



October 21, 2010

**Via Email**

Office of Information and Regulatory Affairs  
Attention: Josh Brammer, Education Desk Officer  
Office of Management and Budget  
725 17<sup>th</sup> Street NW  
Room 10222  
New Executive Office Building  
Washington, DC 20503

Re: Submission of Gainful Employment Information Collection (OMB 1845-NEW1)  
for OMB Review

Dear Mr. Brammer:

On behalf of the Association of Proprietary Colleges of New York State (“Association” or “APC”) and its 27 member colleges, I am submitting these comments on the “notice of submission for OMB Review” (“Notice”) regarding the proposed gainful employment-related information collection and disclosure requirements to be codified at 34 C.F.R. § 668.6 (“Section 668.6”)<sup>1</sup> under the Paperwork Reduction Act of 1995 (“PRA”), published in the Federal Register, 75 Fed. Reg. 57461, on September 21, 2010, by the U.S. Department of Education (“Department”).<sup>2</sup>

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<sup>1</sup> 75 Fed. Reg. 34,809 (June 18, 2010).

<sup>2</sup> The APC Colleges include the following degree-granting institutions in New York State: The Art Institute of New York City, Berkeley College, Briarcliffe College, Bryant & Stratton College-Albany, Bryant & Stratton College-Amherst, Bryant & Stratton College-Buffalo, Bryant & Stratton College- Greece, Bryant & Stratton College-Henrietta, Bryant & Stratton College-Liverpool, Bryant & Stratton College-Orchard Park and Bryant & Stratton College-Syracuse, Business Informatics Center, The College of Westchester, DeVry College of New York, Elmira Business Institute, Everest Institute, Five Towns College, Island Drafting and Technical Institute, ITT Technical Institute, Jamestown Business College, LIM College, Long Island Business Institute, Mandl School, Monroe College, New York Career Institute, Olean Business Institute, Plaza College, Saint Paul’s School of Nursing, School of Visual Arts, Simmons Institute of Funeral Service, Inc., The Swedish Institute, Technical Career Institutes, USC – The Business College and Wood Tobe-Coburn.

The APC colleges are all accredited, degree-granting institutions that serve over 50,000 students annually, and in recent decades have graduated tens of thousands, if not hundreds of thousands, of New Yorkers who have advanced their lives and careers based on our educational programs. Member institutions have been lauded for their success in helping students from low-income communities attain employment in competitive fields. Also, an *U.S. News & World Report* article noted the ability of member institutions to consistently report high loan repayment rates.<sup>3</sup> APC students have access to more than 350 degree programs at 41 campuses in numerous traditional and emerging fields, including business administration, computer programming, health care, and visual arts. Our colleges provide students with a clear path to career opportunities and help businesses in our region by providing employable, highly educated graduates. The APC member colleges are vital members of their local communities -- as employers, taxpayers, corporate citizens and educators.

APC believes that the Department has provided OMB with erroneous information related to these proposed information collection requirements. The Department has misstated the necessity of the data collection, especially at this time; does not discuss the way in which other regulators (namely states and accrediting agencies) already regulate in this general area, and does not address the way in which these data collections conflict with existing statute and Department regulations. Further, the Department grossly underestimates the time and administrative burden that the proposed requirements would impose on approximately 4,500 educational institutions. This is particularly true with respect to reporting information on private education loans and placement rates, both of which would require thousands and thousands of hours by APC colleges and another 4,500 institutions around the country, which we believe is unwarranted.

Accordingly, APC respectfully requests that OMB review these Department proposals very closely and direct the Department to revise these proposals in order to comply with the standards of the PRA as codified at 44 U.S.C. § 3506(c)(3). Should the Department fail to make the necessary changes, then APC requests that OMB disapprove the Department's proposed information collection.

#### The Timing Of This Review Undermines Its Value And Purpose

The APC must express its dismay that it appears the OMB already has completed its review of the information collection requirements at Section 668.6 prior to the conclusion of this comment period. We suggest this based on OMB's publication of a notice on October 15, 2010 indicating that it has completed its review of the proposed regulations under the "Institutional Eligibility Under the Higher Education Act of 1965; Student Assistance General Provisions" heading, which include Section 668.6.<sup>4</sup>

As we began to formulate our thoughts for this letter, we wondered why the OMB Notice did not comply with Section 3506 of the PRA, which requires OMB to "provide interested

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<sup>3</sup> Kim Clark, *New Analysis Suggests Which Colleges Help Disadvantaged Students*, U.S. News & World Report, October 20, 2010, at [http://www.usnews.com/articles/education/paying-for-college/2010/10/04/New\\_Analysis\\_Suggests\\_Which\\_Colleges\\_Help\\_Disadvantaged\\_Students.html](http://www.usnews.com/articles/education/paying-for-college/2010/10/04/New_Analysis_Suggests_Which_Colleges_Help_Disadvantaged_Students.html).

<sup>4</sup> See <http://www.reginfo.gov/public/do/eoReviewSearch> (scroll down page to RIN: 1840-AD02).

Federal agencies and the public an *early* opportunity to comment on information requests.”<sup>5</sup> Clearly, APC and thousands of other affected institutions do not have an “early opportunity” to comment on these vital issues. But it only gets worse since, as discussed above, it appears that OMB has concluded its review of the regulatory package that includes Section 668.6. This timing would seem to render the entire comment process pointless and contrary to the clear intent of the PRA.

The APC and our member institutions believe that the miscalculation of the administrative and fiscal burden created by data collections under the PRA is a serious problem which has repeatedly been abused by the Department. The U.S. Government Accountability Office (“GAO”) addressed this issue in its August 2010 report, *Higher Education: Institutions’ Reported Data Collection Burden is Higher Than Estimated but Can Be Reduced through Increased Coordination*.<sup>6</sup> In its report, the GAO found that of the 22 schools studied, the Department had underestimated the burdens created by data collections for 18; and for more than half of those institutions the time burden was more than double what the Department had estimated.<sup>7</sup> The effect of these excessive data collections is to drive up costs for institutions, forcing increases in tuition to compensate. The need for the proposed data collection to be reviewed and the standards of the PRA to be enforced is significant. It is impossible to keep tuition low while having additional administrative burdens placed on institutions every year.

