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Ms. Jessica Finkel
U.S. Department of Education
1990 K Street, N.W., Room 8031
Washington, D.C. 20006-8502

Re: Program Integrity: Gainful Employment Proposed Rule

Dear Ms. Finkel:

This is respectfully submitted in opposition to the Gainful Employment proposed rule. I will highlight in this response my concerns, objections and recommendations. I will not reiterate all of the facts and figures you have seen in thousands of responses. I want to focus more on the validity and usefulness of the privately funded, career college sector, and frame my comments in the spirit of general fairness in the regulatory and legislative process that built this great Nation.

Let me begin by saying I am heavily involved in the sector, starting as an adjunct teacher in the late 1980s. I have been a teacher, department head, dean, school director, company COO, CFO, CEO, Chairman, and investor. I am currently the Executive Chairman of the Board of the Anthem Education Group and a member of the Career College Association's Board of Directors. From 2001-2006, I served as an ACICS Commissioner and chaired ACICS' board in 2006. I have done in excess of 50 ACICS accreditation visits. However, my response is my own and does not necessarily represent the thoughts or opinions of Anthem, CCA, ACICS, or the general industry. I want to speak more from my personal experience in teaching thousands of career college students and handing out thousands of diplomas and degrees to hardworking, successful and satisfied career college graduates.

I KNOW I have helped change the lives of many students who are now working, taxpaying citizens. Many of my students were unemployed, on welfare, working at McDonalds or Wal-Mart; and, the VAST majority had tried and failed at another sector of higher education. Or, in my opinion, the other sectors of higher education had failed them.

Allow me to briefly defend the private sector of higher education that has been recently attacked in the media. I am chagrined by the well coordinated network of media misinformation, unfounded allegations, innuendos, strong bias' against for-profit colleges and outright falsehoods castigating the entire private for-profit sector in media reports as composed of "bad actors". Based on my 22 years of experience in this sector, nothing could be farther from the truth. The fact that some on the Hill and elsewhere would accept as credible witnesses those who ADMITTEDLY stand to gain millions from short selling stocks is shocking and the behavior of these short sellers should be investigated by the SEC.

The more than 300,000 employees working in the 2,800 institutions in the sector come to work every day intent on providing quality services to their students, now numbering 3.2 million, 11.8% of the total student enrollment in the entire higher education community. It has been my

personal experience that the vast majority of these employees extend themselves on behalf of their students well beyond the expectations described in their employment job descriptions. Many, if not most of them could make more money doing something else. They consider this a passion career and they know they change lives daily. They provide students with opportunities for tutoring, remediation work, advising, counseling, mentoring, as well as delivering quality hands-on academic services and graduate employment assistance. These 300,000 employees change the majority of their students' lives for the better.

I have also taught as an adjunct professor at two state-funded institutions and can assure you the level of student support and services is not in the same league as those provided by career colleges. Also, I was teaching an entirely different group of students. Frankly, my years of teaching at career colleges were much more rewarding than teaching marketing students at a major research university. As I have told many deans and career college teachers, "anyone can teach a 31 ACT student—you can only teach our students if you truly care for them."

I am sickened by some questionable behavior shown in secretly recorded videos of student recruiters and of accusations from disgruntled former students or former employees. I will not defend nor condone the actions of anyone in the for-profit sector who willfully violates laws, regulations or accreditation standards! The Triad of regulators – states, accrediting commissions and the US Department of Education – should investigate these allegations of wrongdoing and, if fraud is PROVEN after reasonable due process to have occurred, then the individuals or institutions involved should be prosecuted to the fullest extent of the law. However, there is no industry with three million current customers that does not have a few dissatisfied. I assure you, my experience at the state-funded institutions found ample instances of student dissatisfaction.

The following eleven points have been well articulated and I present them here only in condensed format:

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.

- 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.

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

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.

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.

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

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

- 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.

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.
- 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.

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.

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. How is this fair? The fact that Harvard Medical School has a repayment rate of 25% is proof that the metric is not even slightly correlated with institutional quality. It tells us about borrower situation not school quality.

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. 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. Further, how will social security reported earnings tell ED the annual compensation of a graduate? There are no dates of employment on a W2 and the use of 1099s for the self-employed has not even been mentioned. Someone could start a \$60,000 job on December 1 and his or her W2 would show \$5,000. How will this be adjusted?

As mentioned, I am sure you have heard these same arguments from thousands of school officials, students, graduates, employers, and many others, including a small number of bipartisan Congressional leaders. If addressed at all, defining gainful employment is a matter that should be taken up by Congress. I urge you to withdraw the proposal and form a task force of DOE Officials, GAO, Industry Leaders, and Legislators to draft a plan that would protect the taxpayer, without discriminating against a particular type of college organizational structure or only certain types of students. A single definition of an eligible institution has worked for health care for years and should be explored in higher education.

