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February 1, 2011

Via Hand Delivery and Email

Eduardo M. Ochoa
Assistant Secretary for Postsecondary Education
United States Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

Re: Request for Correction of Gainful Employment NPRM (75 Fed. Reg. 43616, July 26, 2010) For Failure To Comply with Data Quality Act Guidelines.

Dear Assistant Secretary Ochoa:

I am the President of the Association of Proprietary Colleges ("APC"). I am enclosing herewith a request for correction of the gainful employment NPRM[1] based on a failure to comply with the Department's Data Quality Act guidelines ("Information Quality Guidelines"), and a transmittal letter we sent to Secretary Duncan and the Office of Management and Budget regarding the same. As you may be aware, Chairman Kline and Chairwoman Foxx of the House Committee on Education and the Workforce also issued a letter dated January 31, 2011 (which I am including with this letter), seeking information regarding the Department's compliance with the Information Quality Guidelines.

As an economist, I believe that you will find that the enclosed materials, including numerous reports of well-respected economists, conclusively establish that you, other leaders in the Department, and the public have been seriously misled by the rationale and data used in the NPRM. This letter is my formal request that you agree to a meeting with the economists who have studied these issues (and whose reports are submitted with the attached materials) to discuss these issues in a constructive manner.

[1] Notice of Proposed Rulemaking, 75 Fed. Reg. 43616, et seq. (July 26, 2010).

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Simply put, the NPRM's methodology violates these Information Quality Guidelines, does not measure program quality, is harmful to students and particularly disadvantaged students, ignores the shocking macro-economic effects the proposed regulation would cause, and is economically irrational.

I offer three examples of the numerous flaws in the NPRM detailed in the attached materials. First, the NPRM's authors ignored the fact that the proposed regulation really penalizes institutions not for poor program quality, but for educating disadvantaged students. Indeed, Mark Kantrowitz, whom the NPRM itself cites, has found that there is a very strong inverse correlation between the percentage enrollment of Pell Grant recipients at a college and the college's loan repayment rate under the NPRM's formula, regardless of the type of college:

> [T]he average loan repayment rate is 66% at colleges where less than a tenth of the students receive Pell Grants, compared with 26% at colleges where more than two-thirds of the students receive Pell Grants…*[I]nstitutions with 40% or more Pell Grant recipients are unlikely to satisfy the 45% loan repayment rate threshold.*[2]

Second, the NPRM ignores the shocking macro-economic effects of the proposed regulation. According to reports submitted by well-respected economists and as detailed in the attached Information Quality Guidelines Correction Request, the proposed regulation would, if enacted, under conservative estimates, pose the grave risk of:

- **causing from 1.775 to 2.6 million students to discontinue or not receive additional education over the next 10 years;**[3]
- **depriving students of the additional income they would have earned from this additional education, which according to Census Bureau statistics for associate degree graduates is approximately $400,000 per student;**[4]
- **costing students (principally those with low income) who would have attended an institution of higher education in the next ten years but for the proposed regulation between $198 billion and $291 billion in lost income;**[5]

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[2] Mark Kantrowitz, *The Impact of Loan Repayment Rates on Pell Grant Recipients*, at page 1-2 (2010) (emphasis added).

[3] Professor Jonathan Guryan and Dr. Matthew Thompson, *Comment on the Proposed Rule*, at page 29 (Sept. 9, 2010).

[4] Data from the U.S. Census Bureau establishes that students with associate degrees earn $1.6 million over their lifetimes, whereas students with high school diplomas make $1.2 million. Jennifer Cheeseman Day and Eric C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earning*, at page 4 (2002).

- **costing the United States and state governments between $45 billion and $67 billion in lost taxes;[6]**
- **costing states billions of dollars in additional subsidies to community colleges;**
- **while saving less than $10 billion in defaults on student loans over the next 10 years.[7]**

Third, the proposed regulation's use of truncated 3 and 4 year measurement periods (when the incomes of former students are at their lowest) violates basic, well-established economic principles. The loan repayment rate evaluates the repayment rates for students who attended a program in the preceding 4 years, while the debt to income test evaluates the debt to income ratio for students who graduated from the program in the preceding 3 to 4 years.

Professor Brad Cornell, a well-respected economist from the California Institute of Technology, concludes that the use of this methodology is "economically irrational" because it fails to consider the benefits conferred by the education. Rather, the "correct approach according to finance theory would be an NPV [net present value] based approach that considers the present value of *all incremental lifetime earnings* due to the educational program and compares this to the present value of the total costs of the program."[8] Indeed, the Department itself has concluded that the Harvard Medical School would fail the repayment rate test applying the truncated measurement periods used in the Department's proposed methodology. The extensive violations of the Department's own Guidelines suggest that the NPRM's authors strayed from reasoned decision-making, and instead used misleading data and irrational methodologies, while shielding their approach by failing to conduct the required peer review.

We share the Department's basic goals to improve the quality of education, including promoting career education and limiting student borrowing. APC urges you, as the Department's Guidelines require, to commission a hard look at the methodologies, statistics, and analysis used in the NPRM, and to have the NPRM peer reviewed, as its authors should have accomplished before it was published. The attached Information Quality Guidelines Correction Request provides an opportunity for just such a hard look, consistent with the Department's own procedures.

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5 This figure is derived from multiplying Professor Guryan and Dr. Thompson's estimates of the number of students discontinuing their education times the Census Bureau's differential income figure of $400,000 times an approximate 28% graduation rate (based on APC members' graduation rate for students in associate degree programs).

6 Based on an estimated modest 22.9% combined federal and state tax rate on the lost income.

7 Based on the net present value of defaults on federal student loans as reported in the NPRM (page 43646).

8 Professor Bradford Cornell, *Expert Report Regarding Proposed Gainful Employment Regulation* ¶ 21 (Sept. 9, 2010) (emphasis in original).

I would like to arrange a meeting between you and the other respected economists whose materials we are submitting. I believe that a candid discussion with these other experts in the field of economics will convince you that *the proposed regulation needs extensive additional study by professionals who have the expertise to do so.* I do not believe that the proposed gainful employment regulation would have ever been issued had you, as a trained economist, been in your current position at the time. However, it has now fallen to you to manage the problem. The meeting I propose, with experts who have studied this issue extensively, I believe would assist you in making some difficult choices.

Yours truly,

Stephen Jerome
President
Association of Proprietary Colleges

Enclosures