All of the APC colleges work hard to maintain positive relationships with all of our Federal and state regulators, as well as our accrediting bodies. We believe that the proper development and enforcement of educational legal requirements can help institutions as they strive for continual improvement. But the Federal Government, like the institutions, has to meet its obligations for this system to work. In this case, the Department has proposed information collection requirements that are not only needlessly burdensome, but also are plagued with vague terminology that expands the burden. We ask that OMB fulfill its obligations under the PRA by requiring the Department to modify these proposed requirements.

**We ask you to provide a public statement with respect to the timing of this comment process and how it complies with the purpose of the PRA. As noted above, since OMB already has approved the regulatory package that includes Section 668.6, it appears that this comment process has been reduced to a pointless ritual that is contrary to the intent of Congress in enacting the PRA. We would be quite pleased if you can advise us otherwise.**

**On this same subject, the Secretary has also announced (as discussed below) that the Department has postponed publication of the main body of the related proposed gainful employment regulations, but intends to publish the particular regulation that sets out new requirements for institutions to seek Department approval of new educational programs. These new requirements would require institutions to provide five-year enrollment and job projections, backed up by statements from unaffiliated employers, as part of such applications, which would add yet another large burden on institutions. This “new program regulation” was proposed as part of a different regulatory package, and since**

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<sup>5</sup> 75 Fed. Reg. 57,461 (September 21, 2010)(emphasis added).

<sup>6</sup> Available at <http://www.gao.gov/products/GAO-10-871>.

<sup>7</sup> *Id.* at Highlights.

**OMB has not made any announcement of the PRA review of this particular regulation, it appears that it could be published without any such review whatsoever. This is baffling and, again, leads us to ask if the PRA review is just a ritual or is supposed to fulfill a purpose? We would appreciate your public comment on this subject.**

#### The PRA Requirements

Under 44 U.S.C. § 3506(c)(3), the Department must certify that its proposed information collection:

(3)(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

\* \* \*

(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond; . . .

Consistent with Section 3506 of the PRA, OMB also has requested comments which “[e]valuate the accuracy of the agency’s estimate of the burden of the proposed collection of information.” In response, we are providing examples of how the Department grossly underestimated the administrative burden and cost of its proposed Section 668.6 disclosures. The Department’s failure accurately to report the cost and administrative burden that Section 668.6 demands OMB comment, and if not corrected, OMB’s disapproval.

#### The Information Collection Under Proposed Section 668.6(a) Is Not Necessary for the Proper Performance Of The Department’s Functions, And The Collection Does Not Have Practical Utility.

The PRA requires agencies to certify that the information collected from regulated parties is “necessary for the proper performance of the functions of the agency,” and has “practical utility” so as to minimize the paperwork burden on these entities while ensuring the “greatest possible benefit” and “utility” from the information to be gathered.<sup>8</sup> We believe Section 668.6 falls short under these measures.

Section 668.6 has been issued as part of a pending regulatory package that, if put into effect in the future, would set new standards for educational programs that prepare students for gainful employment in a recognized occupation.<sup>9</sup> Section 668.6 would require institutions to provide the following information:

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<sup>8</sup> 44 U.S.C. § 3501(1,2)(2010). *See also* 44 U.S.C. § 3506(c)(3)(A)(2010).

<sup>9</sup> This information collection affects all educational programs that are eligible for Title IV Program funds under 34 C.F.R. § 668.8(c)(3) and 34 C.F.R. § 668.8(d). The Department has reported that this will affect 2,086 proprietary institutions, 238 private, non-profit institutions and 2,139 public institutions. *See Exhibit 1. Also available at <http://edicsweb.ed.gov>* (link number 4317, “Att\_Gainful Employment.OMB1845.NEW1.05.25.10.DK.xls”).

Under proposed Section 668.6(a), an institution would annually submit to the Department:

- identifying information about each student who completed a program;
- the Classification of Instructional Program (CIP) code for that program;
- the date the student completed the program; and
- the amounts the student received from private educational loans and institutional financing plans.

Under proposed Section 668.6(b), an institution would be required to disclose on its website:

- the occupations that its programs prepare students to enter, along with links to occupational profiles on O\*NET;
- the on-time graduation rate of students entering a program;
- the cost of each program, including costs for tuition and fees, room and board, and other institutional costs typically incurred by students enrolling in the program;
- beginning no later than June 30, 2013, the placement rate for students completing each of those programs, as determined under § 668.8(g) or a State-sponsored workforce data system; and
- the median loan debt incurred by students who completed each program in the preceding three years, identified separately as title IV, [Higher Education Act] HEA loan debt and debt from private educational loans and institutional financing plans.<sup>10</sup>

The burden of these requirements would sweep very broadly. These requirements would place unnecessary burdens on more than 4,500 institutions that offer more than 52,980 affected educational programs that enroll more than 3,190,476 students.<sup>11</sup>

*The Collection Of Identifying Information For Each Program Completer Serves No Practical Utility Under Current Regulations And Is Contrary To Other Provisions Of The Higher Education Act.*

The collection and reporting of individual student identifying information, along with the CIP code of the program the student completed, the date of the student's completion, and the amounts the student received from private educational loans and institutional financing plans does not facilitate the proper functions of the Department, and, in fact, would seem to violate the Higher Education Act ("HEA") provision that prohibits the Department from creating a Federal database with personally identifiable student information.<sup>12</sup> HEA § 134 expressly states that the Department is not authorized to develop, implement or maintain a Federal database of personally identifiable information unless the database is necessary for the operation of specified programs under the Act and was in use by the Secretary prior to August 14, 2008.<sup>13</sup> In this matter, the Department would not be authorized to create a database of individual student information unless the information was required for the Department to operate its Title IV Programs and the database was in existence as of August 2008.

