



TESTIMONY OF THE ASSOCIATION OF PROPRIETARY COLLEGES

**BEFORE THE OFFICE OF POSTSECONDARY EDUCATION
US DEPARTMENT OF EDUCATION**

JULY 10, 2017

Testimony Provided by the Association of Proprietary Colleges (APC)

Good morning. Thank you for holding this hearing and for permitting me to testify.

My name is Donna Stelling-Gurnett and I am the President and CEO of the Association of Proprietary Colleges (APC). The Association was founded in 1978 and represents 14 accredited, degree granting colleges operating on 25 campuses in New York State.

We wish to thank the Department for pausing and taking the time to appropriately reflect on the Gainful Employment Rule and the Borrower Defense to Repayment regulations in an effort to verify that these regulations actually accomplish what they were intended to do.

I would like to take a few minutes to discuss ideas we would like to see incorporated during the upcoming regulatory processes on these issues.

Gainful Employment Rule:

On July 1, 2015, the U.S. Department of Education's controversial Gainful Employment Rule took effect. While our membership has always agreed with its stated aim – to ensure that students enrolled in certain higher education programs receive a quality education that adequately prepares them for gainful employment – we have questioned the relevance of the metrics the regulation relies on to assess program value and have argued that they are unrealistic and politically biased.

Given that the Higher Education Act is currently going through reauthorization, it would be far better to allow our elected representatives in Congress to develop a system of disclosures or accountability measures to ensure students and taxpayers are protected and educational quality is preserved.

The GE Rule is incredibly complicated and ambiguous, so much so that the Department had significant difficulty in implementing it. APC and our member colleges have the highest regard for the professionalism and competency of the Department staff. However, when the Department originally published draft GE rates in 2011, many institutions reported extremely high rates of errors with the repayment rate metric and with aspects of the debt to earnings metric. Compounding these concerns is the Department's acknowledgment last year that it had to recalculate all of the repayment rate data on the College Scorecard due to a "coding error". This coding error translates to incorrect data that confused both students and institutions.

If the Department decides to proceed with the GE Rule, we believe the rule must apply to all programs at all institutions equally. The problem of student debt is a serious one and the nation's trillion-dollar student loan crisis affects all sectors of higher education.

Quality programs with strong academics, exceptional graduation rates, and enviable job placement outcomes should not face closure. The way in which the Gainful Employment Rule metrics were designed doesn't really distinguish between poor- and strong-performing programs by measures that you would expect. For example: There's a well-respected, highly competitive

fine arts college in New York City that happens to be a for-profit. It has a high graduation rate (66%) and a low student loan default rate (7%), which are undeniably exemplary outcomes. However, because its graduates pursue creative and fine art careers that simply do not pay a lot in the first few years after graduation, its programs won't pass the regulation. The metrics don't consider student outcomes; they focus solely on loan metrics. Therefore, although nearly every fine arts program in the country would fail the GE Rule, only for-profit college programs will fail and be shut down because they are the only institutions subject to the GE Rule.

Also, there is no realistic opportunity for colleges to improve their outcomes due to the profoundly retroactive nature of the debt-to-earnings rates (which are generally based on the loans that students received three to five years earlier). The proposed Rule includes a transition period and zone status, but those provisions do not allow any real opportunity for institutions to make changes to meet the proposed metrics. The economy, local labor market and employers determine the earnings side of the debt-to-earnings rates so, in reality, colleges can only impact the debt side of the rates. Reducing student borrowing would be one way to do that, but the Department's own regulations and policies prevent institutions from doing so. Thus, institutions could only reduce tuition and/or increase scholarships or other forms of institutional aid to reduce debt, but these are major changes that take time to implement. And even after these changes are implemented, they can only affect future debt levels; they cannot reverse the loans that students received in prior years that the Department will use in its debt-to-earnings calculations.

Finally, we would recommend that the Department utilize the GE Rule as a disclosure metric for all institutions rather than a high-stakes, loss of Title IV eligibility regulatory standard singling out one sector of higher education.

Borrower Defense to Repayment:

On Borrower Defense to Repayment, APC recommends the Department to first focus on the claims of students. The Association believes strongly that students who have been defrauded or misled should have redress. During the negotiated rule making process the Department strayed into other areas – such as financial responsibility - that the panel was not particularly equipped to handle. We believe financial responsibility deserves its own rulemaking and should not be part of this one.

With regard to the claims, we believe that a student should file a claim with the institution prior to asserting any defense to repayment. This would be an efficient way to resolve meritorious claims without having to literally make a federal case out of a resolvable issue. Indeed, most schools would gladly resolve issues individually with students. If the parties agree to pay all or part of the loan back, the institution would notify the Department and make the payment. We also suggest that the period for such claim resolution should be limited to 90 days before the matter has to go to the Department.

If the student and institution cannot resolve the matter, then the borrower's claim of defense should go to the Department. The Department can review each claim and, after some

initial process of weeding out claims without merit, the Department should hold an administrative process to resolve the matter and make a determination. This process should involve each individual borrower that wants to assert a claim and should also involve the institution at all phases. This process should have a time limit as well, with a commitment to resolve all matters within 270 days.

The Department should develop federal standards for assessing valid defenses rather than rely on each state law. In addition to a breach of contract defense, we would support a more traditional fraud in the inducement standard – one that incorporates concepts of institutional intent to deceive or recklessness with regard to the veracity of a given statement. Also, the borrower must have relied on the false statement or the breach to their detriment – and the detriment must be something more than the fact the borrower took out a loan.

We also strongly believe that institutions should be able to show the value of the instruction provided to offset any recovery.

Lastly, given as these rules will need to be negotiated, we also suggest that the Department add additional constituencies of interest to the session. In addition to the typical required parties, we believe having a chief risk officer, chief financial officer, chief business officer and chief legal officer from an institution of higher education on the panel will provide a better informed committee. APC has participated in past-negotiated rule makings and we welcome the opportunity to participate in the process as it moves forward for these two regulations.

Other Concerns:

On transactions, many of our institutions are actively considering converting to non-profit status as a means of preserving the legacy of their institutions well into the future. Unfortunately, since last year, all approval of non-profit conversions has seemingly stopped. We would appreciate it if the Department could regulate on this issue and make clearer the standards and processes for approval of transactions and non-profit conversions.

In addition, while the process for completing transactions has long been a fairly routine process handled by career staff, last year transactions were required to be reviewed by political appointees. This is a disturbing development. We hope any regulatory action to better define the transaction process does not provide for this type of “political” review.

With regard to financial responsibility, the financial responsibility regulations are about two decades old and should be updated. In particular, the Financial Accounting Standards Board’s (FASB) issuance of Accounting Standard Update 2016-02 (ASU), *Topic 842 on Leases* changes the accounting treatment of leases and will come into effect for non-public entities in December, 2019. Under this standard, virtually all leases will require balance sheet recognition as a right-of-use asset and lease liability. This will negatively affect the Equity Ratio and, if leases are classified as intangible assets, will also harm a school’s Primary Reserve Ratio.

In Conclusion:

New York State has a long-standing history of working together with institutions of higher education in all four sectors (SUNY, CUNY, independent non-profit and proprietary) to benefit all New Yorkers. This commitment to equality and parity across all sectors has created a robust and diverse education system that should be an example for the Department. This approach has resulted in innovative and novel ideas, a consistent pipeline of employees for local businesses, and has had a strong, positive economic impact across the state.

We thank you for your continued support of our students. On behalf of APC member colleges and our students, thank you for your time and consideration of this testimony.