United States Senate
WASHINGTON, DC 20510

September 13, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Docket ID ED-2018-OPE-0042

Dear Secretary DeVos:

We write today in strong opposition to the U.S. Department of Education's ("Department") proposal to rescind rules designed to protect and ensure students enrolled in career training programs obtain "gainful employment." Given that the Department delayed implementing these critical consumer protections three consecutive times, and now proposes to eliminate the rules, it is clear that this Department has little interest in protecting students from enrolling in low-quality programs that leave them saddled with debt they cannot repay. The Department's proposal will weaken higher education accountability at a time when more and more students are taking out substantial levels of student debt but are unable to find good-paying jobs to pay back their loans. Career training programs that cannot fulfill their promises to offer students a meaningful path to economic advancement must be held accountable and should not be rewarded with continued taxpayer support. Therefore, we urge you to immediately withdraw this proposal and enforce current law.

Career training programs that receive federal student aid should be required to meet standards that ensure students enrolling in the programs do not end up with debt they cannot repay. The Department's proposal fails to acknowledge and uphold the purpose, goals, and careful analyses behind what is common-sense policy as outlined below.

1. Gainful Employment *Requires* Accountability, Not Just Transparency, of Career Training Programs. The *Higher Education Act of 1965* (HEA) sets forth a statutory requirement that for-profit colleges and career training programs must offer students a path to "*gainful employment in a recognized occupation.*" The statute does not discriminate by sector, tax status, or mission, as the Department suggests, but recognizes that these institutions and programs are inherently different with respect to governance, financial incentives, and educational objectives. Congress has recognized these differences from the time it permitted federal student aid dollars to flow to non-degree programs at nonprofit institutions and when it first authorized for-profit colleges to participate in the federal financial aid program. Because for-profit colleges have always marketed themselves as workforce-training in nature, Congress determined that these colleges – as well as certificate programs at nonprofit and public institutions – must provide a program of training to prepare their students for gainful employment as an eligibility requirement to participate in federal financial aid programs.

The Department is therefore incorrect when it states that the gainful employment rules reinforce an inaccurate and outdated belief that career and vocational programs are less valuable to students and society. It is precisely because these programs are valuable – and market and represent themselves as job training – that the HEA requires them to provide evidence of workforce success in order to receive federal taxpayer subsidies.

The heart of the gainful employment rules is to set eligibility standards that ensure career and vocational programs do not leave students with too much debt to repay relative to the income that they earn after completing a program, and sanctions programs that fail to meet this test, fulfilling the intent of Congress. When the previous Administration wrote the rules, it decided to supplement those eligibility standards with consumer disclosures to prospective students, recognizing that the two requirements in tandem would help drive institutional and student behavior.

The Department is instead proposing to supplant both the eligibility and consumer disclosure standards with a nonbinding proposal to provide limited outcomes information at all postsecondary programs. However, current law is clear that gainful employment is an eligibility requirement; therefore, the regulation must address what that eligibility standard must be for career training programs. Even the Department's own net budget impact estimate fully acknowledges that publishing outcome information alone does little to protect taxpayer dollars.

2. Gainful Employment is Intended to Protect Students and Taxpayers against Unmanageable Levels of Student Loan Debt. While the Department suggests reasons for why certain programs' costs, and therefore the debt students incur, might be high and why students attending certain programs' earnings might be low, it never directly addresses the importance of the debt-to-earnings ratio in revealing those programs that result in students graduating with unmanageable levels of debt. The Department fails to recognize that the majority of gainful employment programs fail due to the low earnings of students completing the programs, which in turn is driving unaffordable debt. A research study conducted by the Center for American Progress found that 98 percent of failing programs would have needed their graduates to earn significantly more to have a chance at repaying their debt. Most would have needed to earn at least $10,000 more annually in order to repay their debt over 10 years – with over half even needing their graduates to earn at least $20,000 more annually and a full quarter needing their graduates to earn $30,000 more annually.[1] Further, according to a separate research study from Third Way, 1 in 6 failing programs found the majority of graduates earned *below the federal poverty line.*[2]

