April 19, 2010

The Honorable Anthony Wilder Miller
Deputy Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Miller:

Thank you for meeting with us this past Thursday to discuss the Department of Education's (ED) proposed Gainful Employment (GE) regulation. We appreciate the candid discussion, and want to follow up on several items that arose in our meeting.

We appreciated your reinforcement of the ED's public statements that it views private sector presence in the higher education marketplace as positive. We also believe that it is not the ED's intention to eliminate private sector institutions or eliminate private capital from higher education. We view these as important points because the GE proposal made during Negotiated Rulemaking – *which would substantially eliminate proprietary institutions' ability to offer degrees* – is not consistent with the ED's goals.

Our comments come from a sincere concern for the students we serve, an understanding of the limited educational opportunities afforded to these students, and the success stories of their fellow students who graduated before them. We educate hundreds of thousands of students each year, enabling them to obtain jobs and begin careers that are transformational not only for those students, but for generations to follow. We each offer non-degree, associate, baccalaureate and graduate degree programs. Across our three organizations, we enroll more than 300,000 students and employ more than 50,000 faculty and staff each year.

As we discussed, while the ED's GE proposal will exclude fully one-third of our students from the programs they currently attend, its effect on degree programs is the most severe. The ED's GE proposal is unworkable for the vast majority of degree programs in our sector and will result in as many as half of the two million plus degree students at our colleges being denied Title IV funds. This includes, among countless examples, Bachelor's of Science in Nursing students, at a time when our country faces a growing nursing shortage. Private sector colleges are a vital source of new capacity in nursing education as well as in allied health fields, where they educate 54% of all such professionals. We do not believe this could possibly be the intent of the ED, which is why we are asking you to revise your proposal to avoid these unintended consequences.

Likewise, we reiterate that the 50% graduation rate exception described recently does little to ameliorate the impact of the ED's last GE proposal. With the nation's median aggregate college graduation rate at less than 50% for all types of colleges (private, public and non-profit alike – including elite colleges with 90%+ graduation rates), even this exception would exclude the students at more than half of all colleges from participation in the Title IV program. Many of those excluded students would be the very ones Congress was attempting to help through the Stafford and Pell programs, and those for whom there are few other educational opportunities today.

We understand the objectives of the proposed GE regulations are focused on two concerns:

1. The ED's concern that a material segment of students take on disproportionate debt for value received. More specifically, a concern that the risk tolerance of these students essentially means that no amount of warning would deter them from making a poor enrollment decision and "over-borrowing" – i.e., borrowing more than their ultimate job prospects would enable them to repay.

2. The ED's concern about the risk that certain investors could purchase schools with the intention of growing revenue by dramatically increasing enrollment without regard to educational quality, and then turning a quick profit by re-selling the institution to another buyer or to the investing public through a securities offering. The concern here is that such investors would take advantage of the difference between their short timetable and the inherently longer term during which regulatory problems mature - - all while drawing federal financial aid and increasing the overall student debt burden.

As we discussed in our meeting, we share your concern about student over-borrowing and believe our proposal can solve that problem without harming quality schools. Section 1 of this letter expounds further on our student debt proposal and offers additional alternatives.

We also understand your concerns about the incentives certain investors might have and believe that the ED has the tools to constrain them without harming students across the sector. The ED's ability to constrain such investors is discussed in Section 2 of this letter.

1. Our Proposal and Simple Modifications To the Debt-Service-To-Income Ratio Can Solve the Problem of Student Over-Borrowing without Harming Students of Quality Schools

We continue to believe that student debt concerns can be addressed quickly and meaningfully by: (a) mandating that institutions disclose to students the information students need to make informed decisions prior to taking on debt, and (b) implementing a student consumer "lemon law" that warns students prior to enrollment about programs that fail to meet a minimum debt-service-to-income ratio (Appendix A). This approach has at least four advantages over the ED's GE proposal: (1) it addresses the concern that defining "gainful employment" by student debt levels is beyond

Congressional intent; (2) it is a less draconian approach from an enforcement perspective; (3) it avoids the risk of inadvertently eliminating quality programs if the ratio parameters are not set appropriately; and (4) it will immediately address the ED's concerns while still allowing the ED and schools to complete the data collection and analysis necessary to develop a more studied approach, if necessary. This approach would indeed give the ED new tools to address the risk for programs that do not provide value commensurate with their cost.

