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Comment on NPRM

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Introduction

Thank you for the opportunity to submit comment on behalf of America Achieves and our Results for America Initiative. Results for America is committed to ensuring that taxpayer dollars are strategically invested in programs and initiatives that yield a high return on investment for the American taxpayer and achieve their intended results, which is directly the issue at hand when considering regulations on gainful employment and related rules to curb abuses by predatory for-profit colleges. We believe that the federal government should leverage data and evaluation to identify "what works," and be a catalyst for, and funder of, effective and innovative solutions that produce greater social beneft. As such, Results for America urges the Department to move swiftly to promulgate an even stronger gainful employment rule that will be more effective in weeding out predatory institutions of higher education to protect both students and taxpayers and to prevent manipulation of 90/10 calculations and cohort default rates.

The concept of gainful employment was built on protections created after pervasive abuses of for-profit institutions bilking veterns out of their Montgomery GI Bill benefits. The very existence of the legislative provision recognizes that giving for-profit entities the opportunity to benefit from student aid entails a serious risk, and that such opportunity should only be offered to those institutions that improve the financial prospects of students by leading to gainful employment. At its core, gainful employment is a basic guarantee of return on taxpayer investment, as well as a protection against business models that swindle students and taxpayers. The metrics for measuring gainful employment that have been contemplated by the the U.S. Department of Education (the Department) represent access to basic facts about the financial value provided by programs that are only allowed to benefit from federal student aid on the condition that they add such financial value. And the proposals the Department has made to use data to ensure that programs that are quite clearly not providing “gainful employment” either change their practices or lose access to financial aid are the most basic enforcement of the gainful employment provision that should be expected by the taxpayers that the Department serves. The combination of transparency of results, data-driven decisionmaking to protect taxpayers and students, and a focus on securing return on investment makes the promulgation of a stronger gainful employment rule critical.

Prior to joining America Achieves, I spent three years as Chief Education Counsel to the Chairman of the U.S. Senate HELP Committee. Disturbing data regarding trends in the flow of student aid dollars and climbing student default rates combined with terrible examples of abuses, drove the Committee to investigate the for-profit college sector. Over a period of two years, Committee staff compiled numerous data sets, conducted interviews, completed quantitative and qualitative analyses and produced hundreds of pages of findings, which, taken together, irrefutably demonstrate widespread problems within for-profit institutions that show a deliberate and pervasive pattern of bilking students and taxpayers out of student loan and grant dollars to reap enormous profit. (Documentation of this investigation can be found at harkin.senate.gov.)

Some of the findings from this two year investigation include the facts that for-profit colleges are more expensive on average, so a greater percentage of students must incur student loans; and these colleges often invest more in recruitment and marketing efforts than they do in curriculum and instruction, leading to poor employment outcomes for students which in turn cause students to default on their loans at a much higher rate. When the Committee staff looked at a sample of for-profit colleges to better understand expenditures, they found that in one fiscal year, these schools spent $4.2 billion (or 23 percent) of all revenue on marketing, advertising, recruiting, and admissions staffing, $3.6 billion (or 19 percent) on pre-tax profit, and only $3.2 billion (or 17 percent) on instruction. What is the result of a “school” that spends less on instruction than on either marketing or proft? More than half a million students who enrolled in the for-profit colleges examined by the HELP Committee in 2008-9 left without a degree or certificate by mid-2010. Further, students who attend for-profit schools are more likely to be unemployed after leaving school. According to a National Center for Education Statistics study, 23 percent of students who attended for-profit schools in 2008-9 were unemployed and seeking work. One result of this exceptionally high unemployment rate is a dispropotionately high number of instances of loan default – for-profit schools enroll a little more than 10 percent of students but account for nearly 50 percent of student loan defaults.

Perhaps more disturbing than these cold, hard facts, were the countless students, veterans, faculty and recruiters who spoke to us of the outright fraud and abuse perpetrated by predatory institutions. One particularly heart-wrenching story I heard personally was that of a young mother of twins who went back to school to become an ultrasound technician. She took on significant debt and passed all the required courses, only to find upon graduation that the school did not have “programmatic accreditation,” making it nearly impossible for her to get a license to actually work in ultrasound technology. Building upon the HELP Committee investigation, ABC news did an investigative report on the misleading practices recruiters from a multitude of for-profit institutions use to entice prospective students. ABC found that many recruiters told students they would be able to enter certain careers following graduation even though the recruiters knew the program was not certified to prepare students for those careers or knew that those students would be automatically disqualifed from entering those careers for other reasons. Better regulations and enforcement by the Department could and should address these abuses.

