June 4, 2013

Ms. Wendy Macias
U.S. Department of Education
1990 K Street NW., Room 8017
Washington, DC 20006

Re: Docket ID ED-2013-OPE-0008 Negotiated Rulemaking Committee, Public Hearing

Dear Ms. Macias:

These comments represent the Institute for Higher Education Policy's (IHEP) response to the recent Federal Register notice from April 16, 2013 soliciting input on various regulatory topics, including potential approaches the U.S. Department of Education could take to define what it means for a program to prepare students for gainful employment in a recognized occupation.

IHEP is a non-profit, non-partisan research organization based in Washington, D.C., committed to promoting access to and success in higher education for all students, with a particular focus on populations that have been traditionally underserved by our postsecondary system. Celebrating our 20th year, IHEP develops innovative policy- and practice-oriented research to guide policymakers and education leaders, who develop high-impact policies that will address our nation's most pressing education challenges.

The Need to Ensure Quality Educational Opportunities for All Students

Our desire to offer comments on this topic stems from our commitment to ensuring educational opportunity for our nation's students. In order to meet national attainment goals, we must be more vigilant in our efforts to increase access and completion for students, but especially for those who have been underserved. In doing so, we will strengthen our economy and enhance global competitiveness, while simultaneously reinforcing the notions of equality and equity that undergird our democracy.

A critical step towards improving educational opportunity and outcomes requires that we ensure that all institutions provide students with a quality educational experience that maximizes civic engagement and employability, while minimizing debt levels. Research confirms that better information on student outcomes, as well as lower student debt levels, can support this goal. Regulations to ensure gainful employment will:

- Allow students to be informed consumers by providing data about the educational experiences and outcomes of other students,
- Ensure that eligible qualified career programs that receive federal funding do not consistently leave students with debt levels they are unable to repay; and
- Ensure that predatory practices directed toward low-income and other underserved students are minimized or eliminated.

While the gainful employment regulations are applicable to career-oriented programs in non-profit institutions, the rules are particularly important given the substantial growth in private, for-profit institutions. For-profit institutions now represent 13 percent of all student enrollments, and most of this growth occurred with the last decade which saw enrollments at these institutions triple between 2001 and 2010.[1]

[1] United States Senate Health, Education, Labor, and Pensions [HELP] Committee (2012). For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success. Retrieved from: http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf

For-Profit Institutions in Context

While the growth of for-profit institutions is noteworthy, it is also important to acknowledge the diversity of the sector. Often, we think of these institutions as having large enrollments and many curricular options. Instead, most for-profit institutions are quite small and offer specialized programs. Ninety percent of non-profits enroll fewer than 1,000 students (compared to 6 percent and 18 percent of public four-year and two-year institutions, respectively), and 60 percent of for-profit institutions offer only a certificate as the highest credential awarded.[2]

Additionally, the student body and geographic composition of for-profit institutions can vary from other sectors. Eighty-six percent of for-profit institutions are located in metropolitan areas (compared to 75 percent and 63 percent of public four-year and two-year colleges respectively). The geographic location of these institutions offers tremendous advantage for serving large numbers of urban, minority, first-generation, and post-traditional students, while offering programs near growing industries and occupations.[3] In 2010-2011, for example, for-profit institutions enrolled nearly a quarter (23.6%) of Pell Grant recipients, despite enrolling around 13 percent of the total student population.[4] In fact, low-income females from every racial/ethnic group are nearly three times as likely to attend for-profit institutions, as compared to their higher income female counterparts.[5] In many respects, for-profit institutions are attracting the student populations that, as mentioned previously, we must reach in order to increase educational attainment.

