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May 27, 2014

Ashley Higgins
U.S. Department of Education
1990 K Street N.W.
Room 8037
Washington, DC 20006-8502

Dear Ms. Higgins:

On behalf of the higher education associations listed below, I write to offer comments on the Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on March 25, 2014, Docket ID: ED-2014-OPE-0039.

Our associations and member institutions are strongly supportive of gainful employment (GE) regulations that would exclude from Title IV federal financial aid eligibility those programs that fail to serve their students well, regardless of where such GE programs are offered. Identifying and eliminating such programs from eligibility is legally required under Sections 101 and 102 of the Higher Education Act and is clearly in the interest of students and the federal government.

The second round of GE negotiated rulemaking was seen by our members as an opportunity for the Department of Education to clearly define reasonable goals and achieve them through smart regulations that focus oversight resources and enforcement authority where problems are occurring or are likely to occur. By those standards, we believe the proposed rule falls short.

Instead of risk-based regulations focused on areas of possible abuse, excessive layers of reporting and disclosure burdens have been added for all GE institutions. We concur with the department's goals of providing select data to help potential students make prudent decisions about which higher education programs to pursue, and assuring those students a valuable educational experience. We are concerned, however that these specific proposed regulations, which come at a substantial cost and burden, will not achieve those ends. Most unfortunately, the largest portion of the regulations' cost burden will be felt most strongly at institutions, including community colleges, with the fewest resources to accommodate them. The additional cost might be worth bearing if it were adequately offset by commensurate improvements to the Title IV system. But this is not the case.

We believe that gainful employment regulations should prevent students from enrolling in programs that do not serve most of them well and have minimal impact on those institutions who are operating in good faith and to the benefit of their students. To that end, we think this current proposal should be both modified and strengthened. We have identified the following areas of concern with the proposed rule below and include several recommendations on how to strengthen it.

First, the substance of the proposed metrics is too weak to be effective against underperforming programs. Programs with extremely high borrowing rates and loan volumes—precisely the ones the department should be most concerned about—are provided multiple means of manipulating the metrics to navigate their safeguards. In particular, the regulation allows for the shifting of debt to non-completers, periodic tuition discounts to generate better outcomes for just one year, and the application of institutional "default management" techniques to program cohorts (intended solely to push inevitable defaults out of the three-year cohort default window). All of these practices could easily undermine the regulation's intent.

Second, the regulations as designed are not well-targeted and provide no reasonable safe harbors for good actors within the system. A fundamental tenet of prudent oversight and enforcement is to focus attention on programs and institutions where the risks are highest. Needlessly requiring low-risk programs to navigate this complicated compliance regime will overwhelm them and even the department for no obvious gain. This is particularly the case with community colleges, which provide by far the largest number of GE programs while presenting little risk to students or the taxpayer by virtue of their low costs and relatively low borrowing incidence.

It is to the benefit of the department and the public that commonsense filters meaningfully screen those institutions working in the best interests of their students from being subject to costly and unnecessary regulatory and reporting requirements. Therefore, we strongly urge the department to consider safe harbors that would exempt those institutions demonstrably serving their students well from these regulations. We offer four such safe harbors proposed by several participants during the negotiated rulemaking sessions:

- Define a program that has a median loan debt of zero, or where less than 50 percent of credit students borrow, as automatically passing all debt metrics.
- Exempt an institution from reporting requirements for any program where less than 50 percent of the program's credit students took out federal loans for the two most recent academic years.
- Exempt an institution from reporting requirements for any program where the number of Title IV-aided students who completed the program was 20 or fewer over the last two academic years.
- Exempt from the reporting requirements any institution where the default rate falls below a reasonable threshold as determined by the department for two straight years.

In order to provide consistency to the reporting requirements and avoid the confusion of year-to-year determinations, we believe that once a program exceeds a given threshold for two years, reporting the related regulatory structure should apply for a minimum period of two years.

