSEOG Priority Awarding Criteria

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Require an institution to award its FSEOG funds first to its Federal Pell Grant recipients with the highest unmet need. The determination of unmet need should take into account the cost of attendance, EFC, and gift assistance, but not any self-help forms of student financial aid (such as loans or employment). A change to legislative language may be required to accommodate this solution.

PROPOSED SOLUTIONS

Regulation: Overaward and Overpayment Tolerances

An overaward occurs when a student receives aid in excess of demonstrated need or beyond an amount for which the student is otherwise eligible. Tolerances within different federal student aid programs accommodate situations in which inadvertent overawards occur. Overpayments occur when resolution of an overaward is not feasible.

Perceived Problem(s):

- Overpayments can **restrict a student's eligibility** for further federal student aid until resolved or satisfactory repayment arrangements are made.
- Members of the community suggested there should be a standard overall tolerance that applies across all programs to minimize **multiple calculations** to determine whether an overaward or overpayment exists.
- Others added that a consistent, single policy is easier for students to understand and is more equitable.

PROPOSED SOLUTIONS

Regulation: Overaward and Overpayment Tolerances

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Modify the regulations to allow a single, aggregate tolerance that applies across all federal student aid programs, except for the Federal Pell Grant program. A change to legislative language may be required to accommodate this change.

PROPOSED SOLUTIONS

Regulation: Prior Award Year Charges

Current regulations provide authority for an institution to apply current award year federal student aid to allowable charges from a prior award year, up to a maximum of \$200.

Perceived Problem(s):

- Members of the community suggested that the \$200 cap be eliminated because a student's unpaid balance from a prior award year often **prevents enrollment** in current and future periods of enrollment.
- Alternatively, several individuals advocated for raising the cap, rather than eliminating it, recognizing the potential for creating a cycle of carrying over a deficit without ever resolving it.
- Commenters most often suggested amounts between \$500 and \$1,000 as revised maximums.

PROPOSED SOLUTIONS

Regulation: Prior Award Year Charges

Proposed Solution(s): The community suggested that ED consider improvement in one of the following ways:

- Modify the regulation to raise the maximum.
- Modify the regulation to eliminate the maximum. Consider whether elimination of the provision should be replaced with a requirement of written authorization from the student to allow such charges to be paid with current year federal student aid funds once current year expenses have been satisfied. Alternatively, allow the student to opt-out of the automatic application of current year funds to prior year charges once current year expenses have been satisfied.

Legislative action may be necessary for either of these options.

PROPOSED SOLUTIONS

Regulation: Proration of Annual Loan Limits

An institution must prorate the annual loan limits for a student borrowe in a program longer than one academic year who is in a final period of enrollment of less than an academic year.

Perceived Problem(s):

- Members of the community expressed concern that this rule **limits** financial assistance, **penalizes** students who are closest to program completion, leads to **unnecessary borrowing** from programs with higher interest rates and less beneficial repayment terms, and is an **administrative burden**.
- Others noted that this provision is often a very manual process and that the regulation is **duplicative** because annual and aggregate limits already restrict student borrowing.
- On the survey, this regulation received the highest percentage of votes (59 percent) for being able to be eliminated without losing necessary protections.

PROPOSED SOLUTIONS

Regulation: Proration of Annual Loan Limits

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Eliminate the requirement to prorate the annual loan limit for a student borrower enrolled in a program longer than one academic year and in a final period of enrollment of less than an academic year. Legislative action may be necessary to pursue this option.

PROPOSED SOLUTIONS

Regulation: Reporting and Consumer Disclosure Requirements

Current statutory and regulatory language requires institutions to report data or make disclosures of information for consumer awareness on such topics as campus crime, enrollments, fire safety, graduation rates, music downloading, placement rates, and textbook information, as well as reporting under the IPEDS.

Perceived Problem(s):

- There were two aspects of reporting and consumer disclosure requirements that framed the concerns of the community—
 - the **overlapping and inconsistent timeframes**, and
 - the **volume and scope** of the requirements.
- These were presented as two separate issues on the survey, but are combined in the report and this presentation.

PROPOSED SOLUTIONS

Regulation: Reporting and Consumer Disclosure Requirements

Perceived Problem(s) continued...

