September 9, 2010

Submitted via Federal Rulemaking Portal: http://www.regulations.gov

Jessica Finkel
U.S. Department of Education
1990 K Street, NW
Room 8031
Washington, DC 200006-8502

RE: ED-2010-OPE-0012: Notice of Proposed Rule Making: Program Integrity: Gainful Employment

Dear Ms. Finkel:

On behalf of the National Restaurant Association, we appreciate the opportunity to submit our comments on the notice of proposed rulemaking (ñthe Proposed Ruleò) to amend the Student Assistance General Provisions by setting new standards to determine whether students in certain postsecondary educational programs will remain eligible to obtain student financial assistance under Title IV of the Higher Education Act of 1965, as amended (ñHEAò).

We agree with the Proposed Rule that if students were able to complete their education with no student loan debt, more of their subsequent income could be devoted to ñhome purchases, retirement savings, or serving the community.ò[1] However, the availability of federal student aid not only increases the likelihood that a student will enroll at an institution of higher education, but it may also be the only way a student will be able to afford a higher education that would lead to his dream career.

We are troubled by the ñconsumer protection approachò taken by the Department that would, in practice, result in the elimination of some very important programs leading to rewarding careers in our industry.[2] Specifically, the restaurant and food service industry needs the culinary arts programs at proprietary institutions to help provide postsecondary training for our workforce. Before delving into our specific concerns, we will provide some background information to place into context the reasons why our industry needs these programs.

[1] *Program Integrity: Gainful Employment*, 75 Fed. Reg. 43,616, at 43,621 (2010) (to be codified at 34 C.F.R. pt. 668) (proposed July 26, 2010).
[2] *Id.* at 43,622.

THE RESTAURANT AND FOOD SERVICE INDUSTRY

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our mission is to help our members establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 945,000 restaurant and foodservice outlets employing 12.7 million people who serve 130 million guests daily.[3] Despite being an industry of predominately small businesses, the restaurant industry is the nationôs second-largest private-sector employer.

The restaurant and food service industry is unique for several reasons. First and foremost, small businesses dominate the industryï with more than seven out of 10 eating and drinking establishments being single-unit operators. Our workforce is typically young, with nearly half under the age of 25. In addition, the restaurant industry operates under relatively low profit margins of 4 to 6 percent before taxes, with labor costs being one of the most significant line items for a restaurant.

THE PROPOSED RULE IGNORES U.S. WORKFORCE DEMOGRAPHICS AND THE NEEDS OF THE RESTUARNAT AND FOOD SERVICE INDUSTRY

The Proposed Rule disregards demographics of the U.S. workforce and the employment needs of industries like the restaurant and food service industry. The programs proprietary institutions offer in the culinary arts is very much needed by the restaurant and foodservice industry. This need will only increase for postsecondary educated employees as we face a significant deficit of workers in the coming decade. The restaurant and foodservice industry is expected to face a long-term labor challenge where demand for employees outpaces the supply in the U.S. labor workforce.

The restaurant and foodservice industry employs 12.7 million employees, representing nine percent of the nationôs workforce. In the next ten years, restaurants are expected to add 1.3 million additional jobs.[4] Over that same period, demand for employees is expected to outpace the growth of the U.S. workforce. The industry faces long-term labor challenges where the industryôs key source of employees might not be as available in the future. Employees between the ages of 16 and 24 represented 24 percent of the U.S. workforce in 1978, but by 2018 that population is expected to decrease to 13 percent.[5] Meanwhile, those 55 and older made up 14 percent of the workforce in 1978, but will be nearly one-quarter of the nationôs workforce 40 years later. Older employees will be a critical source of employees for the restaurant industry.[6]

Restaurants must add jobs across all occupations in the industry over the next ten years. Some of the strongest gains will be seen in occupations such as food preparation and

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[3] *2010 Restaurant Industry Forecast*, National Restaurant Association (2010).
[4] *Id.* at 20.
[5] *Id.* at 21.
[6] *Id.*

serviceï an expected 15 percent increaseï an area where postsecondary training is valued.[7] Training is also important for management positions where eight percent job growth is expected. In addition, by 2020 the industry will grow chef and head cook positions by 11 percent, and first-line supervisors/food-preparation and serving managers by 12 percent.[8]

Within the restaurant and foodservice industry, only a small percentage of workers have postsecondary training in the culinary arts. Proprietary institutions serve as an important training ground for many of those who pursue a career in the culinary arts. Private for-profit institutions award 59 percent of the bachelor degrees in culinary programs, more than the number of bachelorôs degrees awarded by private non-profit and public institutions combined.[9] If these programs are eliminated or limited by the Proposed Rule, many culinary arts students would not receive the training they desire and potentially would not enter the restaurant and food service workforce where they are needed.

