

Testimony of Rigel Massaro, Public Advocates Inc., San Francisco, CA  
Office of Postsecondary Education, U.S. Department of Education  
May 30, 2013

**Public Hearing Docket ID ED-2012-OPE-0008**

Good morning and thank you for the opportunity to testify. My name is Rigel Massaro and I am a Policy and Legal Advocate with Public Advocates. Public Advocates is a nonprofit law firm and advocacy organization that has challenged the systemic causes of poverty and racial discrimination for over 40 years so that all Californians have the building blocks to thrive.

We are here to reinforce the message that taxpayer-funded federal financial aid should not flow to wasteful career education programs that leave students buried in debt they cannot repay. We support a strong gainful employment rule, rules to prevent schools from evading current laws designed to protect students and taxpayers, and meaningful state authorization requirements.

**A. Assuring Access to High Quality Postsecondary Education**

Public Advocates' motto is "making rights real." We work to turn constitutional rights and legal promises into opportunities for those most often closed out, shortchanged or forgotten. On Valentine's Day 2012, our President, Jamiene Studley, testified in Sacramento on California's oversight of private postsecondary education, saying: "In elementary and secondary education we insist that the right to a public education means not just a school door each child can walk through but a genuine and comparable opportunity for every child to learn. If our goal were to provide low-income neighborhoods and individuals with access to good banking services, we would not count opening more payday lenders as success. The chance to go to institutions that graduate less than a quarter of their students, or that place only a small number of students in secure jobs, does not count as success. The goal of our higher education system is often described as providing access to college and career opportunities, but access alone is not enough. We have to ask 'access to what?'"

At Public Advocates we are particularly committed to increasing access and successful completion for low-income students through quality programs. The most vulnerable students—first generation college goers, students of color, retooling workers, and returning veterans—disproportionately and in growing numbers attend career programs, and do so disproportionately in programs run by for-profit businesses. To assure that career programs achieve sound outcomes and prepare these students for stable, family-supporting jobs, we need a robust federal regulatory framework, including a renewed gainful employment rule, reinforced by effective state oversight and complaint systems.

**B. The Need for a Strong Gainful Employment Rule**

Last year's federal district court decision upheld the Department of Education's clear authority to enforce the statutory gainful employment requirement. It recognized that the Department was attempting to address a "serious policy problem." The court described the government's fully justified challenge in this vivid language: "[c]oncerned about inadequate programs and

unscrupulous institutions, the Department has gone looking for rats in ratholes—as the statute empowers it to do.” We need you to redouble your regulatory commitment to this search.

Even the initial, modest gainful employment rule drove important changes to the benefit of students. Colleges shut down some of their weakest programs, reduced tuition to ensure students did not incur unmanageable debt, made efforts to ensure entering students were adequately prepared, and offered students trial periods before laying claim to their federal aid. But after last year’s court ruling, industry analysts made clear that if the Department doesn’t promptly follow up with rigorous rulemaking, there is a real risk that companies will reverse these reforms.

In addition to supporting strong gainful employment requirements for all career training programs, we recommend stricter provisions for reporting cohort default rates and revisions to 90-10 calculations to change the handling of federal funds other than Title IV. The Senate Health, Education, Labor and Pensions (HELP) Committee’s two-year investigation revealed that career programs, disproportionately for-profits, are postponing payments to students and placing them in forbearance or deferment in order to manipulate their CDR’s and the 90-10 calculations. These practices are unconscionable and must be addressed.

### **C. States’ Role in Student and Consumer Protection**

Finally, the Department should insist that states shoulder their responsibility within the triad for clear, effective consumer complaint processes that cover all programs. As the National Advisory Committee on Institutional Quality and Integrity’s report reminded us, states have an important consumer protection and investigatory role to play to ensure quality within their borders and nationwide. Here in California we are collaborating with the State and school communities to ensure that all private postsecondary schools are state-authorized for the information and protection of students and taxpayers.

Public Advocates is also promoting effective regulation of postsecondary institutions operating in California. Last year, we helped shape and secure support for Assembly Member (now Senator) Marty Block’s student disclosure bill, AB 2296, which Governor Brown signed in law last September.<sup>1</sup> This bill strengthens school performance disclosure requirements to provide a fact-based counterweight to aggressive and all-too-often misleading recruitment practices employed by schools with lavish marketing budgets.<sup>2</sup> It requires institutions regulated by California’s Bureau for Private Postsecondary Education to report accurate information about their performance, including the salaries of a school’s graduates and the share of a school’s borrowers who defaulted on their student loans. The rigorous measures in this statute could be a model for the Department and other states to use in the quest for data clarity and comparability to increase wise choices.

---

<sup>1</sup> See Cal. Educ. Code § 94929.5.

<sup>2</sup> For instance, according to the Senate HELP Committee report, “In 2010, the for-profit colleges examined employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff, more than two and a half recruiters for each support services employee.” *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, 1 (2012).

#### **D. Appropriate Regulatory Standards**

My comments today are situated in the unusual higher education marketplace we've described before as "characterized by information that is hard to verify and compare, severely limited state resources for public institutions, private companies' profit imperatives, an open spigot of public funding, and disproportional enrollment by low-income and minority students in for-profit schools. Even without red flags, a market of this type deserves careful monitoring by policymakers and advocates." As you know, however, the red flags are flying.

Many types of postsecondary institutions can help meet the nation's need for college and career training, as long as they operate with integrity and transparency and provide students with quality programs. As we look ahead to regulatory and eventually statutory changes to better protect students and taxpayers, we encourage the Department to grapple with whether there are appropriate distinctions between nonprofit charitable schools and businesses that provide training and education that warrant tailored treatment. While gainful employment is based on programs and not ownership, as Bethany Little of America Achieves suggested in the Washington hearing, it's time to recognize the difference between nonprofit career and education programs, with responsibility the public, and for-profit colleges owned by a company traded on a major stock exchange or by a private equity firm, with obligations to make a profit for owners and shareholders. For too long this issue has been obscured, as owners of for-profit colleges have asked policy makers, "Shouldn't the Department treat for-profits and nonprofits the same?" But this is a trick question. By choosing to *be* for-profit, they are *less regulated already*. They have rejected the obligations of charitable organizations and significant regulation specifically aimed at preventing abuse of vulnerable populations. This difference brings us back to my opening point: as civil rights advocates we insist that access must be to the quality that regulations are designed to ensure. Access without quality is no access at all.

#### **E. Conclusion**

We care, and we know you do, because so much is at stake — for disadvantaged students, for the nation's economy, for the effective use of state and national education funds, and for responsible oversight of this burgeoning sector. Together we can assure that postsecondary access and quality are inextricably linked. The good news is that you have not only a big challenge and a serious responsibility, but also the tools, the recommendations and the chance now to make an important difference for many students. Thank you.