September 9, 2010
Ms. Jessica Finkel
U. S. Department of Education
1990 K Street NW, Room 8031
Washington, DC 20006

Re: Notice of Proposed Rulemaking
Federal Register, July 26, 2010
ED-2010-OPE-0012

Dear Ms. Finkel,

Thank you for the opportunity to provide comment to the referenced Notice of Proposed Rulemaking. The following comments are made on behalf of DeVry Inc. and the more than 100,000 students and 300,000 alumni of Carrington College, Carrington College California, Chamberlain College of Nursing and DeVry University.

The Department proposes to implement a two-faceted test to determine whether "certain postsecondary educational programs lead to gainful employment in recognized occupations." The two facets of that test are a "repayment" rate of an institution's former students and the debt-burden rate of its graduates. We have significant concerns with both facets of this proposal and the capacity of this test to adequately address the Department's concerns. We believe, if implemented as is, the test and consequences of failure to pass that test will result in decreased access and opportunity for hundreds of thousands of students each year. Further, the impact of this denied opportunity will be felt most strongly by a class of students who, traditionally, have been underserved by higher education – the same class of students for whom the President and the Secretary are trying to increase access. Our commentary will include a discussion of:

- Understanding of the Department's concerns,
- DeVry's concerns with the proposed test, and
- An alternative strategy to address the Department's concerns.

DeVry has a long history of serving students and preparing them for successful careers. DeVry's Chamberlain College of Nursing has been preparing students to enter the nursing field for almost 130 years. DeVry University was a pioneer in providing education in electronics and has been providing graduates to the technology and business sectors for 79 years. The Carrington Colleges have been helping students launch careers in nursing and allied health fields for 35 years. Chamberlain and Carrington graduates have typically scored well above national standards in licensure examinations in fields such as nursing, dental assisting, dental hygiene, diagnostic medical sonography, fitness training, massage therapy, medical assisting, pharmacy technology, physical therapy, radiography and respiratory care. For the past 35 years, 90% of DeVry University graduates actively seeking employment have found such in their field of study within 6 months of graduation. Since 1975, DeVry University has produced nearly 250,000 graduates gainfully employed in their chosen careers. Our focus has always been to prepare students for gainful employment. Our success in doing so is unparalleled.

Concerns expressed by the Department

In the preamble of the Notice of Proposed Rulemaking (NPRM) and in public comments addressing the proposed rule, the Department has expressed its concern that some students at some private-sector ("for-profit") institutions assume a disproportionate amount of debt to complete their program of study as compared to their economic expectations as graduates, including expected earnings and employment opportunities. The Department describes several factors that may lead to over-borrowing by students:

1. *Lack of opportunity for graduates to recoup their investment in education through long-term earnings growth. The Department cites a GAO study from the 1990's to support this concern: "occupation-specific training programs that…made graduates of for-profit institutions less versatile and limited their opportunities for employment…"*
2. For-profit institutions' reliance on taxpayer assistance drives cost to the student, which in turn drives increased borrowing.
3. For-profits' obligation to shareholders will drive profitability at the expense of fully informing student consumers of education options and institutional information.

The Department asserts that *"the proposed standards…are necessary to protect taxpayers against wasteful spending on educational programs of little of no value that also lead to high indebtedness for students. The proposed standards will also protect students who often lack the necessary information to evaluate their postsecondary education options and may be misleading by skillful marketing, resulting in significant student loan debts without meaningful career opportunities."*

We agree with the fundamental concerns expressed by the Department. That is, taxpayer funding should not be wasted and student consumers should have the information necessary to make an informed decision prior to enrolling in a school. We disagree though, that this is a concern limited to for-profit institutions. Wasteful spending and poor information is a concern for all institutions and a protection that should be spread across all sectors of higher education. Information that is important in determining whether to enroll in a for-profit institution is just as likely to be important to the student who is considering enrollment in a public or independent not-for-profit institution. Every student, regardless of their program of study or the type of institution they attend, should have access to information about costs, methods of financing, graduation rates, employment opportunities and the financial implications of repaying their student loans. The focus on for-profit education and the "gainful employment" definition as a vehicle fails to protect either taxpayers or students.