The Department appears to believe that institutions are powerless to change program design and prices in response to costs and labor market conditions. For example, the Department says *"it is the cost of administering the program that determines the cost of tuition and fees"* and argues that debt levels must necessarily be higher at for-profit colleges because they do not have other sources of revenues available to public and private nonprofit colleges. But by definition, for-profit colleges set their *prices* above actual program costs to ensure a profit margin. An analysis by the Senate HELP Committee found that on average, for-profit colleges charge more than 3.5 times as much for the same program at public institutions in the same state.[3] Indeed, the same analysis found that it is the

---

[1] Libassi, C. and Miller, B. *How Gainful Employment Reduces the Government's Loan Forgiveness Costs:* Center for American Progress, June 2017.
[2] Itzkowitz, M. *How the "Gainful Employment" Rule Protects Students and Taxpayers.* Third Way. January 2017.
[3] United States Senate Health, Education, Labor, and Pensions Committee. *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success."* July 30, 2012.

need to satisfy company profit goals, through financial projections and the ability to maximize revenue by matching tuition to federal student aid, rather than the cost of providing instruction and other student services, that determine tuition pricing. This finding is supported by the research literature that finds for-profit colleges overprice their career programs by 78 percent compared to career training programs that do not receive federal aid.[4]

The Department also claims that variations in student earnings may be traced to differences in geography and field, but colleges are fully capable of lowering program prices based on the earnings potential within any particular geography or industry. Indeed, there are several examples of the same program offered in the same city that have very different outcomes, showing that debt and earnings performance are not simply about geography or industry. For example, graduates of the medical/clinical assisting certificate program at Miami Dade College in Miami, Florida typically have no debt and twice the income of graduates of the same program at the nearby for-profit Florida Education Institute.[5]

Finally, the Department says that enforcing the current gainful employment rules "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," even though research has found that students who attend low-quality programs that lose access to federal student aid largely reenroll elsewhere and typically with better outcomes as a result.[6] Further, analysis conducted during the previous administration found similar demographic profiles across all passing, zone, and failing programs, indicating the regulation does not disadvantage programs that serve underrepresented students.[7]

3. Gainful Employment Empowers Institutions to Improve their Career Training Programs.
The Department's proposal to eliminate gainful employment fails to acknowledge that the rules were working exactly as it was intended – and without the rules risky programs will most likely reappear and harm students. By measuring and calculating debt-to-earnings ratio for every career training program, the Department was able to help schools receive valuable debt and earnings data and determine which programs were worth expanding and improving and which programs were not. This information is particularly critical for institutional improvement during a time when colleges that face sagging enrollment are launching new certificate programs to boost revenue.[8]

The gainful employment rules did a remarkable job of identifying risky programs. One analysis found that the majority of the more than 500 failing programs have already shut down.[9] Some of

---

[4] Cellini, S. and Goldin, C. *Does Federal Student Aid Raise Tuition? New Evidence from For-Profit Colleges.* National Bureau of Economic Research Working Paper No. 17827. April 2013.
[5] Florida Education Institute (FEI) charges over $15,000 in tuition and fees compared to $4,000 at Miami Dade College. Debt levels are subsequently much higher and unmanageable at FEI, with median debt at $9,100 and median earnings of only $13,000. Meanwhile, median earnings at Miami Dade are $26,000. The Institute for College Access & Success. *Examples of Nearby Career Education Programs with Very Different Outcomes.* June 2017.
[6] Cellini, S., Darolia, R., and Turner, L. *Where do Students Go When For-Profit Colleges Lose Federal Aid?* National Bureau of Economic Research Working Paper 22967. December 2016.
[7] U.S. Department of Education. *Student Demographic Analysis: Final Regulations – Program Integrity: Gainful Employment.* October 2014.
[8] Marcus, J. "Panicked Universities in Search of Students are Adding Thousands of New Majors." *The Washington Post.* August 9, 2018.
[9] Carey, K. "DeVos is Discarding College Policies that New Evidence Shows are Effective." *The New York Times.* June 30, 2017.

