BEFORE THE
U.S. DEPARTMENT OF EDUCATION

Program Integrity: Gainful Employment

Docket ID ED-2010-OPE-0012

COMMENTS OF
CORINTHIAN COLLEGES, INC.

September 8, 2010

Introduction

Corinthian Colleges, Inc., hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-referenced docket published on July 26, 2010. Corinthian is one of the largest postsecondary education organizations in North America. At its 119 Everest, Heald, and WyoTech campuses in the United States and Canada, as well as online, Corinthian provides diploma and degree programs in such occupational areas as health care, business, criminal justice, construction trades, transportation technology and information technology. It is expanding access to postsecondary education for over 110,000 students, many of whom are minority and low income individuals underserved by traditional academic institutions. By creating additional capacity in the nation's higher education system and providing positive outcomes in completion and employment and demonstrable value in increased earnings to its graduates, Corinthian is making a substantial contribution toward meeting President Obama's goal of once again making the United States first in the world in postsecondary educational attainment. In 2009, 34,000 graduates of Corinthian's campuses were placed in jobs in the fields for which they were trained and realized an earnings increase on average of 27 percent. Indeed, in the last five years, over 140,000 graduates of Corinthian's campuses obtained such employment and these earnings gains.

The Department of Education should not adopt the gainful employment regulations proposed in the Notices of Proposed Rulemaking published on June 18, 2010 (NPRM 1), and July 26, 2010 (NPRM 2). It should instead withdraw these regulatory proposals for additional study, input, and consideration. As we will demonstrate below, the proposed gainful employment regulations are inconsistent with the Higher Education Act of 1965, as amended (HEA). The proposals also lack empirical and analytical support and will have major adverse consequences by destroying career training opportunities and jobs. In fact, contrary to the Department's expectations, the proposed regulations would be a significant blow against gainful employment by causing over one million students to lose access to their current programs that prepare them for the workforce, and the vast majority of these students will have no alternative available to continue their education and training. The outcomes and value provided by postsecondary educational programs to students and taxpayers are vitally important subjects. The proposals offered in NPRM 1 and NPRM 2, however, fail to address those subjects in a lawful, coherent, and sound way. Much additional work needs to be done by the Congress, the Department, and interested stakeholders before a new regulatory structure focused on outcomes and value can be established.

Corinthian is prepared to contribute constructively to such an effort. Our campuses are accountable for meeting minimum quantitative standards for retention, completion, and placement to national accrediting agencies recognized by the Department. We regularly evaluate our programs against these metrics to ascertain that they provide a good value proposition to our students. If they do not, we take action on our own to cease enrollments and teach out programs. In order to advance a broader understanding of the value proposition of private sector for-profit education's programs, we commissioned research last year by the Parthenon Group. Parthenon used the Department's own data, and some of their key findings were:

- The private for-profit sector is investing $1 billion per year in capital in postsecondary education to expand capacity and access.
- The private for-profit sector serves a riskier student population as defined by the Department.
- The private for-profit sector is producing better graduation rates even when the broader purposes of public institutions – mainly transfer – are considered.
- The full economic cost of producing these graduation outcomes in the private for-profit sector is comparable to that of the public sector.
- **Private for-profit sector students realize income gains of $8,000 per year, or 54%, from their educational investment – $250,000 over a 30-year working life.**
- **Private for-profit sector students' average debt burden is 7.6% at two-year institutions and 4.7% at less than two-year institutions – monthly payments of $162 and $92 respectively.**

It is also noteworthy that Parthenon found that students' awareness of the debt that they were taking on was actually better in the private for-profit sector than in the public or private non-profit sectors. The discontinuity between Parthenon's findings and many of the assertions in NPRM 2 alone suggest that the gainful employment proposals are suspect and should be pulled back for additional study.

This should be a comprehensive look at return on investment across higher education since all students, to one extent or another, pursue postsecondary education for purposes of economic advancement. Debt and earnings gains are plainly key elements that must be examined. But other elements should also be assessed in order to guide a new regulatory approach that would determine comprehensively and without unintended consequences whether the federal investment in postsecondary education is yielding appropriate outcomes. These would include completion, skills and learning achievement, placement, social service costs avoided, and tax contributions. The national accrediting agencies have done extensive data collection, standards development, and verification on completion and placement as a condition of their recognition by the Department over the last 15 years. We urge that their work be utilized. We would also be pleased to contribute the Parthenon research to this effort (which again employed the Department's own data), and to offer our cooperation with additional research, data collection, and experimentation.

In the meantime, however, the Department's proposed regulations must be addressed. We explain the deficiencies in those proposals in the remainder of these comments.