Culinary Programs by Institution and Awards[10]				
	All Institutions	Public	Private Non-profit	Private For-profit
Total Awards	100%	74%	7%	20%
Total Certificates	100%	80%	4%	16%
Less than 1 year	100%	78%	2%	20%
More than 1 less than 2 years	100%	78%	5%	17%
More than 2 less than 4 years	100%	96%	0%	4%
Associateôs Degrees	100%	71%	8%	21%
Bachelorôs Degrees	100%	11%	30%	59%
Masterôs Degrees	100%	50%	50%	0%

THE PROPOSED RULE WILL STIFLE JOB CREATION

With the unemployment rate at 9.6 percent nationwide, this is not the time to stifle job creation. The Proposed Rule ignores the negative impact it will have on jobs and the economy. Proprietary schools place hundreds of thousands of students in jobs every year. They teach students skills necessary to build a career in todayôs restaurant and food service industry.

Although formal training is not required to enter the restaurant and food service workforce, it can help advance and maintain a career in the industry. The Department of Labor, Bureau of Labor Statisticsô Occupational Outlook Handbook states, ñAlthough certification is not required, it can help to prove accomplishment and lead to

[7] *Id.* at 21. Source: National Restaurant Association projections, based on historical data from the Bureau of Labor Statistics.
[8] *Id.*
[9] Based on the National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Completion Survey, 2008-2009.
[10] *Id.*

advancement and higher-paying positions. Advancement opportunities for chefs, head cooks, and food preparation and serving supervisors depend on their training, work experience, ability to perform more responsible and sophisticated tasks, and their leadership abilities.ò[11] The proprietary institutions and their programs are an important source of training to help the restaurant and food service industry employees advance their careers.

Restaurant and foodservice workers who obtain culinary postsecondary training can earn more than those without formal training in their occupations. Furthermore, the Proposed Rule ignores real life successes. Graduates from The International Culinary Schools at the Art Institutes, with more than 12,000 students currently enrolled, earn significantly above the Bureau of Labor Statisticsô salary projections in culinary arts. For example, the average starting salary for individuals graduating from The International Culinary Schools at the Art Institutes is $28,000, while the salary projection for the 25th percentile by the Bureau of Labor Statistics, used by the Proposed Rule for its determinations, is just $19,319.[12]

INFORMED CHOICE IS DENIED

The Proposed Rule imposes disclosure requirementsð most of which we supportð on programs that do not meet the proposed debt-to-income ratios or loan repayment rate standards. However, while the Proposed Rule ensures that students will be fully informed of the potential debt burden they may take, it then denies the student the freedom to make an intelligent decision for themselves and their families.

The Proposed Rule assumes ñthat individuals may not have the ability to evaluate fully the costs and benefits of entering into loans.ò[13] Thus, the government takes the paternalistic approach of deciding motivated by a ñconsumer protection approachò that disregards the individual studentôs circumstances and knowledge.[14] We strongly believe that students should be well informed and then allowed to make an informed choice to attend a culinary arts program, or other high-cost, high-quality program, if that is the career path they wish to pursue.

