April 12, 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 soliciting input on the Department of Education's (ED) proposed Gainful Employment (GE) regulation at our recent meetings. We are writing on behalf of our institutions (Kaplan, DeVry, and Education Management Corporation), which together offer opportunities for over three hundred thousand students to attend college annually. We are deeply committed to educating and preparing our students for the new jobs of the 21st century, and to ensuring that our students receive high-quality, results-oriented education, without being burdened by excessive debt.

We understand and support what you are trying to accomplish. We believe that together we can find a solution that addresses student debt and simultaneously enables the Administration to achieve its goals of expanding access to quality higher education, particularly among non-traditional students. We believe both sets of goals are achievable.

We thought it would be most helpful to (a) describe the contribution of the private sector in achieving the Administration's goals, (b) explain the impact of the latest GE proposal made public, and (c) offer a constructive alternative to this GE proposal that would address the ED's concerns without restricting students' access to college opportunities.

Quality Private Sector Colleges Play A Critical Role in Achieving Administration Goals

President Obama has said he wants America to have the highest percentage of college graduates in the world by 2020. This goal will require educating millions of additional college students at a cost of many billions of dollars and cannot be met without the participation of quality private sector colleges like ours. The private sector currently educates some 2.7 million students a year and has the resources to help alleviate the financial burden of achieving the Administration's goal. Moreover, the private sector attracts more non-traditional students – a critical requirement to increasing the number of college graduates.

Not only do private sector colleges attract more non-traditional students, but we also help them graduate and achieve gainful employment at significantly higher rates. A recent report by The Parthenon Group, using ED data for public and private two-year and less institutions, shows that students at private sector colleges graduate at rates roughly 50 percent higher than public schools. The study further shows that private sector college students achieve higher percentage wage increases (54% vs. 36%) after completing their education.[1]

The Current GE Proposal Would Dramatically Limit Students' College Opportunities

Kaplan, DeVry, and EDMC share the ED's goal of ensuring that students receive a quality education and enter programs with a full understanding of the costs, without incurring excessive debt. We would support regulation that appropriately addresses over-borrowing while enabling high-quality institutions to continue their good work of building capacity and innovation in higher education.

The GE criteria proposed by the ED at the end of the most recent Negotiated Rulemaking session attempt to define "gainful employment" by establishing an 8 percent debt-service-to-income threshold based on median student debt for college graduates. Income would be based either on the Bureau of Labor Statistics (BLS) 25th percentile wage data, or actual earnings of college graduates. Loan payments would be based on a 10-year repayment plan.

This proposal as written would have a number of unintended consequences. A recent study by Mark Kantrowitz, a respected independent authority on financial aid, concludes:

> *"The 8% debt-service-to-income threshold is so strict that it would preclude for-profit colleges from offering Bachelor's degree programs. It would also eliminate many Associate's degree programs at for-profit colleges. Even non-profit colleges would find it difficult to satisfy this standard if they were subjected to it."*[2]

Kantrowitz further found that:

> *"The proposed use of Bureau of Labor Statistics wage data . . . will disproportionately harm minority and female students."*[3]

Kantrowitz also points out that the proposed GE rule tasks institutions with a job without providing the tools necessary to complete the job:

[1] Parthenon Perspectives on Private Sector Post-Secondary Schools, February 24, 2010, by Robert Lytle, Roger Brinner and Chris Ross; p. 8; Source: NCES BPS 2004-2006.
[2] What is Gainful Employment? What Is Affordable Debt?, Mark Kantrowitz, March 1, 2010, p. 1.
[3] Ibid.

> *"The debt-service-to-income threshold effectively establishes borrowing limits based on field of study and degree programs, but does not give colleges the controls needed to enforce these limits. Current sub-regulatory guidance precludes colleges from establishing lower loan limits."*[4]

Another study conducted by Charles River Associates reaches similar conclusions, estimating that 18 percent of private sector programs will be disqualified from participation in Title IV programs and that this would impact one-third of private sector students. This means that hundreds of thousands of entering students would be displaced annually from private sector colleges.[5] By 2020, approximately 5.4 million students who otherwise would be on track to attend college would be denied access by the proposed GE regulation.[6]

Finally, the GE proposal would result in significant job loss among the hundreds of thousands of faculty members, administrators, and staff who work in the private post-secondary sector, and in non-degree programs in public sector and independent schools as well.

