



Advancing Racial and Economic Justice

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

Re: ED-2012-OPE-0008-0054

To Whom It May Concern:

Since the fall of 2011, the Consumer Protection Team of the Mississippi Center for Justice, a non-profit, civil rights law firm, has been focused on the issue of for-profit schools and student loans, especially as they affect low-wealth communities of color in Mississippi. We are pleased to have the opportunity to comment on proposed topics for the negotiated rulemaking committee.

In representing students who have been defrauded by for-profit schools, we have encountered the worst abuses of higher education. There were the nursing students who studied for two years only to find, the day after graduation, that the program they had paid \$25,000 to attend was not properly accredited by the state; the medical assisting students who paid \$36,000 for a program in which the training fell far below the standards of their own certifying agency; and the surgical techs who paid \$38,000 for a degree they were told was “national” but doesn’t qualify them to work outside the state. The stories vary in the details, but are the same in their essence. Vulnerable Mississippians – many of whom are struggling single mothers – borrow heavily to pay for a degree that they believe will be their ticket out of poverty. Instead, they are left with mounting debt and unmarketable degrees.

Last year’s report by Senator Tom Harkin’s Health, Employment, Labor and Pensions Committee affirmed that Mississippi’s experiences with the for-profit sector are not the exception, but the rule. Students at Mississippi’s degree-granting proprietary institutions are disproportionately African American, overwhelmingly female, and pay five-figures for degrees that could be obtained at a local community college for a third of the price. They use a disproportionately large percentage of the GI Bill dollars dispersed in Mississippi while educating few veterans, and skirt the limit of the 90/10 rule. Finally, for many of these schools, 3-year cohort default rates are in the double digits.

5 OLD RIVER PLACE  
SUITE 203, 39202  
P.O. BOX 1023, 39215-1023  
JACKSON, MS  
601.352.2269  
601.352.4769 FAX

963 Division Street  
Biloxi, MS 39530-2961  
228.435.7284  
228.435.7285 fax

120 Court Avenue  
Indianola, MS 38751  
662.887.6570  
662.887.6571 fax

[www.mscenterforjustice.org](http://www.mscenterforjustice.org)  
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For these reasons, and with student loan debt surpassing one trillion dollars in 2012, we believe that the negotiated rulemaking committee must address the gainful employment rule and federal relief for those who have been defrauded, ensuring strong federal oversight and protection for students and taxpayers.

### **A Strong Gainful Employment Rule**

Gainful employment, as it existed prior to the US District Court's June 2012 ruling, sought to measure the performance of proprietary schools by requiring that at least 35% of their graduates be in active repayment on their loans, that graduates' student loan debt account for less than 12% of their income and less than 30% of their discretionary income. While these standards created much-needed benchmarks for success, the requirement that institutions fail to meet all three of the targets for four years in a row led to a rule with more bark than bite.

It is essential that the Department of Education reconsider the Gainful Employment Rule in order to ensure that students, advocates, and institutions have concrete measures of institutional success. Without Gainful Employment data, those wishing to assess the value of a school are left scrutinizing loan-default rates, which are easily manipulated by placing struggling graduates in income-based repayment and loan deferral programs, and self-reported employment percentages. Loan repayment rates, depending on how they are defined, are a more reliable measure of a graduate's ability to repay because they eliminate, at the very least, the pool of graduates who avoid default through a series of deferrals and postponements.

Gainful Employment also throws into stark relief the affordability of some for-profit schools by publishing debt-to-income ratios for graduates. Even if a proprietary institution fulfills all of its promises, providing quality and marketable degrees to its students, a job that pays \$24,000 a year simply cannot support a student debt load of \$36,000.

Students who borrow money from the federal government to finance their college educations believe that their ability to borrow is a stamp of approval. At the Mississippi Center for Justice, we hear it all the time. After all, the government wouldn't pay for something that wasn't worthwhile. A strong gainful employment rule would ensure that the government – and American taxpayers – were only paying tuition at schools that make the grade.

### **Federal Relief for Students who have Been Defrauded**

Currently, students who have been defrauded by educational institutions have few options for relief. Discharge of student loans is difficult without a showing that the school has closed, that the student has become disabled, or some other narrowly proscribed circumstances. Alternatively, while there is some relief possible in bankruptcy, such drastic measures have a deleterious effect on the creditworthiness of young adults just emerging into the marketplace, making the purchase of homes and cars or obtaining a small business loan nearly impossible.

While the Mississippi Center for Justice is committed to engaging in litigation against the worst actors, the prospect of litigation to recoup money spent on a worthless degree is daunting for students, many

of whom have signed enrollment agreements that include arbitration clauses. Further, much of the gain from a lawsuit takes years to materialize, only to be given over in contingency or attorney's fees.

Graduates who feel they have been defrauded need more options. Current discharge limitations and refund policies ignore those who realized too late that their programs were inadequately accredited or certified. Worse, they allow schools to continue to graduate students with unmarketable degrees at the expense of taxpayers.

The Department of Education, through the Higher Education Act and the administration of Title IV, has the ability to provide real oversight to an industry that has become notorious for graduating thousands of students with no real job prospects; targeting minorities, women, and veterans with advertisements that make promises they can't fulfill; and using public tax dollars to fund businesses, not schools. By renegotiating gainful employment and creating a fairer, more transparent process for federal loan relief, the Department can ensure that students, not predators, are protected.

Sincerely Yours,



Whitney Barkley

Staff Attorney

Mississippi Center for Justice