

November 14, 2011

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

Re. Docket ID ED-2011-OPE-0011 Application and Approval Process for New Programs

Dear Ms. Finkel:

We are writing in response to the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on September 27, 2011. The proposed new rules amend regulations promulgated by the Department in 2010, which require colleges to notify the Department before offering a new educational program required to prepare students for gainful employment in a recognized occupation. Through this notification process, the Department may advise an institution that it must obtain approval to establish the eligibility of an additional gainful employment program for federal funding. The Department established this notification and approval process to prevent institutions from circumventing the gainful employment standards by simply creating new programs.

We agree that the current requirements for new program approval may be unnecessarily broad. Comments submitted by some of our organizations on September 9, 2010 recommended that new program restrictions “apply only to institutions with currently restricted programs or with programs determined in the previous three years to be ineligible for Title IV aid. Limiting this provision to institutions with restricted or ineligible programs provides a stronger incentive for institutions to keep all of their programs fully eligible for federal aid, and reduces administrative burden for institutions that have a strong record of preparing students for gainful employment.”¹

In the October 29, 2010 Federal Register, the Department agreed, stating that “the program approval process for additional programs should apply only to an institution with programs in a restricted or ineligible status. This would relieve the burden on institutions and the Department, and would allow institutions with a record of strong performance to establish new programs more expediently.” Without final determinations of what constitutes a restricted or ineligible status, however, the Department was at that time unable to appropriately target the requirement for new program approvals, and signaled that “modifications to make the approval process for additional programs performance based will be addressed in subsequent regulations.”

The new rule proposed by the Department under this docket number, however, narrows the requirement far beyond what the Department said in October it planned to do, and would not

¹ Comments on the July 26, 2010 Notice of Proposed Rulemaking submitted by Campus Progress, The Institute for College Access & Success, US PIRG and US Student Association, page 19, available at http://projectonstudentdebt.org/files/pub/July_26_NPRM_Comments.pdf.

address the Department’s rightful “concern that some institutions might attempt to circumvent the proposed gainful employment standards”² simply by creating new programs. Instead of focusing the requirement on new programs at institutions with problematic programs, the proposed regulation limits the requirement solely to new programs that are “substantially similar” to ones already deemed to be problematic. This approach is far more limited than had been suggested previously and will enable institutions to easily evade the modest final gainful employment debt measures.

Requiring colleges to apply for new program approval only for programs that are “substantially similar” to failing programs leaves significant room for gaming. The draft rule defines as “substantially similar” programs with the same four-digit CIP code and credential level. However, there is sufficient overlap between four-digit CIP codes so that colleges may often be able to avoid the application requirement simply by finding another CIP code that aligns with their existing curriculum. For instance, a training program for high school math teachers could fall under either 13.12 or 13.13, under the specific six-digit CIP codes below:

- *13.1205 Secondary Education and Teaching.* A program that prepares individuals to teach students in the secondary grades, which may include grades seven through twelve, depending on the school system or state regulations. May include preparation to teach a comprehensive curriculum or specific subject matter.
- *13.1311 Mathematics Teacher Education.* A program that prepares individuals to teach mathematics programs at various educational levels.

Similarly, new program approvals should not be limited to programs at the same credential level as failing programs. If a college’s Associate’s degree in Allied Health and Medical Assisting Services (CIP code 51.08) is not leading to gainful employment for students who enroll, the college should not be able to simply turn a two-year degree program into a certificate program in order to maintain eligibility for federal funding.

In finalizing the debt measures and thresholds to be used in determining program eligibility for gainful employment programs, the Department lowered the standards in multiple ways, including raising the thresholds at which penalties apply and the number of times programs can fail the measures and remain eligible for Title IV aid.³ The Department indicated it made these changes in order to give “career colleges every opportunity to reform themselves” and to target “the worst-performing schools.”⁴ Given the changes in the final gainful employment debt measures, it is all

² Federal Register Notice, September 27, 2011, page 59864.

³ For instance, under the draft gainful employment debt measures proposed on July 26, 2010 and to which our September 9, 2010 were responding, programs that failed the debt measures in any given year would lose Title IV eligibility, whereas under the final rule, programs have to fail the measures for three out of any four years before losing eligibility. Similarly, under the draft rule, programs with debt-to income ratios between 8 and 12 percent, or with repayment rates between 35 and 45 percent, could face restrictions on the number of students enrolled. In the final rule, no programs will be subject to enrollment restrictions.

⁴ U.S. Department of Education press release, “Obama Administration Announces New Steps to Protect Students from Ineffective Career College Programs: Gives Programs Every Chance to Improve While Holding Them Accountable,” June 2, 2011, available at <http://www.ed.gov/news/press-releases/gainful-employment-regulations>.

the more important that the new program approval process apply to *all* new programs offered by the “worst-performing schools.”

In essence, the new proposed rule would simply mean that colleges offering the worst of the worst programs would need to apply for new program approval only if they wanted to continue to offer a program that they have already shown they should not offer. Expanding the requirement to include all new programs at colleges with one or more failing programs, as suggested previously by many of our organizations and the Department itself, will more effectively prevent gaming and provide an additional incentive for schools to meet the modest debt standards while reducing the administrative burden on schools with a strong record of preparing students for gainful employment.

If you have any questions, please do not hesitate to contact Debbie Cochrane at 510-318-7900.

Sincerely,

AFL-CIO

American Association of Collegiate Registrars and Admissions Officers

American Association of University Women

American Federation of Teachers

Americans for Financial Reform

Campus Progress

Consumer Action

Consumer Federation of California

Consumers Union

Dēmos: A Network for Ideas and Action

The Education Trust

The Institute for College Access & Success and its Project on Student Debt

The Leadership Conference on Civil and Human Rights

League of United Latin American Citizens

NAACP

National Consumer Law Center (on behalf of its low-income clients)

National Consumers League

National Education Association

Neighborhood Economic Development Advocacy Project

Public Advocates Inc.

Thurgood Marshall College Fund

United States Student Association

U.S. PIRG

Young Invincibles