



CONSORTIUM OF UNIVERSITIES OF THE
WASHINGTON METROPOLITAN AREA
1020 19TH STREET NW, SUITE 500
WASHINGTON, DC 20036
(202) 331-8080

February 15, 2018

Senator Lamar Alexander
455 Dirksen Office Building
Washington, DC 20510

Dear Sen. Alexander:

On behalf of the member institutions of the Consortium of Universities of the Washington Metropolitan Area listed below, I thank you for providing the opportunity to comment on your white paper “Higher Education Accountability” that you released on February 1. We also appreciate your long commitment to higher education and ensuring that students have access to that education through federal financial aid programs, including loans.

We agree with some points made in the paper, which I will highlight. We also welcome the opportunity to provide comments and pose questions for reflection and refinement. These comments are organized into two main sections. First, we comment on the process by which compliance should be handled. Second, we focus on the specific proposals for potential indicators. We would welcome the opportunity to explore any of these comments and suggestions in more detail with you.

Accountability Requirements for Title IV Participation: Setting the Context

Before commenting on the substance of the paper, it is important to understand the context in which we are reading it and in which we approach accountability in general. For us, the three main goals we have, and on which we must be accountable, are access, affordability, and quality. Understanding that reasonable people may disagree on the specifics, we approach these issues as follows. *Access* for us is the ability for people of all backgrounds to further their education at the postsecondary level. *Affordability* refers to the fact that once higher education can be accessed, it is within the reach of everyone through a reasonable combination of financial aid and personal investment. *Quality* means that the postsecondary education to which the student has access and that is affordable provides the opportunity to acquire the necessary skills to maximize the odds of success as a productive member of society.

We believe that any measure of accountability to which higher education is subjected must directly address one or more of these three things. To the extent that a proposed accountability metric does not, then we question its intrinsic value as a measure of how well an institution is achieving these goals. It is through this lens that we read and evaluated the ideas proffered in the paper. To preview, we do not believe that loan repayment rates, regardless how they are calculated, provide a good indicator of access, affordability, or quality. They may legitimately measure something else, where that something else provides useful information. But they are not indicators of the three core goals.

Accountability Requirements for Title IV Participation: Process Issues

Appropriate, commonsense oversight of federal spending for student financial aid is necessary and expected. Since compliance with certain federally mandated indicators were wedded with institutional accreditation beginning in the 1990s, there has been robust debate as to whether the dual roles of compliance and quality assurance should be the responsibility of accreditors. Indeed, this discussion was a major focus of the *Accreditation Concepts and Proposals* white paper from Sen. Alexander in 2015. We believe now, as we noted then, that rigorous indicators for compliance are essential, and that fair and consistent application of these indicators is necessary and presumed.

Also in our response to the earlier paper, we encouraged the separation of compliance for purposes of institutional access to Title IV funds from the quality assurance aspects of accreditation, much as existed prior to 1992. We still believe this is the best approach. First, it separates the functions based on the expertise and inherent interests of the bodies responsible for the two major types of accountability under consideration here (i.e., federal compliance and quality assurance). More specifically, because the federal government has the largest stake in Title IV funds, and because the federal government can and arguably should set the indicators for compliance, the federal government is in the best position as the arbiter of the funds and the data collection agency to evaluate compliance. Similarly, accreditors are in the best position to evaluate institutions' academic quality and related support structures (e.g., finance, governance, student support).

In short, because the financial aid in question constitutes federal funds, and the federal government defines the indicators for compliance permitting access to such funds, and the federal government collects and stores all of the data on these indicators, the federal government should assume the responsibility of determining compliance. This approach maximizes the likelihood of fair and consistent application of the criteria for compliance across institutional sectors. Although the paper is silent on the point, we continue to support the position that institutions be required to hold accreditation from an accreditor recognized by the U.S. Department of Education as a prerequisite for Title IV funds eligibility.

Accountability Requirements for Title IV Participation: Who Should Be Accountable When Loans Are Not Repaid?

The core premise of the paper is that institutions should be held accountable when the federal government’s loans made to individual student borrowers are not repaid. We agree that it is reasonable for the federal government to expect repayment of student loans. We also acknowledge that the federal government may determine that it is in the best interests of the country to, within the repayment expectation, establish categories of exceptions to a universal full repayment policy, understanding that those exceptions come at a cost. For example, we note that recent analyses of federal student loan repayment data that the Department of Education is on a trajectory to lend more than it can expect to be repaid given recent trends in the use of income-based repayment plans.¹ (We return to this topic a bit later.)

