

The Department has failed to analyze the actual impact of the regulation

- The Department's current regulation uses two metrics to evaluate programs.
 - The metrics require multiple years of data, yet the Department provided only a one year snapshot of data.
- By not fully analyzing the regulation, the Department has made it impossible to accurately analyze or discuss the regulation.

The gainful employment regulation will deny access to nearly 2 million students

- Through the remainder of this decade nearly 2 million students will be denied access to career programs of their choice, including:
 - Over 140,000 veterans
 - Nearly 500,000 African Americans
 - Over 300,000 Hispanics
 - Over 1 million Pell eligible students

This runs counter to the President's goal of increasing access and opportunity to postsecondary education.

8% Debt-To-Income Ratio is Unrealistic

Bachelor's Degree at 4 year Institutions	Average Cost of Attendance (2011-12) ¹	Average Cumulative Debt at Graduation (2011-12) ²	Min. Starting Salary to Satisfy Gainful Employment Rule ³	BLS 25th Percentile Wages-Bachelor's degree (2013) ⁴
Private Not-for-Profit	\$138,906	\$32,308	\$40,022	\$38,844
Private For-Profit	\$88,312	\$40,138	\$45,545	\$38,844

¹Data from NPSAS:12: average of "student budget (attendance adjusted)" for 2011-12 Bachelor's degree graduates with non-zero cumulative student debt, multiplied by four.

²Data from NPSAS:12: average of "cumulative amount borrowed for undergrad" for 2011-12 Bachelor's degree graduates with non-zero cumulative student debt.

³The minimum starting salary required given Average Cumulative Debt at Graduation to satisfy an 8% debt-payment-to-income ratio and a 20% debt-payment-to-discretionary-income ratio, over a 10 year repayment period.

⁴Bureau of Labor Statistics, Labor Force Statistics (CPS), "Quartiles and selected deciles of usual weekly earnings of full-time wage and salary workers," Bachelor's degree only, 25 years and over (annualized).

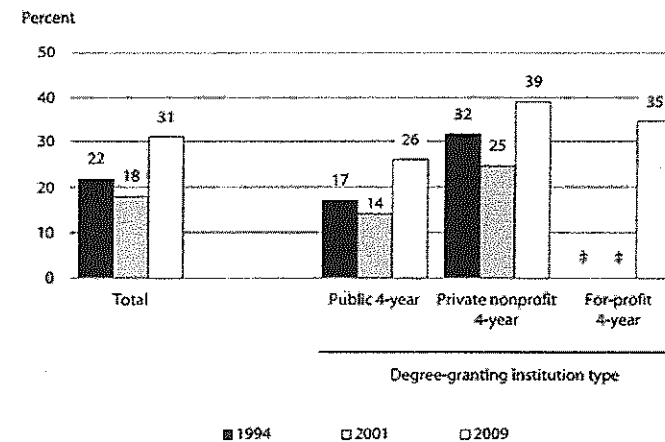
Conflicts with NCES Report

- An October 2013 National Center for Education Statistics (NCES) report found:
 - 26% of bachelor's degree recipients from public four-year institutions who were repaying their loans would fail a 12% debt-to-earnings test;
 - 39% at private nonprofits would fail a 12% debt-to-earnings test;
 - 35% at private sector institutions would fail a 12% debt-to-earnings test.
- Yet the Department has proposed an 8 percent debt-to-earnings metrics threshold as the government standard for affordable debt.

Jennie H. Woo, Degrees of Debt: Student Borrowing and Loan Repayment of Bachelor's Degree Recipients 1 Year After Graduating: 1994, 2001, 2009, NCES 2014-011, U.S. Department of Education, October 2013, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014011>

FIGURE 8.

HIGH DEBT BURDEN
 Percentage of first-time bachelor's degree recipients with ratio of monthly payments to monthly income over 12 percent among those who borrowed for their undergraduate education and were repaying their loans 1 year after graduation, by degree-granting institution type: 1994, 2001, and 2009



Reporting standards not met.