I. The Gainful Employment Proposals are Inconsistent with the HEA

A. The Department Lacks Statutory Authority

On August 2, 2010, Corinthian filed its comments on the proposals in NPRM 1, including the first part of the Department's proposed regulations on gainful employment. In those comments, we demonstrated that the Department currently lacks statutory authority to promulgate the regulations it has proposed based on the term "gainful employment" in sections 101 and 102 of the HEA. We referred the Department to the legal memorandum from the WilmerHale law firm and showed that the Department is dramatically changing the settled understanding of "gainful employment" without any change in the

statute or delegation of additional authority from the Congress. The Department is proposing for the first time to give itself the right to judge the outcomes of postsecondary educational programs. As recently as the Higher Education Opportunity Act of 2008, the Congress has not provided it the authority to do so. We respectfully refer the Department to our comments of August 2, 2010.

We note that the Department attempts to address the problems with its authority in NPRM 2 when it states that the "Department of Education Organization Act gives the Secretary broad responsibility to establish the regulatory requirements necessary for appropriately managing the Department and its programs." (NPRM 2 at 43,617). The Department also claims that the HEA accords it responsibility to ensure that institutions of higher education meet "minimum standards" and that gainful employment is one of those standards. (NPRM 2 at 43,617-18). These assertions are an overbroad and incorrect reading of the relevant statutes. To accept these claims would convert the Department into something it has never been – a Ministry of Education. Other countries and political systems have such ministries with extensive plenary authority to set national higher education policy and to direct and manage their institutions of higher education. The United States does not. The Department's role has been, and remains, to manage the federal student financial aid programs. It may not bootstrap that responsibility into the right to set whatever it may consider to be good higher education policy. Policy making at that level belongs to the Congress, and that is where the Department must go to try to make its case to obtain the authority it is now seeking to exercise.

B. The Proposals Conflict With Other HEA Provisions

1. Student Debt

It is apparent by the end of the preamble in NPRM 2 that the proposed regulations are not really about defining "gainful employment" but about regulating student debt in ways that the Department considers more optimal. This becomes particularly clear as the Department discusses repayment periods on loans, states that "students would be better off without student debt," and asserts that "public policy" should eliminate "excess student debt" even if students "would eventually repay the loans." (NPRM 2 at 43,621-22). There is almost no discussion about jobs and employment. NPRM 2 should have been entitled "Program Integrity: Student Debt."

To do so, however, would have made plain that the Department is now attempting to supersede the policy choices the Congress has made to address student debt. Those choices are reflected in a variety of tools Congress has given students, and those who work with them after they leave institutions, to manage their debt. These include deferments, forbearances, loan forgiveness for pursuing certain career paths Congress has deemed desirable, income-based repayment options, and loan consolidations. The Department may now feel that these choices are too limited or inadequate to address the problems that it perceives with student debt. But it is not for the Department to make such judgments. And it most certainly may not undermine those choices by promulgating regulations that diminish the utility of the options Congress has provided. Yet, that is what the effect of the proposed regulations would be when a completely new concept never mentioned in the HEA – the repayment rate – is defined in such a way

that deferments, forbearances, income-based repayments, and loan consolidations are treated as negatives. The repayment rate as defined by the Department is actually the rate for repayment of loan principal. As a result, the proposed regulations will create incentives for institutions to encourage graduates to avoid the options Congress has accorded them to manage their debt because they will adversely impact the repayment rate attributable to the institutions and thereby affect the eligibility of their programs.

Furthermore, Congress has set up a system to evaluate the performance of institutions in regard to student debt – eligibility based on cohort default rates. Again, the Department may consider that system sub-optimal. But that is how, and the extent to which, the Congress has decided institutions should be held responsible for students' inability or unwillingness to repay their student loans. It has made the policy determination that student defaults within a limited period of time after they have left the institution are a reasonable way to judge the quality of the institution and its educational outcomes. While many have quarreled with the rationale for this system, Congress has decided that students' unwillingness or inability to pay back their loans shortly after they have graduated or withdrawn indicate that they received an inferior educational experience that did not equip them with the means to repay.[1]

Indeed, Congress just spoke to the appropriateness of this system in the HEOA when the cohort default rate regime was adjusted in several important respects – adding an additional year to the cohort default rate period, increasing the default rate caps from 25 to 30 percent, and requiring default prevention plans that institutions were to prepare in partnership with the Department. Congress further spoke to the management of student debt by enacting numerous new options for loan forgiveness, deferral, and income-based repayment. None of these statutory provisions involved the establishment of maximum debt-to-income ratios, minimum repayment rates, or program restrictions that the Department may impose. When it reauthorized the HEA just two years ago, Congress decided how institutional responsibility for student debt is to be handled. The Department is not free to devise a different system that it might think is better.

