WASFAA

Western Association of Student Financial Aid Administrators

July 30, 2010

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

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 June 18, 2010 Federal Register.

General Comments:

Once again, we thank you for the opportunity to comment and appreciate the opportunity to work with the Department to develop regulations that ensure the integrity of our federal aid programs and protect the American tax payers' investment in our nation's students. We do, however, believe that the scope and complexity of the proposed regulations included in this NPRM are far too much given the relatively short 45 day comment period provided. In this case, the community is struggling to adequately research, analyze and address all of the provisions in the NPRM.

We feel that we have been presented with an impossible challenge this time and ask that the Department consider a more appropriate timeframe for future NPRM releases of comparable size and complexity. We

believe the Department will benefit greatly from the additional input provided during a longer a longer timeframe for responses. Although we understand the Department's time constraints, we recommend that 60-day comment periods be used for all NPRM's to provide all interested parties adequate opportunity to respond and give the Secretary the best possible information in determining the provisions of final regulations.

Issue Comments:

The following recommendations represent comments obtained from both the WASFAA leadership and survey responses submitted by our members.

- **Validity of a High School Diploma - 668.16(p)**:

The proposed regulations would require institutions to develop and follow procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the diploma is not valid or was not obtained from an entity that provides secondary school education. In general, this provision will prevent some current abuses that occur when students purchase a high school diploma from an on-line diploma mill.

We are concerned that the list developed by the Secretary may not be comprehensive and, as such, would place a disproportionate burden on institutions and students to follow up on data matching issues. It is unclear what the institution's responsibility will be when the high school is in another country, is no longer in existence, no longer has the student's records or otherwise is unable to be contacted. Also, this proposed rule would add two additional questions to the FAFSA application which would generally seem to frustrate Department's overall FAFSA simplification efforts.

We recommend delaying implementation of this rule until 2012-2013 to give the Secretary sufficient time to develop a comprehensive list and address these issues related to legitimate high schools who are foreign, are no longer in existence, no longer have the student's records, or are otherwise not able to be contacted.

- **Ability to Benefit - 668.32(5), Subpart J, 668.141-668.156**:

We would like to thank the Secretary for providing additional clarification to the new 6-credit ATB option established in the HEOA and based on the California Community Colleges' Experimental Site project. It has assisted many deserving students to qualify for financial assistance. We have no comment on the additional requirements for test publishers.

- **Misrepresentation of Information to Students - Subpart F, 668.71 -668.75**:

While we support the intent of this regulation, we are concerned that the definitions of *substantial misrepresentation* are overly broad and include persons and actions beyond the institution's control and have concerns over the following language in 668.71(c) that defines misrepresentation as:

"Any false, erroneous or misleading statement an eligible institution... or organization or person with whom the eligible institution has an agreement makes directly or indirectly... A misleading statement includes any statement that has the capacity, likelihood or tendency to deceive or confuse." Institutions have agreements with many organizations for many purposes.

We believe it is unreasonable to hold a school accountable for comments a food vendor might make about the school's academic program and are outside the scope of the business relationship between the school and the vendor. The regulatory language should restrict this type of liability to business relationships involving recruitment and marketing. The term "indirectly" and the inclusion of "capacity, likelihood or tendency to deceive or confuse" has the effect of making the institution not only responsible for information it generates but for how that information is interpreted. Literally any phrase or sentence can be misinterpreted or understood by someone in a way differently from its original intent.

In addition, the proposed regulation states that these comments may include information about the educational program, its financial charges or the employability of its graduates but does limit content in any way to these areas. This provision could be interpreted to include any comment about the institution on any subject and has the potential of resulting in frivolous and expensive civil actions being brought against institutions. As the regulation is currently written, institutions have no clear ways to demonstrated compliance beyond expressing their intent to comply through policies/procedures that demonstrate a good faith effort. This could leave many institutions in a position where they may not be able to reasonably know that they are not complying even though they are attempting to do so.

