Fundamental Flaws in the Proposed Gainful Employment Metric

1. The proposed regulation will limit access to higher education for hundreds of thousands of non-traditional students (primarily working adults and lower income students) at a time when job creation, often requiring skills training or retraining, is a paramount national public policy goal.

- Student demand for professional and career education is at historically high levels partly because of the transformation of the U.S. economy from a production-based to a skilled services-based economy and partly because of the high unemployment rate.
- At this time, only proprietary (i.e., for-profit) colleges and universities have the resources to increase capacity to meet the demand. Alternative educational paths for students seeking such training do not exist because those institutions, e.g., community colleges, are facing substantial funding shortfalls.
- President Obama has set a goal of regaining the nation's number one rank internationally for the highest proportion of college graduates by 2020. Even critics concede that we cannot reach this goal without a robust proprietary sector of higher education. The Gainful Employment metric is directly at odds with this national policy goal.

2. The regulation will eliminate high quality programs that offer graduates a lifetime of improved earnings because the initial post-graduation earnings in those careers are low.

- According to data released by the Department of Education ("ED"), if the same metric were applied to traditional medical schools, most would fail. An analysis of the data provided show that institutions in the private not-for-profit and public sector that serve populations similar to those attending private sector colleges and universities (i.e. non-traditional, minority, and lower socioeconomic populations) have similar repayment rates. Yet, ED is targeting just one sector.

3. The regulation falls most harshly on low income and minority students.

- Schools in our sector serve proportionately more low income and minority students who are under-represented in postsecondary education than the traditional sector. This regulation implicitly discriminates against African American and Hispanic students by eliminating program choice and access.

4. The proposed rule, which pegs the calculation of the debt-to-income ratio on earnings in the first three years post graduation, is heavily biased against longer term (baccalaureate and above) and costlier (e.g., health care) programs, because students in those programs have to borrow more in the aggregate but their earnings differential from those with lesser degrees do not emerge until after the first three years after graduation.

- Economists have shown that it takes seven years or more after graduation, not three years, for those with higher degrees to begin to experience the real financial advantage of additional education in the marketplace.
- The explanation given by ED for using the first three years of earnings is that the gap in earnings in the first three years is about the same as the gap in later years. This measure of the gap in earnings does not measure the gap in earnings between those with a high school degree and those with some postsecondary education, but rather only the level of earnings. In ED's explanation it is admitted that the level of earnings increases significantly even over the first ten years after school. Whether the gap, measured this way, stays the same is not relevant to the proposed rule.

5. Although the proposed regulation is lengthy and complex, it is still basically the same concept ED previously proposed that created such strong opposition when it surfaced in January

2010—programs must show a debt to income ratio of 8% or less to continue. In this version of the regulation, ED simply recognized the need for adding a more nuanced measure of income, namely discretionary income.

- Most independent research by authorities such as Dr. Sandy Baum and Mr. Mark Kantrowitz has shown that an 8% metric, borrowed from other types of consumer debt metrics, is wrong for higher education.

- While the addition of the discretionary income to the debt-to-income metric results in fewer programs being impacted, the vast majority that do not meet the flawed 8% metric would still fail and a majority of programs that do not meet the 8-12% metric would remain in the restricted category.

6. The regulation creates a complex taxpayer funded regulatory regime within ED without a sufficient basis of research to assess its national impact.

- ED does not have the current infrastructure to monitor and enforce this complex regulation and significant resources will have to be expended to implement this new regime.
- ED selectively cites research findings and interprets experts on financial aid issues to support and promote its flawed proposal.

7. ED's Gainful Employment metric exceeds statutory authority by going well beyond the definition of the term "gainful employment."

- It provides new authority for ED to pre-approve *all* new programs.
- It uses a narrowly defined repayment rate to measure acceptable levels of debt for the first time rather than the congressionally sanctioned and well-tested cohort default rate.
- It does not permit students using congressionally supported debt management programs such as deferments or forbearances, or who choose lower-wage jobs in social service fields and rely on the Income Based Repayment Plan, to be counted in the repayment calculation, although those are fully legitimate means of repayment for any graduate.