It is difficult to determine whether the Department's proposed test would adequately, if applied to all institutions in a fair manner, address its concerns related to disproportionate debt. The Department's assumptions and assertions supporting the development of the proposed rule are largely based on anecdote, errant data, mischaracterizations and inappropriate associations of unconnected attributes. We have no doubt that there are issues that need to be addressed, and are certainly willing to work with the Department to remedy these issues, but the definition of those issues and the solution the Department proposes, is simply, off the mark. The following comments address how the Department has missed the mark in its articulation of its concerns:

1. Concern with disproportionate debt and opportunity to recoup investment

The Department expresses a concern that too many graduates of for-profit schools assume debt that they cannot afford to repay. The Department bases its concern for disproportionate debt on an analysis of the percentage of students at for-profit institutions with high levels of debt. It asserts, "*13 percent of baccalaureate recipients from public four-year institutions carried at least $30,000 of Federal and private student loan debt. Among graduates of private nonprofit colleges, 25 percent had that level of student debt. And at for-profit institutions, 57 percent of the baccalaureate recipients carried student loans debts of $30,000 or more."* It is not surprising that debt levels are higher at for-profit colleges, since their tuition is not lowered by taxpayer subsidies, and since they generally serve a higher proportion of independent students with little or no family financial support. And while the Department's assertion regarding debt levels may be true, it totally mischaracterizes the scope of the "issue." For-profit institutions account for a small percentage of baccalaureate graduates. Applying these percentages to the 2008-09 graduating class[1], the picture is entirely different. See table below:

	Number of Bachelor's degrees awarded in 2008-09	% of graduates with debt > $30,000	Estimated number of graduates with debt > $30,000	% of Total graduates with debt > $30,000
Public	1,202,435	13%	156,316	47.6%
Private not-for profit	496,260	25%	124,065	37.7%
Private for-profit	84,672	57%	48,263	14.7%

The number of graduates from for-profit institutions with debt greater than $30,000 represents less than 15% of the total such graduates. If this is an area of concern, then why is a solution focused only on such a small minority of that population? The Department has not established any difference in the capacity to repay a $30,000 loan for a bachelor degree graduate from a for-profit institution versus that of a public or independent not-for-profit. In fact, salaries for graduates in the technical, business and healthcare fields typically taught at for-profit institutions exceed salaries of the general population of bachelor's-degree earners. The Department offers no rationale for the $30,000 threshold in this analysis. It simply sates this as is a disproportionate amount of debt for a graduate with a bachelor's degree. As a comparison, 73% of all new car purchases are being financed with an average purchase price of $28,400.[2] Which is more disproportionate? Which loan is likely to cause more financial stress? The Department asserts that low repayment rates are a good indicator of poor programs either because students are not completing their education or because they cannot obtain employment that supports the repayment of their loans. According to the National Center of Education Statistics, neither the debt nor initial salary level has the biggest impact on a student's repayment of their loans. But, the financial circumstances of bachelor's degree recipients in the years after graduation will have an impact. *While loan payments remain constant, income, which is key to the ability to repay, does not: general economic conditions affect income over time, and the data show that students with the highest incomes soon after*

[1] *Postsecondary Institutions and Price of Attendance in the United States: Fall 2009, Degrees and Other Awards Conferred: 2008-09, and 12-Month Enrollment:2008-09 First Look*, National Center for Education Statistics, August 2010

[2] According to the National Automobile Dealers Association

graduation are not necessarily those with the highest incomes 10 years later. On average, students did not run into trouble right away; repayment problems came later.[3] In other words, many students may start out repaying their loans, but because of personal decisions or economic changes unrelated to their education, they fail or are unable to continue repayment. Since the repayment rate reaches out four or more years from a student's last attendance, its relevance as an indicator of program quality is weakened.

IF we assume there is a relationship between and institution's cost and the amount of student debt, a better way to look at this proposition is to evaluate an institution's cost versus the earnings of its graduates. PayScale Inc. is a compensation research and analytics firm. It has the world's largest compensation database and annually publishes a Return on Investment (ROI) analysis of college costs for almost all medium and large U. S. colleges and universities. It calculates the net dollar return and expected annualized return for a 30-year period using actual salaries of college graduates and the published costs for each college. Its 2010 report includes data on graduates from 1980 to the present for almost 600 colleges and universities. That population results in 853 ROI calculations as PayScale calculates separate returns for in-state and out-of-state public universities. PayScale's methodology shows returns that range from $998 (Black Hills State) to $1,688,000 (MIT). A 2009 DeVry University graduate's expected ROI ranks 133rd of 853 schools with an expected return of $888,200.[4]

2. Concern that taxpayer assistance props institutional revenues and imposes unsupportable debt burdens on students.

Essentially, the Department asserts that available financial assistance fuels otherwise unjustifiable tuition and fees charged to students at for-profit institutions. The higher tuition and fees then lead to greater, and unaffordable, student borrowing. This assertion is flawed in at least two perspectives. The assertion would only be true if tuition and fee charges were disproportionate to actual costs and disproportionate to similar costs at public and independent not-for-profit institutions. In fact, for-profit institutions operate with much higher efficiency than not-for-profit institutions. One way to look at this is to compare revenue per FTE[5] (see table below):