2. <u>90-10 Rule</u>

The gainful employment proposals are inconsistent with still other provisions of the HEA and, if adopted, will create circumstances where institutions serving those who most need the financial resources provided by the federal student financial aid programs cannot remain eligible. Simply put, the proposed gainful employment metrics are in conflict with the 90-10 rule. That rule establishes that a private sector

[1] The longer a student is separated from the institution the less appropriate it is to attribute a student loan default to the institution for the obvious reason that other factors over which the institution has no control affect the ability to repay – economic conditions, changes in personal circumstances, and so forth. Hence, Congress has set the default rate measurement period at two years and, in the near future, three years, after the student leaves the institution. While this rationale has a certain logic, ample academic studies have concluded that the suppositions that underlay the cohort default rate regime are faulty and that borrowers' socio-economic characteristics and general economic conditions are the real drivers of cohort default rates. *See* Dr. Roger Brinner, "The Urgent Necessity to Adjust Cohort Default Rate Standards," Parthenon Perspectives.

for-profit institution may not receive more than 90 percent of its revenues from the Title IV student aid programs. (Congress just adjusted the application of this rule as well in the HEOA). With Title IV funding dramatically increasing by over 40 percent in the past four years after remaining essentially flat for ten years and with no ability to deny or limit this aid to students, these institutions' compliance with the 90-10 rule is already problematic.[2] Other than radically turning away from serving low-income, high need students, the only way that institutions can continue to meet the 90-10 rule is to raise tuition prices to maintain a gap of at least 10 percent between what Title IV aid will cover and total institutional charges.

At this point, the proposed gainful employment metrics would become a trap. Increased tuition leads to an increase in debt for graduates even with increases in Pell Grants. At the same time, incomes have been under pressure in recent years, and the recession has further suppressed wages. This combination results in higher debt-to-income burdens for students and a likely failure to meet the gainful employment metrics. The only way to come into compliance with those metrics would be to reduce tuition and thus student debt. Indeed, dealing with "[e]xcess student debt" is the avowed purpose of the proposed regulations (NPRM 2 at 43,619, 43,621), and we at Corinthian would actually like greater flexibility to establish appropriate tuition to ensure a sustainable student value proposition. But reduction of tuition ineluctably would lead to non-compliance with the 90-10 rule. Thus, the 90-10 rule and the proposed gainful employment metrics cannot co-exist. The gainful employment metrics would force non-compliance with the 90-10 rule which, unlike the gainful employment metrics, is an HEA requirement. Certainly, a proposed regulation cannot stand if it effectively requires violation of a statutory requirement.

3. <u>Employer Affirmations</u>

A final respect in which the proposed gainful employment regulation is beyond the Department's authority concerns the requirements for restricted programs and additional programs. Section 668.7(e)(1) proposes that a program on restricted status must supply employer affirmations as specified in proposed section 668.7(g)(1)(iii). The latter section requires for all additional programs leading to gainful employment in a recognized occupation that institutions supply the Department with "[d]ocumentation from employers not affiliated with the institution affirming that … there are projected job vacancies or expected demand for those occupations at those businesses. The number and locations of the businesses for which affirmation is required must be commensurate with the anticipated size of the program." The preceding subsection of the proposed regulations, 668.7(g)(1)(ii), would require institutions to provide to the Department projected student enrollment "for the next five years for each location of the institution that will offer the additional program."

[2] The incontrovertible increase in Title IV funding in recent years brings a very different perspective to the statement in NPRM 2 that "for-profit institutions derive most of their income from the Federal student aid programs." (NPRM2 at 43,618). Rather than being suspect and an impetus for the gainful employment proposals, the increase in this source of funding for private sector for-profit institutions is largely out of their control as long as they serve low-income, high need students that other institutions will not or cannot serve and attempt to achieve the very purpose of the Title IV programs – increased access. The gainful employment proposals should not compound the problems associated with 90-10 compliance. Unfortunately, they do.

To begin with, it would be completely infeasible to obtain employer affirmations to this effect. No employer will affirm that they have job openings for a specific number of a program's graduates. To do so could amount to a commitment to hire, and they will not expose themselves to such liability. In addition, employers' ability to foresee demand for employees is limited and governed by economic conditions over which they have little or no control. Even in times of prosperity, no employer can project job openings for five years ahead. To require such prognostications in the period of high unemployment and weak consumer demand the economy is now experiencing is preposterous.[3] Effectively, the requirement would be a ban on new programs leading to gainful employment, and the "restricted" programs would in fact be ineligible.

But one need not debate the impracticability of these proposed requirements. The HEA, as amended by the HEOA, is devoid of any provision that would give the Department the authority to impose such a requirement. The Department claims a power that it has never been accorded – complete control over the offering of new educational programs – and for good reason. Such power would give the Department a stranglehold on institutional innovation and expansion. Again, we have no Ministry of Education, however much the Department may now aspire to that role.

B. The Gainful Employment Proposals Are Without Empirical and Analytical Support and Will Have Major Adverse Consequences

Even if the Department were entitled to hang the elaborate debt-focused regulatory structure on the thin thread of the term "gainful employment," it would still be obliged to justify its proposals with adequate data and analysis and to show that its policy choices are reasonable. NPRM 2 does neither.

