AMERICAN COUNCIL ON EDUCATION

OFFICE OF THE PRESIDENT

September 9, 2010

Ms. Jessica Finkel
U.S. Department of Education
1990 K Street NW, Room 8031
Washington, DC 20006-8502

Dear Ms. Finkel:

On behalf of the undersigned higher education associations and accrediting bodies, I write to offer comments on the Notice of Proposed Rulemaking (NPRM) posted in the *Federal Register* on July 26, 2010, Docket ID-2010-OPE-0012.

I. Introduction

We commend Secretary Duncan for initiating a rulemaking process to safeguard the taxpayer investment in Title IV gainful employment programs and to ensure that these programs adequately benefit students. We are deeply concerned by the findings of recent Congressional hearings that students enrolling in some job training programs have later found themselves unemployable in their anticipated career fields and saddled with large student loan debts. Postsecondary education and job training programs should increase the employability and future earnings of students, not leave them worse off.

Congress, the American public and, most importantly, students enrolled in gainful employment programs must be assured that these programs provide value. Debt burdens accrued through enrollment in such programs should be manageable in light of earnings students can reasonably anticipate.

The Higher Education Act (HEA) distinguishes between postsecondary education programs designed to prepare students for a particular occupation and those that provide a broader education suited to a wide array of pursuits, including a variety of intellectual or creative endeavors, such as a liberal arts degree or professionally-oriented graduate or undergraduate degree. Historically, a broad-based postsecondary education is associated with a greater earning potential and enhanced versatility in lifetime employability. The department's NPRM recognizes this distinction and cites a U.S. Government Accountability Office finding that occupation-specific training programs that lacked a general education component made graduates less versatile and limited their

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opportunities for employment beyond their fields.[1] Moreover, data from the Department of Education's *Beginning Postsecondary Students* study show students enrolled in degree programs are much less likely to be attending for immediate employment prospects than their counterparts in vocational education and job-training programs.

As required by the HEA, the proposed gainful employment regulations do not apply to degree-granting programs at nonprofit or public institutions. We strongly support this distinction.

II. Scope of Regulation

Despite the exclusion of degree-granting programs at two- and four-year nonprofit and public institutions in the NPRM, the draft regulations will have a significant impact on these institutions. Of the approximately 53,000 programs subject to the proposed gainful employment regulations, more than 40,000 are at public and nonprofit schools. These programs include undergraduate certificate, post-baccalaureate certificate, and graduate and professional certificate programs in a wide variety of fields, even though programs at these institutions are generally characterized by low default rates and manageable debt burdens.

Given this, we have two specific recommendations to target more precisely the proposed rules to limit their impact on degree programs that are not subject to the gainful employment requirements.

- **The department should remove certificate programs that require an associate or bachelor's degree as a prerequisite for enrollment from the scope of the regulation.** These courses of study are distinguishable from occupation-specific training programs in that they typically are designed to serve as an extension or complement to a degree program, to refresh or update the education received from a degree program, or to provide additional specialized training to enhance a career. For example, department data from the *Baccalaureate and Beyond* survey show that among students in post-baccalaureate programs, only 14 percent indicate their reason for enrolling was to make themselves more marketable or earn more money. In fact, the most common reason for enrollment given by post-baccalaureate certificate students was career advancement, suggesting again that these individuals have already embarked on a career path. We recommend modifications to the department's regulations in sections 600.4, 668.8, and any other sections necessary to exclude certificate programs that require a degree for enrollment.

- **The department should also remove certificate programs that are fully accepted for credit as an integrated part of a degree program from the scope of the regulation.** Many certificate programs are closely connected to a degree program and as such, some students earn certificates, often automatically, while pursuing degrees. This type of integrated structure frequently occurs in the technology and health fields

[1] See "Proprietary Schools: Millions Spent to Train Students for Oversupplied Occupations," GAO\HEHS-97-104.

and is common at community colleges as well as other public and nonprofit institutions. Since these certificates are fully embedded within degree programs, the department should recognize the broad educational nature of these endeavors and decline to regulate them further.

III. Implementation Hurdles

The proposed regulation is extremely complex and will be difficult to implement. We are deeply concerned about several implementation challenges raised by the NPRM and we provide recommendations below to resolve them.

First, we are troubled by the absence of data needed to model or simulate the department's proposal. The department has not provided a comprehensive list of all gainful employment programs that would be subject to this regulation. Data on loan repayment for individual programs are not available, adding to a lack of clarity about the regulations' potential impact. The department has attempted to estimate the impact of its new debt-to-income ratio using income data available from a single state, Missouri. While the department claims the Missouri data are "broadly representative," it has not outlined the basis for this conclusion. Nor is it clear where the student income data will come from, even though it is clear that appeals of the information will not be accepted.