[3] *Dealing With Debt 1992–93 Bachelor's Degree Recipients 10 Years Later Postsecondary Education Descriptive Analysis Report,* National Center for Education Statistics, June 2006

[4] Report and methodology found at http://www.payscale.com/education/average-cost-for-college-ROI. PayScale used the same methodology for DeVry as for all other colleges in its list, except that it substituted off-campus living expenses for room and board in calculating total cost for DeVry. Total cost to graduate and graduation rate for DeVry are based on NCES IPEDS data for DeVry University-Illinois.

[5] *2009 Digest of Education Statistics*, National Center for Education Statistics. Revenue and expenses excludes revenues and expenses from hospitals.

2006-07	Revenue per FTE in Constant 2007-08 $	Expense per FTE in Constant 2007-08 $	Net Revenue per FTE in Constant 2007-08 $
Independent not-for-profit 4-year	$ 57,636	40,148	$ 17,488
Public 4-year	$ 35,485	30,981	$ 4,504
For-Profit 4-year	$ 15,182	13,004	$ 2,178
Independent not-for-profit 2-year	$ 20,719	20,221	$ 499
Public 2-year	$ 13,157	12,039	$ 1,118
For-Profit 2-year	$ 15,902	14,347	$ 1,555

On a per FTE basis, only the Public 2-year institutions (with $13,517 in revenue per FTE) operate near the same revenue level as the for-profits and whether this is at the same efficacy level is debatable. For-profit institutions typically have smaller class-sizes than public colleges and universities and provide greater services for financial aid, academic advising and career and employment services.

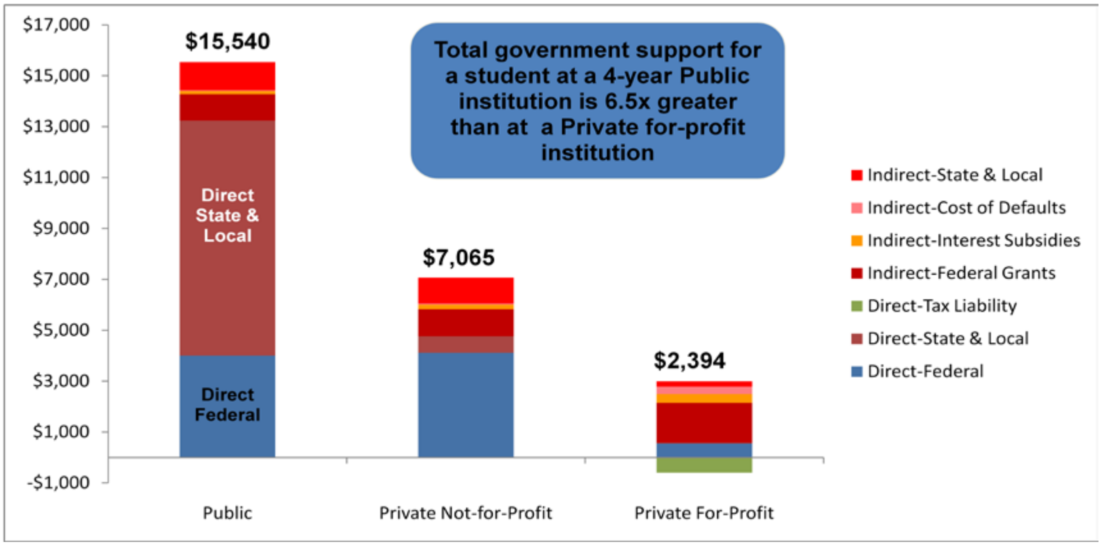
Additionally, the level of student borrowing is not restricted to tuition and fees. A student's financial need and loan eligibility is based on the total cost of attendance which includes transportation, housing and other living allowances. This eligibility often allows students to borrow more than tuition and fees (and receive a credit balance refund). Without a statutory increase in annual loan limits, any tuition increase will decrease the amount of funding available for a credit balance refund. Many for-profit institutions already have financial counselors in place attempting to control the debt levels that students are incurring. But, without regulatory or statutory relief that would authorize controlling debt to levels less than the cost of attendance, institutions are limited in their ability to do so.

3. Concern regarding taxpayer support for profits attained through bad practices and misrepresentation of the for-profit sector.

