Testimony of National Association for College Admission Counseling to the Negotiated Rulemaking Committee on the Gainful Employment Rules
May 30, 2013
Docket ID ED-2013-OPE-0008

About NACAC

The National Association for College Admission Counseling (NACAC) is a non-profit association of more than 13,000 high school counselors and college admission officers across the United States. The association represents more than 1,600 high schools and 1,100 not-for-profit colleges and universities. Founded in 1937, NACAC's core mission is to provide a code of ethics for the college admission counseling profession. NACAC's *Statement of Principles of Good Practice* constitutes the guiding principles for professional college admission practice in the United States.

NACAC members' primary responsibility is to help students prepare for, apply to and select a college that meets his or her academic, financial, social, and other needs. An important component of this counseling role is to ensure that students identify and enroll in a college that will successfully prepare them for life after secondary education. Postsecondary institutions that fail to provide even a minimal level of educational improvement by an intentional model that seeks only to capitalize on enrollment without the required investment in the educational process fail by any market standard for the delivery of a good or service.

Such institutions operate at present, and enjoy unprecedented levels of support from U.S. taxpayers in the form of federal student aid funds. As the Department of Education prepares for another round of negotiated rulemaking on this subject, we think it is significant to note that the problems at stake are not new or misunderstood. Congress and successive Administrations—regardless of political party—have struggled to cope with recurring patterns of waste, fraud and abuse in the federal student aid programs, particularly among for-profit institutions. At a time our nation struggles to reach agreement on the extent of taxpayer support for federal programs and services, we believe the Administration should establish even minimal accountability thresholds to ensure that institutions participating in federal Title IV programs are, in fact, delivering something of value to students and taxpayers.

Recurring Waste, Fraud and Abuse in Federal Student Aid Programs

Over the past several decades, proprietary education ("for-profit colleges") has grown into a multi-billion dollar industry. Based on a wealth of evidence[1], it is apparent that for-profit

[1] For example, Student Loans Need More Reforms, Concord Monitor, September 7, 2012; Many Calif. Vets End Up With Huge Debts From For-Profit Colleges, CBS (San Francisco), 2/16/2013; For-Profit Colleges Are A Spectacularly Bad Investment, Business Insider, 3/29/2013; A costly lesson at for-profit

colleges have reached a point in their development where capitalizing on federal sources of revenue is the primary business model. Congress has dictated that the Administration may not be blind to this point by enacting separate definitions of institution of higher education under the Higher Education Act. As such, Congress recognized that motives for for-profit institutions differed from the motives of non-profit institutions as expressed in their tax status. As evidence over the past decade has shown, priorities for many for-profit colleges are maximizing profits, shareholders' dividends and executives' bonuses. A 2012 Senate Health, Education, Labor and Pensions (HELP) Committee report[2] found that:

- In 2009, publicly traded for-profit colleges had an average profit margin of 19.7 percent and generated a total of $3.2 billion in profit.
- The CEOs of the large publicly traded for-profit education companies, took home, on average, $7.3 million each in fiscal year 2009.
- The report also stated, "… the pay of executives at for-profit schools is based primarily on enrollment and profit goals, not student success."

Throughout the process of developing program integrity regulations, NACAC's primary concerns have focused on the methods used to recruit students. As NACAC has previously testified[3], for-profit colleges aggressively go after students regardless of the suitability of the student to attend their institution. The Senate HELP Committee report confirmed what NACAC has found: for-profit colleges use aggressive and sometimes misleading and deceptive recruiting practices in order to enroll students. Specifically, the HELP Committee report found:

- That the 30 for-profit education companies examined employed 35,202 recruiters, or about one recruiter for every 53 students attending a for-profit college in 2010. However, "among colleges that offered career services, the ratio of students to career advisers ranged from 91 to 1545 students per career services advisor. The University of Phoenix, with a student population of nearly half a million, has no career placement staff at all. Bridgepoint-owned Ashford University employs one career placement official for a student population of 77,179 students (as of fall 2010)."
- Documents demonstrate that in order to achieve company enrollment goals, recruiting managers at some companies created a boiler-room atmosphere, in which hitting an enrollment quota was the recruiters' highest priority. Recruiters who failed to bring in enough students were put through disciplinary processes and sometimes terminated. Before a ban on incentive compensation was reinstituted in mid-2011, recruiters' salaries at many for-profit colleges were tightly tied to enrolling a certain number of new students.