Under our proposal, in addition to disclosure, a school would be required to warn students if that school had failed certain debt-service-to-income metrics. The proposed metrics would roughly follow those in the ED's latest GE proposal, but with the following modifications:

a. Any Debt-Service-To-Income Ratio Should Apply Only To Non-Degree Programs

As you are aware, the GE requirement contained in the Higher Education Act (HEA) applies to *all* program offerings at proprietary institutions including Associate's, Bachelor's and Master's and doctoral-level and professional degrees (other than a *de minimis* number of "liberal arts" programs) and only non-degree programs at public and private nonprofit institutions. While we believe that a debt-service-to-income formula is inappropriate, we are especially concerned with a formula that is inherently biased against degree programs (and with corresponding alternative measures that are biased as well).

There are a number of reasons why debt-service-to-income ratios such as those contained in the ED's GE proposal should not apply to degree programs. First, it is very unlikely that Congress intended the GE requirement to apply to degree programs. When the GE requirement was first introduced by Congress in the 1965 HEA, very few proprietary schools were degree granting. Second, the at-risk students the ED is seeking to protect are much more likely to enroll in non-degree programs than in degree programs. Third, the lifetime benefits conferred by degree programs, such as higher lifetime earnings, higher income growth rates, greater employability, better career advancement and job stability, don't readily lend themselves to a formulaic approach to measuring value using job codes and BLS statistics. For these reasons, debt-service-to-income ratios should not apply to degree programs.

To accomplish the above and to overcome our concerns with the ED's debt-service-to-income proposal, we recommend the ED use the following language, which tracks the last language proposed at the Negotiated Rulemaking session (bolded to show changes/additions):

> (a) General. (1) An institution . . . offering an eligible ***non-degree*** program . . . ***shall be required to warn students that they are likely to have difficulty meeting their repayment obligations in such program where*** . . . at the end of each three-year period . . . the debt to earnings ratio associated with the program is ***twelve*** percent or less. . . .

(b) Debt to earnings ratio. ***[A]n institution*** calculates the ratio for the three-year period by—

(1) Determining the median loan debt of students who completed or graduated from the ***non-degree*** program (loan debt includes title IV, HEA programs (except Parent PLUS), institutional loans and private educational loans) during the three-year period and using the mean loan debt to calculate an annual loan payment based on a ***15-year*** repayment schedule and the current annual interest rate on Unsubsidized Federal Stafford Loans or Direct Unsubsidized Loans;

(2) Using the most current Bureau of Labor Statistics (BLS) data . . . to determine the annual earnings, at the 25th percentile, made by persons employed in occupations related to the training provided by the ***non-degree*** program; . . .

b. Alternatively, There Should Be a Tiered Approach To the Debt-Service-To-Income Formula

Should the ED be inclined to include degree programs, we recommend different formulae for non-degree programs, Associate's degree programs, and Bachelor's degree programs. Post-baccalaureate programs would not be included as those students, having successfully completed at least a Bachelor's level of education, are more sophisticated consumers and better equipped to make informed borrowing decisions.

We recommend the following graduated degree metrics:

Program Level	Debt-service-to-income threshold	BLS Percentile	Years in Repayment
Non-Degree	12%	25th	15
Associate's Degree	15%	50th	15
Bachelor's Degree	15%	50th	20

These numbers are consistent with the studies by Kantrowitz and Baum referenced in our April 12, 2010 letter.

c. Any Formula Should Contain An Exclusion for Prior School Debt

As we also discussed, prior school debt should be excluded from any debt-service-to-income ratio test. By excluding prior debt, the ED can ensure that students who may have failed in the past will continue to have an opportunity to succeed in the future, without penalizing schools for giving the students that opportunity.

d. There Are Other Alternatives Worth Exploring

In the event the ED chooses to pursue a debt-service-to-income ratio test, we reiterate our recommendation that the ED consider alternative routes to compliance as part of that test. These alternatives include maintaining target graduate cohort default rates (GCDRs) at 12.5% over two years and 15% over three years. They also include a threshold for post-graduate employment rates. We recommend setting a minimum employment rate of 70% within six months following graduation. As we discussed, the employment rate would be measured using methodologies similar to those of the larger national accrediting agencies, but with additional flexibility, particularly for degree programs, as degree-seeking students are likely to use their degree for general employment advancement.

