NASFAA HEA Reauthorization Recommendations Refresh Working Group Report

August 2019

BACKGROUND AND PURPOSE:

In 2012, NASFAA embarked on an ambitious effort to develop recommendations for lawmakers in anticipation of reauthorization of the Higher Education Act (HEA) of 1965, as amended, authorized through 2014. The NASFAA Board of Directors convened a Reauthorization Task Force (RTF) to produce a set of proposals for reauthorization that:

- Promote access to postsecondary education;
- Provide simplicity, consistency, flexibility, and program integrity in the delivery of student financial aid; and
- Represent the diverse needs of the Association and its membership.

As a result, the task force held close to 40 listening sessions with NASFAA members at conferences across the country. The RTF presented 61 recommendations to the NASFAA Board of Directors in March 2013. The Board adopted 57 recommendations, sent three recommendations back to the RTF for further development, and rejected one recommendation. In July 2013, NASFAA published the "Preliminary Report of the NASFAA Reauthorization Task Force to the Membership." This report was shared with key staff on Capitol Hill.

Since then, HEA reauthorization remains an unfinished endeavor in Congress. In 2016, NASFAA staff published an updated version of the 2013 RTF report, providing updates on progress toward achieving some of the recommendations and including work of a variety of NASFAA policy task forces convened following the RTF to examine specific policy issues. As part of this effort, no recommendation was removed or substantially modified.

Though Congress has made some progress on HEA reauthorization, observers have yet to see true bipartisan work to achieve viable legislation. In December 2017, the House of Representatives Committee on Education and the Workforce cleared the PROSPER Act, a comprehensive HEA reauthorization bill, on a party-line vote. House Republican leadership did not bring the bill to the House floor. In 2018, House Democrats released their comprehensive HEA reauthorization bill, the Aim Higher Act, which provided a number of stark policy alternatives to the PROSPER Act. Neither party in the Senate has yet to produce a comprehensive HEA reauthorization bill, despite over four years of hearings. Though the prospects of HEA reauthorization remain hazy, NASFAA continues to advocate for financial aid administrators on Capitol Hill and remains prepared for HEA reauthorization whenever it may occur.

Much has changed in higher education since NASFAA developed its recommendations over five years ago. New forms of delivery, changing public sentiments, expanding technology, congressional and executive actions, and shifting demographics all necessitate a fresh look at the work of the RTF. For example, the Obama administration used executive authority to implement prior-prior year (PPY) in 2015, and Congress reinstated year-round Pell in 2017, both NASFAA recommendations.

WORKING GROUP MEMBERS:

- Mary Booker, University of San Francisco
- James Broscheit, Montana State University
- Lisa Hopper, National Park College
- Anthony Jones, University of Georgia
- Mark Lindenmeyer, Loyola University Maryland
- Kelly Morrissey, Community College of Rhode Island
- Emily Osborn, Northwestern University
- Mary Sommers, University of Nebraska at Kearney
- Lori Vedder, University of Michigan-Flint, NASFAA 2018-19 National Chair
- NASFAA Staff Liaisons: Megan Coval and Stephen Payne

NEW HEA RECOMMENDATIONS FOR NASFAA BOARD OF DIRECTORS CONSIDERATION:

1. Allow non-tax filers to utilize the IRS Data Retrieval Tool to provide confirmation of their non-filing status.
2. Permit institutions meeting certain Cohort Default Rate (CDR) threshold criteria the opportunity to increase loans for students beyond the RTF recommended limits.
3. Eliminate the tax liability of loan forgiveness and discharge.
4. Provide sufficient financial aid data-sharing authority to allow an institution to share FAFSA data with any party with the student's consent.
5. Provide institutions with the authority to allow students who are enrolled less-than-half-time in their last term of enrollment to receive federal student loans in order to complete their degree.
6. Ensure the Pell Grant maintains purchasing power.
7. Work to improve the operational efficiency of the Department of Education's Office of Federal Student Aid.
8. Ensure that any accountability/risk-sharing proposal considers risk institutions already assume and the potential impact on low-income and under-resourced institutions.
9. Require common terms and elements on the financial aid award notification, similar to those included in NASFAA's Code of Conduct, but which do not restrict institutions' ability to communicate financial aid eligibility to their students in the way that is most meaningful and relevant to them.
10. Consolidate the income-driven repayment plans.
11. Revise the Master Calendar to accommodate "Early FAFSA."
12. Clarify definition of legal guardianship for dependency status.