When the HELP Committee launched the investigation, we were told time and again by the industry that these stories were the exception - the result of only a “few bad apples” in the barrel. What became evident after tabulating milllions of numbers and sorting through millions of pages of documents (that included “recruitment” manuals exhorting employees to use the “pain points” of potential students to get them to enroll and pointing out that mothers on welfare and victims of abuse were particularly ripe targets for recruitment), was that the core of this business model is rotten.

It relies on massive numbers of vulnerable people being strong-armed through huge investments in marketing and high-pressure sales (paid for courtesy of tax dollars) to enroll in education programs that they often have no chance of completing or that may not offer any value if completed, and to wring these victims of as much Pell grant and student loan money as possible before spitting them out saddled with a mound of debt and few profitable skills, and then moving on to recruit more vulnerable students.

The financial markets love this model because the federal largesse makes the dollars bottomless and easily captured. There may be some institutions that operate differently, but by 2009, at least 76 percent of students attending for-profit colleges were enrolled in a college owned by either a company traded on a major stock exchange or a college owned by a private equity firm. So why does this matter? Because the fiduciary duty of these corporations is not to the students or to the taxpayers, but rather to their stockholders and owners. As a result there is no reason to shut down or improve a program that ruins lives with a mountain of debt, but no diploma (or no diploma of any value) so long as that program can continue to recruit new students and relieve them of their Pell Grants, student loans or GI benefits.

Unfortunately, Congress has been unable to create any counter-incentive to this drive for profit, despite the fact that taxpayers are investing billions of dollars a year ($32 billion or 25 percent of the total Department of Education student aid program funds in 2009-2010) in companies that operate for-profit colleges. Some representatives of the for-profit colleges have suggested that Congress would be better positioned to address these issues during reauthorization of the Higher Education Act in 2015. Given that reauthorizations of education bills are many years behind schedule, that is simply not going to happen. Only those entities with millions of dollars to spend on lobbying and campaign contributions are suggesting that waiting on Congress would be best. Students and taxpayers, who come armed only with the facts and their conviction that government can and should do better to protect them, are looking to the Department to step up and do so. In my years on the Hill, through many pitched legislative battles, I have never seen lobbying as intense, pervasive and manipulative as that purchased by the for-profit colleges looking to protect their profits. The idea that a fair decision is likely to be made legislatively given the incredible inequity of resources involved in influencing that decision is naive.

Prior to the gainful employment rule, which finally pushed some institutions to improve their practices or shut down some of the worst programs, there was almost no meaningful check on this business model that victimizes millions of Americans, many of them veterans. That is why you must focus on redesigning the gainful employment rule to be tighter and stronger.

The Department of Education now has the advantage of additional information unearthed by the Senate investigation, the Department of Justice, the Consumer Financial Protection Bureau, myriad State Attorneys General, and the program data yielded by the short-lived application of the gainful employment rule. There were schools miserably failing, by wide margins, two of the three tests administered by the Department under the gainful employment rule, and yet they were untouched in their operation. The Department should not continue to offer a "nine strikes before you are out"approach and should instead address extremely low-performing programs earllier, with interim steps to push program improvement. For at the end of the day, that is the point of the gainful employment rule: to apply data to weed out or force improvement for those programs that are consistently leaving almost all who enroll unable to repay the debts they incurred for a substandard education.

For those who believe in the "few bad apples" theory of this industry, a gainful employment rule should be attractive. It offers data-driven, helpful insight into the value of programs and will not hurt those programs that are able to provide real value to students. In the absense of the gainful employment rule, more taxpayer dollars will be spent without yielding any real benefit for students or contributing to the development of a skilled American workforce. And those few improvements for students that have been made in the past few years will likely slip away. That's why, on behalf of Results for America, I recommend that the following policy actions be taken to protect both taxpayers and students:

- Re-issue a stronger gainful employment rule and enhance the program evaluation metrics that the Department has developed to ensure that they even more accurately assess program effectiveness and, when applicable, program improvement.
- Allow students to seek loan relief any time a program does not meet certain requirements, is subject to false certification (such as ESL learners in English programs, disqualified students because of criminal record etc.), or if programs get cut off for not meeting gainful employment standards.
- Require audits of for-profit schools.
- Increase the required loan repayment rate from 35 percent to at least 50 percent. Consider establishing a probationary ranking for schools with repayment rates of 35 percent to 50 percent, and immediately discontinue funding to schools that have repayment rates of less than 25 percent.
- As you are making these adjustments, add regulations to prevent the manipulation of Cohort Default Rates and 90-10 calculations. The Senate investigation found that these manipulations are astoundingly common and have significant negative impacts on students.

The privilege, opportunity and responsibility to protect America's students and taxpayers from the business model of predatory institutions of higher education rest with you. Thank you for taking that so seriously, and for giving me the opportunity to speak in support of protecting students and taxpayers through regulations that must include a stronger gainful employment rule and rules to prevent manipulation of CDRs and 90/10 calculations.