While these students – and the larger society - stand to benefit by receiving a quality postsecondary credential or degree, their lack of familiarity with the nuances of the postsecondary system also make them the most vulnerable to choosing institutions that may not adequately serve their needs. Nationally, around 30 percent of students who start at four-year for-profit institutions receive at least an associate's degree at any institution within six years, compared to 63 percent and 68 percent of students who begin at non-profit four-year public and private institutions, respectively.[6] Obviously, students who do not graduate, but borrow to finance the cost of attending college, stand a greater chance of struggling to repay student loans. As it stands, for-profit institutions make up 47 percent of all federal loan defaults, again despite enrolling 13 percent of students. Further, a recent analysis by IHEP indicates that only one-third of borrowers at two- and four-year for-profit institutions are making timely payments on student loans, and over half are either delinquent or in default.[7]

Therefore, as we seek to develop accountability measures for improving educational quality, we must focus our attention on protecting students instead of protecting institutions. Reliable information, presented in a user-friendly format, about program costs, quality, and outcomes, may reduce the number of students who enroll optimistically in programs of dubious quality, and then leave with a skillset of limited applicability in the job market and with substantial student loan debt.

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[2] Institute for Higher Education Policy (2012). A New Classification Scheme for For-Profit Institutions. Washington, DC: Institute for Higher Education Policy. Retrieved from: http://www.ihep.org/assets/files/publications/a-f/(Report)_For-Profits_Classification_July_2012.pdf

[3] Hentschke, G. 2010. Innovations in Business Models and Organizational Cultures: The For-Profit Sector. Los Angeles, CA: USC Rossier School of Education

[4] U.S. Department of Education (2012). 2010-2011 Federal Pell Grant End-of-Year Report, Table 13. Retrieved from: http://www2.ed.gov/finaid/prof/resources/data/pell-2010-11/pell-eoy-2010-11.html E

[5] Institute for Higher Education Policy (2011). Initial College Attendance of Low-Income Young Adults. Washington, DC: Institute for Higher Education Policy. Retrieved from: http://www.ihep.org/assets/files/publications/m-r/Portraits-Low-Income_Young_Adults_Attendance_Brief_FINAL_June_2011.pdf

[6] IHEP analysis of the 2009 follow-up to the 2003-04 Beginning Postsecondary Students Longitudinal Study (BPS:04/09).

[7] Cunningham, A. and Kienzl, G. (2011). Delinquency: The Untold Story of Student Borrowing. Washington, DC: Institute for Higher Education Policy. Retrieved from: http://www.ihep.org/assets/files/publications/a-f/delinquency-the_untold_story_final_march_2011.pdf

In short, the need for regulation of the for-profit sector, such as the gainful employment rules, is needed because:

- This sector holds the potential for serving large numbers of underserved students – significantly reflective of the students we most need to succeed in higher education,
- The students that attend for-profit institutions are most susceptible to predatory and other practices that result in high debt loads and low-quality credentials, and therefore warrant additional protections,
- Industries for which a majority of their revenues – over three-fourths in the case of for-profit institutions collectively[8]–comes from taxpayer subsidies should be held accountable in order to prevent inefficient use or waste of that same taxpayer money.

The Need for Gainful Employment after *Association of Private Sector Colleges and Universities v. Duncan (D.D.C. 2012)*

The final gainful employment rules[9] released by the U.S. Department of Education in June 2011 indicated that programs could lose eligibility for aid if they failed to meet all of the following metrics for three out of four consecutive years:

- A federal student loan repayment rate of at least **35 percent**
- A debt-to-income ratio (annual loan payments as a percentage of income) of less than **12 percent**
- A debt-to-discretionary-income ratio (annual loan payments as a percentage of total income minus 150% of the poverty level) of less than **30 percent**.

It is important to note that these final rules were less stringent than the regulations originally proposed by the Department in 2010.[10] As originally proposed, the Department of Education also had a "restricted" zone for federal aid eligibility for programs providing marginally better outcomes for students. These institutions included those with:

- A federal student loan repayment rate between **35 and 45 percent**
- A debt-to-income ratio between **8 and 12 percent**
- A debt-to-discretionary-income ratio between **20 and 30 percent**

Rules would have required institutions in this category to inform students and graduates about the average debt levels of students who attended their institution; cap enrollment at the average enrollment from the previous 3 years; and provide the Department with employer testimony about the existence of job openings in the program's field.

