



August 26, 2013

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW, Room 7W301
Washington, D.C. 20202-1510

VIA Email and Fax

Dear Secretary Duncan:

I write on behalf of the Association of Private Sector Colleges and Universities (APSCU). APSCU represents over 1,400 member institutions that educate and support more than three million students each year. As a vital component of higher education, our institutions—which are fully accredited by agencies recognized by the Department and authorized by the respective states in which they operate—provide a full range of postsecondary education programs to students seeking career-focused education. These institutions educate students for careers in more than 200 occupational fields, including information technology, allied health, automotive repair, business administration, commercial art, and culinary and hospitality management.

On July 12, 2013, we wrote to you, asking you to consider selecting specific individuals to serve on the gainful employment negotiated rulemaking committee. Those individuals are all well-qualified and deeply familiar with the challenges facing higher education. They are well-suited to offer unique insights accumulated over years of managing successful private sector colleges and universities.

Unfortunately, of the 28 representatives the Department selected, only four represent private sector colleges and universities. Several of the other representatives are on-the-record opposing the private sector or work for entities that are opposed to the existence of our institutions. As a result, the committee neither fairly nor adequately represents our students and institutions; rather, it is composed of vocal opponents of our sector. The Department's decision to establish a rulemaking committee that underrepresents private sector colleges and universities is all the more inexplicable and inappropriate given that any final regulations that emerge from this process will disproportionately affect our institutions and students.

A committee with this make-up is likely to draft proposed regulations that stifle educational innovation, cost jobs, and displace the students who benefit most from career and job-focused training. These outcomes will undermine the President's goal of closing the skills gap by increasing the number of Americans with postsecondary credentials. We fear that in trying a second time to adopt gainful employment regulations, the Department has again chosen to overlook the positive contributions of our institutions to students who would otherwise be excluded from postsecondary education.

The Honorable Arne Duncan
August 26, 2013
Page Two

The Department's failure to select a fairly representative committee is particularly astonishing in this case. Indeed, the composition of the rulemaking committee is so biased and one-sided as to call into question the Department's intent to fulfill its obligations under the Higher Education Act and the Administrative Procedure Act to engage in a fair process and to adopt well-reasoned regulations that are consistent with its statutory authority.

To have a meaningful and valuable impact on postsecondary education going forward, the Department should abandon this ill-conceived negotiated rulemaking session and work with Congress on a comprehensive reauthorization of the Higher Education Act that addresses all the issues and concerns facing the country's system of higher education and the students it strives to educate. This view is shared by a bipartisan group of Members of Congress who have urged the Department to abandon this new regulatory effort to adopt gainful employment regulations and many in the higher-education community who have voiced support for H.R. 2637, the Supporting Academic Freedom through Regulatory Relief Act, which would restrict the Department's ability to adopt gainful employment regulations and was approved by the Committee on Education and the Workforce on July 24, 2013. Diverse groups such as the American Council on Education, the Council for Higher Education Accreditation, the Association of American Universities, the Association of Jesuit Colleges and Universities, the Council for Christian Colleges and Universities, the National Association of Independent Colleges and Universities, and the National Association of Student Financial Aid Administrators, among others, have all expressed opposition to new gainful employment regulations through their support of this legislation.

If the Department chooses to ignore those who have called for abandoning the current negotiated rulemaking process to adopt gainful employment regulations, APSCU respectfully asks that the Department expand the representation on the rulemaking committee to include a fair representation of our institutions. If the Department were seriously interested in having a workable regulatory scheme, it would reach out to APSCU's members to make sure their insights and experience are fairly reflected in any final regulations.

Sincerely,



Steve Gunderson
President and CEO