July 26, 2023

The Honorable Burgess Owens
Chairman, House Subcommittee on Higher Education and Workforce Development

The Honorable Frederica S. Wilson
Ranking Member, House Subcommittee on Higher Education and Workforce Development

Dear Chairman Owens and Ranking Member Wilson,

The 40 signatories below represent students, consumers, veterans, faculty and staff, civil rights advocates, researchers, and other groups working to advance accountability and to guard against predatory, wasteful, and abusive practices in higher education. We welcome the House Subcommittee on Higher Education and Workforce Development's upcoming hearing, "Lowering Costs and Increasing Value for Students, Institutions, and Taxpayers." This hearing should be an important opportunity to elevate measures Congress and the Administration can take and are taking to strengthen protections for students, families, and taxpayers. These protections remain especially needed from predatory practices that continue to drive up debt while leaving too many students with debt but no degree. They are also needed for program completers who take on debt but come out with little in the way of earnings gain or improved career outcomes to show for it.

The federal government plays a critical role in putting higher education within reach for millions of Americans by providing grants and loans to help finance their education. Unfortunately, some colleges engage in predatory practices that can mislead or defraud students, wasting taxpayer dollars that back financial aid programs; they consistently leave students with low-value or worthless degrees and debts borrowers cannot afford to repay. Data clearly demonstrates that a disproportionate number of these institutions are privately owned and operated on a for-profit basis.[1]

Predatory colleges disproportionately harm veterans, low-income students, and students of color.[2] Frequently, students leave these schools with high debt but with no degree or certification. Prior to the pandemic, students at for-profit colleges defaulted almost four times more often than students who attended public community colleges.[3] When predatory schools close, they often do so suddenly, leaving thousands of students locked out and with uncertain futures – even as owners extract final draws of cash. Meanwhile, predatory colleges exacerbate racial inequity by disproportionately enrolling students of color. Black and Latino students attending for-profit

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[1] U.S. Department of Education, Fact Sheet: Department of Education Announces Release of New Program-Level Gainful Employment Earnings Data, https://bit.ly/3sqwgyH.

[2] D. Halperin, Republic Report, "Law Enforcement Investigations and Actions Regarding For-Profit Colleges," January 27, 2023, https://www.republicreport.org/2014/law-enforcement-for-profit-colleges/; U.S. Senate Health, Education, Labor, Pension Committee Staff Report, "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," July 2012, https://bit.ly/3I7BlFX; U.S. Department of Veterans Affair, Press Release, VA intends to suspend enrollment of new GI Bill students at University of Phoenix, Career Education Corporation, Bellevue University and Temple University," March 9, 2020, https://bit.ly/2XCBnxI.

[3] J.S. Clayton, "The Looming Student Debt Crisis is Worse Than We Thought," The Brookings Institution, January 11, 2018, https://brook.gs/2XHRoSQ.

colleges are less likely to complete programs, and they borrow an average of $10,000 more than Black and Latino students attending public colleges.[4]

We advocate for the measures below to guard against the predatory and exploitative practices that lead to burdensome student loan debt, poor job prospects, and wasted tax dollars.

Strong Gainful Employment and Financial Value Protections. In May, the U.S. Department of Education released a proposed rule to fulfill the requirement under the Higher Education Act (HEA) to ensure all career education programs offered at public, non-profit, and for-profit colleges receiving federal student aid dollars "prepare students for gainful employment in a recognized occupation." The proposed rule would put in place a two-step test for career programs. As under a prior rule rescinded by the Education Department in 2019, the new gainful employment rule would require programs to demonstrate completers do not face burdensome loan payments as a proportion of their earnings. Rescinding the rule came at an estimated cost to taxpayers of more than $6 billion.[5]

A new second test would require programs to demonstrate most of their completers earn more than working-age adults in their state who hold a high school diploma but no postsecondary credential. Both elements of the proposed rule would provide a baseline threshold for program-level accountability that sets the bar for institutions to ensure their career offerings prepare graduates for upward economic mobility.

In addition to the gainful employment rule as an accountability measure, the Education Department has proposed to enhance transparency by establishing a financial value listing of programs. This list would span postsecondary programs and provide an accessible online site for students and families to see if a student's intended program of study at an institution is among high-debt, low-earnings programs.

The Education Department received thousands of comments providing feedback on the proposed gainful employment and financial value transparency regulations. This feedback should inform any further strengthening of the rule, the final version of which should be published before November 1, 2023, to take effect next year. We encourage Members of Congress to support the administration's effort to put this needed protection in place to protect students from high-debt, low-earnings programs, and taxpayer dollars from being funneled into these low-performing programs. A strong gainful employment requirement must become permanent and be fully implemented.