- Regarding issues of overlapping and inconsistent timeframes, members of the community suggested that federal reporting and disclosure requirements often **overlap and duplicate similar requirements** from state agencies and non-government organizations.
- This includes **differences in deadlines** for submitting reports and disclosures, as well as timeframes for data collection (e.g., a state report requires calendar year data, yet a federal report on the same issue requires award year data).
- Others suggested that consumer disclosures from all sources, including federal and state sources, be combined and standardized in order to minimize overlap, **inconsistency**, and duplication.

PROPOSED SOLUTIONS

Regulation: Reporting and Consumer Disclosure Requirements

Perceived Problem(s) continued...

1. Many suggested that additions to and modifications of these requirements over the years have led to an **unwieldy** volume and **expansive** scope of reports and disclosures.
2. Others in the community suggested that the volume and scope of information is **overwhelming** for students and families and contributes to **confusion** rather than awareness.
3. Some felt that an overhaul of these requirements is necessary to ensure the most appropriate information and data are being shared as effectively as possible.
4. Many asserted that the regulations do not provide useful information to students or prospective students and that accrediting bodies are covering much of the same ground as this federal regulation.
5. Furthermore, there were recommendations that **data definitions need to be revised**

PROPOSED SOLUTIONS

Regulation: Reporting and Consumer Disclosure Requirements

Proposed Solution(s): The community suggested that ED consider improvements in one or more of the following ways:

- Conduct an audit of all:
 - data collection timeframes to assess periods covered in each requirement in order to align timeframes and reduce duplication; ensure collections produce information students and families need and can easily understand
 - data submission and disclosure dates to ensure appropriate distribution across the calendar or award year; the goal should be efficient timing for submission of data and release of information
 - reporting and disclosure requirements to reduce redundant or conflicting information requested or reported; determine whether data are available in other areas (e.g., state agencies)

PROPOSED SOLUTIONS

Regulation: Reporting and Consumer Disclosure Requirements

Proposed Solutions continued...

- Synchronize and combine data reporting to one location to the extent practicable; for example, IPEDS could serve as a central repository of information, since a significant portion of data and information is already reported through this system
- Examine the feasibility of adjusting data collection definitions to include all types of students enrolled in all degree or certificate program types and formats
- Conduct focus groups with students and families regarding what information they need and want to make college-going decisions and how they identify and process information; students and families participating should represent all levels of income and college preparedness

PROPOSED SOLUTIONS

Regulation: Return of Title IV Funds

When a student withdraws, the institution must determine the amount of Title IV aid (i.e., federal student aid) that must be returned, if any, to the federal student aid programs using a set of formulas and criteria established in the statute and regulations.

Perceived Problem(s):

- Members of the community have suggested that changes made to these regulations over the years have added significant overall **complexity**, **burden**, and **confusion** (for institutions and students), especially related to recent changes for academic programs with modular structures.
- Nevertheless, comments received throughout the study recognized the need for these regulations to exist, but acknowledged a strong desire for simplification and modification.
- Many said the process for returning funds should rely less on **prescriptive** formulas, instead, allowing for certain opportunities of institutional discretion, such as flexibility in the order of return of funds by program.

PROPOSED SOLUTIONS

Regulation: Return of Title IV Funds

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways:

- Conduct a focus group of representatives from all sectors, as well as students, to review all requirements for the return of Title IV funds to recommend areas in which streamlining and simplification could occur
- Modify the regulation to allow greater institutional discretion for the order in which certain funds must be returned in circumstances in which a different order of return would benefit the student

PROPOSED SOLUTIONS

Regulation: Return of Uncashed Credit Balance Checks

Current regulations require that a check written to a student or parent for a credit balance of federal student aid funds be negotiated within 240 days of the date of the check or the funds must be returned to the federal student financial aid programs (as opposed to being allowed to escheat, or revert, to the state).

Perceived Problem(s):

- Members of the community suggested this **timeframe is too short** and needs to be lengthened to at least 365 days to accommodate differing deadlines among states and financial institutions.
- Others expressed concern that 365 days was too long, but recognized that in certain circumstances, 240 could be insufficient.

