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U.S. Department of Education  
Attn: Ms. Wendy Macias  
1990 K Street NW, Room 8017  
Washington, DC 20006  
Submitted online at Regulations.gov

Re: Docket ID ED-2012-OPE-0008-0028

To the Department of Education:

My comments focus on the issue of for-profit colleges and, especially, the Administration's "gainful employment" rule.

In the public hearings the Department has been holding, representatives of for-profit colleges have urged you to postpone rulemaking and allow Congress to address the issues through reauthorization of the Higher Education Act. What they are actually seeking through this approach is to make sure nothing happens that would impede the flow of federal dollars to even the worst actors in their industry.

For-profit colleges receive as much as \$33 billion a year in taxpayer money. They use millions of dollars from those federal revenues to hire the most expensive and connected lobbyists, litigators, and public affairs strategists in Washington, and to provide campaign contributions, in an effort to avoid reforms that would hold them accountable for deceptive and abusive practices that harm students and taxpayers alike. During the first Obama term, the industry used these resources to prevent reform measures on Capitol Hill and to enlist Members of Congress to pressure the Administration to forego regulatory changes. No doubt that is what many for-profit colleges would like to do again in the next round.

Numerous government and media investigations have now revealed the truth about this industry, and I believe the political tide has turned to a significant extent. But the for-profits' riches may continue to force a congressional stalemate on these issues, thus blocking reforms through the HEA or otherwise. In other words, leaving the decisions to Congress may well mean doing nothing. On the other hand, President Obama was re-elected last year six months after making a strong, unambiguous statement at Fort Stewart, Georgia, about the need to crack down on for-profit college abuses, and he defeated an opponent, Mitt Romney, who expressly endorsed and received extensive support from the industry. This Administration has clear authority – statutory authority and moral authority – to implement effective regulations to curb abusive practices by for-profit colleges. You owe it to our citizens to do so promptly.

I have worked on public policy issues for more than twenty years. From 2004 until 2012, I was senior vice president at the Center for American Progress and the founding director of Campus Progress, an organization that advocates with and for young Americans on policy issues, including higher education matters. In that position, I became actively involved in the debate on gainful employment. I left Campus Progress in January 2012 to start my own legal and advocacy practice. In this capacity, among other tasks, I have worked with non-profit organizations, foundations, and government officials on higher education issues. I also have published numerous articles, combining original reporting and advocacy, on these matters.<sup>1</sup>

In the course of this work, I have been in direct contact with many current and former students, faculty, staff, and executives of for-profit colleges. The students tell of enrolling at for-profit colleges as a result of coercive boiler room tactics, and based on false promises about the quality of programs, the value of degrees, the transferability of credits. They tell of weak academic programs, enormous student loan debts, and resulting personal financial disaster. The former staff tell of cynical recruiting abuses, systematic lying to prospective students, phony job placement operations, regular false reporting to authorities – and demotions and firings of employees whose consciences compel them to stand up for students and honest practices. These discussions have deepened my understanding of these issues, and they have strengthened my sense that our country must act urgently to curb abuses in this sector in order to protect students and taxpayers.

In March, a federal judge delivered his the [second](#)<sup>2</sup> of two opinions finding errors in the gainful employment rule that the Department issued in June 2011. Judge Rudolph Contreras, of the U.S. District Court for the District of Columbia, [upheld](#)<sup>3</sup> the Administration's power to enact the rule, but, in a lawsuit brought by the for-profit college industry, he found two defects and blocked the Administration from enforcing it.

The Department and the Obama Administration have faced a [relentless attack](#)<sup>4</sup> on the gainful employment rule by industry lobbyists. You have plenty else on your plates, and you might have been tempted to put the whole matter aside. But you can't afford to do so. The gainful employment rule is critical to protecting the federal investment in our students and providing opportunities for a wide range of Americans to build careers. The rule, though not as strong as many higher education advocates wanted, is having a genuine and positive impact in curbing some of the worst abuses of the industry. And,

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<sup>1</sup> My work on these issues is supported by the non-profit groups the Center for Public Interest Law and The Institute for College Access and Success, as well as individual donors who have no financial interest in these matters.