A. Insufficient Data and Faulty Premises

The Department has provided insufficient information for affected institutions to understand and evaluate the proposed rules fully. In contrast to the proposal that the Department surfaced in the final days of negotiated rulemaking in January 2010, which would have utilized Bureau of Labor Statistics (BLS) data to determine debt-to-income ratios, the gainful employment proposals in NPRM 2 call for actual income results for individuals who have completed institutions' programs to be used for this purpose.

Critically, the wage data that will be used to determine the median graduate income has not been made available to affected institutions, or even to the Department itself. In fact, the Department has not even

[3] For example, Massage Envy, which operates massage therapy clinics in 42 states and has 16,000 massage therapists, is a significant employer of graduates of our massage therapy programs. It has expanded steadily for seven years. While it is "very pleased with the skills and knowledge they acquired' from Everest's programs and expects to continue hiring them as jobs become available, Massage Envy has informed us that it is not possible to predict the number of such openings in the future. E-mail from CG Funk, Vice President, Industry Relations & Product Development, to Wendy Cullen, September 3, 2010. We have received similar feedback from other employers of our graduates.

specified which federal agency will provide the income data that will serve as the basis for evaluation. If it is the Social Security Administration (SSA), the potential complications are numerous: (a) graduates may receive income in addition to their salaries that is not reported as Social Security wages; (b) graduates may voluntarily take time away from the workforce to care for a sick relative or to have a child (many graduates of for-profit institutions are in these circumstances) which would reduce their reported Social Security earnings; and (c) graduates may be unable to find work despite having been fully qualified by their education for employment in their field of choice due to poor macroeconomic conditions. Recessions disproportionately affect the types of students served by private sector for-profit institutions. Since average earnings are to be utilized, instances where a graduate has zero earnings will unfairly raise the debt-to-income ratios. No one within the Department or subject to this regulation knows whether or to what extent these factors will inappropriately bias the income component of the debt-to-income ratio – one of the key elements of the gainful employment test that has been proposed.[4]

In addition, the regulatory mechanism that would produce this component is non-transparent, to say the least. As proposed, institutions would report students who complete programs and their debt levels to the Department, the Department would receive income data from the unnamed federal agency for these students and perform the debt-to-income calculations, and the Department would report the results to the institution. The institution would have no way of knowing that it might be at risk of failing the debt-to-income test before finding out that it has, and thus would have no way of confidently making modifications in order to enhance its ability to comply with the regulations.

Furthermore, the institution would have no ability to review and challenge the accuracy of the data on which the debt-to-income calculation would be made. This appears to be intentional. NPRM 2 states that "neither the Department nor the institution will be able to review the wage information for specific program graduates" and would limit the discretion even of Hearing Officials to review the accuracy of the data. The system contemplated is an "automated process." (NPRM 2 at 43,629). This black box approach to determining whether educational programs will live or die fails the most elementary notions of due process. It lacks basic checks and balances to ensure that fundamental determinations of eligibility are based on factually accurate data.

Corinthian has already uncovered anomalies that raise questions about the gainful employment metrics. For example, two of our campuses in Bremerton, WA, and Decatur, GA, have solid results placing graduates in the fields for which we train them – 77 and 80 percent respectively. They offer similar programs in health care – Medical Assisting, MIBC, and Massage Therapy. They are, of course, commonly owned and managed. There is every reason to believe that they should both pass a

[4] An apparent timing bias in the proposed regulations will also unfairly depress the income element. It appears that the proposed regulations contemplate measuring earnings from the date students complete their programs and thus assume students will be fully employed upon graduation. Yet, all standards for measuring placement of which we are aware allow for a period after graduation for students to search for and obtain employment. During this period, they will not have earnings. The regulations' failure to recognize a lag between the graduation date and earnings measurement date unfairly biases income downward in the debt-to-income ratio.

reasonable test for gainful employment. Yet, the repayment rate for the Bremerton campus is *three times* the repayment rate for the Decatur campus – 42 *v.* 14 percent. The Bremerton campus programs would be eligible, and the Decatur campus programs would not be. We have found similar anomalies at our campuses in Everett, WA, (placement 72 percent, repayment 45 percent) and Southfield, MI, (placement 73 percent, repayment 14 percent), and at our campuses in Renton, WA, (placement 70 percent, repayment 42 percent) and Jonesboro, GA (placement 73 percent, repayment 14 percent). Based on an internal analysis we have performed, the two factors that best explain these results were whether the students were African American and the extent of their prior education. Results like these raise doubts about the validity of both the data and the regulations themselves and concerns about the unintended consequences of the regulations.

