

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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May 27, 2014

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

Docket Number: ED-2014-OPE-0039

Dear Secretary Duncan:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, is pleased to have this opportunity to submit comments to the U.S. Department of Education's March 25, 2014 Notice of Proposed Rulemaking (NPRM) on Gainful Employment.

The Chamber is a strong and active supporter for improved outcomes at our nation's colleges and universities. However, the 842 pages of new regulations to define "gainful employment" raise several serious concerns regarding the federal government's overzealousness in regulating higher education. This includes the negative impact the regulations would have on businesses while failing to focus on broader issues of higher education access, affordability, and quality.

Given these concerns, the Chamber respectfully requests that you revoke the proposed regulations. The Chamber believes it is past time for the Department to work with Congress on reauthorizing the Higher Education Act rather than move forward with a new controversial rule that is not data-driven, would create an uneven playing field within the education sector, would not address program and school quality issues, and would fail to meet the needs of students and employers. At a minimum, the Chamber would urge your consideration of several key changes (as highlighted below) to the NPRM to reduce the negative impact of the proposed regulation on schools, employers and, more importantly, on students.

**Chamber's Commitment to Quality in Higher Education:**

The Chamber has long supported efforts to improve the national postsecondary education system. This work is reflected in projects such as the *Leaders & Laggards* report series that includes a "State-by-State Report Card on Public Postsecondary Education." The Chamber graded each state on the extent to which they are adequately focusing on issues such as student

access and success, innovation, efficiency, and meeting labor market demands. This report's outcomes hardened the resolve of the Chamber to push for policies that address what needs to be done across *all* of higher education. In particular, we have been vocal on the need to improve data in higher education, which is critical in order for students to make informed decisions when it comes to their many choices in pursuing education beyond high school.

While we are committed to quality in higher education, we do not believe the approach taken through the proposed gainful employment regulations would contribute to this goal. As outlined below, the Chamber believes the regulations would do more harm than good.

### **Concerns Regarding Gainful Employment NPRM:**

#### **Hurts businesses working to fill the skills gap**

In the U.S. today, there are millions of unfilled, high-skilled jobs while at the same time tens of millions of people are unemployed. The U.S. Department of Labor predicts this skills gap will continue to increase, and over the next 30 years there will be a shortage of more than 35 million skilled workers.

The proposed one-size-fits-all system of higher education where winners and losers are picked by regulatory fiat would not allow for the diversity of educational programs needed to narrow this ever-increasing skills gap. Graduates from "traditional" institutions alone cannot meet employer demand for an educated workforce, which prohibits growth and competitiveness for businesses of all sectors and sizes. This regulation would also result in trouble for students—including many of those considered to be non-traditional—who would have reduced access, fewer choices, and less convenience in obtaining skills development to meet their personal needs.

#### **Attacks private industry and fails to focus on quality in all of higher education**

While proprietary schools would not be the only institutions to bear the burden and cost of this proposed regulation, their programs represent a vast number of those most impacted. Given the elimination of so many programs at once, students may face increased costs for higher education due to supply and demand; surely an unintentional consequence, but predictable nonetheless. As such, the Department appears more interested in thwarting the work of for-profit educational institutions than it does by engaging in much needed broader dialogue regarding the affordability and quality of programs across all of higher education.

Students and employers would be better served by improving data transparency for all schools, which would ultimately address issues of affordability, quality, and outcomes. Doing so is the only way to create openness and fairness in the education marketplace.

#### **Represent costly over regulation on the part of the federal government**

There is growing consensus that over regulation is having a negative impact on higher education in this nation. This is reflected in the recently announced bipartisan task force to review higher education regulations and reporting. The effort is being led by Senate Committee on Health, Education, Labor, and Pensions Ranking Member Lamar Alexander (R-Tenn.), and

Committee Members Barbara Mikulski (D-Md.), Richard Burr (R-N.C.), and Michael Bennet (D-Colo.) In announcing the effort, Senator Alexander noted, “Let’s face it: the federal government has become one of the greatest obstacles to innovation in higher education. The stack of federal regulations on colleges and universities today is not the result of evil doers; it is simply the piling up of well-intentioned laws and regulations without anyone spending an equal amount of time weeding the garden first.”

