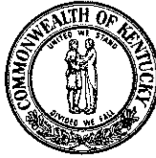

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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June 4, 2013

Ms. Wendy Macias
U.S. Department of Education
1990 K Street NW., Room 8017
Washington, DC 20006

Re: Docket ID ED-2012-OPE-0008 Negotiated Rulemaking Committee, Public Hearings

Dear Ms. Macias:

The Kentucky Office of Attorney General, Office of Consumer Protection ("OAG") provides these comments in response to the Federal Register Notice of April 16, 2013 (78 FR 22467) requesting comments on topics to be included in the upcoming U.S. Department of Education negotiated rulemaking. Since 2010, the OAG has been investigating and pursuing violations of Kentucky's Consumer Protection Act by certain for-profit colleges, and we are currently in litigation against three for-profit colleges with several other investigations pending. In addition, Attorney General Conway has testified before the Senate Judiciary Committee on issues concerning for-profit schools and the student debt crisis and leads a thirty-two (32) state working group of Attorneys General who are investigating issues involving for-profit schools. Our Office also chaired the Executive Committee of a twenty (20) state investigation of and settlement with QuinStreet, Inc., a lead generation firm that operated websites including GIBill.com which deceptively steered students seeking information about veteran education benefits exclusively to their for-profit school clients. As you are aware, our Office also participated in the most recent negotiated rulemaking on federal student financial aid. Our experience in these activities and in particular our interaction with many consumers has provided our Office and other Attorneys General with firsthand knowledge about abuses of our laws as well as federal regulations by some for-profit colleges and consumer harm resulting therefrom. We appreciate this opportunity to share some of what we have learned in hopes that it further informs the Department in this rulemaking process.

Based on the OAG's experience we recommend the following:

- Reduce the time by which an institution must deliver a student's federal student aid credit balance to the student;
- Require institutions to make specific written disclosures to students in waivers and authorizations about the student's entitlement to the financial aid exceeding tuition and fees and their ability to use the federal student aid funds;

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

- Consider whether any clarification of the term 'credit balance' would be appropriate for defining when students are entitled to the delivery of their federal student aid;
- Prevent institutions from manipulating information provided to students and from manipulating data to evade the negative consequences under other Department regulations, such as the 90/10 rule and calculation of the Cohort Default Rate;
- Adopt strengthened gainful employment regulations;
- Require institutions and accreditors to better substantiate with independent data and research the extent of the need for postsecondary education for the "recognized occupation" as a part of obtaining approval for the program;
- Develop a standardized methodology for calculating job placement rates, or at a minimum, define certain factors that must be included or that shall not be permitted to be included in the calculation of job placement rates.

Delivery of federal student aid funds to students and Title IV disbursements

The Federal Register Notice specifically seeks input on the matter of "reducing the time by which an institution must refund to a student any title IV Federal Student Aid program funds that are more than the amount the institution charges for tuition and fees and other educationally related costs, amending the regulations relating to requirements for student authorizations, specifying when and how an institution must disburse title IV Federal Student Aid program funds...." We support the Department's selection of this topic for the upcoming negotiated rulemaking as it is an area where the OAG has uncovered a great deal of abuse.

The OAG strongly favors reducing the time it takes an institution to deliver student credit balances (the funds remaining after payment of tuition and fees) to students so that students may obtain their books and educational supplies in a timely manner at lower prices. If students have their federal student aid earlier, then there will be more competition for the students' dollars because the student will have a real opportunity to use their funds to purchase books from a cheaper vendor. Institutions are permitted to disburse federal student aid to students 10 days prior to the start of classes, and the Department directs schools to deliver credit balances to students "as soon as possible." Current regulations, however, provide schools an opportunity to delay delivering credit balances even to returning students for more than 14 days after the first day of classes. See FSA 2012-2013 Handbook, Vol. 3, 20 and Vol. 4, 19 Schools holding onto the students' credit balances until after the term commences are in a position to coerce students into buying their books and supplies from the school at exorbitant prices. While it is a service to students to allow students to obtain their books at the school bookstore by charging books to their accounts, a school is free to charge any price without regard to the market because the student does not have the aid available to purchase books from another vendor. In this scenario, the school has possession of the aid and is able to apply the student's aid to the school account to the detriment of the student as well as any competitors.

This very practice led us to sue a company operating schools in four states including Kentucky. It is clear from our dealings with this school that it purposefully misread the Department's regulations in order to insure that students had no alternative but to spend their

financial aid at the school's own bookstore for books and supplies that were priced well above prices readily available from other vendors.

The school also adopted a hyper-technical and manipulative definition of "credit balance" to unfairly delay delivery of the student's financial aid to the student. The school would draw down the federal student aid and deposit the aid into the students' school accounts. However, to avoid creating a credit balance prior to the term commencing, the school purposefully did not post tuition charges to the students' accounts until sometime after the term had commenced. According to the school, a credit balance owing to the student was not created prior to the term commencing because it had not yet paid itself tuition, so there were no federal student aid dollars to deliver to the student. Consequently, students who needed their financial aid to purchase books were forced to buy their books at exorbitant prices from the school's bookstore. This obviously is harmful to consumers because they are incurring more debt than they need, but it is also a fiscal issue for taxpayers and the Department because schools are obtaining more federal student aid dollars than the market would entitle them to if students had the funds available to purchase items from other vendors.

