

September 20, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Washington DC 20202

Dear Madam Secretary:

The Institute for Higher Education Policy (IHEP) submits the following comments to help inform the U.S. Department of Education's (ED's) efforts to implement Executive Order 13777, which calls for a review of current federal regulations. IHEP is a nonpartisan, nonprofit organization committed to promoting access to and success in higher education for all students, with a special focus on underserved populations. IHEP develops innovative research to guide policymakers and education leaders in addressing our nation's most pressing education challenges. We embrace a vision in which all people, regardless of background or circumstance, have the opportunity to reach their full potential by participating and succeeding in higher education.

While a re-examination of the purpose and efficiency of existing regulations by ED's Regulatory Reform Task Force is a constructive activity, we wish to underscore the importance of regulations that promote the use of high-quality data for decision-making and promote equity by protecting students and enhancing the programs that serve them. Many regulations serve a critical purpose and must be maintained. We also write to identify areas where ED should work with Congress to create more opportunity for underserved Americans.

Maintain regulations that are vital to consumer information and equal opportunity for all—

1) *Maintain regulations that provide valuable information on our postsecondary system to students and the public by mandating data collection and disclosure while protecting student privacy, including but not limited to:*

- 34 CFR 5b and 34 CFR 99, which require the protection of student privacy and outline parameters for acceptable data use. Keeping personally identifiable information secure while establishing guidelines for legitimate use is critical to protecting students, both as individuals and as consumers.
- 34 CFR 100.6 and 34 CFR 106, which mandate demonstrated compliance with the Civil Rights Act and Title IX of the Education Amendments. Enrollment, completion, and faculty data are currently disaggregated to support compliance with these regulations.¹
- 34 CFR 668.6 and 34 CFR 668.7, which define, require institutional disclosure of, and allow ED publication of debt and earnings information for programs at public, nonprofit, and for-profit colleges that prepare students for gainful employment in a recognized occupation. The Administration has already delayed and begun dismantling the gainful employment rule, which provides data to help students make choices based on quality information about the potential return on their investment.
- 34 CFR 668.41, which requires institutions to disclose retention rate, completion rate, transfer-out rate (if applicable), job placement rate, and financial aid information as well as other institutional information,

¹ Fuller, C. (2011). *The history and origins of survey items for the Integrated Postsecondary Education Data System*. U.S. Department of Education. Retrieved from <https://nces.ed.gov/pubs2012/2012833.pdf>

such as cost of attendance, to current and prospective students. Disclosing this type of information to students helps them make wise choices about where to go to college.

- 34 CFR 668.45, which requires disaggregation of completion or graduation rates by race/ethnicity, gender, and economic status. Data disaggregation is necessary to advance equitable education outcomes.
- 34 CFR 668.181–217 and 34 CFR 668.500–516, which require the calculation of cohort default rates. These rates can help inform students, policymakers, and institutions about student success repaying their loans.

We support regulations that promote the collection and use of high-quality data, which are crucial to promoting a transparent higher education marketplace, stewarding taxpayer dollars, and supporting civil rights. They facilitate consumer choice, inform policymaking, and assist institutions as they strive to improve. Section 668.14 of 34 CFR requires that institutions receiving federal financial aid "complete in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other federal data collection effort, as designated by the Secretary, regarding data on postsecondary institutions." IPEDS, housed within the Education Department's National Center for Education Statistics, provides the most comprehensive publicly available data on American colleges and universities, including important information on measures such as enrollment, completions, admissions, student financial aid, and more.

IPEDS data serve as the foundation for countless consumer tools—many developed by states and private entities—that inform students about how much a specific college might cost after accounting for financial aid, and how many students receive grants and loans at a particular college. The information also provides insight on the size and diversity of the student body, how selective the institution is, and how likely students are to complete their degrees or certificates. We readily concede that IPEDS is not perfect. In fact, we have joined with partner organizations to recommend improvements to IPEDS,² and reforms to our national postsecondary data systems more broadly, including the creation of a student-level data network.³ To ensure compatibility and harmony across postsecondary data systems, the Department should also align common metrics and definitions across regulations. Until our national data systems are more fully reformed, however, IPEDS will remain the cornerstone tool for meeting the information needs of students, families, institutions, and policymakers.

2) *Maintain regulations that protect civil rights and promote educational equity, including but not limited to:*

- 34 CFR 100 (Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of the Civil Rights Act)
- 34 CFR 106 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance)
- 34 CFR 110 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance)

² Rorison, J. & Voight, M. (2016). *Putting the "integrated" back into IPEDS: Improving the Integrated Postsecondary Education Data System to meet contemporary data needs*. Institute for Higher Education Policy. Retrieved from http://www.ihep.org/sites/default/files/uploads/postsecdata/docs/resources/putting_the_integrated_back_into_ipeds.pdf

³ Institute for Higher Education Policy. (2017, May 23). Postsecondary Data Collaborative and Workforce Data Quality Campaign applaud bipartisan, bicameral College Transparency Act. Retrieved from <http://www.ihep.org/press/opinions-and-statements/postsecondary-data-collaborative-and-workforce-data-quality-campaign>

While 34 CFR 100 helps the Department and college and universities comply with the Civil Rights Act, 34 CFR 106 enacts necessary basic protections for students, faculty, and staff against discrimination by sex. Part 110 of 34 CFR further prohibits discrimination on the basis of age, which is increasingly relevant as more and more college students represent non-traditional demographics. Tying demonstration of compliance to participation in taxpayer-supported programs is just one of the ways the public can have some level of assurance of equal treatment under the law. ED should maintain its commitment to civil rights for all Americans, and uphold these regulations.