PROPOSED SOLUTIONS

Regulation: Return of Uncashed Credit Balance Checks

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways:

- Allow the deadline to be extended to meet the longer of 240 days or the state's or financial institution's deadline
- Allow the option for Title IV credit balances about to escheat to be used first to reduce the student's federal education loan debt, then any remaining amounts returned to the applicable federal student financial aid programs

PROPOSED SOLUTIONS

Regulation: Self-Certification of Non-Title IV Student Loans

An institution participating in a federal student aid program must provide an applicant for a non-Title IV student loan with the self-certification form required by the Truth in Lending Act, and the information to complete the form, if the institution has that information.

Perceived Problem(s):

1. Members of the community expressed concern that this requirement does not apply to all forms of student loans. This treatment creates **redundancy**, **inconsistency**, and **confusion** for students utilizing non-Title IV loans, such as those used by students enrolled in health professions programs.
2. Others suggest that all student loans, federal or otherwise, **should be certified by a designated official** at the institution rather than by the student.

PROPOSED SOLUTIONS

Regulation: Self-Certification of Non-Title IV Student Loans

Proposed Solution(s): The community suggested that ED consider improvements in one or more of the following ways:

- Exclude all federal student loans from these disclosures
- Require certification of non-Title IV student loans by an institution's designated official for administering student financial aid programs
- Exempt institutional loans from the student self-certification requirement as long as the modification stipulates the institution's designated official for administering student financial aid programs is part of the institutional loan certification process

Legislative action may be necessary for some of these options.

PROPOSED SOLUTIONS

Regulation: TEACH Grant Eligibility Rules

The Teacher Education Assistance for College and Higher Education (TEACH) Grant program provides grant assistance to students in exchange for agreeing to teach in a high-need field in an elementary or secondary school serving low-income students. If the student is not able to fulfill all terms of the agreement, the grant converts to an unsubsidized loan, with capitalized interest.

Perceived Problem(s):

1. Some suggested that the **inconsistency** of means through which TEACH Grant benefits can be realized makes it difficult to determine whether it is an appropriate award for a particular student.
1. Others suggested that the **intensive counseling and research** necessary to administer the program make it burdensome. Finally, the terms of the benefits are **complex** and often **misunderstood** by students even after intensive counseling.

PROPOSED SOLUTIONS

Regulation: TEACH Grant Eligibility Rules

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways:

- Modify the TEACH program so it is identified as a loan initially with the possibility of the loan being forgiven or cancelled if the student fulfills the terms of teaching service
- Extend the term of qualifying service for exceptional circumstances due to no fault of the student, such as closing of an eligible school

PROPOSED SOLUTIONS

Regulation: Written Authorization to Open a Bank Account on Behalf of the Student

For an institution with a policy of delivering federal student aid credit balances through electronic means only, current regulations require the institution to obtain written authorization from a student in order to open a bank account on the student's behalf if the student does not designate a bank account within an established timeframe.

Perceived Problem(s):

- Some suggested that when written authorization is not received, this requirement is **costly** and **burdensome**, and that electronic payments are delivered more promptly and accurately than paper checks.
- The majority of comments received from survey respondents and others in the community indicated this regulation needs to remain in place to insure against a bank account being opened on behalf of a student without his/her knowledge.

PROPOSED SOLUTIONS

Regulation: Written Authorization to Open a Bank Account on Behalf of the Student

Proposed Solution(s): The community suggested that ED consider improvement in the following way:

- Conduct a focus group of representatives from all sectors within the higher education community, as well as students, to discuss the perceived burden for these requirements and the need for changes

PROPOSED SOLUTIONS

Regulation: Year-Round Pell (Determining Student Eligibility for Two Federal Pell Grants in One Award Year)

These regulations have been eliminated, but were kept in the final report because a substantial number of community members requested the comments be recorded should the provisions, or similar ones, be reinstated and receive funding in the future.

Perceived Problem(s):

1. Some members of the community expressed concern over the **prescriptive** nature of the regulatory **definition of acceleration** and over how eligibility for a second award was determined, especially during payment periods that crossed over award years.
2. An additional concern related to the requirement to use the highest Pell Grant amount during cross over periods, often **rendering students ineligible** for other aid.