2. The ED Has an Array of Powerful Tools to Constrain Certain New Investors

As we discussed, most private sector higher education companies are invested in students for the long haul. Certainly, Kaplan, DeVry, and EDMC – as well as other higher education organizations – are focused on building enduring institutions that create value for our students, our employees, and our communities. Our institutions will only succeed to the extent our students succeed. We are passionate about our students' achieving their learning outcomes, securing good jobs, and becoming contributing members of society. Our reputation is essential to attracting students, faculty, and employees. Indeed, most of our alumni quietly but successfully enter into essential roles in the American economy – working hard, paying taxes, and raising their families. Their enthusiasm is what encourages other students to join our institutions – and any unhappiness or frustration with their learning experiences would quickly hamper our institutions' ability to attract new students.

We understand your concern that some firms may invest in higher education with different motives and according to a vastly different timetable. They may see an opportunity to purchase a struggling institution, grow it rapidly, and exit the business before difficulties like poor completion, employment rates, cohort default rates or other problems mature -- all at the students' and the taxpayers' expense.

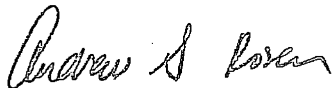
We respectfully submit that the HEA currently provides the ED with ample measures to prevent such a scenario from occurring. A number of such measures are enumerated below. A chart providing additional detail regarding these measures is attached as Appendix B to this letter.

1. The ED has the authority to condition or withhold Title IV approval from new owners who do not have a demonstrated track record.
2. The ED may condition or disallow the resumption of Title IV participation following a change in ownership.

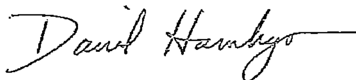
3. Following a change in ownership, the ED may terminate an institution's eligibility to participate in the Title IV programs without the institution having the usual due process rights to contest the termination.
4. The ED has the ability to ensure that no students receive Title IV funds until the ED is satisfied that the students are eligible for the funds and the school is worthy.

We appreciate your meeting with us and we sincerely hope that you have found these observations and ideas useful. We look forward to discussing these matters further. Should you so desire, we would be happy to provide you with further clarifications and are available to meet at your convenience.

Yours Truly,



Andrew S. Rosen
Chairman and CEO, Kaplan, Inc.



Daniel Hamburger
President and CEO, DeVry Inc.

Todd S. Nelson
CEO, Education Management Corporation

Enclosures

cc: The Honorable Martha J. Kanter
The Honorable Carmel Martin
Mr. Robert Shireman
Mr. Matthew A. Yale
Ms. Georgia Yuan

XYZ UNIVERSITY
INSTITUTIONAL DISCLOSURES RELATED TO EXPECTED EARNINGS AND DEBT

You have requested information about our **Veterinary Assistant** program

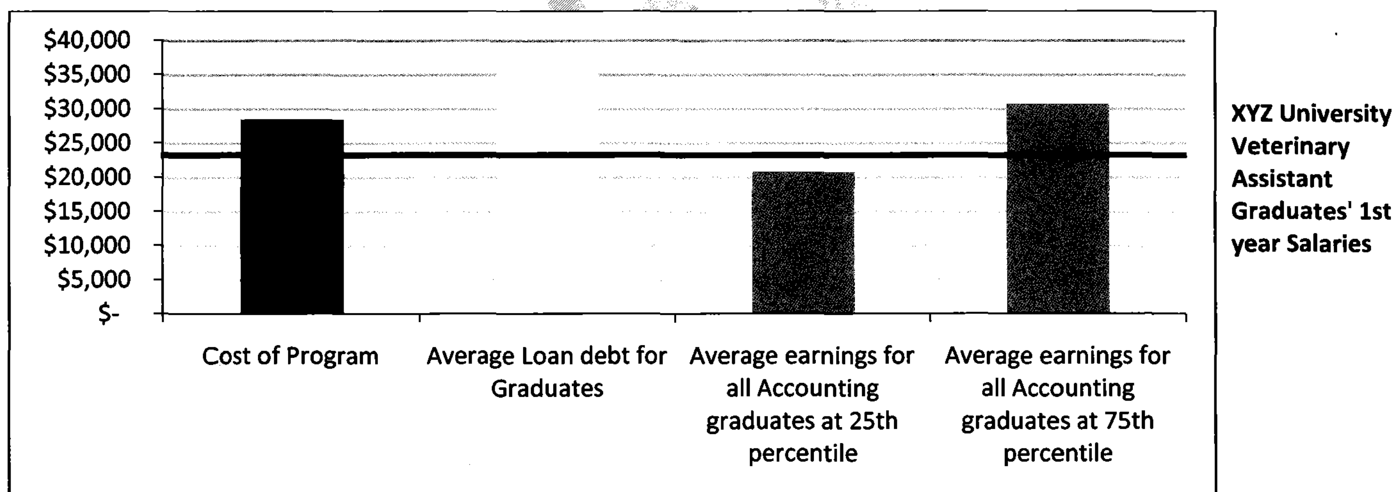
WARNING: The annual loan repayment burden for graduates of this program at XYZ University exceeds the maximum debt-to-earnings ratio as recommended by the U. S. Department of Education.