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<sup>10</sup> 75 Fed. Reg. 34,809 (June 18, 2010).

<sup>11</sup> 75 Fed. Reg. 43,632 (July 26, 2010).

<sup>12</sup> 20 U.S.C. § 1015c (2010).

<sup>13</sup> 20 U.S.C. § 1015c(b)(2010).

The Department has stated that this proposed information collection is necessary to allow the Department to evaluate “whether students are receiving training in a recognized occupation where they are gainfully employed,” and that the information to be collected and submitted to the Department would allow “the institution and the Department to evaluate the outcomes of programs that lead to gainful employment in a recognized occupation, as well as inform prospective students.”<sup>14</sup> This is a reference to the new regulations that the Department has proposed that may go into effect in the future, as codified at 34 C.F.R. § 668.7 (the “Gainful Employment Rule”). However, current regulations do not contain any of these referenced requirements so there is no need for this information collection, and the violation of students’ rights to privacy or the HEA, under current regulations.

Rather, the proposed collection activities would only have practical utility if the proposed 34 C.F.R. § 668.7 were to be promulgated in its current form. It is far from certain if and when that will occur. While 34 C.F.R. § 668.7<sup>15</sup> originally was scheduled for publication on or prior to November 1, 2010, that date has now been delayed to allow the Department to hold hearings and further consider the proposed rule. The Secretary of Education announced this revised timeline in his press release dated September 24, 2010, which was issued in response to a tidal wave of more than 90,000 comments, including letters from more than 80 Members of Congress.<sup>16</sup> While we cannot claim to know how this process will unfold, the press release would indicate that the Secretary intends to review the comments and genuinely consider the basic elements of the proposed rule, with the intent of publishing such rule in early 2011. As a result, under the “master calendar” for Department regulations, the rule at 34 C.F.R. § 668.7 could not go into legal effect until July 1, 2012.

Thus, at this time, neither the Department nor OMB, and certainly not the public, can know what the final rule will say. For instance, will there be both a Loan Repayment Rate and two alternative Debt to Income Measures, as originally proposed? Will the Debt to Income Measures include obligations under private educational loans and institutional financing plans? Will there be a placement rate with the specific and complex parameters of the proposed placement rate? Will certain requirements apply to graduates and other requirements apply to all students? Will the Department apply some measures over a three-year period and other measures over a four-year period?

We could list dozens of other unknowns. The point is that we do not see how the Department can promulgate information collection requirements that are aligned with another proposed future rule when the terms of that other rule are subject to intense public and political debate and, by the Secretary’s own statement in the press release, are still subject to change based on information that the Department will receive from the public in the coming weeks and months. We do not see how the Department can claim, or OMB can review and evaluate, if Section 668.6 is “necessary for the proper performance of the functions of the agency” and that

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<sup>14</sup> See Exhibit 2. Available at <http://edicsweb.ed.gov> (select “Browse Pending Collections,” link and click on link number 4317; see Att\_SupportingStatement.OMB.1845.New1.V.2.07.2.10.DK.docx)

<sup>15</sup> 75 Fed. Reg. 43,616 (July 26, 2010).

<sup>16</sup> <http://www.ed.gov/news/press-releases/departments-track-implement-gainful-employment-regulations-new-schedule-provides->.

the information will have “practical utility,” as required under the PRA, when no one knows the substance of the future rule for which the information is being collected. Further, we do not see how OMB can expect APC or any other regulated party to comment on Section 668.6 in a meaningful way when we face the same uncertainty.

We suggest that there is no legal basis for the Department to require institutions to provide personally identifiable information about their former students until it is determined that the proposed rule at 34 C.F.R. § 668.7 will in fact go into effect with fixed terms. The cart is truly before the horse in this proceduring.

Turning back to the HEA prohibition on a Federal database of personally identifiable information, we again note that the Department may only amass this highly confidential information on millions of students if it is “necessary for the operation of [certain] programs.” If the Gainful Employment Rule were in effect, or even were published in formal form for future effect, we might be able to understand the necessity. But when the Gainful Employment Rule is unknown, and is subject to political debate and change, it is not necessary and is premature for the Department to begin to require the collection of such information. As such, the OMB should disapprove Section 668.6 based on both the PRA and HEA.

*The Lack of Institutional Knowledge of Private Education Loans and The Failure of the Department to Define “Institutional Finance Plans” Eliminates The Practical Utility Of Collecting and Submitting This Information To The Department.*

Under proposed Section 668.6(a), institutions would be required to collect and submit to the Department the amounts individual students received from private education loans and institutional financing plans, and under the proposed GE Rule institutions would be required to disclose the median loan debt incurred by students who completed each program in the preceding three years, identified separately as Title IV Program loan debt, and debt from private education loans and institutional financing plans.<sup>17</sup> These requirements are impossible for institutions to fulfill in a consistent and uniform manner because institutions cannot obtain full knowledge of all the private education loans that their students may arrange and the Department has not defined an “institutional financing plan.”

Our member colleges do not have access to the number or value of private loans a student may arrange to pay his or her education-related expenses, especially where a student has secured a direct to consumer (“DTC”) loan. The Department’s proposal fails to recognize that students can arrange their own loans of which the institutions have no knowledge. The Department’s regulations and policies were modified in 2009 to make clear that institutions are not required to certify any information on private loan applications<sup>18</sup> and therefore in many cases institutions cannot know if their students have obtained such a loan. Institutions only become aware of private loans if the lender provides the funds directly to the institution or follows some other mechanic that denotes a source of payment as a private education loan. If a student simply

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<sup>17</sup> 75 Fed. Reg. 34,809 (June 18, 2010).

