June 20, 2023

Docket ID: ED-2023-OPE-0089

On behalf of the Coalition of Higher Education Assistance Organizations (COHEAO) and its Board of Directors, I am writing to express concerns with the proposed new requirement in Sec. 668.14(b)(33) dealing with the withholding of transcripts included in the May 19, 2023 Notice of Proposed Rulemaking (NPRM) entitled "Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB)." The provision exceeds the Department of Education's (ED) authorities contained in the Higher Education Act (HEA) by interfering with the normal operating business of the institution, which ED has routinely said is not within their authority without due cause – a notion further acknowledged in the May 19th notice.

COHEAO is the only higher education organization focused on helping students manage the operational aspects of their college experience. Our institutional members work in the Business Office, assisting students with their college bills by finding manageable solutions. Our commercial members partner with institutions to provide students and graduates with agreeable approaches to paying their debt owed to the institution. COHEAO supports efforts to reduce the college cost burden through increased student financial aid like the Pell Grant and other campus-based funding.

In general, the focus on transcript withholding has increased over the past few years, but COHEAO believes the arguments regularly made by consumer advocates are anecdotal, short-sighted, and seemingly ignore the larger consumer impact. First, several reports, including the Supervisory Highlights issued in the Fall 2022 by the Consumer Financial Protection Bureau (CFPB), argue that institutions rarely (if at all) release transcripts to prospective employers. This is simply false and any research on this topic that included conversations with institutions would discover and report that nearly all institutions will release a transcript to a prospective employer.

Secondly, the idea that transcript withholding prevents the student/borrower from progressing with their education, either at their current institution or at another institution, is regularly posed by supporters of stronger regulation of withholding. While this can be true, there is a very legitimate and rational concern associated with this practice. In an era where everyone is concerned with unmanageable student debt, an enrollment pause has the student/borrower's best interest in mind. A student faced with this situation likely has an unmanageable debt. It is not in the student's interest to allow them to continue to add more debt that will also likely be unmanageable, creating a larger problem for the student/borrower and the financial aid system.

Institutions use transcript holds as a means to engage in a conversation with the student before an institution pursues more drastic steps. These conversations allow institutions and their contractors to provide much-needed financial literacy and work with the student/borrower on resolving their debt within that student's current financial means. Eliminating these tools eliminates the leverage to engage in these financial literacy education conversations. Ultimately, students are harmed when these discussions do not occur and removing them results in actions that cause real negative consequences for the student/borrower.

COHEAO is aware of the discussions that transpired on this topic during the negotiated rulemaking, including ED's difficulty in determining any legal standing to engage on this topic. The discussion in the preamble of the NPRM focuses on preventing an institution from withholding transcripts when an institution is in the wrong, such that the debt is a result "*from an error in the institution's administration of the Title IV, HEA programs, return of funds under the Return of Title IV Funds process, or any fraud or misconduct by the institution or its personnel.*" The notion of error is reinforced throughout other discussions in the preamble. However, ED acknowledges the ambiguity of its own regulation later in the notice. In the discussion on page 32383 of the May 19, 2023 Federal Register, ED notes the problem that institutional policies and Return of Title IV rules may not align creating a balance for the student. ED further acknowledges that the student "*has an agreement with the institution.*" The discussion proceeds to move the argument away from institutional error and to a situation of "process, procedure and institutional business," where ED has no jurisdiction to interfere.

ED's proposed language manifests this overstep, going beyond institutional error. The proposed language states:

> "*(33) It will not withhold transcripts or take any negative action against a student related to a balance owed by the student that resulted from an error in the institution's administration of the title IV, HEA programs, any fraud or misconduct by the institution or its personnel, or* ***returns of Title IV, HEA funds required under Sec. 668.22*** *(emphasis added) unless the balance owed was a result of fraud on the part of the student;*"

The bolded language in subparagraph (33) is problematic and troublesome as it interferes with the normal operating business of an institution. As ED noted, the student has an agreement with and obligations to the institution. If a student incurs charges by enrolling at the institution, then it is expected that the student will pay those charges in exchange for educational services. In doing so, that student may use federal Title IV funds to help pay for those charges. Should a student make a second decision to alter their enrollment status such that it may or may not reduce the institutional charges, depending on the timing of the decision; however, if the decision reduces the amount of federal Title IV funds available to that student, the expectation to pay for those charges continues to exist. There is no role for ED to interfere with this business transaction – especially if the institution has followed the rules associated with the Return of Title IV Process.

ED also argues that credits earned by a student using federal Title IV funds should not be lost and therefore this policy is justified; however, the student brings a multitude of funds from various sources. Federal funds are intermixed with state, institutional, scholarship, and individual funds. These are comingled to address all institutional charges and though federal funds are usually the first dollar in, it is still a stretch to argue that federal dollars paid for the entire credits earned by the student. It would be nearly impossible for an institution to parse out the credits paid for entirely by federal dollars and as a practical matter it would be impossible to parse out on a transcript. ED's argument fails further when schools have heavily discounted tuition, as most do for Pell-eligible students, and federal Title IV funds are used to pay other expenses.

This draft rule as it applies to the comingling of funds leads to a further operational problem for institutions, which are incapable of determining what amount of any debt might be a result of return of Title IV funds. It is more likely that the debts incurred from a student's decision resulting in the need for the return of Title IV funds includes a combination of debts. Several COHEAO member schools indicated that when a student withdraws, either from school or a number of classes, that student likely already has existing debts. The return of Title IV funds creates a larger debt, which then creates a problem for the institutional systems which cannot identify the difference. In addition, this creates further confusion for students when the institution attempts to only collect a portion of the total debt owed. These schools raised additional concerns about the impact this policy change could have on retention.

Given the complicated nature of this proposed policy change and the questionable authority of ED's interference with institutional business operations between an institution and student, COHEAO suggests ED use the information related to this topic and examine how the return of Title IV processes may be improved to mitigate these perceived debts. In fact, ED's return of Title IV process penalizes students in the same fashion in situations where the school reports an overpayment to ED. In those situations, the student is not eligible for future Title IV funds until they repay ED. Further, if an institution returns all of the student's Title IV funds in cases where student refunds were issued to pay non-institutional charges, then the Department is receiving a mix of Title IV funds and institutional funds. COHEAO believes it is inappropriate for ED to maintain a policy that restricts future access and enrollment for a student, but then interferes with normal institutional operations that impose an identical restriction. It is also deeply troubling and problematic that ED is proposing to deny a school's ability to recoup institutional funds.

The attempts to mitigate the perceived negative consequences of transcript withholding create an inequity in higher education. In this case, pitting the treatment of Title IV recipients against non-Title IV students. Ultimately, as policies like this restrict the ability of institutions to recoup funds, institutions will be forced to alter business practices to ensure their viability. These decisions might lead to restricting access to higher education for vulnerable populations. Policies attempting to address today's perceived inequities could result in greater inequity in the future as institutions struggle to remain in business.

Ultimately, COHEAO believes issues involving debt need to be addressed through better financial literacy and education efforts. COHEAO is very active in financial literacy and wellness initiatives. That experience reveals that most students are unaware of how they finance their college education and even less aware of general economic concepts, such as how to save, create a budget, and simple or compounding interest. Thus, students need more and better financial literacy education. COHEAO members are best positioned on college campuses to help students with this education. Removing the opportunity to assist struggling students with very broad and general language contained in the current proposed policy is harmful to the students and goes beyond the scope and authorities contained in HEA.

Respectfully,

Robert L. Moran

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