

# United States Senate

WASHINGTON, DC 20510

May 27, 2014

The Honorable Arne Duncan  
Secretary  
U. S. Department of Education  
400 Maryland Ave., SW  
Washington, D.C. 20202

Dear Secretary Duncan,

We are writing to express our serious concern with the Department of Education's second attempt to move forward with "gainful employment" regulations.

As proposed, the Department's gainful employment regulations would establish biased and punitive standards on U.S. career colleges and universities that limit student access to higher education opportunities. According to the Department, were the 841 pages of regulations implemented, an estimated 1 million students across all income levels would lose their ability to pursue their chosen higher education goals. We, therefore, urge you to withdraw the pending regulation and work with Congress to examine the rising cost of postsecondary education in a meaningful way, provide greater accountability, and ensure public confidence in the oversight of our federal student aid programs.

The Department previously issued a similar rule that used arbitrary student debt standards to punish for-profit colleges and universities by making their students ineligible for federal student aid. As you are well aware, in 2012 the U.S. District Court for the District of Columbia struck down a majority of the rule, citing the regulation as "arbitrary and capricious". Unfortunately, we believe that the current proposed rule is based on similarly arbitrary numbers and lacks economic and legal precedence.

Regrettably, the problem with so-called gainful employment regulation is not limited to the rulemaking process. As a matter of policy, the current proposal would unfairly apply new standards to only one area within the higher education sector. Should the Department insist on moving forward with untenable gainful employment regulations, new rules should at a minimum apply to all postsecondary institutions, including public and private universities, rather than singling out for-profit colleges and universities. Under the current one-size-fits-all approach, the new gainful employment standards will also impact for-profit law schools. These law schools already meet the strict American Bar Association accreditation standards and consistently see an 85 percent success rate with students passing the bar exam. By failing to have equal standards, the Department not only presumes to make the decision on which higher education institutions

can best meet student needs but also ignores the reality that public and private not-for-profits institutions have programs that would fail to meet the standards they have set for for-profit colleges.

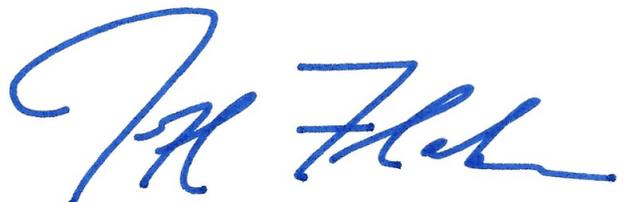
Following the Department's first attempt to regulate for-profit institutions, many of our colleagues on both sides of the aisle raised concerns that these standards would ultimately limit access to higher education for lower income and minority students, working adults with families, and veterans. These groups have frequently been highlighted by the administration as key targets for improved educational opportunities, yet this proposed rule would have serious impacts on their success in gaining access to higher education.

We strongly urge you to withdraw this proposed regulation and work closely with Congress in an open and unbiased examination of higher education; including the rising cost of postsecondary education and any deficiencies in accountability that are needed to ensure public confidence in the oversight of our Federal student aid programs.

Sincerely,



John McCain  
United States Senator



Jeff Flake  
United States Senator