MODIFICATIONS TO EXISTING HEA RECOMMENDATIONS:

1. Prior-Prior Year (PPY) Data (Need Analysis #1): The working group supported updating the existing PPY recommendation to acknowledge the implementation of PPY and support officially codifying the use of PPY income data in HEA.
2. Continue Public Service Loan Forgiveness with Modifications (Direct Loans #15): The working group supported adding language to the existing PSLF recommendations to call attention to implementation challenges in the program.
3. Flex Pell (Pell #4): The working group supported updating the existing "flex Pell"/year-round Pell recommendation to acknowledge the reinstatement of student access to two scheduled awards in an award year and to support eliminating the requirement for the student to be enrolled at least half-time to be eligible for the additional Pell Grant funds.

4. Simplify the Return of Title IV Funds Calculations and Process (R2T4 #1): The working group supported adding language to the existing R2T4 recommendation in support of revising the order of the funds to be returned by the school in Step 6 to allow for the GradPLUS loan to be returned prior to the Unsubsidized Loan.

NEW HEA RECOMMENDATIONS FOR NASFAA BOARD OF DIRECTORS CONSIDERATION:

1. Allow non-tax filers to utilize the IRS Data Retrieval Tool to provide confirmation of their non-filing status.

Rationale: Dependent students who are selected for verification must provide verification of their parents' non-tax filing status from the IRS, and independent students are required to obtain confirmation of their own. For the neediest financial aid filers, obtaining this confirmation is a major obstacle and often results in "verification melt." For individuals who have never been in the IRS database, or for those who have changed addresses since last filing a tax return, the process to receive this verification of non-filing letter is very difficult and often next to impossible to complete.

By expanding the IRS Data Retrieval Tool, parents and/or students could link to IRS data, and if there is no match to their SSN for the associated tax year, could confirm their non-filing status. Now that Prior-Prior Year (PPY) income is being used, in most cases, the timing would allow for a positive confirmation that the individual did not/will not file taxes in that year. Additionally, W2 income for nontax filers could also be linked to identify individuals who had earned income but did not complete a tax return.

2. Permit institutions meeting certain Cohort Default Rate (CDR) threshold criteria the opportunity to increase loans for students beyond the RTF recommended limits.

Rationale: Loan limits need to be restructured periodically to account for the loss of buying power, limits on federal, state, and institutional grant assistance, and to reflect more realistic tuition, fees, room, and board expenses in the public and private sectors. In 2015, NASFAA convened the Dynamic Loan Limits Working Group in the fall of 2015 with the goal of determining whether the current Direct Loan limit structure should change, and if so, to make a proposal outlining those changes. Two of the three recommendations from the group were existing NASFAA recommendations. The third proposal would institute "bonus borrowing" authority for certain institutions.

From the original Dynamic Loan Limits Working Group proposal: "The group proposes giving certain schools (exceptional performers) the ability to increase loan limits beyond the RTF recommended limits. Exceptional performers would be defined as those whose most recent cohort default rate is no more than 75% of the national average cohort default rate or, for institutions with low borrowing rates, the product of its most recent cohort default rate (CDR) and its percentage of borrowers is no more than 50% of the national average CDR. Students at exceptional performer schools would have the ability to borrow an additional $5,000 annually. It is important to note that this bonus borrowing would not affect an undergraduate student's ability to receive the additional $5,000 outlined in the RTF recommendations for independent students or dependent students whose parents are unable to obtain a PLUS loan. Increased aggregate limits would apply for students with bonus borrowing. The group agreed that bonus borrowing must be prorated based on enrollment status. Finally, bonus borrowing would not be required; institutions meeting the CDR threshold could choose whether they wished to take advantage of bonus borrowing."

3. Eliminate the tax liability of loan forgiveness and discharge.

Rationale: Certain federal student loan forgiveness and discharge programs are included in the calculation of gross income for income tax purposes and others are not. As it stands today, most forgiveness programs, such as Public Service Loan Forgiveness and teacher loan forgiveness, are excluded from income. Forgiveness of the remaining balance in the income-driven repayment plans are included in income if cancellation exceeds $600. Because income-driven repayment plans closely tie to a borrower's income, taxing forgiven debt is counter-intuitive to the benefit provided.

4. Provide sufficient financial aid data-sharing authority to allow an institution to share FAFSA data with any party with the student's consent.

Rationale: Currently, HEA requires that FAFSA data only be used for purposes of the application, award, or administration of federal, state, or institutional aid, or aid awarded by other entities as designated by ED. This restriction prevented financial aid administrators from sharing FAFSA data with scholarship providers and other entities, even in cases where a student provided written authorization.