PROPOSED SOLUTIONS

Regulation: Year-Round Pell (Determining Student Eligibility for Two Federal Pell Grants in One Award Year)

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways, should similar provisions exist:

- Make provisions less prescriptive. For example, allow acceleration to be determined by percentage of Federal Pell Grant funds used during the current award year. If a student exceeds 100% of his/her eligibility, current or subsequent enrollment would use a second portion of Pell eligibility.
- Revise these regulations to allow institutions to establish a policy for defining to which award year a cross over enrollment period is attributed for all federal student aid purposes as long as the policy is applied consistently

PROPOSED SOLUTIONS

System Component: Eligibility and Compliance Monitoring

Eligibility monitoring includes the process by which a postsecondary institution recertifies its eligibility to participate in the federal student aid programs, as well as the national or regional accreditation processes. Compliance monitoring includes audits and program reviews. Members of the community were asked to what extent they believed the results of these monitoring efforts were effective in identifying problem areas and informing changes to the HEA regulations.

Perceived Problem(s):

- The majority of comments deemed the monitoring processes as effective or marginally effective.
- However, several individuals commented that ED could **better use findings** from the monitoring processes to propose changes to the regulations.

PROPOSED SOLUTIONS

System Component: Eligibility and Compliance Monitoring

Proposed Solution(s): The community suggested that ED consider improvements in one or both of the following ways:

- Utilize the monitoring processes, such as program reviews, to better emphasize the institution-wide responsibility for regulatory compliance, rather than a single office's responsibility for all compliance. ED should routinely send communications to individuals listed on an institution's application to participate in the federal student aid programs describing the institution-wide responsibility for compliance.
- Incorporate problem areas identified in the monitoring processes into the development of proposed changes to regulations, especially during negotiated rulemaking sessions

PROPOSED SOLUTIONS

System Component: Negotiated Rulemaking

Negotiated rulemaking is a process in which representatives from the higher education community (known in the process as non-federal negotiators) are chosen by ED to participate in discussions on the development of a proposed regulation.

Usually changes are made to an existing regulation, but may also involve creation of a new regulation. The non-federal negotiators work with a federal negotiator to reach agreement on proposed regulatory language that is then published in the *Federal Register* for broad community comment before ED issues the final regulation.

Survey respondents and commenters felt that, overall, negotiated rulemaking is seen as beneficial and effective, largely because this process allows individuals administering and impacted by the regulations to provide input during the development of proposed regulatory language.

PROPOSED SOLUTIONS

System Component: Negotiated Rulemaking

Perceived Problem(s):

Many survey respondents and participants in the survey's follow up activities expressed concern regarding three aspects of the regulatory development and implementation processes:

- how **consensus** is reached on proposed regulatory packages during negotiated rulemaking sessions
- both **participation** and **feedback** during such sessions
- issues related to the **master calendar**

PROPOSED SOLUTIONS

System Component: Negotiated Rulemaking

Proposed Solution(s): The community suggested that ED consider improvements in one or more of the following ways:

- **Allow Majority Consensus.** Allow consensus to be granted on a proposed regulatory package by reaching majority consensus rather than a lack of dissent from any single negotiator (federal or non-federal)
- **Limit Number of Topics per Committee.** Limit the number of topics assigned to negotiations in order to ensure the topics are manageable and sufficient time can be devoted to analysis, discussion, and negotiation
- **Modify Selection of Non-Federal Negotiators.** Require a minimum percentage of practitioners

PROPOSED SOLUTIONS

System Component: Negotiated Rulemaking

Proposed Solutions continued...

- **Consider Alternative Observation/Participation.** Consider alternative ways (such as providing streaming video) for the public and stakeholders to observe proceedings and provide feedback during negotiations
- **Put Guidance on a Master Calendar.** Guidance issued by ED (such as Dear Colleague Letters and the Federal Student Aid Handbook) on how to implement and administer the regulations should be put on a master calendar (i.e., the effective date of such guidance would depend on the date the guidance is published)

PROPOSED SOLUTIONS

System Component: Negotiated Rulemaking

Proposed Solutions continued...

- **Modify the Master Calendar.** Require a minimum timeframe of one year from publication date when implementation would require significant systems or procedural modifications
- **Expand the Timeframe for Public Response.** Expand the minimum timeframe from 30 to 60 days for the public to respond to proposed regulatory packages

PROPOSED SOLUTIONS

System Component: Federal Burden Calculations

The survey asked about office administrators' familiarity with regulatory burden calculations conducted by ED, and published in the *Federal Register*, when assessing the impact of new or modified regulations, or when a regulation requires institutions to collect information or data.

