

Gregory Martin
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Ave., SW, Mail Stop 294-42
Washington, D.C. 20202

Re: NPRM on Student Assistance General Provisions, Distance Education and Innovation Regulations

Docket ID ED-2018-OPE-0076

May 4, 2020

Dear Gregory Martin:

We write on behalf of the National Student Legal Defense Network (“Student Defense”) in response to the Notice of Proposed Rulemaking regarding the 2020 Student Assistance General Provisions, the Secretary’s Recognition of Distance Education and Innovation (“NPRM”).¹ Student Defense is a non-partisan, 501(c)(3) non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. Student Defense appreciates the opportunity to comment on this proposal.

We are submitting this comment at a time when the country is facing unprecedented public health and economic challenges due to the COVID-19 crisis. According to recent reports, 30 million individuals filed for unemployment in the first six weeks following the President’s declaration of a national emergency on March 13, 2020.² As the economic fallout from the health crisis continues, many workplaces remain shuttered, displacing workers and causing widespread employment and income losses. Although the magnitude of the COVID-19 crisis’s impact on jobs and the economy may be “unlike anything experienced in our lifetimes,”³ it is likely that postsecondary enrollment trends will be consistent with those of past recessions, and impacted individuals will seek out postsecondary education “as the worsening labor market reduces the amount of potential earnings foregone in order to obtain additional education.”⁴ Furthermore, the physical distancing restrictions that are currently in place may result in decreased demand for

¹ 85 Fed. Reg. 18,638 (Apr. 2, 2020), amended by 85 Fed. Reg. 20,895 (Apr. 15, 2020).

² Associated Press, *3.8 Million Workers Seek US Unemployment Aid, Raising Total Layoffs Since Virus Hit Hard to 30 Million*, Washington Post (Apr. 30, 2020), https://www.washingtonpost.com/business/38-million-workers-seek-us-unemployment-aid-raising-total-layoffs-since-virus-hit-hard-to-30-million/2020/04/30/c11e5b2e-8ade-11ea-80df-d24b35a568ae_story.html.

³ Gita Gopinath, *The Great Lockdown: Worst Economic Downturn Since the Great Depression*, International Monetary Fund (Apr. 14, 2020), <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/>.

⁴ U.S. Census Bureau, U.S. Department of Commerce, *Postsecondary Enrollment Before, During, and Since the Great Recession at 13* (Apr. 2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P20-580.pdf>.

traditional, in-person learning, and increased demand for distance education, and in particular, online education.⁵

We are particularly concerned with the impact on student populations with large numbers of people enrolled in institutions offering distance education—such as students of color, low-income students, student parents, and veterans.⁶ The U.S. Department of Education (“Department”) itself noted in the NPRM that “non-traditional students . . . have been a key market for existing competency-based or distance education programs.”⁷ Because the COVID-19 health crisis is already having a disproportional impact on members of vulnerable student groups (such as low-income individuals⁸ and communities of color⁹) and because non-traditional students may be more likely to seek out programs with the “flexible pacing and different model for assessing progress,”¹⁰ provided by many distance learning programs, we can reasonably expect that trends around these student groups’ enrollment in postsecondary education will hold strong and, if anything, grow in the coming years.

At the time that the Department published this NPRM, the majority of the country was three weeks into government-mandated lockdown orders¹¹ and national unemployment figures ballooned past 6 million.¹² By almost any measure, at the time the NPRM was published, the country was in the midst of a sharp and sudden economic downturn. In light of this, it should have been obvious to the Department that the COVID-19 pandemic and its implications for online education required serious consideration and study for the purposes of and prior to the publishing of this NPRM. Despite this, the Department failed to make even a single reference to the pandemic or the changes it will bring to online

⁵ Doug Lederman, *Will Shift to Remote Teaching Be Boon or Bane for Online Learning?*, Inside Higher Ed (Mar. 18, 2020), <https://www.insidehighered.com/digital-learning/article/2020/03/18/most-teaching-going-remote-will-help-or-hurt-online-learning>.

⁶ National Center for Education Statistics, *Table 311.22. Number and Percentage of Undergraduate Students Enrolled in Distance Education or Online Classes and Degree Programs, by Selected Characteristics: Selected Years, 2003-04 through 2015-16* (2018), https://nces.ed.gov/programs/digest/d18/tables/dt18_311.22.asp

⁷ 85 Fed. Reg. at 18,639.