The Department asserts that for-profit institutions may mislead prospective students because they "*are legally obligated to make profitability for shareholders the overriding objective.*" This is an argumentative assertion and not grounded in fact or on substance. For-profit institutions do have an obligation to protect shareholder value, but that includes controlling for risk that accompanies any misrepresentation of its services and student outcomes. Building shareholder value over time can only be done by delivering value to students. Value is achieved in building quality programs supported by quality facilities and services. A focus on immediate profitability is rarely conducive to building value for students. In fact, the "profitability" of the for-profit sector pales to that of the not-for-profit 4-year sector (see chart above).

The Department is misleading the public within these proposed rules. The Department cites a Florida study that concludes "*that for-profit institutions were more expensive for taxpayers on a per-student* *basis due to their high prices and large subsidies."* The Department's own data shows this to be untrue, even when adjusting for the cost of defaulted loans[6] (see chart below):

Federal, State and Local Government Support, Post-Tax, Per-Enrolled Student, for Four-Year Institutions of Higher Learning, By Type of Institution[1]



Even for 2-year institutions, taxpayer support is almost two times greater for public institutions than for-profit institutions ($6,919 v. $3,628).

DeVry's concerns with the Department's proposed test

DeVry has a number of significant concerns with the Gainful Employment proposal, most of which are related to the indeterminable impact of the proposed rule or the unknown methodologies used in determining the published and proposed rates. The following represent our most significant concerns and where we think the most egregious lapses have occurred in the proposal's development:

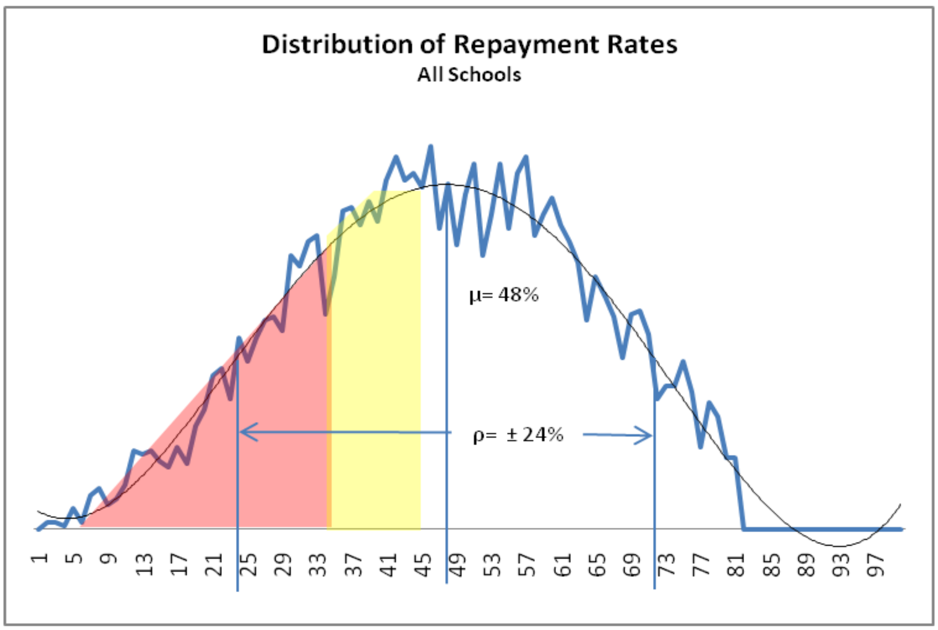
a. Repayment Rate

- *The development of the repayment rate was done outside of the negotiated rulemaking process.* As such it lacks the transparency and breadth of contributions that helps assure relevancy and quality. Despite the follow-up conference call held with the community and the subsequent publication of a question and answer document, there is still too much unknown about the rate and too many unanswered questions as to what populations are included or excluded. According to the Department's own analysis, at least 300,000 students are enrolled in programs that will be terminated from Title IV participation. The Department asserts that these students will be served by other institutions or programs, but does not specify who these institutions or

[6] Direct and Indirect taxpayer support is from the National Center of Education Statistics (NCES). The cost of defaults was derived from NCES and other government data sources by the economic advisory firm, Sonecon LLC.

what these programs will be or how they will be fulfilled. The only institutions adding capacity at this time are for-profit institutions and the Department has proposed rules that will hamstring their ability to rapidly add new capacity. The implementation of a requirement with unknown implications presents too high of a risk to hundreds of thousands of students, many of whom have few or no other options.