3) *Maintain regulations that facilitate aid programs for needy, hard-working Americans pursuing a college credential, including but not limited to:*

- 34 CFR 675 (Federal Work-Study Programs)
- 34 CFR 676 (Federal Supplemental Educational Opportunity Grant Program)
- 34 CFR 690 (Federal Pell Grant Program)

Receipt of need-based aid promotes persistence for low-income students, and remains critical to success for many American students.⁴ The Pell Grant forms the bedrock of financial support for about 7 million low-income students each year,⁵ and the federal Supplemental Educational Opportunity Grant (SEOG) provides additional grant aid to over a million of the lowest-income students annually.⁶ Moreover, the Federal Work-Study (FWS) program is linked to higher graduation rates and better chances of finding a job after college.⁷

Because these programs contribute to both a more efficient and equitable system to educate Americans and prepare them for successful careers, they are valuable investments for taxpayers. They are also written into statute. Eliminating regulations for FWS, SEOG, and Pell has the potential to make compliance with the law more difficult for ED and for institutions, and could prevent many low-income students from accessing and persisting in college.

Work with Congress to overturn legislation and eliminate related regulations that impede progress for underserved Americans—

4) *We urge ED to work with Congress to amend statutes, and then remove the associated regulations, that bar historically disadvantaged Americans from receiving vital student aid:*

- 20 USC 1070a(b)(6) and 34 CFR 668.32(c)(2)(iii), which bar Pell Grant eligibility for anyone incarcerated in a federal or state penal institution.
- 20 USC 1091(r) and 34 CFR 668.40, which ban participation in all federal student aid programs for certain individuals convicted for the sale or possession of illegal drugs.

⁴ Usher, A. (2006). *Grants for students: What they do, how they work*. Educational Policy Institute. Retrieved from <http://www.educationalpolicy.org/pdf/GrantsForStudents.pdf>

⁵ U.S. Department of Education. (2017, June 27). Federal Pell Grant program end of year report, 2015–16 [Data file]. Retrieved from <https://www2.ed.gov/finaid/prof/resources/data/2015-2016eoypublicationsreports.zip>

⁶ U.S. Department of Education. (2017, September 6). Federal campus-based programs data book 2016 [Data file]. Retrieved from <https://www2.ed.gov/finaid/prof/resources/data/databook2016/databook2016.zip>

⁷ Scott-Clayton, J. & Minaya, V. (2014). *Should student employment be subsidized? Conditional counterfactuals and the outcomes of work-study participation*. National Bureau of Economic Research. Retrieved from <http://www.nber.org/papers/w20329.pdf>

These statutes and regulations undermine students' economic security and job prospects, and they negatively impact general re-entry outcomes upon release from prison, despite the evidence that recidivism rates drop significantly for individuals who earn postsecondary degrees while incarcerated.⁸ In fact, postsecondary education programs reduce the costs of repeated incarceration \$4–5 per \$1 spent on educational programs.⁹ Educational opportunities also improve public safety—investing \$1 million in prison education prevents about 600 crimes, whereas \$1 million invested in incarceration only prevents about 350 crimes.¹⁰

We know these opportunities help individuals become productive members of their families and communities upon release, helping them obtain employment and avoid cycling back into the criminal justice system. Federal student aid programs, in particular the Pell Grant program, allow these low-income individuals an opportunity to earn an education they would not otherwise have. We urge you to work with Congress to eliminate these statutory restrictions, which further disadvantage needy students and the communities they could benefit. If these statutes are amended by Congress and the restrictions lifted, we recommend eliminating the regulations.

Many parts of the Code of Federal Regulations are identified here as crucial to ensuring that our higher education system works for all Americans regardless of race, sex, or economic status. Other regulations impede progress for underserved members of our society, and should be eliminated after working with Congress to amend the underlying legislation. We look forward to continuing to serve as a resource to the Department and providing further input that can facilitate equity, transparency, and choice in the higher education marketplace. If you have any questions about these comments, please contact Mamie Voight, vice president of policy research (mvoight@ihep.org or 202-587-4967).

Sincerely,

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⁸ Davis, L.M., Bozick, R., Steele, J.L., Saunders, J., & Miles, J.N.V. (2013). *Evaluating the effectiveness of correctional education: A meta-analysis of programs that provide education to incarcerated adults*. RAND Corporation. Retrieved from https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf

⁹ Bidwell, A. (2013, August 22). Report: Prison education programs could save money. *U.S. News & World Report*. Retrieved from <https://www.usnews.com/news/articles/2013/08/22/report-prison-education-programs-could-save-money>

¹⁰ Bazos, A. & Hausman, J. (2004). *Correctional education as a crime control program*. University of California Los Angeles School of Public Policy and Social Research. Retrieved from <http://www.ceanational.org/PDFs/ed-as-crime-control.pdf>