The proposed gainful employment regulations represent exactly what Senator Alexander believes is in question. Although perhaps well intentioned, the nearly one thousand pages of new regulations to define “gainful employment” are not in the best interest of institutions nor the students they serve. In fact, as with many undue regulations, they would simply contribute to the cost of services by requiring more time and energy devoted to filling out forms and checking off boxes, while taking away resources from classrooms and students.

These costs are not fictional, nor are they insignificant. According to the estimates provided in the NPRM, the initial year of reporting under these regulations would require 1.65 million additional hours of workload on the part of institutions participating in Title IV programs. As also noted in the NPRM, “The monetized cost of this additional burden on institutions using wage data developed using BLS data is \$60,364,201.”

Given the considerable federal investment in higher education, the costs associated with the proposed regulations could be justified if they truly represented a similar level of benefit; unfortunately, this is not the case.

### **Suggested Changes to the Gainful Employment NPRM:**

At a minimum given the Chamber’s many concerns with the proposed regulations, the Chamber would urge several key changes to the proposed language, while preferring the proposed regulations be revoked to work with Congress to address issues of quality as part of the broader reauthorization of the Higher Education Act.

#### **1. Eliminate risk of ending quality programs based upon a single metric.**

Under the NPRM, a program with very low cohort default rates would be deemed as failing to meet the debt-to-earning (DTE) ratio. The Department should revert to the 2011 rulemaking to not rely solely on the DTE ratio. The new program Cohort Default Rate (pCDR) should work together with DTE to make sure that programs are not closed unless students were in fact unable to repay their loans.

#### **2. Revert to prior rulemaking with respect to debt-to-earnings thresholds.**

Under the NPRM, the threshold for determining when a program “passes” was reduced to 8% annual DTE or 20% discretionary DTE. While the proposal maintains the prior 12% annual DTE and 30% discretionary DTE as a “zone” to put programs on notice for approaching the new thresholds.

The Department should revert to the prior 12%/30% threshold for passing and eliminate the confusing addition of “zone” programs.

As part of the prior rulemaking, the Department asserted that these higher thresholds “were set after consideration of industry practice and expert recommendations.” The DC Court later approved the 12% and 30% thresholds—at the Department’s urging—finding that they “were based on expert studies and industry practice—objective criteria upon which the Department could reasonably rely.”

In a report released in October 2013, the Department’s own National Center for Education Statistics found that, in 2009, 26% of bachelor’s degree recipients at public four-year institutions faced monthly loan payments greater than 12% of their monthly income. Thirty-nine percent of private nonprofit institutions exceeded the 12% threshold as compared to 35% of proprietary colleges [See Degrees of Debt: Student Borrowing and Loan Repayment of Bachelor’s Degree Recipients 1 Year After Graduating: 1994, 2001, 2009]. As is clear from this report, if the gainful employment regulation applied to all institutions of higher education, traditional higher education institutions and programs of study would not be able to meet the debt-to-earnings test, and it is fair to assume that tens of thousands of programs would likely fail a tougher 8% test.

It is clear that after arguing vigorously for the previous thresholds of 12% and 30%, the Department is arbitrarily acting to lower the levels based on no objective criteria or evidence.

### **3. Revert to the prior requirement regarding the number of years a program may fail before becoming ineligible.**

Under the NPRM, a program would become ineligible for Title IV if it fails for two out of three years.

The Department should revert to the prior rule in which a program would have to fail three out of four years. This change reflects the fact that until 2018, the debt-to-earnings metrics will be based on results that pre-date the expected July 1, 2015 effective date of the rule. Institutions should be provided the opportunity to bring programs into compliance before they must be eliminated.

In each of these cases, the Department has provided neither reason nor data to support the about face on these significant changes to the gainful employment rule. The capricious nature of the rule is suspect in its promulgation and would harm access, choice, and convenience for countless Americans trying to further their education, while simultaneously negatively impacting the business community.

The Chamber stands ready to work with the Department of Education and Congress to ensure these critical issues are addressed in such a way that results in positive outcomes, not unintended and negative consequences, for students, institutions, and businesses.

Sincerely,



R. Bruce Josten