- *The repayment rate thresholds are arbitrary, and appear to lack an objective basis tied to the Department's objectives.* There is no statistical connection to the thresholds to establish any linkage to program or institutional quality. In fact, the mean repayment rate for all schools is 48%, with a standard deviation of 24 percentage points. The chart below shows the distribution of the repayment rates for all schools (normalized for population size) with the mean, standard deviation and the punitive zones that result in limitations or termination of program eligibility.



Scores within a single standard deviation in a distribution generally indicate a lack of statistically significant difference in outcomes. The relatively large standard deviation indicates that differences in performance are unlikely to be attributed to a single cause; e.g., program quality. It would indicate that variances in performance are as likely to be due to student attributes and risk factors as institutional or program quality. Establishment of punitive thresholds within a single standard deviation of the mean is contrary to the fundamental tenets of continuous improvement. Expecting improvement from such a large percentage of the population is an extremely heavy lift and is likely to occur only with radical actions, such as completely eliminating access for any prospective student with at-risk characteristics.

Further, the validity of the test is suspect when almost one-half of the colleges fail to meet the expected performance level. The overwhelming majority of minority-serving institutions and community colleges, as well as many urban public and independent colleges and universities, fail to meet the 45% threshold. As such, the proposed regulatory regime would invariably taint these high-quality institutions, right alongside a range of high-quality proprietary providers.

- *The proposed definition of "repayment" ignores students who are repaying. It also penalizes schools for debt incurred at a previous institution.* The proposed rule too narrowly limits the definition of borrowers in repayment to just those whose outstanding principal balance is reduced in a given year. This omits a number of borrowers whose loans are in good standing and many of whom are current in their payment obligations. Last year, the Secretary and the President lauded new loan repayment plans that help borrowers be responsible in repayment, but at the same time reduce the stress of repayment – especially during this economic crisis. These plans, income-based or graduated repayment, permit reduced payments in early years and will typically result in the borrower accruing unpaid interest in those years. Consequently the borrower's principal balance will increase during these years, even though they may be making a payment every month. Borrowers opting for these plans and maintaining a good record of repayment do not count in the proposed repayment rate methodology as repaying their loans. However, these plans are especially attractive to students who want to consolidate loans from multiple lenders, loans from both the FFEL and Direct Loan programs, and loans that were received in undergraduate as well as graduate programs.

  For-profit institutions serve a high percentage of older, non-traditional students. These students frequently attend part-time and take time off to tend to family and work. This pattern leads to multiple periods of enrollment and deferment. During these periods, interest on outstanding unsubsidized loans will accrue. This accrued interest ends up being capitalized and added to the outstanding principal when they return to repayment. The result is that, even though the borrower is current on their payment obligations, there has been an increase in principal balance and their loans fail to meet the requirements to be considered in the repayment calculation.

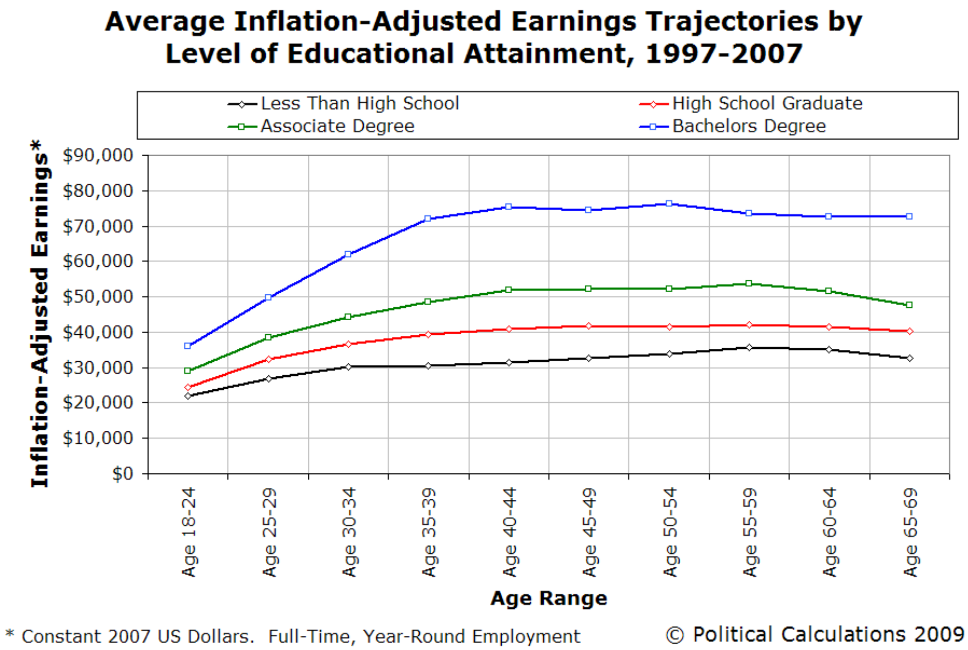
  All of these situations apply heavily to DeVry students, and as a result, have a punitive impact on the repayment rate of DeVry schools. 35% of DeVry University and Chamberlain College of Nursing undergraduate students enroll with debt incurred from prior schools. Last year, the average debt from prior enrollments for these students was almost $14,000. And, of course, the issue is greater at the graduate school level. Almost 75% of DeVry University graduate students have prior debt with this debt averaging more than $33,000. When these students leave DeVry, the combined debt from the multiple enrollments will influence many of these borrowers to opt for a repayment plan that may result in a negative amortization in the early years. The proposal for the debt-burden rate recognized the unfairness of including prior debt in that calculation, but there is no such exclusion in the repayment rate proposal – any ultimate use of a repayment rate must make an allowance so that transfer receiving institutions are not penalized by their students opting for an affordable repayment plan. The alternative is that some institutions will restrict transfer credit – an alternative that serves neither the student, nor the taxpayer, well.

