Dear Ms. Finkel:

I write on behalf of the American Association of Community Colleges (AACC) concerning the July 26, 2010 Notice of Proposed Rulemaking (NPRM) on “Gainful Employment.” AACC represents the nation’s 1,200 community colleges and is formally affiliated with the national community college student association, ASACC. These comments are also endorsed by the Association of Community College Trustees (ACCT), which represents the boards of trustees at the nation’s community colleges.

Virtually all our member institutions offer programs that would be covered under the NPRM; many provide more than 100. Therefore, the regulation could have an enormous impact on community college students across the country. AACC supports the NPRM’s overall approach, though a number of important recommendations for changes follow.

The entire system of federal student aid depends on a broad assurance that funds are appropriately spent. Unfortunately, recent developments in the for-profit higher education industry, highlighted by hearings of the Senate Health, Education, Labor, and Pensions Committee, and studies by the Government Accountability Office, have called that into question. The explosive growth in enrollments at profit-driven institutions, coupled with the highest average student debts and default rates in postsecondary education, demand more active federal involvement.

In fact, although for-profit colleges are owned by shareholders and corporate executives, they are perhaps more accurately viewed as poorly regulated quasi-federal entities. This is because these institutions are overwhelmingly funded by federal student aid dollars. As stated in the NPRM, the largest five for-profit companies derive 77% of their revenues from Title IV aid; the average community college receives 6% to 7% of its funds via the Title IV programs. This is a defining difference that is appropriately reflected in federal policy.

Compliance with the NPRM will be costly and time-consuming. AACC has previously submitted comments on the June 18, 2010 NPRM that outline some of the regulatory apparatus that will be needed to implement the July 26 NPRM. We believe that the Department has underestimated the time it will take to comply with the regulations, and have filed formal comments on this topic with the Office of Management and Budget. We urge ED to strive to minimize the time that it will take for institutions to comply with these rules. Community colleges cannot afford to devote significant and unnecessary new resources to their implementation.
Most importantly, we emphasize that the final rule should be better targeted on the driving force behind these regulations—programs where high percentages of students take on large amounts of debt that they cannot hope to repay in a reasonable timeframe and do not have the skills to do so. Community colleges, which are already publicly accountable, are more than willing to be held accountable for programs that require significant borrowing, with all of its consequences. But they do not support a new regulatory framework in which substantial new compliance burdens are imposed across-the-board because of problems in other sectors of higher education.

More detailed comments on the regulations follow.

**Certificate Programs That Lead to Degrees Should Be Excluded From the Gainful Employment Regulation**

The final regulation should clarify that it would not apply to certificate programs at non-profit institutions of higher education that, in combination with the completion of other educational requirements, lead to an associate degree. This programmatic structure is common at many community colleges and will, among other things, provide further incentive for institutions to develop programs that provide a sequence of courses, or career ladders, that lead to degrees—a national goal shared by President Obama and a broad array of public and private organizations. It is common for community colleges to structure programs so that students are encouraged to continue pursuing their studies by gaining incremental credentials as they progress towards degree attainment, even though the program is not designed as a certificate program. Therefore, these certificate programs should not be classified as a program of gainful employment under the regulation.

**Section 668.7 (a)—“Gainful Employment”**

The final regulation should reflect its stated priority of ensuring that student debts are reasonable, both in relation to earnings and in terms of whether they can be repaid. The best way to ensure this is to discourage borrowing altogether. Consequently, the regulation should provide incentives to colleges to provide low-tuition programs or other mechanisms that help students avoid borrowing. In cases where fewer than 35% of a program’s enrollees rely on federal loans, the program should not be subject to any of the potential limitations of Section 668.7. Any program in which such a small percentage of students take out loans will by definition have a federal median debt of zero, and therefore is extremely unlikely to have its participation in Title IV limited under this regulation. Therefore, it is counterproductive and needlessly burdensome to subject institutions to further reporting requirements for these programs. Exempting these programs will ensure that federal oversight efforts and the institutional regulatory burden will be efficiently targeted.

The final regulation should not require institutions to retroactively gather data on individuals who previously enrolled in programs leading to “gainful employment.” The two NPRMs on this topic assume, but do not stipulate, that this would be required. Many institutions will not be able to provide needed data on students who have previously left their institutions and they should not be required to do so. ED should adjust the final rule
to reflect this phase-in. It may be possible for institutions to provide this data for award year 2009-2010, but this approach should be avoided, if possible.

**Section 668.7(g)—Additional Programs**

This subsection of the NPRM should be changed so that gainful employment programs at community colleges do not need to undergo additional new review by ED in order to be eligible for Title IV aid. As a matter of course, community college workforce education programs are designed to meet local labor market needs. Furthermore, as public institutions, community colleges undergo thorough oversight before they can add new credit programs. Business advisory committees are used in this process, and board, public agency, accrediting agency, and often even state approval is required. The NPRM’s requirements would add a layer of federal bureaucracy that is unnecessary and redundant and will impede the ability of community colleges to quickly and effectively respond to workforce needs. Although this regulation may be appropriate for other types of institutions, it is thoroughly unnecessary for community colleges and we urge that it not be applied to them.

Thank you very much for your consideration of these comments.

Sincerely,

George R. Boggs  
AACC President and CEO