We request that the Secretary review these definitions and provide language that targets the specific areas of misrepresentation that need to be addressed in order to protect students but at the same time provide more specific and clear guidance to institutions regarding the dissemination of information that can be reasonably controlled by institutions.

- **Incentive Compensation - 668.14**:

We support the Secretary's effort to address reports of aggressive recruiting practices resulting in students being encouraged to take out loans they could not afford, or enroll in programs where they were either unqualified or could not succeed. However, we believe that the proposed language may be interpreted to go beyond the Secretary's intent. Section 668.14(b)(22)(ii) allows for merit-based compensation that is "not based directly or indirectly upon success in securing enrollments or the award of financial aid." We are not clear how else the performance of an employee in the Financial Aid or Admissions Office would be evaluated or, for that matter, an athletic recruiter. Colleges and universities measure the job performance of their Financial Aid Office staff by whether awards are correctly made to students and funds are disbursed in a timely manner. Likewise, the function of the Admissions Office staff is to recruit and admit students. We ask that the proposed regulatory language be reviewed and clarified so as not to prevent colleges and universities from using such performance indicators in annual reviews which may also be used to determine merit-based pay increases but does not serve as the basis for an employee's

salary. Additionally, we believe it may be more accurate to refer to use language that specifically prevents "commissions" or "incentives" for securing enrollments or delivering financial aid.

- **State Authorization as a Component of Institutional Eligibility - 600.9:**

We support this proposed rule in the hope that state oversight will address abuses and eliminate the need for further regulation.

- **Gainful Employment in a Recognized Occupation - 600.2, 600.4, 668.6, 668.8(c):**

We share the Department's concern over programs in which enrolled students tend to amass student loan debt in excess of their reasonable ability to repay based upon the student's potential earnings when entering the workforce in their chosen occupation. While we agree with the Department's concerns there is even greater concern in the about the approach the Department proposes to address these concerns. While we have not yet had an opportunity to thoroughly review the gainful employment NPRM that was recently released, we are concerned that the regulatory, reporting, and consumer information burden associated with operating an affected program will be so great as to discourage institutions from offering legitimate and needed programs.

Community colleges will be greatly affected by this proposed rule and, as discussed in other comments, may have the least amount of resources to address these new requirements. The result at many Community Colleges could be a realignment of mission that would exclude many programs that were formally offered. Community colleges pride themselves in being responsive to community needs but may not be able to do so as many of their programs – as many as 60% could be ineligible or restricted to the point that they are financially unviable. Many institutions will have no choice but to eliminate the programs. Again, we agree with the Departments concerns and the premise that the issue must be addressed but feel that the unintended consequences of these proposed rules will have a net negative effect.

We feel that the vast majority of institutions will struggle greatly to implement these proposed rules and believe some schools will be forced to eliminate affected programs. We strongly recommend that the Department delay implementation of these rules until such time as a better and less burdensome approach can be identified. In the interim, we ask that the Department solicit alternative proposals from the community that would accomplish the same program integrity goals without delivering a fatal regulatory blow to many valuable and worthwhile programs.

- **Definition of a Credit Hour - 600.2, 602.24, 603.24, 668.8(k) and (l):**

We agree with the Department's proposed rule and believe most schools are already utilizing the same standards in most cases. We are, however, concerned that overly aggressive interpretations of

"reasonable equivalencies" could lead to inappropriate intrusions into academic and curriculum matters and could lead to problems in developing innovative and responsive programs and instructional methods.

We ask the Secretary to consider clarifying or preparing guidance for institutions that would protect access to emerging instructional technologies, techniques, methods, and ideas while at the same time allowing for reasonable equivalencies.

- **Agreements Between Institutions of Higher Education - 668.5, 668.43:**

  We agree with the Department's proposed rules and appreciate the sensitivity to institutional control utilized in the development of this approach.

  We note that some regional accrediting agencies require partnerships with existing accredited, state authorized, Title IV eligible schools when a new institution is created by a State or municipality. We ask that the Department clarify whether this proposed rule would apply to institutions that are either sponsoring a new public institution or are a new public institution sponsored by an existing Title IV eligible institution as required by their regional accrediting agency.