In March 2018, the FY 2018 omnibus spending bill expanded data-sharing authority to allow an institution to share, with written consent from the student, FAFSA information with scholarship-granting organizations or tribal organizations to assist the applicant in applying for and/or receiving financial assistance. Other potential uses of FAFSA data, such as eligibility determinations for state or local benefits programs, were not addressed in the bill. In September 2018, the FY 2019 spending bill further expanded FAFSA data-sharing authority to allow an institution to share FAFSA data, with the student's written consent, with an organization "assisting the applicant in applying for and receiving federal, state, local, or tribal assistance that is designated by the applicant to assist the applicant in applying for and receiving financial assistance for any component of the applicant's cost of attendance." In both the FY 2018 and 2019 bills, the language included an important note: that the expanded authority "shall be in effect until title IV of the HEA is reauthorized," emphasizing the clear opening for congressional action on this issue as part of HEA reauthorization.

Rather than carving out circumstances where the student is permitted to provide written consent for disclosure, it is appropriate that the statute should allow the student to consent to disclosure to any party. The disclosure would be permissible, but not required, on the part of the institution. This recommendation would maintain restrictions on uses of the FAFSA data by the institution but expand the ability of the student to provide written consent for disclosure.

5. Provide institutions with the authority to allow students who are enrolled less-than-half-time in their last term of enrollment to receive federal student loans in order to complete their degree.

Rationale: Improving program completion is an important policy priority. To better assist program completion, Congress should establish enrollment flexibility for students who are enrolled less-than-half-time in their last term of enrollment. This recommendation would support providing institutions with the ability to allow students enrolled less-than-half-time in their last term to receive federal student loan funds to support their education, should the institution choose to exercise this authority.

Currently, annual loan limits for undergraduates must be prorated if the student is enrolled in a program that is shorter than one academic year, or if the student is enrolled in a program that is an academic year or longer but the student is borrowing for a final period of enrollment that is less than a full academic year in length. These same students, if Federal Pell Grant eligible, can get some aid to support final term costs. This recommendation would provide consistency across Federal aid programs.

6. Ensure the Pell Grant maintains purchasing power.

Rationale: From FY 2014 to FY 2017, the Pell Grant maximum award was indexed to the Consumer Price Index for All Urban Consumers (CPI-U); however, that small boost, which averaged only $69 per year, expired at the end of FY 2017. Whatever path forward Congress takes on advancing a sufficient Pell Grant maximum award to support low-income students, Congress should, at the very least, reinstate an automatic inflation adjustment to the maximum award. Sustained and certain investment is necessary to ensure the Pell Grant regains its purchasing power. Predictable, set increases to the Pell Grant maximum award assist financial aid offices, and students and families, in determining a student's ability to pursue higher education.

7. Work to improve the operational efficiency of the Department of Education's Office of Federal Student Aid.

Rationale: Tasked with implementing the federal student aid programs, the Department of Education's (ED) Office of Federal Student Aid (FSA) was structured as a performance-based organization (PBO) in 1998 with expanded administrative autonomy in exchange for increased oversight and accountability. In recent years, NASFAA has highlighted opportunities for improvement in the partnership between institutions and FSA, such as in the timeliness of responses from FSA. NASFAA supports ensuring FSA is properly resourced to serve students and schools.

We urge Congress to prioritize accountability and oversight of FSA, particularly in meeting customer service objectives in its interaction with schools. NASFAA also supports exploring other transparency and accountability improvements, such as by increasing the involvement of stakeholders in the FSA strategic planning process, introducing additional performance metrics, and/or establishing an FSA Oversight Board, as explored in a 2017 NASFAA report.

8. Ensure that any accountability/risk-sharing proposal considers risk institutions already assume and considers the potential impact on low-income students and under-resourced institutions.

Rationale: While policymakers continue to emphasize the need for additional "skin-in-the-game" for institutions, schools already take on significant risk when dedicating scarce resources to students who have been deemed at-risk. Institutions admit at-risk students and provide remediation for students who need extra investment to benefit from higher education. In addition, colleges and universities provide—whenever possible—generous grant aid and participate in the campus-based aid programs, which entail risk-sharing in the form of institutional contributions and administrative expenses. Policymakers should take caution to avoid unintended consequences and perverse incentives for institutions that incentivize serving fewer at-risk students than more.

Institutions have a vested interest in the success of their graduates, but to tie an institution to the repayment behavior of its former students, as some have proposed, can be problematic. For example, some institutions, particularly community colleges, have "open enrollment" policies and do not select which students are admitted, and therefore, have little control over their student body and its level of preparation for higher education. Further, once a student leaves an institution, schools have no control over the actions or inactions of servicers in the repayment process.