Prior to commenting on existing and proposed indicators to assess loan repayment, though, we wish to raise an objection to the underlying premise of holding institutions accountable for a borrower’s failure to repay a federal loan. Our objection rests on several grounds. First, the loan in question is a contractual relationship between the federal government and an individual borrower, not between the federal government and an institution. The institution is merely the place where the loan is spent in exchange for an opportunity for an education. The institution serves as a convenient “go between” to more efficiently make the transaction. Second, once the borrower leaves the institution, the institution has no leverage to encourage or demand the borrower to repay the federal government. Third, there appears to be another underlying premise in the paper that borrowers fail to repay because they received an inferior education that did not result in a job that paid enough for the borrower to afford to make the loan payments. Granted that one reason a borrower fails to repay is lack of income, and even granting this may be at least a partial effect of a mismatch between the borrower’s education and job requirements, it is not the only reason; for instance, the borrower could simply decide not to repay even when income is not a barrier, as happens with other loans and borrowers. In no other sector, lending or otherwise, is any other party besides the individual who signs (or co-signs) a loan agreement held responsible if the original borrower fails to pay. Even when income taxes are not paid and are due to the federal government, the federal government pursues the delinquent taxpayer, not the individual’s employer, for repayment and penalties. From a fairness perspective, colleges and universities should not be treated any differently, and should not be held responsible for behavior over which they have no control.

There is an additional, possibly unintended, consequence of defining institutions as the accountable party for loan repayment. If institutions know they will be held accountable for loan repayment, they may become less likely to admit students they consider “risks” in the long run. These may be students who come from financial stressed backgrounds, or from

¹ U.S. Department of Education Office of the Inspector General. (2018). *The department’s communication regarding the costs of income-driven repayment plans and loan forgiveness programs*. Retrieved from <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf>.

groups with historically lower participation rates in postsecondary education. These decisions would be contrary to the goal of access discussed earlier, and exacerbate the structural inequality that already challenges the country.

Accountability Requirements for Title IV Participation: Indicators

Setting aside the matter of whether the institution actually bears responsibility for borrowers who fail to repay, it is still important to understand and discuss various ways to track borrower repayment of student loans as both an important exercise and as a matter of policy for accountability once the appropriate responsible party is correctly identified. The paper provides a brief overview of the history of Title IV funds eligibility accountability and the three primary indicators currently required for compliance: cohort default rates, 90-10 rule, and gainful employment rule. We now turn to the current indicators and their proposed replacement indicators.

Cohort Default Rates v. Loan Repayment Rates: Institutional Level Analyses

Currently, compliance partially depends on an officially determined cohort default rate. It is proposed that this metric be replaced with a measure of loan repayment rates. We agree with the conclusion that cohort default rates are likely inappropriate measures and should be replaced. Before we comment specifically on the proposed new indicators, we would like to note the various examples of loan repayment (or not). As stipulated in the paper, classifying a student borrower as “in default” is a longer and more arduous determination than stipulating that a student borrower is making “interest only” payments or has a deferment as defined under federal statute (e.g., is in active duty military service, is in graduate school, etc.). However, these situations and categories are not dissimilar to those used in commercial lending, so are not unique to the federal government.

An extremely important initial point concerns the very definition of “repayment” and the specific borrowers who are (or are not) included. As noted in the paper, Sens. Jeanne Shaheen (D-NH) and Orrin Hatch (R-UT) introduced the “Student Protection and Success Act” that focuses on those students who fail to make at least a \$1 payment on the loan principal within three years, with the specific exclusion of those borrowers who have official deferments or are in mandatory forbearance (p. 5 line 5-p. 6, line 22, Section B of the bill S 2231² text).³ Others⁴ have proposed a cohort repayment metric that is based on borrowers’ repayment after five years to establish a threshold for determining compliance and institutional penalties. The House PROSPER⁵ bill also includes specific categories of exemptions for purposes of defining repayment and those borrowers who are included in

² S 2231. *Student Protection and Success Act of 2017*, retrieved from <https://www.congress.gov/115/bills/s2231/BILLS-115s2231is.pdf>

³ The paper appears to claim that S 2231 includes borrowers with deferments and mandatory forbearance in the computation of those who have not made repayment. We believe this reading of the bill is in error.

⁴ Chou, T., Looney, A., & Watson, T. (2017). *A risk-sharing proposal for student loans*. Retrieved from http://www.hamiltonproject.org/assets/files/risk_sharing_proposal_student_loans_pp.pdf.

⁵ H. R. 4508 *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act*. Retrieved from <https://edworkforce.house.gov/uploadedfiles/bills-115hr4508ih.pdf>.

the calculations. Thus, there is significant precedent for specific exemptions in existing and proposed legislation regarding who should be enumerated for purposes of defining repayment. We comment more on this issue a bit later in the section on deferments and mandatory forbearance.

We would also note that should the in-school interest subsidy disappear, the cost of loans will increase simply because the borrower is enrolled, not because the institution charges more, or the borrower (at the proper time) participates in a government-sponsored income-based repayment program. This situation could result in less of the payment being applied to principal through no fault of the borrower, but under some approaches would be included in a non-repayment category. We believe this would be unfair.

Our major concern with moving to indicators based on loan repayment concerns the formula for computing repayment. Until that is better defined, we cannot fully evaluate the merits of these competing indicators.

Cohort Default Rates v. Loan Repayment Rates: Program Level Analyses

The paper suggests that rather than approach loan repayment from an institutional level, an alternative may be to examine the repayment rates on a program-by-program basis. It appears that this proposal rests on the assumption that programs of study can be neatly mapped onto a set of distinct employment outcomes, if not isomorphically, then at a general level. We need look no further than to the elected members of Congress and their staffs to see that this assumption is deeply flawed, as there is tremendous diversity of education background represented among a group of individuals who hold similar job titles in their respective positions.