Second, we are concerned the NPRM would impose new rules retroactively on gainful employment programs. It is not clear institutions will be able to locate data going back to 2007, and it is not fair to make them responsible for a rule that did not exist and cannot be modeled. The retroactive imposition is made far worse because, unlike the cohort default regulations, it does not include an appeals process to allow schools to challenge inaccurate data. We recommend the department reconsider the retroactive nature of its data collection and create an interim system to allow a limited appeal process that permits institutions to challenge inaccurate data.

Third, the use of Classification of Instructional Programs (CIP) codes for the institutional reporting of gainful employment programs raises questions the department should resolve before proceeding. Under section 668.7(a)(3), the secretary will establish procedures to collect the CIP code for each student who attended a gainful employment program within a specified timeframe. We do not believe the CIP code format is sufficiently granular to adequately distinguish among programs, and we do not think the department's limited experience with CIP codes in the context of the TEACH and SMART grant programs is a reliable indicator of its application to this process.

For example, there will be cases where two or more gainful employment programs at an institution share the same CIP code. This could be a common outcome in the context of new and emerging health fields where multiple programs might be designated in the "general" or "other" subcategories. The likelihood this will occur will increase given the infrequency of CIP code updates. Because the department does not plan to update the codes again until 2020, they will rapidly become obsolete even though they will remain part of a high-stakes assessment. Given the importance of CIP codes to this process, we believe they should be updated more frequently.

Fourth, we are concerned about how required CIP code data would be transmitted to the department. We assume this data would become an additional element to be submitted through the Common Origination and Disbursement system, but since this has not been specified in the NPRM, we request clarification in the final rule.

Finally, some data elements specified in the June 18 NPRM are not necessary to calculate the proposed ratios and conflict with existing definitions. These should be eliminated. In particular, there is no need to create a new "on-time" graduation rate, and we strongly oppose requiring institutions to provide a placement rate except under the circumstances specified in our Aug. 2 comment letter. We refer you more generally to the comments in our Aug. 2 letter regarding other new data the department proposes to collect.

IV. Specific NPRM Recommendations

A. Section 668.7(a)

While the department plans to separate programs that are required to submit gainful employment data from those that are not, the data we cited earlier make clear that a significant number of nonprofit and public institutions will be affected. In many cases, these programs do not have the characteristics that would warrant subjecting them to the gainful employment regulations. For example, many of these institutions have an exceedingly low percentage of borrowers and/or low default rates. Others may offer only a handful of occupationally oriented programs. While these programs can be found at all types of institutions, a particularly large number will be found at community colleges.

By way example, students attending community colleges account for less than 13 percent of all federal loans even though they represent 40 percent of the total student population. In fact, the most recent department data show that only 5 percent of community college students in certificate programs take out federal loans to finance their education, and for those who do, the average debt is only $3,600. Overall, Title IV accounts for less than 10 percent of community college revenues and a strong public accountability framework ensures their programs are closely aligned with local needs.

Similarly, many other public and private nonprofit colleges have a modest number of gainful employment programs which are an outgrowth of, and benefit from, the larger infrastructure of established degree-granting programs. Students in these programs often gain credentials as part of an educational pathway to a degree, and such programs are unlikely to lack the educational and student supports that characterized many of the problematic programs at career schools highlighted in recent investigations.

We recommend the addition of two mechanisms to balance oversight of gainful employment programs while limiting the regulatory burden on institutions that pose little risk. Our recommendations would more precisely focus the gainful employment regulations on the department's stated concerns about excessive student indebtedness.

1. Percentage of Credentials Awarded in Gainful Employment Programs

The department should exempt from the gainful employment regulatory framework institutions where only a small percentage of the total credentials are awarded in gainful employment programs.[2] Specifically, we propose that only institutions with more than 5 percent of their total credentials in gainful employment programs be subject to the department's two-part eligibility test. The department already has completion data from the Integrated Postsecondary Education Data System in its possession that would allow it to calculate this.

This screening mechanism will exempt institutions that are only minimally engaged in offering gainful employment programs. Such institutions are very likely to offer these programs as outgrowths of other courses of study that have a much broader, non-occupational focus. In addition, these institutions have no profit incentive to expand such offerings.

2. Percentage of Federal Borrowers in Gainful Employment Programs

We recommend that in cases where less than 35 percent of a gainful employment program's enrolled students take out federal loans, the program be exempt from further regulation.[3] In cases where only a small percentage of students borrow, the institution's programs are highly unlikely to fail the department's two-part test. Our recommendation would save institutions and the department from costly regulatory compliance and allow the agency to concentrate on those programs that are a higher risk to students and taxpayers. Presumably, the department can identify these programs based on data that will be submitted under the June 18 NPRM.

