ConsumersUnion®
POLICY & ACTION FROM CONSUMER REPORTS

June 4, 2013

Wendy Macias
U.S. Department of Education
1990 K St. NW, Room 8017
Washington, DC 20006

Re: Negotiated Rulemaking Committee; Public Hearings (Docket ID: ED-2012-OPE-0008-0054)

Dear. Ms. Macias:

Consumers Union, the policy and advocacy arm of *Consumer Reports*®,[1] appreciates the opportunity to comment on the Department's plans to engage in further negotiated rulemaking on higher education issues, and offers recommendations for the topics that such rulemaking should cover.

We urge the Department to redouble its efforts to implement a strong gainful employment rule, as well as prevent evasion of other laws meant to protect students and taxpayers from shoddy programs. We also encourage the Department to closely monitor developments in the market for campus debit cards, and to work with the Consumer Financial Protection Bureau to ensure that all debit cards receiving student aid funds have strong, guaranteed protections.

For over 75 years, Consumers Union has advocated for fairness in the marketplace. We strive to promote transparency and choice, and we aim to give a voice to consumers whose hard-earned money is put to work every day to invest in their futures and stimulate our economy.

Education is one such investment – a very important one – and it is becoming ever more expensive.[2] Meanwhile, average family income (adjusted for inflation) is lower than it was a decade ago, making it even harder to keep up with rising tuition without taking out a loan.[3] As a result, more and more households in the U.S. must borrow to pay for higher education - according to recent data, two-thirds of all college students graduate with student loan debt.[4]

Now more than ever, choosing a higher education program is an important financial decision, as well as a personal and educational one. This is why it's important to remember that an

---

[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

[2] The National Center for Education Statistics estimates that just in the academic years between 2000–01 and 2010–11, prices for undergraduate tuition, room, and board at public institutions rose 42 percent, and prices at private not-for-profit institutions rose 31 percent, after adjustment for inflation. *See* Nat'l Ctr. for Educ. Statistics, Fast Facts, Tuition Costs of Colleges and Universities, http://nces.ed.gov/fastfacts/display.asp?id=76.

[3] College Board, Trends in Higher Education, Trends in College Pricing, Changes in Family Income Over Time, http://trends.collegeboard.org/college-pricing/figures-tables/changes-family-income-over-time (last visited June 3, 2013).

[4] THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2011 1 (2012), *available at* http://projectonstudentdebt.org/files/pub/classof2011.pdf.

individual enrolling in school is not just a student, but a *consumer* of education services – and as a consumer, that student should be given a fair deal.

Given the financial stakes in today's market, students and their families deserve a good return on their investment: access to high-quality educational programs that translate into personal growth and increased employability for the student, and increased productivity for greater society.

Unfortunately, that investment is at risk, especially when it comes to the for-profit sector of higher education. The numbers tell the story. According to Department data provided to the Senate Health, Education, Labor & Pensions Committee for a two-year study of the industry, for-profit colleges enroll 13 percent of students seeking higher education, but contribute to 47 percent of student loan defaults.[5] The Department estimates that for student loan borrowers who left school in 2009 (with or without graduating), approximately 22 percent of those who attended for-profit schools defaulted on their loans within three years.[6] Nonetheless, these schools consumed an estimated $32 billion in federal taxpayer dollars in the 2009-10 school year - roughly 25 percent of the total amount going to higher education programs.[7]

Federal aid should only go to career education programs that effectively train students and prepare them for "gainful employment in a recognized occupation."[8] That was the plain language and intent of Congress, and we urge the Department to continue its important work to give effect to that intent. It is imperative that the Department take steps to ensure that students and taxpayers are not subsidizing ill-gotten profits for schools offering programs that do little more than put their students in debt.

For these reasons, we urge the Department to focus its next round of negotiated rulemaking on the development of a strong gainful employment rule. Despite recent legal challenges to the Department's last round of negotiated rulemaking, the courts have made clear that the Department has authority to define gainful employment.[9] The Department's existing data on federal aid recipients already provides useful indicators of which schools are likely failing to serve their students.

The Department should take steps to improve the rule, for example, by setting a stronger threshold for the program repayment metric. The Department's current threshold only requires that 35% of the former students in a given program be repaying their loans – yet virtually all students attending for-profit schools take out student loans.[10] This allows a program to receive federal funding even if *most* of its former students are in debt and not actively paying off their loans – yet such a result strongly suggests that the program is failing to sufficiently prepare students for the job market so as to justify the debt burdens it places on them.

---

[5] S. COMM. ON HEALTH, EDUCATION, LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37, pt. 1, at 17 (2012).

[6] U.S. Dep't of Educ., FY 2009 Official National 3-Year Cohort Default Rates, http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdrschooltype3yr.pdf (calculated Aug. 5, 2012) (breaks out data by institution type).

[7] S. REP. NO. 112-37, pt 1, at 19, 30.

[8] 20 U.S.C. § 1001(b)(1) (2012).

[9] *See* Ass'n of Private Sector Colls. & Univs. v. Duncan, 870 F. Supp. 2d 133, 148 (D.D.C. 2012) (noting that in promulgating a gainful employment rule, "the Department has gone looking for rats in ratholes--as the statute empowers it to do").

[10] S. REP. NO. 112-37, pt. 1, at 22, 129 (an estimated 96% of students at for-profit schools borrow student loans).

We also urge the Department to hold schools to greater accountability for failing to meet the metrics for gainful employment – a school that fails to meet two out of three metrics, even for one year, is likely putting its former and current students at risk of suffering financial distress.

In addition, we urge the Department to take steps to prevent manipulation of cohort default rates through the use of loan forbearances and deferments, consolidating higher- and lower-performing campuses, or other tactics that mask responsibility for a program's low performance.[11] The Department should prevent the use of similar tactics to evade the 90-10 rule,[12] which requires for-profit colleges to obtain at least 10 percent of their revenue from non-Title IV funding sources. Schools need to be held accountable when their programs are doing little more than saddling students with taxpayer-financed debts that they cannot afford to repay.

Finally, we encourage the Department to work with the Consumer Financial Protection Bureau in order to ensure that students' financial aid disbursements are not linked to costly and potentially risky campus debit cards. Prepaid debit cards in particular can come with multiple fees, and may not have the same protections as debit cards linked to bank accounts.[13] As the Bureau considers changes to federal regulations governing electronic fund transfers,[14] the Department can play an important role in providing information about the different types of campus debit card arrangements on the market. This will help the Bureau's efforts to level the playing field and protect consumer deposits linked to all types of debit cards.

We thank the Department for considering these comments, and look forward to working with the Department in the future on higher education issues.

Sincerely,

Suzanne Martindale
Staff Attorney

[11] *See id.* at 174-85.
[12] *See id.* at 159-74. These longstanding abuses are well-documented in the Senate report.
[13] For more information about prepaid cards, *see* CONSUMER REPORTS, PREPAID CARDS: LOADED WITH FEES, WEAK ON PROTECTIONS (2012), *available at* http://consumersunion.org/wp-content/uploads/2013/02/Prepaid_Cards_Report_2012.pdf.
[14] *See* Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 30923 (proposed May 24, 2012) (advanced notice of proposed rulemaking regarding prepaid cards).