Third, it is our belief that the statute as written requires a front-end gatekeeping mechanism for gainful employment. The NPRM instead relies on a post facto determination based on the real-world consequences of gainful employment programs on multiple cohorts of students, whose debt-to-earnings, debt-to-discretionary earnings and default outcomes it uses to identify underperforming programs after they have already produced several years of subpar outcomes. This interpretation of the statute will necessarily result in students continuing to be placed at risk of enrollment in underperforming programs. The consequences of this approach are significant, particularly since the NPRM fails to provide any relief to victims, as was included in earlier drafts.

Finally, the regulation's disclosure scheme, undergirded by elaborate and costly reporting requirements, is far too extensive and complicated to be of meaningful use to prospective students. The proposed regulations require 16 categories of disclosures with 36 separate data elements. Collectively, they are mind-numbing:

Program Information:

- 6-digit Department of Education Classification of Instructional Program (CIP) Code
- Institution's name for the program, if different from CIP
- Credential level
- Department of Labor Standard Occupational Classification (SOC) Code(s)
- Name of occupation(s) for which program prepares students to enter
- Links to occupational profiles on O*Net

Program completion rate for:

- Full-time students
- Less-than-full-time students

Program withdrawal rate

Length of the program in calendar time (weeks, months, years)

Number of clock or credit hours, as applicable, in the program

Total number of individuals enrolled during most recent completed award year

Loan repayment rate for students who entered repayment on Title IV loans during the two-year cohort period as calculated by the Secretary, broken down by:

- All students who enrolled in the program
- Students who completed the program
- Students who withdrew from the program

Total tuition and fees

Total cost of books, supplies, and equipment that a student would incur for completing the program

Placement rate for program, if institution is required by its accrediting agency or state to calculate a placement rate

Percent of individuals enrolled in program during the most recently completed award year who incurred debt for enrollment in the program

Median loan rate for any one or all of the following groups of Title IV program borrowers:

- Those students who completed the program during the most recent completed award year
- Those students who withdrew from the program during the most recent completed award year
- All of the students described above

Median earnings as provided by the Secretary of any one or all of the following groups of students

- Students who completed the program during the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program

Students who withdrew from the program during the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program

Cohort Default Rate (CDR) as calculated by the Secretary

Annual earnings rate as calculated by the Secretary

With respect to the occupations for which the program prepares students as disclosed, whether completion of the program satisfies any applicable educational prerequisites for professional licensure in the state in which the institution is located and in any other state included in its Metropolitan Statistical Area

Whether the program holds the programmatic accreditation necessary for an individual to obtain employment in the occupation for which it prepares the student

The value of this extraordinary range of disclosures to prospective students is highly dubious, particularly as different disclosures apply to different groupings of students. Some disclosures apply to all Title IV recipients; some to just Title-IV recipients who completed programs; some to just federal loan borrowers; and others just to those borrowers who entered repayment in a specific time period. This will inevitably lead to confusion for students as they try to sort through this mass of data and determine which elements are relevant to them.

Compounding this confusion is the requirement that all students must sign a form acknowledging that they have received the disclosures before enrolling. This requirement will complicate students' planning and will pose enormous compliance challenges for institutions. A few basic performance disclosures focusing on average debt, completion rates, and earnings are much more appropriate and useful.

While we strongly share the department's goal of protecting students and better serving taxpayers, the regulations need substantial revision along the lines we have proposed in order to meet those aims. It will not benefit students, policymakers, or institutions to produce confusing and misleading data at great cost to all institutions with gainful employment programs while not adequately addressing the real problem of underperforming programs that represent a real risk to students.

Thank you for the opportunity to comment on this NPRM, and we appreciate your attention to these comments.

Sincerely,

Molly C. Broad

Molly Corbett Broad
President

MCB/ldw

On behalf of:

ACPA - College Student Educators International
American Association of Collegiate Registrars and Admissions Officers
American Association of Colleges of Nursing
American Association of Colleges for Teacher Education
American Association of Community Colleges

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American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Advancement and Support of Education
Council for Christian Colleges and Universities
Council of Independent Colleges
College and University Professional Association for Human Resources
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National Association of Independent Colleges and Universities
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