⁸ Abby Vesoulis, *Coronavirus May Disproportionately Hurt the Poor—And That’s Bad for Everyone*, Time (Mar. 11, 2020), <https://time.com/5800930/how-coronavirus-will-hurt-the-poor/>.

⁹ Connor Maxwell, *Coronavirus Compounds Inequality and Endangers Communities of Color*, Center for American Progress (Mar. 27, 2020),

<https://www.americanprogress.org/issues/race/news/2020/03/27/482337/coronavirus-compounds-inequality-endangers-communities-color/>.

¹⁰ 85 Fed. Reg. at 18,681.

¹¹ Jiachuan Wu, *et al.*, *Stay-At-Home Orders Across the Country: What Each State Is Doing—Or Not Doing—Amid Widespread Coronavirus Lockdowns*, NBC News (updated Apr. 29, 2020),

<https://www.nbcnews.com/health/health-news/here-are-stay-home-orders-across-country-n1168736>.

¹² Jack Brewster, *6 Million More File for Unemployment and Nearly 2 Million Buy Guns: Coronavirus by the Numbers*, Forbes (Apr. 2, 2020), <https://www.forbes.com/sites/jackbrewster/2020/04/02/6-million-more-file-for-unemployment-and-nearly-2-million-buy-guns-coronavirus-by-the-numbers/>

education in this NPRM. At the time that the NPRM was published, the Department estimated that the proposed regulations would have a total net impact of \$784 million.¹³ If enrollment trends are consistent with past recessions, then the total net impact could be exponentially higher as even more students enroll in distance learning in an effort to improve their career prospects while seeking to adhere to public health requirements. By failing to even consider the ongoing public health crisis as it relates to this NPRM or to provide any meaningful analysis of its implications—implications that permeate the entire set of issues being negotiated in this NPRM—the Department has produced a flawed proposal. Making matters worse, the Department is not capable of resolving this incredible oversight in the Final Rule because to make such a massive change to the proposed rule’s analysis without the opportunity for public inspection and comment would deprive the public of the opportunity to meaningfully weigh in on the proposed rule changes, as is required by the Administrative Procedure Act (“APA”). 5 U.S.C. § 551, *et seq.*

For these reasons, Student Defense encourages the Department to rescind this NPRM and convene a new round of negotiated rulemaking to grapple with the changing landscape and increased reliance on online education. To do anything short of going back to the negotiating table on these issues risks being unlawful. Should the Department decide to continue this rulemaking process and publish a rule based on this NPRM, then it must, at the very least, provide an extensive analysis in the Final Rule of the impact of COVID-19 on distance learning, including revised cost-estimates, and how the Final Rule provides sufficient safeguards for institutions to provide both innovative and high-quality educational opportunities to distance learners in light of these changing times.

1. The Department Should Maintain the NPRM’s Definitions of “Credit Hour” and “Distance Education”

During the rulemaking process, the Department proposed making significant revisions to the existing definitions of “credit hour”¹⁴ and “distance education.”¹⁵ But the Department made these proposals without any evidentiary basis or support, rendering them been legally insufficient under the Administrative Procedure Act. *See, e.g., Motor Vehicle Manufacturers Ass’n v. State Farm Auto Mutual Ins. Co.*, 463 U.S. 29, 4244 (1980); *United Steel v. Mine Safety and Health Admin.*, 925 F.3d 1279, 1285 (D.C. Cir. 2019). By failing to present evidence during the negotiated rulemaking that would justify a change—and by failing to suggest in the NPRM that the Department has support to justify those original proposals now—the Department has no choice but to maintain the consensus definitions included in the NPRM.

¹³ 85 Fed. Reg. at 18,640.

¹⁴ *Id.* at 18,646.

¹⁵ *Id.* at 18,647–48.

2. The Department’s Proposed Regulatory Changes Regarding the Eligibility of Direct Assessment Programs Violate the Higher Education Act and Should Not Be Adopted

a. The NPRM proposes to make changes to its process for determining the eligibility of direct assessment programs that are in conflict with and exceed the Department’s statutory authority.