- **Verification of Information on Student Applications - Subpart E – 668.51 – 668.61:**

These proposed regulations dramatically change verification rules that have been in place since 1985, increase workload, and are likely to cause institutions to incur substantial costs to maintain compliance. We agree with the Department's approach to creating the regulatory framework that supports the IRS data transfer and the supporting language that would consider IRS information imbedded in the ISIR to be automatically verified. We also agree that, once fully implemented, the IRS data transfer will likely reduce burden on institutions and will help expedite financial aid processing. However, other proposed rules related to Verification will be more burdensome and may impact some segments more than others. Also, it is not clear how or if institutions currently in the Quality Assurance program and exempt from verification are affected by these proposals. We urgently request that the Secretary consider the following and make appropriate adjustments to the final rules in order to ensure clarity and fairness across all student populations and institutional sectors:

Elimination of 30% ceiling on number of applicants to be verified: The Department currently targets Pell-eligible students for verification which means that community colleges are more heavily impacted by verification than other types of institutions. Additionally, due to state economic issues, Community Colleges also find themselves with the least amount of resources to address increases in regulatory burden. Although the Department's records indicate that most colleges do not exercise the 30% ceiling, given the large increases in applicants open enrollment institutions are experiencing, this is an option that more schools may need to take advantage of in order to process all of their financial aid applications. We ask that the Secretary consider retaining the 30% ceiling until effective guidance for adequate levels of staffing or more specific metrics for administrative capability can be developed.

Elimination of standard verification items: This proposal may make verification a simpler process for some families; however, it is unclear if it will make it easier for schools to explain to a family why they were selected for verification. Because the verification items cannot be predicted until the ISIR is processed, schools cannot expedite the process for families by requesting verification forms prior to receiving an ISIR. Most importantly, it is not clear at this point that once an ISIR has been verified and a correction submitted, the new data will not trigger another type of verification edit creating a "verification loop". We recommend that the Secretary establish protocols to ensure that CPS edits prevent a student from falling into a "verification loop." We also ask that the Department consider multi-year sets of verification items rather than different items every year in order to allow institutions to plan accordingly and serve students more readily.

Verification completed prior to Professional Judgment: In emergency situations, the verifying base year data before submitting changes due to professional judgment may create delays that counteract the very reason for the professional judgment. This could be resolved by modifying FA Access to allow both ISIR changes to be made at the same time.

Updating marital status and dependency status: We strongly support this change and request that the Secretary clarify/also allow changes to household size and number in college that result from a change in marital status and/or dependency status.

- **Satisfactory Academic Progress - 668.34**:

We generally agree with the Department's desire to clarify the satisfactory progress regulations and approach proposed. However, we recognize that there are a large number of concerns in the financial aid community regarding the implementation of this proposed regulation.

Specifically, we are concerned that the proposed regulation does not adequately recognize the potential impact it will have at many institutions and could ultimately harm some groups of students unfairly. For example, many schools have SAP policies that are intentionally designed to provide progressively intrusive assistance to students who are struggling. Many include "warning" or "probation" as part of the progression prior to "suspension" and do not allow "warning" or "probation". Under the proposed regulation, a quarter or trimester school that uses a three step progression (three steps align with the traditional academic year as two steps would at a semester school) that includes "warning" and "probation" before "suspension" will be forced to stop using their progression and go to an annual review process or shorten their progression to two steps ("warning" and then "suspension") If the school chooses to shorten its progression, its students will be suspended faster than students who attend semester schools. If the school chooses annual review, its students could lose the valuable feedback and correction they would have received through the schools existing SAP progression.

Additionally, many schools will be forced to choose whether to take on the additional workload of measuring SAP each term in order to allow a "warning period" or to take on the workload of a dramatic

increase in appeals if they keep their current system of annual SAP reviews. This may also affect certain types of schools or certain student populations disproportionately. For example, community colleges are likely to be the greatly affected and are also the institutions with the lowest ratio of staff to applicants. It will be difficult or impossible for many to accommodate either increase in workload and could lead to even greater compliance issues.