In an era of electronic transfers, the length of time provided by regulation for delivery to students should be shortened in order to provide students their credit balance sooner. Federal student aid "funds must be provided to students in a timely manner to best assist them in paying their educational expenses" so as to best meet the students' needs. See FSA 2012-2013 Handbook, Vol. 3, 21. Directives from the Department to deliver student credit balances within a required time and "as soon as possible" are ignored when schools manipulate student accounts. The interpretation of the regulations adopted by the school we investigated was an intentional misinterpretation of the federal regulations. The OAG recommends that the Department consider whether any additional clarification or regulation is needed to proactively eliminate this potential area of abuse.

Furthermore, other investigations have found evidence that schools are engaged in manipulating student financial aid for the purpose of evading the 90/10 rule. For instance, the final report from the Senate Health, Education, Labor and Pension Committee investigation of for-profit colleges indicated that some institutions actually delay providing the students their aid so that the funds will be included in the next fiscal year, which then keeps the school below the 90 percent federal funding limit. The OAG recommends the Department consider additional measures to prevent institutions from engaging in activity that harms consumers and evades the consequences of the 90/10 rule.

We also have observed that institutions obtain waivers/authorizations from students relating to their title IV Federal Student Aid early in the enrollment process. Students may be asked to sign a waiver allowing the school to retain any credit balance so as to help the student manage his/her funds. These waivers often provide the consumer with very technical definitions and little explanation as to what it means for the student. Importantly, students are not well-informed of some essential information at this stage, including that they are entitled to have any credit balance paid directly to them which would allow them to purchase books and supplies from other vendors. The OAG recommends the Department consider requiring specific form

disclosures to students in waivers and authorizations about their entitlement to, and use of, their federal student aid.

Gainful Employment and measures of successful programs

The Notice also seeks input on the matter of "potential approaches to defining what it means for a program to prepare students for gainful employment in a recognized occupation. This includes thoughts on the best measures (such as debt-to-earnings ratios or repayment rates) and their thresholds for defining or evaluating gainful employment programs, how best to construct an accountability system that accurately distinguishes between successful and unsuccessful programs and how to address the establishment of new programs, as well as related ideas..."

We agree with the Department and consumer advocates such as The Institute for College Access & Success ("TICAS") that defining "gainful employment" is necessary to ensure that unsuccessful programs which harm both consumers and taxpayers are eliminated. Further, careful examination should be made to determine whether it is logical and prudent for a program that fails 2 out of 3 metrics to continue as approved for federal student aid.

Additionally, in our experience, a major contributor to student complaints, withdrawal rates and default rates is that students are enrolled in programs for jobs that do not require much, if any, postsecondary education. Thus, students complain the education was useless and a waste of time; students withdraw because they realize the classes are not substantive; and students default because the cost of the education for the career far exceeds the amount of money they are paid to work because it is not a job requiring postsecondary education-- high school graduates, without any postsecondary education, are hired for the same jobs. Yet these programs are accredited and substantial amounts of federal student aid are available to the schools for providing these expensive and unnecessary "career" programs. For instance, one large health care employer in our state explained that it hires persons with only a high school diploma to train them on the job of "billing and coding," and that there is no expectation of any additional certification. A billing and coding diploma from an accredited, Title IV approved for-profit college in our state costs $27,000.00 and an Associate of Applied Science degree in billing and coding costs $36,000.00. O*Net describes billing and coding jobs as only requiring a high school diploma. http://www.onetonline.org/link/summary/29-2071.00#Education

The issue raised is whether such programs truly "prepare" students for gainful employment in a recognized occupation within the meaning of the statute. The Department should consider placing a greater burden on institutions and accreditors to justify and substantiate with independent data and research the extent of the need for postsecondary education to prepare students for an identified "recognized occupation" as a part of obtaining approval for the program. Further, the Department should adopt regulations requiring that the cost of the program correlates in a reasonable fashion to the rate of pay expected from the employment, including the rate of pay needed for repayment of loans in a timely manner. Policymakers and taxpayers are rightfully concerned about the skyrocketing amount of student loan debt. Putting an end to predatory programs that charge students exorbitant tuition for meaningless, unnecessary degrees should be a high priority for the Department.

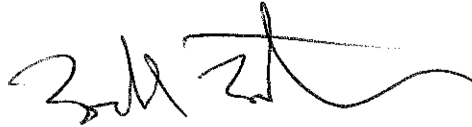
Another important tool for measuring successful programs is job placement rates, and having a standardized methodology for calculating job placement rates is necessary to make this tool useful. The OAG commends the Department for adopting regulations requiring schools to disclose their job placement rates to students, but unfortunately a standard method for calculating job placement rates has not been devised. The information being disclosed is of limited value to consumers because it is not uniform and consumers may not know the different factors used to calculate the rates. The OAG recommends considering methods for standardizing job placement rates by setting out specific factors and data to be included/excluded when calculating the rates. For example the Department could determine by regulation the date in time following graduation by which the student must have obtained employment and the length of time a graduate must remain employed to be designated as "placed." The Department could also define what constitutes "in field" placement to insure that the designation truly reflects employment related to the underlying educational program. The Department should also not allow schools to count as "placed" graduates who return to the same job they had prior to enrolling in the school.

It is also worth noting that schools may be manipulating program identifiers to avoid scrutiny and the consequences of poor performance. Our work to track the performance of a program has at times been hindered because, while the content of a program appears to have remained the same, the title/identifier for the program has changed. Therefore, it can sometimes be difficult to compare a program's job placement rates over time.

We hope these comments are useful to the Department and help guide it through the negotiated rulemaking process. Thank you for this opportunity to bring our recommendations to your attention.

Very truly yours,

JACK CONWAY
KENTUCKY ATTORNEY GENERAL



Todd E. Leatherman, Executive Director
Office of Consumer Protection
Kentucky Office of the Attorney General