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September 9, 2010

Jessica Finkel
U.S. Department of Education
1990 K Street, N.W.
Room 8031
Washington, D.C. 20006-8502

Re: Docket ID ED-2010-OPE-0012

Dear Ms. Finkel:

The University of California is submitting comments in response to the Notice of Proposed Rulemaking published in the Federal Register on July 26, 2010 on 34 CFR Part 668, Student Assistance General Provisions and the addition of new rules on "Gainful employment in a recognized occupation."

For more than 140 years, the University of California has been successfully carrying out a three-part mission of education, research and public service. While public, non-profit research universities like the University of California are not the intended focus of this NPRM, UC does offer a number of non-degree programs for which eligible students may receive federal financial aid at our campuses. Thus, the University has a direct interest in how this proposed rule would be implemented.

UC appreciates the opportunity to comment on the NPRM and asks that the Secretary of Education give serious consideration to the points we raise in this letter.

Overall, the University of California applauds the U.S. Department of Education for its commitment to strengthening the current rules against fraud and abuse for the Title IV accounts. Postsecondary education institutions across all sectors tarnish the integrity of higher education and threaten the long-term viability of federal student financial aid programs when they use unscrupulous recruitment, admissions, or pricing practices.

The University strongly believes that federal student aid programs need continued, robust and sustained federal support to assure that students from a broad range of income levels and backgrounds can pursue postsecondary education and training opportunities without suffering undue financial hardship.

Consumers can and do make their own educational choices, but the federal government provides federal assistance—mainly through Pell Grants and Direct Loans—to eligible students who work to earn degrees or seek new skills to help them obtain employment. These students and their families should be able to trust that, in providing taxpayer-funded subsidies, the federal government has conducted at least some minimal screening to shield against fraudulent programs.

Overall the Department appears to have outlined a workable approach to a difficult problem and the analytical material included in support of the proposal is compelling. The Department's efforts are appropriately intended to increase transparency and improve public information about the relative costs and short-term economic benefits of various postsecondary certificate and credential programs that do not lead to a degree. It seems that the proposed calculations would require, with a few notable exceptions discussed in the questions below, minimal work on the part of affected institutions because the Department plans to use data on student borrowing of most federal loans and borrower income that is already collected in other government data bases. This method may also assure consistency in how the new metrics developed by the Department are calculated.

The 2012 effective date may be too ambitious, given the complexity involved in the Secretary locating appropriate income data for individuals identified by institutions as having completed particular programs. Also, the timeframe could be challenging for institutions to report to the Secretary, presumably via the Common Origination and Disbursement (COD) system, program cohort membership (in some fashion), amounts of private education loans, and, outstanding institutional financial plan balances owed beyond completion of a program for enrollees who actually complete each program. However, given the scale and seriousness of the alleged institutional offenses, full implementation should begin as soon as possible.

In our view, students contemplating enrolling in UC programs covered by this proposed regulation would find the additional information about the income-to-debt ratios of the program's completers, as well as the percent of former program enrollees who are paying down their student loan principal within the first three years after program completion, to be useful as they decide whether to invest in such a training or educational enterprise. At present, though, there is no way that affected programs could provide prospective enrollees with the two proposed metrics, as the program cannot have access to income information about individuals who have completed their programs and because it is impractical for programs to calculate the program repayment rates of former enrollees. Thus, the Secretary's proposed calculations, student loan debt-to-income ratios and program participant repayment rates as defined here, will enable institutions to provide additional information, not currently available, in some useful context for those considering enrollment.

As the Department moves forward on these proposed regulations, the University offers a number of recommendations, and asks that the questions raised below be clarified.

- By what means and on what timetable will affected programs communicate to the Secretary the membership of each cohort? Will this be defined in part by completion date in each program, more specifically than a CIP code, together with any additional information available to the program regarding private student loan borrowing on the part of cohort members? What software can be used? What schedule would be set for submission, each term, or each year?

- On what basis will institutions be allowed to share information from educational records with the Secretary (e.g., amounts of private education loans that the institution certified for students in the affected program cohorts, above the federal aid students received, or unpaid balances for institutional financing plans by individuals in an affected program cohort)? In addition to FERPA restrictions, students in affected UC programs would also be protected by the California privacy statute. Does the fact that UC would be sharing such information—only with respect to program cohort members who also have federal student aid— give the Secretary special privilege in terms of access to otherwise-private information?

