

September 13, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Submitted electronically via: <http://regulations.gov>

Re: Docket ID: ED-2018-OPE-0042-0001, Gainful Employment

Dear Secretary DeVos:

As **68** organizations and advocates working on behalf of students, consumers, veterans, service members, faculty and staff, civil rights, and college access, we emphatically support a strong gainful employment rule. A strong rule is needed to protect students and taxpayers from career education programs that consistently leave students with large debts they cannot afford to repay. We urge you to abandon your proposal to eliminate the existing rule and instead start properly enforcing the gainful employment regulation, as you are required to do under federal law.

The Gainful Employment Rule Protects Hundreds of Thousands of Students from Unaffordable Debts

The gainful employment rule guides federal funding of career education, applying to non-degree programs at public and nonprofit institutions and all programs at for-profit colleges. Under the rule, a program loses access to federal funds if it repeatedly leaves its graduates with unaffordable debts, relative to their earnings. The rule is needed to prevent programs like these from continuing to bilk students and taxpayers, and to keep unscrupulous schools from enrolling as many students as possible without regard to the quality of their training or the size of their students' debts.

The gainful employment rule was the result of nearly nine years of the Education Department's research and analysis, including undergoing two distinct rulemaking processes and considering nearly 190,000 public comments. After careful consideration by negotiators representing students, consumers, legal aid providers, veterans, representatives from every college type, state higher education officials, and state attorneys general, the gainful employment rule was finalized in 2014 and went into effect in July 2015.

There is now stronger evidence than ever that the gainful employment rule works as intended. The mere threat of sanctions under this rule prompted many colleges to close their worst-performing programs, reduce tuition or increase financial aid, and implement other reforms to improve the value

they offer students.¹ Industry representatives concede that the rule has improved the value of career education programs for students and taxpayers.² Indeed, industry members and analysts tell their investors that the standards are manageable, and that they lead to better programs.³

Yet the stakes remain high. The first release of gainful employment data showed that more than 350,000 students graduated from the worst-performing programs with nearly \$7.5 billion in unaffordable debt.⁴ Hundreds of these programs are still enrolling new students today.⁵

While only two-fifths of career education programs are at for-profit colleges,⁶ 95 percent of the worst-performing programs under the gainful employment rule are operated by for-profit colleges.⁷ Recent research confirms that many for-profit programs leave students worse off than before they enrolled at the school. One study found that the average graduate of for-profit college certificate programs experienced minimal or no earnings gains yet had sizeable debts to repay.⁸

The Rule Is Particularly Important for Women, Low-Income Students and Students of Color

The Department's proposal claims that the gainful employment rule "could significantly disadvantage institutions or programs that serve larger proportions of women and minority students and further reduce the educational options available to those students." Yet such claims fly in the face of the Department's own prior analyses and well-documented concerns about disproportionate enrollment of these groups at for-profit colleges, where costs and debt are high and outcomes poor.

The Department explored the question of the gainful employment rule's effect on educational opportunity for underrepresented students in great depth in its past rulemaking, concluding that "the regulations do not disproportionately negatively affect programs serving minorities, economically

¹ Kevin Carey, "DeVos Is Discarding College Policies That New Evidence Shows Are Effective," *New York Times*, June 30, 2017, <https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html> : forthcoming from The Century Foundation; forthcoming from New America.

² Erica Green, "DeVos Ends Obama-Era Safeguards Aimed at Abuses by For-Profit Colleges," *New York Times*, August 10, 2018, <https://www.nytimes.com/2018/08/10/us/politics/betsy-devos-for-profit-colleges.html> ("Even for-profit leaders concede the gainful employment rule has had its intended effect. Mr. Gunderson said that for-profit institutions had to adjust programming to be more affordable and responsive to the job markets").