<sup>18</sup> See DCL GEN 10-01, <http://ifap.ed.gov/dpccletters/GEN1001.html> (addressing approval and use of Self-Certification Forms by loan applicants; noting that institutions must, at the request of the student-applicant, provide the self-certification form information to the student-applicant).



borrow money and then pays the institution, the institution cannot trace that source to a private loan. Under Section 668.6, institutions would need to piece together information related to private loans that is inherently fragmentary and incomplete, and that is outside of the institution's control. Some institutions might have access to more information than others, so the reporting to the Department would not be consistent and uniform.

This private education loan provision also adds a significant new burden. In an effort to evaluate the work involved, one of our member colleges with approximately 1,000 students set out to gather the relevant private loan information for one single year. The college discovered that it required three professional staff members working four full days (12 work days or 96 hours) to accomplish this data collection just for private education loans. They had to gather pieces of this information from multiple sources within their system. There is no way that this institution (or, in our view, any institution) can simply set up a software program, press a few buttons and generate a report with the information on private education loans. The Department's estimate of 10 hours to compile not only the information related to private loans, but also the other eight disclosure requirements is a gross underestimate of the work involved, which we suggests reflects the Department's lack of understanding of the nature of the information the Department is requesting.<sup>19</sup>

Of greater concern is that, if implemented, this provision will create an uneven playing field that will favor some institutions over others, depending on whether their students tend to use DTC loans where the loan proceeds are paid to the student or loans that are delivered directly to the institution. Institutions that receive private loan funds directly from the lender will be able to provide more complete information under this provision, but institutions that receive a personal check from a student after the student has deposited his or her DTC loan will not have the information needed to report such private loan amounts and therefore will likely report lower amounts to the Department. This disparity will create confusion and conflicting data between institutions, will favor some institutions over others under the Department's new measurement scheme, and will reduce the practical value of this information for consumers. Indeed, it is even possible that Section 668.6 would create an incentive for some institutions to avoid collecting information on private education loans because, if the information is not in their files, they cannot be required to report it to the Department.

Another basic problem with the Department's proposal arises from the Department's failure to provide a regulatory definition of an "institutional financing plan." This is an incredibly opaque term subject to many interpretations. Institutions provide institutional financing to their students in many ways, and it is not clear what the Department intends to capture by its use of this term.

For instance, some institutions offer plans that enable a student to pay a modest amount (often \$50 or \$100) per month during the period of his or her enrollment. We would not consider this to be debt; it is certainly not debt that the student carries with him or her after graduation since it is paid during the period of enrollment. It is more like a payment plan that allows a student to spread a fraction of the payments over the period of enrollment rather than requiring a major deposit or some other "up front cash" as required by many institutions. Under

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<sup>19</sup> See U.S. Department of Education, Supporting Statement at pages 5-9 – Exhibit 2.



Section 668.6 as proposed, we simply do not know if the Department intends to capture this type of a plan. If so, we believe that would be wrong-headed since such payments are not truly debt.

Since institutions cannot track all of the forms by which their students may take out a private education loan, and since the Department has not indicated what it means by an “institutional financing plan,” the calculation of private education debt to be reported to the Department will be uneven and inconsistent. This would defeat the purpose of the proposal and would cause confusion among consumers. The purposes of the PRA would require a consistent reporting system that ensures that institutions are treated even-handedly and that the information has “practical utility” for the consumer and other users. The Department’s proposal in Section 668.6 does not accomplish these purposes. Moreover, the Department’s proposal would place a very large burden, far higher than the Department estimated, on institutions to collect information that they do not currently track and would require them to piece together fragments of information, to the extent available, from various parts of their student information systems.

#### The Placement Rate Calculation Under the Section 668.8(g) Creates an Undue Burden.

The Department has proposed that institutions calculate and report a placement rate for their graduates from all affected programs under the following formula:

##### **(g) Calculation of placement rate.**

(1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Of the total obtained under paragraph (g)(1)(i) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed, or have been employed, for at least 13 weeks following receipt of the credential from the institution.

(iii) Divide the number of students determined under paragraph (g)(1)(ii) of this section by the total obtained under paragraph (g)(1)(i) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(ii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized

occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to (i) A written statement from the student's employer; (ii) Signed copies of State or Federal income tax forms; and (iii) Written evidence of payments of Social Security taxes.

The Department has also estimated that it would take institutions “approximately 3 hours” to obtain and provide the information required for all of the disclosures under proposed Section 668.6(b), including the placement rate and others.<sup>20</sup> We are not sure whether to describe this as laughable or preposterous or insulting.

One of our member institutions that regularly conducts placement surveys analyzed the process to go beyond its current survey methodology and collect the placement information under this proposed new requirement. This college found that it would require two to four hours per graduate for several staff members to do the additional work to track down the information the Department would require. A second member institution independently determined that for 1000 graduates it would require approximately 5,000 man hours (5 hours per student) and a cost of approximately \$100,000 just to calculate the placement rate. Thus, the Department’s estimate of about three hours for placement and other information for an entire cohort of graduates, with no consideration to the size of the cohort, is nowhere near realistic. We suggest it is off by a factor of 10 to 20 to 50.

We would like to explain further. Our member colleges do not track placement in the form that the Department is proposing. Indeed, we do not believe that any institutions track placement in this form except for the small handful that offer every short educational programs that are subject to this placement rate calculation. Thus, OMB should not suffer the misimpression that this information is sitting in our files and just needs to be organized for presentation to the Department. The only way to get this information is to make telephone calls, write letters or emails, or initiate some other form of individualized contact with former students or their employers to ask them to provide the information. Moreover, the proposed formula would require multiple contacts -- first to see if they’ve been placed, then to follow up on their placement approximately 13 weeks after hiring, and then to ensure employment 180 days after completion of their program.

