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TO: Interested Parties
FROM: The Institute for College Access & Success
DATE: October 31, 2013
RE: Gainful employment proposals submitted by negotiators

This memo reviews some of the proposals submitted to the U.S. Department of Education by members of the negotiated rulemaking panel on gainful employment. All of these proposals were submitted after the September negotiating session and prior to September 30, the deadline set by Department staff in order to give the Administration adequate time to consider the proposals before developing materials for the final negotiating session, now scheduled for November 18-20.

Key recommendations submitted to the Department with which we agree include:

1. Include a repayment rate measure in the program assessments;
2. Pass all career education programs where most graduates do not borrow (i.e., where the median loan debt of completers is zero);
3. Focus a rigorous new program approval on colleges with problematic programs;
4. Provide relief to students who enrolled in programs that lose eligibility;
5. Require disclosure and reporting of more meaningful and verifiable job placement rates;
6. Require effective disclosure and reporting of meaningful program information; and
7. Prevent cohort default rate (CDR) manipulation through adoption of a program-level CDR or other means.

Any questions about this memo may be directed to Pauline Abernathy or Debbie Cochrane of TICAS at (510) 318-7900.

1. <u>Include a repayment rate measure in the program assessments</u>. The legal aid alternate negotiator submitted a proposal, on behalf of the working group, to reinstate a repayment rate metric to work alongside the debt-to-earnings ratios. Unlike the debt ratios, the repayment rate measures the ability of all of a program's borrowers to repay their debt, not just those who completed the program.

Including noncompleters in the assessments is crucial. Without them, program assessments would *overestimate* the value of some programs from which few students graduate. For example, under the Department's August draft proposal which did not include a repayment rate in the assessments, a program in which 99% of students borrowed and dropped out quickly could pass the metrics with flying colors, so long as the debt burden of the 1% of completers was deemed manageable. Excluding noncompleters would also *underestimate* the value of other programs, such as those providing high-value training where completion is not necessarily required for employment and students are frequently offered high-paying jobs before they complete their training (e.g., some community college welding programs).

We support the structure of the working group's proposal, which would allow programs with very high repayment rates to pass the rule, no matter their debt-to-earnings ratios, and eliminate Title IV eligibility for programs that have very low repayment rates for two consecutive years, regardless of their debt-to-earnings ratios. The rationale is that if a very high share of a program's former students is paying down their debt, it demonstrates that their loan debt is not burdensome. Similarly, if very few of a program's former students are paying down their debt, it demonstrates that the debt is *not* manageable, regardless of how their debt compares to their earnings. Two years is a much more reasonable timeframe for allowing poor programs to continue to receive funding than the four years proposed by the Department for "zone" programs. Under the working group's proposal, programs with repayment rates in between the high and low thresholds would be required to pass both debt-to-earnings ratios.

Importantly, the negotiators chose not to specify the high or low repayment rate threshold, and instead suggested that a panel of experts be tasked with determining them. It is essential that the repayment rate thresholds be both rational and defensible. However, since the negotiators selected for the committee were not selected on the basis of their expertise in lending industry standards, it may be reasonable to defer to other experts' determinations of where to set the cutoffs. The definition of a repayment rate is another critically important issue, particularly as the repayment rate for disclosure in the Department's August draft proposal was substantively very different from the repayment rate measure in the final June 2011 gainful employment rule. For example, the 2011 repayment rate counted the loans of borrowers in income-driven repayment plans as being paid down when they were being paid down, but not when their balances were increasing or staying the same. In contrast, the repayment rate in the Department's August draft would automatically count all borrowers in income-driven repayment plans as repaying their loans, even when their balances are ballooning. This definition would obviously affect where the thresholds should be set, and could be highly misleading as a consumer disclosure because a program could claim to have a 100% repayment rate when *none* of its former students are able to pay down their loans and all of their balances are growing.