The Department proposes changes to the regulations governing the process by which an institution seeks and obtains the Department’s approval of a direct assessment program that conflict with and exceed its statutory authority. Specifically, the Department’s proposed regulations would require an institution to obtain the Department’s approval for its first direct assessment program, and when the institution adds a direct assessment program at each credential level of offering. However, Departmental approval would not be needed for any subsequent direct assessment programs that are added at credential levels for which a direct assessment program had already been approved. Proposed 34 C.F.R. § 600.10(c)(1)(iii).

The Higher Education Act (“HEA”) requires the Secretary to make a determination for each and every direct assessment program that is seeking title IV program participation. HEA § 481(b)(4), 20 U.S.C. § 1088(b)(4) (“In the case of a [direct assessment] program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to be an eligible program.”). The Department’s current regulations are consistent with the statutory language and require an institution to obtain the Secretary’s approval for *each* direct assessment program that it offers, regardless of the other direct assessment programs that the institution offers. 34 C.F.R. § 600.10(c)(1)(iii). The Department contends that because it “review[s] the institution’s processes related to title IV aid administration but will not evaluate academic content or academic quality of programs, except to confirm that an accrediting agency has specifically approved each program,” “once an institution has demonstrated its capability to administer these programs, there is little value in the Department reviewing subsequent programs.”¹⁶ But the Department’s purported justification cannot change the plain text of the statute. The Department does not have the authority to grant the Secretary discretion to approve some direct assessment programs and not others. Rather, Congress was clear in requiring the Secretary to make a determination regarding the eligibility of each direct assessment program, regardless of whether the institution offers other direct assessment programs that have previously been deemed eligible by the Secretary at the same credential level.

¹⁶ 85 Fed. Reg. at 18,650.

b. The current regulations for determining direct assessment program eligibility must be maintained because direct assessment programs are exempt from limitations on outsourcing.

Under the current regulations, direct assessment programs are exempt from the restriction that limits the percentage of learning resources that may be used that are provided by other entities. 34 C.F.R. § 668.10(e). Pursuant to the Department’s proposed changes to 34 C.F.R. § 600.10 and as a consequence of this exemption, an institution that has already received approval for a single (and its first) direct assessment program at a given credential level would then be able to develop subsequent direct assessment programs at the same credential level *that can outsource up to 100 percent of its learning resources and delivery mechanisms to entirely different entities*, without any review from the Department regarding the program’s eligibility.

As noted above, the Department explained its reasoning for this proposed change by claiming that it “will review the institution's processes related to title IV aid administration but will not evaluate the academic content or academic quality of programs, except to confirm that an accrediting agency has specifically approved each program.”¹⁷ However, the Department’s accreditation regulations, which were published in November 2019 and will take effect in July 2020, weaken the accreditor’s review and allow an accreditor’s senior staff, rather than the accreditor’s appointed board of commissioners, to review, approve, and monitor substantive changes to direct assessment programs. 34 C.F.R. § 602.22(a)(2)(i);¹⁸ *see also* 34 C.F.R. § 602.22(a)(1)(ii)(J).¹⁹ As a result, direct assessment programs, and in particular, direct assessment programs with written arrangements with other entities, are now at an even greater risk of inadequate oversight as a result of these various regulatory changes. Because an institution’s direct assessment programs can vary widely, even if they are offered at the same credential level, it is crucial that the Department maintain its oversight responsibilities, consistent with its statutory obligations.

c. The Department failed to consider its Inspector General audits of accreditors of competency-based education programs that demonstrated why accreditors cannot be solely responsible for the evaluation and oversight of direct assessment programs.

In 2015, the Department’s Office of Inspector General (“OIG”) conducted audits of several regional accrediting agencies of competency-based education programs.²⁰ Under the Department’s new accreditation regulations, which will take effect in July 2020,

¹⁷ *Id.*

¹⁸ 84 Fed. Reg. 58,834, 58,923 (Nov. 1, 2019).

¹⁹ *Id.*

²⁰ A direct assessment programs is a type of competency-based education program.

accreditors will be able to designate agency senior staff to evaluate and approve direct assessment programs. 34 C.F.R. § 602.22(a)(2)(i); *see also* 34 C.F.R. § 602.22(a)(1)(ii)(J). However, the Department failed to consider the OIG audits²¹ during the negotiated rulemaking or ask for public comment on how the audit findings may demonstrate whether accreditor’s senior staff alone will be able to adequately assess the administration and effectiveness of direct assessment programs without the Department’s review, which is mandated by statute.