<sup>2</sup> *Ass'n of Private Sector Colleges and Universities v. Duncan*, CA 11-1314 (RC), slip op., Mar. 19, 2013. [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2011cv1314-35](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv1314-35)

<sup>3</sup> *Ass'n of Private Sector Colleges and Universities v. Duncan*, CA 11-1314 (RC), slip op., June 30, 2012. <http://big.assets.huffingtonpost.com/judgeordergainful.pdf>

<sup>4</sup> Lichtblau, With Lobbying Blitz, For-Profit Colleges Diluted New Rules, N.Y. Times, Dec. 9, 2011. [http://www.nytimes.com/2011/12/10/us/politics/for-profit-college-rules-scaled-back-after-lobbying.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2011/12/10/us/politics/for-profit-college-rules-scaled-back-after-lobbying.html?pagewanted=all&_r=2&)

fortunately, there is a clear path to fixing the rule so it will pass muster in the courts. There is also opportunity, and cause, to strengthen the rule, and combine it with other reforms, so it does even more to help our students.

In April, a broad coalition of organizations representing students, educators, consumers, veterans, and civil rights interests, sent a [letter to President Obama](#)<sup>5</sup> asking him to promptly issue a strengthened gainful employment rule. I participated in creating and organizing the letter. Below I discuss why the rule and other reforms are so important to the future of higher education and our country.

### **The gainful employment rule is needed because many for-profit colleges are engaged in extensive abuses**

When the Obama Administration entered office, among the numerous challenges it faced was the for-profit college industry, which was growing extremely wealthy off taxpayer dollars, yet appeared to be providing exceptionally poor value for students. The sector is dominated by big companies – University of Phoenix / Apollo Group, Education Management Corp., Kaplan, ITT, Corinthian Colleges, Career Education Corp., etc. – that receive, together, about 86 percent of their revenue from taxpayers. These schools have taken as much as \$32 billion in Department of Education federal financial aid in a single year, about 25 percent of all such aid, plus another approximately \$1 billion in aid for military service members and veterans from the Department of Defense and Department of Veterans Affairs.<sup>6</sup> That means all of us are paying for their ubiquitous advertisements, their large CEO salaries, and their high-priced lawyers and lobbyists.

Instead of implementing federal rules to ensure that taxpayer education dollars were spent wisely, the administration of George W. Bush actually loosened restrictions, thereby unleashing a torrent of waste, fraud, and abuse. While there are some responsible companies providing quality programs, many for-profit colleges have been engaged in deceptive recruiting of veterans, single parents, immigrants, and others struggling to train for a decent-paying career. These deceptions, and false reporting to government authorities, have masked what many for-profit colleges actually offer: high-priced, low quality programs that leave students with worthless credits, without good jobs, and buried in student loan debt.

The results of this reckless joyride are clear: More than half of the students who enrolled in for-profit colleges in a recent year dropped out within about four months, without a degree or certificate. And even students who graduate often cannot find work in the promised field or cannot earn enough to pay back their loans. As a result, for-profit

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<sup>5</sup> Coalition letter to President Obama, April 15, 2013. [http://www.republicreport.org/wp-content/uploads/2013/04/GE-coalition-ltr-to-POTUS-April\\_15\\_2013.pdf](http://www.republicreport.org/wp-content/uploads/2013/04/GE-coalition-ltr-to-POTUS-April_15_2013.pdf)

<sup>6</sup> United States Senate Health, Education, Labor And Pensions Committee, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Majority Committee Staff Report and Accompanying Minority Committee Staff Views, July 30, 2012. [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf)

colleges have 13 percent of the students, but 47 percent of student loan defaults. Twenty-three percent of their borrowers default on their loans within three years of graduating or dropping out.

The budget crisis our country faces, and the need to train more Americans for good careers in a tough economy, does not give us the luxury of wasting so many scarce education dollars on poor quality programs. Nor can we afford to exacerbate a student debt explosion – already exceeding one trillion dollars – that poses the kind of dangers we saw with the subprime mortgage crisis.

A [comprehensive report](#)<sup>7</sup> on the for-profit college industry released in 2012 (after the gainful employment rule was issued) by Tom Harkin (D-IA), chair of the Senate Health Education Labor and Pensions Committee, as well as numerous media investigations over the past three years, have shown how egregious the abuses by this industry have been – and that irresponsible predatory behavior is not confined to a few bad actors but instead is widespread across the industry.

The Harkin report also found multiple schemes by for-profit colleges to evade existing federal rules aimed at protecting students.

