JOBS FOR THE FUTURE

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

Subject: Docket ID ED-2010-OPE-0012

Dear Ms. Finkel:

Jobs for the Future commends the Department of Education for issuing draft regulations to define gainful employment in time to go into effect next year. The Department's proposed rules issued July 26, 2010, emphasize why these regulations are so important and why it is important to issue them now.

Postsecondary education and training are critical for the economic vitality and long-term recovery of our nation; and they are critical to Americans seeking to improve their economic wellbeing, options, and contribution to family and society. Both non-profit and profit education sectors have important roles to play. In recent years, though, the entrepreneurial for-profit career education sector has grown rapidly, nearly tripling its enrollments between 2000 and 2008. In addition, the financing model for the for-profit career education sector relies heavily on federal Title IV student aid—making it important for the Department to ensure that public resources are well spent and that students derive the benefit they seek when they enroll. For-profit colleges enroll fewer than 10 percent of all students, but account for about 25 percent of federal student aid—and 44 percent of all federal student aid defaults.

Given the rapid expansion of these institutions, their disproportionate share of federal aid funds and their high federal loan default rates, it is timely and important that the Department issue these standards in order to protect taxpayers against wasteful spending, create incentives for poorly performing institutions to improve, and provide students with consumer information that can improve their decisions about educational programs and financing. Jobs for the Future commends the Department's effort to hold education programs that receive federal student aid funds accountable for training students for good jobs without saddling them with unmanageable debt. (In the future, Congress should consider ways to ensure that occupational degree programs at non-profit and public postsecondary institutions, particularly two-year degree programs, also provide gainful employment.)

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We are in broad agreement with a group of 30 organizations that submitted a letter to the Secretary of Education on August 25, 2010, welcoming the proposed regulations as an important step in the right direction but advocating a number of important strengthening changes for the final rules. Like those organizations, Jobs for the Future supports the overall approach taken by the Department. It both provides students with important information about career education programs and begins to curtail taxpayer subsidization of programs that routinely leave students with debts they cannot repay. The NPRM thoroughly documents the strong basis for the two loan-based metrics used in the proposal, and provides a great deal of clarity about why this rule and this approach are necessary and appropriate.

However, this group of advocates for students, consumers, and higher education access and success asked the Department to strengthen the proposed regulations in four areas to provide more meaningful protection for students and taxpayers starting next year:

<u>The Rule Needs to Set Higher Standards</u>. The proposed rule would let programs continue to be eligible for federal student aid even when more than half of their former students with loans can't afford to pay down their principal. As the regulation's goal is to ensure that programs are not routinely saddling students with debt they cannot repay, programs should not remain fully eligible for aid if the majority of their borrowers cannot repay their loans. We follow the well-researched and well-considered recommendations of the Institute for College Access and Success (TICAS) that the repayment rate thresholds be increased by at least 10 percent for each tier and two new tiers added. Programs in the top category, those with repayment rates of at least 55 percent, would remain fully eligible for Title IV aid with no need to provide a debt disclosure or warning. Lower repayment rate tiers (at least 45 percent and less than 55 percent, below 45 percent and at least 35 percent, etc.) would generally require debt disclosures and warnings, in a scaled fashion dependent on the repayment rate and debt-to-income ratio.

The Department requested comments on whether there is a repayment rate threshold sufficiently low that no programs falling below it should remain eligible for federal student aid, regardless of debt-to-income ratios. Again, following TICAS' research, we recommend that programs in which fewer than one in four borrowers are able to pay down their loan principal, or those with a repayment rate below 25 percent, should no longer be eligible to receive federal student aid, if a sufficiently high share of students borrow and thus are sufficiently representative of program outcomes. (Part of the rationale for this recommendation is the likely understatement of repayment rates that results from the exclusion of both private loans and parent PLUS loans, which accounted for 20 percent of all postsecondary education loans in 2008-09.)

<u>Programs Must Improve to Remain Eligible for Federal Aid</u>. The Notice estimates that seven percent of career education programs have loan repayment rates and high

median debt-to-income levels that would put them in the category of restricted eligibility for financial aid. The proposed rule does not include any requirement that programs in this category improve their performance: they could continue to enroll the same number of Title IV aid recipients, year after year, without improving students' gainful employment in a recognized occupation. Programs with high student borrowing rates, low loan repayment rates, and high student debt burdens should have to rapidly improve to keep receiving federal student aid dollars. For this reason, restricted status must be time-limited, particularly since the proposed rule allows restricted programs to enroll unlimited numbers of student receiving GI Bill and other non-Title IV federal student aid.

Families with Children Need Equal Protection. Half of all undergraduates at for-profit colleges have dependent children, and more than one in four have at least two children. According to the definition of discretionary income cited in the Notice, a family of one earning $33,000 a year has $16,800 of discretionary income, but a family of four with the same income has *no* discretionary income. If the final rule includes a threshold based on student "discretionary income," it must reflect the real debt burden on low- and middle-income families with children. It should either adjust for family size to reflect the real debt burden on families with children or the discretionary income threshold must be limited to programs whose former students have a very high average income, to ensure that they have sufficient discretionary income regardless of family size.

Students Need Protection Beginning Next Year. While the proposed regulations would take effect in July 2011, they would not begin to protect students or taxpayers until July 2012 and would not be fully effective until July 2013. Students and taxpayers cannot afford to wait so long for at least some protection from exploitation. For instance, while program-level assessments may be unavailable at that point, institutions with both high rates of borrowing and high rates of default could be required to place such information in a clear and conspicuous location on the college's Web site and marketing materials, and to provide such information to prospective students until the program-level assessments are available. Such transparency might accelerate efforts by at-risk programs to revise program content and instruction and provide more effective counseling, job placement, and other support services that can reduce the risk to students and taxpayers.

In addition to these changes to strengthen the rules, JFF offers these additional comments:

The Importance of Employer Affirmations of Program Value: Given the importance of employer assessment of program value to the likelihood of securing gainful employment, we commend the Department for the provision requiring documentation from employers not affiliated with the institution affirming that the curriculum of the additional program aligns with recognized occupations at those employers' businesses, and that there are projected job vacancies or expected demand for those occupations at those businesses." Increased communication between educational programs and employers who are the "consumers" of a program's "product" is important to promote and incent.

The regulation makes clear that the employer affirmations for new programs are intended to help the Secretary determine whether to approve, with or without restrictions, new career college programs at participating institutions. It will also ensure that schools cannot simply rename programs deemed ineligible. However, the purpose of annual employer affirmations for restricted programs is unclear, since the regulatory language describes as one consequence of restricted status that "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." If the employer affirmations are intended to provide additional confirmation of the need for the program, this provision could conclude with the new clause, "or fewer if the affirmations provided in §668.7(e)(1) do not justify that number of enrollees.

The description of the documentation required for employer affirmations (§668.7(g)(1)(iii)) can be strengthened:

- Along with the affirmation of projected vacancies or demand, employers should also be required to quantify the vacancies or demand expected. Since employers are of neither equal size nor hiring capacity, it is important to require along with the number and location of employers the number of expected hires from such programs for which an employer is affirming the need.
- To minimize the likelihood that employers may be easily compelled to affirm the demand for a particular program or skill set, whether or not their demand is in line with enrollment or even whether they would hire program graduates, the regulation should require that employer affirmations be "under penalty of perjury."

<u>The Need to Understand More about the Potential Impact on Pell Grant Recipients.</u>
Mark Kantrowitz, publisher of finaid.org, argues from available data that few programs with more than 40% Pell Grant recipients are likely to achieve loan repayment rates above 45% and that the percentage of Pell Grant recipients enrolled in programs in for-profit institutions with loan repayment rates under 45% is quite high. The Department rightly wants to balance the public policy goal of greater access to postsecondary credentials for low-income students with the responsibility to ensure that low-income students are not exploited in programs where their likelihood of repaying loans and benefiting in the labor market is low. The Department should consider supporting additional research on the implications of the new rules for Pell Grant recipients, whose options will likely shift as institutions adjust to the rules.

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Thank you for taking long overdue steps to enforce the law requiring career education programs to prepare students for gainful employment. The changes suggested above will help make the rules stronger and more effective.

Sincerely,

Marlene Seltzer
President and CEO