



National Association for
College Admission Counseling

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September 12, 2018

The Honorable Betsy DeVos
Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED-2018-OPE-0042

Dear Secretary DeVos:

On behalf of the National Association for College Admission Counseling ([NACAC](#)), I would like to express our strong opposition to the Department of Education's ("Department") decision to rescind the Gainful Employment regulations. These regulations were developed to ensure that our nation's tax dollars are effectively used to help students obtain a quality education. This decision will hurt students and taxpayers, alike.

Founded in 1937, NACAC is an association of more than 16,000 members, including school counselors and college admission staff, who work with students making the transition from high school to postsecondary education ("college"). NACAC is committed to maintaining professional standards that foster ethical and social responsibility among those involved in the college application and enrollment process, as outlined in the NACAC's SPGP: Code of Ethics and Professional Practices, which may be accessed on our [website](#). Through our advocacy efforts, we are also dedicated to ensuring that all students have access to high quality school counseling to help them make informed decisions as they prepare for and pursue college or career.

Over the past century, there has been a regular pattern of unscrupulous, primarily proprietary, colleges seeking to exploit federal financial aid programs. Perhaps the first and most comprehensive effort to understand these deceptive practices occurred about thirty years ago, when in response to reports from the GAO and the Department of Education's Office of the Inspector General, Senator Sam Nunn (D-GA) held a series of hearings (the "Nunn Commission") to educate



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Congress and the public about persistent fraud and abuse. Throughout these hearings, it became clear that within the for-profit sector, unscrupulous schools' efforts were focused on enrolling as many students as possible to obtain their Title IV aid. At the time, there were few federal regulations that prohibited this type of behavior. The Nunn Commission provided numerous recommendations about how to thwart bad actors in Title IV programs. Subsequently, Congress enacted several pieces of legislation meant to curb this behavior to protect students and taxpayers, who footed the tuition for millions of students but saw little return on their investment.

Unfortunately, since the original reforms were implemented, there has been an equally robust effort to undermine program integrity protections. The Department's decision to rescind the gainful employment regulations is the latest example of this effort, which will result in thousands of students receiving a [subpar education](#), millions of taxpayer dollars [being wasted](#), and an increased [deficit](#).

After a significant increase in enrollment at for-profit colleges in the 2000s, and subsequent growth in the number of students defaulting on their loans, in 2009 the Department added much-needed definitions to interpret and enforce the Higher Education Act's gainful employment ("GE") statute, which states that to remain eligible for Title IV student aid program funds, vocational programs of training at non-profit and for-profit institutions are required to prepare students for gainful employment in a recognized occupation. The Department undertook this effort acknowledging it has a responsibility to both students and taxpayers. As a judge [noted](#) in his decision in response to a lawsuit filed by opponents of the gainful employment regulations "The Department [of Education] has set out to address a serious policy problem, regulating pursuant to a reasonable interpretation of its statutory authority.... Concerned about inadequate programs and unscrupulous institutions, the Department has gone looking for rats in ratholes—as the statute empowers it to do."

Clearly, there is a need to regulate unscrupulous institutions, and the gainful employment rule seemed poised to help clean up the industry. Scores of colleges were eliminating or improving the programs that were not meeting muster (including [Harvard](#) which closed a theater arts program that failed GE's metrics, undermining the Department's claim in the Federal Register Notice that GE unfairly focuses on for-profit colleges).

Unfortunately, the Department's current proposal fails to provide the oversight and enforcement needed to ensure that students and taxpayers are protected from these unscrupulous institutions. For example, the Department's new plan relies on the College Scorecard. However, the



Scorecard does not provide information on a programmatic level as the gainful employment regulation would have, providing instead, information at the institution level. Providing information on a programmatic level is a more nuanced approach that will help colleges identify problematic programs, without jeopardizing the entire institution and will help students make informed decisions about what to study.

The Federal Register Notice also states “at a time when 6 million jobs remain unfilled due to lack of qualified workers ...” This statement presents a non-sequitur. By rescinding gainful employment, the Department is allowing students to enroll in programs we know will fail to prepare them for these jobs. The 6 million jobs will continue to remain unfulfilled and the students will be buried under mountains of debt. However, if the worst performing programs (or even institutions) were shuttered due to gainful employment regulations, students would be steered to more effective programs that might result in these 6 million jobs being filled.

The Notice also erroneously states, “it is the cost of administering the program that determines the cost of tuition and fees.” However, numerous reports, including the [comprehensive report](#) issued by the Senate Health, Education, Labor and Pensions Committee in 2012, clearly show that unscrupulous colleges charge exorbitant tuition and fees, and frequently set tuition to maximize profits.

The Department also argues that it underestimated the burden the gainful employment rules would pose to schools. We remind the Department that the statutory *condition* for participation in federal Title IV student aid programs for for-profit and non-profit vocational programs is to “prepare students for gainful employment in a recognized occupation.” (20 U.S.C. Sec. 1002 (b)(1)(A)(i) and (c)(1)(A)). Institutions that are not prepared or able to meet such a condition are free to operate without taxpayer funding in the free market. For those institutions wishing to participate in Title IV programs, but need assistance with compliance, the Department is fully within its rights and capabilities to offer technical assistance. However, the role of the Department of Education is to serve as gatekeeper, protecting precious taxpayer resources from unscrupulous actors – not, as it is currently proposing, to facilitate waste, fraud, and abuse.

The Notice also stated that “there is significant variation in methodologies used by institutions to determine and report in-field job placement rates, which could mislead students ...” Rather than eliminate the reporting requirements, the Department could and should standardize them so that institutions fully understand what is required. Furthermore, there is significant documentation of unscrupulous colleges manipulating job-placement rates. By scrapping this requirement, the



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Department is opening the door to allow colleges to mislead students about their effectiveness without facing any consequences.

Lastly, the Notice claims that it is unfair to penalize one sector over another. This is factually inaccurate, deliberate misstatement of the gainful employment rule. As noted above, the gainful employment regulation applies to both for-profit and non-profit programs *in accordance with underlying statute*. The practical effect of the rule has been to identify and weed out hundreds of programs at institutions that cost students and taxpayers billions of dollars. That the large majority of these programs existed at for-profit institutions should be a signal to the Department—as gatekeeper—that there are significant problems in that sector. We remind the Department that there is ample documentation of abuses in the for-profit sector that we expect would be appropriately dealt with regardless of the characteristics of the college involved.

We reiterate that strong regulations are needed to protect students and taxpayers; the Department’s proposal fails that obligation. The Department has proposed this rescission despite clear, unequivocal evidence that unscrupulous colleges have repeatedly abused students and taxpayers since the inception of the Title IV programs. As such, the Department must abandon this course, and properly serve its role as the gatekeeper to student aid funds.

Please contact Michael Rose, Director of Government Relations, with any questions regarding NACAC’s public policy positions or advocacy.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hawkins", with a long horizontal flourish extending to the right.

David Hawkins
Executive Director for Educational Content and Policy