The Department has stated that these revisions in SAP regulations are necessary due to institutions that are abusing the system. We agree that abuses need to be addressed but strongly feel that there are other options available to curtail SAP abuses that do not dramatically increase workloads or unfairly impact students at institutions at which there is no evidence of abuse.

Accordingly, we request that the Secretary delay implementation of this regulation and resubmit it through the Negotiated Rulemaking process for further review and feedback.

- **Retaking Coursework - 668.2:**

We support this proposal. However, we request clarification regarding the treatment of repeated credits in determining enrollment status for part-time students, as the context of this rule change is only within the parameters of the "full-time student" definition. "Half-time student" is also defined within the same section of 668.2. The definition of half-time student references the "full-time student" definition and it is our view that repeated credits should be treated the same, but confirmation of that would resolve any question on how repeated credits are treated for any enrollment status less than full-time, or for determining the enrollment status of a student enrolled solely in correspondence courses. In addition, it is unclear why this change applies only to determining enrollment status of students in term-based program.

We ask that the Secretary expand this rule change beyond term-based programs, and include non-standard and non-term programs. The same issue of administrative burden exists in identifying repeated credits for students enrolled in those types of programs.

- **Return of Title IV – Programs with Modules or Compressed Courses - 668.22:**

We support the Department's desire to address abuses of the current R2T4 regulations and guidance with regard to modules or compressed courses. However, we believe that the proposed rules are seriously flawed and will unfairly impact a large number of students. The proposed regulations are intended to eliminate loopholes that have allowed some institutions to create modules of only a few days to avoid returning funds under the Return of Title IV (R2T4) calculation. However, the proposed language is unclear in how it would be applied at many institutions. For example, if an institution has two or more summer sessions that are combined as modules, is every student who only enrolls in only one summer session subject to the R2T4 calculation because they were not enrolled for the full payment period? This could include hundreds or thousands of students at many large institutions.

For example, if a school uses three 5 week modules within a 15 week semester but the courses offered in modules are not intended to be sequential, it is conceivable that a student could take courses from one or two modules but not all three. In this instance, a student could be scheduled to take 12 credits – 6 in the first module, 6 in the second module, none in the third module. If the student successfully completes the first module (6 credits) but then drops the second, it appears that an R2T4 calculation would be required.

Both the preamble and the proposed regulation fail to address how the institutionally defined census date or attendance would be incorporated into this proposed regulation. For example, a student who has not attended and drops before the census date is not considered to have withdrawn and the institution likely would not have delivered aid to the student for those credits. In the same circumstance but if the institution had delivered aid, the institution would be required to return 100% of Pell for a class in which the student did not begin attendance.

We believe that the concept behind this proposed rule is sound – that a more equitable method of making R2T4 calculations when compressed courses or modules are involved but disagree with the Department's proposed rules. We believe that, in their current form, schools will find it impossible to consistently apply the rules due to the nature of the modules and compressed courses that already exist and will certainly lead to a dramatic increase in compliance problems thereby defeating the purpose of the proposed rule.

We recommend delaying implementation of this proposed rule until such time as adequate input from the financial aid community can be received and an appropriate solution found that would both ensure program integrity and minimize the risk of widespread compliance deficiencies.

- **Return of Title IV – Taking Attendance - 668.22:**

Similar to the previous R2T4 topic, we agree with the concept behind this proposed rule. However, the preamble and proposed rule fail to adequately address the wide variety of circumstances that currently exist within institutions.

Of specific concern is the impact to large institutions that may have varying attendance requirements amongst its individual colleges, disciplines, or departments. Of course, this could mean that within a single institution, there could be many different methods for determining last date of attendance depending on whether or not attendance is required for a certain student population and if so, what method is used. For many schools, maintaining many different attendance policies as well as properly applying those policies when calculating Return to Title IV will be an overwhelming and burdensome task that will likely lead to increased error rates and generally diminish the institution's ability to maintain compliance with existing staff or will drive up costs by forcing institutions to develop systems or hire staff to ensure compliance with the more complex requirements.

