



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

MAR 31 2011

Michael D. Hays  
Jonathon C. Glass  
Dow Lohnes  
1200 New Hampshire Avenue, NW Suite 800  
Washington, DC 20036-6802

Dear Messrs. Hays and Glass:

This letter responds to your February 1, 2011 "Request for Correction of Gainful Employment NPRM (75 Fed. Reg. 43616, July 26, 2010) for Failure to Comply with the Data Quality Act Guidelines," (RFC) submitted on behalf of the Association of Proprietary Colleges (APC).

The Department of Education (Department) is committed to ensuring that the information it disseminates and uses for policymaking purposes is useful, objective, secure, and, when required, reproducible. In 2002, in response to the Information Quality Act (IQA), the Department adopted its Information Quality Guidelines (IQG) to describe the Department's policies and procedures for reviewing and verifying the quality of information disseminated to the public. The IQG were developed in conformance with the Office of Management and Budget's (OMB) published guidelines and were approved by OMB. The Department used processes that comply with the IQA and the IQG in developing its proposed rule on gainful employment.

The IQG places the burden of proof in seeking a correction of information on the requesting party.<sup>1</sup> In addition, the IQG requires:

- A detailed description of the information that the requester believes does not comply with the Department's or OMB's guidelines, including the exact name of the data collection or report, the disseminating office and author, if known, and a description of the specific item in question;
- Potential impacts on the requester from the information identified for correction (*i.e.*, describe the requester's interest in the information and how the requester is affected by the information in question); and
- An explanation of the reason(s) that the information should be corrected (*i.e.*, describe clearly and specifically the elements of the information quality guidelines that were not followed).

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<sup>1</sup> <http://www2.ed.gov/policy/gen/guid/iq/iqg.html>

The IQG limit our substantive response to issues covered by the IQA. Based on our review of the RFC, we have determined that, with the few exceptions described below, issues raised in the RFC were not data quality issues, but rather comments on the proposed regulation, its structure and design, and its use of data that APC prefers the Department not use in favor of other data APC prefers.

The IQG provide the following process for comments about information on which the Department has sought public comment:

Comments about information on which the Department has sought public comment, such as rulemaking or studies cited in a rulemaking, will be responded to through the public comment process, or through an individual response if there was no published process for responding to all comments. The Department may choose to provide an earlier response, if doing so is appropriate, and will not delay issuance of the final action in the matter.<sup>2</sup>

Based on these guidelines and the substance of the RFC, the Department, with the exceptions noted below, considers the RFC as comments on the proposed rule. In all its rulemaking, the Department does not consider comments submitted after the close of the comment period, in this case September 9, 2010. However, we note that many of the comments made in the RFC are the same or substantially similar to comments received during the public comment period and the Department will respond to those comments through its regular process. The Department further notes that the substantive exhibits relied upon in the RFC, with the exception of one (Exhibit 14), were all received during the public comment period.

In addition to treating the issues in the RFC as comments, the Department notes APC's requests made in paragraph 126 of the RFC:

- A. Withdraw the gainful employment Proposed Regulation pending further study in conformance with the Quality Guidelines;
- B. Convene a group of outside experts, including economists and statisticians as well as representatives of institutions, to study the possible effects of the Proposed Regulation; and
- C. Convene a group of outside experts to examine alternatives to the Proposed Regulation (including the comparative benefits of expanded disclosures rather than increased eligibility standards) to accomplish the Department's stated goal to improve postsecondary education.

Consistent with our goal of openness and transparency in our rulemaking processes, we offer the following information in order to help explain the process the Department has engaged in prior to and throughout the development of the NPRM and the final regulations.

The Department began its negotiated rulemaking process that led to the NPRM published on July 26, 2010 nearly two years ago. On May 26, 2009, the Department published a notice in the Federal

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<sup>2</sup> Ibid.

Register announcing its intention to convene a committee to develop proposed regulations to improve program integrity in the Title IV, HEA programs. That notice listed "gainful employment in a recognized occupation" as one of the issues to be considered. The notice also announced three public hearings which were held in Denver, CO, Little Rock, AR, and Philadelphia, PA in June 2009.

After a thorough review of all public comments presented at the three public hearings and the more than 200 written submissions received, the Department published a notice on September 9, 2009 announcing the specific subject areas for which we intended to establish negotiated rulemaking committees and requested nominations for individual negotiators for those committees.