- The exclusion of medical residency forbearances from the allowable repayment rate exclusions in §668.7(b) (4) assures the failure of most medical schools. Indeed, even Harvard Medical School would have a failing repayment rate of 24%, according to the Department's figures; clearly there is a flaw in the test. Only those with a high withdrawal rate with former students immediately entering repayment will have an opportunity for enough students to make repayment against their principal balances to qualify at the 45% threshold. Forbearances are granted automatically to borrowers entering an internship or residency after they have entered repayment. Thus the repayment calculation is triggered, but since the borrower won't be making payments, their loans will only be in the denominator of the calculation.

b. Debt-burden Rate

- The Department proposes to hold schools accountable to a debt-burden calculation that is based on actual earnings of a school's graduates. While we support the use of actual earnings and the inclusion of all graduates (thus counting those who "stray" outside the strict mapping to an occupation), we are concerned with some of the limitations of using that data. Specifically,
    a. We are concerned that the first visibility we will actually have of our debt-burden rate is with the official publication that potentially results in sanctions towards an institution's programs. We are also concerned that there appear to be no plans for interim reporting on a quarterly, monthly or more frequent basis. This prohibits schools from identifying negative trends and responding before they may be subject to sanctions.
    b. We are also concerned with the proposed appeal process. As proposed, an institution will not have access to the data or the calculation used to terminate a program's eligibility from the Title IV programs. This is contrary to the Due Process provisions guaranteed by the U. S. Constitution, and to the Department's long-standing precedents of providing for a cure period. As proposed, institutions, and the hearing officer, must accept as accurate the average annual earnings calculation provided by another Federal agency. This presupposes that either all federal agencies are inerrant or the collateral damage from any errors is acceptable. Neither of these presuppositions is acceptable.

- The Department proposes a single debt-burden rate (or range) to apply to all programs, regardless of level or duration. But one size does not fit all. Much of the Department's rationale is based on the study of Sandy Baum and Saul Schwartz. However, Baum and Schwartz specifically criticize the use of such a blanket threshold, asserting that there is a greater capacity to afford higher debt levels as (expected) earnings increase. This is consistent with the earnings growth rates that are realized with increased education. Many studies, including Department of Labor research, have established that there is a correlation between earnings growth and education level – the higher the education level, the higher the earnings growth rate. The following chart illustrates the difference in earnings growth rate:



The gap in earnings growth is not stabilized until the borrower reaches their mid-forties. The capacity to afford more in debt repayment will continue to grow. The Department's proposal capping the non-punitive threshold at 8% makes no sense. A baccalaureate graduate's earnings will quickly escalate – driving the debt-burden rate lower. It is then inconsistent with this research to assign the same debt-service thresholds to all levels of education.

- The proposed rule for exclusion of debt from prior institutions leads to differential treatment of students who continue their studies at the same institution. §668.7(c).1 excludes any debt obligation incurred from prior enrollment from the debt-burden calculation unless that enrollment was at an institution under common ownership or control with the institution being measured. Consequently, an MSN student at Chamberlain with debt incurred as an undergraduate student at Chamberlain would have all that debt included in the debt-burden calculation. But an MSN student who received her undergraduate degree at Ohio State University would not have her undergraduate debt included in the calculation. Schools thus would have disincentives to develop bridge and support programs to help students transition from undergraduate to graduate programs.