We want to be sure that OMB understands that, even though the Department is importing a placement rate calculation from another existing regulation, that other regulation only applies to educational programs that are between 300 and 600 clock hours in length, so it does not apply to any programs that are one-year or more in length, including degree programs that make up the majority of programs offered by APC colleges. These 300 to 600 hour programs are relatively few in number. That is why we say that, under current law, almost no institutions around the country are subject to this placement rate formula. The only way to get this information would be to have bank of telephone operators (or their equivalent in email authors) who will have to chase down former students and their employers and ask them for this information which is private (more on that below), and then collect documents to verify the data.

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<sup>20</sup> See Exhibit 2, page 8.

Based on the above estimate of two to five hours per graduate, for an institution with 1,000 graduates, collecting this placement rate information would require an additional burden of 2,000 to 5,000 hours of work, at an additional cost of \$50,000 to \$100,000 per year. We do not see how OMB can possibly sign off on this as necessary and appropriate under the PRA.

There is a tragic irony here. As noted above in footnote 6, when the Department imposes massive new administrative requirements that drives up costs that – inevitably – drives up tuition. Since one of the rationales for the broader Gainful Employment Rule is to control tuition levels, and maybe even force institutions to reduce tuition, this placement rate requirement is counter-productive.

The placement rate requirement is counter-productive, and even potentially dangerous, for another reason. There is little incentive for a graduate or an employer to provide its former institution information related to job placement, including details on job title and longevity, assuming the institution can find the graduate. Just think about what that means in a practical sense from the viewpoint of the student or their employer when they get a call from the institution asking them for this information:

- \* Why should the students provide it? They certainly are under no compulsion to do so. Indeed, if they read consumer protection articles in the mainstream press, they have been advised to be suspicious of such requests and to avoid sharing personal information with anyone else because of the risk of a breach of their privacy.

- \* Why should the employers provide it? They certainly are under no legal compulsion to do so. Would they put themselves in some legal jeopardy if they provide this information to a third party? Do they have personnel policies in which they assure their employees that they hold such information confidential?

- \* For the many former students who are self-employed or work from project to project (which is common in the arts and other technical fields), this information is probably even more sensitive. Further, it is not clear what 13 weeks of employment even means for these types of workers.

- \* It is one thing to provide this information in a survey in which the former institution says it will keep the information confidential. But the intention of this rule is exactly the opposite. The institution is required to record the information with the person's identity, and required to maintain the information in its files for some extended period. The Department's requirement enhances, rather than reduces, the risk to the former students' privacy.

- \* Again, it is one thing for an alumnae to provide this information verbally to an institution to which it feels some loyalty. But that is not good enough for the Department. Rather, the Department says that the institution "shall document" the information through such papers as a tax return, signed statement from the employer, or W-2 form or similar document that could also contain earnings information. This requirement can only enhance the risk of breaches of privacy.

Based on these sorts of questions, we believe it is only reasonable to assume that some students (or their employers) will decline to provide the requested information. When the Department calculates the placement rates, or the institution publishes the rates on its website, it is not clear if or how the institution can adjust for former students who simply decline to provide information. However, it is clear that the institutions will be greatly damaged if they must count such students as non-placed when the students, instead, are simply protecting their privacy. Further, from the perspective of OMB, it should be clear that the quality of the data will be greatly compromised and will not have the “utility” required under the PRA.

Finally, we note that this placement rate information is not required under Section 668.6 until a date that is “no later than June 30, 2013.” While this would appear to allow some breathing room before institutions are obligated to address this requirement, in reality, institutions will be asked to provide placement rates for a three year period: demanding that institutions begin documenting placements as of July 1, 2010 – prior to the implementation of the regulation. We strongly urge the OMB to use this period and provide a particularly close review of this proposed placement rate requirement under the standards of the PRA while there is time for the OMB to fulfill its mission under the PRA and advise on the necessary changes.

#### The Department’s Failure to Use Plain, Coherent, and Unambiguous Terminology Violates the PRA.

The Department’s proposed Section 668.6 would require institutions to disclose information on subjects for which there is no regulatory definition or even a clear and widely understood definition. As noted above, these include “private education loans” and “institutional financing plans.” The term “institutional financing plan” is particularly ambiguous and, for the reasons discussed above, would not generally be considered a form of debt at all. In the absence of a clear definition of these terms, it will be impossible for institutions to provide meaningful information, and it would be unfair to ask them to guess at what the Department might mean. This ambiguity has to increase the burden on thousands of institutions to report since they cannot be sure what they are reporting on, and has to decrease the “utility” of the information since it will be reported in varying ways that are not uniform and that make comparisons difficult or misleading.

Another critical and undefined term is “*on-time* graduation rates.” Presently, there are definitions for graduation rates under the Title IV regulations, but there is no definition of an “on-time graduation rate.” Under one of the existing definitions, students who earn their credential within “150 percent of the published length of the educational program” are counted as completers.<sup>21</sup> We understand that the definition in IPEDS is being revised to allow students who complete their programs and receive their credential to be counted as completers if they complete within 200 percent of the published length of the program. Under Section 668.6, it is not clear which of these apply or if either applies. By referring to the “on-time graduation rate,” perhaps the Department intends only to capture those students who earn their credential within the exact published length of the program. Each of these definitions would produce very different results.

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<sup>21</sup> See 34 C.F.R. § 668.8(f) Calculation of completion rate.

We do not see how OMB can sign off on this language as “plain, coherent, and unambiguous,” as required by the PRA. We ask that OMB direct the Department to clarify this definition and the other ambiguous terms in the information collection proposal before such proposal can be given legal effect.

