

## THE COALITION FOR EDUCATIONAL SUCCESS

Preparing the New American Workforce

Ed-Success.org

December 16, 2010

Honorable Tom Harkin  
United States Senate  
Washington, DC 20510

Dear Senator Harkin,

At your request as Chairman of the Senate Health, Education, Labor, and Pensions Committee, on August 4<sup>th</sup>, 2010, the General Accounting Office released a report on the for-profit higher education sector. Based on a review of the tapes released to some of the targeted schools as well as a close review of GAO's "corrected" November 30<sup>th</sup> version of the report, it is now clear that the GAO's work product was riddled with selective omissions, unsubstantiated conclusions, and careless inaccuracies.

Most disturbing, all of the errors disclosed in the report were shaded against the schools, suggesting a measure of willful intent. It is wrong and unfair, now as it ever was, for the report to be used as the basis for any policy, particularly a policy that unjustly singles out for-profit schools and not all of higher education. But that is exactly what the Department of Education has done, as evidenced in the attached August 14<sup>th</sup> letter from Secretary Duncan to you.

GAO's credibility is now in serious question. In the same spirit of openness and accountability that you have asked of the schools in a series of far-reaching document requests and ongoing investigations, we ask that you:

- Insist that the GAO release all of the source tapes, notes and other materials concerning its probe of for-profit higher education. This should include the full 90-100 hours of tapes referred to by the GAO in its testimony on August 4<sup>th</sup>.
- Release all of the communications and contacts between the HELP Committee and your office staff with the GAO and the Department of Education around the report, both before its original release and up to and through the release of the amended version on November 30<sup>th</sup>.
- Call on the Department to immediately meet its obligations under the Freedom of Information Act and release all documents and communications concerning the report.
- In all fairness, you must stop citing the now dubious report as justification or as support for the Department's "Gainful Employment" rulemaking or for any potential Congressional action until the accuracy of the GAO report can be verified.

- Finally, given that the Department has relied extensively, and now mistakenly, on the GAO report as a basis for its proposed GE rules, you should insist that the Department suspend the rulemaking process.

The GAO report has already done extensive damage to our schools and to the students, faculty and employers who depend on them. A badly done report and badly done analysis has led to bad policy. To limit any further damage, it is important that the Department suspend the rulemaking process to allow the full Committee to conduct its own review of the GAO report.

Filled with intentionally false and distorted statements, the GAO study was purposely, and perhaps illegally, slanted to create negative perceptions of for-profit career colleges. At the September 30<sup>th</sup> Committee hearing, you said that, “the HELP Committee depends on companies to completely and accurately provide information for analysis.” You should apply the same standard to the GAO, the Department of Education and the HELP Committee itself.

Sincerely,

A handwritten signature in cursive script that reads "Lanny J. Davis".

Lanny J. Davis

cc: Committee on Health, Education, Labor, and Pensions

enclosure

**Key Policy Letters from the Education Secretary or Deputy Secretary**

August 13, 2010

August 13, 2010

Honorable Tom Harkin  
United States Senate  
Washington, DC 20510

Honorable Michael Enzi  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman and Senator Enzi:

Thank you for holding the second in a series of hearings on the accountability and oversight of proprietary institutions of higher education that participate in the Federal student assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). Let me assure you that the Department will respond quickly and aggressively to the troubling findings of the U.S. Government Accountability Office (GAO) investigation that documented indicators of fraud and deceptive marketing practices at several for-profit colleges. Given the important and growing role that for-profit colleges play in delivering higher education programs, it is essential that we do all we can to identify and eliminate exploitive practices when they occur. I am writing to describe our current plan.

As you know, GAO sent undercover investigators posing as students to 15 for-profit colleges. Recognizing that the severity of the issues varies, at all 15 schools, GAO found false or misleading statements about accreditation, the requirements for repayment of student loans, graduation rates, job placement, or likely earnings. In four cases, school officials encouraged students to submit apparently fraudulent financial information in order to qualify for federal student aid.

The unethical and potentially illegal practices uncovered by GAO are unacceptable. We have a responsibility to ensure that students can make informed choices about investing in postsecondary education, and that taxpayers' investments in the Federal student aid programs are helping students. We will act swiftly on that responsibility. We are investigating the specific findings of wrongdoing, strengthening our enforcement of existing rules, creating new approaches to detect and prevent abusive recruiting practices, and expanding institutional disclosure and related consumer information.

#### Response to the GAO Findings

The Department's Office of Inspector General (OIG) will examine GAO's specific findings. The OIG will take appropriate action, including referring for criminal prosecution all individuals who are determined to have been involved in fraudulent or criminal activities.

Federal Student Aid (FSA) is also reviewing the GAO findings as a possible basis for investigations of and enforcement actions against schools. FSA may demand the return of improperly obtained funds or terminate an institution's eligibility to participate in the Federal student aid programs. These actions reinforce the Department's current oversight efforts, including both on-site and off-site program reviews, targeted data reviews, and review of consumer complaints and reports of waste, fraud, and abuse.