Notwithstanding the significance of any of the issues above, here is the bottom line in our analysis: Using the proposed metrics, DeVry University has a repayment rate of 37% under this flawed methodology. With a median debt load for bachelor degree graduates of about $31,000 and average first-year salaries greater than $44,000, some of its programs will have a debt-burden rate of more than 8% (using BLS 25th percentile data as a proxy for actual earnings). Under the proposed regulatory regime, some DeVry University programs would be restricted from growth and require a debt-warning be issued to prospective students. This despite a track record that includes 79 years of providing highly skilled and in-demand graduates, 90% employment for almost 250,000 graduates since 1975 and, according to PayScale Inc., a strong return on their educational investment using actual costs and lifetime earnings of almost $900,000. DeVry graduate's expected return on their investment exceeds that from a number of schools ranked in the U. S. News % World Report's' top 50, including New York University, Wake Forest University, Brandeis University and the University of North Carolina-Chapel Hill.

That any school with that type of a track record would fail to meet the passing threshold indicates that this proposal is significantly flawed. However, we understand the urgency in developing a program that monitors student borrowing and delivers more robust information for both institutions and students to use. Consequently we do not propose that these efforts be scrapped entirely. We propose the following strategy as an alternative.

Proposed alternative strategy

1. **Use 3-year cohort default rates (at the program level) instead of the proposed repayment rate, and use BLS data for the debt-burden rate.**

   As articulated above, we have a number of concerns with the proposed repayment rate, many of which mirror some of the public comments you have received so far. These concerns are credible and the weight of these in their entirety indicates that the proposed metrics and standards are not ready for use.

   As an alternative, the 3-year default rate has already been legislated as a means to address the possibility of "manipulation" of default rates through the use of deferments and forbearances. ***We recommend using the established 30% rate at a programmatic level to identify programs that need fixing***.

   As previously noted, we also have concerns with using actual earnings data, the periods in which earnings data would be captured and the lack of a known process for capturing those earnings. Also concerning is the lack of transparency into the earnings calculation. ***As an alternative, we recommend that BLS data be used initially for the debt-burden calculation.*** It is knowable information; it can be mapped to specific occupations and does not penalize a school for temporary decreases in earnings that may result from parental, medical or other leaves of absences that all families experience from time-to-time.

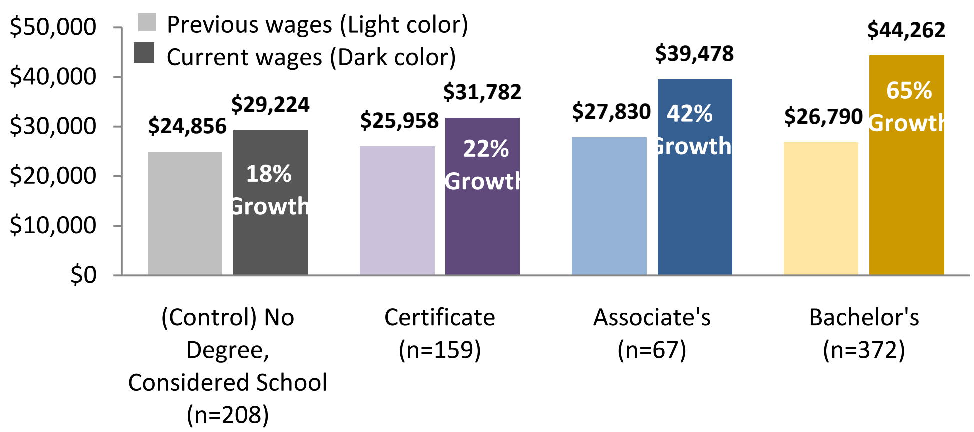
2. **Use metrics that are consistent with the level of education and the long-term value of that education, and so regulate degree and non-degree programs differently.**

   DeVry schools offer programs of study at all levels of higher education – from undergraduate certificate programs to graduate and professional degree programs. We note that there are significant differences among these students in terms of their expectations for their education, their need for support services, including their need for financial assistance and their understanding of the implications of using debt, and their vision of how their education will impact their careers. Measurements of "gainful employment" should correlate meaningfully to the student attributes and expectations that are predominant at each of the various levels of education.

We recommend that the default and debt-burden metrics be used for non-degree undergraduate certificate programs, but not for degree programs, which are better assessed by a test of employment after graduation.