Borrower-Focused Borrower Defense to Repayment Process. The HEA includes a provision that creates a statutory requirement for "borrower defense to repayment." Like consumer protections in other areas of law, the provision allows a borrower's student loans to be discharged if the loans were taken out as a result of the school deceiving the student in the form of misrepresentation, fraud, or other illegal conduct by the institution.

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[4] The Leadership Conference Education Fund, *Gainful Employment: A Civil Rights Perspective*, October 2019, https://bit.ly/3nDAYWk.
[5] N. Schwartz. "Betsy DeVos formally revokes gainful employment rule." *Higher Ed Dive.* June 30, 2019. https://www.highereddive.com/news/betsy-devos-formally-revokes-gainful-employment-rule/557949/.

Students must have a clear and straightforward path to complete loan discharges when their school has deceived them. They must be able to automatically discharge loans when schools close suddenly, and the Department of Education must be able to recover the cost of canceled loans from colleges. The Department made important and welcome strides in 2022. Collectively, the Department's actions are now relieving hundreds of thousands of defrauded borrowers from the burdens of their student debt balances.

Following a negotiated rulemaking process and extensive public comments, the Department published a new borrower defense rule that took effect July 1, 2023.[6] We encourage Members of Congress to support full implementation of the new rule and resist any legislative efforts to undermine or block this needed protection for defrauded borrowers.

Deter Incentive-Based Compensation in Student Recruitment. The HEA's ban on incentive compensation (commissioned sales) was enacted with strong bipartisan support in 1992 to reduce high-pressure, deceptive sales tactics in college admissions. Congress intended to prevent colleges from rewarding individuals or third parties for enrolling students by paying commissions or bonuses based on the number of students enrolled – which could incentivize recruiters to deceive prospective students. Such financial arrangements, when provided by third-party servicers such as online program managers (OPMs), put the interests of contractors and their owners and investors before the interests of students.

In February of this year, the Education Department issued guidance intended to clarify the definition of regulated third-party servicer activities.[7] This effort followed a recommendation from the Government Accountability Office for the Department to strengthen its approach to monitoring colleges' arrangements with OPMs.[8] In response to concerns from some associations and third-party service providers, the Department has delayed implementation of this guidance. We encourage Members of Congress to conduct oversight of arrangements with OPMs that can put business profitability ahead of student interests.

Additional Issues. Finally, we continue to support measures ensuring:

- Institutional resources are directed toward students through instruction and support services, rather than spent on marketing, advertising, and profit.
- Higher education in prison programs (current and new) properly follow guidance for implementing Pell Grant eligibility for incarcerated students. This compliance should ensure predatory practices outlined above are not present or exacerbated in these programs, which disproportionately enroll students of color and from low-income backgrounds.

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[6] U.S. Department of Education, "Education Department Releases Final Regulations to Expand and Improve Targeted Debt Relief Programs, October 31, 2022, https://www.ed.gov/news/press-releases/educationdepartment-releases-final-regulations-expand-and-improve-targeted-debt-relief-programs.

[7] Office of Federal Student Aid. (GEN-23-03) Requirements and Responsibilities for Third-Party Servicers and Institutions (Updated May 16, 2023). U.S. Department of Education. https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-02-15/requirements-and-responsibilities-third-party-servicers-and-institutions-updated-may-16-2023.

[8] U.S. Government Accountability Office. *Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*. April 2022. https://www.gao.gov/assets/gao-22-104463.pdf.

- Colleges – particularly those converting from for-profit to non-profit or public status – have robust governance structures in place to prevent personal enrichment of institutional leaders and enable independent decision-making.

We appreciate your service in Congress and leadership on this subcommittee, as well as your support of strong higher education policies that minimize waste, fraud, and abuse. We are all available to serve as resources, and we are eager to work with you and your colleagues to make certain that commonsense laws and regulations are strengthened and enforced, and to ensure the efficient use of taxpayer dollars by colleges nationwide.

Sincerely,

AAUP
AFL-CIO
American Association of University Women
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers
Americans for Financial Reform
Carolyn Fast, Senior Fellow, The Century Foundation
Center for American Progress
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
Children's Advocacy Institute
Clearinghouse on Women's Issues
Consumer Action
David Halperin, Attorney
Economic Action Maryland
Goddard Riverside
Housing and Economic Rights Advocates
Hildreth Institute
Maine Center for Economic Policy
National Association for College Admission Counseling
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Education Association
New America Higher Education Program
New York State Association for College Admission Counseling
Partnership for College Completion
Project on Predatory Student Lending
Public Citizen
Service Employees International Union (SEIU)
Student Defense
Student Veterans of America
The Education Trust
The Institute for College Access & Success

UnidosUS
Veterans Education Success
Veterans for Common Sense
VoteVets
Western New York Law Center
Young Invincibles