Association of Proprietary Colleges
Educating New Yorkers for a lifetime of success.

February 1, 2011

Via Hand Delivery and Email

The Honorable Arne Duncan
Secretary
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 Secretary Duncan:

I am the President of the Association of Proprietary Colleges ("APC"). Founded in 1978, APC represents 27 degree-granting institutions on 41 campuses throughout New York State. The APC member colleges currently enroll more than 50,000 students in more than 350 educational programs leading to associate, bachelors, masters and doctoral degrees in traditional and emerging fields. A list of our member colleges and compelling statistics showing the success of our students is attached. All of the APC colleges are accredited by the New York Board of Regents, Middle States Commission on Higher Education, or other recognized accreditors.

I write to request correction of the gainful employment NPRM[1] based on a failure to comply with the Department's own Data Quality Act guidelines ("Information Quality Guidelines") for the reasons set forth in this letter and the annexed formal document. We share the concerns that Chairman Kline and Chairwoman Foxx of the House Committee on Education and the Workforce expressed in their letter to you dated January 31, 2011 (a copy of which is enclosed herewith). But APC has grave additional issues as well. APC firmly believes that you, other leaders in the Department, and the public have been seriously misled by the rationale and data used in the NPRM. Simply put, the NPRM's methodology violates these Guidelines, does not measure program quality, is harmful to students and particularly disadvantaged students,

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

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 authors of the NPRM 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]

The NPRM's disregard of this fundamental data is particularly troubling to us because the APC colleges have worked so hard to build a superior record of student success that compares quite favorably with other colleges in New York State (see attached).

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 and University of Chicago Medical Schools would fail the repayment rate test applying the truncated measurement periods used in the Department's proposed methodology.

In short, the proposed regulation presents the grave risk of a public policy disaster of mammoth proportions. The extensive violations of the Department's own Guidelines suggest that the NPRM's authors strayed from reasoned decision-making, and instead used misleading and inaccurate data and irrational methodologies, while shielding their approach by failing to conduct the required peer review or convening outside experts to examine these issues.

We share the Department's basic goals to improve the quality of education, including career education and including efforts to limit student borrowing. But, to quote the aphorism, we also believe that bad data makes bad policy. 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

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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).

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.

I would be delighted to meet with you at any time to discuss these issues or to answer any questions you might have.

Yours truly,

Stephen Jerome
President
Association of Proprietary Colleges

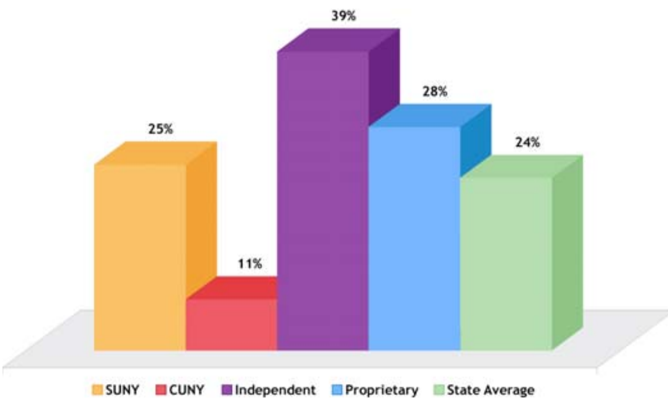
cc (w/enclos):

Rep. John Kline, Chairman, Committee on Education and the Workforce
Rep. George Miller, Ranking Member, Committee on Education and the Workforce
Rep. Virginia Foxx, Chairwoman, Subcommittee on Higher Education and Workforce Training
Rep. Ruben Hinojosa, Ranking Member, Subcommittee on Higher Education and Workforce Training
Sen. Tom Harkin, Chairman, Committee on Health, Education, Labor and Pensions
Sen. Michael B. Enzi, Ranking Member, Committee on Health, Education, Labor and Pensions
New York Congressional Delegation
Mr. Robert Gordon, Associate Director for Education, Income Maintenance, and Labor Office of Management and Budget
Eduardo M. Ochoa, Assistant Secretary for Postsecondary Education

APC Member Colleges

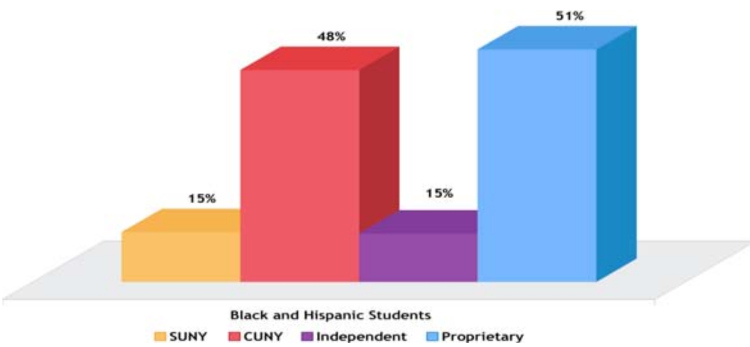
1. Art Institute of New York City
2. Berkeley College
3. Briarcliffe College
4. Bryant and Stratton College
5. Business Informatics Center
6. College of Westchester
7. DeVry College of NY
8. Elmira Business Institute
9. Everest Institute
10. Five Towns College
11. Island Drafting and Technical Institute
12. ITT Technical Institute
13. Jamestown Business College
14. LIM College
15. Long Island Business Institute
16. Mandl School
17. Monroe College
18. New York Career Institute
19. Olean Business Institute
20. Plaza College
21. St. Paul's School of Nursing
22. School of Visual Arts
23. Simmons Institute of Funeral Services
24. Swedish Institute
25. Technical Career Institutes
26. Utica School of Commerce
27. Wood Tobe-Coburn

Associate Degree Graduation Rate at Institutions First Entered, Within Three Years, 2006



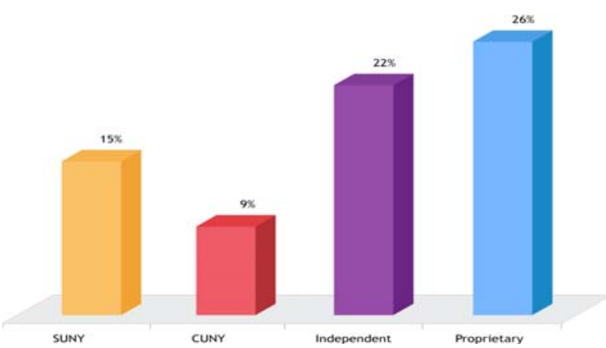
Source: New York State Education Department using National Center for Educational Statistics (IPEDS) data

Percentage of Race/Ethnicity — Full-Time Enrollment, 2007, 2- and 4-Year Institutions Combined



Source: New York State Education Department using National Center for Educational Statistics (IPEDS) data

Graduation Rates for Black and Hispanic Students by Sector, Associate Degrees Earned Within Three Years of Enrollment, 2006



Source: New York State Education Department using National Center for Educational Statistics (IPEDS) data