Opportunity to Comment on US Department of Education's Notice of Proposed Rulemaking

The National Association of State Student Grant and Aid Programs (NASSGAP) thanks you for the opportunity to submit comments for consideration as the Department undertakes the rulemaking process. In the most recent academic year, NASSGAP's member states provided over $11 billion in grant aid to over 4 million students pursuing their higher education goals. For more background information on NASSGAP and its members, please visit www.nassgap.org.

On July 31st, the US Department of Education (ED) issued a formal Notice of Proposed Rulemaking (NPRM) that would change the process going forward for borrowers who wish to assert a defense to repayment (DTR) for federal student loans taken to attend institutions that made fraudulent or deceptive claims about the quality or their program, the value of a degree or certificate earned from the institution and/or the outcomes (e.g., placement rates, jobs and starting salaries) achieved by its graduates. Although some NASSGAP members are guaranty agencies under the legacy FFELP, all of our members serve student borrowers who are seeking to pursue their educational dreams and acquire 21st century job skills to help fill the well over six million unfilled jobs in America.

While there are many complex issues relating to the issues proposed to be addressed in the rulemaking process, there are some proposals that clearly would greatly harm student borrowers, will impair those students' future access to student financial aid and could ultimately make students less likely to pursue the degrees and certificates necessary for meeting each of our states' workforce needs.

The NPRM introduces the idea that a borrower would be required to default on their loan before they would be able to assert a DTR. This proposal would make an already very bad situation much worse. It would require a borrower who has gone into great debt without getting a degree or certificate that has value in the labor market to severely damage their credit rating and incur fees just to assert their existing rights, with no guarantee that their claim would succeed. The damage to their credit rating could make it more difficult to get a job, secure housing for their family and lead to garnishment of future wages and/or Social Security benefits, creating a long-term downward economic spiral for impacted borrowers. Additionally, a default makes these students ineligible for Title IV aid, and in many cases, the state student aid provided by NASSGAP members. Given that what many of these students most need is additional education to improve their job opportunities, retaining eligibility for federal and state student aid must be a priority for these students. Further, students in a DTR situation are disproportionately first-generation students, working adults, single parents and veterans, all of whom are more likely to exhaust their Title IV benefits, increasing the urgency of restoring their eligibility. Finally, the damage to a borrower's credit rating from a default could expose them to the loss of a job, license and/or security clearance. Obviously, the loss of a security clearance could severely damage a veteran's employability. NASSGAP opposes any effort to require a borrower to default as a pre-condition to asserting a DTR claim.

The NPRM would also shift to the borrower the burden of proof to show that the institution acted deceptively or fraudulently and would preclude class-action lawsuits. Obviously, this new burden of proof would be challenging given that each and every student is unlikely to record conversations with recruiters or radio commercials for an institution, clip out newspaper ads, print online claims or photograph ads on subway cars, buses and the like. Given that all the above recruiting efforts, except perhaps a conversation with recruiters, occur with a wide audience, a class action resolution would seem appropriate where there is a large group of student consumers similarly affected by the deceptive or fraudulent claims. This policy shift does nothing to discourage misrepresentation and other predatory practices by institutions; and may in fact encourage such practices.

Finally, ED has also initiated a novel approach to making DTR determinations. Previously, borrowers were deemed to be eligible for forgiveness on loans in their entirety if there was evidence of fraudulent or deceptive recruiting activity or advertising by the institution the borrower attended. Now, ED is offering partial relief based in part on whether and by how much a borrower's earnings increased when compared with earnings prior to enrollment. This approach effectively punishes borrowers who ambitiously seek work and potentially have taken on a second job to build their income and to help pay their bills since their education did not deliver the promised job skills and opportunities.

Higher education is not just a personal benefit, but a societal benefit, so when individual students fall prey to predatory practices by institutions, they are not the only party that is hurt. Our society not only misses the societal benefits (happier, healthier, more engaged taxpayers, etc.), but our society and our economy may actually be harmed due to adults who are unable to find work, cannot become homeowners, etc. In today's labor market, we need more, not fewer, students and adult learners investing in education and acquiring 21st century skills.