Regardless, the U.S. District Court for the District of Columbia in *Association of Private Sector Colleges and Universities v. Duncan* and its rejection of a follow-up motion by the Department, invalidated the final benchmarks as well as the ability to collect data on these outcomes measures. While the debt-to-income and debt-to-discretionary income ratios were found to be valid, the court viewed the repayment rate measure as "arbitrary" and lacking a sound foundation in research, and thus struck down the trio of benchmarks. In the

[8] U.S. Senate HELP Committee 2012
[9] 76 FR 34385 (2011-06-13). Retrieved from: https://www.federalregister.gov/articles/2011/06/13/2011-13905/program-integrity-gainful-employment-debt-measures
[10] 34 CFR 668 (2010-07-26). Retrieved from: https://www.federalregister.gov/articles/2010/07/26/2010-17845/program-integrity-gainful-employment

aftermath of these decisions, the Department is back to having very few mechanisms by which for-profit program quality can be judged.

When the gainful employment provision was initially introduced, many for-profit institutions responded by eliminating the poorest-performing programs, lowering or freezing costs, and introducing other reforms in order to comply with the law.[11] However, in the wake of the *Association of Private Sector Colleges and Universities v. Duncan* rulings, these institutions no longer have an incentive to maintain the reforms they have undertaken, thereby leaving students susceptible to the same inappropriate institutional practices and outcomes that gainful employment regulations set out to eliminate.

Revising Gainful Employment Regulations to Better Serve Students: Repayment Rates, Student Default Risk Indices

The debt-to-income measures were based on a rational examination of household financial circumstances as evidenced in prior research. However, the repayment rate figure of 35 percent was overturned as part of *Association of Private Sector Colleges and Universities v. Duncan* because it was ruled "arbitrary and capricious." Yet, it hardly seems capricious to hold the bottom quarter of institutions with regard to loan repayment accountable when nearly two-thirds or more of their former students are unable to repay their federal student loans. Such a low rate sends a poor signal to students potentially or already enrolled in these programs about the Department of Education's commitment to ensuring program quality and affordability. Given this, we still recommend the use of loan repayment rates as a benchmark in any accountability metric.

In fact, IHEP recommends revisiting the idea of a "restricted zone" for institutions as was included in the initially proposed regulations.[12] Had the restricted zone been included in final rules, the Department would have given for-profit institutions time to improve outcomes while simultaneously setting a higher–and more reasonable–standard for programs to be fully eligible for federal money. Unfortunately, these benchmarks were not included in final regulations, and IHEP urges the Department to consider re-including them in upcoming regulations.

If the Department does not consider repayment rates as viable in the wake of the U.S. District Court decisions, it could instead create a new metric for institutions based on the probability that a cohort will default on their student loans. While Cohort Default Rates (CDRs) have proven imperfect in assessing institutional eligibility for federal aid, the Department of Education could improve them by taking steps to curb known gaming of CDRs by offering guidance to institutions as to what constitutes default management for students and what constitutes manipulation by institutions. Doing so could allow the Department to utilize a default rate measure in Gainful Employment benchmarks, in lieu of repayment rates. The Department's move toward three-year cohort default rates, with sanctions beginning in 2014 for schools whose CDR exceeds 30 percent for three consecutive years, provide an already established benchmark for unacceptable CDRs for institutional eligibility for Title IV aid. The Department could consider using a CDR measure below the 30 percent threshold, and pairing that measure with the two debt-to-income measures as an accountability benchmark.

An additional option would be to devise a student default risk index–as some organizations have proposed[13] – that factors in both CDRs and overall student borrowing rates among programs. By including student

[11] Epstein, J. (April 21, 2010). "Going Ahead with Gainful Employment." *Inside Higher Ed.* Retrieved from: http://www.insidehighered.com/news/2010/04/21/gainful

[12] 34 CFR 668 (2010-07-26). Retrieved from: https://www.federalregister.gov/articles/2010/07/26/2010-17845/program-integrity-gainful-employment

[13] The Institute for College Access and Success (2013). Aligning the Ends and the Means: How to Improve Federal Student Aid and Improve College Access and Success. Washington, DC: The Institute for College Access and Success. Retrieved from: http://www.ticas.org/files/pub/TICAS_RADD_White_Paper.pdf

borrowing rates, the Department could better identify not only the percentage of borrowers within a program who are defaulting, but also determine whether or not these defaults constitute a substantial portion of all students who enroll. This would protect institutions with high CDRs but a small percentage of student borrowers. To be clear, any accountability measure that includes CDRs will only be effective if the Department is willing to curb manipulative practices from institutions.

