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A Mississippi Nonprofit Corporation

May 27, 2014

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
c/o Ashley Higgins
1990 K Street, NW, Room 8037
Washington, DC 20006-8502

Re: Docket ID ED-2014-OPE-0039

Dear Secretary Duncan:

Thank you for the opportunity to comment on the proposed Gainful Employment Regulation. Founded eleven years ago, The Mississippi Center for Justice is a non-profit, public interest law firm dedicated to making Mississippi the social justice state. Gainful Employment touches on two of the projects that have been a cornerstone of our mission since our founding – Education and Consumer Protection.

We see the problem of for-profit schools as a civil rights issue. Early on in our campaign work, it occurred to us that the clients who were walking through our doors to talk to us about lack of certification, fraudulent degrees, and exorbitant student loan debt at for-profit colleges were the same ones who, just a few years earlier, were struggling in failing public schools and underfunded districts.

Here in Jackson MS, the public school system –currently on academic watch¹ - is nearly 98% African American².

¹ <http://www.msreportcard.com/rc2012/?dist=2520>

² <http://reports.mde.k12.ms.us/data/>



When these students graduate from these underperforming schools, where most students fail to show proficiency in high school level Biology, English, or History,³ they are often vulnerable to the promises of for-profit colleges. After all, the average ACT score for Jackson Public schools is 16.9⁴, but the local community college's admissions requirements for popular allied health programs like nursing, dental assisting, and medical assisting is an ACT score of 18. Otherwise, applicants are required to take remedial courses.

Students who have spent their entire academic lives in segregated, troubled public schools are graduated into failing post-secondary for-profit colleges, where the demographics mirror those of the districts of their elementary and secondary educations. For example, Virginia College, also located in Jackson, is 89% African American⁵.

The clients that we have served in the last two years are overwhelmingly African American, female, and low income. They are also single mothers. Many have GEDs, not high school diplomas, and are attracted to the for-profit because they offer a clear, fast way out of poverty. And free bus passes. For those without access to a regular, reliable car, having a free bus pass was like a literal ticket out.

The clients we have served made another observation that gets to the heart of what the Gainful Employment Rule seeks to address. They believed that because the US Department of Education was lending them money, the degrees that they were earning were worthwhile. Offering federal student loans for a course of study is like a Good Housekeeping Seal of Approval. But unlike Good House Keeping Magazine, the United States Department of Education isn't actually warranting its products⁶.

The Notice of Proposed Rulemaking for Gainful Employment published by the Department in March is a step in the right direction, but it doesn't go far enough to actually fulfill the promise implied by lending students tens of thousands of dollars to attend for-profit institutions. Below, we discuss three ways that the current rule can be improved to better protect students and taxpayers.

³ [file:///C:/Users/wbarkley.MCJ/Downloads/2520%20\(1\).pdf](file:///C:/Users/wbarkley.MCJ/Downloads/2520%20(1).pdf)

⁴ http://www.jackson.k12.ms.us/about/2012_testscores/2012_children_first_report.pdf

⁵ <http://nces.ed.gov/collegenavigator/?q=virginia+college+jackson&s=all&id=441919#enrolmt>

⁶ <http://www.goodhousekeeping.com/product-reviews/history/about-good-housekeeping-seal>

Reintroduce Student Relief Provisions

At the second round of Negotiated Rulemaking in November 2013, the proposed rule incorporated the suggestion of Legal Aid Negotiator Eileen Connor, that borrowers who attend failing programs should be entitled to some debt relief. Even then, the Department's draft included only partial relief for students. Unfortunately, even this half measure was removed in the current NPRM. This unfairly shifts the cost of failed programs to students and taxpayers, and we respectfully request that a strong relief provision for student relief be included in the final rule.

As was made clear at each rule making session, the final rule should allow for the full discharge of a student borrower's debt and restoration of their Pell eligibility. The Department could then pursue the institution to collect as much of the loss as possible. We believe that this is the fairest option, because it would allow students to continue their education at another institution of higher learning without facing the burden of accumulating student debt from a degree that, through no fault of their own, cannot be used. Many of our clients are unable to go back to school, despite a desire to do so, because they have exhausted their Pell Grant eligibility and the debt from the for-profit college they attended has gone into default.

If the Department is still resistant to cancelling the debt of students who have attended failing programs in its entirety, then we would suggest returning to the "letter of credit" scheme first introduced in the earlier proposed rule. In that draft, the Department suggested that borrower relief would be sufficient if it reduced student debt burdens to the point that they would pass the debt-to-earnings ratio test for the final award year before the school lost eligibility. However, this does too little to relieve the often large debt burdens incurred by borrowers who attend these very expensive programs. Instead of putting those borrowers in the position to reestablish themselves in programs that will lead to "gainful employment in a

recognized occupation,” it merely leaves them trapped in a cycle of debt and low wage employment.

