

May 20, 2010

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

Dear Secretary Duncan:

As organizations representing students, higher education, consumers and civil rights, we write to express our support for the Department of Education's efforts to make its regulations more consistent with the program integrity provisions in Title IV of the Higher Education Act. In particular, we urge you to propose regulations on incentive compensation and gainful employment that will more effectively protect students from high-pressure and deceptive sales tactics for educational programs of little or no benefit to them, and will ensure that taxpayer dollars do not subsidize such practices and programs.

To protect both students and taxpayers, federal law prohibits "any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid," and requires vocational programs and nearly all programs at for-profit institutions to "prepare students for gainful employment in a recognized occupation." Yet, examples of overly aggressive recruiting are plentiful. Some for-profit institutions recently made headlines by targeting homeless shelters in their recruitment efforts.ⁱ Another for-profit institution paid \$78.5 million to settle a whistleblower False Claim Act lawsuitⁱⁱ and another \$9.8 million to the Department of Education to resolve claims that it was paying improper incentive compensation to its recruiters.ⁱⁱⁱ Yet another large for-profit institution paid \$6.5 million to settle a lawsuit brought by the California Attorney General charging "a persistent pattern of unlawful conduct," including the inflation of job placement and starting salary information in order to recruit students to enroll in costly vocational programs, and falsification of records provided to the government.^{iv}

While most schools may not engage in such practices, federal data suggest these are not isolated incidents. Students at for-profit schools are the most likely to borrow and borrow the most. According to the most recent federal data, one in five for-profit school students defaults on their federal loans. A full 44% of all defaulters attended for-profit institutions, even though just 7% of all students attend for-profit schools.^v Low-income, first-generation and minority students attend for-profit institutions at disproportionate rates, making them particularly vulnerable to illegal or unscrupulous acts by these schools.^{vi}

Incentive Compensation. In direct conflict with federal law prohibiting institutions of higher education from providing "any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid," current regulations permit incentive payments that are not "based solely" on the number of students recruited, admitted, enrolled or awarded financial aid. Some schools have aggressively exploited this and other loopholes in the current regulations to do just what the statute is intended to prohibit. Consistent with the Department's proposals during the negotiated rulemaking process, the proposed new regulations should conform to the law

and prohibit any employee or contractor compensation “based directly or indirectly” on successfully securing student enrollments or aid. To avoid creating additional loopholes, it is important that the prohibition include compensation based directly or indirectly on applications or enrollment up to and including completion, as well as payments for prospective student contact information.

Gainful Employment. Each year, students borrow and taxpayers spend billions of dollars to subsidize attendance at programs required to “prepare students for gainful employment in a recognized occupation.” Yet, the Department’s current regulations include no official definition of “gainful employment.” We urge you to develop regulations that define gainful employment in a way that is measurable, enforceable, not overly burdensome to schools, and is aligned with the following principles:

- **Include all debt incurred at any affiliated school.** All debt incurred at a school under the same control structure must be included in any measure of gainful employment that considers debt. Otherwise, schools controlled by the same company could simply move students from one school or program to another. Excluding debt from unaffiliated schools also has the benefit of allowing low-cost schools to enroll and graduate students with high debt from unaffiliated schools without fear of penalty.
- **Include all private loans known to the school and its affiliates.** Debt-related measures of gainful employment must include all private loans that should be known to the school. Excluding private loans would create a perverse incentive for schools to promote risky private loans before students have exhausted their safer federal loan options. Private loans that should be known to the school must include all credit provided by any school under the same control structure as well as any loans provided by lenders with which the school has a preferred lender arrangement.
- **Avoid loopholes for programs with both high student borrowing and low completion rates.** A low completion rate is one of the ways schools can fail to prepare students for gainful employment. Students who borrow but do not complete are often left carrying substantial debt without the increased earning power that should come from a completed degree or certificate. The definition of gainful employment should not create a loophole for schools to discourage completion by students they consider likely to have trouble repaying their loans.
- **Use only data that are accurate and consistent across colleges and programs.** Existing requirements for the calculation and reporting of completion and placement rates are not sufficient for use in any success-based measure of gainful employment. Accrediting agency requirements vary widely and allow for substantial variation in the calculation of rates, and some schools have been found to have falsified and manipulated their placement data. It is therefore essential that the data and reporting standards are clear, consistent and *independently verified*.

Again, we applaud your initiative in reviewing the Department’s current program integrity regulations to ensure their consistency with federal law and to protect both students and

taxpayers. We support your efforts and stand ready to assist you in improving the Department's regulations.

Sincerely,

American Association of Collegiate Registrars and Admissions Officers
American Association of University Women
American Federation of Teachers
American Medical Student Association
California Coalition for Civil Rights
California Community College Student Financial Aid Administrators Association
California Tomorrow
Campaign for College Affordability
Campus Progress Action
Center for Law and Social Policy
Community College League of California
Consumer Action
Consumer Federation of California
Crittenton Women's Union
Demōs: A Network for Ideas & Action
Empire Justice Center
Florida State College at Jacksonville
Greater Boston Interfaith Organization
The Greenlining Institute
The Institute for College Access & Success and its Project on Student Debt
NAACP
National Association for College Admission Counseling
National Association of Consumer Bankruptcy Attorneys
National Center for Public Policy and Higher Education
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Council of La Raza
Neighborhood Economic Development Advocacy Project (NEDAP)
New York Community College Association of Presidents
Public Advocates Inc.
Public Higher Education Network of Massachusetts
Rainbow PUSH Coalition
Student Senate for California Community Colleges
U.S. PIRG
United States Student Association
Young Invincibles

Please note: This letter was updated on June 21 to include organizations that asked to sign the letter after it was submitted to Secretary Duncan on May 20, 2010.

ⁱ Golden, Daniel, "Homeless Dropouts From High School Lured by For-Profit Colleges," *Bloomberg.com*, April 30, 2010. Available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aA2_FIVDs2Sk

ⁱⁱ O'Reilly, Cary and Daniel Golden, "Apollo Settles University of Phoenix Recruiting Suit," *Bloomberg.com*, December 14, 2009. Available at http://www.bloomberg.com/apps/news?pid=20601087&sid=a0_TscSKjRBI&pos=5

ⁱⁱⁱ Gilbertson, Dawn, "Student-recruitment tactics at University of Phoenix blasted by feds," *The Arizona Republic*, September 14, 2004. Available at <http://www.azcentral.com/specials/special42/articles/0914apollo14.html?&wired>

^{iv} California Attorney General's office July 31, 2007 press release on settlement with Corinthian Schools at <http://ag.ca.gov/newsalerts/release.php?id=1444>

^v TICAS press release available at http://projectonstudentdebt.org/pub_view.php?idx=537

^{vi} Based on calculations by the Project on Student Debt on data from the 2008 National Postsecondary Student Aid Study (NPSAS).