Some for-profit colleges are evading the Department's cohort default rate rules, which penalize schools if too many of their students are defaulting on student loans, by pressuring broke students to place their loans in "forbearance" status. Default is avoided, allowing the schools to remain in compliance with federal rules and thus keep federal cash pouring in, but the students still have to pay back the loans and are no better off.

For-profit colleges also are using multiple schemes to comply with the federal 90/10 rule, which requires these schools to obtain at least 10 percent of their revenue from sources other than Department of Education-managed financial aid – on the theory that schools that cannot get anyone to pay out of their own pockets are not worth propping up. These schemes include: Combining unconnected campuses for reporting purposes, so the bad performance of one campus can be absorbed into the better performance of another<sup>8</sup>; halting the flow of federal aid money to some campuses late in the fiscal year, and thereby potentially delaying checks that students need; manipulating scholarship programs; and aggressively targeting military service members and veterans, whose additional education benefits are not counted as federal aid under the 90/10 rule.

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<sup>7</sup> Senator Tom Harkin, For-Profit College Investigation.  
<http://www.harkin.senate.gov/help/forprofitcolleges.cfm>

<sup>8</sup> Even if such campus is only performing better under 90/10 because it is located thousands of miles away in Canada, where Canadian students are not eligible for U.S. financial aid. *See* Halperin, Did For-Profit College EDMC Merge Canadian and U.S. Campuses to Evade The Law?, Huffington Post, March 22, 2013, [http://www.huffingtonpost.com/davidhalperin/did-for-profit-college-ed\\_b\\_2930603.html](http://www.huffingtonpost.com/davidhalperin/did-for-profit-college-ed_b_2930603.html).

## **The gainful employment rule is helping to curb abuses and could help move for-profit colleges in a better direction**

The gainful employment rule, issued in June 2011, was designed to implement a law, passed decades ago by Congress, requiring that career education programs receiving federal aid actually train students to earn a living. The new rule focused not on whether students had formally defaulted on their loans, but rather on whether they were earning enough money to be able to actively pay their loans back. As eventually watered down by the Administration after facing industry pressure, the [rule](#)<sup>9</sup> removes a career training program, whether at a for-profit, non-profit, or state school, from federal aid eligibility only if it fails all three of these tests, in each of three out of four years:

- (1) at least 35 percent of former students are repaying their loans (defined as reducing the loan balance by at least \$1);
- (2) the estimated annual loan payment of a typical graduate does not exceed 30 percent of his or her discretionary income;
- (3) the estimated annual loan payment of a typical graduate does not exceed 12 percent of his or her total earnings.

These tests seem extremely lenient -- if two-thirds of your former students can't pay back their loans, should taxpayers keep funding your "career" college? So, not surprisingly, many higher education advocates denounced this final formulation of the rule as a sellout to industry. But at least some of us [were willing](#)<sup>10</sup> to give the rule a chance, believing that, in concert with other measures to curb this industry, the gainful employment regulations might make a difference.

Data released by the Department of Education last year under a test run of the gainful employment rule [show](#)<sup>11</sup> that the rule, once implemented, could have some real bite: 65 percent of the programs failed at least one of the three minimal tests aimed at protecting students, and five percent--193 programs at 93 different for-profit colleges--failed all three tests.

And, in fact, the rules appear to have now played a role in pressuring some for-profit colleges to moderate their bad behavior -- shutting down some of their worst programs,

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<sup>9</sup> U.S. Department of Education, Obama Administration Announces New Steps to Protect Students from Ineffective Career College Programs. <http://www.ed.gov/news/press-releases/gainful-employment-regulations>

<sup>10</sup> See Halperin, Why Did For-Profit College Stocks Rise After the Gainful Employment Rule Was Released? Campus Progress, June 3, 2011. [http://campusprogress.org/articles/why\\_did\\_for-profit\\_college\\_stocks\\_rise\\_after\\_the\\_gainful\\_employment\\_ru/](http://campusprogress.org/articles/why_did_for-profit_college_stocks_rise_after_the_gainful_employment_ru/)

<sup>11</sup> See Halperin, Romney's Full Sail, WashPost's Kaplan Among Colleges Flunking Federal Test By Leaving Students In Debt, Republic Report. <http://www.republicreport.org/2012/romneys-full-sail-washposts-kaplan-among-colleges-flunking-federal-test/>

curbing their ever-escalating tuition charges (including at perennial over-chargers University of Phoenix, EDMC, and Bridgepoint), declining to admit some students who have little chance of succeeding in a given program, and offering students trial periods before finally depositing their government aid checks.