Program Level: ☐Associates ☐Bachelors ☒Certificate/Diploma

Here are some important disclosures for the award year ending **June 30, 2009**

During the year ended **June 30, 2009**, **81.2**% of students enrolled in this program graduated or continued their enrollment into the next year while **18.8**% withdrew from school.[1]

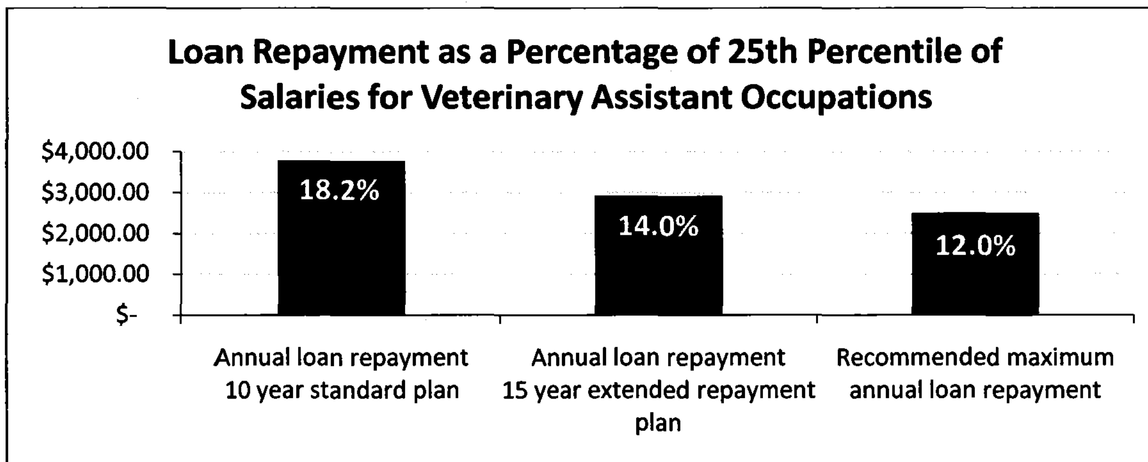
Of the students who graduated and were available for employment[2], **73.4**% were employed in their field of study, or a related field, within six months of graduation with an average annual salary of $**23,600** per year.



The weighted annual salaries for this occupation at the 25th and 75th percentiles are $**20,809** and $**30,706**, respectively.[3]

The cost for this program of study at XYZ University for a student enrolled full-time and with no transfer credits is $**28,440**. The average annual tuition increase for the three most recent years was **4.6**%.

The average education loan debt incurred at this institution for graduates of this program during the 2009 award year was $**27,400**. This amount includes $**20,300** of federal student loans and $**17,100** of institutional loans. Additionally, **2.0**% of graduates obtained private student loans from third parties.



If this average education loan debt was 100% federal loans with an average interest rate of 6.8% and you chose to repay using a 10 year standard repayment term, the annual total of 12 monthly payments would be $**3,783.34**. If you chose to pay using a 15 year extended repayment term, the total of your first 12 monthly payments would be $**2,918.76.**[3]

The latest official Cohort Default Rate (FY07) from the US Department of Education indicates that **3.6**% of graduates in this program defaulted on their federal loans.