NOTE: Estimates include students enrolled in Title IV eligible postsecondary institutions in the 50 states, the District of Columbia, and Puerto Rico. They do not include graduates who were unemployed. Standard error tables are available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014011>.

SOURCE: U.S. Department of Education, National Center for Education Statistics, 1993/94, 2000/01, and 2008/09 Baccalaureate and Beyond Longitudinal Studies (B&B:93/94, B&B:2000/01, and B&B:08/09).

Examples of Public or Not-for-profit Programs and Debt to Income Calculations

School	Program	Annual Tuition & Fees ¹	Total Tuition and Fees for On-Time Completion	Average Debt of Graduates Who Borrowed ²	Earnings Necessary to Pass at Average Debt ³	Median Earnings Based on CPS Data ⁴
George Washington University	Law (no previous GW Debt)	\$49,840	\$149,520	\$128,341	\$107,757	\$76,500
Lutheran Theological Seminary at Gettysburg	Master's of Divinity	\$12,285	\$49,140	\$47,624	\$50,825	\$24,150
University of Michigan	Education	\$12,948	\$51,792	\$27,644	\$36,733	\$35,000
Virginia Commonwealth University	Social Work (BSW)	\$8,817	\$35,268	\$27,179	\$36,405	\$29,400

¹Based on full-time attendance. Does not include any charges outside of tuition and fees (e.g. housing costs, health insurance, etc.).

²Assumes borrowing is only for tuition and fees and all other financial costs of education are paid out of pocket. The average debt for University of Michigan and Virginia Commonwealth University are based on all students (regardless of program). All other debt amounts reported are specific to the program listed.

³This value represents the earnings necessary to pass both the debt-to-income rate and debt-to-discretionary income rate tests at the average rate of borrowing for the program.

⁴Median earnings based on 2010-2012 CPS data for individuals in occupations related to the field of study (based on the CIP to SOC crosswalk). Note that some individual programs report higher earnings than these, but it is unclear how each school calculates and reports these numbers.

Source: University web sites, the Project on Student Debt web site, and Current Population Survey data.

Higher Education Leaders: Early Year Earnings Are a Poor Measure of Program Quality

- Multiple leaders in postsecondary education have said that using earnings to determine program value is misguided. Comments include:
 - Harvard President Drew Faust said looking at the salary a college graduate earns in his or her first job as a proxy for the value of a college education is a huge mistake.
 - University of California, Berkeley Chancellor Nicholas Dirks said schools should not be rated based on the earnings of their graduates.
 - Vassar College President Catharine B. Hill noted that a ratings system based on earnings ignores the fact that earnings often increase over time.

Congress of the United States
Washington, DC 20515

April 18, 2013

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

Dear Secretary Duncan:

Over the past four years, the Department of Education has embraced an active regulatory approach to define program quality. We urge you to abandon these efforts and instead let Congress address these issues as part of the upcoming reauthorization of the *Higher Education Act*.

In 2010 the Department of Education advanced several “program integrity” regulations. Over the last year, several of these regulations have been subject to legal challenges – and at least two have been struck down by the courts. In one case, the U.S. Court of Appeals for the District of Columbia struck down the distance education portion of the state authorization regulation. Later that same month, in a separate case, the U.S. District Court for the District of Columbia threw out the bulk of the gainful employment regulation, including the requirement that institutions of higher education obtain approval from the department prior to starting new programs. And just a few weeks ago, the District Court reaffirmed its decision to prohibit the department from fully implementing the gainful employment regulation when the court denied a department motion to amend its judgment in the case.

Both the state authorization and gainful employment regulations have also faced significant congressional opposition. For example, in 2011 the U.S. House of Representatives voted 289 to 136 to prohibit the Department of Education from implementing the gainful employment regulation. Members in both the House and Senate also sent countless letters to the Obama administration raising concerns about the regulation. Additionally, the House voted 303-114 to repeal the state authorization regulation in 2012. During debate, members questioned the regulation’s potential negative effect on soaring college costs.

