NATIONAL SKILLS COALITION
Every worker. Every industry. A strong economy.

September 9, 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 National Skills Coalition – a national coalition of business leaders, labor affiliates, education and training providers, and public workforce officials – I write to offer comments on the Notice of Proposed Rulemaking (NPRM), Docket ID ED–2010–OPE–0012, published in the Federal Register on July 26, 2010. This NPRM would, among other things, amend Part 668 of Chapter 34 of the Code of Federal Regulations to establish criteria to determine whether certain institutions of higher education are preparing students for "gainful employment in a recognized occupation," and therefore eligible to participate in federal student aid programs under Title IV of the Higher Education Act of 1965.

For nearly a decade, National Skills Coalition has been a leading advocate for federal policies and programs that expand access to high-quality education and training programs to ensure that all individuals can acquire the skills necessary to get and keep well-paying jobs. We strongly support the Department's efforts to ensure that federal investments in higher education lead to meaningful opportunities for skill development and credential attainment for all students, particularly low-income individuals and other underserved populations. We deeply appreciate the Department's recognition that students obtain education and training through a diverse range of institutions and that access to accurate information on program quality and relevance to local labor market demands is key to student success. We believe that the proposed rule – coupled with separate regulations proposed under NPRM, Docket ID ED-2010-OPE-0004, published in the Federal Register on June 18 – takes a critical step toward this goal by eliminating funding for programs that offer little or no improvement in a student's employment prospects. We also strongly support the Department's efforts to crack down on predatory or misleading marketing and recruitment practices that can lead students to take on excessive student loan debt in order to pursue substandard postsecondary education and training. Taken as a whole, we believe these regulations will help to preserve the integrity of Title IV HEA programs and will provide important and necessary protections for both students and taxpayers.

However, while the regulations would undoubtedly reduce the number of students defaulting on student loans and help to remove some of the worst actors from the postsecondary arena, it is critical that the Department recognize that this is only a first step in addressing the broader challenges of promoting access and completion for all students. In an economy where the vast majority of jobs – especially in high-growth or high-wage sectors such as health care, manufacturing, and energy – will require a postsecondary degree, certificate, or credential it is not enough to simply eliminate low-quality programs. Rather, we must also simultaneously create pathways and expanded capacity to serve all students across a range of institutions. While we recognize the relatively narrow scope of the regulatory process, we are concerned that the limited focus of the proposed regulation fails to consider the institutional obstacles that often prevent nontraditional students from entering into and succeeding in traditional postsecondary institutions. The rapid growth of proprietary and other nontraditional postsecondary educational institutions reflects growing demand for education and training services and seems to meet an otherwise unmet need. Again, while we strongly support efforts to eliminate federal funding for programs that do not adequately prepare individuals for today's labor market, we fear that these efforts will have the unintended consequence of limiting access to postsecondary education and training if not adequately matched with efforts to remove long-standing barriers to postsecondary success for nontraditional and other underserved populations.

Postsecondary Education and Training Critical for Jobseekers, Businesses

In his joint address to Congress in February 2009, President Obama announced an ambitious goal for improving postsecondary educational attainment, calling for the U.S. to have the highest proportion of college graduates in the world by the year 2020, and urging all Americans to commit to at least one year of postsecondary education or job training.[1] With the Government Accountability Office reporting that 90 percent of the fastest growing jobs in the U.S. economy will require some form of postsecondary education, achieving the President's goal is critical to ensuring that our nation's workers can get and keep well-paying jobs, and employers can find the qualified workers they need to grow and compete in the 21st century economy.[2]

Ensuring that all Americans are able to access and succeed in postsecondary education or training should be a national priority. Postsecondary attainment – at any level – can lead to significant earnings gains: a 2007 report by economists Harry Holzer and Bob Lerman found that the median worker with an associate's degree earns about 33 percent more than a worker with only a high school degree while workers with a bachelor's degree earn about 62 percent more than workers with only a high school degree, suggesting a consistent earnings gains for postsecondary education on a per-year basis[3] Individuals with postsecondary education and

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[1] http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Address-to-Joint-Session-of-Congress/

[2] http://www.gao.gov/new.items/d08245.pdf

[3] http://www.nationalskillscoalition.org/assets/reports-/americasforgottenmiddleskilljobs_2007-11.pdf

training are more likely to find and retain employment, as well: in June 2010, the unemployment rate for individuals with only a high school diploma stood at 10.8 percent, more than a full percentage point above the national unemployment rate of 9.5 percent, while the rate for individuals with some college or an associate's degree was 8.2 percent, and the rate for individuals with a bachelor's degree or above was 4.4 percent.[4]