The Department then began the public rulemaking negotiations in November 2009 and concluded those sessions in January 2010. Following the publication of the NPRM on July 26, 2010, the Department received more than 90,000 public comments including those items submitted as Exhibits 1, 7, 9, and 12 to the RFC. In addition, the Department took the extra step of conducting two days of additional public hearings in November 2010, to ensure full engagement with the public including experts, institutions, associations, and students. We also invited over 50 entities to meet with Department officials in an effort to understand fully their comments and suggestions on the proposed rules.<sup>3</sup> Among those attending the meetings were Anthony Carnevale from the Center for Education and the Workforce, Jonathan Guryan from Northwestern University, and Mark Kantrowitz, the latter two authors of comments submitted in the RFC. In addition to this public engagement, the Department consulted with other agencies in the federal government, including statisticians from the National Center for Education Statistics (NCES) and the Bureau of Labor Statistics, as well as economists at the President's Council of Economic Advisers and OMB.

In light of these consultations with other government agencies and extensive public engagement over nearly two years, the Department believes it has heard from stakeholders and has sought knowledge from experts, economists, and statisticians regarding the possible effects of the proposed rule. We believe these discussions will be reflected in the final regulation and the explanations provided in the preamble to the final regulation.

The comments received by the Department and reiterated in the meetings described provided suggested alternatives to the proposed rule, including the alternatives outlined in the comments that were included in the RFC. The Department does not believe that convening another group to consider alternatives would add to or improve the substantial body of information that has already been placed before the Department as part of the rulemaking process. Finally, the Department does not believe it needs to withdraw its proposed regulations to address data quality issues based on the responses shown below to the data quality issues raised by APC.

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<sup>3</sup> <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html>

## **Specific data quality issues raised in the RFC**

### **1. Influential Information**

APC asserts in the RFC that the Department did not subject the methodologies supporting the NPRM to peer review. Peer review of methodologies is a matter of data quality when the data is “influential information” within the meaning of the IQG. The IQG discusses the type of information the Department views as “influential”:

Individual programs within the Department of Education may designate certain classes of scientific, financial, and statistical information as influential.

For example, institutional data on the total number of student borrowers who enter repayment on Stafford loans during a specific fiscal year, and related data on the subset of students who default before the end of the next fiscal year are used in the calculation of cohort loan default rates of Stafford loan borrowers at each postsecondary institution. These default rates are compared to established thresholds for high and low default rates, resulting in sanctions for institutions with high default rates and reduced administrative burden for institutions with low default rates. Given this use, these data and the calculations used in computing the rates and in setting the thresholds are influential.

In drafting the proposed rule, the Department employed ratios and formulas for measuring whether an institution receiving Title IV funds provides, as required under the Higher Education Act of 1965 (HEA), “gainful employment in a recognized occupation.” The formulas and methodologies used in the NPRM create a new set of metrics. The data derived from these metrics will be influential information, while the development of the metrics is subject to public comment through the rulemaking process. The process and information relied on in developing these metrics were described above and in the NPRM. In challenging our lack of peer review, the RFC references some of the same experts the Department turned to in considering options for the metrics.

Analysts in the Department and economists from the President’s Council of Economic Advisers and OMB reviewed the analysis underlying the rules and the thresholds proposed in the NPRM. We also received and reviewed analyses performed by a variety of independent experts as part of the comments submitted on the NPRM. The Department’s response to these analyses will be presented in the final rule.

We believe the proposed rule received heightened and appropriate scrutiny by many experts in the government and the public. As such, the requirements of the law and the policies of the Department have been satisfied.

### **2. The Missouri Longitudinal Data**

The RFC asserts that the Missouri Data Set is not representative of data for the Nation. The RFC appended, as Exhibit 14, a document from Mark Kantrowitz discussing the use of the Missouri Data

Set. As additional background, the Department is providing the following information about the Missouri Data Set.

While developing the proposed rule, the Department turned to NCES's Postsecondary Studies Division to help identify relevant State data. In May 2010, NCES was aware that the State Higher Education Executive Officers (SHEEO) was executing a major national study of State postsecondary data systems.<sup>4</sup> Though the study had not been published at that time, NCES made inquiries of SHEEO to help the Department identify State data systems that met the following criteria: (a) the data system contains information about program completers and exiters who attended both public and for-profit institutions; (b) the postsecondary data are linked to the State's unemployment insurance (UI) records; and (c) the State educational data contain information about borrowing. These three criteria were essential to generating a data set that could identify the program in which students had been enrolled (Classification of Instructional Program code and degree award level), institutional control (public and for-profit), status upon exiting (completion), post-school wages (from UI data), and cumulative federal borrowing.

NCES and SHEEO data systems experts reviewed three State data systems that were potential candidates for the analysis in the NPRM, and determined that the Missouri Data Set best met conditions (a) and (b) because only the Missouri Data Set could comprehensively link UI data to cohorts of students exiting from for-profit institutions as well as public institutions. (Condition (c) was later determined to be unnecessary because further analysis led the Department to conclude that borrowing data would best be obtained from NSLDS.)