³ See e.g. Spiros Protosaltis & Libby Masiuk. November 30, 2017. "Protecting Students and Taxpayers: Why the Trump Administration Should Heed History of Bipartisan Efforts." Center on Budget and Policy Priorities. <https://www.cbpp.org/research/federal-budget/protecting-students-and-taxpayers>

⁴ The Institute for College Access & Success, "How Much Did Students Borrow to Attend the Worst-Performing Career Education Programs? The Need for a Strong Gainful Employment Rule," August 22, 2018, https://ticas.org/sites/default/files/pub_files/ge_total_debt_fact_sheet.pdf

⁵ New America, forthcoming

⁶ Program Integrity: Gainful Employment Final Rule, RIN 1840-AD15, 79 Fed. Reg. 211, 6,5000 (October 31, 2014).

⁷ TICAS, "How Much Did Students Borrow." Op cit. 4

⁸ Stephanie Riegg Cellini and Nicholas Turner, "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data," National Bureau of Economic Research Working Paper No. 22287, January 2018, .

disadvantaged students, first-generation college students, women, and other underserved groups of students.”⁹ Courts upholding the rule have specifically recognized this analysis.¹⁰

In fact, women, low-income students and students of color are disproportionately targeted by for-profit colleges, making concerns about poor-quality programs in that sector acutely relevant to these communities. These are the students who will benefit *most* when colleges are compelled to either improve the value of poor-performing programs or stop using federal student loans. Recent research has confirmed that students can and do find better educational opportunities when low-performing programs and schools are not propped up with federal funds.¹¹ Analysis of the Department’s gainful employment data further shows that programs with high costs and poor outcomes are often located near programs serving similar students with better outcomes at lower cost.¹²

The Department’s Proposal Would Repeal Disclosure Requirements, Not Strengthen Them

The Department describes its intent to strengthen accountability by publishing program-level student outcomes at all colleges and universities. Yet instead of proposing concrete disclosure requirements, the Department’s proposal merely raises questions about whether it should require stronger disclosures, describing vague, non-binding concepts that are impossible to evaluate. For example, the Department fails to describe what data it plans to make available, when it will publish it, how it will verify it for accuracy, or how it will ensure the data gets into the hands of students in a manner that is effective in influencing their decisions.

Instead of taking specific steps to strengthen disclosure, the proposal *repeals* existing disclosure requirements. In its cost-benefit analysis, the agency even claims as a benefit the time saved by students who will no longer have to be informed that their program has poor outcomes. In other words, the Department’s proposal is little more than lip-service, touting the importance of more disclosure while simultaneously counting as a benefit to students the time savings of eliminating disclosure.

Designed with career education students in mind, and informed by consumer testing, the gainful employment disclosures provide information on program costs and the extent to which programs’ graduates find employment and have debt to repay. Repealing them is in direct conflict with the

⁹ Program Integrity: Gainful Employment Final Rule. <http://www.nber.org/papers/w22287>

¹⁰ See *Ass’n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 364–65 (S.D.N.Y. 2015) stating that the association’s argument about student demographics “appears utterly to disregard the extensive statistical analyses underlying the GE Rules.” See *Ass’n of Private Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176, 196 (D.D.C. 2015) stating that “there is no basis for the claim—on this record, at least—that any particular group of students will suffer special harm under these regulations. 79 Fed. Reg. at 65,045. And in any event, the Department gave all these alleged harms their due, producing an eighty-page Regulatory Impact Analysis that weighed the positive and negative implications of its debt-to-earnings test.”

¹¹ Stephanie R. Cellini, Rajeev Darolia, and Lesley J. Turner, “Where Do Students Go when For-Profit Colleges Lose Federal Aid?” National Bureau of Economic Research Working Paper No. 22967, April 2018, <http://www.nber.org/papers/w22967> ; Tiffany Chou, Adam Looney, and Tara Watson “Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability,” National Bureau of Economic Research Working Paper No. 23118, February 2017, <http://www.nber.org/papers/w23118> .

¹² TICAS, “How Much Did Students Borrow.” Op cit. 4.

Department's stated goals of informing student choice.

Ultimately, while clear and targeted disclosures are important, disclosures are no substitute for accountability. This is particularly true when students face the types of high-pressure and deceptive recruiting practices that are too frequently seen within the for-profit college industry.¹³ Repealing a strong accountability system in favor of *any* disclosure-only regime will put students and taxpayers at risk.