The inclusion of this recommendation would encourage institutions to offer programs that do not entail significant indebtedness, thereby serving one of the primary purposes of the NPRM. Loans that do not need to be taken out by students are even better than loans repaid.

B. Section 668.7(e)

Under section 668.7(e), programs on restricted status would provide the department with documentation from employers affirming the curriculum aligns with recognized occupations at the employer's business and there is expected demand for those occupations. Such employer affirmations could be easily manipulated by unscrupulous schools and would be impossible to verify. We believe the proposal would be strengthened by removing the employer-affirmation language.[4]

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[2] As used in this context, the phrase "total credentials" would include the total number of degrees and the total number of certificates awarded.

[3] Because the proposed regulation cannot be modeled, we have recommended a 35 percent threshold to mirror the lower limit of the Department's loan repayment rate calculation.

[4] We have the same concerns about the employer affirmations called for in 668.7(g) as part of the proposed application for approval of additional programs and similarly call for their elimination.

Under this section, programs placed on "restricted" status would also be subject to enrollment limits. Specifically, section 668.7(e)(3) permits the secretary to limit the enrollment of Title IV HEA program recipients to the average number enrolled during the prior three award years. Given the rapid enrollment increases in many gainful employment programs, we are concerned that enrollment levels during the prior three award years may not reflect historic norms. As such, a baseline incorporating these years of extraordinary growth might not provide an effective limitation. We recommend modifying the language in 668.7(e)(3) to allow the department to place stricter limitations on programs placed on restricted status in the next few years.

C. Section 668.7(f)

Under section 668.7(f), a program that fails the Department's two-part test for gainful employment will be made ineligible for Title IV funds. We recognize the penalty applies to programs but are concerned about the continued harm to students who took out loans to attend these low-performing programs and who may take out more loans to continue attending them in the coming two years as allowed by the regulation. We ask the secretary to consider remedies for students who have enrolled in these programs, such as discharging loans.

D. Section 668.7(g)

Under section 668.7(g), the department proposes to establish new criteria for granting Title IV eligibility to new programs that prepare students for gainful employment. We have serious concerns with this provision and urge that it be altered. The proposal would impose an extremely bureaucratic approval process, place a high burden of proof on institutions, and hamper the ability of colleges to respond to new and emerging workforce needs. Perhaps most importantly, for most schools offering gainful employment programs, the proposal is redundant with institutional procedures already in place. The current authority to add programs as outlined in Section 600.10(c) is appropriate for most institutions.

In addition, we are unclear about the effect of proposals under section 668.7(g) regarding a change to the current approval process for new gainful employment programs. At issue is the impact of overriding the exception for the programs contained in section 600.10(c)(2). This section exempts from secretarial approval any program that prepares students for gainful employment in the same or related occupation as an already approved program at the same institution. Our objections to this section of the regulation would be diminished, but not eliminated, if the current exception were retained. In any case, the final rule should clarify this issue.

If the department wishes to increase its oversight of new gainful employment programs at schools they suspect of delivering low-quality programs, we recommend the expanded approval process apply only in cases where there is a record of poor

performance sufficient to justify the additional oversight. This could be revealed through the tests required under this regulation, program reviews or other available data.

Thank you for your attention to these views.

Sincerely,

Molly Corbett Broad
President

MCB/ldw

On behalf of:

Higher Education Associations
ACPA – College Student Educators International
American Association of Colleges of Pharmacy
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of University Professors
American Council on Education
American Dental Education Association
APPA: Leadership in Educational Facilities
Association of American Medical Colleges
Association of American Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
Hispanic Association of Colleges and Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
The Association of Schools of Public Health
UNCF
University Professional & Continuing Education Association

Accreditation Organizations

Accreditation Council for Pharmacy Education
Accreditation Review Commission on Education for the Physician Assistant
American Board of Funeral Service Education
American Council for Construction Education
American Dental Association Commission on Dental Accreditation
American Occupational Therapy Association
American Psychological Association
Association of Specialized and Professional Accreditors
Commission on Accreditation of Allied Health Education Programs
Commission on Collegiate Nursing Education
Commission on English Language Program Accreditation
Council of Arts Accrediting Associations, including:
- National Association of Schools of Art and Design
- National Association of Schools of Dance
- National Association of Schools of Music
- National Association of Schools of Theatre

Council on Education for Public Health
Council on Social Work Education
Montessori Accreditation Council for Teacher Education
New England Association of Schools and Colleges, Commission on Institutions of Higher Education
Southern Association of Colleges and Schools Commission on Colleges
The American Board for Accreditation in Psychoanalysis, Inc.
The Commission on Accreditation for Marriage and Family Therapy Education
The Council for Accreditation of Counseling and Related Educational Programs
The Middle States Commission on Higher Education
The National League for Nursing Accrediting Commission
Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities