Center for Responsible Lending

February 23, 2018

Chairman Lamar Alexander
Ranking Member Patty Murray
U.S. Senate Committee on Health, Educations, Labor and Pensions
428 Dirksen Senate Office Building
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HigherEducation2018@help.senate.gov

Dear Chairman Alexander and Ranking Member Murray,

The Center for Responsible Lending[1] (CRL) appreciates the opportunity to provide comments on priorities for the reauthorization of the Higher Education Act (HEA). Any proposal should hold to the spirit of the original HEA which sought to open the doors of higher education to all. This proposition connotes meaningful access and opportunity to quality higher education programs, not simply the creation of more options or the provision of unduly burdensome loans. Despite this goal, our current system is at risk of curtailing the access it first envisioned. Thus, any reauthorization should focus on the outcomes for those who have been traditionally shut out of higher education: low-income students and students of color. To do this, any HEA reauthorization should provide meaningful access through ensuring that students can minimize their student debt, that their student debt repayment is manageable, and ensuring that the institutional benefactors of federal aid are providing quality educational services in exchange for the taxpayer and student's investment. Specifically, CRL urges this Committee to only propose and pass legislation that includes the following:

- Preservation and streamlining of income-based repayment plans and loan forgiveness;
- Increased and indexed low-income grant aid (PELL, TEACH, FSEOG);
- Increased aid and support for Title III and Title V Schools;
- Strong accountability measures for predatory for-profit institutions, and;
- Statutory requirements to ensure loan servicers meet basic consumer protection standards.

Preservation and streamlining of income-based repayment plans and loan forgiveness
The concept of income driven student loan repayment has been and will continue to be essential to making college debt manageable for millions of borrowers and taxpayers. However, the current system, which includes 4 separate options, should be streamlined and improved. A system with one income-driven plan for borrowers to access would be preferable and would allow more students to take advantage of this option

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and thus avoid delinquency and default. Any income driven repayment plan should include 1) payments that equal no more than 10% of discretionary income; 2) the option for a $0 payment for those with the lowest incomes; 3) tax-free loan forgiveness at the term's end and 4) easy enrollment and re-enrollment.

The importance of income-driven repayment plans that are truly affordable cannot be understated. The interplay of student loan payments and other life choices and responsibilities is well documented.[2] In fact, as we watch more and more Americans defer buying a home as they struggle to pay back their student debt, it is essential that we make repayment possible and affordable. This means adopting a base percentage that works in tandem with other vital rules and protections, such as the Qualified Mortgage Rule which ensures that mortgage-seekers have an ability to repay their mortgage by capping the debt-to-income ratio that they can take on.

Affordability also requires the continued availability of loan forgiveness. The ability to have debt forgiven after 20 years, or 10 under Public Service Loan Forgiveness, is essential to ensuring that borrowers are not subjected to a lifetime of debt. It also makes good fiscal sense. In fact, some borrowers on income driven plans will end up paying at least as much as borrowers on standard plans if not more.[3] Taxpayers still receive a return on their investment and as borrowers make their on-time payments and work to pay down their debt so they can also make financial plans for the future, plans that will contribute to the overall economy.

All loan forgiveness should also be tax-free. The requirement to pay taxes for those on income-driven plans undermines the central purpose of these plans: to make debt manageable. Payments are already based on income and a formula that ensures that the debt is not unduly burdensome for the borrower. An extra tax bill at the end of repayment will often require funds that participants do not have and thus subject them to paying even more for the debt they had already spent decades repaying. This committee should also explore the feasibility of automatic re-enrollment based on IRS data. Many borrowers suffer the burden of being automatically switched to a standard repayment plan should they be unable to properly re-certify each year. Such a process seems unnecessary if the data is available from another government entity to avoid it.

All of these reforms would also make the job of loan servicers easier. Most servicing is done through call centers with agents who are not well-versed in the many options for repayment. If the repayment options are streamlined, it is more likely that they will understand them and be better able to help borrowers enroll quickly and efficiently, without needless forbearance or deferment periods.