The incentive for for-profit colleges to improve their behavior is enhanced because of the presence of the federal 90/10 rule. Gainful employment presses colleges to curb their sky-high tuitions, lest too many students end up with insurmountable debt. Yet lower prices means that federal aid can cover a higher percentage of tuition and other costs, theoretically creating 90/10 problems. In fact, the Government Accountability Office reviewed this issue and “did not find any relationship between a school’s tuition rate and its likelihood of having a very high 90/10 rate.”<sup>12</sup> But to the extent that this dynamic might put some for-profits, as structured today, in a tighter squeeze, it would be an appropriate squeeze – their prices *should* be lower, and their programs also should improve in quality, so more students can pay back their loans, and more students, employers, and outside scholarship programs will be willing to spend their money to pay for tuition.

Numerous statements by Wall Street analysts and by industry executives themselves suggest that concern about the gainful employment (GE) rule taking effect has been making it tougher for for-profit colleges to act with impunity. For example:

An [SEC filing](#)<sup>13</sup> by the for-profit giant ITT Tech, Feb. 2012:

The GE Requirements have resulted in, and will likely continue to result in, significant changes to the programs of study that we offer, in order to comply with the requirements or to avoid the uncertainty associated with such compliance, such as offering programs at lower costs or in fields with higher earnings potential. The GE Requirements have and will continue to put downward pressure on tuition prices, so that students do not incur debt that exceeds the levels required for a program to remain eligible under Title IV Programs. This could, in turn, increase the percentage of our revenue that is derived from Title IV Programs and, therefore, adversely impact our compliance with the 90/10 Rule. We have also begun to limit enrollment in certain programs of study and substantially increase our efforts to promote student loan repayment.

Barclays U.S. Education Services, “Another Challenging Quarter in the Books,” Aug. 2012:

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<sup>12</sup> United States Government Accountability Office, For-Profit Schools: Large Schools and Schools that Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid, October 2010. <http://www.gao.gov/new.items/d1114.pdf>

<sup>13</sup> <http://www.sec.gov/Archives/edgar/data/922475/000119312512077917/0001193125-12-077917-index.htm>

Over the past eighteen months, many of our covered [for-profit college] companies have made substantial changes to their offerings in an attempt to position better for the changing regulatory environment. This has included teaching out programs, introducing new program offerings, changing tuition, reducing the duration of programs, and even more dramatic steps including the closure of poorly performing campuses.... As companies weigh their options, we expect further changes ahead in the form of adjustments to tuition and program durations, enrollment caps, and program/campus closures.

PiperJaffray Investment Research, "Where We Stand on the Education Stocks: Education Industry Benchmark Analysis" March 2013:

Most industry participants have already implemented steps to improve GE compliance....

There is also [evidence](#)<sup>14</sup> that for-profit colleges have been exploring ways to evade the requirements of the gainful employment rule, but that information argues for tightening up the rule and carefully monitoring compliance, rather than abandoning the approach.

The concepts in the gainful employment rule are catching on in efforts to hold for-profit colleges accountable. New York City Comptroller John Liu and the his city's pension funds recently [submitted shareholder proposals](#)<sup>15</sup> to big for-profits DeVry and Career Education Corp. requiring those companies to disclose student debt-to-income ratios and loan repayment rates. (The SEC rejected Career Education's effort to block the proposal.)

If the gainful employment rule is helping to eliminate some of the worst excesses of the for-profit college sector, those that have truly been ruining students' lives, can it go further and actually force the industry to offer programs that are reasonably priced and actually train students for careers? I think that will take some time. For many current programs in the sector, higher retention and graduation rates right now would not necessarily be a good thing -- if a program is high-priced and low-quality, finishing it may actually make a student worse off. A June 2012 [paper from the National Bureau of Economic Research](#)<sup>16</sup>, authored by Professor Kevin Lang and Russell Weinstein, both of Boston University's Department of Economics, found:

Among those entering associates degree programs, there are large, statistically significant benefits from obtaining certificates/degrees from public and not-for-profit but not from for-profit institutions.... Even after controlling for an extensive