A poorly designed risk-sharing system could increase the number of institutions (most likely community colleges) that choose not to participate in the federal loan programs, as some institutions have already chosen to do since high cohort default rates (CDR) can put institutions at risk for losing all federal student aid funding. This could result in reduced access for students and/or a greater reliance on private borrowing where consumer protections are inconsistent, and borrowing is credit-based thereby further restricting access.

9. Require common terms and elements on financial aid offers, similar to those included in NASFAA's Code of Conduct, but which do not restrict institutions' ability to communicate financial aid eligibility to their students in the way that is most meaningful and relevant to them.

<u>Rationale</u>: Financial aid administrators value the importance of clear, concise, accurate information for students and parents, and recognize there are ways to improve financial aid offers, which is why NASFAA supports standardizing core elements on an aid offer. Congress should provide institutions with flexibility to design their aid offers in a way that best suits their particular student population to help maximize the effectiveness of aid offers and avoid unintended, negative consequences of overly prescriptive standardization. In 2014 NASFAA's Board of Directors adopted language in the association's Code of Conduct to require institutional members to comply with several aid offer improvement provisions, including using standard terminology and definitions.

10. Consolidate the income-driven repayment plans.

<u>Rationale</u>: Currently there are multiple income-driven repayment plan options for student loans, in addition to the standard 10-year repayment plan, a graduated repayment option, and an extended plan. To reduce confusion and redundancies, Congress should reduce the number of income-based student loan repayment plan options to a single income-driven repayment plan.

11. Revise the Master Calendar to accommodate "Early FAFSA."

<u>Rationale</u>: President Barack Obama took executive action in 2015 to allow the use of prior-prior year (PPY) tax information on the Free Application for Federal Student Aid (FAFSA) – a move supported by NASFAA and others in the higher education community. One of the goals of this change was to better-align the admissions and financial aid processes and provide students and families important information sooner. However, the Master Calendar outlined in HEA Sec. 482(F) requires the Secretary to distribute the final Pell Grant payment schedule by February 1. Financial aid offices use the Pell Grant payment schedule to determine a student's Pell Grant award. Without timely information from the Department of Education, institutions have to provide estimates to students and families. Congress should modify this timeline to account for the earlier information intended with the change to Early FAFSA by revising the Master Calendar to require earlier release of the final Pell Grant payment schedule, such as by November 1.

12. Clarify definition of legal guardianship for dependency status.
    a. Allow for variances between courts and states to accommodate other terminology for legal guardianship.
    b. Revise criteria for independent status to include other terminology that is interchangeable with legal guardianship.

<u>Rationale</u>: Current law allows a student to be independent (i.e., not provide parental information on the FAFSA) if the student "is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence." The term "legal guardianship" has been narrowly defined to include this term only and excludes "legal custody," "care, custody, and control," and other terminology used in various jurisdictions. Different states and courts use different terms to mean that a child has been removed from his/her parents' home and placed in the care of a third party. For example, "legal

guardianship” is most commonly used in probate court, and “legal custody” or “care, custody, and control” are more commonly used in family court. All of the terms, when used in this context, mean that a child is no longer in the care of his/her parents by court order.

We understand why the term “legal guardianship” was chosen over “legal custody,” as “legal custody” is also used in divorce proceedings to indicate with which parent minor children will primarily live. However, the same term is used by many states and courts when a child is removed from his/her parents’ home and placed in the care of a third party. We believe the intent of the law was to allow for children who have been removed from their parents by order of the court to be independent for federal aid purposes. The narrow use of the term “legal guardianship” places an unnecessary burden on students whose state or court did not use this term when removing them from their parents’ care. These students are forced to pursue a dependency override, which typically requires additional and annual paperwork beyond the submission of a court order. This additional and annual paperwork is an unnecessary burden on a disadvantaged child who likely has experienced significant trauma.

Congress should clarify the criteria for independent status to define “legal guardianship” as the removal of a child from his/her parents and placement in the care of a third party by a court of competent jurisdiction in the individual’s State of legal residence.

In July 2019, *ProPublica*[1] and the *Wall Street Journal*[2] reported parents giving up legal guardianship of their children in an attempt to become eligible for additional federal, state, and institutional aid. While NASFAA will continue to work separately with Congress and the Department of Education to find ways to mitigate this activity, this recommendation focuses on streamlining the legal guardianship process to capture students who may have circumstances similar in nature to the existing process for legal guardianship, but are instead forced to jump through additional hurdles.

[1] “Parents Are Giving Up Custody of Their Kids to Get Need-Based College Financial Aid,” *ProPublica*, July 2019.
[2] “College Financial-Aid Loophole: Wealthy Parents Transfer Guardianship of Their Teens to Get Aid,” *Wall Street Journal*, July 2019.