Increased and indexed low-income grant aid (Pell, TEACH, FSEOG)
Low-income grant aid (such as FSEOG, TEACH, and Pell Grants) also play a critical role in ensuring meaningful access to higher education. Nearly a third of college students receive Pell Grants as a form of financial aid. Without Pell Grants, a third of Americans, including 30 percent of Hispanics and 56 percent of the African Americans, would no longer be able to afford higher education. Pell Grants and other grants for low-income students reduce the financial barriers of pursuing higher education and ensure the diversity of America's educated workforce. Despite the significant importance of this aid, Congress has consistently failed to increase the maximum Pell award even as the cost of college has skyrocketed. The maximum Pell award remains at less than $6,000 per calendar year, despite the fact that the average cost of tuition for even state residents at a public college is close to $10,000 per year. This failure is not only unacceptable given the

purpose of the HEA, it is also economically indefensible. With higher Pell awards we can ensure that more students can attend college and graduate with significantly less debt, rather than large loan amounts that they will more than likely struggle to repay. This is a short-sighted view of the best way to invest taxpayer dollars in our higher education system. Under either structure, dollars get invested and never returned; however, with more grant aid, the likelihood that students provide returns through other means is exponentially higher.

With this understanding, the maximum award should be at least doubled in order to reflect the current cost of college and permanently indexed to inflation. Further, the allocations for Federal Supplemental Opportunity Grants and TEACH Grants should also be increased as they also enable low-income student to attend college without unduly burdensome debt. TEACH grants also ensure that low-income elementary and secondary schools have larger pools of qualified teachers from which to draw. Improving elementary and secondary education and ensuring that more students leave high school prepared for success in college translates to students graduating faster and with less debt. Further, 70 percent of students attending Historically Black Institutions (HBCUs) are Pell Grant eligible and nearly half of all students attending Hispanic-Serving Institutions (HSIs) also receive Pell Grants, low-income grant aid is essential for supporting minority serving institutions - institutions proven to provide resources for student success that other institutions cannot.

Increased aid for Title III and Title V Schools

As the American population becomes more diverse, Minority Serving institutions (MSIs) play an increasingly critical role in securing our economic future. By catering to underserved and disadvantaged communities, HSIs and HBCUs underscore opportunity as the capstone of American exceptionalism. Beyond the unique cultural value of these institutions, generally, HSIs and HBCUs are also more affordable than other schools. In 2013-2014, the average total cost of attendance at all HBCUs was 26 percent lower than the average total cost at all four-year non-profit colleges. As mentioned previously, these institutions are also more likely to educate significant populations of low-income students. This is a function of their unique value. Of equal significance, is the history of racial inequality in this country that is still evidenced today through the racial wealth and wage gaps. Because these institutions do more than their share to educate low-income students, they often struggle financially and should be better supported. Increasing both discretionary and mandatory aid to these institutions is essential to their survival and essential to providing meaningful access for all.

Strong accountability measures for predatory for-profit institutions

Any HEA reauthorization should also include important protections for borrowers and taxpayers as well as strong accountability mechanisms, particularly for the sector known for the worst abuses, the for-profit college industry. To do this, this Committee should include provisions for students to access debt relief when they are defrauded by their schools and metrics for career programs receiving Title IV funding.

Borrower Defense to Repayment

The Department of Education recently re-conducted a negotiated rulemaking on the borrower defense to repayment provision of the HEA. This committee was convened after the Department’s ill-advised delay of the properly proposed and finalized rule of 2016. As the Department has delayed action on this, over 90,000 claims have languished leaving borrowers stuck in limbo and unable to proceed with their lives. Many of these borrowers were students at the now defunct Corinthian Colleges whose predatory actions have been widely reported and documented. Borrowers and taxpayers deserve a better system and one that is less susceptible to political whims. CRL encourages this Committee to take this opportunity to include its own expansive protections in this reauthorization. In drafting this protection, the Committee should create a statute that includes, at minimum, provisions reflecting the following important characteristics:

- Be based on a broad, general standard of federal and state consumer protection law;
- Consider a broad range of evidence to show consumer protection violations;
- Provide for full relief wherever possible and not limit borrower recovery based on arbitrary statutes of limitations;
- Give heavy weight to actions by state attorneys general and federal consumer protection authorities;
- Provide cohort-based relief whenever possible;
- Give cohort members opt-out automatic relief, rather than requiring individual applications and showings of reliance or harm;
- Be applicable to all federal loans with no time limit – Direct, FFEL, and Perkins; and
- Provide mechanisms for the Department to recover funds from bad actors.

Gainful Employment

The Department also recently rescinded and delayed the important protections provided in the 2014 Gainful Employment Rule. This ill-advised decision can also be remedied by congressional action that will ensure that students have access to quality educational opportunities at an affordable price. We urge the committee to include language in the HEA that, at minimum, encompasses the following:

- Provide program-level accountability for all career training programs;
- Use both the debt-to-income measurement (DTI) of 8% and loan default rates of 35% as adequate measures of quality;
- Measure outcomes for all program participants, not just graduates;
- Limit enrollment in poorly performing programs until they improve;
- Provide financial relief to make whole students in programs that lose eligibility;
- Require clear and conspicuous disclosure of program failure; and
- Reward rather than burden low-cost programs where most graduates do not borrow.

Statutory requirements to ensure loan servicers meet basic consumer protection standards

Currently, Connecticut, California and the District of Columbia have taken important steps to extend consumer protections to their residents with student loans by enacting some form of compliance requirements for servicers operating in their state. Like the federal-state partnerships in many consumer areas, the ability of states to regulate servicers and protect their citizens is vital to ensuring that the student debt system is fair and effective. As regulators of student loan servicers, states can prohibit misrepresentations, payment misapplications, and false credit reports. They can prevent servicers from putting borrowers in default before guiding them to income-sensitive repayment plans, thus protecting many student borrowers from default and the resulting consequences. States can also enforce their consumer protection laws and protect their residents from servicers who violate the law (and have successfully done so in several states). Reauthorization of the HEA should include express provisions safeguarding these actions as well as future actions by state actors to regulate this industry.

Further, this Committee can provide more federal safeguards against abuse and harm. As the HEA directs the Department to carry out the Direct Loan program as necessary, it should also direct the Department to ensure that all servicing contracts adequately incentivize servicing that minimizes delinquency and default, prioritizes information and disclosure, and requires transparency and accessibility. Good servicing is often the difference between whether a borrower falls behind in repayment, and avoiding default should be one of this Committee's major concerns.

Conclusion

Reauthorization of the HEA offers this Committee the significant opportunity to change the trajectory of higher education in this country. With student debt at $1.4 trillion and counting, we are on the verge of another financial crisis. Rather than continue to add to this debt bill and sanction the continued growth of predatory institutions at the expense of taxpayers and students, we urge this Committee to take strong steps to re-invigorate the original promise of the HEA and afford all students a real opportunity to succeed and access the American dream.

Sincerely,

The Center for Responsible Lending

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[1] The Center for Responsible Lending is a non-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices, including student loan debt incurred as a result of fraudulent representations by higher learning institutions. CRL's views on student lending are informed by its affiliation with Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

[2] Jacob Passy, WHY MILLENIALS CAN'T BUY HOMES, MARKETWATCH, https://www.marketwatch.com/story/student-debt-is-delaying-millennial-homeownership-by-seven-years-2017-09-18 (published Oct. 30, 2017).

[3] Betsy Mayotte, INCOME-DRIVEN STUDENT LOAN REPAYMENT PLANS CAN COST MORE, U.S. NEWS & WORLD REPORT (2015), https://www.usnews.com/education/blogs/student-loan-ranger/2015/07/15/income-driven-student-loan-repayment-plans-can-cost-more (last visited Dec. 11, 2017).