Students Will Be Protected by Transparent Cost and Debt Information.

We remain concerned that defining "gainful employment" by student debt levels is beyond Congressional intent. We believe that the necessary data to both define the problem and support a sufficient and informed policy have not yet been compiled and analyzed. We are certain there are numerous consequences of the GE proposal that are not currently contemplated by the ED.

For these reasons, we propose that student debt concerns be addressed by mandating that all institutions disclose to students the information students need to make informed decisions prior to taking on student debt, as well as warn students about programs that fail to meet a minimum debt-service-to-income ratio under a new student consumer "lemon law." Prospective students who receive sufficient information at the time of enrollment are in the best position to make an informed decision regarding whether or not to attend an institution. We believe the information students need to make decisions concerning the appropriate amount of debt to incur for a given program should be provided in a disclosure form to students.

The form would include: (a) the cost of the program of study, (b) a reasonable projection of potential earnings in the students' chosen field upon graduation and throughout the life of their employment in that field, (c) a reasonable estimate of the debt students typically incur to complete their program, and (d) students' repayment plan options. A proposed disclosure form

[4] Ibid. p. 2.

[5] Report on Gainful Employment, Charles Rivers Associates, April 2, 2010, prepared by Jonathan Guryan, PhD, and Matthew Thompson, PhD, p. 38.

[6] Executive Summary to Report on Gainful Employment, Charles Rivers Associates, April 2, 2010, prepared by Jonathan Guryan, PhD, and Matthew Thompson, PhD, p. 1.

is attached as Appendix 1. The accuracy of the information contained in the disclosure form would be ensured by the misrepresentation prohibition that received tentative agreement at the last Negotiated Rulemaking session. The proposed misrepresentation prohibition provides, among other things, that:

- If the Secretary determines an institution has engaged in substantial misrepresentation, the Secretary may revoke or limit that institution's participation in the Title IV programs.
- Misrepresentation is defined as any false, erroneous or misleading statement an institution makes directly or indirectly to a student, prospective student, or any member of the public, an accrediting agency, State agency, or the Secretary.
- A misleading statement includes any statement that has the capacity, likelihood, or tendency to deceive or confuse. The omission of information may also be interpreted as a misrepresentation.

In addition to this disclosure, schools would be required to warn students prior to enrollment of any program that fails to meet a debt-service-to-income ratio test. The debt-service-to-income ratio would be based on the approach recently proposed by the ED, with appropriate modifications discussed below. Institutions offering programs that fail the test would be required to warn students in appropriate marketing materials, and in a written disclosure signed by the student prior to enrollment, that *(a) the program has failed a debt-service-to-income-ratio test,* and *(b) student borrowers enrolling in the program should expect to have difficulty meeting their repayment obligations upon graduation.*

To ensure that the debt-service-to-income ratio is appropriately directed at identifying "outlier" programs we propose that the ratio currently contained in the GE proposal be adjusted as follows:

- Formula applied to non-degree programs only.
  - ➢ Degree programs confer lifetime benefits that don't correlate easily to specific job codes, such as higher lifetime earnings, higher income growth rates, greater employability, better career advancement and job stability.[7] In addition, degree holders tend to change jobs and pursue careers seemingly unrelated to the degrees, but using the skills they developed in college. Including degrees in the ratio definition would dramatically undervalue these programs.
  - ➢ By applying the formula only to non-degree programs, both private and public institutions are impacted in the same manner.
- A debt-service-to-income threshold of 15 percent, based on median student debt for college graduates, and assuming a current unsubsidized Stafford loan interest rate of 6.8% to calculate the annual repayment amount.

[7] Kantrowitz, pp. 20-21.

