



ASSOCIATION OF AMERICAN UNIVERSITIES

October 8, 2008

Ms. Wendy Macias
U.S. Department of Education
1990 K Street, NW
Room 8017
Washington, DC 20006

On behalf of the Association of American Universities (AAU), representing 60 leading public and private research universities in the United States, I appreciate the opportunity to provide comments on the proposed negotiated rulemaking process to implement the Higher Education Opportunity Act of 2008 (P.L. 110-315). Specifically, I write to offer comments on issues of particular interest and concern to AAU-member universities that we hope will be considered for action by the Department of Education through the upcoming year. AAU's comments are intended to supplement the testimony submitted by individual AAU-member institutions at the Department of Education regional hearings outside of Washington, DC. While AAU recognizes that the negotiated rulemaking process will focus on the *Title IV: Student Assistance* provisions, we are also providing comments on the college cost provisions, the international education application provisions, and several additional provisions outlining new federal reporting requirements for institutions of higher education.

Overall, AAU believes that institutions are taking their new obligations under the Act seriously and are making a good faith effort to comply—as they would with any new federal law. We recognize that the Secretary of Education is obligated to conduct the negotiation process in a timely manner, and thereby plan to identify the appropriate campus experts who will be able to provide advice and recommendations concerning the necessary regulations necessary to implement Title IV of the Higher Education Opportunity Act. We look forward to working with the Department to clarify existing ambiguities in the Act and to streamline new regulations in a manner that minimizes the cost burden and maintains maximum flexibility for institutions of higher education.

Title IV: Student Assistance (New Federal Requirements)

AAU recognizes and appreciates that the federal government must set appropriate conditions and requirements to ensure that federal student financial aid funds are used effectively to help finance high-quality education. However, we remain concerned that many of the new reporting and regulatory requirements are duplicative, and may create costly new administrative and personnel burdens on colleges and universities. We want to work with the Department to streamline

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Carnegie Mellon University
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The Johns Hopkins University
Massachusetts Institute of Technology
McGill University
Michigan State University
New York University
Northwestern University
The Ohio State University
The Pennsylvania State University
Princeton University
Purdue University
Rice University
Rutgers, The State University of New Jersey
Stanford University
Stony Brook University-State University
of New York
Syracuse University
Texas A&M University
Tulane University
The University of Arizona
University at Buffalo, The State University
of New York
University of California, Berkeley
University of California, Davis
University of California, Irvine
University of California, Los Angeles
University of California, San Diego
University of California, Santa Barbara
The University of Chicago
University of Colorado at Boulder
University of Florida
University of Illinois at Urbana-
Champaign
The University of Iowa
The University of Kansas
University of Maryland, College Park
University of Michigan
University of Minnesota, Twin Cities
University of Missouri-Columbia
University of Nebraska-Lincoln
The University of North Carolina
at Chapel Hill
University of Oregon
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
The University of Texas at Austin
University of Toronto
University of Virginia
University of Washington
The University of Wisconsin-Madison
Vanderbilt University
Washington University in St. Louis
Yale University

these provisions, recognizing that institutions already comply with a multitude of reporting requirements.

In light of the long list of new requirements, AAU plans to actively work with Congress to secure funding for the provision in the Act authorizing a study of all federal regulations with which colleges and universities must comply. We believe that the results of this study will be valuable in informing policy decisions in the future.

AAU research universities are particularly interested in the implementation of regulations with respect to the following new reporting requirements:

- **Copyright Infringement/Peer to Peer File Sharing**

AAU understands and appreciates the need to reduce illegal uploading and downloading of movies and music. In fact, the higher education community has long been committed to working with others to find workable solutions to the problem. The law now requires institutions to certify to the Secretary of Education that they have developed plans to effectively combat the unauthorized distribution of copyrighted material and offer alternatives to illegal file sharing. In fact, many institutions already provide regular notices to students explaining that the illegal distribution of copyrighted materials may subject them to criminal and civil penalties. As the Department works to interpret this requirement, it is important to keep in mind that the software and technologies for monitoring and discouraging unauthorized distribution and new approaches for the legitimate distribution of digital entertainment are constantly emerging. Technologies that may be effective in one setting may not be effective in another setting. For that reason, rules on policing P2P file sharing should maintain maximum flexibility.

- **Alumni Reporting and Graduation Rates Reporting**

It is our intent to work with the Department to ensure that the collection and disclosure of information, such as details regarding employment placement of graduates, types of employment obtained, and enrollment in graduate and professional education, is completed in a manner that is cost-effective, practical, and comparable across institutions.

- **Endowment Reporting**

It is our intent to work with the Comptroller General—who is instructed to conduct this study—to ensure that the reported data reflects the complexities of endowments, the restrictions placed on them, and other purposes for which institutions use their endowments, such as research and community service. (Note: AAU recognizes that this requirement falls under Title XI, but included it in this section as a function of it constituting a federal requirement on institutions.)

- **Campus Safety Reporting**

This section of the law includes several new reporting requirements related to disclosure of fire safety standards and measures, criminal offenses, emergency notifications, missing person procedures, memoranda of understanding with local law enforcement agencies, and emergency response and evacuation procedures. AAU looks forward to working with the Department to develop rules to implement these requirements that are both practical and provide real protection for students, faculty, and staff.