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<sup>14</sup> Senator Tom Harkin, For-Profit College Investigation  
[http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/ITT.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf)

<sup>15</sup> Liu, NYC Funds: For-Profit Colleges Need To Open Their Books On Student Debt, April 4, 2013. [http://www.comptroller.nyc.gov/press/2013\\_releases/pr13-04-047.shtm](http://www.comptroller.nyc.gov/press/2013_releases/pr13-04-047.shtm)

<sup>16</sup> Lang & Weinstein, Evaluating Student Outcomes at For-Profit Colleges, NBER Working Paper No. 18201, June 2012. <http://www.nber.org/papers/w18201>

set of background variables, students at for-profit institutions do not benefit more and often benefit less from their education than apparently similar students at not-for-profit and public institutions.

As this study suggests, degrees from many of today's for-profit colleges are often a waste of money because they don't help students to get jobs – the instruction and training is weak, job placement efforts are weak, and the schools' reputations are poor and thus the degrees are not respected in the labor market. Another [study](#)<sup>17</sup> by Harvard economics professors Lawrence Katz and Claudia Goldin found that students who attend for-profit colleges have higher unemployment rates and lower earnings than do comparable students from other types of colleges.

But the gainful employment rule, when combined with [other federal rules](#)<sup>18</sup> and [efforts to crack down](#)<sup>19</sup> on deceptive and coercive recruiting could, over time, force the major for-profit colleges to fundamentally change their business model and compete to do what they all should have been doing all along – help students to learn skills and build careers. Some of the current CEOs may have to depart, and some of the big companies may have to shut their doors, in favor of leaders and institutions that are genuinely willing and able to deliver quality education programs.

However, all of this potential progress in reshaping the for-profit college industry would be imperiled if the Administration dropped the gainful employment rule. The evidence suggests that the current industry giants are not ready to fundamentally change and will only do so under pressure. Even today, as broader public awareness of industry abuses has helped produce declining enrollments, revenues, and stock prices, the industry continues to spend much of its earnings on misleading advertising aimed at students, as well as lobbying and lawyering to avoid accountability, including the gainful employment rule. **It is difficult to understand how this industry and its trade association, APSCU, can continue to fight to allow its most unethical and incompetent members to run programs that hurt students so badly.** After a decade of entitlement and unblocked access to federal riches, it seems that some for-profit college owners are not giving up their irresponsible way of life without a fight.

**The gainful employment rule should be strengthened as part of an overall effort to improve accountability**

Fortunately, bad actors in the sector won't succeed if the Obama Administration moves ahead purposefully. The gainful employment rule can clearly be revised to address Judge Contreras's objections.

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<sup>17</sup> Deming, Goldin, Katz, The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? NBER Working Paper No. 17710, December 2011. <http://www.nber.org/papers/w17710>

<sup>18</sup> See Halperin, Without Romney to Shield Them, For-Profit Colleges Must Face Reality, Huffington Post, Nov. 14, 2012. [http://www.huffingtonpost.com/davidhalperin/for-profit-college-reforms\\_b\\_2131098.html](http://www.huffingtonpost.com/davidhalperin/for-profit-college-reforms_b_2131098.html)

<sup>19</sup> See Halperin, A Good Day: Obama Stands With Troops Instead of Wealthy Predatory Colleges, Republic Report, April 27, 2012. <http://www.republicreport.org/2012/obama-stands-with-troop/>



Judge Contreras ruled that the Administration had the authority, and clear justification, to issue the rule: “The Department has set out to address a serious policy problem, regulating pursuant to a reasonable interpretation of its statutory authority. . . . Concerned about inadequate programs and unscrupulous institutions, the Department has gone looking for rats in ratholes – as the statute empowers it to do.” But the judge found that the Administration had failed to offer a clear rationale for one of the rule's three threshold tests – the requirement that at least 35 percent of former students are repaying their loans.

As suggested above, I would say that the "are you kidding me?" rationale should be enough for that threshold; if, for three out of four years, 66 percent of a career education program's former students can't pay down their loans, isn't it manifest that the program is harmful? But more rigorous analysis leads to the same conclusion: As The Institute for College Access and Success has determined, there are a number of sound bases in federal law and education data for determining that a 35 percent repayment threshold is fully warranted as a means of protecting students (and, indeed, that a threshold higher than 35 percent would be justified).

