July 6, 2017

Wendy Macias
U.S. Department of Education
400 Maryland Ave. SW
Room 6C111
Washington, DC 20202

Dear Ms. Macias:

On behalf of the institutions listed on this letterhead that are members of the Consortium of Universities of the Washington Metropolitan Area, I write to offer comments on the U.S. Department of Education’s (DOE) Intent to Establish Negotiated Rulemaking Committees (Docket ID ED-2017-OPE-0076) published on June 16, 2017 to develop proposed regulations to revise the regulations on gainful employment regulations published October 31, 2014 (79FR 64889). This comment letter addresses certain areas of concern we have related to the current regulations on gainful employment we wish to see specifically addressed in the proposed rulemaking process.

Overview

As previously implemented, the gainful employment regulations require institutions to make disclosures about their students’ debt and employment prospects, and lose the ability for federal financial aid if their students have a debt load deemed disproportionate to their ability to find employment in their chosen field at a salary that would enable repayment of that educational debt. The primary intent of the regulations was to penalize institutions that take advantage of students (who are often poor, minorities, first generation students, members of the military). The targets were mainly for-profit institutions that engage in questionable practices. Non-profit institutions that offered programs preparing students for specific jobs that had certain characteristics described in the regulations were also subject to them.

As is well known, much litigation ensued regarding the regulations. While the intent (i.e., to protect students from questionable job training programs) remains valid, how to accomplish this in a fair and reasonable manner remains challenging. As noted in much of the litigation and related commentary, the lack of clarity and specificity in the nature and scope of the concepts included in the regulations were extremely problematic. The remainder of our submission focuses on several key areas of concern we strongly urge the rulemaking committee to consider carefully.
Key Issues for Revised Regulations

As noted, we raise several issues of concern for the coming regulatory discussion. For ease of presentation, we list them as sets of questions for consideration and clarification in any forthcoming regulations.

1. What, precisely, is the goal of regulations regarding gainful employment subsequent to completing a course of study? In other words, what is the problem any proposed regulation is supposed to solve? Is it the desire for absolute employment guarantee? What does “gainful” employment mean? Is the criterion merely economic, or is it also worker satisfaction? Clearly, no program can provide absolute certainty regarding employment to all students in all economic environments in all locations. Salaries cannot be guaranteed. Job satisfaction cannot be guaranteed. Given that, then any “acceptable” level of outcome is arbitrarily chosen. Is it the desire to balance educationally-related debt to earnings? If so, then it is unreasonable to hold academic institutions accountable for market driven compensation scales provided by organizations not under the control of said institutions. **Absolute clarity in defining the nature of the problem to be solved is critical.**

2. What is the scope of programs targeted by the regulations? Are they for non-degree programs? Degree programs? Graduate and/or first professional degree programs? **Absolute clarity in defining the types and scope of programs to which any new regulations apply is essential.**

3. Why are federal regulations needed as an additional level of oversight? Could not the existing accreditation processes serve this same oversight function? It is already the case that access to Title IV federal financial aid is contingent on obtaining and maintaining accreditation without additional federal oversight. **We fail to see the need for additional regulation relating to access to and oversight of federal financial aid.**

4. Some students choose not to seek employment immediately after completing a program of study. For example, some individuals who successfully complete a program may choose to delay employment to attend to personal or family needs, to be complete religious life obligations, or to seek additional advanced training. **Any regulation must account for individual decisions to opt out of immediate employment.**

5. We understand the concerns regarding students who assume high levels of educationally related debt in relation to ability to pay. However, we also recognize the existence of several options for repayment; for example, certain situations may permit and provide for income-based repayment or loan forgiveness. However, it is also the case that focusing exclusively on loan indebtedness may create discrimination toward those institutions that legitimately serve high numbers of students from financially challenged backgrounds. **We argue that any forthcoming regulation take existing loan repayment options into account, and not create disincentives for institutions to serve financially challenged students.**

6. The existing regulations fail to provide adequate protection for institutions with respect to fraudulent claims of harm. Likewise, as noted earlier, it is totally unreasonable to expect that all program completers under any circumstances to obtain full employment. **We argue that any forthcoming regulations provide adequate protections and due process for institutions from claims by program completers whose reasons for non-**
employment or underemployment are due to factors within their control. Additionally, we argue that institutions must not be held accountable for lack of employment due to economic conditions (e.g., recession).

Structural Labor Market Inequities and (Gainful) Employment

We have several concerns regarding the ability and appropriateness of holding institutions accountable for employment and for earnings in a marketplace that still suffers from structural inequities that discriminate against certain sectors of the labor force. Much evidence of basic employment and pay inequities targeting women and minorities exists in both scholarly and popular outlets. Thus, we will not reiterate those here, but simply state that the Bureau of Labor Statistics provides ample documentation of both.

Less discussed is the systematic discrimination in employment and compensation of individuals with disabilities, such as individuals who are deaf or hard of hearing. For example, for people with a disability, the Bureau of Labor Statistics: (a) persons with a disability are more likely to be unemployed than a person without a disability; (b) workers with a disability are more likely to be employed part time than those without a disability; (c) persons with a disability are more concentrated in service fields and less likely to work in management, professional and related occupations; (d) people with a disability are less likely to be employed in the private sector; and (e) a larger proportion of persons with a disability are not in the labor force than those who do not have a disability. Specifically for deaf or hard of hearing individuals, Garberoglio, Cawthon and Bond (2016) reported that for deaf individuals: (a) 48% of deaf individuals are employed (with 47% not in the labor force and 4.6% unemployed); (b) deaf individuals with a bachelor’s degree were employed at rates 16.1% behind hearing individuals; and (c) deaf individuals with master’s degrees were employed at rates 16.8% behind hearing individuals.

Inequities in pay are also noteworthy for people with disabilities. Yin, Shaewitz, and Megra (2014) reported that people with disabilities earn on average about 64% as much as those without disabilities, with the greatest earnings inequalities occurring among those with master’s degrees or higher. They also noted that among those working full time, people with disabilities still only make 86% as much as people working full time who do not have a disability.

Clearly, these structural inequities in employment rates and pay pose challenges for any system of accountability for student outcomes in job training programs. We urge the rulemaking commission to consider these structural inequities in employment and pay in the context of institutional accountability. We argue that institutions cannot be penalized for structural inequities that reflect societal issues outside the control of institutions.

Conclusions

We believe that any discussions of regulations pertaining to employment and pay outcomes of academic programs must be grounded on clearly and unambiguously defined parameters. Current regulations (that have been delayed) are not, and are extremely problematic as a result. The issues we raise are, we believe, the minimum necessary to justify the implementation of federal accountability beyond that already in place. Furthermore, due to systematic inequities in
employment patterns and pay, we also argue that institutions must not be held accountable for discriminatory patterns that the federal government itself has failed to rectify.

Thank you for the opportunity to comment on this process and for your attention.

Sincerely,

John C. Cavanaugh, Ph.D.
President & CEO