Another option would be providing incentives for programs to improve on student loan repayment rate measures as well as debt-to-income benchmarks. Under the 2011 regulations, programs could lose eligibility only by failing on three metrics for three out of four consecutive years. On the other end of the spectrum, the Department could consider incentives for programs with successful outcomes over the same period of time. For example, if a program enrolls a relatively high percentage of low-income students, has a repayment rate in the upper quartile of all programs, and maintains exceptional debt-to-income ratios, the Department could offer incentives to these institutions. Doing so may boost the performance of other institutions along these lines, including those who have traditionally underperformed.

Restore the 90-10 Rule to its Original Intent

Another way to ensure that students are best served by for-profit programs is to restore the "90-10 rule" to its original intent. The idea for the 90-10 rule, which was introduced in the 1992 reauthorization of the Higher Education Act, can be traced back to the 85-15 rule administered by the Department of Veteran's Affairs (VA) in the GI Bill of Rights. Specifically, in the 1952 follow-up to the original the GI Bill, proprietary institutions were required to demonstrate that a percentage of students had covered their tuition without use of the bill's benefits, though this was later expanded to include other non-profit and public higher education institutions.[14] In other words, the program needed to prove itself in the private market – with students, employers, or a community-based scholarship program putting their own money on the line, in addition to the government.

During the 1992 Higher Education Act (HEA) reauthorization, concerns about the for-profit sector led Congress to adapt the 85-15 rule and apply it to proprietary institutions for Title IV aid. The rule was intended to minimize fraud and abuse within the student aid system, and required that for-profit institutions receive at least 15 percent of their revenue from non-federal sources so as to demonstrate that they were offering a worthwhile education that at least some students would be willing to pay for out of their own pockets. In 1998, the 85-15 benchmark was relaxed, forming the basis for the current 90-10 rule. The 2008 reauthorization of the Higher Education Act further relaxed the provisions of the 90-10 rule by expanding the sources of funds that could count toward the 10 percent, including GI Benefits and Department of Defense Tuition Assistance dollars. This has led to obvious incentives for for-profit institutions to target veterans and active-duty military personnel. Additionally, both the VA's 85-15 rule and HEA's 90-10 rule are on the books, operating independently of one another, creating confusion and further opportunities for abuse by for-profit institutions nearing the 90 percent threshold.[15]

By strengthening and restoring the original intent of the 90-10 rule, the Department –or Congress –could add another layer of protection for students, while ensuring that institutions prove their quality and applicability in the labor market. This, in addition to restoring and enhancing previous Gainful Employment regulations, could provide students with meaningful economic opportunity, enhance institutional and program quality, and ensure that taxpayer funds are not spent subsidizing poor-quality institutions

[14] Galluci, R. (2011). Improving educational outcomes for our military and veterans. Testimony before the United States Senate Committee On Homeland Security And Government Affairs Subcommittee On Federal Financial Management. Kansas City, MO: Veterans of Foreign Wars. Retrieved from: http://www.vfw.org/VFW-in-DC/Congressional-Testimony/Improving-Educational-Outcomes-for-our-Military-and-Veterans/

[15] Galluci 2011

In conclusion, we thank you for this opportunity to provide comments on prospective Gainful Employment regulations, and we hope you consider these principles and suggestions in determining how to ensure that all higher education programs provide credentials to students that are both affordable and valuable in the labor market. Please do not hesitate to contact me with any questions about these comments.

Sincerely,

Michelle Asha Cooper, Ph.D.
President, Institute for Higher Education Policy