Finally, this is an appropriate place briefly to remind OMB that the Department is not the only regulatory authority that monitors our member colleges and other institutions to evaluate their quality and student outcomes. All of the APC colleges are authorized by the New York State Board of Regents (“Regents”) and accredited by the Middle States Commission on Higher Education (“MSCHE”) or other federally recognized, national accreditors, including the New York State Board of Regents. The Regents and MSCHE have established their own requirements which require the colleges to monitor their quality and report a wide range of information which is closely related to the information in the Department’s proposed Section 668.6. We urge OMB to respect the comprehensive nature in which our colleges are monitored by three independent agencies (state and accrediting, as well as federal) as it reviews all of the issues that are raised in the Department’s proposal, since among all Federal agencies OMB should be particularly attentive to avoiding duplicative regulations and requirements.

\* \* \*

For the reasons outlined above, APC urges OMB to review and comment on the Department’s proposed information collection, and require the Department to come into compliance with the requirements of the Paperwork Reduction Act, especially as it relates to the collection of information that has no utility under present regulations, does not contain clear definitions, and creates heavy burdens on institutions which has the effect of limiting the resources they can provide to their students since they must focus more resources on complying with administrative regulation.

**As noted above, we would especially appreciate your explanation of how OMB can review and act on these comments even though the OMB already has signed off on the regulatory package which is set to be published on or before November 1, 2010.**

Thank you for your consideration of our request. If we can meet to discuss these issues, we would be very pleased to do so. Should you have any questions about any aspect of our comments, please contact me at (718) 933-6700.

Sincerely,



President,  
Association of Proprietary Colleges & Monroe College

Enclosures

## Exhibit 1

OMB.1845.NEW1 Gainful Employment Table.03.16.10						
Respondent Type	Requirement	# of Respondents	# of Responses	Hours/Response	Total Hours	Description
<b>Section A: Burden by Affected Entity</b>						
<b>Federal Government</b>						
<b>Individuals or Households</b>						
Sub-total		0	0		0	
<b>Private Sector</b>						
Business or other for-profits						
Proprietary institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	2,086	2,086	10	20,860	
Proprietary institutions - reporting of CIP codes, grad dates, and amounts of private and institutional loans for all completers/graduates	34 CFR 668.6(a)	278,224	278,224	0.08	22,258	
Proprietary institutions - reporting of SOC codes, O*Net info and programmatic cost info via the institutions Web site	34 CFR 668.6(b)	2,086	2,086	3	6,258	
Sub-total		282,396	282,396		49,376	
<b>Not-for profits</b>						
Private not-for profit institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	238	238	10	2,380	
Private not-for profit institutions - reporting of CIP codes, grad dates, and amounts of private and institutional loans for all completers/graduates	34 CFR 668.6(a)	29,598	29,598	0.08	2,368	
Private not-for-profit institutions - reporting of SOC codes, O*Net info and programmatic cost info via the institutions Web site	34 CFR 668.6(b)	238	238	3	714	
Sub-total		30,074	30,074		5,462	
Total Private Sector		312,470	312,470		54,838	
<b>State, Local, or Tribal Governments</b>						
Public institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	2,139	2,139	10	21,390	



Public institutions - reporting of CIP codes, grad dates, and amounts of private and institutional loans for all completers/graduates	34 CFR 668.6(a)	284,144	284,144	0.08	22,732	
Public institutions - reporting of SOC codes, O*Net info and programmatic cost info via the institutions Web site	34 CFR 668.6(b)	2,139	2,139	3	6,417	
Sub-total		288,422	288,422		50,539	
<b>Section B: Burden Impact Totals</b>						
<b>Total</b>		<b>600,892</b>	<b>600,892</b>		<b>105,376</b>	
<b>CURRENT INVENTORY</b>						
Current # of Respondents		0				
Current # of Responses			0			
Current Inventory of Hours					0	
<b>REVISED # OF RESPONDENTS</b>		600,892				
<b>REVISED # OF RESPONSES</b>			600,892			
<b>REVISED # OF BURDEN HOURS</b>					105,376	
<b>TOTAL # RESPONDENTS</b>		600,892				
<b>TOTAL # RESPONSES</b>			600,892			
<b>TOTAL # HOURS</b>					105,376	
Difference					105,376	
<b>Section C: Burden by Regulation Group</b>						
1. 34 CFR 668.6(a) - Information gathering / CIP process						
<b>Individuals</b>						
<b>Private Sector</b>						
Proprietary institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	2,086	2,086	10	20,860	
Private not-for profit institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	238	238	10	2,380	
<b>State, Local, or Tribal Governments</b>						
Public institutions - developing a process to identify CIP codes for programs of study	34 CFR 668.6(a)	2,139	2,139	10	21,390	

TOTAL 34 CFR 668.6(a) - CIP code process		4,463	4,463		44,630	
2. 34 CFR 668.6(a) - reporting on grads						
<b>Individuals</b>						
<b>Private Sector</b>						
<b>Business or other for-profits</b>						
Proprietary institutions - reporting information on occupational training program completers, including student identifiers, CIP codes, program completion dates, amounts of private education loans and institutional financing.	34 CFR 668.6(b)	278,224	278,224	0.08	22,258	
<b>Not-for profits</b>						
Private not-for profit institutions - reporting information on occupational training program completers, including student identifiers, CIP codes, program completion dates, amounts of private education loans and institutional financing.	34 CFR 668.6(b)	29,598	29,598	0.08	2,368	
<b>State, Local, or Tribal Governments</b>						
Public institutions - reporting information on occupational training program completers, including student identifiers, CIP codes, program completion dates, amounts of private education loans and institutional financing.	34 CFR 668.6(b)	284,144	284,144	0.08	22,732	
TOTAL for 34 CFR 668.6(a)(2)(iii) - reporting		591,966	591,966		47,357	
3. 34 CFR 668.6(b) - disclosures						
<b>Individuals</b>						
<b>Private Sector</b>						
<b>Business or other for-profits</b>						
Proprietary institutions - reporting of program names and SOC codes, grad rates, cost information and placement rates, and median debt incurred by students who completed the program for the preceding three years. The institution must separate the median loan debt from private educational loans and institutional financing.	34 CFR 668.6(b)	2,086	2,086	3	6,258	