NOTE: YOUR ACTUAL EXPERIENCE MAY BE DIFFERENT THAN THE AVERAGES AND STATISTICS PRESENTED ABOVE AND THAT THE DATA PRESENTED WILL CHANGE IN THE FUTURE.

____

(Student Signature)

____

(Date)

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(1) *Withdrawal rates are calculated for the selected program using the methodology required for the Institutional Post-secondary Enrollment Data Survey to the U. S. Department of Education. The graduation and continuing enrollment rate represents the complement of the withdrawal rate.*

(2) *Graduates in the following categories are considered unavailable for employment and are not counted in the placement rate calculation: graduates who are pursuing further education, are deceased, are in active military service, have medical conditions that prevent them from working, are continuing in a career unrelated to their program of study because they currently earn salaries which exceed those paid to entry-level employees in their field of study, or are international students no longer residing in the country in which their school is located.*

(3) *Salaries are from the Bureau of Labor Statistics as reported for the Standard Occupational Classification (SOC) codes that correspond to the Classification of Instructional Program (CIP) code for this academic program. For information related to salaries from these and other occupations, please visit http://www.bls.gov/oes/current/oes_nat.htm.*

(4) *Costs are based on tuition rates and fees currently charged to students in the indicated program of study.*

(5) *The recommended loan repayment is calculated using a debt-to-earnings ratio of 12% of the 25th percentile of salaries as reported from the Bureau of Labor Statistics for the Standard Occupational Classification (SOC) codes that correspond to the Classification of Instructional Program (CIP) code for this academic program.*

(6) *For more information concerning repayment options on federal loans, please visit https://studentloans.gov/myDirectLoan/index.action.*

APPENDIX B

Enforcement Mechanism	Summary	Regulatory Citations
Title IV Eligibility Terminates Upon Institutional Change in Ownership *An institution that changes ownership must enter into a new program participation agreement at the ED's discretion. The ED may review all aspects of the institution and may deny ongoing Title IV participation.*	Title IV eligibility terminates when an institution changes ownership. The new ownership must re-apply for participation in Title IV programs. Under ED's current practice, the ED may extend the current program participation agreement under a "provisional certification." The ED will not approve the new owners without a demonstrated track record (as indicated by at least two years of audited financial statements) in higher education unless they (1) post a letter of credit (typically 25 percent of the Title IV aid disbursed to the institution's students during the previous fiscal year), and (2) agree to growth restrictions (typically the inability to offer new programs or open new locations until the ED has reviewed and approved financial aid and compliance audits for a full fiscal year of operations under the new ownership).	34 C.F.R. §600.20(g) and (h) 34 C.F.R. §600.31(a) 34 C.F.R. §668.13 34 C.F.R. §668.14 34 C.F.R. §668.23
Additional Program Participation Agreement Conditions *ED has discretion to include additional provisions in new participation agreement*	The ED has the ability to add any additional conditions in any new program participation agreement that the Secretary requires the institution to meet in order for the new institution to participate in Title IV.	34 C.F.R. §668.13(c)(4)(ii)
Disallowance of Title IV Participation *May revoke Title IV participation following a change*	Before the expiration of a provisionally certified institution's period of participation, if the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.	34 C.F.R. §668.13(d)(1)
Reimbursement or Heightened Cash Monitoring *Ability to place institution on cash management restrictions, even in absence of change in ownership*	Even in the absence of a change in ownership, the ED has the ability to place a school on the reimbursement or heightened cash monitoring method of Title IV payments, so that no students receive Title IV funds until the ED is satisfied that the students are eligible for the funds and the school is worthy of administrating the funds.	34 C.F.R. §668.162 34 C.F.R. §668.175(d)(2)(i)
Annual Compliance Audits *May annually review institution's compliance with Department regulations*	Once the ED has confirmed the institution's eligibility for Title IV, the institution must file annual compliance audit statements with the ED. Thus, the ED can monitor the institution's management and take action as needed.	34 C.F.R. §668.23(b)
Program Review Requirements *ED may conduct a full program review of any institution in addition to the review associated with applying for eligibility*	In addition to the fact that an institution that changes ownership will be required undergo new Title IV eligibility review, the ED can review any program at any time to determine compliance or issues.	34 C.F.R. §668.24(f)