Expanding access to postsecondary education is critical not just to ensure workers have the skills they need to get and keep well-paying jobs, but also to ensure that U.S. businesses can find the qualified workers they need to fill those jobs. According to a recent report from Georgetown University's Center on Education and the Workforce, the U.S. will need to increase the number of workers with associate's degrees or above by about 3 million over currently projected levels by 2018, and add 4.7 million individuals with postsecondary certificates, in order to keep up with labor market demands.[5] Indeed, there is some evidence that employers are struggling to fill current openings, despite high unemployment, with a recent survey of manufacturers revealing that more than half were experiencing difficulty finding skilled production workers.[6]

Congress and the Obama administration have taken important steps to expand access to higher education. The Health Care and Education Reconciliation Act, signed into law in March 2010, includes a number of key investments in education and training, including $36 billion for the federal Pell Grant program, which provides financial assistance to low- and moderate-income students; $2 billion over four years for the Trade Adjustment Assistance Community College and Career Training Grant Program, which supports job training programs at community colleges; and $750 million over five years for the College Access Challenge grant program, which provides funds to states to help low-income students enter into, and succeed in, higher education. Congress also included significant education and job training investments as part of the American Recovery and Reinvestment Act, including $17 billion for Pell Grants and roughly $4 billion in funding for job training programs under the Workforce Investment Act.

As important as these investments are, however, they will not lead to the broadly shared prosperity we seek unless all Americans are able to take advantage of expanded educational opportunities. It is therefore critical that any benefits from the Department's proposed regulations be weighed against the risks of reduced access for workers and other students.

Impact of the Proposed Regulations

In the explanatory section of the NPRM, the department indicates that defining "gainful employment in a recognized occupation" will help reduce incidences of student loan default, stating:

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[4] http://www.bls.gov/news.release/empsit.nr0.htm

[5] http://www9.georgetown.edu/grad/gppi/hpi/cew/pdfs/FullReport.pdf

[6] http://institute.nam.org/view/2001005064765286263/info

“[t]he proposed standards for institutions participating in the title IV, HEA programs are necessary to protect taxpayers against wasteful spending on educational programs of little or no value that also lead to high indebtedness for students. The proposed standards will also protect students who often lack the necessary information to evaluate their postsecondary education options and may be mislead *[sic]* by skillful marketing, resulting in significant student loan debts without meaningful career opportunities.”

The NPRM proposes a new two-part test for whether programs are preparing individuals for gainful employment. The first test would measure the ratio of median student loan debt for program completers to discretionary and average annual earnings for those individuals. The second test would establish required overall loan repayment rates for all program participants over a four-year period. Programs that satisfy each of the tests would remain fully eligible to participate in Title IV programs without restrictions. Programs that failed to satisfy any of the tests would be ineligible to offer Title IV assistance to students. Programs that met some but not all of the test requirements could be placed on restricted status, requiring institutions to provide warnings to current and prospective students about high debt levels associated with the programs, submit annual documentation from unaffiliated employers that the program curriculum aligns with occupations at those businesses and that there are projected job vacancies at those businesses, and limit enrollment in the programs.

The Department estimates that, of the 52,980 programs subject to the new rules, a total of 39 percent (20,662) would be found fully eligible, 5 percent would be rendered ineligible (2,649), and 29,669 (55 percent) programs would be placed on restricted status or would remain eligible with the requirement to provide alerts about high student debt levels to current and prospective students. The Department estimates that there are currently 3,190,476 students in programs that would be affected by the rule, of whom approximately 307,000 would be in programs determined to be ineligible.

The Department acknowledges that the proposed regulations will have the greatest impact on proprietary institutions, but suggests that this is justified by concerns about the quality of education provided at such institutions. For example, the Department points out that graduates of two-year for-profit schools, on average, have substantially higher student debt levels than community college graduates, and that there are 18 federal student loan defaults per 100 graduates of for-profit institutions, compared to only five defaults for graduates of public institutions. The Department also notes the growing body of evidence indicating that many proprietary institutions engage in aggressive and potentially misleading marketing and recruitment activities, which may lead students to take on significant loan debt for low-quality programs.[7]

[7] See http://www.gao.gov/new.items/d10948t.pdf and http://www.gao.gov/new.items/d09600.pdf.

National Skills Coalition firmly believes that more must be done to hold postsecondary education institutions accountable for program quality and financial integrity. However, we also believe it is important to acknowledge that the growth of the proprietary sector in recent years reflects, at least in part, an increased demand in the labor market for postsecondary credentials and the obstacles many individuals – particularly nontraditional and underrepresented students – face in seeking such credentials.