Table One – Gainful Employment Programs in Jackson, Mississippi

CIP Name	Credential Level	Debt to Earnings Annual Rate	Debt to Earnings Discretionary Rate	Median Title IV Loans
Computer Systems Networking and Telecommunications.	01 Undergraduate Certificate	7.71	124.03	13,000
Computer Systems Networking and Telecommunications.	02 Associate's Degree	8.96	20.94	24,667
Cosmetology/Cosmetologist, General.	01 Undergraduate Certificate	12.62	100	12,381
Medical Office Assistant/Specialist.	02 Associate's Degree	20.05	100	22,211
Medical Insurance Coding Specialist/Coder.	01 Undergraduate Certificate	8.83	204.9	14,366
Medical Insurance Coding Specialist/Coder.	02 Associate's Degree	12.69	274.29	23,240
Medical/Clinical Assistant.	01 Undergraduate Certificate	9.23	195.19	15,186
Pharmacy Technician/Assistant.	01 Undergraduate Certificate	11.28	100	15,307
Surgical Technology/Technologist.	02 Associate's Degree	8.72	26.06	23,000
Massage Therapy/Therapeutic Massage.	02 Associate's Degree	15.86	100	20,932
Business Administration and Management, General.	02 Associate's Degree	3.13	20.29	12,000
Computer Systems Networking and Telecommunications.	02 Associate's Degree	13.55	104.02	23,500
Commercial Photography.	02 Associate's Degree	13.95	100	N/A
Interior Design.	02 Associate's Degree	13.94	121.15	25,126
Medical Insurance Coding Specialist/Coder.	02 Associate's Degree	14.74	230.16	23,833
Medical/Clinical Assistant.	02 Associate's Degree	19.33	100	24,166
Massage Therapy/Therapeutic Massage.	02 Associate's Degree	15.28	100	23,917

For a point of reference, we researched the annualized and discretionary debt to income levels of seventeen gainful employment programs in Jackson, Mississippi who submitted figures for the 2012 Informational Rates. None were passing outright under the proposed annualized and discretionary debt to earning rates. Fourteen were failing outright. On average, borrowers in these programs have \$19,802 worth of debt.

Students and taxpayers shouldn't be left holding a \$19,802 bill for an institution that, for years, made millions by failing in their basic mission. Therefore, we would suggest that the final rule require a set aside or a letter of credit when the institution first enters the zone or failing period. That set aside or letter of credit should be enough to cover the debt of each student borrower for the subsequent award year, and should be renewed until the school passes both the annualized debt to earnings ratio, the discretionary debt to earnings ratio, and the programmatic co-hort default rate and is no longer in danger of losing Title IV eligibility.

Further, regardless of what resolution is reached concerning the responsibility of a failing program towards the financial health of their former students, we would urge that the Department provide for the full restoration of Pell eligibility to those students affected by program closure.

Require the Licensing and Accreditation Necessary to Obtain Employment

The Mississippi Center for Justice first became familiar with the issues surrounding for-profit colleges when we were approached by a cohort of would-be nurses who, a day before graduation, had been asked to sign a disclosure and waiver acknowledging that they were graduating from an unaccredited program and, therefore, would be unable to sit for the state licensing exam. The state licensing exam is required to practice as a nurse in the state of Mississippi.

This complaint launched the Center into two years of researching and educating ourselves on licensing and accreditation procedures. As reflected by the discussion at the rulemaking sessions, these are often layered and complicated processes, with requirements varying from state to state. Further, there often exist extralegal community expectations that, while not codified by law, are necessary for employment.

While the preamble to the NPRM reiterates the Department's commitment to ensuring that institutions have the required institutional and programmatic certification, the NPRM itself misplaces the proper focus of accreditation. Instead of examining the location of the institution to determine proper accreditation and certification, the Department should examine the location of the population of the students it serves. If an institution is going to charge a student for its product, it should be required to ensure that the product will be beneficial to that student.

Exempt Low Cost Programs from Gainful Employment Requirements

For many low income students, community colleges provide a low cost, accredited, and well respected alternative to for-profit colleges. The Department of Education recognized this fact in its 2011 Rule, exempting programs with a median loan debt of zero:

... we are revising the regulations to provide that programs with a median loan debt of zero are meeting the measures. This clarification is a logical extension of the debt measures since programs with a median loan debt of zero are not placing any debt burden on the majority of their students. Program Integrity: Gainful Employment Debt-Measure Rules, 76 Fed. Reg. at 3440176.

Low cost programs provide an inexpensive and valuable service to communities. Complying with the Gainful regulations, while justifiable for an institution that is charging \$30,000 for a degree and spending the vast majority of that revenue on advertising and profit, is much more difficult for a state sponsored school already struggling to provide essential services. Instead requiring low cost institutions to comply with the Gainful regulations then passing them through the process, it makes far more sense to merely exempt these programs on the front end.

However, we would also urge the Department to give special dispensation to schools like Hinds Community College. Hinds Community College primarily serves low- income students from Jackson, which, as previously discussed, has a struggling public school district. While too many Hinds students borrow for the school to be eligible for a borrowing based appeal, the amounts that students borrow are low – around \$3,000 on average. A separate appeals process should be created for schools with a median debt burden over \$0 but under another de minimis amount.

We appreciate the Department's obvious dedication to the academic achievement and financial health of our clients, and of students across the country. Thank you for the opportunity to serve on the Negotiated Rulemaking Committee and to participate in this process.

Sincerely Yours,

Whitney A. Barkley
Mississippi Center for Justice