May 30, 2012

BY HAND

Wendy Macias
U.S. Department of Education
1990 K Street NW
Washington, DC 20006

Re: Comments for Docket ID **ED-2012-OPE-0008**

Dear Ms. Macias,

Please find enclosed, for the Federal Student Aid Negotiated Rulemaking Committee's review and consideration an official copy of the U.S. Senate Committee on Health, Education, Labor, and Pensions staff report *For Profit Higher Education, the Failure to Safeguard the Federal Investment and Ensure Student Success* (S. Prt. 112-37). An electronic version of the report is also available at: http://www.help.senate.gov/hearings/hearing/?id=cdd6e130-5056-9502-5dd2-e4d005721cb2. The report provides a considerable amount of previously unknown information about the proprietary higher education sector, including:

1) A comprehensive analysis of student retention for a cohort of students enrolling in a proprietary institution owned by the 30 companies examined by the Committee. The cohort includes over two-thirds of the total students enrolled in a proprietary institution, and a much higher proportion of the students enrolled in a degree-granting proprietary institution.

2) Significant documentation of regulatory evasion strategies employed by companies owning and operating proprietary institutions including:

   a. Efforts to keep student borrowers out of default during the three year institutional monitoring period;

   b. Efforts to develop institutional and private lending programs at extremely high interest rates with the knowledge that the majority of participants are likely to default; and

   c. Grant and scholarship offerings funded directly or indirectly by the parent company designed to lower median debt of students completing programs.

3) An analysis of the lack of relationship between the investment in instruction and the cost of attendance at large proprietary institutions.

4) Documentation of systemic deceptive and misleading recruiting practices. While this documentation predates the Department's repeal of the safe-harbor provisions for incentive based compensation payments, it nonetheless documents sales tactics designed to pressure prospective students to enroll as well as misleading and deceptive tactics that may persist.

The Committee's report also includes, in volumes II-IV, approximately 4,000 pages of the most relevant documents produced to the Committee. I hope that the Department will take into consideration the report's information and analysis as it moves forward with developing the final list of issues to be considered in the proposed rule. In particular, I strongly urge the Department to consider two major threats to the integrity of federal financial aid programs identified in the report:

1) Evasion of the consequences and sanctions provided under the Higher Education Act for high cohort default rates through the use of default-rate manipulation tactics, including encouraging or even harassing borrowers to delay payments on their loans in order to artificially drive down default rates. Delaying payments, through deferment or forbearance, is often not in the best interests of the students and may force students to pay thousands of dollars in additional interest over the life of the loan. For example, as described in the report, by its own account, Corinthian Colleges Inc. reduced its two-year default rate from 21.5 percent in 2008 to an expected 6.7 percent for 2009 through such tactics. Additionally, the large discrepancy between the two-year and three-year cohort default rates of for-profit institutions raises serious questions about how widespread the use of such tactics may be across the sector. Specifically, while 152,862 for-profit college borrowers who began to repay their loans in 2009 had defaulted by the end of 2010, almost 229,315 had defaulted by the end of 2011, an increase of 50 percent. In addition, I am aware that the Department has heard from borrowers that they were pressured or "forced" to apply for forbearance or deferment and were not made aware of other options that would have been more beneficial to the borrowers, and one borrower was offered a gift card to complete the forbearance process. Regulations should prohibit these "default management" tactics, including efforts that are undertaken exclusively during the cohort default rate monitoring period, to ensure borrowers are not coerced into forbearance or deferment as a way to artificially reduce default rates.

2) Consolidation of Office of Postsecondary Education Identification (OPE-ID) numbers to avoid potential sanctions for high cohort default rates and the so-called "90-10" rule that restricts the share of a proprietary institution's revenues from Title IV of the Higher Education Act. While colleges are allowed to identify their campuses with one or multiple OPE-IDs, some colleges may be abusing the process to avoid sanctions. For example, the attached report noted that one executive acknowledged that their company's consolidation of 29 of its OPE-IDs into just three would change the schools' default rates and Title IV revenue calculations. Additionally, according to the *Chronicle of Higher Education*, another company sought to consolidate into a single OPE-ID number 19 numbers, four of which were

at risk of losing eligibility for federal aid. For-profit schools should not be able to use OPE-ID consolidations to circumvent regulations that protect students and taxpayers and the Department should immediately examine regulatory remedies to prevent these tactics.

In conclusion, I look forward to an expedited rulemaking process that builds upon the extensive work that has already been completed on several issues to ensure that the Department protects students and taxpayers in a meaningful and timely manner. In light of the new information that has become available in the past two years, including from numerous agencies and organizations, I hope that the ensuing regulations have a significant impact on our efforts to safeguard our nation's investment in students.

Sincerely,

Tom Harkin
Chairman

cc: Lamar Alexander, Ranking Member, Senate Committee on Health, Education, Labor, and Pensions