Throughout the Title IV statute and regulations, there are precedents for variances in how eligibility, and student and institutional performance are measured according to program level and student status. For example, academic progress is measured differently for students enrolled in clock hour v. credit hour programs and even differently for students enrolled in standard-term v. nonstandard-term credit hour programs. ***We recommend you extend this concept, measuring whether a program successfully prepares a student for gainful employment differently for different levels of programs.***

Many studies and Department of Labor data show that the expected earnings for graduates with only an undergraduate certificate will be just slightly higher than earnings for someone with only a high school diploma. (We note, of course, that there are other benefits to the certificate graduate, such as lower unemployment rates and better employment benefits.) This earnings data is summarized in the chart below[7].



Thus, we believe it reasonable to control unaffordable debt and unqualified enrollment in non-degree programs through metrics such as those proposed by the Department.

However, expected earnings begin to substantially increase with degree attainment, and thus the proposed GE metrics become less functional as a measure of gainful employment. The return on almost all degrees is substantial, and that return must be measured over the long period for which an individual's investment in a degree is appropriately amortized. Put differently, unlike a student's investment in a certificate course of study, which is generally amortized over a relatively few number of years, a student's investment in a degree program is generally amortized over the lifetime of that individual's career. As such, near-term measurement of earnings as it relates to the debt taken on to obtain that degree is inappropriate.

[7] *This study was conducted by The Cicero Group from one institution's prospective student pool from 2003. The study shows the change in earnings from 2003 to 2010 by level of program attainment*.

Alternatively, in order to assess degree programs, we recommend measurement of how well graduates of those programs obtain employment in their field of study. Specifically, we recommend that a standard like that used by the Accrediting Council for Independent Colleges and Schools (ACICS) be used as the test of whether an undergraduate associate or baccalaureate degree program meets the "gainful employment" requirement.

Further, we recommend that graduate certificate and degree programs not be subjected to new tests – such programs simply do not lend themselves to a "Gainful Employment" type of metric. The Higher Education Opportunity Act (HEOA) included new requirements for surveying employment outcomes of graduates and disclosing this to prospective students. We believe disclosure of this information is an appropriate step at this level, as graduate students themselves are typically the best judge of whether a program supports their employment objectives.

Please note that the DeVry family of institutions includes those at every level, from doctoral down to certificates. We are proposing regulations that would impact all of our schools and programs. Some of our certificate programs may need to show improvement based on these standards and we are committed to achieving such improvements.

In summary, we recommend the following standards as tests for the "gainful employment" requirement:

Program Level	**Debt-burden-to-income threshold**	**BLS Percentile**
Certificate	8%	25^{th}
Associate & Baccalaureate Degrees	60% of graduates employed in their field of study	
Graduate Certificates & Degree	Disclosure of position titles and employers of graduates	

3. **Failure to hit minimum thresholds should result in requirement to develop specific improvement plans, not immediate program termination.**

   Failure to hit minimum thresholds should trigger actions designed to enable the institution to improve. The objective should be to drive improved performance and to increase capacity at that improved performance level – not simply to cut off the weaker performers without the opportunity for cure, which is akin to ejecting a player after their first foul. Only those programs that show no ability to improve performance should be ultimately subject to the Secretary's limitation, suspension and termination authority. This approach is, of course, consistent with the Department's historical practices – when an institution fails to meet either the Cohort Default Rate, the 90/10 or the financial responsibility thresholds, the institution is given an opportunity at remediation before the program or institution is terminated from participation in Title IV.

4. **Continue work on repayment rate and use of actual earnings in the debt-burden rate.** We like these metrics at the conceptual level. With development, testing and refinement, we believe

they have the potential to be more reflective than the current CDR metrics of actual performance and risk associated with the programs. But, they are not yet ready for use. They have not been clearly defined or scoped. They are not transparent in their impact, or capable of being monitored by schools on an ongoing basis. As currently drafted, almost one-half of all colleges would fail to meet the first threshold (45%) for the repayment rate including many well-regarded institutions.

We recommend that you defer implementation of these rates, and assign them to either a special task force or a focused negotiated rulemaking to develop them to a point they could serve as the basis for a regulatory regime that would hold all institutions accountable for the programs and services they deliver. We would be eager to work with the Department in that regard.

Thank you again for the opportunity to comment. As noted above, we are committed to 1) providing high-quality academic programs and services, and 2) assisting the Department in developing strong standards in assuring transparency and accountability within the administration of the Title IV programs. We are available at your convenience to work with you in these efforts and to answer any questions regarding these concerns and recommendations.

Sincerely,

(s)Sharon Thomas Parrott
Chief Compliance Officer and Senior Vice President
Government and Regulatory Affairs

(s)Thomas Babel
Vice President
Regulatory Affairs