- Is the reference to “debt incurred from institutional financing plans” intended to capture only unpaid balances owed to the institution, in whole or in part, after the completion of the affected programs? Institutions frequently offer installment payment options that are fully paid during the term of the program with no balance left. The final rule should clarify that these plans, which are not actually structured as loans with promissory notes, but rather as short-term cash management options, are not included. However, if a remaining balance is owed to the institution when a student leaves a program, the plan would convert to a “private” loan and be reported to the Secretary.

- With respect to private education student loan balances, how will the Secretary calculate the annual repayment obligation when neither the institution nor the Secretary actually knows the particular repayment schedule, applicable interest rates, relevant loan fees, etc. associated with the private education loans? Is the proposal to simply presume the federal unsubsidized loan interest rate (6.8%) and a ten-year amortization as outlined in the NPRM?

- The proposal would limit enrollment in programs at non-compliant institutions, but this sanction could be strengthened by requiring, over a specified amount of time, that such programs show an improved median debt-to-discretionary-income ratio or improved repayment rates among program completers. Unless there are conditions set for program improvement, consumers and taxpayers will continue to fall victim to fraudulent practices and misuse of federal taxpayer subsidies will persist.

- It appears that the Department will use Classification of Instructional Programs (CIP) codes to distinguish one program from another at an institution. However, there may be problems without further definition. Currently, different programs at the same institution could use the same CIP codes so there needs to be a more granular approach to discern the information that the Secretary will need to perform these calculations.

- The thresholds associated with “median debt-to-discretionary-income” ratios described in these proposed rules will not reflect the sufficiency of earnings in light of student loan debt for each borrower’s circumstances, as these ratios do not reflect adjustments for several key variations. While this proposed algorithm is fairest to institutions, it should be made clear to the public and to prospective borrowers, that the stated ratios are not any sort of meaningful guarantee that an income of the size used in the calculation will actually be enough to meet the needs of real families, particularly, for example, if they are large, if they live in a particularly high-cost area of the country, or if they have other, non-student-loan debt.

- The threshold can be comparatively useful, but should not be construed as any sort of guarantee that completion of the program will result in a job with earning similar to the median earnings used in the calculation and the median earnings should not be construed to be, in a practical sense, “enough” for all families with debt at or below the one represented in the ratio. UC hopes and expects that the Secretary will require that representations of the proposed “debt-to-income-ratios” will be placed in an understandable and cautionary context for consumers, lest the availability of this new metric be transformed into yet another advertizing ploy or be oversold, as in claims such as “the U.S. Department of Education has determined that this program is affordable, and successful completion of this activity will result in economic improvement to you and your family.”

- In the proposed regulations with respect to the calculation of the "repayment rate," the Secretary is proposing to exclude from both the numerator and denominator data about the borrowing and repayment behavior of individuals who have been granted only "in-school" and military deferments. We recommend that the Secretary similarly exclude data associated with borrowers deferred from repayment for service in the Peace Corps, AmeriCorps, and other recognized volunteer service. Also, we recommend that borrowing and repayment information associated with deferments for pending death and disability cancellations be similarly excluded from the repayment rate calculation.

- The University requests that the Department allow institutions to examine its source data so they can better understand the calculations and conclusions provided by the Department.

The University of California is committed to assuring accessibility for all eligible students irrespective of their family resources. As part of this ongoing effort, UC uses the "Education Financing Model" or EFM to gauge whether the amount of work undertaken by UC students is compatible with full-time academic or program enrollment, and in the case of loan debt, if it is manageable in terms of expected post-enrollment earning and loan repayment obligations. UC's undergraduate "loan/work expectation" is designed to set student work hours so students can make reasonable progress toward their degrees and to hold borrowing to levels that will allow them to meet their loan repayment obligations after they graduate. UC's integrated framework is regularly updated to assure it accuracy and reliability.

The proposed regulation, while touching only on non-degree programs, is based on a similar rationale about what amount of borrowing (and indirectly what amount of work on the part of students) is reasonable. UC's concern with the proposed regulations is more focused on the practical, operational features of this bold plan; can the Department actually perform as described, and can our program administrators perform as would be required by the regulation, particularly in an environment of severely diminishing administrative resources?

The metrics outlined in this NPRM would set reasonable targets for manageable loan burden given students' post-completion job options and incomes, and would provide highly useful information to consumers about programs in terms of student loan debt and expected income. This is important to the University and all institutions interested in the welfare of their former, current and prospective students. The University of California views this proposed rule as a prudent step in its efforts to allocate federal student aid dollars.

Thank you for your consideration of our comments.

Sincerely,

Nancy Coolidge
Associate Director