Indeed, “[t]he opportunity for interested parties to participate in a meaningful way in the discussion and final formulation of rules” is a “particularly important component” of the rulemaking process. *Connecticut Light & Power Co. v. Nuclear Reg. Comm.*, 673 F.2d 525, 528 (D.C. Cir. 1982). “The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process. If the notice of proposed rulemaking fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency’s proposals. As a result, the agency may operate with a one-sided or mistaken picture of the issues at stake in a rule-making.” *Id.* at 530. *Cf. Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973) (“It is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data, or on data that, [in] critical degree, is known only to the agency.”).

3. The Department Should Preserve Current Outsourcing Limitations on Two or More Eligible Institutions That Have Common Ownership and That Seek to Enter into Written Arrangements With One Another.

a. The Department’s proposal to eliminate the existing regulation on written arrangements between eligible institutions with shared ownership ignores qualitative differences between these institutions and can lead to deception of students and employers.

Under the current regulations, eligible institutions with shared ownership that enter into written arrangements with one another must comply with the regulatory requirement that “[t]he institution that grants the degree or certificate must provide more than 50 percent of the educational program.” 34 C.F.R. § 668.5(a)(2)(ii). The Department proposes

²¹ *See, e.g.*, Office of Inspector General, U.S. Department of Education, Final Audit Report of the Higher Learning Commission, Control No. ED-OIG/A05O0010 (Sept. 30, 2015), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2015/a05o0010.pdf>; Office of Inspector General, U.S. Department of Education, Final Audit Report of Western Association of Schools and Colleges Senior College and University Commission, Control No. ED-OIG/A5P0013 (Aug. 2, 2016), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2016/a05p0013.pdf>.

to eliminate this regulatory requirement entirely,²² allowing the degree or certificate-granting institution, in a written arrangement like the one described above, to provide none of the educational program for which the degree or certificate is being conferred. Eliminating this safeguard fails to recognize that there may be substantive differences in quality and student experience between institutions that share ownership—and can lead to the deception of both students and employers.

Prospective students consider various factors when deciding whether to enroll at a particular institution, such as the institution's quality of instruction, level of faculty engagement, method of instructional delivery, and student experience, and as a result, have related expectations when they enroll and begin attendance. Similarly, when employers field candidates for job openings, they expect that the school listed on a job candidate's resumé is the same institution that provided the majority of the job candidate's educational instruction while they were enrolled there. The Department's proposal to eliminate outsourcing restrictions between institutions that share ownership would allow such deceptions to student and employers to take place under the protection of the law. Additionally, it ignores the qualitative differences that may exist between institutions with shared ownership that lead to outsized differences in student experience and outcomes.

Current schools that are owned by the same individual or entity highlight this point. For example, a system of colleges may share an owner, but each college may provide its educational programs in fundamentally distinct ways, such as one college that provides the education program through traditional, in-person learning, and one college that only offers a fully online educational experience. Students, meanwhile, chose to attend one institution (and one type of institution) over another. Under the current regulations, these colleges may enter into a written arrangement under which the online college provides up to 50 percent of the education program for students enrolled at, and seeking to earn a degree from, the traditional college. *See* 34 C.F.R. § 668.5(a)(2)(ii). Under the proposed regulations, this restriction would be eliminated in its entirety²³ and students enrolled at the traditional college could be required to take all of their courses online through the online college, without any in-person attendance. Despite the fact that both institutions are eligible institutions for purposes of Title IV, elimination of this regulatory limitation would allow the owner of the system of colleges to significantly alter the educational experience of its students, and effectively nullify the institutional choice that the student made.

²² 85 Fed. Reg. at 18,659.

²³ *Id.*

b. The Department lacks evidence to support its stated justification that current regulations on limiting written arrangements between eligible institutions owned or controlled by the same individual or entity are “needlessly restrictive.”

