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April 19, 2010

Arne Duncan, Secretary
U.S. Department of Education
LBJ Education Building
400 Maryland Avenue, SW
Room # 7W311
Washington, DC 20202

Dear Secretary Duncan:

I write regarding the Department of Education's ("DOE") treatment of for-profit post-secondary education providers, particularly those owned by holding companies with publicly traded stock ("For-Profits").

I am aware of the DOE's recent efforts to address certain deficiencies of the For-Profits through the DOE's statutorily mandated negotiated rulemaking process. While it is encouraging that the DOE is considering new regulations to address some of the deficiencies of the For-Profits, I also understand that the For-Profits and their industry organizations have been lobbying to include numerous exemptions on new regulations and advocating vague standards rather than mandates for "gainful employment" regulation.

The For-Profits' lobbying efforts would assuredly make any new substantive regulations devoid of provisions that would bring about real reform. The For-Profits have in the past sought and succeeded in contradicting the law through the DOE's rulemaking process. Specifically, while federal law mandates that education providers receiving federal funds cannot pay "any commission, bonus, or other incentive payment based directly or indirectly in success in securing enrollments,"[1] the DOE adopted regulations that *allow direct and indirect incentive compensation*[2] in 2002 at the urging of the For-Profits.

It cannot be disputed that each of the For-Profits operates to siphon taxpayers' funds for the benefit of the For-Profits' shareholders, executives, and employees who receive illegal incentive compensation. The For-Profits' system enriches shareholders and executives while victimizing the students it is intended to serve, by giving students unsustainable debt burdens, not dischargeable even in bankruptcy, and an education that does not provide the students with greater earnings potential.

As an example of the For-Profits' wrongful executive enrichment, one might look at Apollo Group, Inc. The chairman and the two "co-chief executive officers" of Apollo together earned approximately $25

[1] 20 U.S.C. §1094(a)(20)
[2] 34 C.F.R. §668.14(b)(22)(ii)

million in 2009 alone,[3] while their business is based almost exclusively on student loans guaranteed by the federal government.

While the DOE in the past has taken minor action against Apollo, the terms of its settlement pale in comparison to Apollo's reported $78 million payment to settle a *qui tam* lawsuit related to Apollo's incentive compensation payments to enrollment recruiters.

By reports from employees, many of the For-Profits regularly violate regulations concerning incentive compensation payments, even with the "safe-harbors" described above for incentive compensation schemes that are currently in place.

Recently, Wall Street analyst reports have emerged citing industry sources that the DOE would be providing an exemption for "gainful employment" measures it has been considering, related to the educational debt to income ratio of graduating students. Reports stated that the exemption would allow the For-Profits to avoid accountability on this measure. We sincerely hope that these exemptions are not being considered, as the new gainful employment regulations would bring much needed scrutiny and accountability to the For-Profits.

Generally, we would like to see the DOE take greater action against For-Profits' violations of current regulation, and we would to see the DOE refuse to submit to the lobbying efforts of the For-Profits to 'water-down' new "gainful employment" regulations. It is within the authority of the Secretary of the DOE to impose new regulations without agreement of the For-Profits.

On a personal note, for over a decade, I have been an adjunct professor of business at various community and four-year colleges, and I know firsthand the effects that a lack of financial aid has on students' ability to obtain a college degree within a reasonable amount of time. Many students find themselves working full-time or part-time jobs just to fund a portion of their higher education. The enrichment of these private enterprises at the expense of American students who are this country's future is deplorable.

We would appreciate meeting with you or your representative to discuss our concerns.

Sincerely,

Daniel Rodriguez
Director

cc: Peter Cunningham, Assistant Secretary
Office of Communications and Outreach

Robert Shireman, Deputy Undersecretary
Office of the Under Secretary

David Bergeron, Director of Policy, Planning and Innovation
Office of Postsecondary Education

[3] See Schedule 14C filed by Apollo Group, Inc. with the Securities and Exchange Commission on December 29, 2009.