Re: HERA Interim Final Comments

Dear Ms. McLarnon:

I write on behalf of the undersigned higher education associations to comment on the interim final regulations published in the Federal Register on Wednesday, August 9, regarding the Higher Education Reconciliation Act (HERA) and related legislation. We recognize the unusually tight timeline under which these regulations were developed and appreciate the opportunity to offer our views.

In general, while we continue to have concerns about a number of provisions in the underlying legislation, the vast majority of these interim rules appear to reflect the requirements of their respective statutes.

Items we believe merit further discussion are outlined below.

**Distance Education**

We applaud the Department’s decision to redefine “telecommunications course” in a way that requires “regular and substantive interaction” between students and instructors [§ 600.2].

Additionally, we support the restriction that a course based solely on the use of video cassettes and disc recordings does not qualify as a telecommunications course [§ 600.2].

Finally, we agree with the Department’s determination that telecommunications, correspondence and direct assessment programs offered at foreign schools should not be considered eligible for Title IV funding [§ 600.51].
**Direct Assessment**

We believe the Department’s approach to the interim final rules governing direct assessment programs is appropriately conservative given the uncharted territory this new inclusion represents. For example, conditioning direct assessment program eligibility on approval from the Secretary should provide an important level of oversight [§ 668.8], and clarifying that Title IV funds may only be used for learning that results from actual instruction is an essential baseline criteria for maintaining program integrity [§ 668.10((f)]. However, the regulations do not speak to how the Department will be evaluating satisfactory academic progress as it relates to direct assessment programs, and further clarification on that point would be welcome.

**Treatment of Title IV Funds When a Student Withdraws**

We note for the record that we believe the new confirmation and documentation requirements in § 668.22 represent an additional administrative burden for our institutions.

Additionally, § 668.22(h)(5)(iii) conditions the Secretary’s waiver authority for overpayments due from students impacted by disasters to those “whose withdrawal ended within the award year during which the designation occurred or during the next succeeding award year.” We ask the Department to clarify that students remain eligible to benefit from the Secretary’s waiver authority even if they do not return to the same school in the following year.

Finally, we request that the Department provide additional guidance regarding how the requirements in § 668.22 are to be applied in concert with the existing regulations found in § 668.164(g)(3) and § 668.165(a)(2).

**Military Deferment**

A plain language reading of § 674.34, § 682.10 and § 685.204 leads us to conclude that a qualified borrower who experiences multiple deployments could receive multiple deferments for their eligible Perkins, FFEL and DL loans provided each deferment period did not last longer than three years. Is that interpretation correct?

**PLUS Loan Application**

Although we did not find the FAFSA requirement in the HERA statute, we believe requiring graduate and professional students to fill out a FAFSA form in order to apply for a PLUS loan is an appropriate and constructive use of the Department’s regulatory discretion [§ 682.102(c)(2)].

**Eligible Borrowers**

It looks like the word “not” is missing in § 682.201(d)(2), i.e. “A borrower may not consolidate a loan under this section for which the borrower is [not] wholly or partially responsible.”
Identity Theft

In the preamble, as well as in § 682.402 and § 685.215, it appears as if a student who becomes a victim of identity theft must produce a court verdict to substantiate the crime or else rely on state and local criminal laws regarding forgery and the like for vindication. We are concerned that the regulatory language in this area, as currently written, does not provide sufficient protection to bona fide victims of identity theft. We encourage the Department to develop an explicit process designed to reliably discharge fraudulent loans and remove those loans from students’ Title IV records. Additionally, for students who cannot yet prove they are victims of identity theft, we recommend finding a way to track these unresolved cases in a manner that does not penalize the legitimately aggrieved student.

Direct Loan Consolidation/Income Contingent Repayment Program (ICRP)

§ 685.220 states that a borrower may not consolidate a defaulted Direct Consolidation Loan. However, under HERA, FFEL borrowers are eligible for a Direct Consolidation Loan with an income contingent repayment plan if the loan has been submitted to the guaranty agency for default aversion. In the interests of equity and the principle that every borrower deserves a chance to resolve a default, we encourage the Department to modify this regulation to ensure that DL borrowers with a defaulted consolidation loan will continue to be eligible for rehabilitation with access to the manageable payments made possible by an income contingent repayment plan.

Thank you for your consideration of these comments. We look forward to working with the Department in order to further refine and implement these regulations in the years ahead.

Sincerely,

David Ward
President

DW/mmm

On Behalf Of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Hispanic Association of Colleges and Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities & Land-Grant Colleges
National Association of Student Financial Aid Administrators