these programs were run by the now defunct Corinthian Colleges, Inc. and ITT Educational Services, Inc. Others were programs at existing colleges that used the Department's data to close failing programs. Fortis College in Virginia, for example, ceased enrollment in its associate degree in criminal justice and safety studies after learning that students left the program with over $30,000 in debt but only $15,000 in annual earnings. Harvard University (a non-profit) suspended a theater arts program after learning the average graduate had to pay over two-fifths of their discretionary monthly income toward making loan payments.

Even the Department's own analysis finds that 47 percent of associate degree programs in medical or clinical assistant programs fail whereas only 3 percent of medical or clinical assistant certificate programs do. It also finds that 58 percent of associate degree programs in massage therapy fail, whereas only 1.5 percent of massage therapy certificate programs do. This aligns with existing BLS occupational profiles that find the typical entry-level education for medical or clinical assistant and massage therapy programs only require a postsecondary non-degree award.[10] This suggests that perhaps some credential levels and associated debt levels are more appropriate than others for certain careers and earnings.

In summary, repealing the gainful employment rules would put students and taxpayers at great risk. The Department estimates that repealing this regulation and allowing students to attend risky programs that will leave them in a precarious position will cost taxpayers an additional $5.3 billion in Pell Grants and student loans. It should be noted the Department estimates that $4.5 billion of those costs will come from the Pell Grant program, putting more pressure on a program that already faces a funding shortfall within the next few years.

To be clear, the impact and cost to the hundreds of thousands of students enrolled in programs failing the current gainful employment thresholds is even greater. Students who enroll in failing programs that otherwise should lose eligibility for financial aid are more likely to carry debt as a college dropout, to default and thus face punitive lifetime consequences, and to struggle for financial independence and sustainability. The Department should be working to prevent these outcomes for students. We urge you to reverse course immediately, withdraw this proposal, and fully enforce the gainful employment rules.

Sincerely,

Dick Durbin

PATTY MURRAY
United States Senator

RICHARD J. DURBIN
United States Senator

[10] U.S. Department of Labor Bureau of Labor Statistics. *Occupational Outlook Handbook: Massage Therapists* and *Occupational Outlook Handbook: Medical Assistants.*

TAMMY BALDWIN
United States Senator

RICHARD BLUMENTHAL
United States Senator

SHERROD BROWN
United States Senator

BENJAMIN L. CARDIN
United States Senator

THOMAS R. CARPER
United States Senator

CHRISTOPHER A. COONS
United States Senator

CATHERINE CORTEZ MASTO
United States Senator

TAMMY DUCKWORTH
United States Senator

DIANNE FEINSTEIN
United States Senator

KIRSTEN GILLIBRAND
United States Senator

KAMALA D. HARRIS
United States Senator

MARGARET WOOD HASSAN
United States Senator

MAZIE K. HIRONO
United States Senator

DOUG JONES
United States Senator

PATRICK J. LEAHY
United States Senator

CLAIRE MCCASKILL
United States Senator

EDWARD J. MARKEY
United States Senator

JEFFREY A. MERKLEY
United States Senator

CHRISTOPHER S. MURPHY
United States Senator

JACK REED
United States Senator

BERNARD SANDERS
United States Senator

BRIAN SCHATZ
United States Senator

CHARLES E. SCHUMER
United States Senator

JEANNE SHAHEEN
United States Senator

TINA SMITH
United States Senator

CHRIS VAN HOLLEN
United States Senator

ELIZABETH WARREN
United States Senator

SHELDON WHITEHOUSE
United States Senator

RON WYDEN
United States Senator