

**Congress of the United States**  
**Washington, DC 20515**

July 13, 2012

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

Dear Secretary Duncan,

In light of the recent ruling on measures of gainful employment issued by the US District Court for the District of Columbia, we write to extend an offer of cooperation. In our opinion, we see this judgment as an opportunity for the Department and Congress to work together on ways to best provide information to students, their families and our workforce about postsecondary education options.

In his written decision, Judge Rudolph Contreras in *The Association of Private Colleges and Universities vs. Arne Duncan and the United States Department of Education* stated, “Because one of the debt measures lacks a reasoned basis, that regulation will be vacated as arbitrary and capricious. Because the majority of the related rules cannot stand without the debt measures, they will be vacated as well<sup>1</sup>.” Considering this decision, we ask that the Department put any further implementation of the gainful employment rules on hold as well as refrain from starting a new round of negotiated rulemaking.

Congress will begin discussions on reauthorization of the Higher Education Act next year. With the implementation of gainful employment standards on hold, we believe that the soundest approach from a policy and resource perspective is for the Department to work with Congress to develop clearer and simpler policies in the reauthorization process that would apply to all Title IV funded schools. We believe that in this context we will be able to work with the Department to come up with key data points that can be universally applied and disclosed, to ensure that students and taxpayers receive a good return on their investment in postsecondary education.

Practically, an appeal to the judge’s ruling could take at minimum a year and a negotiated rulemaking process could take even longer. Putting off implementation of this rule and leaving additional deliberations to the legislative process makes sense. This will give us an opportunity to have reasoned conversations among all stakeholders about statutory and regulatory provisions, which can be applied more broadly to protect students and allow us to be better stewards of taxpayer dollars.

---

<sup>1</sup> *Assn. of Private Colleges and Universities v U.S. Dept. of Educ.*,  
<[https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2011cv1314-25](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv1314-25)> 1 (D.D.C. 2012).

It is our sincere hope that we can work together to clarify the statute, remove any ambiguity, and resolve these issues through the legislative process. We welcome your thoughtful consideration of our request and look forward to your response. If you should have any questions, please contact Adrienne Izzo of Mr. Andrews' staff at (202)225-6501 or [adrienne.izzo@mail.house.gov](mailto:adrienne.izzo@mail.house.gov)

Sincerely,



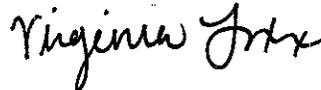
ROBERT E. ANDREWS  
Member of Congress



JOHN KLINE  
Member of Congress



CAROLYN MCCARTHY  
Member of Congress



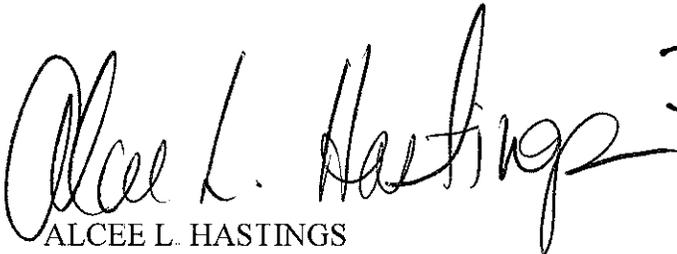
VIRGINIA FOXX  
Member of Congress



ROBERT C. "BOBBY" SCOTT  
Member of Congress



HOWARD P. "BUCK" MCKEON  
Member of Congress



ALCEE L. HASTINGS  
Member of Congress



DENNY REHBERG  
Member of Congress