The rationale for the proposed regulations presented in NPRM 2 also contains a number of propositions that, upon examination, are untrue, exaggerated, or distorted. Most importantly, the metrics themselves are without a sound basis. The debt-to-income thresholds are purportedly "research-based" and "industry-used." (NPRM 2 at 43,620). While the research sources for the debt level percentages are not cited in NPRM 2, Departmental and other advocates for the gainful employment metrics have repeatedly claimed that studies performed by Sandy Baum for the College Board support an 8 percent standard. An examination of the report that Baum prepared on this subject shows that claim to be unfounded. In *How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt*, Baum and her co-author actually ***criticized*** the 8 percent standard. They found five weaknesses with it, were skeptical of its importation from the mortgage industry, suggested that 18-20 percent was a more appropriate upper limit, cautioned against wholly objective, mechanistic approaches, and concluded that programs like Income Based Repayment are the best debt management tools. [5] It is inexplicable that the Department would continue to claim a research and industry basis for the metrics it proposes.

In fact, evidence has recently come to light that the metrics were chosen arbitrarily with the achievement of certain results in program ineligibility in mind. On August 12, 2010, Morgan Stanley convened a conference call with MaryEllen McGuire, a former Senior Education Advisor to the White House Domestic Policy Council. After incorrectly citing Baum's report and mortgage underwriting practices as the basis for the 8 percent standard, McGuire explained the 12 percent threshold was chosen because it "quite honestly, is just 50% more than the 8%." McGuire then went on to explain that "runs" were performed using different percentages for the repayment rate thresholds to see "what we believe the market can bear" – the number of institutions that would be identified as impacted. Explaining that the long term plan is to build capacity in the community colleges to take the students now served by the private sector for-profit schools, McGuire suggested that the percentages were chosen to result in a certain number – but not too many – of the programs rendered ineligible during the "transition year" as "millions of dollars … pour into the community college systems" to increase their

[5] A comprehensive critique of what the Department appears to continue to rely upon in NPRM 2 may be found in a letter from Harris Miller, President and CEO, Career College Association, to Hon. Arne Duncan, June 3, 2010. Reliance on mortgage standards is especially inapt; borrowers in the Home Affordable Modification Program (HAMP) have median debt-to-income ratios of 63.5 percent.

capacity.[6] This account of the methodology and motivations for the gainful employment metrics belies the rationale stated in NPRM 2 and indicates that damaging if not destroying private sector for-profit institutions is the real aim of the proposed regulations.[7]

The rationale in NPRM 2 contains other unsupportable contentions that the Department evidently believes provide factual support for the gainful employment proposals. It cites a recent study completed for the Florida legislature that supposedly concluded that "for-profit institutions were more expensive for taxpayers on a per-student basis due to their high prices and large subsidies." (NPRM 2 at 43,618). This study, however, stated that while students typically pay more to attend private career education programs, "some public programs are more expensive when the state's contribution to the program is considered." That is because "[s]tudents' costs represent a relatively small percentage of total program costs at public institutions," with state appropriations funding 70% of the costs.[8] The "large subsidies" run to the public institutions – community colleges and state universities – and not to the private sector for-profit institutions.

But one need not look to a Florida study. The Department's own data fail to support the proposition that private sector for-profit institutions are more expensive. A report just released by the National Center for Education Statistics (NCES) shows that four-year for-profit institutions in 2009-10 had lower average tuition and fees than four-year private nonprofit institutions and almost the same average tuition and fees as those charged by four-year public institutions for out-of-state, *i.e.*, non-subsidized, students. These for-profit institutions' percentage increases in tuition and fees between 2000-01 and 2009-10 were the lowest among all types of four-year institutions.[9]

Yet another assertion that cannot withstand examination in NPRM 2 is that "for-profit institutions may be subject to less oversight by States and other entities." (NPRM 2 at 43,618). Since no factual basis is offered for this claim, it is hard to know to what it could possibly be referring. In fact, for-profit institutions are heavily and sometimes singularly regulated by the states. Such regulatory structures exist in Florida, Texas, and many other states. To the degree that this is an allusion to the demise of the regulatory regime under the discredited and now-defunct Maxine Waters Act in California, our comments filed on August 2, 2010 in response to NPRM 1 show that the supposed lack of regulation of for-profit institutions in California is mythology. In fact, it is private nonprofit and public institutions that frequently enjoy exemption from state regulation based on their regional accreditation.

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[6] Transcript of Morgan Stanley's Call on Regulatory and Legislative Issues in the For-Profit Education Sector at 2-4 (August 12, 2010)(remarks of MaryEllen McGuire).

[7] The requests for comments on even more stringent measures in NPRM 2 lend support for this conclusion. *E.g.,* NPRM 2 at 43,619-20 ("we seek comment on whether programs with a loan repayment rate of less than 45 percent but higher than 35 percent should be subject to the loss of title IV, HEA program funds;" "We seek comment on whether a program with a loan repayment rate below a specified threshold should be ineligible for title IV, HEA funds, regardless of the debt-to-income ratio").

[8] Office of Program Policy Analysis & Government Accountability, Report No. 10-18, at 8-9 (January 2010).

[9] *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* (NCES 2010-161) at 4 (hereinafter cited as "*2009 NCES Report*").

