



1307 New York Avenue, NW • Fifth Floor • Washington, DC 20005-4701
202.293.7070 • fax 202.296.5819 • aascu.org

March 5, 2009

The Honorable Arne Duncan, Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Secretary:

Thank you for taking the time to meet with heads of higher education associations on February 3, 2009. It was an informative and revealing meeting foreshadowing new thinking about your FY 10 proposed budget priorities as well as validating policies articulated by President Obama during the campaign. I mentioned two points in the meeting that reflect key policy priorities of the American Association of State Colleges and Universities (AASCU). Our 430 public four-year institutions and systems of higher education annually generate nearly 50 percent of the nation's baccalaureate degrees in education. We are very interested in working with you to improve teacher education. I have included with this letter our 2009 *Public Policy Agenda* illustrating a number of our relevant education policy goals that you may count on AASCU to help you promote in the FY 10 proposed budget. I will be available to meet with you and your staff to share ideas and develop projects that will assist you in realizing your goals for teacher education.

A second question I raised at the meeting cited the abysmal statistics regarding the number of borrowers who leave postsecondary institutions and are placed in default status under current law mainly due to the lack of knowledge about the repayment options that are available. I promised to send you a proposal from AASCU that fits very nicely with your FY 10 budget proposals for making all loans "direct" and places defaulted loans completely under the watchful eye of the U. S. Department of Education. Our proposal could be considered as complementary to the FY 10 budget proposals for restructuring of the student aid programs and might even add a dimension that could make the loan proposal more appealing. We support and applaud the President's student aid restructuring package, especially the provisions relating to moving the Pell Grant programs to the entitlement side of the budget.

Our proposal centers on a belief that, with the new income-related repayment plans, the federal loan programs are now able to move past "default" and into repayment plans that are less punitive. Students should be able to borrow now with the confidence that their federal student loan debt will be manageable after they leave postsecondary education.

Federal student loan borrowers are by definition "sub-prime" borrowers: they have no credit history and no co-signers, and many have minimal resources when they enter repayment. Annually

thousands of borrowers become “defaulters” under current law. Over 200,000 borrowers leaving postsecondary institutions and entering repayment in FY 06 were put into default status; of these, 50,000 had attended public four-year institutions.

Unfortunately many borrowers do not have access to information on the full array of repayment plans at the point when they discover that their incomes are not sufficient to meet their debt service. For these borrowers, “default” occurs after 270 days; penalties can increase rapidly and debt can accumulate dramatically. This is an operational as well as a policy problem that needs attention by the Executive Branch as well as the Congress.

Options -- We believe there are options that would enable us to do this well.

Loans entering repayment

We believe that ED should take a larger role in addressing loans that are past due but not yet in default. We propose that loans held by lenders that have been delinquent without a repayment stream acceptable under law to both the lender and the borrower for a set number of days, e.g., prior to the 270-day default trigger now in statute, should be assigned to the Department of Education. Currently, the Department only has authority to claim these loans once the Guaranty Agency (GA) pays the insurance on the loan to the lender which occur after a default claim. The Department could then intervene promptly to assist the borrower in selecting an option appropriate to the borrower’s financial circumstances. The ED could use the borrower’s IRS income data at this point to work out an appropriate repayment plan. Currently, ED uses this access to IRS income data only to take over any tax refund offset or EITC payments due to the borrower as payment on the loan. We believe that these payments should only be factored into the repayment plan for the borrower.

Loans already in default status

Current policy is an unnecessary hurdle for low-income borrowers. The only way borrowers in default on these loans now can exit default status and have access to the full range of repayment options is to “rehabilitate” the loan (requiring the [GA] to find a lender who will buy the loan), or to consolidate the defaulted FFEL loan into the Direct Loan program. Only then can they have access to Income Based Repayment (IBR), Income-Contingent Repayment (ICR), or the full range of other manageable repayment options.

Federal data indicate that most borrowers now classified as defaulters have low incomes after leaving college. Both rehabilitation and consolidation are overly complex procedures for exiting default status, which are often administered more strictly by the GAs than required by regulations. If the loans were assigned to ED, then payment arrangements with borrowers could be made that would be manageable in relationship with the borrower’s income. ED would use contractors to collect loans in accord with the revised goal. Congress or the ED can set up standards by which the default record is expunged without maintaining the cumbersome rehab process.

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The emphasis on this policy would be to assist lower-income individuals enter a repayment plan. Since loans are calculated in the cohort year for budget purposes, extending the number of years should not have any budgetary impact. Further, establishing fair treatment for defaulters would not handicap ED in collecting loans from borrowers with sufficient financial resources to repay. If borrowers in default have enough income to repay, but they elect not to pay according to their plan established with ED, ED has the authority to attach wages or sue in court.

Borrower rights

A borrower's rights should not disappear when a private collection agency holds his or her file. Under current policy, once files are sent to a collection agency, the borrower will no longer be able to postpone payments. Even borrowers that wish to repay or exercise other rights are often shut out because of problems with overly aggressive and often abusive collection agencies.

Federal loan collection policy should be modified to collect only what is due and manageable instead of adhering to a practice of declaring the entire loan to be due and payable. Such a change in policy would facilitate borrowers addressing their past due status and mitigate the accumulation of excessive collection charges and fees when collection agencies are able to assess penalty fees based on the entire loan rather than just the payments that are due. ED could contract with many groups, including collection agencies, to get delinquent and defaulted borrowers to understand the repayment plans available to them. However, it should not routinely hand problem loan portfolios off to these agencies.

Please do not hesitate to contact me after you have reviewed our ideas. We are very interested in being supportive of the Administration's FY 10 budget proposals for restructuring student aid and would welcome the opportunity to assist in any way.

Sincerely,



Edward M. Elmendorf
Senior Vice President
Government Relations and Policy Analysis

EME/rmj

Enclosure