The Honorable Arne Duncan
April 18, 2013
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Despite these court decisions and congressional actions, we are disappointed the Department of Education has indicated it will continue to pursue the gainful employment and state authorization regulations. Instead of continuing to push regulations that have been rejected by Congress, the court, and institutions of higher education, the administration should stop pursuing these failed regulatory efforts and work with the House Committee on Education and the Workforce on a better way forward as part of the reauthorization of the *Higher Education Act*.

If you have any questions, please contact Amy Jones (amy.jones@mail.house.gov) or Brian Melnyk (brian.melnik@mail.house.gov) with the Committee on Education and the Workforce at (202) 225-6558.

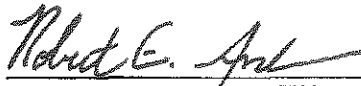
Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce




VIRGINIA FOXX
Chairwoman
Subcommittee on Higher Education and
Workforce Training



ROBERT E. ANDREWS
Member of Congress



CAROLYN McCARTHY
Member of Congress



ALCEE L. HASTINGS
Member of Congress



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Leadership and Advocacy

July 15, 2013

The Honorable Virginia Foxx
Chairwoman
Subcommittee on Higher Education and Workforce Training
United States House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Foxx, Kline and Hastings:

On behalf of the higher education associations listed below, thank you for introducing H.R. 2637, the Supporting Academic Freedom Through Regulatory Relief Act.

H.R. 2637 would provide much needed relief from concerns stemming from the Department of Education's state authorization, gainful employment, and credit hour definition regulations and allow greater flexibility under the incentive compensation regulation for third-party service providers.

The regulations at issue are complex, confusing, and burdensome and have raised challenging compliance issues for institutions. The lack of clarity in the state authorization regulation has raised questions for thousands of institutions about their students' continued eligibility for federal financial aid. Less than two months ago, the Department announced it would delay implementation of the state authorization regulation after questions arose about whether state authorization processes in certain states met the federal regulation's requirements. Unfortunately, the Department has been unwilling to identify which state processes are lacking and in what respects.

The implementation of the gainful employment regulations has also proven challenging, with the Department issuing no fewer than 43 Dear Colleague Letters attempting to explain the regulation's requirements. After a federal court struck down the metrics section, institutions were left with significant disclosure requirements for which they need underlying calculations that the Department cannot supply. More importantly, institutions are assuming these burdens without the regulation's promise of a mechanism to remove bad actors from the federal aid programs.

Finally, the regulation creating a federal definition of a credit hour is horribly muddled and opens the door to federal interference in core academic decisions—interference expressly

H.R. 2637
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July 15, 2013

prohibited under federal law. Moreover, the definition's emphasis on seat time is outdated and has a chilling effect on the ability of institutions to pursue innovative approaches to measuring learning.

These regulations are highly problematic and have the potential to create far-reaching, negative consequences for higher education. Congress should have the opportunity to carefully consider these issues and make its will known before additional rulemaking occurs on these topics.

We thank you for your support of America's colleges and universities and the students they serve.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

On behalf of:
American Council on Education
Association of American Universities
Association of Jesuit Colleges and Universities
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

Congress of the United States
Washington, DC 20515

December 13, 2013

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

Dear Secretary Duncan:

We write concerning the Department of Education's latest efforts to rewrite its "gainful employment" regulations. While we share your desire to ensure that both student interests and tax-payer funds are adequately protected, we are concerned by the process by which the Department has addressed these issues, and believe every effort should be made to limit adverse impacts on individuals who face limited access to educational opportunities.

Therefore, we hope that you can provide us with data to help in better understanding the Department's latest proposal. In particular, we have two requests:

- (1) We would like to see the impact of the regulation on all programs at all institutions of higher education, rather than the limited subset of institutions and programs targeted by the Department.
- (2) We also ask that you provide us with data regarding the impact on students by demographic.

We believe that your most recent comments on President Obama's proposal to create a rating system for colleges imply that this information will be an important component to any eventual solution. As a result, if the gainful employment regulation being proposed by the Department is the new quality measure for program eligibility, we presume that this will become a primary metric on how the President's rating system will be structured.