The judge also determined that the Department of Education did not have authority to collect information in the way it proposed, for purposes of the two gainful employment debt to income tests, on students who do not receive federal financial aid. But that problem can be fixed by measuring only the debt outcomes of students who do obtain student loans. (At community colleges, because of low tuition, only a small percentage of students obtain loans. To address the problem of distorted data resulting from such small samples, the rule could deem any program in which a majority of the graduates do not take out loans to have automatically passed both debt to income tests.) Removing from the calculations the tiny percentage of for-profit college students who do not take out loans would not require that the debt test ratios be weakened, because they already were too weak to fully protect students.

Indeed, there is a strong argument for the Administration to considerably strengthen the gainful employment regulation in a new rulemaking proceeding. The Harkin report and other subsequent investigations have exposed the depth of misconduct and cynicism of this industry, as well as the severe harms caused to students who have seen their debts rise and their dreams crushed. Staff members who have complained about rampant fraud at their institutions have been punished and fired for standing up for students. And for-profit college [CEOs have raised their own salaries as much as seven-fold](#)<sup>20</sup>, essentially looting their own institutions, even as share prices have fallen dramatically. After several years of writing and advocating on these issues, I am almost daily contacted by former students, faculty, and staff who have offered harrowing, heartbreaking tales of abuses and lies at for-profit colleges, some of which I have published and others that await public telling until authorities have completed investigations.

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<sup>20</sup> See Halperin, EDMC Professors and Students Speak: How Lobbyists and Goldman Sachs Ruined For-Profit Education, Huffington Post, Sept. 24, 2012.  
[http://www.huffingtonpost.com/davidhalperin/edmc-professors-and-stude\\_b\\_1909449.html](http://www.huffingtonpost.com/davidhalperin/edmc-professors-and-stude_b_1909449.html)

Certainly there was no obligation for the Administration to devise three different measures of gainful employment failure, and then allow programs to remain eligible for federal aid as long as they didn't fail all three tests, three out of four years – nine strikes and you're out, as it were. A revised rule could, for example, require programs to pass two out of three tests each year, instead of just one out of three over four years. A revised rule could also make the repayment rates and debt-to-income ratios somewhat more demanding.

There might be other ways to enforce the statutory gainful employment requirement, but I believe it is appropriate for the Department to stay with the approach it has pursued – measuring repayment rates and debt-to-income ratios.

There are other steps that should be taken by the Administration and Congress, including these:

- Senator Kay Hagan (D-NC) has offered legislation that would prohibit colleges from spending federal funds on marketing, advertising, or recruiting. This provision would have real teeth, since the biggest for-profit colleges receive about 86 percent of their revenues through federal aid, and spend about 23 percent of their budgets on such marketing. The for-profit colleges trade association, APSCU, has attacked this bill as another unacceptable imposition on this industry, but there's clearly a problem that needs addressing when an APSCU member like Bridgepoint Education spends, as it did in 2009 according to Senator Harkin's report, more than \$2000 per student on marketing and only \$700 per student on instruction, and industry leader the University of Phoenix spent \$892 on instruction and \$2225 on marketing.
- Senator Dick Durbin (D-IL) is seeking to reform the 90-10 rule, which, as discussed, permits for-profit colleges to take up to 90 percent of their revenue from federal student grants and loans. Durbin's bill would reduce that threshold to 85 percent – where it stood before for-profit colleges pressured Congress to raise it in 1998 – thus forcing these schools to provide more value that students are actually willing to pay for out of their own pockets. The legislation would also count military and veterans benefits as federal aid, which, of course, it is; the current situation, where that funding is not counted as federal aid, has turned our troops into, as the Consumer Financial Protection Bureau's Holly Petraeus has put it, "dollar signs in uniform" – targets to exploit by schools desperate to comply with the rule.
- The Administration should also devise means to prevent inappropriate manipulation of the cohort default and 90/10 rules, as discussed above.

Our government should implement such reforms promptly. But even taken together, these changes may not be enough to protect students and taxpayers. As Senator Harkin's report documented, big for-profit colleges have become expert at finding means to circumvent these rules, causing even more harm to students. Given the coming budget

crunch, Congress is looking for places to cut, and student financial aid generally will be under pressure.