  - ➢ The 15 percent debt-service-to-income threshold is referenced in the Kantrowitz study as a well as a recent study published by the College Board,[8] and is within the range generally used by personal financial counseling professionals.
- Income based either on the BLS 50th percentile wage data, or actual earnings of graduates if the latter are higher than the BLS 50th percentile.
  - ➢ The 50th percentile of the BLS wage data more accurately reflects the long-term potential earnings of a graduate. Moreover, there is no reason to assume that non-degree program graduates, regardless of their backgrounds, would be unable to achieve average earnings.
- Loan payments based on a 20-year repayment plan.
  - ➢ The 20-year loan repayment plan is also referenced in the Kantrowitz study and supported by the fact that borrowers are permitted to, and do, choose repayment plans covering a period of up to 25 years.
- Exclude prior school debt from the calculation and provide institutions the regulatory ability to control student borrowing, thereby enabling compliance with ratio and 90/10 requirements.
  - ➢ Absent the regulatory ability to control student borrowing, the GE calculation should be based only on direct cost of education.
- Eliminate the ED pre-approval requirement for new programs.
  - ➢ State regulatory bodies and accrediting agencies already require approval of all new programs.

We also recommend that the ED consider alternative routes to compliance with the debt-service-to-income ratio test, specifically by establishing: (1) target graduate cohort default rates (GCDRs) (e.g., 12.5% GCDR on a two-year calculation; 15% on a three-year calculation), (2) targets for actual post-graduation salaries that include a multiplier of 1.5x to recognize the fact that *lifetime* earnings are significantly higher than BLS rates, and (3) thresholds for post-graduate employment rates.

We believe that the proposal contained in this letter provides an innovative and effective way to protect students from institutions that over promise and under deliver to students, thus leaving students with too much debt and not enough return on investment.

[8] *How Much Debt Is Too Much,* Sandy Baum and Saul Schwartz, The College Board, 2006, p. 12.

We appreciate the opportunity to provide this input and we look forward to sitting down with you soon to discuss these matters further.

Yours Truly,

Andrew S Rosen

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

Daniel Hamburger

Daniel Hamburger
President and CEO, DeVry Inc.

Todd S. Nelson
CEO, Education Management Corporation

Enclosures
cc: The Honorable Martha J. Kanter
Mr. Robert Shireman

APPENDIX 1

INSTITUTIONAL DISCLOSURES RELATED TO EXPECTED EARNINGS AND DEBT

You have requested information about our **Accounting** program

Program Level: □ Associates ☒Bachelors □Masters □Certificate/Diploma

Here are some important disclosures for the award year ending **June 30, 2010**

During the year ended **June 30, 2009** , **75.8** % of students enrolled in this program graduated or continue to be actively enrolled at the institution while **24.2** % ceased enrollment.

Of the students who graduated, **88.6** % were employed in their field of study, or a related field, within six months of graduation with an average annual salary of approximately $ **46,300** per year.

This academic program corresponds to the following Standard Occupational Classification (SOC) codes as reported by the Bureau of Labor Statistics (BLS): **13-2011** . The weighted annual salaries for these SOC codes at the 25th and 75th percentiles are $ **45,900** and $ **78,210** , respectively. For information related to salaries from these and other occupations, please visit http://www.bls.gov/oes/current/oes_nat.htm.

The cost of this program of study for a student enrolled full-time and with no transfer credits is $ **62,040** . The average annual tuition increase for the most recently concluded three years was **4.6** %

The average education loan debt of students incurred at this institution and who graduated from this program during the prior award year was $ **33,100** . This amount includes $ **30,900** of federal student loan debt and $ **2,200** of institutional loan debt. This does not include any debt incurred while attending another institution. Additionally, **4.6** % 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 $ **4,571.04** . If you chose to pay using a graduated repayment plan (over 10 years), the total of your first 12 monthly payments would be $ **3,138.60** . For more information concerning repayment options on federal loans, please visit https://studentloans.gov/myDirectLoan/index.action.

The latest official Cohort Default Rate (FY07) from the US Department of Education indicates that **1.7** % of graduates in this program defaulted on their federal loans.

PLEASE NOTE THAT YOUR ACTUAL EXPERIENCE MAY BE DIFFERENT THAN THE AVERAGES AND STATISTICS PRESENTED ABOVE.