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May 27, 2014

Ms. Ashley Higgins
U.S. Department of Education
1990 K Street NW, Room 8037
Washington, DC 20006-8502

Re: Docket ID ED-2014-OPE-0039

On behalf of the 10 campuses and the nearly 230,000 students at the University of California (UC), I submit the following comments in response to the Notice of Proposed Rulemaking (NPRM) regarding gainful employment published in the Federal Register March 25, 2014.

The gainful employment regulation must strengthen the integrity of Title IV student aid programs in a way that is meaningful for students and taxpayers. The proposed rule does not accomplish this goal. In its current form, the proposed rule is meaningless, sets the compliance bar far too low, and will not stem the flow of federal dollars to poorly-performing institutions, even in the most egregious circumstances. The rule should employ relevant metrics that take full advantage of information that higher education institutions already provide to the federal government on a regular basis, as well as data collected and maintained for direct loan servicing. Examples of metrics that can be derived from readily available data include graduation and completion rates, loan repayment and default rates, and student debt-to-earnings ratios.

The proposed rule offers no tangible protections for students; instead, it protects institutions that have failing programs by providing them with excessive flexibility with respect to improvement. Programs found to be "in the zone," where they have not met the debt-to-earnings ratio but have not yet "failed," are required only to provide consumer disclosures to students. This is minimal protection that does not convey the personal risk prospective students and borrowers assume by enrolling in these programs. Instead of lengthy time to cure deficiencies, failing programs should be immediately suspended and their borrowers provided with appropriate relief when they do not meet the strengthened metrics set in the final regulation.

The federal investment in student financial aid carries with it an implied endorsement that an institution and its programs have been "approved" by the U.S. Department of Education (ED); it signals to consumers that the federal government has determined that an investment of taxpayer funds is worthwhile. However, ED program performance data show that the required participation standards have failed to assure that all Title IV-participating schools and programs deliver educational experiences that can be completed successfully, at reasonable cost, and will lead to educational outcomes sufficient to enable borrowers to pay back their student loans.

By contrast, new standards recently implemented in California — the nation's most populous state — demonstrate that it is possible to improve the effectiveness of publicly funded student aid programs using information schools already provide, and that this can be done in a practical and meaningful way.

In the 2011–12 State budget, the California State Legislature adopted tightened eligibility standards for colleges participating in the Cal Grant program, the state's need-based educational aid program. The new standards require institutions where at least 40 percent of enrolled students take out student loans to have a six-year graduation rate of at least 30 percent and a federal three-year cohort loan default rate of less than 15.5 percent in order to participate in the Cal Grant program. According to the State Legislative Analyst's Office (LAO), even though 80 percent of California's for-profit colleges (154 schools) participating in the Cal Grant program were disqualified in the first year of full implementation under the new state standards, this action had no impact on these institutions' eligibility to participate in federal student aid programs. This resulted in a savings to the state of $50 million and protected students by reducing the financial incentives to enroll in institutions with a poor record of serving students. UC believes the Cal Grant eligibility standards can be improved even further and supports the LAO-suggested enhancements, including the use of a loan-repayment rate and a debt-to-income ratio to gauge school performance (instead of a cohort default rate that can be easily manipulated) and the recommendation that the 30 percent six-year graduation rate be implemented for all participating Cal Grant schools.

Nonetheless, California's recent experience could easily apply to federal financial aid programs and, if implemented, has the potential to improve college outcomes for students. The LAO predicts that the impact to students enrolled at ineligible schools will improve "as new students seek enrollment at eligible institutions, eligible institutions expand to meet demands, and ineligible institutions take steps to improve their student outcomes and regain eligibility".[1] This analysis supports the position that strengthened standards actually improve the educational outcomes for low-income students and do not threaten access to higher education. A federal requirement based on California's experience would strengthen President Obama's higher education initiatives to improve accessibility, affordability, and accountability.

Moreover, the University of California believes the pending proposed rule could be improved by:

- Utilizing current cohort default rates together with the percentage of enrolled students borrowing, as California is doing to assure the integrity of the Cal Grant program, to identify and curtail abuses in the short run and to suspend program participation at schools with high cohort default rates;

[1] Taylor, M. (2013, January 7). An Analysis of New Cal Grant Eligibility Rules. *Legislative Analyst's Office (LAO).* http://www.lao.ca.gov/reports/2013/edu/new-cal-grant/new-cal-grant-010713.pdf.

- Expanding use of data the federal government already has as a result of requiring schools to monitor individual limits on Pell Grants and subsidized student loans. In addition, by using these data, ED would be able to calculate an appropriate loan-repayment rate that would be difficult to manipulate using data elements reported to them for other purposes;

- Assuring the capital and human resources required to administer the rule do not exceed the value it provides to students and taxpayers. For example, allowing an exemption for schools that have an overall cohort default rate under 10 percent for the immediately preceding three prior years, whose instructional expenses exceed 50 percent of tuition and fees, and/or whose median annual federal borrowing is zero, would reduce the costs of administering the rule and enable ED to focus on poor-performing schools;

- Further improving the administrative efficiency of the rule by utilizing existing program review processes to monitor programs with low risk, such as post-baccalaureate programs that prepare students to enroll in further graduate study (e.g., preparation for medical school or Ph.D. programs), instead of creating whole new mechanisms of review for such programs;

- Offering relief to borrowers who enrolled in programs that were determined to be "in the zone" or failing during the borrower's time of enrollment. In its current construct, the desire to provide schools and programs with a lengthy opportunity to improve performance prolongs the potential damage to students who are enrolling in these programs in pursuit of gainful employment; and,

- Requiring schools to pay monetary penalties to students if the program does not meet the certification requirements, including requisite training for licensure.

The Department of Education has an opportunity in finalizing this proposed rule to assure the integrity of Title IV student aid programs and to provide meaningful protections that encourage students to seek programs where those enrolled have lower debt burdens, lower student-loan default rates, higher earnings and lower unemployment, and are more satisfied with their educational experience. To be truly effective, any new regulation must provide protections for students before they enroll in a program that is unlikely to enable them to fulfill their educational aspirations.

Thank you for your consideration of these comments.

Yours very truly,

Janet Napolitano

Janet Napolitano
President

cc: Provost Aimeé Dorr
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