Without providing any evidence to support its stated reasoning, the Department seeks to eliminate the written arrangement requirements for eligible institutions that are owned or controlled by the same individual, partnership, or corporation under 34 C.F.R. § 668.5(a)(2)(ii). The proposed change would allow the institution granting the degree or certificate to provide virtually none of the educational program offered by the school. To justify this change, the Department argues that is “needlessly restrictive”²⁴ and further states, “[a]lthough institutions that are party to such a written arrangement may share ownership or control, each institution must meet the criteria to be an eligible institution.”²⁵ However, the Department failed to provide any evidence to support its justification that the current regulations are “needlessly restrictive,” and therefore does not have the facts or evidence to support this proposed regulatory change.

4. The Department’s Proposal to Keep in Place Current Regulations Limiting the Outsourcing of Educational Programs to Ineligible Entities Should Be Maintained

During negotiated rulemaking, “[t]he Department initially proposed to relax the limitations on the percentage of a program that may be provided by an ineligible institution or organization through a written arrangement” with an eligible institution to further its goal of “facilitat[ing] partnerships between the eligible institutions and organizations that can provide instruction using trade experts in a workplace environment.”²⁶ Members of the negotiated rulemaking subcommittee opposed making any changes to the restrictions currently found in 34 C.F.R. § 668.5(c)(3) and “expressed the collective opinion that the existing allowances already provide sufficient flexibility for the purposes expressed by the Department and that permitting any larger portion of an educational program to be offered by an ineligible entity would call into question whether the program was in fact being offered by an eligible institution.”²⁷ Ultimately, federal and non-federal negotiators agreed to a compromise proposal that would balance flexibility with safeguards by 1) maintaining percentage restrictions, and 2) adding language to 34 C.F.R. § 602.22(a) that would require an accreditor to make a final decision on such requests within 90 days.²⁸ In addition, the NPRM proposes to impose additional criteria on ineligible entities seeking to enter in written arrangements with eligible institutions.²⁹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 85 Fed. Reg. at 18,658.

For the reasons below, we urge the Department not to deviate from the consensus and dismantle the current regulations.

a. The Department has not produced evidence to support changes to the current regulatory limits on outsourcing educational programs to ineligible entities.

In the NPRM, the Department proposes to preserve limits on the percentage of an educational program that an ineligible entity can provide an eligible institution through a written arrangement. Proposed 34 C.F.R. § 668.5(c). This proposal is consistent with the consensus reached during negotiated rulemaking on this issue and thus should be preserved in the Final Rule. To the extent the Department has contrary evidence that it believes would support deregulation, such evidence has never been provided to the public for comment.

b. The current regulatory limits placed on institutions seeking to outsource educational programs to ineligible entities should be maintained because the Department's previous elimination of accreditor board review of written arrangements further weakens oversight of ineligible entities.

As explained above, the 2019 accreditation rules allow substantive changes, including written arrangements with ineligible entities, to be approved by accrediting agency staff, rather than the accrediting agency's board of commissioners. 34 C.F.R. § 602.22(a)(2)(i);³⁰ *see also* 34 C.F.R. § 602.22(a)(1)(ii)(J).³¹ In addition, such decisions generally must be made within 90 days unless there are "significant circumstances" present. 34 C.F.R. § 602.22(a)(2)(ii).³² The Department's decision to weaken the accreditor's oversight role over written arrangements with ineligible entities in multiple ways make it even more imperative for the Department to preserve the current limitations on such arrangements. The current regime allows eligible institutions the flexibility to work with nontraditional providers and ineligible entities, while providing protections for the quality of the educational program through percentage limitations and the additional criteria proposed in the NPRM. Student Defense strongly recommends that the Department maintain the language of the proposed regulations in the Final Rule.

³⁰ 84 Fed. Reg. at 58,923.

³¹ *Id.*

³² *Id.*

5. The Department’s Proposal to Grant Automatic Recertification of Title IV Eligibility For Institutions Whose Application for Recertification Remains Pending for 12 Months Without Action from the Secretary Violates the HEA And Is Otherwise Unjustified

a. Automatic recertification unlawfully circumvents the Secretary’s statutory obligations.

