

**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  
Page 2

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](mailto:amy.jones@mail.house.gov)) or Brian Melnyk ([brian.melnyk@mail.house.gov](mailto:brian.melnyk@mail.house.gov)) with the Committee on Education and the Workforce at (202) 225-6558.

Sincerely,



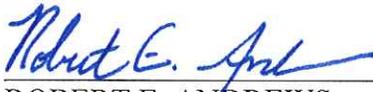
---

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