August 2, 2010

Ms. Jessica Finkel
U.S. Department of Education
1990 K St. N.W.
Room 8031
Washington, DC 20006-8502

We write on behalf of the American Association of Community Colleges (AACC) and the Association of Community College Trustees (ACCT) to state specific community college perspectives on the Department of Education’s (ED) June 18 Notice of Proposed Rulemaking (NPRM) on Program Integrity Issues. AACC represents the nation’s community college chief executive officers and, perhaps most importantly for the purposes of this regulation, the administrators who will be responsible for implementing it. AACC is also formally affiliated with the American Student Association for Community Colleges, the community college student group. ACCT represents the nation’s community college trustees. We appreciate the opportunity to comment on these important regulations, which our organizations generally commend. Our comments that follow focus on a limited number of issues that are of particular interest to community colleges. AACC and ACCT also endorse the comments being submitted by the American Council on Education (ACE), and we particularly note the position on the definition of credit hour as well as State Authorization.

AACC also calls your attention to comments it submitted on July 16 to the Office of Management and Budget on the regulatory burden that the NPRM will impose on our campuses. These outline why we believe that ED has dramatically underestimated the time it will take for community colleges to comply with the proposed rules.

Subsection 668.6: Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

The NPRM on gainful employment will heavily impact community colleges, despite public focus on its effect on for-profit education. According to IPEDS data, in 2007 two-year public institutions of higher education awarded 129,818 certificates that would fall under the gainful employment regulation. Without doubt, this number has since increased. On average, then, each community college will have to annually produce and make available a substantial amount of currently uncollected information on close to 1,200 students—a heavy regulatory burden that is unaccompanied by any funds to help meet the additional cost.
Subsection 668.6(a) Reporting Requirements

We do not believe that the information that is to be reported to ED under this section should be provided on individuals. In fact, we believe that this proposed requirement is in violation of Section 134 of the Higher Education Act, which prohibits the ED from creating a federal database with personally identifiable student information. Rather, aggregate information should be provided for all of the individuals who complete a particular covered program within a specified timeframe. The CIP code of the program would be provided. The date that each individual completed the program, as stipulated in 668.6(a)(3), is unnecessary, and this requirement should be deleted from the final regulation. The requirement that colleges provide information on the average amount of private educational loans and institutional financing that program completers received should be modified to state, “to the maximum extent practicable,” because campus officials will not always be aware of all amounts borrowed. In addition, the debt information to be reported, as outlined in 668.6(a)(4), should be limited to that which the student incurred at the institution—this is what is relevant for determining a programs’ essential costs and benefits. In order to ensure the integrity of program-wide information provided to ED, institutions should be responsible for maintaining records that substantiate the information for a specified period.

Subsection 668.6(b) Disclosures

In subsection 668.6(b)(4), the requirement that institutions provide an “on-time graduation rate” has no reference to existing law or regulation. Consequently, to provide reliable, commonly used and understood information, as well as to minimize institutional burden, we propose that the current graduation rate calculation used to comply with the “Student Right to Know” requirements (34CFR668.45) be employed for this purpose. For subsection 668.6(b)(5), the regulation should specify that the median loan debt reported on the Web site should be limited to debts incurred by the student at the institution where the program was completed. This is the borrowing that is relevant to evaluating the occupational opportunities provided by the program.

We oppose as drafted subsection 668.6(b)(4) of the NPRM, which requires institutions to provide placement rates for each program falling under the “gainful employment” definition. Our objections are based on the substantial difficulty that community colleges will have
generating the required information—in fact, it appears that many of them will simply be unable to do so. While placement rates represent useful consumer information, the Department should not unilaterally impose this enormous regulatory burden on institutions without the explicit authorization of Congress, which historically has delineated desired consumer information disclosures through requirements in the HEA. We note that a placement rate is not in any way required in order to calculate the relationship between debt levels of graduates and earnings, or repayment of student loans, as proposed by the Department in its July 26th NPRM.

We support requiring institutions to provide placement rates if, and only if, they can be generated by matching student records with a “State-sponsored workforce data system,” as specified by ED in the June 18 NPRM. The substantial funding provided for state longitudinal data systems by ED, as well as the Department of Labor’s emerging Workforce Data Quality Initiative, give hope that in the coming months this information will be widely available. If forcefully implemented by ED, the requirements under the State Fiscal Stabilization Fund should also foster better integration of educational and workforce data. However, for various reasons, many community colleges are unable to obtain sufficiently detailed placement information through record matches. We do not believe that ED currently has the authority to require states to make placement data available to institutions. In cases where state or other agencies cannot provide placement data to institutions, the latter should be required to certify that this is the case.

Alternatively, many community colleges simply will be unable to comply with the NPRM’s requirement that, when state workforce data systems are not able to provide needed information, they must provide placement rates as specified in subsection 668.6(g). Under this option, colleges would need to document employment on a case-by-case basis—a heavily labor-intensive process that oftentimes will prove fruitless. Indeed, a similar requirement that placement rates be provided for job training programs has caused substantial number of community colleges to eschew participation in the Workforce Investment Act programs. This is an extremely unfortunate, if unanticipated, outcome.

We are particularly concerned about the potential application of Section 668.6(g) to this regulation because we believe that it is internally inconsistent and will produce flawed data. The regulation requires colleges to count as placements only those students who obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation, yet it allows this to be documented with state or federal income tax forms and written evidence of payments of Social Security taxes. These sources will not always provide verification that the former student is working in the occupation for which they received training.
Consequently, we urge the Department of Education, working cooperatively with Federal, state and other agencies, to ensure that any new requirements related to job placement will generate precise, meaningful, and readily available data. Again, the regulations in subsection 668.6(g) do not meet that standard and should not be included in the final rule.

Thank you for your attention to these issues. Please do not hesitate to contact me or David Baime of my staff (ext. 224, dbaime@aacc.nche.edu) if you have any questions.

Sincerely,

George R. Boggs          J. Noah Brown
AACC CEO and President    ACCT President and CEO