A crucial premise running through NPRM 2 is that student loan debt is higher for graduates of for-profit institutions. (NPRM 2 at 43,618). Here, NPRM 2 engages not in demonstrable inaccuracy, but in exaggeration and distortion. A recent study published by the College Board examined bachelor's degree recipients with the highest debt levels and has often been cited as support for the notion that students at for-profit institutions have higher debt levels than those at other types of institutions. This study is of limited value for several reasons. Most for-profit institutions and their programs are still at the two-year and less level, not at the bachelor's level.[10] In addition, the report excludes federal PLUS and home equity loans – financing sources that families of students attending traditional institutions are more likely to use than students at for-profit institutions. Even so, the report found that the vast majority of students – 89 percent – with high debt (in excess of $30,500) are graduates of traditional institutions. In addition, the study found that the average debt of all high-debt borrowers was $45,700. The average debt levels by sector were $45,100 for public institutions, $53,200 for private nonprofit institutions, and $47,600 for for-profit institutions.[11] This hardly supports the conclusion that student loan debt is a particular problem at for-profit institutions. In fact, a comprehensive look at average cumulative debt shows that undergraduates at for-profit institutions do not carry the most debt. The real problem is at private nonprofit institutions where average cumulative debt per borrower is significantly higher than at public or private for-profit institutions.[12] Anecdotal evidence points in this direction as well.[13]

A related claim made by the Department and others is that a much higher number of graduates of for-profit institutions default on their loans than at other institutions. When one controls for the student population served, this is an incomplete, if not misleading, statement. The Government Accountability Office (GAO), for example, recently agreed that it is the characteristics of the students served by for-profit institutions, and not the institutions themselves, that account for their higher default rates.[14] Moreover, NPRM 2 elides a significant point on this score about the dollar *amount* of defaults and focuses only on the percentage of students within the sectors who default. Surely, in making sound public policy in this area, the magnitude of defaulted loans is at least relevant. A fuller picture of student loan defaults is necessary to ensure that any regulatory initiatives are not inappropriately directed principally at for-profit institutions.

B. <u>Major Adverse Impacts</u>

As part of its justification for the proposed regulations, the Department applied the proposed regulations to institutions and programs in Missouri that would be subject to regulations if they were

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[10] *2009 NCES Report* at 6,7, 13-14.

[11] College Board, *Who Borrows Most? Bachelor's Degree Recipients with High Levels of Student Debt* at 8 (2010).

[12] As shown in data collected at www.finaid.org, Student Loans, the average total debt/borrower for four, two and less than two-year institutions is: $16,369 at public institutions, $17,162 at for-profit institutions, and $26,683 at private nonprofit institutions, excluding parent PLUS loans. When the latter are included, the average total debt/borrower is: $18,927 at public institutions, $19,157 at for-profit institutions, and $33,330 at private nonprofit institutions.

[13] *E.g.*, R. Lieber, *Placing the Blame as Students are Buried in Debt*, New York Times (June 1, 2010)(Religious and Women's Studies graduate of NYU has nearly $100,000 in debt and debt-to-income ratio of 30% after taxes, and has been in deferment since graduation).

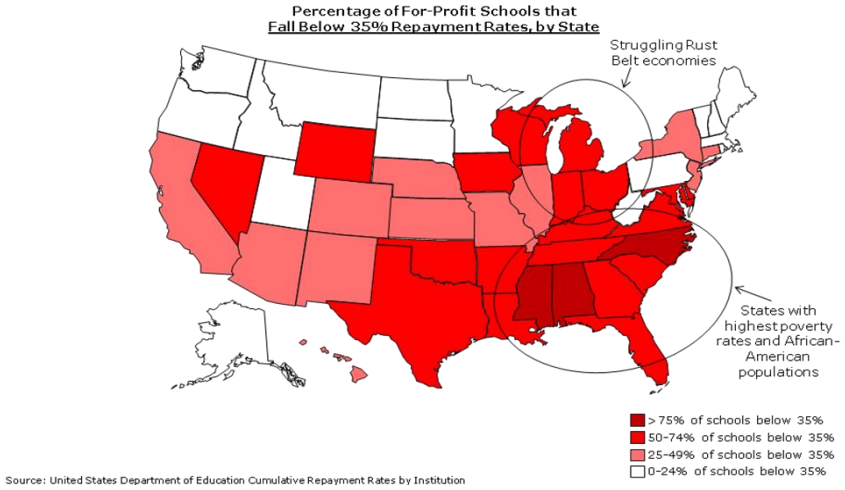
[14] GAO-09-600 at 19-21 (August 2009).

adopted. The Department utilized information from the National Student Loan Data System (NSLDS) and income data kept by the Missouri Department of Education to assess the impact of the proposed rules. According to the Department, 5 percent of the programs in Missouri would be ineligible and 16 percent of the students there would be affected by the ineligibility of those programs. These estimated impacts are woefully low.