The Missouri Department of Higher Education then worked closely with NCES and Federal Student Aid staff to identify the structure of the linked completion/wage data and key data definitions, and to create a merged completion/wage/cumulative loan file. To document the characteristics of the matched Missouri/NSLDS data set and fully alert data users to the characteristics and limitations of the matched Missouri/NSLDS data set, a technical note was developed in collaboration with the Missouri Department of Higher Education and the Department.<sup>5</sup> The link to this analysis was provided in the NPRM, and a copy of the analysis is attached for your convenience. (See 75 Fed. Reg. 43668-9.) At the time the NPRM was published, the Missouri Data Set was the best State database available for testing the potential effects of the proposed regulations. We believe these data support the analyses in the NPRM.

### 3. Repayment rate data

The RFC challenged the calculation of the repayment rate information the Department made available during the public comment period following the publication of the NPRM. The development of the program to extract the numbers produced for each repayment rate analysis run from the National Student Loan Data System (NSLDS) was based on requirements and clarification received from the Department analysts requesting the data.

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<sup>4</sup> [http://www.sheeo.org/sspds/StrongFoundations\\_Full.pdf](http://www.sheeo.org/sspds/StrongFoundations_Full.pdf)

<sup>5</sup> <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/ge-analysis-missouri.pdf>

NSLDS is an information system that integrates processes and stores data about federal financial aid disbursed to students under Title IV of the HEA. NSLDS contains information about loans, grants, students, lenders, lender servicers, guaranty agencies, and Federal Loan Servicers. Data are provided as frequently as daily from guaranty agencies, schools, Federal Loan Servicers, and internal Department systems.

The Department continuously monitors the data stored in NSLDS to assure quality, timeliness, and accuracy. This monitoring includes program reviews, independent and Inspector General audits, reviews by lenders and loan servicers, and other analyses that measure trends and reasonability. The NSLDS Operations and Maintenance contract also has numerous data quality safeguards, including a Data Integrity Group of subject matter experts that provides support and regularly advises on data providers' compliance with data quality requirements. Additionally, on a quarterly basis, NSLDS performs comprehensive data quality tests of its more than 6 billion records. The data quality exceeded 99.44 percent in the most recent scan of NSLDS. A comprehensive data review of NSLDS is done by the Department and its contractor to ensure that the data in the analyses are an accurate reflection of the data from the NSLDS and that the data in the report meet the requirements of the requested analysis.

The results produced from the repayment rate analysis were based upon NSLDS data, and the logic used to produce the results was used in concert with data from the Integrated Postsecondary Education Data System (IPEDS), which allows information to be aggregated by institutions of higher education. IPEDS is managed by NCES, located within the Department's Institute of Education Sciences. As a federal statistical agency, the work of NCES is governed by rigorous statistical and data quality control standards, and its data products and reports are subject to expert internal review.

Based on the foregoing information, the Department is confident that the NSLDS data used in the analyses meet the IQA requirements, and that its analyses are valid and reliable.

### **Appeal**

If you are not satisfied with this response you may file an appeal within thirty (30) calendar days of receipt of this response. As the Department intends to respond to the issues raised in the RFC as comments on the proposed regulation, you may also submit a new RFC following the publication of the final regulations on gainful employment. If you choose to submit an appeal, you must include a copy of the initial request, a copy of this decision, and a letter explaining why you believe the Department's decision was inadequate, incomplete, or in error. The appeal may be sent to:

Principal Deputy Assistant Secretary  
Office of Management  
U.S. Department of Education  
RE: Information Quality Request  
Room 2W311, LBJ  
400 Maryland Avenue, SW  
Washington, DC 20202

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Alternatively, you may e-mail an appeal to the following address:  
[OMInformationQualityRequests@ed.gov](mailto:OMInformationQualityRequests@ed.gov). If sending by e-mail, please indicate that you are submitting an Information Quality Appeal in the subject line of the e-mail and include all information specified for an appeal submitted by regular mail.

The APC letter accompanying the correction request was sent to Secretary Duncan, Mr. Robert Gordon, and Assistant Secretary Ochoa and copied to members of Congress. We will send a separate communication to those individuals with a link to this response, which will be posted on our information quality website.

Thank you for your interest in the Department's information quality. If you have questions, please feel free to contact me at 202-260-8915.

Sincerely,



Angela Arrington  
Director  
Regulatory Information Management Services

cc: Mr. Robert Gordon, Associate Director OMB  
Dr. Eduardo M. Ochoa, Assistant Secretary