

## Comments for the Record



# Public Comment for Department of Education: Evaluation of Existing Regulations

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*On June 22, 2017, the U.S. Department of Education (ED) published a Federal Register [notice](#) seeking public comments regarding regulations to be repealed, replaced or modified. Specifically, ED expressed interest in regulations that are costly or unnecessarily burdensome. The American Action Forum has explored this topic in the past and has written about the cost and effects of the growing number of regulations affecting higher education. The comments below reflect those findings.*

Agency/Docket Number:

Docket ID: ED-2017-OS-0074

Thank you for the opportunity to provide written comments regarding the evaluation of existing regulation at the U.S. Department of Education. The comments below are my own and do not necessarily reflect the opinion of the American Action Forum.

The growth in higher education costs is hardly a secret to parents and students. A survey commissioned by the American Action Forum (AAF) found that 92 percent of respondents believe college is too expensive.<sup>[\[i\]](#)</sup> Published tuition and fees have outpaced inflation and increased over 28 percent during the last ten years. There are countless factors driving these spikes, but increasingly, legislators and universities have targeted regulations as a primary culprit for rising costs. Indeed, the Department of Education (ED) today imposes more than double the amount of paperwork it did a decade ago, likely increasing the amount of administrative staff colleges and universities need to manage for compliance, and playing a role in higher tuition bills across the country.

AAF found that the Department of Education currently imposes nearly 86 million hours of paperwork, and more than 465 federal education forms, including 120 in postsecondary education, at a cost of more than \$2.7 billion annually. The table below outlines 15 regulations and their annual paperwork burden.

Regulation	Annual Paperwork Burden
Conflicting Student Information	4.4 Million Hours
Non-Allowable Charges	59,999 Hours
Determining Student Eligibility	14,828 Hours
Entrance Counseling	282,713 Hours
FSEOG Priority Awarding	85,080 Hours

Regulation	Annual Paperwork Burden
Over-award and Overpayment Tolerances	8.2 Million Hours
Prior Year Changes	59,999 Hours
Proration of Loan Limits	937,777 Hours
Reporting Timeframes	11,407 Hours
Reporting Volume and Scope	1.2 Million Hours
Return of Title IV Funds	3,660 Hours
Return of Uncashed Checks	59,999 Hours
Non-Title IV Student Loans	3,302 Hours
TEACH Grant Eligibility	186,929 Hours
Opening Bank Account	59,999 Hours

One regulation, cash management for student assistance, appears on the list four times and imposes 59,999 burden hours. This collection illustrates the cumulative nature of regulatory burdens. Although cash management for student assistance is a single collection, it imposes four detailed reporting requirements that many institutions find burdensome.

Combined, these 15 regulations account for 15 million hours of paperwork, and \$486 million in annual costs — roughly the same amount post-secondary institutions spend on loan and credit counselors. This is approximately 17 percent of ED’s total paperwork burden, so reform in these areas could produce significant cost savings.

## RECOMMENDATIONS

### Suspend the gainful employment rule.

Under the Higher Education Act, a certain number of short-term and sub-baccalaureate training programs are eligible for federal financial aid only if they can lead to gainful employment for the participant. For many years, this was interpreted to mean that the program of study aligned with an occupation identified by the Department of Labor – a logical enough approach.

Subsequently, ED set out to rewrite those rules, imposing reporting requirements and eligibility standards for postsecondary institutions engaged in offering these types of programs. Although the intent of this process is to weed out “bad actors” from the federal financial aid programs, the effects account for \$433 million in annual costs coupled with nearly 7 million paperwork hours. This equates to more than 3,400 individuals working full-time for a year to complete the required Gainful Employment paperwork.

Finally, an analysis of Bureau of Labor Statistics data conducted by AAF found that the technical and trade and business management training sector suffered 15 percent loss of jobs since 2012 when the Obama Administration finalized the first Gainful Employment rule.<sup>[ii]</sup>

## **Rewrite the borrower defense to repayment regulation.**

Contrary to the Obama Administration's stated objective, the new regulation only provides vague standards that vastly expand the grounds upon which a student borrower can sue for federal loan forgiveness.

Moreover, the rule also allows ED to hold participating Institutions of Higher Education (IHE) financially accountable through the establishment of a financial protection standard meant to help protect students, the federal government, and taxpayers against potential institutional liabilities by requiring IHEs to provide ED a letter of credit (a letter from an IHE guaranteeing the availability of funding should borrowers win claims for which an institution is liable).

The circumstances that would require IHEs to produce a letter of credit include a government entity (attorney general, the Consumer Financial Protection Bureau, or the Federal Trade Commission) suing the IHE for borrower defense related reasons, debts and liabilities stemming from borrower defense-related administrative actions, or any other lawsuit against the IHE that reaches summary judgment. Other triggers not tied to the legal action against the IHE but indicate risk of closure include the IHE failing the 90/10 non-federal revenue requirement, the IHE's cohort default rate exceeding 30 percent for two consecutive years, or a program failing to meet gainful employment requirements.

For each of these triggering offenses, ED can now require the IHE to provide proof that the institution has funding, totaling 10 percent of the total amount of Title IV funds received, available to mitigate losses. Moreover, and potentially devastating to any number of IHE's, ED can require the 10 percent availability of funds for each triggering event, so some institutions could be required to set aside as much as 50 percent of their expected funding received from federal sources.

The likelihood that this rule will bankrupt smaller IHEs with limited endowments was well documented by for-profit schools, community colleges and historically black colleges and universities during the comment period, but ED chose not to address them during the rule making process. As a result, the rule may prevent thousands of students from accessing a post-secondary or career education.

Finally, the White House's Office of Management and Budget has failed to provide a precise economic impact analysis so that policymakers can properly evaluate the proposal. In short, the new Borrowers Defense to Repayment regulation will likely cost taxpayers a small fortune.

## **Review all Title IV-related regulations.**

Many of the rules affecting the issuance of federal financial aid were written in a world that predated today's rapid, data-driven and mobile communications-reliant economy. In a world where data can be processed at record levels, these antiquated rules are reinforcing processes that could be simplified, streamlined, or eliminated altogether. A number of these rules, in addition to requiring antiquated compliance processes on the part of institutions of higher education, have the compounding impact of reducing innovation in higher education. Efforts to move toward competency-based education or more flexible delivery models have frequently been set back by federal rules that continue to reflect a 19th-century approach to higher education. A top-to-bottom review is overdue.

Repurpose "compliance-only" types of regulatory requirements to refocus on the desired outcome. There are

numerous examples of forms, across K-12 and higher education, where simply filling out the right one is the only requirement for receiving a specific form of federal assistance. These types of check-the-box forms can add up to substantial paperwork hours, and frequently have no positive impacts associated with them, other than the disbursement of federal funds. For example, when public school districts submit their Impact Aid forms on time, a check is issued. There is no accountability or outcome measurement associated with the form and resultant funds. This is rampant throughout the Department of Education's grant programs. A simpler approach to compliance, relying on web-based and other, more nimble technologies could save colleges, universities, and public-school districts an enormous amount of time.

[i] Bolger, Glen and Hobart, Jim; Public Opinion Strategies. AAF Higher Education National Survey. Key findings from a national telephone survey of 800 likely voters, with 240 cell phone interviews, conducted January 19-22, 2014. <https://www.americanactionforum.org/survey/new-aaf-poll-and-video-examines-the-nations-views-on-higher-education/>

[ii] Miller, Chad. "Job Loss: Negative Effects of Gainful Employment Regulations". February 2016. <https://www.americanactionforum.org/research/job-loss-negative-effects-of-gainful-employment-regulations/>