



# WASFAA

Western Association of Student Financial Aid Administrators

September 9, 2010

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

**Docket ID ED-2010-OPE-0012**

Dear Ms. Finkel:

On behalf of the WASFAA Executive Council who represent more than 500 postsecondary financial aid professionals from institutions in Alaska, Arizona, California, Idaho, Nevada, Oregon, Washington, Hawaii, Guam, the Northern Mariana Islands and the Freely Associated Nations of the Pacific, thank you for the opportunity to comment on these important issues. As a professional association committed to the effective delivery of federal student aid to needy and eligible students, we appreciate the opportunity to help shape the regulations that affect our students and schools and submit the following comments in response to the Program Integrity Notice of Proposed Rulemaking published in the July 26, 2010 Federal Register.

After surveying our membership, the WASFAA Executive Council would like to relay several concerns about the proposed gainful employment rules. First, we do appreciate the premise behind the rules – that taxpayers' investment in our students needs to be protected and the students should also be protected. Accordingly, we believe it is entirely appropriate for the Department to propose rules that would provide boundaries and definitions to the higher education community regarding gainful employment.

Having reviewed the gainful employment NPRM as well as the concerns of our colleagues through our own survey and other reputable industry sources we offer the following observations, concerns, and suggestions -

**Observations:**

First, we understand the intent of the Department is that the proposed rules would apply to any program operating under the statutory “gainful employment” requirement at any school regardless of institutional control. This rule would apply to programs at public, private, proprietary, grad and undergrad schools alike. That being the case, we have also noted that much of the media coverage surrounding these proposed rules has disproportionately focused on the impact the proposed rules will have on the for-profit sector. We have noted and are concerned about the level of awareness that public and non-profit colleges have attained regarding these proposed rules and anticipate significant challenges at these schools, many of which are currently unaware that the proposed rules will have any impact upon their programs whatsoever. We encourage the Department to reach out to all affected schools once the final rules have been published to ensure that senior college administrators and Presidents are in fact aware of their regulatory obligations related to “gainful employment”.

Second, the approach the Department has taken with these proposed rules in some ways and by some interpretations wanders into areas that have traditionally fallen under the purview of states and/or accrediting agencies. We’ve also noted that there are likely to be certain requirements imposed by states or municipalities upon programs offered by publically controlled institutions that will not be compatible with the Department’s proposed rules. We encourage the Department to consider the impact upon institutions who will be forced to arbitrate the competing interests/requirements and provide guidance for resolving such discrepancies when they arise.

Third, we feel that the overall scope and impact of the proposed regulations does not substantially reflect the content of the negotiated rule making sessions and that the statutory requirement for negotiated rulemaking has been frustrated with respect to gainful employment. We encourage the Department to adopt a layered approach to the implementation of the gainful employment concepts and return them in concept and in method to the negotiated rulemaking for further study and participation from the community.

Finally, we recognize that the Department must promulgate regulations without regard to the availability of resources at institutions. We understand that statutory requirements must be supported by regulation and that responsibility has been delegated to the Secretary. However, we are very, very concerned that the current economic climate has put many institutions in a position where they simply will not be able to successfully implement these proposed regulations. This observation is not specific to these proposed regulations, rather to the entirety of the regulations governing the administration of Federal Student Aid. As you know, the past several years have been very active from a legislative and regulatory standpoint. The addition of all of the program integrity rules to the implementation of 100% Direct Lending, Two Pell's in One Year, and a host of other changes have stretched colleges and universities to their administrative breaking points. We believe that, if we hope to implement these rules successfully, the

Department must take a more specific position on administrative capability, specifically the requirement for adequate training and staffing. It is our current thought that without support from the Department on this matter, institutional compliance issues will become widespread and ultimately undermine our collective efforts to ensure program integrity.

### **Specific Concerns:**

We note several specific concerns from our membership in addition to the general observations above as follows –

1. The concept of “gainful employment” as the Department proposes to define it varies significantly from its current application at many institutions. Of course, this is exactly the point where there are concerns about programs that do not, in fact, prepare students adequately for gainful employment while at the same time saddling them with inappropriate amounts of debt. However, we propose that some schools do in-fact offer programs that have educational and career value but will have difficulty demonstrating that under the proposed rules.

Example: A school may offer a graduate certificate in “Technical Writing.” Many of the students who enroll in the program use the certificate to enhance their skills and employability at their current job even though their current job or the job they may be seeking is not in the field of “Technical Writing.”

We encourage the Department to develop and incorporate in the proposed rules some method of recognizing programs that add value to the current labor force and modify the initial approval requirements so that unnecessary barriers are eliminated.

2. We’ve noted that Mr. Mark Kantrowitz’ observations in his paper, concerning the impact of the persistence of interest on loan repayment rates is very compelling. We encourage the Department to adopt Mr. Kantrowitz’ suggestions to correct the methodology to properly account for students who are making regular and on-time payments but are not paying down the principle on their student loans. We believe it is inappropriate to penalize programs when students select repayment options that they are entitled to.
3. We also encourage the Department to adopt Mr. Kantrowitz’ suggestion to delay the implementation of restrictions and determinations of ineligibility based on the proposed rules by three years. We believe this will give institutions an appropriate amount of time to gather/submit the required data for each impacted program as well as work to rectify any issues that may currently be present either at the institutional level, the state level, or the accreditation level. Delaying the implementation of restrictions and determinations of ineligibility will give the higher education community an appropriate amount of time to change according to the new norm.

Implementing any earlier is likely to lead to widespread compliance problems which would defeat the purpose of the proposed rules.

4. With regard to programs that are placed on “restricted” status under the proposed rules – please clarify whether the program’s total enrollment would be restricted or only the enrollment of Title IV aid recipients in that program would be restricted. In the preamble of the proposed rules, the language used is:

“For a restricted program, the institution would be required to work with employers to assure that the training program is meeting their needs, and limit new students enrollments in that program to the average enrollment level for the prior three years.

While in proposed regulation the language used is:

“(3) The Secretary limits the enrollment of title IV, HEA program recipients in that program to the average number enrolled during the prior three award years.

5. Our membership is also concerned that there are numerous other unintended consequences of the proposed regulations relating to the data and methodology developed by the department. We note a large number of concerns from the higher education community about potential loopholes, problem areas, and unintended oversights that are becoming apparent in the proposed methodology. Again, we encourage the Department to consider returning appropriate portions of the proposed rules to the negotiated rule making process to give the higher education community an appropriate amount of time to study and propose alternatives that do not have undesirable unintended consequences for students and institutions.

On behalf of the WASFAA Executive Council, thank you again for the opportunity to comment.

Sincerely,



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