

February 23, 2018

Sen. Lamar Alexander  
Chair  
Senate Health, Education, Labor and  
Pensions (HELP) Committee  
United States Senate  
455 Dirksen Senate Office Building  
Washington, DC 20510

Sen. Patty Murray  
Ranking Member  
Senate Health, Education, Labor and  
Pensions (HELP) Committee  
United States Senate  
154 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Alexander and Ranking Member Murray,

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), I write to respectfully submit our comments on your request for input on the Senate Health, Education, Labor and Pensions Committee's Higher Education Act reauthorization process. We appreciate the opportunity to provide comments and inform the committee's evaluation of proposals that will have a policy impact, particularly with regard to education records and student privacy, student access, and higher education accountability.

AACRAO is a nonprofit association of more than 11,000 campus enrollment officials who represent approximately 2,600 institutions and agencies in the United States and more than 40 countries worldwide. The vast majority of our individual members are campus officials with direct responsibility for admissions, recruiting, academic records, and registration functions. The campus administrative officials that comprise our membership range from front-line administrative staff to senior administrators with primary responsibility for enrollment planning, records management, administrative computing and other important operations central to the smooth and efficient administration of colleges and universities.

### **Education Records and Student Privacy**

**AACRAO encourages Congress to consider a number of provisions to update FERPA.** Because AACRAO members serve as custodians of education records for current and former students, they are particularly knowledgeable about privacy issues in general, and specifically about information security and privacy requirements of Federal and State laws. Compliance with the Family Educational Rights and Privacy Act (FERPA) has long been a primary area of professional jurisdiction for AACRAO members, who are often the leading FERPA experts on their campuses.

First, recent court decisions have created confusion around the issue of whether electronic records, and emails that specifically identify the student, are considered educational records and are covered under FERPA. The association strongly supports the inclusion of language in the Higher Education Act that will identify electronic records in the definition of educational records to diminish confusion surrounding electronic documents, such as emails, and create a national standard.

Second, we seek to resolve the legally ambiguous status of records collected and maintained by third-parties, or cloud based storage, for use by educational agencies and institutions. The increased use of third party services that directly capture and maintain information that otherwise was previously

maintained by higher education institutions, or “Third Party Record Collection Agencies,” needs to be included in the list of entities that capture and maintain student data and should be covered under FERPA.

Third, AACRAO strongly supports the inclusion of language to advance the Reverse Transfer Efficiency Act of 2017 (H.R. 3774). The bipartisan measure, which was included by unanimous consent in the House Education Committee mark-up of the PROSPER Act, would assist institutions in identifying students who have earned enough credits to be awarded an associate’s degree through “reverse transfer.” Currently, there are no processes or guidelines for sharing student credit information from four-year to two-year institutions for the possible award of degrees or certificates from a two-year institution. The bill would create a new exemption under FERPA to facilitate the disclosure of students’ postsecondary coursework and credit information to an institution the student was previously enrolled at for the purpose of applying such coursework and credits toward completion of a recognized postsecondary credential.

Finally, in 2012, the Obama Administration, through the Department of Education, implemented regulatory amendments that dramatically expanded FERPA. The amendments greatly broadened the definition of who is given access to personally identifiable information (PII) from student records on a non-consensual basis. AACRAO strongly believes that some of the 2012 regulatory actions should be rescinded to ensure students’ private information will not be inappropriately disclosed to third parties.

- The 2012 regulations inappropriately expanded the definition of “Authorized Representative” to anyone chosen by the designated official. AACRAO believes that the definition “Authorized Representative” should be restored to its previous definition of “individuals and entities under direct control of officials” as designated in the original statute.
- The 2012 regulations also overreached on the definition of “Implied Authority” to audit programs and have created much confusion, and lacks legal precedent. AACRAO believes that the Task Force should close this loophole for non-consensual disclosure of education records.
- The 2012 regulations vastly widened this definition to include programs not administered by educational authorities. AACRAO believes that the definition of “Education Programs” should revert back to the original definition of “programs administered by an educational agency or institution.”
- The 2012 regulations expanded the meaning of non-consensual disclosure of personal information from education records to organization conducting “for, or on behalf of” educational agencies or institutions. AACRAO strongly urges the restoration of the limitation on the purposes for which the research exception may be invoked, and to statutorily prohibit re-disclosure of personally identifiable information by organizations accessing education records under this exception.

### **Financial Aid**

**AACRAO supports federal funding for financial aid to ensure that all qualified students have access to higher education, and for research to advance knowledge and innovation.** In an increasingly competitive global marketplace, a higher education infrastructure and a well-educated population are more important than ever to ensure future U.S. economic innovation and competitiveness in the global marketplace.

There is widespread agreement that the current Free Application for Federal Student Aid (FAFSA) is a barrier to college access. Research indicates that FAFSA simplification would increase college

attendance rates, as well as the amount of financial aid some students receive during their first year of college. The association supports efforts to simplify the form by decreasing the number of required questions and codifying the use of prior-prior year (PPY) income data to reduce the complexity of the application for students while still providing institutions with the information required to accurately determine financial need.

Additionally, AACRAO also supports the elimination of loan origination fees. Student loan origination fees were created to offset risk for private, bank-based lenders. The federal government still charges these fees under the Federal Direct Loan program, though, despite the fact that they are unnecessary and a costly, complex burden on students. Ending origination fees would help to simplify and increase affordability within the federal student aid system.

### **Student Assistance**

**Federal funding plays a key role in increasing access to higher education, especially for students from underrepresented populations and families with low and moderate income, where a college degree is seen as unattainable.** Recent cutbacks in federal funding programs pose an even greater threat to equal access, especially as the number of high school graduates without the resources to finance further education is set to increase dramatically during the next decade.