---

training schools: As graduates leave for-profit trade schools with plenty of debt but not enough skills to get hired, attorneys general are taking a closer look, Boston Globe, 5/15/2013;

[2] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate Health, Education, Labor and Pensions Committee, July 2012

[3] Testimony of the National Association for College Admission Counseling (NACAC) Higher Education Act Statutory Ban on Incentive Compensation for Admission and Financial Aid Officers**,** June 22, 2009

- Recruiting materials indicate that at some for-profit colleges, admission representatives were trained to locate and push on the pain in students' lives. They were also trained to "overcome objections" of prospective students in order to secure enrollments. Additionally, companies trained recruiters to create a false sense of urgency to enroll and inflate the prestige of the college.

- Some for-profit colleges, including many with the highest profit margins, spend more per student on marketing, recruiting, and profit than on instruction. Publicly traded for-profit education companies spent, on average, $248 million on marketing and recruiting in 2009. Marketing and recruiting includes all spending on advertising, other marketing spending, lead generation and the recruiting sales staff. That spending equates to 23 percent of total revenue, on average. Some companies dedicate a higher percentage … Together, the 30 education companies examined by the committee spent $4.2 billion on marketing in 2009, or 22.7 percent of all revenue. This translates to approximately $2,622 per student spent on marketing.

- For-profit colleges gather contact information of prospective students, or "leads," by paying third party companies known as "lead generators" that specialize in gathering and selling the information. Among the 62 lead generators used by companies analyzed, the cost per lead ranged between $10 and $150. Lead generators advertise themselves as a free, safe, and reliable way to get information about college, but lead generator Web sites generally direct students only to schools and programs that pay them, and have a history of engaging in online marketing using aggressive and misleading methods.

In fact, in 2012, QuinStreet agreed to pay $2.5 million to resolve allegations that it had run "false, misleading, and deceptive" Web sites aimed at recruiting military veterans to enroll in mostly for-profit colleges.[4]

Other investigations have found misleading and deceptive recruiting practices at for-profit colleges:

- A Government Accountability Office report[5] found that applicants to for-profit colleges "were encouraged by college personnel to falsify their financial aid forms to qualify for federal aid…"

- Both the HELP and GAO reports, as well as other sources, have shown that "programs at the for-profit colleges GAO tested cost substantially more for associate's degrees and certificates than comparable degrees and certificates at public colleges nearby."

All of these are counter to NACAC's *Statement of Principles of Good Practice,* which states, among other things:

[4] For-Profit Colleges' Marketers Generate Leads, and Controversy, The Chronicle of Higher Education, October 22, 2012

[5] FOR-PROFIT COLLEGES: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices (GAO-10-948T), August 2010

- We believe our members have a responsibility to treat one another and students in a fundamentally fair and equitable manner.

- Members will make protecting the best interests of all students a primary concern in the admission process.

- Members will provide accurate admission and financial aid information to students, empowering all participants in the process to act responsibly.

- Members will be ethical and respectful in their counseling, recruiting and enrollment practices.

Finally, the GAO report also found that "other college representatives exaggerated undercover applicants' potential salary after graduation and failed to provide clear information about the college's program duration, costs, or graduation rate despite federal regulations requiring them to do so."

The 2012 Senate HELP Committee report found:

- 596,556 students who enrolled in for-profit colleges in 2008-9, or 54 percent, left without a degree or certificate by mid-2010.

- 298,476 students who enrolled in 2-year Associate degree programs at for-profit colleges in 2008-9, or 63 percent, departed without a degree. Nine companies had Associate degree programs with withdrawal rates over 60 percent.

- Ninety-six percent of students at for-profit colleges take out student loans, according to the most recent U.S. Department of Education data. In comparison, 13 percent of students at community colleges, 48 percent at 4-year public, and 57 percent at 4-year private non-profit colleges borrow money to pay for school.

- Students who attended a for-profit college accounted for 47 percent of all Federal student loan defaults. More than 1 in 5 students enrolling in a for-profit college—22 percent—default within 3 years of entering repayment on their student loans.

- Students who attend for-profit schools are more likely to experience unemployment 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.

Furthermore, for-profits consistently misrepresent their job placement figures, inflating them to make the institution look more credible than they really are. The Senate HELP Committee report found that:

> For-profit colleges market themselves as career focused, and entice students to enroll by offering the prospect of better jobs and better wages. Accordingly, for-profit colleges use job placement data to sell their offerings, and to satisfy national accrediting agencies and

State regulators that they are performing adequately. However, some for-profit colleges' job placement statistics have been plagued by irregularities and falsified data. A number of recent law enforcement investigations have revealed widespread falsification of placement rates at some colleges in the for-profit sector. Undercover tapes show that 5 out of 15 campuses visited by the Government Accountability Office provided misleading information about the salaries students could expect to earn from new jobs after graduation. Two schools guaranteed or virtually guaranteed jobs for the undercover GAO agents after graduation. Another told an agent, who expressed interest in a barber program, that barbers can earn $150,000 to $200,000 per year, $100,000 more than the Bureau of Labor Statistics reports that nearly all barbers earn.

The federal government has a vested interest in ensuring that for-profit colleges, and all colleges for that matter, are performing at the highest level possible because of the significant amount of federal financial aid students use in order to attend college. The federal government should only provide financial aid to schools that are performing well, especially at a time when federal dollars are already stretched thin. Given the current manifestation of the recurring pattern of fraud and abuse in the area of vocational training, particularly among for-profit colleges, we encourage the Administration to act in this area as a form of triage.

<u>Gainful Employment</u>

gain•ful : *serving to increase wealth or resources*
Oxford American College Dictionary

Departmental consideration of a gainful employment rule evokes the federal government's fundamental ability to pursue the statutory intent of its programs and protect the integrity of taxpayer funds from waste, fraud and abuse. Where such waste and/or abuse occurs, the administration has every right to exercise its authority under the law to restrict access to funds to only those entities acting in accordance with basic standards for quality and with the original intent of the programs it purports to implement.

In 1972, Congress recognized that postsecondary education programs (a) included educational programs designed to provide skills in specific industries or professions to fill demand in the labor market, and (b) that for-profit institutions offered such training and could be eligible to enroll students assisted by Title IV funds. The definition of gainful, as excerpted above, is instructive in our view. Specifically, Congress could have worded statute to read:

20 USC §1002(b)

(1) Principal criteria
For the purpose of this section, the term "proprietary institution of higher education" means a school that—

(A) (i) provides an eligible program of training to prepare students for ~~gainful~~ employment in a recognized occupation

Instead, Congress used the word "gainful" to specify explicitly that a non-trivial return on the student's and taxpayers' investment was a *condition* for Title IV eligibility.

Recommendations from NACAC on a gainful employment rule are grounded in the association's self-regulatory work in maintaining the *Statement of Principles of Good Practice* (SPGP). The SPGP, which NACAC both enforces (in the case of mandatory practices) and promotes (in the case of best practices) among its members, is constructed on decades of observing the tendencies of actors, both secondary and postsecondary, in the college admission environment. To the degree that there are persistent problems in college admission, the association makes an effort to address challenges that are within its ability to affect. When amending the SPGP, the association has found that solutions to professional challenges lie in the ample body of experience and thought that has preceded our consideration of the issue.