But there is much more to the problem of analyzing loan repayment rates by academic program of study. First, one must come to consensus on the definition of "program." The National Center for Educational Statistics created the Classification of Instructional Programs (CIP) in 1980 to provide "a taxonomic scheme that supports the accurate tracking and reporting of fields of study and program completions activity."⁶ CIP codes include macro-level programs (e.g., "engineering") and increasingly finer-grained subprograms and specialties. At the least, agreement would be necessary on every program in the CIP list in terms of the level of analysis that would be used to track program-based repayment. Reaching that degree of agreement for every academic program offered in the country would be a major challenge.

Still, let us suppose such agreement is reached, and an institution has certain program eligible for loans and other that are not. Given that most programs of study have overlapping course requirements, especially at the early introductory level, one can easily envision that two students enrolled in the same course (say, Calculus I) might be paying for it in one case with a federal student loan and in another with some other funds because

⁶ National Center for educational Statistics. (n.d.). *Classification of instructional programs (CIP)*. Retrieved from <https://nces.ed.gov/ipeds/cipcode/Default.aspx?y=55>.

they are blocked from accessing federal student loans. Furthermore, imagine the confusion for students who are double majoring, with one program eligible and one ineligible for student loans taking a course that it required by both. It would also be likely that the institution might adjust the price of the ineligible program downward to compensate for the lack of loan eligibility, resulting in (unintended) steering of students with fewer financial means into "cheaper" programs. (The reverse is also possible.)

The burden of defining, tracking, and monitoring loan repayments by program, and then tracking which students currently enrolled are eligible for federal loans for which courses would require institutions and the government to dramatically expand their respective accountability infrastructure and staff. Just the programming requirements for student information systems and financial systems alone would be extremely costly. These increased costs would likely more than offset all of the reductions in cost from the regulatory relief that Congress and the Administration have accomplished combined. We do not think this would result in an outcome desired by either of us.

In sum, we agree that indicators based on institutional loan repayment may hold promise as a better indicator than cohort default rates. As we note, however, whether this actually is the case will depend on the specific formula used that takes deferments and mandatory forbearance, already in the law and ideas that have bipartisan support, into account. We strongly believe that program-based models are overly complex, would move the federal government into micromanagement, run the risk of unintended consequences as noted, and create untenable situations for students. Additionally, we urge further reflection on key aspects of a loan repayment indicators, such as: (a) the length of time into the repayment phase before repayment performance is indexed; (b) how long the borrower must meet the criteria for failure to repay in order to be officially considered as non-payer; and (c) the advisability of threatening institutions, rather than the borrower, with penalties for repayment.

Loan Repayment Deferrals and Mandatory Forbearance

As the paper notes, and we pointed out earlier, throughout the period of tracking the repayment of student loans, certain borrowers have been excluded from any computation about default rates or repayment rates. There is good reason for this. Individuals who continue their education in graduate and professional schools, or individuals who are on active duty in the military, among others, are engaging in highly regarded activities that either do not provide a steady income (and, in fact, are likely to increase indebtedness) or ensuring the safety and security of American citizens. In recognition of these activities, Congress has consistently provided repayment exemptions to them. Likewise, in situation in which the borrower can document excessive debt under certain specific conditions, Congress has determined that loan repayments are not required for a period. This situation is referred to as "mandatory forbearance;" common examples are service in the National Guard or in an AmeriCorps position for which you receive a national service award. The

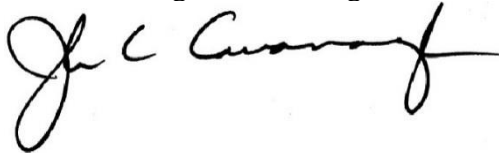
Department of Education provides information about both deferments and mandatory forbearance.⁷

We believe that any new indicator regarding loan repayment stipulate that borrowers who have received official deferments or mandatory forbearance as defined in statute be excluded from the enumeration of borrowers who are not making adequate repayment of federal student loans. To do otherwise would be to create a severe disincentive to, for example, serve our country in active duty military or National Guard capacities.

Conclusion

In sum, we believe there is much merit in discussing better ways for the federal government to ensure that it is getting a good return on its large investment in students. We have provided some ideas along those lines, and suggested areas in which additional discussion may be more fruitful. The three goals for higher education we set forth at the outset, access, affordability, and quality, should be the ones for which indicators are created. Holding institutions accountable for loan repayment behavior over which they have no control, and for which no other sector in very similar circumstances is held accountable, does not address these goals. However, we do look forward to engaging in robust discussions regarding indicators that do, including assessments of the access student from all backgrounds have to higher education, the affordability of that education, and the quality of academic programs.

With best regards and in gratitude for your support,

A handwritten signature in black ink, appearing to read "John C. Cavanaugh". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John C. Cavanaugh, Ph.D.
President and CEO

⁷ Department of Education. (n.d.). *Deferment and forbearance*. Retrieved from <https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance>.