Other aspects of the repayment rate definition that affect the thresholds include the treatment of Public Service Loan Forgiveness and whether the rate is calculated based on dollars or borrowers (the 2011 rate was based on dollars while the August draft rate is based on borrowers). If experts outside of the negotiating committee are tasked with both defining how the rate is calculated and setting the high and low thresholds, the regulations should include the guidance necessary to determine a calculation that best fits its intended purpose: ensuring that student loan borrowers have at least enough resources to pay down the debt from their career education program.

2. Pass all career education programs where completers' median loan debt is zero.
Negotiators representing community colleges and financial aid administrators proposed incorporating into the new gainful employment rule a provision from the 2011 rule, which specified that programs with a median loan debt of zero be considered to meet the measures established under the rule. The Department's August draft proposal based program assessments on the debt burden of completers receiving Title IV aid only, which for some programs is a small fraction of program completers. This is inappropriate since programs in which most graduates do not borrow are by definition not consistently leaving students with burdensome debt. It is

also at odds with related statutory precedent: federal law acknowledges the importance of the share of students borrowing in interpreting student loan default rates.[1]

Further, putting low-cost, low-debt programs at risk of losing Title IV eligibility – as could occur under a rule that considers only Title IV students' debt, no matter how small a share of the students they are – runs counter to the Department's goal of supporting programs that avoid saddling students with unmanageable debt. Take a program with 100 completers, including 15 students who received Title IV aid but only 10 of whom borrowed. The debt burden of just 10% of its completers could jeopardize the future of the program, even though 90% of its completers did not borrow.

The Department could pass all career education programs where most graduates do not borrow without collecting student-level information about all program completers. One way to do this would be to compare the number of program completers with debt, which the Department can tally for a given academic year from NSLDS, with the total number of program completers for the same academic year as reported to IPEDS. Another way to implement this provision would be to have colleges attest, subject to audit, that the majority of program completers in a given year did not borrow to attend the program.

3. <u>Focus a rigorous new program approval on colleges with problematic programs</u>. Negotiators representing community colleges and financial aid administrators recommended the creation of a new program approval process that focuses where problems are most likely to occur: at colleges with a history of creating and running weak career education programs. Under the negotiators' proposal, colleges would only have to seek new program approval from the Department if they had one failing program, two zone programs, or if they recently voluntarily closed a program similar to the one for which they are seeking approval. Such a proposal would limit the burden on the Department by focusing attention on colleges with a history of problematic programs and provide regulatory relief to institutions and programs with strong career education track records.

While the concepts outlined in the proposal are sound, the Department and the committee will want to consider which timeframes to specify. For instance, we recommend scrutiny of new programs at schools that recently had failing or zone programs. In addition, we recommend that the regulation require new program review at new schools and at schools that recently eliminated and added a majority of their programs.

For colleges with programs subject to upfront approval, we recommend consideration of some of the rigorous ideas detailed in the proposal submitted by the primary consumer negotiator. That proposal, reflecting the thoughts of the working group on the topic, would require colleges to identify upfront key information about each new career education program, such as required programmatic accreditation and exams, employment opportunities, and projected debt-to-earnings ratios.

4. <u>Provide relief to students who enrolled in programs that lose eligibility</u>. The legal aid negotiator submitted a proposal, on behalf of a working group, to provide relief to students

[1] For more about the participation rate index appeal which enables colleges with low borrowing rates to avoid cohort default rate sanctions, see section 4.8 of the U.S. Department of Education's Cohort Default Rate Guide: http://www.ifap.ed.gov/DefaultManagement/guide/attachments/CDRGuideCh4Pt8PRI.pdf

who enrolled in programs that lose eligibility for federal aid. These students took out federal loans and received Pell Grants to attend programs that, by the Department's own definition, failed to prepare students for gainful employment in a recognized occupation. Such students should not be responsible for repaying loans they received to attend these programs, and the Pell Grants they received should not count against their lifetime limit. Two of the options in the proposal would provide relief *at no cost to taxpayers* either by requiring schools to refund these students' tuition or by requiring non-public schools to post a surety bond or letter of credit for any zone or failing program. There is precedent for both options, and they would also provide schools with an added incentive to improve failing programs and keep programs out of the zone. At the September meeting, multiple negotiators made compelling arguments for such an approach, including representatives of consumers, veterans, students, legal aid, and colleges.