<b>Not-for profits</b>						
Private not-for profit institutions - reporting of program names and SOC codes, grad rates, cost information and placement rates, and median debt incurred by students who completed the program for the preceding three years. The institution must separate the median loan debt from private educational loans and institutional financing.	34 CFR 668.6(b)	238	238	3	714	
<b>State, Local, or Tribal Governments</b>						
Public institutions - reporting of program names and SOC codes, grad rates, cost information and placement rates, and median debt incurred by students who completed the program for the preceding three years. The institution must separate the median loan debt from private educational loans and institutional financing.	34 CFR 668.6(b)	2,139	2,139	3	6,417	
TOTAL for 34 CFR 668.6(b)		4,463	4,463		13,389	
GRAND TOTAL		600,892	600,892		105,376	

## Exhibit 2

## SUPPORTING STATEMENT

Information Collections Under the Regulations Governing Student Assistance General Provisions.

### A. JUSTIFICATION

#### RIN-1840-AD02

##### 1. Necessity of Information Collected

This request is for approval of the reporting and records maintenance requirements that are contained in the Student Assistance General Provisions regulations – Subpart A - §668.6 - Gainful employment in a recognized occupation. Educational programs offered consistent with §668.8(c)(3) are programs that are at least a one-academic year training program that leads to a certificate, degree or other recognized educational credential and that prepares a student for gainful employment in a recognized occupation. Similarly, under §668.8(d) programs offered by a proprietary institution of higher education or by a postsecondary vocational institution of higher education must provide undergraduate training that prepares a student for gainful employment in a recognized occupation.

##### **Purpose and Use of Information Collected**

**Subpart A – General** (OMB control number: 1845-NEW1)

Section 668.6 contains information collection requirements to be approved by OMB. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education is submitting a copy of this section to the Office of Management and Budget (OMB) for its review. We are adding the following new sections:

##### **Section 668.6 – Gainful employment in a recognized occupation.**

The proposed regulations require an institution to report annually information about students who complete a program that leads to gainful employment in a recognized occupation. Under proposed §668.6(a), institutions are required to develop a process to associate the Classification of Instructional Programs (CIP) codes for each of its programs as defined in §§668.8(c)(3) & (d). In addition, that process will include how the institution will report information to identify the student, the date the student completed the program, and the amount the student received from private educational loans and institutional financing programs.

Under proposed §668.6(b), for each program under this section, on the institution's Web site, the institution must provide prospective students with the name of the occupations (by name and its Standard Occupational Classification (SOC) code) that the program prepares students to enter, along with links to occupational profiles on the Department of

Labor's Occupational Information Network (O\*Net). In addition, institutions are also required to disclose on their Web sites information about on-time graduation rates for students entering the program; the cost of tuition and fees for these programs, the cost of room and board, and other institutional costs a typical student would incur for enrolling in the program. Beginning no later than June 30, 2013, the placement rate for students completing the program and the median loan debt incurred by students who completed the program during the preceding three years must be reported. Finally, the institution must identify separately and disclose the median loan debt from Title IV, HEA program loans, and the median loan debt from private loans and institutional financing plans.

2. **Purpose and Use of Information Collected**

Student Assistance General Provisions:

Subpart A – General Section 668.6 – Gainful employment in a recognized occupation  
The Department of Education is responsible for evaluating whether students are receiving training in a recognized occupation where they are gainfully employed. The information collected, maintained, and submitted by institutions to the Department consistent with the proposed provisions of this section will allow the institution and the Department to evaluate the outcomes of programs that lead to gainful employment in a recognized occupation, as well as inform prospective students.

3. **Consideration of Improved Information Technology**

Although there are no legal or technical obstacles to the use of technology in this information collection activity, the process for institutions to submit their information to the Department is generally not conducive to any more sophisticated use of technology.

4. **Efforts to Identify Duplication**

This information is not duplicated on any other information collection.

5. **Burden Minimization as Applied to Small Business**

The information collected in this proposed regulation represents the minimum necessary.

6. **Consequences of Less Frequent Data Collection**

The request for student identification data, CIP codes data, graduation or completion data, on an annual basis along with the proposed disclosure of information about the program on the institution's Web site, including occupation names and SOC codes, links to occupational profiles on O-Net, the on-time graduation rate for students entering the program, program cost information, placement rate information, and the median loan debt incurred by students who completed the program during the preceding three year period is projected to be sufficient for the Department to make determinations about the number

of completers or graduates who receive the training needed to become gainfully employed as a result of taking these training programs. The disclosures via the institution's Web site will provide useful information to prospective students and their families.

7. **Special Circumstances Governing Data Collection**

This application is consistent with all of the guidelines in 5 CFR 1320.5(d)(2).

8. **Consultation Outside the Agency**

The Department of Education announced in a September 9, 2009 Federal Register notice (74 FR 46399), the Department's intention to establish negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended (HEA). These committees were formed as a result of a Federal Register notice published on May 26, 2009 (74 FR 24728) which announced a series of three regional hearings at which interested parties could comment on topics suggested by the Department. The topic "Gainful employment in a recognized occupation was among the list of program integrity issues listed by the Department.

A Notice of Proposed Rulemaking was published in the Federal Register on June 18, 2010. A 60 day notice was published in the Federal Register seeking public comment on July 16, 2010. A 30 day was published in the Federal Register. Prior to the approval of these proposed regulations the Department negotiated with members of the community during three sessions in early 2010.

9. **Payments or Gifts to Respondents**

There are no payments or gifts to respondents.

10. **Assurance of Confidentiality**

There is no assurance of confidentiality provided to institutions for the submission of this information.

11. **Questions of a Sensitive Nature**

There are no questions of a sensitive nature in this application.