Corinthian asked the Parthenon Group to analyze the data utilized by the Department in making these claims, and understands that Parthenon will be filing their own comments on the proposed regulations. We respectfully, but urgently, refer the Department to those comments. **The Parthenon comments show, contrary to the estimates presented in NPRM 2, that the proposed regulations would adversely affect over one million students and devastate the private for-profit sector of higher education.**[15] Taking Secretary Duncan at his word that the President's goals for greatly increasing postsecondary attainment cannot be achieved without a healthy and productive for-profit sector, it is clear from Parthenon's analysis that the gainful employment regulations would ensure the failure of the Administration's efforts.

In summary, the data the Department utilized omits students without federal loans, students with private loans, unemployed students, and Missouri students who have moved out-of-state. After correcting for just these omissions and exclusions, Parthenon estimates that, conservatively, 32 percent of students in for-profit institutions would find themselves in programs deemed ineligible and that an additional 28 percent would be in programs deemed restricted. Parthenon estimates that of 3.5 million students enrolled in programs that would be subject to the proposed regulations, 1,025,836 would be in ineligible programs, and an additional 911,285 would be in restricted programs.

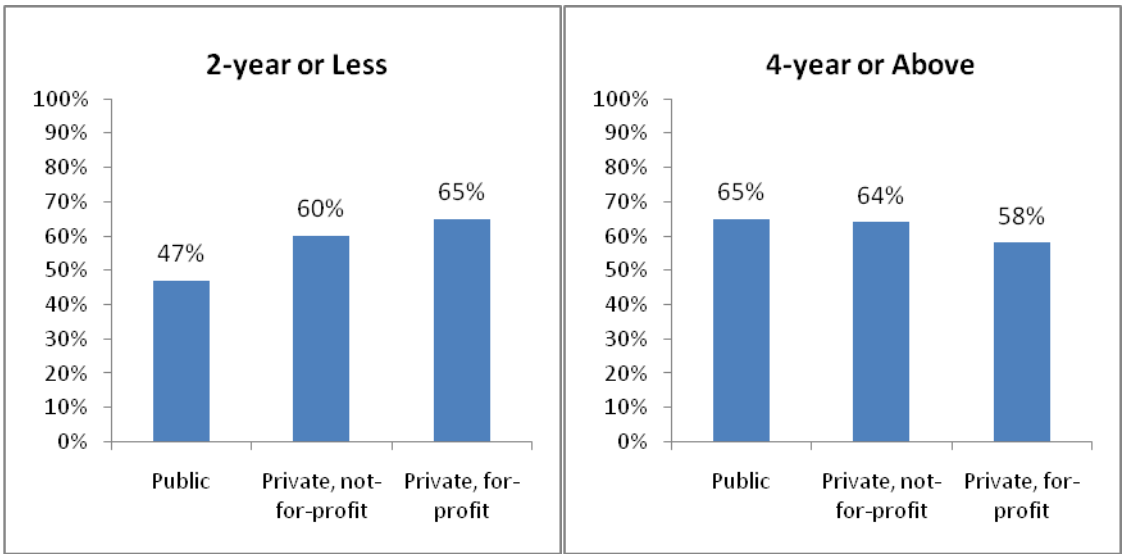
While the effects will occur across the country, states with the highest poverty rates, minority populations, and struggling economies will be especially hard hit. Based upon the repayment rates provided by the Department, the map below shows that the effects in the south and so-called Rust Belt will be severe:



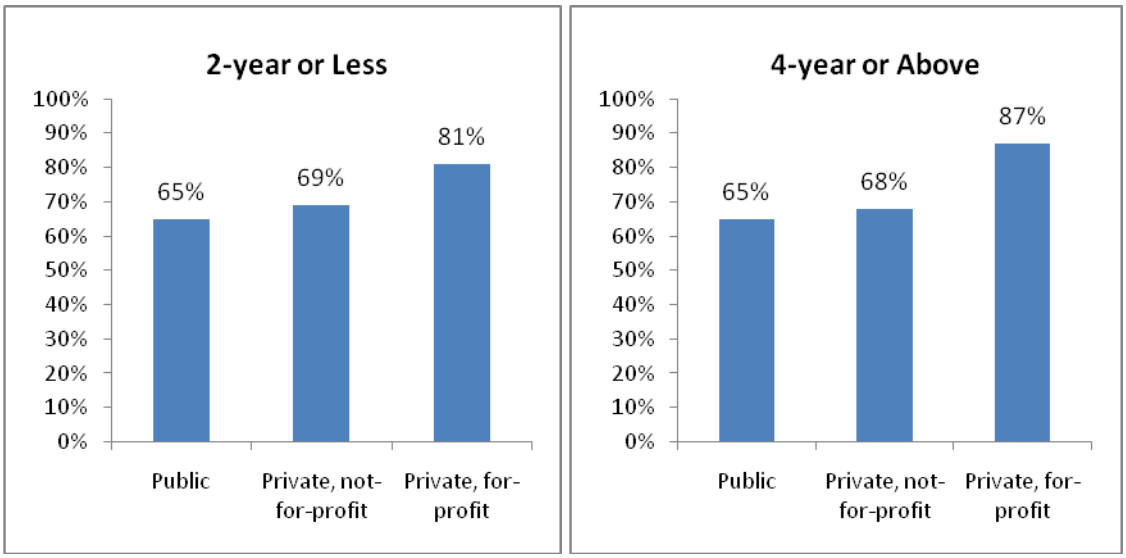
[15] According to the *2009 NCES Report* at 18, enrollment in for-profit institutions in 2008-2009 was 3,216,179.