Pell Grants, in particular, are essential to college access and affordability for low- and moderate-income students. Research has shown that the grant aid increases college enrollment and completion rates for these students, making college possible for more than nine million Americans. However, today the share of higher education costs covered by the maximum Pell Grant is approximately half of what it was three decades ago and by 2019 it is estimated that the maximum grant will cover the smallest share of college costs in the history of the program.

AACRAO strongly urges maintenance of the current maximum Pell Grant Award and supports the improvement of gatekeeping for the Pell Grant program so that every dollar of federal support actually reaches students in need. We support proposals to provide a bonus to Pell Grant recipients enrolled in more than 12 credits to incentivize completion.

Additionally, the association is in favor of increased federal funding for campus-based Title IV aid programs that help to improve student access by reducing the overall cost of college, including the Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Perkins Loan programs. The Federal Work-Study program provides need-based, part-time jobs to students to assist in covering the full cost of attendance. The program expands opportunities for student access as well as workforce development, but its current formula for eligibility should be reviewed to better align with better serve low-income students and its community service requirement and private sector employment cap should be removed.

The FSEOG and Perkins Loan programs provide grants and loans to students with the greatest demonstrated financial need. Without the assistance provided by these programs, low-income students could be forced to take out private loans, which lack many of the protections for borrowers of federal student loans, in order to cover remaining gaps in the cost of attendance after a student is awarded federal aid.

Similarly, AACRAO supports the maintenance of federal income-based repayment program benefits, including loan forgiveness through income-driven repayment plans and through the Public Service

Loan Forgiveness (PSLF) program. Individualized payment options and benefits provided by these programs help to make loan repayment more manageable for students saddled with high debt relative to their post-graduate earnings.

### **Accountability**

**AACRAO feels strongly about the need to maintain the integrity and accountability of the Higher Education Act's gatekeeping system of federal recognition, accreditation and state licensure policies.** AACRAO members play a central role in protecting and maintaining the academic integrity of their institutions as admissions gatekeepers and as codifiers and custodians of the institutional academic policies that govern the awarding of credits and credentials. They also have a systemic interest in academic integrity across the spectrum of educational institutions, since they must make decisions based upon credits and credentials granted by high schools and previously attended colleges and universities. As key stakeholders in promoting the integrity of all collegiate institutions, AACRAO members are particularly reliable partners in the committee's efforts to review and improve accountability measures for Title IV federal student aid programs.

AACRAO supports efforts to strengthen the regulation and enforcement of accountability measures for all institutions of higher education eligible for participation in Title IV federal student aid programs. In particular, we urge the maintenance of the federal 90/10 rule, which we believe serves to ensure the market viability of Title IV-eligible institutions by restricting inappropriate reliance on federal funding by schools. Moreover, we support proposals, made by a number of key policymakers, that would alter the current 90/10 rule by limiting the total amount of federal funds received through Title IV, U.S. Department of Veterans Affairs educational benefits, and the Department of Defense tuition assistance program to no more than 85 percent of each institution's total revenues for any given year. Additionally, we believe that the rule should prevent the current gaming of the system by excluding all institutional aid, including any private-label loans that have been made or are held by an entity that has had an origination relationship or any business arrangement with the school. Such a change would help to ensure that no institution becomes exclusively dependent on federal funds.

The association supports regulations governing state authorization, including rules that require institutions that provide distance education to be authorized in each state that has student enrollment. We believe the regulations expand much-needed protections for students enrolled in distance education programs and correspondence courses. However, the requirement is overly burdensome and often results in increased costs for institutions. We generally support efforts to extend minimum standards of state authorization for participation in Title IV programs to distance education programs and correspondence courses with the recognition of participation in reciprocity agreements to fulfill the proposed requirement. The inclusion of state authorization reciprocity agreements helps to minimize the burden on well-intentioned institutions that provide distance education in multiple states.

AACRAO supports an expansion of the current definition of cohort default rates to more accurately capture all defaults. It is odd and counterintuitive that defaults that occur outside the official window do not "count" against the institutions where the loans were disbursed. Just as borrowers and taxpayers are stuck with defaults whenever they occur, schools should likewise have all defaults associated with them counted accurately, no matter when they occur. Recent proposals to eliminate the cohort default rate system entirely and replace it with a program-level loan repayment rate system could be problematic. While we agree that information regarding student loan repayment rates is useful for measuring a broad range of borrower outcomes, it is not sufficient as a standalone measurement for student success. The use of programmatic repayment rates could improve upon the existing

institutional cohort default rates, but its full implications are not known. Any proposal for a program-level repayment rate metric should incorporate protections to prevent institutions from gaming the system by simply modifying failing programs to look like new programs to maintain access to Title IV funds.

The current gainful employment rule, as an accountability metric, is flawed and its shortcomings should be addressed. Additionally, the regulation's reporting requirements are overly burdensome for well-intentioned institutions. However, AACRAO believes that the gainful employment rule provides critical incentives for colleges to offer quality, affordable programs, to protect students from burdensome debts, and to reduce the costs of student loans for taxpayers. We believe that a careful review of the regulation is necessary to achieve a balance between ensuring that vocational educational programs produce valuable student outcomes, while not saddling institutions with imposing costs and reporting requirements.

The association would like to thank you for your consideration of our views regarding higher education policy proposals. We appreciate the committee's willingness to work with the higher education community and stand ready to assist you in your effort to reauthorize the Higher Education Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael V. Reilly". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Michael V. Reilly  
Executive Director