With so many new requirements, it is critical that certain terms are clarified during negotiated rulemaking. The following is an abbreviated list of questions that campuses have identified with respect to these new reporting requirements:

1. While clarification was provided in the law for the removal of reporting obligations for off-campus properties, is the fire safety requirement just for housing or for all facilities at the institution?
2. Will the guiding regulations for the new crime reporting categories be synchronized with current reporting criteria and other Clery Act provisions?
3. With respect to the emergency notifications, what constitutes dissemination of information? What constitutes immediate notification? In this case, and with the other requirements, the professional judgment of campus officials must be balanced with the notification requirements.
4. How will the new regulation for missing persons ensure that student privacy and the contact provisions are adequately balanced? Does this new provision consider other aspects of FERPA? The evacuation procedures requirement will likely be one of the most complex issues for negotiated rulemaking. Since institutions have different missions, resources, programs, and structures, the Department will need to be flexible. The International Association of Campus Law Enforcement Administrators has submitted comments indicating the logical obstacles to implementation of this provision.

- **Textbook Requirements**

AAU institutions share the Department's goal of making information about textbooks as accessible and affordable as possible for students. In fact, institutions are already developing plans to implement the textbook provisions of this Act. Many institutions have convened committees of deans, registrars, bookstore managers, and others to discuss ways to encourage faculty members to select their course books early, to create new electronic databases for linking textbook information to course descriptions, and to set up systems for exchanging textbooks. As this new requirement is implemented, it is important to note that institutions are not operating in a

vacuum—effective results will require the cooperation of other constituencies, such as the publishers. (Note: AAU recognizes that this requirement falls under Title VIII, but included it in this section as a function of it constituting a federal requirement on institutions.)

- **Private Education Loan Disclosures**

AAU supports the provisions in the Act that seek to restore integrity and accountability to the private loan system. While the Act does not make major changes to the substance or operation of the federal loan programs, it does include numerous provisions addressing the controversies and perceived abuses that were the focus of so much attention last year. We are fully committed to doing our part in preventing unfair private educational lending practices and eliminating conflicts of interest. And strongly support regulations that require intervention by a financial aid officer before a private educational loan can be obtained by a student.

Although the act takes precedence over the Department’s regulations relating to preferred lender lists and prohibited inducements that went into effect on July 1, 2008, we recognize that the Department will need to reconcile the new statutory requirements with its new rules. As the act does not expressly preempt state laws in the area of student lending ethics, institutions in states with pertinent statutes or regulations may need to comply with state as well as federal requirements. It is our hope that new regulations on prohibited conduct, preferred lending arrangements, disclosures to borrowers, and self-certification will be streamlined to the greatest extent possible, especially considering the potential overlap of federal and state laws.

(Note: AAU recognizes that loans and lending relationships are addressed in three different titles of the Act (with much cross-referencing), but we included this issue under Title IV because it covers provision specific to federal loan programs, such as the Perkins Loan program, as well as additional requirements for institutions including a new required code of conduct.

Title I: General Provisions (College Cost Requirements)

As noted in previous communications to Congress and the Department, AAU supports institutional as well as targeted federal efforts to provide improved, user-friendly information to students, families, and taxpayers about college tuition and financial aid. However, we remain concerned about several of the cost-related disclosure and reporting requirements within the Act. While much of the information is already collected by the Department, some items, such as “net price,” are new. As a practical matter, AAU is very interested in the additional guidance from the Department that will be necessary to determine the full extent of these requirements.

In particular, AAU is interested in the cost provisions related to the net price calculator, the multi-year tuition calculator and the federal college affordability lists.

It is worth noting that several AAU members have already developed a net price calculator as a means to provide the public with information on estimated financial aid packages and net costs using institutional, state, and federal resources. Given that the new law allows institutions to use the Department's net-price-calculator or their own, AAU hopes that the Department will draw on the expertise of these institutions with respect to this provision, among others. Overall, we look forward to identifying the appropriate campus expertise to help the Department sort through the myriad of issues related to the new college cost provisions.

Title VI: International Education Programs (Application Requirements)

AAU is concerned about the new application provision within the Act requiring prospective grantees to show how grant activities "will reflect diverse perspectives and a wide range of views." The provision appears to conflict with the rule of construction stating that the Secretary is not authorized to mandate, direct, or control an institution's specific instructional content, curriculum, or program of instruction. AAU looks forward to working with the Department to resolve this issue.

The new application provision raises several of the following questions that we hope will be resolved through the upcoming year: How will "diverse perspectives" be applied and what will be its reach? Will diverse perspectives be applied to the entire course offerings of all disciplinary departments participating in the center? Will it be applied to the curriculum content? Will it be applied to the ideology of speakers at an outreach conference, or to the overall topics and/or content of outreach conferences and seminars? Who will judge if the activities are "diverse" enough? How will "diverse" be defined? What is the reach of the new Research and Studies authorized activity pertaining to diverse perspectives? Does the new provision pertain to the grant activities of Title VI overall, to the statement of activities in the applications, or to the activities themselves for each and every grant? Will this amendment enable detractors of Title VI to apply for and receive Title VI funds to evaluate the extent to which the aforementioned grant/application conditions are met?

In conclusion, thank you again for this opportunity to provide comments on the implementation of the Higher Education Opportunity Act of 2008. We intend to work with our higher education colleagues in the coming months to identify and nominate campus experts for the various negotiating rulemaking panels addressing issues of specific interest to AAU members. Overall, we look forward to working with the Department, Congress, and the broad higher education

community to help ensure practical and cost-effective implementation of the new law.

Please do not hesitate to contact me with questions regarding AAU's comments.

With best regards,

A handwritten signature in black ink, reading "Robert M. Berdahl". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Robert M. Berdahl
President