As you know, in October, the National Center for Education Statistics (NCES) released a report entitled, "Degrees of Debt: Student Borrowing and Loan Repayment of Bachelor's Degree Recipients 1 Year After Graduating: 1994, 2001, 2009." The report found that, in 2009, 26 percent of bachelor's degree recipients at public four-year institutions, who were repaying their loans, faced monthly loan payments greater than 12 percent of their monthly income. More specifically, the report found that, for private non-profit institutions, 39 percent of graduates exceeded the 12 percent debt-to-earnings threshold. Meanwhile, 35 percent of graduates from private sector colleges exceeded the threshold.

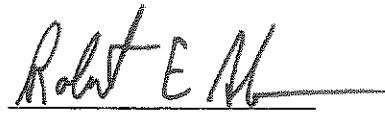
The NCES findings are of particular concern to us, because the Department's proposed regulation effectively requires an 8 percent debt-to-income ratio in order for a program to pass. Using this report, it is foreseeable that tens of thousands of programs would likely fail the proposed gainful employment regulation, which would negatively impact millions of students nationwide.

We thank you for your attention to this matter, and look forward to continuing our work to enact responsible measures that preserve access to postsecondary education and expand career choices for all Americans. We hope that you will respond to our request for information promptly.

Sincerely,



Alcee L. Hastings
Member of Congress



Robert E. Andrews
Member of Congress




Carolyn McCarthy
Member of Congress



Patrick Murphy
Member of Congress



Andre Carson
Member of Congress



Alan Grayson
Member of Congress



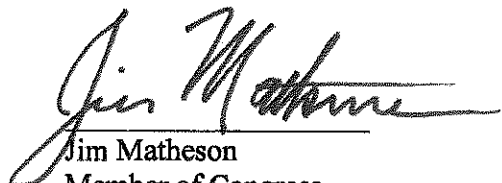
Frederica S. Wilson
Member of Congress



Theodore E. Deutch
Member of Congress



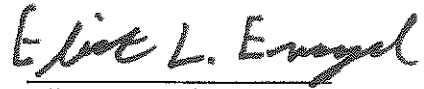
Ed Pastor
Member of Congress



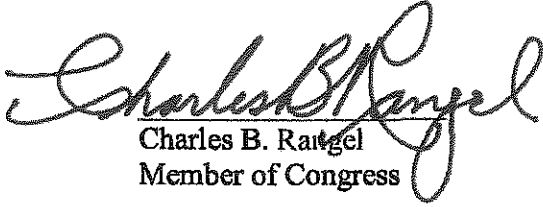
Jim Matheson
Member of Congress



Mark Pocan
Member of Congress



Eliot L. Engel
Member of Congress



Charles B. Rangel
Member of Congress



Ann Kirkpatrick
Member of Congress



Robert C. Scott
Member of Congress



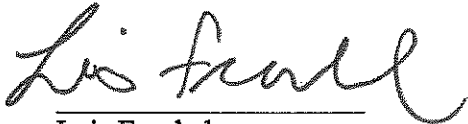
Loretta Sanchez
Member of Congress



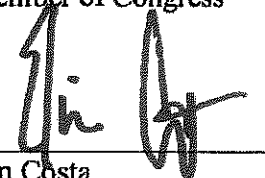
Paul D. Tonko
Member of Congress



Bennie G. Thompson
Member of Congress



Lois Frankel
Member of Congress



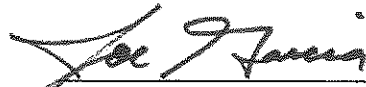
Jim Costa
Member of Congress



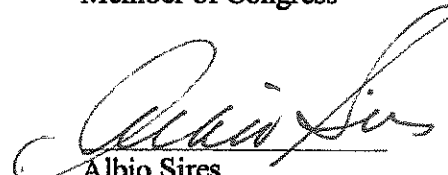
Kathy Castor
Member of Congress



Gregory Meeks
Member of Congress



Joe Garcia
Member of Congress




Albio Sires
Member of Congress



Ron Kind
Member of Congress




Timothy J. Walz
Member of Congress




Kyrsten Sinema
Member of Congress



Marc A. Veasey
Member of Congress



Ron Barber
Member of Congress



Henry Cuellar
Member of Congress

Congress of the United States
Washington, DC 20515

January 29, 2014

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

Dear Secretary Duncan:

I write to express my concerns regarding the Department of Education's latest efforts to promulgate "gainful employment" regulations. While I strongly support the Department's goal of ensuring high-quality affordable education for all students, I am concerned the draft rule has not been vetted thoroughly and may result in unintended consequences for low-income, minority, and non-traditional students who attend proprietary institutions.

At the close of the most recent negotiating session, a panel of industry and Department negotiators failed to reach consensus on a coherent approach to measuring appropriate student debt loads, programmatic cohort default rates, and job placement rates. In spite of this result, the Department seems poised to publish a rule that would potentially impact over 11,000 programs and millions of students seeking to attend and enroll in career education courses.

Gainful employment programs are crucial to the future of our economy, providing students with the workforce skills necessary to find good jobs and attain brighter futures. The four million students currently attending private sector schools deserve to understand how their educational experience will be impacted by new regulations. As of now, too many factors remain unclear and I am concerned institutions have not had time to adequately assess the impact of these rules, leaving students and administrators uncertain amid a shifting regulatory landscape.

For students who are low-income, veterans, or non-traditional learners seeking a better job, proprietary institutions offer the flexibility and resources they need to better themselves. These students are among the foremost reasons why Title IV programs exist, and although their circumstances often result in higher default rates, we owe it to them to craft a rule that ensures they are not denied the benefit of federal financial aid without just cause. Therefore, I encourage you to craft a rule that takes into account the varied student demographics of institutions subject to gainful employment regulations and allows for a level playing field.

While I commend and support your focus on weeding out unscrupulous institutions, I am also concerned that the Department's chosen metrics fail to capture whether schools are sufficiently

preparing students for gainful employment. Non-profit institutions are also beneficiaries of Title IV funds, and yet this approach does nothing to ensure students attending these institutions receive a valuable education. In fact, in October the National Center for Education Statistics released a report entitled "Degrees of Debt". A key finding in the report showed that in the most recent year studied (2009), 31 percent of graduates of all bachelor's degree awarding institutions had an annual debt-to-earnings ratio that was greater than the 12% cutoff in the draft rule. I believe a comprehensive study of how all recipients of Title IV funds – including low-income, minority, and non-traditional learners – would perform under these standards would give some context to the Department's efforts.

In light of these concerns, I ask that you delay publishing a rule on gainful employment until the Department has fully studied the matter and stakeholders have had time to fully assess how schools and students will be impacted.

Thank you for your work and for your consideration of this request. Please contact my staff if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Lipinski".

Daniel Lipinski

Member of Congress



Arizona State Board for Private Postsecondary Education

December 23, 2013

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

RE: Request Substantial Revisions to the Proposed Gainful Employment Regulations

Dear Secretary Duncan:

The Arizona State Board for Private Postsecondary Education ("State Board") requests that the Department consider substantial revisions to the proposed regulations for gainful employment. The State Board believes that the proposed regulations, as currently drafted, will result in thousands of students being denied access to good and viable programs.

The State Board supports the Department's objectives to improve educational outcomes, decrease the financial burden born by students and expand the capacity and protection of students to ensure ethical practices.

However, the State Board believes the proposed "gainful employment" regulations are problematic. The proposed regulations expand an arbitrary net that will likely negatively impact many good programs. The proposed regulation does not provide for programs that successfully serve at-risk students by the use of relative measures. The proposed regulations treat all levels of programs alike, despite the overwhelming evidence of the significant economic impact gained by students as they advance their education from a certificate/associate program to a bachelor, or even graduate and professional, level.