AT RISK STUDENTS ARE HARMED THE MOST

The financial aid programs established by Title IV of the HEA were designed to help at-risk students. Meanwhile, the Proposed Rule will result in reduced access, less opportunity, and fewer choices for these students. The financial aid programs help students access education and training that may, otherwise, not have the opportunity to obtain a postsecondary education. For example, the Federal Pell Grant Program ñprovides need-based grants to low-income undergraduate and certain post baccalaureate

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[11] *Bureau of Labor Statistics, Occupational Outlook Handbook*, 2010-11 edition, Chefs, Head Cooks, and Food Preparation and Serving Supervisors, found at http://www.bls.gov/oco/ocos330.htm#training.
[12] The Art Institutes Culinary Starting Salary represents 12 months ending 12/31/09.
[13] *Program Integrity: Gainful Employment*, 75 Fed. Reg. at 43,622.
[14] *Id.*

students to promote access to postsecondary education.ò[15] Yet at-risk students are harmed most by the Proposed Ruleôs tests and metricsï specifically the loan repayment rate requirements. The Proposed Rule will have a chilling effect on degree programs offered to low-income, minorities, women, working adults, and other at-risk students.

ñThe loan repayment rates are likely to have a significant impact on Pell Grant students, since Pell Grant recipients are disproportionately enrolled at institutions with loan repayment rates under the 35% threshold. Institutions with a higher percentage of Pell Grant recipients have a lower loan repayment rate.ò[16] Pell Grant recipients at for-profit colleges represent about a quarter of all Pell Grant recipients.[17]

Under the two thresholds set by the Proposed Rule, programs educating about 20.5% of Pell Grant recipients at for-profit institutions would be affected with most of those programs becoming ineligible for Title IV aid.[18] In essence, the test and metric discriminates against institutions that serve and educate at-risk students. A good indicator of where a schoolôs loan repayment rate is going to fall, regardless of type of school, is its proportion of Pell Grant recipients as part of its general student population.[19] Thus, the Proposed Rule penalizes those schools accepting a higher proportion of the students the Title IV program was meant to assist.

THE PROPOSED RULE IS BIASED AGAINST HIGH-QUALITY DEGREE PROGRAMS

The debt-service-to-income ratio of eight percent is inherently biased against high quality degree programs, in favor of inexpensive diploma and certificate programs. This runs contrary to the goal of President Obamaôs American Graduation Initiative that calls for five million more college graduates by 2020.[20] Access to higher education for the very students who the Presidentôs initiative tries to encourage is being attacked in the Proposed Rule. In fact, a report recently released by the College Board recommends a number of ideas to address college completion, one being college costs, with a recommendation for more need-based financial aid.[21] The Proposed Rule appears to do just the opposite; taking financial aid opportunities away from at-risk students and, in practice, eliminating some of the postsecondary education programs serving this population.

The Proposed Rule will exacerbate the problem of lower bachelor degree attainment among minorities. Only 30 percent of African-Americans and 20 percent of Latinos in the 25-34 age group have an associateôs degree or higher. Overall, students from the highest income families are almost eight times as likely as those from the lowest income

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[15] *Federal Pell Grant Program, Program Description,* found at http://www2.ed.gov/programs/fpg/index.html
[16] Kantrowitz, Mark, *Summary and Analysis of Gainful Employment NPRM*, at 15, August 15, 2010.
[17] *Id.*
[18] *Id.* at 15-16.
[19] *Id.*.
[20] *See* http://www.whitehouse.gov/blog/Investing-in-Education-The-American-Graduation-Initiative/
[21] Lewin, Tamar, ñOnce a Leader, U.S. Lags in College Degrees,ò *The New York Times*, Jul 23, 2010.

families to earn a bachelorôs degree by age 24.[22] Discouraging programs at proprietary institutions that provide education to advance a studentôs career, such as in the restaurant and food service industry, is counterproductive and only increases the difficulty of attaining a degree by minorities.

THE PROPOSED RULE CONSIDERS THE QUALITY OF A PRORAM IRRELEVANT

The tests and metrics by which the Department evaluates programs for eligibility for financial aid under Title IV of the HEA ignore the quality of the programs. The tests are arbitrary and bear no relationship to the quality of the education the student receives. Higher quality degree programs, such as a bachelorôs degree versus an associateôs degree or certificate, can come with higher costs by the nature of the education provided.