In fact, all of American education is broken. Our results in K-12 are an embarrassment to the world. All types of colleges are failing to deliver a return on investment to certain students in certain programs. We need to fix ALL of education and not just focus on one segment that has documented superior outcomes compared to many taxpayer funded schools and colleges.

Despite numerous research papers and DOE's own reports, opponents counter the fact that student demographics are much more a predictor of graduation, default, and repayment by saying, "oh sure, blame the student." I am not blaming the student because of his or her skin color or other demographic. I am blaming the SITUATION that too many students find themselves at risk in. It is also a National tragedy that unemployment for African American men with a high school degree or less is over twice the already far too high unemployment rate.

It is also a tragedy that family status and income level (EFC) predicts gainful employment metrics FAR more than the organizational structure of the college or university. Education is the only hope to save the middle class and greatly diminish the size of the lower class in this country. Now is not the time to penalize the schools that have been serving students in "at risk" situations. More than half my students tried another form of higher education and did not graduate and get a job. Where are they to go now?

I want to close with a true and very personal story. I have two sons, actually three but the story is about two of them. One son scored high on his ACT after graduating from a private high school. He got a full military scholarship to the university of his choice. He chose Auburn. In his first year, he became a volunteer fireman and had saved lives before he was a sophomore. He gave up his scholarship and his parents paid around \$100,000 for his wonderful education. We went to many football games, being a family of Auburn supporters. He lived in a dorm and

had a wonderful five years getting his bachelor's degree in Political Science. He is a poster boy for "traditional" universities, which is what was right for him. Today he is a Firefighter for the City of Birmingham. He makes a little over \$40,000 per year and the City is proposing a 20% pay cut for its most important employees. He loves his job and my wife and I could not be more proud of what he does.

The second son is from my first marriage. He came from a broken home, made poor grades, and dropped out of high school in the eleventh grade. He got his GED with a very high score because he is very smart. He tried a community college where he lived in Florida and the large classes, often cancelled, and other issues just put him in a situation where it did not work for him. At the age of 23, he moved to Alabama and started school at a career college. He was a cabinet maker, earning \$8.00 per hour. It was not a matter of IF he would lose a finger or two in that job; it was "when." He always loved computers and enrolled in a CAD and Animation Associate's Degree. He loved his real-world teachers, never missed a class and earned all "A"s, except for one "B" I believe. He went on to get his bachelor's degree in Computers from the same career college. He has never slept in a dorm, joined a fraternity, or gone to a college football game, at least where he was attending college. He is a Web Master and IT Director today and earns about \$90,000 per year. I believe his first job out of college paid around \$24,000. He loves his job and my wife and my first wife could not be more proud of what he does.

Both sons are white males—the "majority." Their "demographics" had absolutely nothing to do with their vastly different college experiences. Their SITUATIONS did. All students are not alike and all colleges are not alike. I would no more recommend taking Harvard Medical out of Title IV than I recommend taking an ethical career college, who happens to serve students in difficult situations, out of Title IV. I believe most of the problems with the horrible issues in K-12 are due to student situations and not some failing on the part of mostly caring teachers. The Nation should work on these situations without regard to demographics and work on the WHOLE problem and not just one small piece.

I strongly request that DOE withdraw the proposed rules on gainful employment until reliable, transparent, and independent research can be conducted and validated and all these many questions can be debated and answered in the context of much bigger issues, such as the Great Recession, rampant unemployment, and inequality among the races and religions. I believe the mission and vision of the U.S. Department of Education is to assure access to all regardless of their demographics or situation. This rule, as proposed, seems to be 180 degrees counter to that mission.

My family is truly blessed. We paid for both sons' education. Neither would have met the proposed gainful employment standards upon graduation. Yet, the one who is making twice as much money as the other today would probably not be able to obtain Title IV for his chosen career three years from now. Why? Because of the education or student outcomes of the colleges? No, purely because of the organizational structure of the institutions. It is time we measure ALL schools, colleges, and universities on their character and not on their organizational charter.

If the DOE honestly believes it has a valid measure of protecting taxpayer investment in education and refuses to withdraw the gainful employment rules, then it is only fair that they be applied to ALL Title IV participants. My experience tells me when you measure apples to apples for student outcomes, controlling for student situations, career colleges and universities are the far better investment for education related taxpayer dollars.

Thank you for the opportunity to respond to this crucial issue. I stand ready to answer any questions or provide additional information.

Respectfully,

James D. Hutton, Ph.D