Finally, FSA Chief Operating Officer Bill Taggart will send a letter shortly to all college presidents to remind them of the potential consequences of fraudulent or deceptive recruitment, admissions, and financial aid activities.

#### Expanding and Strengthening Enforcement

The Department is already in the process of strengthening FSA's oversight of the Federal student aid programs, and GAO's findings have led the Department to explore other options for improving this oversight. The Department, in its 2011 Budget request, is seeking additional resources to increase the capacity for and effectiveness of Departmental oversight. FSA is also in the process of hiring more than 60 additional staff to strengthen oversight of schools and conduct 50 percent more program reviews of postsecondary institutions each year. In the near future, FSA will also hire a new Chief Customer Experience Officer to manage consumer protection activities.

In light of GAO's findings, FSA is also exploring potential enhancements to existing data analysis efforts under way that provide early indicators of fraud or other risks of impropriety. For example, FSA is developing a new Integrated Partner Management System that will capture information from audits, financial statements, accrediting

agencies, and recertification reviews, which will be used to target enforcement efforts.Â

In addition, we will be reviewing GAO's undercover project and its methods as well as the similar practices of other Federal agencies. As part of FSA's planned investment in its consumer protection activities, the Department will be developing a program to use these methods to assess institutional compliance with existing statutory and regulatory requirements, including testing the accuracy and appropriateness of information provided by institutions to prospective students through recruiters and financial aid advisors.

Finally, the recently enacted Improper Payments Elimination and Recovery Act established a recovery audit contractor program, while new fraud detection and forensic auditing tools show promise in strengthening efforts to prevent fraud and abuse. Â We are committed to working with the Office of Management and Budget and the Chief Financial Officers Council to identify government-wide best practices that may have application for higher education and student aid programs. This review is consistent with FSA's business model to continuously challenge status quo enforcement mechanisms in search of solutions that have the potential to improve on current results.

#### Stronger Rules

The Department has proposed new regulations for program integrity for Title IV programs that are on schedule to be finalized by November 1, 2010, and, under the HEA master calendar, will be effective July 1, 2011.Â The proposed rules include enhanced state enforcement measures, additional guidance on misrepresentation, and changes to rules on incentive compensation.Â

States have a critical role and responsibility in overseeing postsecondary institutions, along with accrediting agencies and the Department. Â Postsecondary institutions are required to have a state license to be eligible for Federal financial aid. Â However, state oversight activities vary widely. Â Under the proposed rules, schools receiving Federal student aid would be required to have a license from a state entity that maintains a list of authorized institutions and has procedures to accept and investigate complaints, and to remove institutions from the list.Â The loss of a license from this agency would mean that the school would become ineligible to participate in the Federal student aid programs.

The proposed rules would also grant the Department stronger authority to prevent an institution from making false, erroneous, or misleading statements about its educational programs, its financial charges, and the employability of its graduates.Â The proposed rules would apply to all statements made by institutions and their agents to students, prospective students, members of the public, accrediting agencies, states, and the Department.

The HEA prohibits institutions from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activity.Â However, the current regulations provide 12 "safe harbors" that allow schools to avoid this rule.Â These safe harbors have given license to some institutions to pay their recruiters based on success in securing enrollments.Â The proposed rule would eliminate these exceptions because allowing compensation based on the number of enrollees creates incentives to pressure or deceive prospective students.

These proposed rules, when finalized, will complement the Department's companion set of proposed program integrity rules, which would set standards for non-degree programs at all institutions and most educational and training programs at for-profit institutions to demonstrate that they are preparing students for "gainful employment," as required by the HEA.Â In their entirety, the proposed rules will help to ensure that students are protected from unscrupulous practices and protect taxpayers from the misuse of Federal funds.Â

#### Consumer Disclosure

In some cases observed by GAO, prospective students struggled to get accurate information on the academic programs in which they were interested.Â This information included program costs, graduation rates, and job placement rates. Â The Department is working to make this and related information available directly to students and families to the extent possible.Â The Department's on-line Free Application for Federal Student Aid (FAFSA) form gives students an independent source of information on graduation rates, retention rates, and transfer rates.Â The FAFSA also links to the Department's College Navigator Web site, which recently added new information on college "net price," which is the actual cost of attendance "not just the sticker price" including living expenses and scholarships, for students of different incomes. Â The College Navigator Web site also includes detailed college information, including programs offered and graduation rates.

The Department has also recently proposed regulations that would require additional data disclosure to prospective students. Â For example, certain non-degree and educational and training programs as mentioned above, which are eligible to receive Federal student aid for their students if they prepare those students for "gainful employment in a recognized occupation," would be required to disclose their former students' student loan repayment rates and debt-to-income ratios.

My staff and I will continue to work with you, your colleagues, and other Federal agencies to detect and eliminate fraudulent or misleading activities by postsecondary educational institutions that endanger students, put taxpayers at risk, and otherwise misuse Federal funds.Â We thank you for your leadership on this important issue and look forward to an open dialogue and meaningful action in the days and weeks ahead.

Sincerely,

/s/

Arne Duncan

cc: Committee on Health, Education, Labor, and Pensions

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Last Modified: 08/17/2010