Programs with higher costs, hence higher tuition and higher potential for student debt, may be necessary for training in some fields. For example, culinary programs require higher operating costs than other programs due to the need for smaller classes, dedicated/specialized space, and food/preparation costs. (New kitchen space can cost $1 million to open.) However, entry level starting salaries appear to be low in the Bureau of Labor Statistics averages because few workers in the group actually hold a postsecondary degree. For example, the starting salary for someone in the culinary arts field is $19,319 (25th percentile) according to the Bureau of Labor Statistics. Yet attainment of a degree in the industry can lead to higher-paying positions and a rewarding career.[23]

The Proposed Rule will make it extremely difficult, if not economically unfeasible, for institutions to offer culinary programs that come with a higher cost but greater earning potential later in a studentôs career. As stated, proprietary institutions award more bachelorôs degrees in the culinary arts than any other type of institution.[24] These programs are of higher quality leading to bachelorôs degrees, but the Proposed Rule does not take this into account.

THE PROPOSED RULE GOES WAY BEYOND OUTLIERS

The Department has stated that the intent of the Proposed Rule was only to eliminate ñbad actorsò or outliers in the proprietary institution community.[25] However, the Proposed Rule goes well beyond the stated intent. The number of programs that would no longer be eligible for Title IV aid combined with those considered ñrestrictedò is significant and comes with enrollment reductions and onerous disclosure requirements on restricted programs. Between 37 percent and 43 percent of private for profit institutions have loan repayment rates below 35 percent. Roughly 22 percent have loan repayment rates between 35 and 45 percent and would be considered restricted programs.[26]

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[22] Lewin, Tamar, ñOnce a Leader, U.S. Lags in College Degrees,ò *The New York Times*, Jul 23, 2010.
[23] BLS, OOH 2010-11 edition, http://www.bls.gov/oco/ocos330.htm#training.
[24] Based on the National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Completion Survey, 2008-2009.
[25] *Program Integrity: Gainful Employment*, 75 Fed. Reg. 43,616.
[26] *Program Integrity: Gainful Employment*, 75 Fed. Reg. at 43,619.

Over sixty-three percent of for-profit institutions would either not be eligible or be considered a restricted program, when considering just one of the metrics used by the Proposed Rule, loan repayment rates.[27] Such numbers indicate that the Proposed Rule extends well beyond regulation of ñbad actorsò and outliers.

THE METRICS USED TO EVALUATE AN INSTITUTION'S ELIGIBILITY TO OFFER TITLE IV PROGRAMS IS FLAWED

The metrics used by the Department in the Proposed Rule are based on all borrowers entering repayment not just those who have completed the program.[28] There are many reasons why a student might not complete a program, not just the cost of the education. Measuring institutions on all those who are repaying is not a fair metric, as some of these students have not completed the full program of study. Only those who have completed the full program have the maximum earning capacity as opposed to non-completers. This is true in any career. For example, a law studentôs loan repayment capacity is seriously hindered by not finishing the degree and annual salary data only considers actual graduates.

THE DEPARTMENT HAS OVERSTEPPED ITS AUTHORITY

A final point that we would like to raise is the fact that the Proposed Rule does not seem to have any underlying statutory authority to regulate program eligibility for aid under Title IV of the HEA based on expected debt-to-earnings ratios. In fact, the Proposed Rule seems to be in conflict with the HEA. The Proposed Rule attempts to address the costs of deferments and other repayment options, while Congress explicitly has created these mechanisms to address the issue of increasing student debt load and rising tuition costsð not authorizing the Proposed Ruleôs attempt at controlling tuition prices.

Finally, the very essence of the Proposed Rule goes beyond the confines allowed by the law. Its attempt at defining ñgainful employmentò by relating the phrase somehow to a debt-to-earnings formula goes against both the plain meaning of the phrase and the Department of Educationôs long-standing interpretation of the provision at issue. Thus, the proposed definition of ñgainful employmentò also goes beyond the Departmentôs authority.

CONCLUSION

Thank you again for the opportunity to share our views on the Proposed Rule.

Because of its negative policy implications, particularly its impact on culinary programs at private for-profit institutions, as well as its lack of legal foundation, we would like to ask the Department to reconsider the Proposed Rule and withdraw it from consideration.

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[27] Kantrowitz, *Summary and Analysis of Gainful Employment NPRM*, at 18.
[28] *Program Integrity: Gainful Employment*, 75 Fed. Reg. at 43,619.

We look forward to working with you as we move forward on our common goal of providing education opportunities for students to succeed in the career of their choosing.

Sincerely,

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