Student Defense opposes the Department’s proposal to depart from the law and current practice by adding proposed 34 C.F.R. § 668.13(b)(3), which provides that “[i]n the event that the Secretary does not make a determination to grant or deny certification within 12 months of the expiration date of [an institution’s] current period of participation, the institution will automatically be granted renewal of certification, which may be provisional.” Proposed 34 C.F.R § 668.13(b)(3). The Department’s proposal to eliminate the Secretary’s review authority over Program Participation Agreement (“PPA”) recertification applications that have not been acted upon within 12 months is contrary to the HEA. The HEA clearly requires the Secretary to determine an institution’s eligibility to participate in title IV, HEA programs by evaluating an institution’s legal authority to operate within a State, its accreditation status, and its administrative capability and financial responsibility. HEA § 498(a), 20 U.S.C. § 1099c(a). There exists no basis in the law to allow the Department to essentially undo the Secretary’s statutory obligation to qualify and certify institutions, no matter how long an institution’s application for PPA recertification remains under review.

b. The Department does not provide an adequate justification for its proposed rule change and is therefore not justified in changing its current practice for evaluating applications for PPA recertification.

As its justification for its proposal, the Department states, “we are aware of the uncertainty experienced by institutions in cases where the decision period is lengthy.”³³ However, the Department fails to provide any evidence of this “uncertainty,” nor does it explain its impact. Indeed, there may be any number of good reasons for why the Department’s review of an institution’s application for recertification may be delayed. For example, there may be a pending investigation by the Department or by the accrediting agency, a Departmental review of the institution’s ability to meet conditions set forth by the Department regarding the institution’s financial responsibility obligations, a criminal investigation, or other litigation that would give the Department reason to postpone its approval of an institution’s application or decide not to issue a provisional PPA. While we believe that the Department does have an obligation to move expeditiously with respect to

³³ 85 Fed. Reg. at 18,663.

considering recertification applications, the duty to move expeditiously does not preempt the duty to move carefully and with regard for student interests.

Without any evidence that such uncertainty requires the Department to modify its recertification process, and without any consideration to how this proposal would impact student interests or its statutory obligation, the Department's proposal is arbitrary and capricious. To include this proposed change in the Final Rule would violate the APA. *See, e.g., State Farm*, 463 U.S. at 4244; *United Steel*, 925 F.3d at 1285 (D.C. Cir. 2019). Thus, even if the Department's proposed changes were within its statutory authority, it has not provided an adequate justification for departing from the current recertification regulations.

c. The Department has failed to consider reasonable alternatives that address the Department's stated reasons for the proposed rule change.

Furthermore, because the Department's NPRM failed to consider any reasonable alternatives, it should not finalize the proposed rule. To the extent that the Department is justified in its concern by the delay in its own internal decision-making regarding PPA recertifications, the Department does not consider any other reasonable alternatives for improving this process despite its legal obligation to do so. *See, e.g., Public Citizen v. Steed*, 733 F.2d 93, 99 (D.C. Cir. 1984). There exist a multitude of reasonable alternatives for addressing the uncertainty purportedly experienced by institutions that have submitted an application for recertification, short of unlawfully granting institutions automatic recertification for the full PPA period. For example, the Department could seek additional funding to increase its staff designated to review recertification applications in order to ensure that all applications are promptly reviewed and acted upon. In addition to or as an alternative to this, the Department could allow that, after 12 months following the expiration of an institution's current period of participation and should the Department still be unable to reach a final decision on the institution's application for recertification, the institution in question will automatically be granted provisional PPA, lasting between three and six months while the Department continues its review. But even accepting, for the sake of argument, that the Department is solving an *actual* and not hypothetical argument, the Department has utterly failed to consider any alternatives, including alternatives that would better protect student and taxpayer interests.

Regardless of whatever solution the Department devises to address lengthy decision periods, without considering reasonable and lawful alternatives to the status quo, the Department cannot make the change proposed in 34 C.F.R § 668.13(b)(3).

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Student Defense remains steadfast in our belief that the Department cannot and should not, in good faith, move forward with any of the above set of issues without first grappling with the massive changes the COVID-19 crisis will bring to online education. The Department must ensure that online programs provide value to students as the country looks to rebuild its economy and help individuals obtain secure education and a sound economic footing.

Thank you for your attention to these important issues facing student loan borrowers. If you have any concerns, please contact Student Defense's Borrower Assistance and Digital Advocacy Manager, Senya Merchant, at senya@defendstudents.org.

Sincerely,

The National Student Legal Defense Network