Serving Nontraditional and Underrepresented Students

Proprietary institutions serve a disproportionate percentage of independent students. Two-thirds of all students at proprietary institutions in 2007-08 were classified as independent students with total incomes of $49,999 or below, compared to 41.5 percent of comparable students at public two-year institutions, and 38.7 percent had total incomes of less than $20,000 (the federal poverty guideline for a family of four in 2008 was set at $21,200).[8] Independent students are also significantly less likely than dependent students to persist in postsecondary education; of students entering higher education at all institutions during the 2003-2004 school year, more than half of independent students (52.7 percent) had not attained a postsecondary credential and were no longer enrolled in a postsecondary institution in 2006, compared to 25.6 percent of dependent students.[9]

Proprietary institutions also serve a disproportionate percentage of minority students. While African-Americans and Latinos represented 14 percent and 14.1 percent respectively of overall postsecondary enrollment in 2008, including 14.4 percent and 14.8 percent respectively at public two-year institutions, they represented 24.8 percent and 20.8 percent of enrollment at proprietary institutions. And while only 6.8 percent of white students were enrolled in for-profit institutions, 15.9 percent of African American students and 13.2 percent of Latino students were enrolled in such institutions.[10] These populations often face significant barriers to persistence and completion, with 43.4 of African American students and 37.2 percent of Latino students entering postsecondary education in 2003-04 having left school by 2006.[11]

Because the proposed rule would almost certainly disproportionately impact nontraditional and underrepresented students (because they are more likely to be served by proprietary institutions), who have long struggled to overcome existing obstacles to obtaining postsecondary education, the Department should take all possible steps to minimize the disruptive impact on these students and to facilitate access to alternative postsecondary opportunities for impacted students.

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[8] http://nces.ed.gov/datalab/index.aspx?x=dkba7b.

[9] http://nces.ed.gov/das/library/tables_listings/showTable2005.asp?popup=true&tableID=3786&rt=p

[10] http://nces.ed.gov/datalab/index.aspx?x=dkba7b

[11] http://nces.ed.gov/das/library/tables_listings/showTable2005.asp?popup=true&tableID=3786&rt=p

Ensuring Adequate Capacity to Serve All Students

While the proposed rules will undoubtedly protect many students from taking on excessive student loan debt, it is not clear that these students will be able to find suitable postsecondary alternatives should their current programs be made ineligible for Title IV assistance. The Department suggests that of the estimated 307,000 individuals in ineligible programs during the transition year beginning in July 2012, a significant percentage (between 239,000 and 270,000 individuals) would either complete the ineligible program, enroll in another program at the same institution, or transfer to another institution in the same sector. However, even assuming this assessment is accurate it is unclear what will happen to these and other students in the years following the transition period. Assuming demand for such programs remains at current levels, the nation would need to develop sufficient postsecondary capacity to absorb students who are served or who would be served by these programs – plus any other students enrolled in programs found to be ineligible following the transition year.

Some advocates for the proposed regulations have suggested that these students could transition to the public or private nonprofit sectors, but the Department estimates that few displaced students from the proprietary sector are expected to transfer to public institutions (between 10,000 – 19,000 students) or to private nonprofit institutions (between 5,000 and 10,000 students) during the transition year, and provides no estimates for years following the transition year. Even if a significant percentage of the students displaced by the new gainful employment rules will be able to transition to schools in the public sector, it is not clear that this would lead to an increase in credential attainment for many of these at-risk individuals. According to the latest Department of Education data, while only 42 percent of first-time, full-time students enrolled in two-year for-profit schools completed a degree or certificate within the normal program completion time, less than 12 percent of first-time, full-time students at public two-year schools graduated within that same timeframe.

It is also unclear whether the public sector currently has the capacity to respond adequately to the needs of students that would be displaced by the proposed regulations. The American Association for Community Colleges (AACC) estimates that for-credit enrollment in community colleges increased from about 6.8 million in fall 2007 to around 8 million in fall 2009, an increase of 17 percent. While AACC has not estimated enrollment increases for non-credit programs during that time period (non-credit enrollment accounted for 42 percent of total community college enrollment in 2007) it seems likely that these programs have also seen significant enrollment increases as unemployment rates have soared and individuals seek education and training to find new jobs.

These enrollment increases are occurring in an economic climate when states are expecting significant budget shortfalls, reducing the ability of public institutions to expand capacity to respond to demand. According to a 2009 survey of state community college directors, 71 percent of states were required to make midyear operating budget cuts for community colleges in Fiscal Year 2008-09, and state operating support for community colleges was expected to decline by 1 percent nationally in FY 2009-10. Nearly two-thirds of respondents indicated that increased unemployment was already straining the existing retraining capacity of community colleges in their states, and more than 40 percent of respondents indicated that they were concerned about the capacity of community colleges in their states to meet the needs of returning adult students.