5. Require disclosure and reporting of more meaningful and verifiable job placement rates. The primary negotiator for state attorneys general submitted two proposals on behalf of the job placement working group, one of which is aimed at improving the comparability and reliability of job placement rates. The need for changes has never been more clear or urgent.[2] Earlier this month, the California attorney general filed a lawsuit against Corinthian Colleges accusing the company of deliberately inflating its job placement rates, and in August the New York attorney general reached a $10.25 million settlement with Career Education Corporation over similar charges.[3]

While the negotiators' proposal does not establish one universal definition of job placement, it *establishes minimum standards*, based on existing requirements used by the Education Department, states, and/or accreditors, which would dramatically improve the comparability and reliability of the job placement rates provided to consumers. For instance, it would require that jobs last for at least 13 weeks, which would prevent schools from counting one- or two-day employment as job placements. The proposal includes practical solutions to many of the other most common problems with current job placement rates.

The negotiators recommend that job placement rates be both disclosed to consumers and reported to the Department. The report from the NCES Technical Review Panel on job placement rates noted that rates could be reported to the Department even if they are not included in IPEDS.[4] Reporting to the Department will enable the Department, states, researchers, and consumers to have easy access to the job placement rates for comparable programs at different schools, and will also likely improve compliance at individual schools.

The negotiators' proposal would require all career education programs to calculate, disclose, and report a job placement rate, regardless of whether they are currently required to calculate one by their state or accreditor. While this would ensure that all consumers have easy access to more

[2] See Burd, Steve. "Obama Administration Should Stop Punting on For-Profit College Job Placement Rates." *Higher Ed Watch*. http://bit.ly/1cOktNT.

[3] See Office to the California Attorney General, October 20, 2013 press release, "Attorney General Kamala D. Harris Files Suit in Alleged For-Profit College Predatory Scheme," available at http://bit.ly/1f6rJ8X; and Office of the New York State Attorney General, August 19, 2013 press release, "A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement With For-Profit Education Company That Inflated Job Placement Rates To Attract Students," available at http://bit.ly/14Wxmpg.

[4] Report and Suggestions from IPEDS Technical Review Panel #34: Calculating Job Placement Rates. https://edsurveys.rti.org/IPEDS_TRP/documents/TRP34__SummaryPackage_suggestions_final.pdf.

comparable and reliable job placement rates when comparing career education programs at different institutions, it would also place an additional burden on colleges that do not currently calculate job placement rates or are required to calculate them using a different standard, including community colleges in some states. If the committee were to determine that this additional burden is too great at this time, applying the negotiators' proposal only to career education programs at colleges required by their accreditor to calculate a repayment rate would still be a significant improvement over current policy. This would have the effect of improving current job placement rates without requiring any schools that are not currently calculating them to start calculating them.

6. Require effective disclosure and reporting of meaningful program information. The alternate negotiator for state attorneys general submitted a detailed proposal, on behalf of a working group, to ensure that the program information disclosed to consumers is easy to find and meaningful, and is reported to the Department as well as disclosed to consumers. Given how difficult it is to find and understand the current gainful employment program disclosures on some college web sites,[5] the proposal specifies where and how the information should be disclosed to consumers, based on current Federal Trade Commission guidance and state attorney general experience and settlements.

The proposal recommends that the program information also be reported to the Department. The regulations would require certain information to be included in the disclosures and give the Secretary discretion to include additional information after consumer testing. For instance, while the regulations would not mandate schools to disclose if they spend more on marketing, advertising and recruitment than on instruction, the regulations could be drafted to give the Secretary authority to require such a disclosure after public comment and consumer testing. The business and industry negotiator submitted a proposal on the reporting of this information by some schools, noting that the Department could also use this information in its oversight of schools.