The Department's Proposal Ignores Its Own Prior Research and Distorts External Evidence

The Department raises questions about the existing gainful employment rule without acknowledging the extensive public record on these topics, ignoring the reams of evidence compiled through its own years of careful analysis and study. In addition to the examples highlighted above, the agency does not acknowledge its own existing factual findings on the economic benefits of improved educational value created by the rule, the relationship between the debt-to-earnings ratios and the economic cycle, and many other topics explored by the Department in depth in 2009-11 and 2013-14.

Even research that has long been central to the gainful employment policy debate is cited differently now, without explanation for the change. For example, the Department's analysis of the central question of the rule—what level of debt is affordable?—dismisses the 8 percent debt-to-earnings standard as not grounded in research, citing the work of Sandy Baum and Saul Schwartz. The Department never even acknowledges the tougher 20 percent debt-to-discretionary-earnings standard that Baum and Schwartz recommend and that is part of the existing rule, or the fact that they consider the 8 percent threshold to be too lenient. No wonder Baum calls the department's application of her work "illogical." She goes on to note that her research is actually in direct contradiction to the Department's characterizations and that "[t]he [2014] GE rules are, if anything, too permissive."¹⁴

The Department Must Implement Existing Law

While the Department may seek to rescind the gainful employment rule through the statutorily required rulemaking process, until such a rescission goes into effect it is obligated to enforce the law as it exists today. It has given no explanation for why it took more than a year to start a new collection of data to produce the next round of debt-to-earnings rates. Following a court ruling that held the rule could not be enforced as written under very narrow circumstances, the Department abandoned any standards for programs appealing their results, without soliciting any public comments or explaining that it went far beyond the court's instructions. It has repeatedly pushed back the timeline for required disclosures without any justification. These delays are illegal and must end.

¹³ Government Accountability Office, "For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices," August 4, 2010, .

¹⁴ Sandy Baum, "DeVos Misrepresents the Evidence in Seeking Gainful Employment Deregulation," *Urban Wire*, August 22, 2018, <https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation>

We urge you to abandon this unwise and ill-developed proposal and to instead implement the law immediately.

Sincerely,

Allied Progress

American Association of University Women (AAUW)

American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

American Federation of Teachers

Americans for Financial Reform Education Fund

Association of the United States Navy

Association of Young Americans (AYA)

Center for Law and Social Policy (CLASP)

Center for Public Interest Law

Center for Responsible Lending

Children's Advocacy Institute

The College Access Consortium of New York, Inc.

College Advising Corps

Consumer Action

Consumer Advocacy and Protection Society (CAPS)

Consumer Federation of California

Demos

East Bay Community Law Center

The Education Trust

EMPath

Empire Justice Center

Generation Progress

Goddard Riverside Community Center

Government Accountability Project

The Harvard Project on Predatory Student Lending

Higher Ed Not Debt

Higher Education Loan Coalition

Hildreth Institute

Housing and Economic Rights Advocates

The Legal Aid Society of NYC

Legal Services NYC

Maryland Consumer Rights Coalition

Mississippi Center for Justice

NAACP

National Association for College Admission Counseling

National Association of Consumer Advocates

National Association of Consumer Bankruptcy Attorneys (NACBA)

National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Student Legal Defense Network
National Urban League
New America Education Policy Program
New Settlement Apartments College Access Center
New York Communities for Change
New Yorkers for Responsible Lending
NJ Citizen Action
One Wisconsin Now
PHENOM (Public Higher Education Network of Massachusetts)
Public Citizen
Public Counsel
Public Good Law Center
Public Law Center
Service Employees International Union (SEIU)
StreetSquash
Student Action
Student Debt Crisis
Student Veterans of America
The Institute for College Access and Success (TICAS)
U.S. Public Interest Research Group (PIRG)
UnidosUS
United States Student Association
University of San Diego Veterans Legal Clinic
Veterans Education Success
Veterans for Common Sense
Vietnam Veterans of America
Woodstock Institute
Young Invincibles