Continued intransigence by the for-profit colleges might warrant a stronger approach, one that starts by asserting that the evidence compels frankly treating for-profit colleges differently than another kinds of colleges, because the tension between pleasing shareholders and serving students is now patently obvious. This approach would be premised on the principle that federal aid is, for a school, a privilege, not a right. Instead of new measures to determine whether aid should be taken away, for-profits would be required to apply anew for eligibility. The Department of Education would house a nonpartisan board that establishes broad criteria for eligibility. The board, comprised of members without prior financial ties to for-profit education, would hold public proceedings and use expert judgment to make decisions. Approval would require a unanimous vote every two years. As much as possible, eligibility decisions would be insulated from legal maneuvering and court processes.

Such fundamental reform might become a necessity if the big for-profit colleges don't step up and accept a future where the way to earn federal aid is to truly serve students and the help them train for successful careers.

### **Awareness of for-profit college abuses have changed the debate**

The Obama Administration should take heart not only because a revised rule is warranted, but also because the revelations of abuses across the for-profit college sector have helped reshape the landscape. When the rule was issued, eleven state attorneys general had come together to coordinate their investigations of fraud and abuse in the industry; today, a bipartisan group of 32 state attorneys general are united in that effort. The U.S. Justice Department, Securities and Exchange Commission, and Consumer Financial Protection Bureau also are investigating misconduct by various for-profit colleges.

In the past, campaign contributions from for-profit colleges, and expensive lobbyists, prominent Democrats as well Republicans, were able to sway lawmakers to oppose or express doubts about the Obama reforms. Today, a broad group of Senators Democrats is standing with Senator Harkin in demanding that the industry be held accountable, and even stalwart Republican Senator Marco Rubio (FL) has proposed reforms against some industry opposition. And where before, the for-profit colleges had been able to gain gestures of support from some members of the House Black, Hispanic, and Asian-Pacific caucuses, today there is strong momentum in all three caucuses for genuine changes to the industry. While the House Republican leadership seems to remain firmly in the industry's embrace, their members seem [increasingly aware](#)<sup>21</sup> that there are political risks

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<sup>21</sup> See Halperin, Congressman, After Hometown Criticism, Pulls Out Of Event At For-Profit College Owned by Big RNC Donor, Republic Report, Aug. 22, 2012.  
<http://www.republicreport.org/2012/stutzman-national-college/>

to backing wealthy for-profit college owners, when veterans, newspaper editorial writers, and others in their districts are paying close attention and demanding reforms.

## **Conclusion**

Among the many untruths uttered by predatory for-profit colleges, two stand out for me.

The first is that their schools “should be congratulated” for enrolling many low-income students that other schools might turn away. I actually heard a top for-profit college lobbyist use that phrase once in a small room meeting. It is a remarkable statement. These enterprises should be congratulated, and I will be the first to do so, if and when they actually train most or all of their students for rewarding, remunerative careers. They should decidedly not be congratulated for what many of the big players in the industry now do for a great number of their students – simply mislead them, enroll them, cash their financial aid and private student loan checks, and then leave them adrift, in weak and often worthless programs.

The second untruth is that today’s for-profit schools represent a free market alternative to traditional higher education. I support the idea of private sector involvement in higher education as a way to spur innovation and efficiency. But today the for-profit college industry’s big players are spurring anything but, and they are getting rich off a revenue stream that is 86 percent federal dollars. There is a government program, not a free market program. And the issue before you is whether to tolerate a federal regulatory status quo that rewards waste, fraud, and abuse, or whether instead to rewrite the rules to reward schools that actually are helping their students and vindicating the federal investment in higher education.

Standing with our soldiers at Fort Stewart, Georgia, a year ago, President Obama signed an executive order<sup>22</sup> aiming to protect U.S. troops, veterans, and their families from predatory abuses by for-profit colleges. The President charged that some for-profit education companies “aren’t interested in helping you.... They are interested in getting the money.” He called their conduct “appalling” and “disgraceful” and told the troops that these schools are “trying to swindle and hoodwink you.” He was absolutely right, and the moral urgency of his remarks demand that his Administration continue the essential, arduous work of protecting our students from predatory colleges and the mountains of student debt they take home as profits. That includes ensuring a strong gainful employment rule, one that implements an essential, common-sense principle:

**Federal aid should go only to those career education programs that effectively train students and help them build careers.**

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<sup>22</sup> The White House, We Can’t Wait: President Obama Takes Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and their Families, Apr. 26, 2012. <http://www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading>