COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
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September 13, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Re: Docket ID ED-2018-OPE-0042

Dear Secretary DeVos:

I write this comment in strong opposition to the rescission of the "Gainful Employment" (GE) rule proposed in the Notice of Proposed Rule Making (NPRM) published in the Federal Register on August 14, 2018. Finalized in 2014, the GE rule has a simple premise: to ensure that career programs keep tuition and fees in line with the earnings students could reasonably expect to make because of the program. It provides disclosures to alert students when programs are not meeting debt-to-earnings (D/E) metrics and consumer protection safeguards that eliminate access to federal student aid if a program fails such metrics for multiple years.

This crucial regulation sets the compliance standard for a longstanding mandate in the *Higher Education Act of 1965* (HEA) that requires career programs to either provide "training to prepare students for gainful employment in a recognized occupation" or lose access to federal student aid.[1] Without a compliance standard set through rulemaking, this statutory requirement will go unfulfilled, leaving students and taxpayers to suffer at the hands of predatory programs pedaling high-cost, low-quality degrees and credentials.

The Department of Education's (Department's) given rationales for rescinding the GE rule are unsubstantiated. Of note are the following specious arguments:

- **The NPRM misuses research findings to purposefully mislead taxpayers.** The Department claims that new research challenges the validity and accuracy of using certain D/E calculations in the rule. However, this is not the case. Sandy Baum, one of the researchers cited in the NPRM, has publicly stated that the Department's interpretation draws the opposite conclusion her research made, amounting to a misrepresentation.[2] Baum is on record stating "[t]he [2014] GE rules are, if anything, too permissive."[3] This selective use of sources reflects the relative weakness of the arguments to rescind the GE rule.

- **The NPRM wrongly assumes that cost alone provides an accurate measure of program quality.** The NPRM suggests that high-quality programs have a greater chance of failing GE "simply because it costs more to deliver the highest quality program."[4] This is the first of many places where the Department decides to focus on only one half of the D/E calculation to make its point. Defining a high-quality program as one that has high costs neglects a key part of assessing quality: whether a program has better results (i.e. higher earnings for completers) when compared to other programs. The Department's suggestion that a program is high quality simply because it costs more reflects what is regarded in the higher education community as a rampant fallacy – one that is, at least in part, responsible for elevated higher education costs.[5] A program that has low costs but results in higher earnings to students obviously has higher "quality" than one that has high costs and low earnings. Such a program would have no problem passing the GE rule.

- **The NPRM feigns concern with institutional burden.** Claiming the GE rule imposes undue institutional burden while simultaneously proposing to expand the earnings disclosure requirements to all Title IV eligible programs is contradictory in nature. If institutional burden is a deeply held concern by this Department, it would consider keeping the disclosures narrowly focused on certain programs.

- **The NPRM falsely asserts that the GE rule limits postsecondary access based on racial, gender, and geographic considerations.** Many for-profit schools have an established track record of enrolling disproportionate numbers of racial and ethnic minorities, lower-income individuals, and single mothers.[6] The schools use aggressive recruiting tactics and convince these individuals that the school's career programs are the key to a better life.[7] Students enroll in these programs not because of a lack of accessible options, but because the programs successfully target underserved communities and low-information consumers. However, there are programs that serve these same student populations without failing GE. Analyses of GE data show several instances of similar career programs in the same geographic area with drastically different D/E outcomes.[8] In some of these cases, it is a career program at a for-profit school that has better D/E outcomes than a nearby program at another for-profit.[9] This is proof that career programs, even at for-profit institutions, can both serve vulnerable populations well and pass GE. Data also show that when low-quality career programs lose access to federal aid, students are still able to access higher education, often by enrolling in comparable, lower-cost public programs.[10] Instead of recognizing these truths, the Department argues that rescission is necessary so as to not limit access to career programs for underserved student populations. To allow the lowest-quality programs to aggressively target vulnerable populations of students, and then suggest we cannot have a rule in place that would hold these programs accountable because such oversight would limit postsecondary access for vulnerable students is insulting.

- **The NPRM advances a baseless claim the GE rule inhibits workforce readiness.** To the contrary, evidence shows that career schools are using GE as a tool to rethink which programs provide students with a greater chance of success in the workforce.[11] Even representatives of the for-profit education industry have agreed that the rule is working as it should.[12] Additionally, there are a host of pressing issues facing American workers, such as wage stagnation, the erosion of power to organize, unpredictable schedules, and lack of access to paid sick leave and other benefits that continue to be ignored by the Trump Administration.[13]

These baseless arguments are founded on a deeply disturbing premise: there are justifiable reasons to provide low-quality programs access to students and their federal student aid dollars. Rescinding the rule suggests there is no need to intervene when a career program charges more than $30,000 for a credential that results in earnings of less than $15,000 per year.[14] Eliminating the rule when data show that, in many cases, students would have comparable earnings if they had never even attended some career programs is baffling.[15] To rescind GE and place no check on the ability to access postsecondary education opportunities that saddle students with a lifetime of unsurmountable debt is unconscionable.

Furthermore, by choosing to rescind the rule in its entirety, the Department is abdicating its duty to regulate in the best interests of students and taxpayers. This abdication is fully aligned to the desires of low-quality programs and institutions that, under federal statute are subject to the GE requirement and accompanying regulation.

This proposed action does not exist in a vacuum – we have one year of GE data that clearly show what is at stake with this rule. In the first round of GE data released January of 2017; nine out of 10 colleges with career programs had no failing programs.[16] While eight out of 10 for-profit schools also had no failing programs, 98 percent of the over 800 programs that failed the rule were offered by for-profit colleges.[17]

Since taking office, the Trump Administration has extended deadlines for schools to comply with the rule, effectively suspending implementation of a rule that has been in effect since 2015;[18] declined to renew contracts with vendors who compile GE data for the Department, signaling intent not to implement the regulation;[19] supported House Majority efforts to strike the operative language from the HEA that allows the Department to regulate on GE;[20] and been sued by multiple State Attorneys General for failure to uphold the current rule.[21] Based on this track record, the decision by the Department to rescind the rule seems less of a logical endpoint to a thoughtful process and more akin to a step toward realizing the Administration's larger goal of redirecting tax dollars to unregulated corporate interests in higher education. By the Department's own analysis, the rescission of the GE rule will result in more than $5 billion of additional federal student aid flowing to programs that would not have had access due to failing GE.[22] Even considering the Department's flawed arguments in their most favorable light, the logical course of action would be to amend the rule to reflect the Department's concerns, not to rescind it in its entirety.

Lastly, along with rescinding the GE rule, this NPRM seeks comment on the proposal to provide program-level outcomes data for all Title IV programs. This proposal is, in no way, a substitute for ensuring that career programs and programs at for-profit institutions are providing students with educations that lead to gainful employment in a recognized profession, which is the legal requirement of HEA. Compliance with this law must be the focus of the Department's regulatory process. Full rescission of the GE rule will leave students, taxpayers, and policymakers unable to determine whether career programs provide their students gainful employment in a recognized profession.

In the laws establishing and organizing the Department, the mission statement of the Department includes promoting "preparation for global competitiveness by fostering educational excellence."[23] The GE rule ensures that workers who choose to enhance their skills in career programs can do so with faith that the program will provide a real chance at a better job and a better future.

I therefore urge you to abandon the proposed rescission and restore the GE rule.

Sincerely,

Bobby Scott

**ROBERT C. "BOBBY" SCOTT**
Ranking Member
Committee on Education and the Workforce

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[1] 20 U.S.C. 1001(b)(1).

[2] *See* Andrew Kreighbaum, "Questioning the Evidence", INSIDE HIGHER EDUCATION, Aug. 23, 2018, *available at* https://www.insidehighered.com/news/2018/08/23/researcher-says-devos-misrepresented-her-work-justify-repeal-student-loan-rule.

[3] *See* Sandy Baum, "DeVos Misrepresents the Evidence in Seeking Gainful Employment Deregulation", THE URBAN INSTITUTE, Aug. 22, 2018, *available at* https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation.

[4] 83 FR 40171.

[5] *See* e.g., Robert Ronstadt, "High Tuition Doesn't Equal Quality", FORBES, Mar. 10, 2009 ("a similar price/quality disconnect exists between community colleges and "for profit" schools, with the latter charging inflated prices for similar, if not the same programs while enticing students to finance their educations with expensive loans."), *available at* https://www.forbes.com/2009/03/10/college-debt-smart-shoppers-personal-finance-retirement-ronstadt.html#68c34082127b.