In either scenario, the regulatory requirements will be of such overwhelming complexity that the Department's desire to mitigate the potential for fraud and abuse of Federal funds at these institutions is likely to be severely frustrated or completely defeated.

We recommend delaying implementation of this proposed rule until such time as adequate input from the financial aid community can be received and an appropriate solution found that would both ensure program integrity and minimize the risk of widespread compliance deficiencies.

- **Disbursing Federal Student Aid Funds - 668.164:**

We agree with the intent of this proposed rule and appreciate the flexibility to provide "a way" rather than a prescribed method of making books and required supplies available to Pell eligible students. It is our impression that most institutions are already disbursing Title IV aid prior to the start of the semester or have mechanisms in place to allow students to obtain books and supplies and will be minimally impacted by this proposed rule.

We do, however, request clarification with respect to several items. It appears that this proposed rule applies only to Pell eligible students who have an anticipated credit balance 10 days prior to the start of the payment period. Regarding the anticipated credit balance, should the credit balance be calculated as a result of the Pell Grant only, all Title IV aid, or all aid (institutional, state, etc.) known to the institution at the time? Section (e) of this same section seems to indicate that it would be a credit balance resulting from all available Title IV aid but isn't clear. If the conclusion is all Title IV aid, please clarify whether the anticipated credit balance should include proceeds from Stafford Loans subject to 30-day delay or multiple disbursements in a single payment period.

Finally, this rule applies to Pell eligible students only but we strongly believe this rule should apply to students who are eligible for Iraq/Afghanistan Service Grants as well.

Summary Comments:

Overall, we generally agree with the Department's intent to shore up the integrity of our federal aid programs by taking measures to prevent abuse, and closing undesirable loopholes that some institutions have abused. However, many of these proposed regulations go far beyond addressing specific institutional abuses. In most instances, the proposed rules will not only close loopholes at schools who are taking advantage of them but also impact all schools who are not. The net result is a solution that is intended to address specific issues at specific schools but instead dramatically increases burden upon all schools. So much so that, in the absence of guidance or more specific regulatory language addressing adequate staffing levels or administrative capability, many schools will simply not be able to comply in spite of their best efforts.

While we understand that increased institutional workload is not normally considered by the Secretary when promulgating regulations, the fact that these proposed rules will create a significant increase in cost

and workload for institutions, as is demonstrated by the cost and workload measures included in the NPRM cannot be ignored. They cannot be ignored because the complexity and increased burden without any hope of additional resources to bring to bear will ultimately result in widespread compliance problems. We certainly don't want to undermine the integrity of our student aid programs by creating situations so complex that institutions are not able to reasonably apply the rules consistently.

Many institutions, particularly public institutions, are experiencing crisis-level increases of 50 – 100% in financial aid applications at the same time that their budgets are being cut due to state budget deficits. Many institutions just do not have the resources to accommodate some of these changes and no way to generate them other than staff lay-offs in other areas or reductions in programs.

In all cases, we fear that it will be our students who will bear the brunt of delays in processing financial aid or reductions in classes. We strongly urge the Secretary to take into account the impact of these regulations and consider appropriate delays in implementation so that the community can find solutions that are simple to administer, easier to communicate to students, less costly to institutions, and protect the integrity of our federal aid programs at the same time.

We are a resilient, passionate, and creative community and would be eager to work closely with the Department to find solutions that can accomplish all of these important goals. We appreciate the opportunity to submit our comments and will be happy to provide any additional comments or information you deem helpful.

Sincerely,

Sandi Guidry
2010 WASFAA President
University of Nevada - Reno
MS 076
Reno, NV 89557
775-682-8110
sguidry@unr.edu

Kevin Jensen
Chair – 2010 WASFAA Federal Issues Committee
College of Western Idaho
5500 E Opportunity Dr
Nampa, ID 83686
208-562-3251
kevinjensen@cwidaho.cc