8. Although ED offers the repayment rate test as an alternative qualification test for programs that fail the debt to income ratio metric, by ED's own analysis that alternative test will benefit only a tiny fraction of programs and arbitrarily hurt smaller programs and small schools.

9. The repayment rate test may often be the only test available to smaller programs and, as a result, small programs, often at smaller schools, would suffer random and severe consequences.

- Small programs are more likely to be unable to meet the debt ratio metric due to small student numbers, and will have to rely on the repayment test according to ED.
- As a result, repayment problems by just a few students could eliminate the entire program. The repayment test results for small programs would be random and impacted by economic volatility at much higher rates than larger programs, for no quality reason.

10. The proposed regulation does not balance risks and interests in pursuit of a common policy goal, but instead appears to advance an agenda unrelated to student debt.

- Institutions bear all the risks of repayment without taking into account student populations served.
- Institutions will know whether a program fails only *after* it fails because only ED will have access to the repayment information and income data (using social security reported earnings) used to calculate the metric.

- The retroactive application of the regulation violates a basic principle of legal fairness and points to the agenda of ED to eliminate, not reform, programs.
- Institutions will have no way to monitor compliance and make adjustments until after a program has failed the metrics.
- If a single program is out of compliance with the metric, the entire institution can be placed on provisional certification, limiting the institution's ability to add new programs and increase enrollments. The Department has stated that when reviewing an institution's application for recertification of its program participation agreement – the school's agreement with ED for participating in the title IV Federal student aid programs – they will take into consideration the fact that an institution is provisionally certified due to being out of compliance with one of the gainful employment measures for one program. Thus, the institution's participation in the title IV programs can be terminated due to one program not meeting the gainful employment provision.
- By excluding students utilizing deferments, forbearances, and in some cases IBR from the repayment calculation, institutions will have to choose between assisting students in selecting the best method of managing their student loan repayments or risking running afoul of the metric.
- Institutions will lose their right to due process because without access to the income data (out of privacy concerns for the students) they will not be able to defend themselves against action by ED.
- The requirement that institutions on restricted status obtain testimonials from an employer unaffiliated with an institution that the program aligns with expected job skills is weighted against institutions. While many private sector institutions have well-established relationships with employers, they may not be permitted to speak on behalf of the school and the students they have hired. An unaffiliated employer has no reason to take the time and effort needed to support a program.

11. The proposal is social engineering at its worst.

- ED is telling lower income students who rely on title IV Federal aid to assist them in achieving their postsecondary dreams where they can go to school, what they can study, and what careers they can enter. A student who can afford to pay out of pocket can make his/her own choices.
- ED states institutions could comply with the metric by lowering their tuition. Not only is this a back-door way to control tuition pricing, it is a false premise. Students will still be able to take out the same amount of federal loans even if a school lowers tuition because institutions are not permitted to limit loan eligibility even when that eligibility far exceeds institutional charges. Also, institutions would run afoul of the 90-10 rule if they lowered their tuition to the degree ED infers in the proposed regulation.
- By placing an entire institution on provisional certification if a single program is out of compliance with the proposed gainful employment metric, the regulation stunts one of the great advantages of private sector education for our economy: the rapid development of new programs closely tied to changing workforce needs.

12. CCA supports substantially increased, and yet easy to understand, consumer disclosures to prospective students that gives detailed information on the costs of the educational program, the likely occupations in which the student may work after graduation, the overall loan burden the student is likely to have at graduation (including the predicted monthly repayments), and the range of earnings in those occupations, as determined by the U.S. Department of Labor.

- Increased consumer information, not a complex and convoluted set of metrics, is the direction ED should take to address concerns that prospective students do not fully appreciate the risks and rewards of entering an educational program.