[6] *See* e.g., Melinda Anderson, "When For-Profit Colleges Prey on Unsuspecting Students", THE ATLANTIC, Oct. 24, 2016, *available at* https://www.theatlantic.com/education/archive/2016/10/when-for-profit-colleges-prey-on-unsuspecting-students/505034/; Julie Anderson, et al., "Single Mothers Overrepresented at For-Profit Colleges", INSTITUTION FOR WOMEN'S POLICY RESEARCH, Sept. 6, 2017 *available at* https://iwpr.org/publications/single-mothers-overrepresented-profit-colleges/; Lynn Jennings, "Gainful Rule Is Exactly What Students of Color Need", EDUCATION TRUST, April 10, 2014, *available at* https://edtrust.org/the-equity-line/gainful-rule-is-exactly-what-students-of-color-need/.

[7] *Id.*

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[8] Examples of Nearby Career Education Programs with Very Different Outcomes, THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS, June 12, 2017, *available at* https://ticas.org/sites/default/files/u159/ge_comparisons_factsheet.pdf.

[9] *Id.*

[10] Stephanie Cellini et al., "Where Do Students Go When For-Profit Colleges Lose Federal Aid", NBER Working Paper Series No. 22967 (December 2016) *available at* http://www.nber.org/papers/w22967.

[11] Kevin Carey, "DeVos Is Discarding College Policies That New Evidence Shows Are Effective", N.Y. TIMES, June 30, 2017 ("a close analysis of the more than 500 failing programs … reveals something interesting: A substantial majority of them, 300 or so, have already been shut down — even though colleges are not yet required to do so. The gainful employment test turns out to be an accurate way of identifying programs that for-profit colleges themselves don't think are worth saving…"), *available at* https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html.

[12] Erica Green, "DeVos Ends Obama-Era Safeguards Aimed at Abuses by For-Profit Colleges," N.Y. TIMES, Aug. 10, 2018 ("Even for-profit leaders concede the gainful employment rule has had its intended effect. Mr. Gunderson said that for-profit institutions had to adjust programming to be more affordable and responsive to the job markets."), *available at* https://www.nytimes.com/2018/08/10/us/politics/betsy-devos-for-profit-colleges.html.

[13] Paul Waldman, "Donald Trump's War on Workers", WASH. POST, Sept. 3, 2018, *available at* https://www.washingtonpost.com/blogs/plum-line/wp/2018/09/03/donald-trumps-war-on-workers.

[14] Pauline Abernathy, "What Does a Failing Program Look Like", THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS, Mar. 7, 2017, *available at* https://ticas.org/blog/what-does-failing-program-look.

[15] Stephanie Riegg Cellini and Nicholas Turner, "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data", NAT'L BUR. OF ECON. RESEARCH, May 2016, *rev'd* Jan. 2018, ("Taken together, our results suggest that relative to no college, for-profit certificate programs modestly increase the likelihood of employment, but appear to do little to raise earnings."), *available at* http://www.nber.org/papers/w22287.

[16] Press Release, U.S. Dep't of Educ., Education Department Releases Final Debt-to-Earnings Rates for Gainful Employment Programs (Jan. 9, 2017), *available at* https://www.ed.gov/news/press-releases/education-department-releases-final-debt-earnings-rates-gainful-employment-programs.

[17] *Id.*

[18] Andrew Kreighbaum, "DeVos Allows Career Programs to Delay Disclosure to Students", INSIDE HIGHER EDUCATION, (July 3, 2017), *available at* https://www.insidehighered.com/news/2017/07/03/education-department-announces-new-delays-gainful-employment.

[19] Letter from Sen. Patty Murray and Rep. Rosa DeLauro to Betsy DeVos, Sec'y, U.S. Dept. of Educ. (Sept. 17, 2017).

[20] *See* Erica L. Green, "New Higher Education Bill Rolls Back Obama-Era Safeguards", N.Y. TIMES, Dec. 13, 2017 at A14.

[21] Complaint for Declaratory and Injunctive Relief, Maryland v. U.S. Dep't of Educ., 1:17-cv-02139 (D.D.C. Oct. 17, 2017), *available at* http://www.illinoisattorneygeneral.gov/pressroom/2017_10/Complaint_Gainful_Employment-stamped-101717.pdf.

[22] 83 FR 40180.

[23] Department of Education Organization Act, P.L. 96-88, 1980.