Then matched with IPEDS data, these impacts will fall especially heavily on minority and female students:

% of Non-White Students in Programs with Repayment rates <35%



% of Female Students in Programs with Repayment Rates <35%



We believe health care programs will be disproportionately impacted.

The student population in Missouri is not representative of the national student population, and nor is Missouri's program mix. In addition, the Department's findings must be adjusted to reflect worsened economic conditions since the period two years ago that the Department analyzed. The Department's analysis of the Missouri data makes no attempt to anticipate what the impact of the recession might have had on the metrics in question. This is a significant failure because unemployment caused by the recession has increased among all sectors of the populace, and the recession has hit particularly hard

the relatively young, non-Caucasian demographic disproportionately served by for-profit institutions. Unemployment today is up 50 percent for 20-24 year olds alone. The recession has also caused significant under-employment of individuals who have managed to retain jobs. Rising unemployment and under-employment will necessarily have a negative impact on both repayment rates and income levels, leading more programs to become ineligible or restricted than the Department has anticipated when the rule goes into effect—even programs structured so that they would pass the relevant tests in a more normal economy.[16] Ignoring the impact of cyclical economic effects outside of the control of an educational institution further speaks to the haphazard analysis that underlies the Department's estimates of impact.

Indeed, the Department's proposals are precisely the wrong remedy at the wrong time. The consequences of adoption of the proposals will be exactly what the economy does not need – additional significant job losses. As noted at the outset of these comments, Corinthian's campuses alone placed 34,000 individuals into jobs in the fields for which they were trained in 2009. We believe that the performance across the private for-profit sector would multiply this figure many times over. The wholesale ineligibility of education and training programs that will result from the adoption of the gainful employment regulations will leave the majority of these individuals without the means to be employed in the workforce or to cure their under-employment by improving their skills.

The Department should be under no illusions that an alternative exists for these individuals. The forecast in NPRM 2 of the capacity of other institutions, particularly community colleges, to absorb the displaced students is hopelessly optimistic, for three reasons. First, many programs offered by private sector for-profit colleges are not offered by most public institutions. Such programs as Massage Therapy, Medical Assisting, MIBC, Pharmacy Technician, Dental Assistant, Medical Administrative Assistant, Surgical Technician and HVAC are not broadly available at public institutions. Second, capacity at most community colleges is already very limited because state funding has been decreasing.[17] In fact, the gainful employment regulations would be, in effect, a shift in cost burdens from the federal government (Title IV aid to students at for-profit institutions) to state governments (which subsidize public community colleges). Third, students who attend for-profit institutions have often tried and failed at community colleges, either because of a lack of faculty support, or because the campus was too far away, or because classes were offered at inconvenient times. Many of Corinthian's students have enrolled at our campuses because of their disappointment with community colleges.

While the denial of employment opportunities to the students enrolled in affected programs is of most concern, job losses will also occur for the employees of institutions and suppliers of these institutions whose programs lose eligibility. Corinthian alone employs more than 15,000 individuals. The type of impact demonstrated above must lead to the termination of faculty, administrators, managers, and support staff associated with programs wrong-headedly deemed ineligible. We again refer the Department to the comments filed by the Parthenon Group. They estimate the loss of 100,000 jobs from the adoption of the gainful employment regulations.

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[16] *See* C. Dougherty, *Incomes Fall in Most Metro Areas*, Wall Street Journal A2 (August 10, 2010).
[17] *See* Funding and Access Issues in Public Higher Education: A Community College Perspective viii.

As the U.S. Chamber of Commerce stated in its comments filed on August 18, 2010, "this ill-conceived regulation would result in jobs lost and fewer Americans getting the postsecondary education and training they need to secure a job in today's economy." The Chamber went on to note that private sector investment and innovation in higher education are critical and that the proposed regulations would be "lethal" to programs that enroll significant numbers of low income students. The Chamber concludes that:

> "The focus of the federal government should remain on growing the U.S. economy and creating jobs. Yet, this rulemaking would limit educational and economic opportunities for many Americans. The Chamber urges the Department to withdraw the Notice of Proposed Rulemaking."

Corinthian concurs and joins in that request. In the midst of a recession and high unemployment, the proposed gainful employment regulations will, in fact, hurt gainful employment.

Respectfully submitted,

Peter Waller
Chief Executive Officer