

Congress of the United States
Washington, DC 20515

May 27, 2014

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

Dear Secretary Duncan:

Given the significant investment of taxpayer resources in postsecondary education, the federal government has an obligation to monitor higher education institutions that participate in federal student aid programs. While we share the goal of promoting accountability and integrity among these institutions, we are deeply concerned about several provisions included in the latest iteration of the gainful employment regulation.

The proposed rule will unduly affect students enrolled at proprietary institutions and non-degree programs at nonprofit institutions, including many community colleges that are critical to our nation's workforce development. According to the Association of Private Sector Colleges and Universities, the regulation will reduce postsecondary education options for as many as 3.9 million students by 2020¹, many of whom are minorities, veterans, or low-income. These nontraditional and low-income students rely on federal student loans and grants to pursue a postsecondary education and need the flexible programs offered by proprietary institutions and community colleges to earn a degree, while also balancing the demands of family and work.

The proposed regulation will also increase the federal reporting burden levied on postsecondary institutions. The gainful employment regulation will require institutions to meet two overly-complicated metrics: a debt-to-earnings measure and a programmatic cohort default rate. Many of the proposed reporting requirements under the gainful employment regulation are redundant to existing requirements, creating additional compliance burdens and paperwork hours that could lead to higher costs for students.

Worse, the metrics fail to accurately gauge program quality and include arbitrary thresholds that penalize certain institutions. For example, law degree programs at proprietary institutions have similar tuition, cohort default rates, and bar passage rates as comparable programs at nonprofit private institutions. However, the nonprofit programs are exempt from the debt-to-earnings measure, even though research suggests a majority of these schools would not pass the metric.²

¹ Guryan, Jonathan and Matthew Thompson. "Report on the Proposed Gainful Employment Regulation." Charles River Associates. May 23, 2014. Page 69.

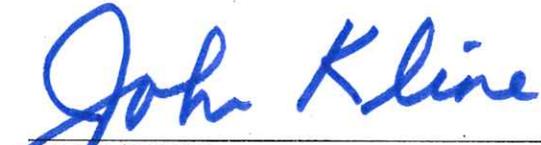
² Analysis based on public American Bar Association data of tuition and debt levels and US News & World Report starting salaries data.

Additionally, the added reporting requirements could actually lead to reduced transparency and confusion for prospective students. Postsecondary institutions are already required to report key data, including graduation rates, costs, and outcomes displayed through the College Navigator website and the College Scorecard. The new disclosures will require certain institutions to report similar data points measuring different cohorts of students, leading to inconsistent data that will make it harder for students to compare multiple institutions.

We understand and support efforts to bolster the integrity of America's higher education system. However, there is widespread agreement that the punitive gainful employment regulation is the wrong tack. Previous iterations of the gainful employment regulation have been firmly rejected by both Republicans and Democrats in Congress, the higher education community, and the federal court system. In both the 112th³ and 113th⁴ Congresses, there was bipartisan support to prohibit the Department of Education from implementing the gainful employment regulation. Additionally, in 2012, the U.S. District Court for the District of Columbia struck down a majority of the regulation, citing its "arbitrary and capricious" nature.⁵

As the Committee on Education and the Workforce continues working toward the reauthorization of the *Higher Education Act*, promoting enhanced accountability in federal student aid programs and empowering students and their families with useful information remain our top priorities. We hope the department will work with us to achieve these shared goals, while promoting and protecting a diverse system of education that will serve students of all ages, income levels, and backgrounds.

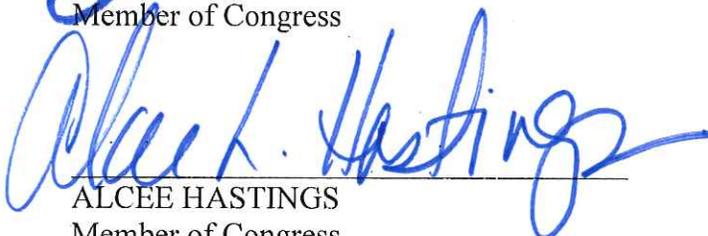
Sincerely,



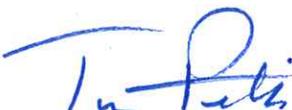
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³ "Amendment A084 to Full-Year Continuing Appropriations Act of 2011: Roll Vote No. 92." Congressional Record – House 157-27 (February 18, 2011) pp. H1234-1235.

⁴ "Supporting Academic Freedom through Regulatory Relief Act." U.S. House of Representatives Report 113-205 (September 10, 2012) pp. 5-6.

⁵ *Association of Private Sector Colleges and Universities v. Duncan*, 870 F. Supp. 2d 133 (D.D.C. 2012), and 930 F. Supp. 2d 210 (D.D.C. 2013).



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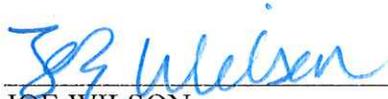
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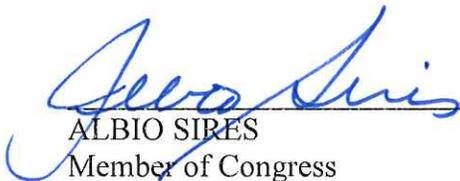
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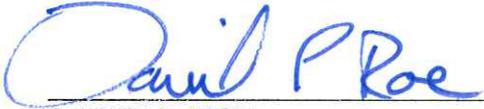
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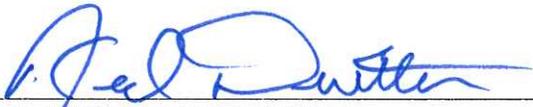
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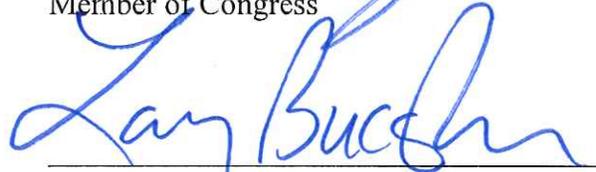
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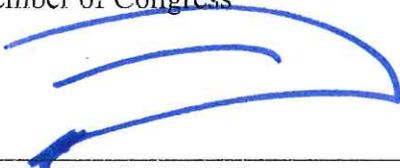
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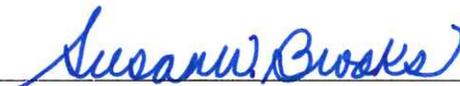
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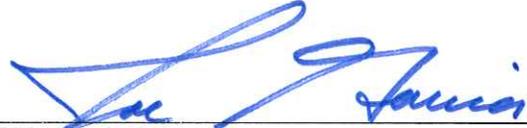
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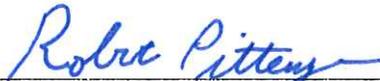
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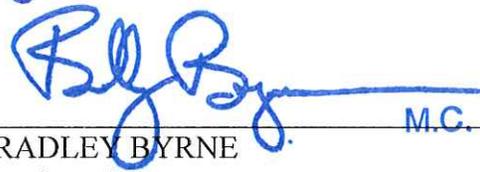
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