The persistence of problems within the Title IV programs over the past 40 years is indicative of the need for further regulatory scrutiny. In our comments, we attempt to single out proposals by federal oversight bodies that have sought to address the challenges that the Department has identified in its call for comments. We find that the solutions and justifications for administrative action are most likely available through the ample record of federal oversight of for-profit college participation in the Title IV financial aid programs.

Concepts for Departmental Consideration

Previous federal inquiries indicate recurring challenges associated with the involvement of for-profit institutions in the federal financial aid programs. Such inquiries date back to the late 1960s, and continue through to the present day. All point to recurring themes of overly-aggressive recruitment, misrepresentation of program quality and employment prospects, and significant loan debt/default on the part of students. Without compromising Congress' intent to include for-profit institutions' participation in the federal financial aid programs, and without compromising the Department's explicit mandate to protect the integrity of taxpayer-supported programs, the Department can and should craft common-sense regulations to ensure that taxpayers and students receive the intended benefit of the federal student aid programs.

Recommendations from the Report of the Permanent Subcommittee on Investigations, 1991

The 1991 report of the Senate Permanent Subcommittee on Investigations, also known as the Nunn Commission stated:

> *[M]any of the [federal financial aid] program's intended beneficiaries—hundreds of thousands of young people, many of whom come from backgrounds with already limited resources—have suffered further because of their involvement with GSLP [the federal loan program]. Victimized by unscrupulous profiteers and their fraudulent schools, students have received neither the training not the skills they hoped to acquire and, instead, have been left burdened with debts they cannot repay.*
>
> *Likewise, the American taxpayer has suffered, both in terms of footing the bill for billions of dollars in losses in defaulted loans and the ultimate cost of the program's failure to*

provide the skilled labor force our Nation needs in the increasingly competitive global marketplace.

Recommendations made by the Nunn Commission provide important context for the Department's consideration of additional regulations to prevent against waste, fraud and abuse. Since these recommendations were directed to the Department by the Commission, the legal authority of the Department to implement regulations seems clear. The Commission's recommendations included:

- Prior to committing federal funds for student aid, the Department of Education "must require strict and credible assurance that recipient institutions provide the students with a quality education." (emphasis added)

  Related measure: "Strict and credible assurance" suggests the need for (a) bright line indicators, and (b) indicators that are reliable and clearly understood. As referenced above, the inclusion of the term "gainful" in HEA (20 USC §1002(b)(1)) provides more than sufficient justification for the Department to develop a reasonable, credible and strict standard for assessing whether a student has improved his or her prospects for employment as a result of participating in a program under this section. Given the definition of the term "gainful," such an assessment necessarily includes a measure of the improvement of wealth.

- The Department of Education "should be required" (or, as we would interpret, would be encouraged) to "develop minimum uniform quality assurance standards, with which all recognized accrediting bodies that accredit proprietary schools must comply." (emphasis added)

  Related measure: The Department may reasonably consider, based on this recommendation, requiring accrediting agencies to be held to standard of quality assurance when approving programs that lead to gainful employment in a recognized occupation as a condition of recognition by the Department.

- Congress should "consider the feasibility of setting reasonable limits on the type of proprietary school education that federal dollars should subsidize, emphasizing education and training from which students, and ultimately, society as a whole, will realistically benefit. In the past federal financing for relatively worthless training in 'glutted' career fields has created unnecessary financial costs to the taxpayer and very real costs to the students in terms of lost opportunities in marketable skills." The Department of Education, in conjunction with the Department of Labor, "should develop and make widely available accurate information on current and future labor market needs for those trades and skills that are subsidized through federal student aid programs." (emphasis added)

  Related measure: As either a regulatory structure or simply an administrative initiative, the Department could publish, and/or require institutions to publish, the demand for specific programs as reflected in labor market needs and how well programs authorized to participate in Title IV programs based on the gainful employment rule are serving to fill these labor market needs. Annual reporting to Congress may also better inform legislators as to the scope of problems in gainful employment programs.

- The Department of Education should "revise limits on the amount of federal student financial aid for proprietary schools, to better reflect the cost of equivalent training available through other legitimate sources of postsecondary education."