Other program disclosure and reporting recommendations in the working group proposal include:

- Include all students in the disclosures. All students, regardless of whether they receive Title IV aid, should be included in the program-level information. The Department regularly and legally collects *aggregate* data on students who do not receive Title IV aid and can do so here without running afoul of the court's concerns about collecting *student-level* information on students who do not receive Title IV aid. To illustrate why it is so important to include all students, consider a program in which 100 students enroll, 80 complete on time, but only 20 students received Title IV aid and 10 of them completed on time. Under the Department's draft proposal, this program would have a 50% on-time completion rate (10 out of 20 Title IV recipients), even though 80% of the students completed on time.

[5] For examples of problems with the current disclosures, see the working group proposal and Appendix F of TICAS' June 2013 comments on topics for Department of Education negotiated rulemaking at http://www.ticas.org/files/pub/TICAS_June_2013_neg_reg_comments.pdf.

A similar distortion would occur if the median debt calculations were based on just Title IV recipients or just borrowers, rather than on all students. For example, if the median debt were based just on Title IV recipients or borrowers, a program where only 10 out of 100 graduates borrowed could have the same median debt as a program where 90 out of 100 graduates borrowed. This would be misleading, as the fact that 90% of graduates had no debt is highly relevant to consumers and prospective students. The median debt of this program's graduates is zero, and should be disclosed as such by calculating median debt based on all graduates.

- Issue preliminary and final disclosure templates. To make the current consumer disclosures easier to find, use and compare, the Department should immediately develop and publish a draft preliminary disclosure template for additional comment. Once the preliminary template is finalized, programs would be required to use it to disclose the information required under the current gainful employment regulation. After the new regulations go into effect on July 1, 2015, schools would be required to use a new final template developed by the Secretary, subject to consumer testing and consistent with the new regulations.

- Improve the student warnings about programs that could lose eligibility. The proposal includes recommendations for improving the warnings provided to students and the legal justification for such warnings. While the particular wording may require further refinement, warning needs to be clear, conspicuous, and compelling regarding the program's performance jeopardizing students' ability to receive federal grants and loans.

7. Prevent CDR manipulation through adoption of a program-level CDR or other means. The primary student negotiator submitted a proposal to establish a program-level cohort default rate (pCDR) for all career education programs. pCDRs would be a "standalone" metric and would *not* be a substitute for any other gainful employment assessments. Similar to institutional CDRs, programs with low borrowing rates or few borrowers would be exempt from sanction.

The main benefit of a pCDR would be to deter schools and programs that fail to prepare students for gainful employment from manipulating institutional CDRs and other metrics. One industry analyst went so far as to call CDRs "irrelevant for investors" due to being "an easily manipulated statistic," and that institutional CDRs will only matter if the gainful employment regulation includes a pCDR.[6] There are multiple additional ways by which the Department can and should curb CDR manipulation, some of which are administrative and others regulatory,[7] and the student negotiator's proposal urges the Department to explore them.

[6] "In our opinion, CDRs have been an easily manipulated statistic that was generally irrelevant for investors until last month when ED threatened to establish a new program level 3-yr CDR test in its new Gainful Employment (GE) rule. As this year's CDR data shows, institutions have become extraordinarily adept at managing these rates, but a program-level test would be far more granular than the OPEID unit currently evaluated and, thus, much more difficult to control….if ED drops this idea from the next version of GE II, then CDRs will return to their role as an easily managed cost of doing business." Excerpt from Height Analytics Report, "FOR-PROFIT EDUCATION: CDR Analysis – CDRs Only Matter if ED Establishes New Test in GE," October 2, 2013.

[7] See pages 14-19 of TICAS' comments on topics for negotiated rulemaking submitted on June 4, 2013 at http://www.ticas.org/files/pub/TICAS_June_2013_neg_reg_comments.pdf.