The State Board has reviewed the latest proposed regulations for gainful employment released December 11, 2013. Based upon our review, the State Board has the following concerns AND recommendations for a number of the provisions:

- * The proposed regulations reflect a lack of understanding of the different credential levels in vocational and degree programs. The State Board would recommend that the proposed regulations address this issue by applying a longer amortization period and a longer period of earnings for both bachelor and graduate degrees.
- * The proposed metrics are not alternative measures and as such, create a logical problem. Many programs have good CDRs, but potentially lower DTE statistics.

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If the students are clearly repaying their student loans, then the gainful employment program is not a threat to the tax payer dollars and is clearly performing. The metrics should work together as alternatives.

- * The Department's recommended approval process is extremely problematic. First, currently the State Board reviews and approves programs for licensed institutions. Is it the Department of Education's intent to interfere with the State's responsibility in this matter? Second, the proposed regulations would deny new programs if they have a CIP code similar to an existing failing program. CIP codes are quite broad. While it is clear the Department is attempting to "head off" manipulation by schools, it is also ignoring that many very different programs can exist under similar, if not the same, CIP codes. The proposed process will not encourage successful programs.
- * We would like to call your attention to the gainful employment negotiated rule-making and the fact that the proposed language excludes any institution that did not receive Title IV funding from the gainful employment calculation. Since only Title IV borrowers can be used in the metric, and new programs cannot be approved if they have a similar CIP code to a failed program, then a school that has a struggling program that "fails," will not ever have the opportunity to rectify the problem, improve the program, and bring it into compliance. This "dead for good" approach will, overtime, continually whittle down programs with no hope of ever expanding, or providing an opportunity for a program to perform.
- * The regulatory language that establishes a "line of credit" for programs that may fail is unnecessary. It is the State Board's statutory authority and responsibility to provide consumer protection to Arizona citizens and students in other states attending Arizona institutions. Again, is it the Department's intent to interfere with State affairs?
- * The State Board also believes that the proposed gainful employment regulation, as a whole, will create extensive administrative work for the State. The State Board currently reviews and monitors schools who have adverse action from any regulatory entity. If the Department now begins to take adverse action against specific programs, the State's workload will increase. Monitoring every school and program that is "in the zone" creates an undue administrative and regulatory burden on the State.
- * The State Board does not believe the intent of the legislative provision on gainful employment was intended to measure cost or debt. The State Board would recommend a metric that replaces DTE with placement. A well-used and understood metric that tracks placement rates by CIP code should be used with performance benchmarks established as no more than 2 standard deviations below the mean for all schools with programs in that CIP code.
- * Finally, it is clear that the regulation will likely expand to all of higher education. The proposed regulations should be to establish a regulatory framework that is

more easily translated to ALL of institutions. It is the State Board's recommendation that the regulation be developed in such a manner that it can evolve to be "one rule for all schools, both for-profit and the not-for-profit institutions."

The State Board currently licenses and regulates 255 private postsecondary institutions operating vocational and degree programs. These private colleges, universities, and career colleges annually serve 843,331 students enrolled in either residential or online programs. The State Board reviews and regulates more "gainful employment" programs than many other States agencies.

Again, the State Board strongly encourages the Department to consider the harmful effect the proposed regulations on gainful employment that will result in thousands of students being denied access to good and viable programs.

Respectfully submitted,



Jason Pistillo
Chairman



Teri Stanfill
Executive Director

Cc: Senator John McCain
Senator Jeff Flake
Senator Tom Harkin, HELP Chairman
Senator Lamar Alexander
Senator Barbara Mikulski
Senator Bernard Sanders
Senator Robert P. Casey Jr.
Senator Kay Hagan
Senator Al Franken
Senator Michael F. Bennet
Senator Sheldon Whitehouse
Senator Tammy Baldwin
Senator Christopher Murphy
Senator Elizabeth Warren
Senator Michael Enzi
Senator Richard Burr
Senator Johnny Isakson
Senator Rand Paul
Senator Orrin Hatch
Senator Pat Roberts
Senator Lisa Murkowski
Senator Mark Kirk
Senator Tim Scott