  Related measure: While the Department may not be able to limit the amount of aid available to students, it has already laid the groundwork for ensuring that taxpayer funding for financial aid is not used to support programs that are exorbitantly priced in its proposed gainful employment regulation. The relationship of the amount of debt to earnings is a strict and credible measure—and the measure most closely tied to the sensitivity of the market to the demand for certain jobs and associated training—for assessing the government's purpose in supporting employment training through Title IV student aid funding.

- The Department of Education "must develop ways to assist those students who continue to be victimized by fraud and abuse" in federal aid programs. "Because the Department's oversight systems have failed, students who have not received the education promised have been left responsible for loans that they cannot repay and, therefore, on which they all too often default."

  Related measure: Both Congress and the Department have a well-established reliance on student loan default rates as *de facto* measures of institutional quality. In establishing the cohort default rate (CDR) as a statutory criteria for evaluating educational quality and, by extension, value to both students and taxpayers, the government adopted a percentage and a time frame for the cohort default rate that are accepted as meaningful. As such, the CDR, in our view, sets ample precedent for establishing similar measures related to the ability of students to repay their loans, such as those established by the Department under the original gainful employment rule. NACAC has advocated that the CDR measure sets too low of a bar, and should be strengthened. We supported extending the CDR window from two to three years out of concern that institutions were manipulating their CDR numbers to push potential defaults out of the federal two year window. In our view, the Department is well within its authority to establish strict and credible measures—however minimal—to ensure that institutions surpass a basic level of quality control, akin to quality control in manufacturing that rejects faulty or incorrectly assembled products. Like the Congressional establishment of the CDR requirement, or the 85/15 (now 90/10) requirement, numbers were developed based not on pure statistical or mathematical formulas, but on common sense approaches to minimal thresholds for legitimate institutions.

Recommendations from the Senate Health, Education, Labor and Pensions Committee, 2012

The Senate Health, Education, Labor and Pensions Committee released a comprehensive report in 2012 documenting another in the recurring round of waste, fraud and abuse in the Federal financial aid programs. In addition to documenting repeat abuses, such as overly-aggressive recruiting and misrepresentation, the Committee also documented manipulation of job placement and student loan default rates. The Committee's report underscores the importance of developing and enforcing accountability measures that can be verified by the Department independently of an institution's involvement in generating the data. Recommendations included in the Committee's report included:

- Establish a uniform methodology for calculating job placement rates to better understand if students are working in their chosen field and set standards to ensure the accuracy of reported job placement rates.

- Examine incentivizing higher standards of student success and tying access to Federal financial student assistance to institutions of higher education meeting minimum student outcome thresholds.

- While accreditation should remain a required component of access to title IV Federal financial aid, the Department of Education should assume greater responsibility for determining access to title IV based not solely on accreditation but also on additional and expanded criteria. Utilize criteria beyond accreditation and State authorization for determining access to Federal financial aid.

- Extend the incentive compensation ban to all employees of institutions of higher education and clarify that numeric threshold or quota-based termination policies are not permissible.

In our view, a student's ability to understand the financial obligation they are to assume, as well as its relationship to their future earnings potential, is an essential step in making an informed enrollment decision. In an environment where Title-IV eligible institutions have actively misled students as to those prospects, despite clear regulatory prohibitions on misrepresentation, we are convinced that additional measures are necessary.

Conclusion

In our view, the Department's gainful employment regulation, promulgated in 2011, constitutes a credible and strict standard for regulating access to federal Title IV programs. Proceeding with regulation should not be a question of "whether," but "how." Our recommendations represent our viewpoint as an association that is perhaps not best situated to offer specific metrics for assessment, but as one that understands when students are being misled into circumstances that threaten their financial well-being, the further eligibility for student assistance, and the fiscal health of our government.

For additional information on NACAC or if you have any questions about this testimony, please contact David Hawkins, Director of Public Policy and Research at (703) 299-6809 or dhawkins@nacacnet.org.