

## CollegeAmerica Services, Inc.

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Office of General Counsel • Matthew Gerber, Esq.

September 9, 2010

Ms. Jessica Finkel  
U.S. Department of Education  
Docket ID: ED-2010-OPE-0012  
1990 K Street NW  
Room 8031  
Washington, DC 20006-8502

RE: Department of Education's Proposed Gainful Employment Regulation

Dear Ms. Finkel:

For the last seven years, I have been general counsel for CollegeAmerica, Stevens-Henager College, and California College San Diego, for-profit institutions located in the western United States. As someone responsible for ensuring legal compliance with statutes and corresponding regulations, I am extremely concerned with the department's proposed gainful employment regulation.

The department has attempted to address what it perceives to be a crisis: the inability of college graduates to repay student loans because their job compensation is not high enough. But in attempting to address this problem the department has not taken into account its cause or the long term effects of its proposed solution.

We are currently experiencing the worst economic downturn in generations. If workforces are being slashed, if the private sector cannot create the jobs necessary to hire recent graduates, and if employers are reducing compensation to ensure that they survive this recession, how can outcomes be improved while the economy is stagnant? Since educational institutions have no authority to forbid low-income students from borrowing maximum federal loan amounts, it follows that during a recession that low-income students who borrow the maximum will be in a difficult position.

The Department of Education states that the Student Aid Objective is "to ensure low and middle income students have the same access as high income students do." The for-profit education sector delivers a viable alternative to students who are lower-income, minority, older and/more financially independent. With this proposed regulation, the Department of Education is telling lower-income students, who rely on Title IV Federal aid, where they can go to school, what they can study, and what careers they can enter. The department would be penalizing, especially during a recession, the very students it and the president want to help. This runs counter to the Student Aid Objective.

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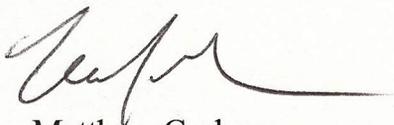
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If enacted, the regulation will invariably create confusion within the for-profit sector, especially among those of us whose responsibility it is to understand regulations and advise accordingly. The Department of Education will be the only entity with full access to the data used to measure and test program compliance with the proposed regulation. Institutions would not know whether a program fails the test until *after* it has already failed. How will that ensure compliance?

The Constitution affords everyone the equal protection of the laws. Not-for-profit and public sector schools that serve students similar to those attending for-profit institutions have similar repayment rates. To meet the proposed regulation, a number of for-profit colleges might have to lower tuition in certain programs. Lowering tuition could cause the colleges to violate the 90-10 rule. At the same time, nonprofit and public sector institutions would remain free to charge whatever they deem fit. This violates equal protection and is discriminatory!

The Department should reconsider this proposed regulation, which by its nature will have a detrimental effect on colleges, the students they serve, and the future of higher education in America.

Sincerely,



Matthew Gerber