The Department should take all necessary steps to ensure that any postsecondary capacity lost as a result of the proposed gainful employment rule is matched with efforts to create alternate capacity suited to the needs of any displaced students.

Recommendations

National Skills Coalition strongly supports a long-term goal of expanding capacity within the public and private nonprofit postsecondary educational sectors to ensure that all students have access to high-quality, affordable education and training necessary to get and keep well-paying jobs. In the short term, however, we are concerned that a significant number of students enrolled in programs that will be found ineligible under the proposed regulations will be left without meaningful access to more appropriate alternative educational opportunities. We therefore offer the following recommendations:

Develop a Transition Plan to Ensure Displaced Students Can Access Postsecondary Education and Training

National Skills Coalition strongly supports the Department's efforts to preserve the integrity of Title IV HEA student aid programs and to reduce the rate of student loan defaults through the proposed regulations. However, we are concerned that the rules as currently drafted will reduce postsecondary options for many at-risk individuals seeking to improve their skills and enhance their employment prospects, without providing meaningful alternatives. We therefore believe that the Department should work with Congress to develop a transition plan to increase postsecondary capacity to address the needs of current and prospective students displaced by the new gainful employment definition. The plan could include new investments in a range of programs that are currently authorized under the Higher Education Opportunity Act but which have never been funded, including the "Program to Increase College Persistence and Success;" the "Bridges from Jobs to Careers" grant program; and the "Business Workforce Partnerships for Job Skill Training in High Growth Occupation or Industries" grant program. The Department should also consider developing regulations or guidance to help ease transitions between postsecondary institutions and other federal training and employment programs, building on successful state and local "career pathways" models that enable low-income and other at-risk individuals to get the skills they need to get and keep well-paying jobs and careers.

Develop Additional Measures of "Gainful Employment"

While it seems likely that the proposed gainful employment tests will help reduce student loan debt and default rates, they may have limited impact on other recognized measures of program quality and effectiveness, such as completion and placement rates. Programs at risk of falling into the ineligible or restricted categories could potentially maintain Title IV eligibility by simply reducing program costs, without investing in efforts to ensure that their programs lead to meaningful academic or employment outcomes for students. There may also be perverse incentives for programs to "cream" to meet outcome requirement, such as denying enrollment to students who might negatively impact program outcome measures, a phenomenon known to occur in other education and training programs that serve low-income individuals and other hard-to-serve populations.

It should further be noted that the proposed gainful employment definition could tend to discourage programs that lead to lower-paying, entry-level jobs that often provide the crucial foothold for low-skill, low-income adults to enter or reenter the labor market. Rather than reducing tuition and other costs that would help bring such programs into alignment with the debt ratios required under the new definition, institutions may simply drop these programs, leaving many students without meaningful educational opportunities.

We would therefore recommend that the Department consider additional measures of "gainful employment" for purposes of determining Title IV eligibility, which could include measures of credential attainment, program completion, job placement, and earnings gains. Credential attainment and program completion measures could create incentives for programs to invest in academic and supportive services that lead to student success, while including job placement and earnings gains measures could establish incentives for programs to maintain programs that cater to low-income workers and other hard-to-serve populations, and to work with students to obtain and retain employment following completion. In developing these additional measures, the Department should consider how the measures align with efforts under the Department of Labor and other agencies to encourage "common measures" across a range of federal education and training programs.

Extend Loan Repayment and Debt Disclosure Requirements to All Programs

Under proposed 668.7(d), programs that do not meet certain thresholds under the loan repayment and debt-to-income ratio tests are required to provide disclosures to current and prospective students about their most recent loan payment and debt measures. The Department notes that "a wealth of evidence suggests that many individuals lack sufficient information—or may be manipulated with false information or assurances—regarding future employment prospects and program costs, and thus are unable to properly evaluate their eventual ability to repay loans."

National Skills Coalition believes that making this information available is an important consumer protection measure, and such information should be made available to any prospective student selecting an education or job training program. We therefore strongly encourage the Department to extend this requirement to all programs subject to the gainful employment definition, regardless of performance against the loan repayment and debt measures. We would also encourage the Department to make this data available online, and through other venues where individuals might seek information on career opportunities such as One-Stop career centers funded under the Workforce Investment Act, state Unemployment Offices, and career guidance offices in secondary schools.

We appreciate the Department's commitment to this issue and look forward to working with you on this and other efforts to promote access to and completion of high-quality education and training programs that allow all students to obtain the skills necessary to get and keep well-paying jobs.

Sincerely,

Rachel Gragg, Ph.D.
Federal Policy Director
National Skills Coalition