12. **Annual Hour Burden for Respondents/Recordkeepers**  
**Section 668.6 – Gainful employment in a recognized occupation.**

Section 668.6(a): Programs as provided under §668.8(c)(3) by an institution of higher education that are at least a one-academic year training program that leads to a certificate, degree or other recognized educational credential and that prepares a student for gainful employment in a recognized occupation. Programs as provided under §668.8(d) that are



offered by a proprietary institution of higher education or by a postsecondary vocational institution of higher education must provide undergraduate training that prepares a student for gainful employment in a recognized occupation. Institutions offering programs of study that prepare student for gainful employment in a recognized occupation must report annually for each student who completes or graduates from the program; information to identify the student; the Classification of Instructional Program (CIP) code for the program; the completion or graduation date; and the amount of private education loans and/or institutional financing received by the student. Each institution must develop a process to collect and report this data. We estimate that development of these processes to increase burden by 44,630 hours.

#### AFFECTED ENTITIES and BURDEN:

We estimate that 2,086 proprietary institutions will, on average, spend 10 hours to develop their processes to record student identifier information, to associate CIP codes to their occupational training programs, to record program completion dates and collect information on the amounts program completers received in private educational loans and institutional financing plans.

We estimate that 238 private non-profit institutions will, on average, spend 10 hours to develop their processes to record student identifier information, to associate CIP codes to their occupational training programs, to record program completion dates and collect information on the amounts program completers received in private educational loans and institutional financing plans.

We estimate that 2,139 public institutions will, on average, spend 10 hours to develop their processes to record student identifier information, to associate CIP codes to their occupational training programs, to record program completion dates and collect information on the amounts program completers received in private educational loans and institutional financing plans.

	# of Responses:	# of Respondents:	# of Burden Hours:
PROPRIETARY:			
	2,086	2,086	20,860
PRIVATE NON-PROFIT:			
	238	238	2,380
PUBLIC:			
	2,139	2,139	21,390
Total	4,463	4,463	44,630

Section 668.6(a): The proposed regulations require institutions to report to the Secretary student identifier information for each completer or graduate, the CIP code of the program that the student completed, the date the student completed the program, and the amounts of private educational loans and institutional financing that the student received as a result of completing the occupational program.

**AFFECTED ENTITIES and BURDEN:**

We estimate that there will be 591,966 graduates from these occupational programs over a three-year period.

We estimate that 47% will graduate from occupational programs at proprietary institutions or 278,224 graduates or completers. We estimate that reporting for each graduate will be .08 hours (5 minutes) per graduate or 22,258 burden hours.

We estimate that 5% will graduate from occupational programs at private non-profit institutions 29,598 graduates or completers. We estimate that reporting for each graduate will be .08 hours (5 minutes) per graduate or 2,368 burden hours.

We estimate that 48% will graduate from public institutions or 284,144 graduates or completers. We estimate that reporting for each graduate will be .08 hours (5 minutes) per graduate or 22,732 burden hours.

	# of Responses:	# of Respondents:	# of Burden Hours:
PROPRIETARY:			
	278,224	278,224	22,258
PRIVATE NON-PROFIT:			
	29,598	29,598	2,368
PUBLIC:			
	284,144	284,144	22,732
Total	591,966	591,966	47,358

Section 668.6(b): Under proposed §668.6(b), for each program under this section, on the institution's Web site, the institution must disclose the name of each program and its Standard Occupational Classification (SOC) code, along with links to occupational profile information as reported on the Department of Labor's Occupational Information Network (O\*Net). In addition, institutions are also required to disclose on their Web sites information about on-time graduation rates for students entering the program, information about the cost of the program (including tuition, fees, room and board, and other institutional costs a typical student would incur for enrolling in the program). Beginning no later than June 30, 2013, an institution must disclose the placement rate for students complete the program and the median debt incurred by students who completed the program during the preceding three years. The institution must identify separately the median loan debt from private educational loans and institutional financing plans.

**AFFECTED ENTITIES and BURDEN:**

We estimate that of the 4,463 institutions with these programs that 2,086 are proprietary institutions or 47%. We estimate that of the 4,463 institutions with these programs that

238 are private non-profit institutions or 5%. We estimate that of the 4,463 institutions with these programs that 2,139 are public institutions or 48%. We estimate that on average, it will take approximately 3 hours per institution to obtain the required disclosure information from O\*Net and its own programmatic cost information and to provide that information on its institutional Web site.

# of Responses:	# of Respondents:	# of Burden Hours:
PROPRIETARY:		
2,086	2,086	6,258
PRIVATE NON-PROFIT:		
238	238	714
PUBLIC:		
2,139	2,139	6,417
Total:	4,463	13,389

For additional information, please see the supplementary document “Burden Analysis-1845-NEW1 – 1840-AD02”.

**13. Start-up Cost Burden to the Respondents**

None.

**14. Estimated Annual Cost to the Federal Government**

There are no additional costs to the Federal government as a result of the proposed regulations.

**15. Reasons for Changes to Burden Hours Estimated**

This is a new collection package therefore there are no current burden hours associated with this package.

Respondents, Responses and Burden Hours:

# of Respondents	# of Responses	# Hrs Burden
<b>Section 668.6 – Gainful employment in a recognized occupation.</b>		
<u>Section 668.6(a):</u>		
Process development -		
4,463	4,463	44,630
Reporting –		
591,966	591,966	47,357

Section 668.6(b):

Disclosures -

4,463

4,463

13,389

Sub-total:

600,892

600,892

105,377

Current

Inventory:

# of Respondents

# of Responses

# Hrs

Burden

-0-

-0-

-0-

Revised

Inventory:

# of Respondents

# of Responses

# Hrs

Burden

600,892

600,892

105,377

**16. Collection of Information with Published Results**

The results of the collection of information will not be published.

**17. Approval to Not Display Expiration Date**

ED is not seeking this approval.

**18. Exception to the Certification Statement**

No exceptions.