TICAS Negotiated Rulemaking Testimony

Testimony of Kate Tromble, Vice President
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Good morning. I am Kate Tromble with The Institute for College Access & Success. Thank you for the opportunity to share TICAS' views on the Department of Education's proposed negotiated rulemaking process. We will supplement these oral comments with more detailed written comments.

Students, veterans, and taxpayers have waited far too long for consistent, strong protections from unmanageable student debt, sudden school closures, and waste, fraud, and abuse in higher education. They cannot afford to wait any longer. We urge the Department to prioritize reinstituting the rescinded gainful employment rule, revisiting and strengthening the borrower defense rule, and addressing the challenges within the current income driven repayment system in the upcoming negotiated rulemaking.

It is critical that any negotiating committees be balanced. There should be at least as many student, veteran, consumer, and public interest voices at the table as there are members of the regulated communities. Involvement with litigation against the Department should not preclude participation.

Gainful Employment

The 2014 Gainful Employment Rule was the result of extensive expert input and analysis, negotiated rulemaking, and almost 200,000 public comments. This critical safeguard prevented thousands of students from taking on debts they were unlikely to be able to repay. And, even before it was finalized, the rule had significant positive effects, prompting colleges to eliminate their worst performing programs, stem tuition increases, and implement reforms to improve student outcomes.

The finalized rule was similarly effective. By early 2017, 9 in 10 colleges with rated GE programs had no failing programs. And the rule drove other improvements like free trial periods, more scholarships, lower tuition rates, and greater focus on employer needs. **Despite these benefits, the rule was rescinded in 2019, removing a valuable safeguard for students against low-quality programs.**

Throughout the COVID-19 pandemic, enrollments increased at for-profit institutions despite falling across other sectors. This dynamic without the safeguard of a strong GE rule is concerning. It leaves students as vulnerable now as they were before the 2014 rule. And it leaves students of color, low-income students, and women particularly vulnerable as these student groups disproportionately enroll in the programs governed by the GE rule. Black and Latinx students, for instance, make up 36% of undergraduates at all colleges, but they represent more than half (51%) of undergraduates at for-profit colleges.

Borrower Defense

Turning to Borrower Defense. The large number of borrowers with pending discharge applications and the ineffective 2019 borrower defense rule make tackling this issue a priority in negotiated rulemaking.

Thousands of students who attended collapsed colleges and colleges where state and federal investigations have found patterns and practices of predatory activity remain burdened by their student loan debts. Many are not aware of their borrower defense rights, or do not see value in applying because so many other claimants have had their claims stymied or summarily rejected. **Most importantly, borrowers taking loans today remain subject to the 2019 borrower defense rule, which offers them little possibility of relief.**

It is also worth noting that the Department can act now to improve the current situation for borrowers as it prepares for a negotiated rulemaking process. For example, the Department can adjudicate all Corinthian College and ITT claims, as it began doing last week, and revisit already-adjudicated partial relief claims to award full relief to approved claimants.

Income-Contingent Repayment

Finally, income-driven repayment (IDR) plans are a critical safety net for student loan borrowers. Borrowers enrolled in an IDR plan default at much lower rates. However, the current IDR landscape is beset by some challenges: enrolling and staying enrolled in plans, truly affordable monthly payments, questionable servicer conduct, and the lack of real relief after a reasonable number of payments. To address these challenges, the Department can use the upcoming negotiated rulemaking process to craft a new IDR plan built on REPAYE. There are also steps the Department can take separate from the rulemaking process to improve the current repayment system.

Closing

Other issues TICAS sees as priorities that we will address in our written comments given time limits include accreditation, state authorization, public service loan forgiveness, and discharges for borrowers with a total and permanent disability. We will also urge the Department to move forward on issues that should not require a rulemaking process—including implementing Pell Grant eligibility restoration for incarcerated students.

Thank you for the opportunity to share TICAS' thoughts. We look forward to partnering with the Department as this process continues and remain available to answer questions or provide further information needed.