Perceived Problem(s):

- 35% of the survey's office administrator respondents said they were **unfamiliar** with the regulatory burden calculations and an additional 35% were **unaware** such burden calculations even existed.
- Of the portion who said they were familiar, more than 70% found them **inaccurate** or highly inaccurate, indicating that the calculations either seldom or never matched the level of burden encountered by offices on their respective campuses.

PROPOSED SOLUTIONS

System Component: Federal Burden Calculations

Proposed Solution(s): The community suggested that ED consider improvement in the following ways:

- Develop and carry out an awareness campaign to educate the higher education community as to when and where such calculations are published, and how the calculations are derived
- Follow the awareness campaign with the development and implementation of a mechanism or process to test the accuracy of the calculations with a representative sample of affected parties

PROPOSED SOLUTIONS

System Issue: Use of Savings

Savings from regulatory reform consist of two aspects—savings from reform to the system of regulation, and savings from changes made to individual regulations.

- Among all survey respondents, there was relative uniformity in the perception that cost and time savings could be achieved if regulations and the system were reformed.
- The most likely use of savings would be expansion of counseling and customer services, student-focused programs, and institutional need-based student financial aid.
- The community suggested that ED consider improving the system by engaging in discussions on the significance of cost and savings and their potential uses following regulatory reform that does not negatively impact program integrity, accountability, student access, and student success.

PROPOSED SOLUTIONS

System Issue: Alternative Regulatory Structures

Perceived Problem(s):

- Issuing one set of HEA regulations applicable to all institutions (i.e., **one-size-fits-all**) is seen by the community as a significant factor in the HEA regulations, as a whole, being considered **overly-burdensome**.
- The community expressed the most enthusiasm for pursuing broader use of performance-based regulations. There were strong differences of opinion regarding the use of sector-specific regulations.
- Research-based waivers received positive comments, but concerns were expressed that the existing Experimental Sites Initiative has led to little regulatory action taken on results of the experiments.

PROPOSED SOLUTIONS

System Issue: Alternative Regulatory Structures

Proposed Solution(s):

- The community suggested that ED consider improvement by exploring the feasibility of using alternative regulatory structures, primarily performance-based regulations. Other alternatives include expanding the use of regulatory compliance waivers based on data-driven research and experiments, and creating sector-specific regulations.
- The Advisory Committee encouraged Congress to provide ED with the necessary statutory authority if it is needed to pursue any of these options.

PROPOSED SOLUTIONS

System Issue: Performance Indicators

Proposed Solution(s): Considering the possibility that regulatory relief would be provided to institutions based upon meeting an established performance indicator, senior executives responding to the survey and participating in follow-up activities were asked to comment upon the viability of several performance measures.

- The performance measures receiving the most support were:
 - consecutive years of audits with no material findings
 - annual retention rates
 - graduation rates
 - retention-to-graduation rates
- The measures receiving the least support were: cost per full time equivalent student, diversity of the graduating class, job placement rates, rates of acceptance to graduate or professional programs, and student test score benchmarks.

PROPOSED SOLUTIONS

System Issue: Performance Indicators

Proposed Solution(s):

- The community suggested that ED consider improving the regulatory system by working with the higher education policy community to determine:
 - which performance-based measures may be appropriate thresholds for triggering regulatory relief, and
 - to which regulation a measure (or multiple measures) should apply.
- Performance-based regulations currently exist, although to a limited extent.

PROPOSED SOLUTIONS

System Issue: Advancing Regulatory Reform

Perceived Problem(s):

- The higher education community agreed strongly on two points regarding future regulatory reform—**doing nothing is the most unhelpful option**, and the most preferred method for regulatory reform is further study or review of the regulations impacting higher education institutions.
- The community supported three methods of further study or review:
 - comprehensive study of all regulations impacting higher education institutions
 - further study of the HEA regulations
 - thorough review of the HEA regulations by ED in partnership with the higher education community

PROPOSED SOLUTIONS

System Issue: Advancing Regulatory Reform

Proposed Solution(s):

- Based on the community's suggestions, ED, or an independent entity, should conduct a comprehensive, scientific review and analysis of all regulations affecting higher education institutions with the full participation of the higher education community.
- The existing retrospective review plan should incorporate such a review and analysis, and be carried out no less frequently than biennially

QUESTIONS & ANSWERS

DISCUSSION

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