KAPLAN

ANDREW S. ROSEN
Chairman and CEO

May 12, 2010

The Honorable Cass R. Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: ED-OPE 1840-AD02, Institutional Eligibility Under the Higher Education Act of 1965; Student Assistance General Provisions

Dear Mr. Sunstein:

I am looking forward to meeting with your staff and others in the Executive Branch to discuss the U.S. Department of Education's (ED's) draft regulation regarding gainful employment (GE), which is currently under review at OMB. While certain leaders at the ED have assured that it is not the ED's intention to eliminate private sector institutions of higher education, Kaplan remains deeply concerned about the unintended and economically significant consequences of the ED's GE proposal. We ask that your Office (1) direct the ED to withdraw the GE proposal, (2) classify the GE proposal as an economically significant regulatory action, or at a minimum, (3) direct the ED to modify the GE proposal along the lines set forth below.

Just this past weekend, in his speech at Hampton University, President Obama emphasized one of the overarching themes of his administration: the need to enable more Americans to gain access to higher education.

> *"Too many young people . . . are not as well prepared . . . Globally, it's not even close. . . . So all of us have a responsibility, as Americans, to change this; to offer every single child in this country an education that will make them competitive in our knowledge economy."*
>
> - President Obama, Commencement Address at Hampton University, May 9, 2010

The President has said he wants America to have the highest percentage of college graduates in the world by 2020, in order to restore "America's economic preeminence." He has emphasized, and experts agree, that a post-secondary education is an essential qualification in today's economy.

> *"At a time when our children are competing with kids in China and India, the best job qualification you can have is a college degree or advanced training. If you do have that kind of education, then you're well prepared for the future -- because half of the fastest growing jobs in America require a Bachelor's degree or more. And if you don't have a college degree, you're more than twice as likely to be unemployed as somebody who does."*
> - President Obama, The White House, April 24, 2009

It is very surprising, then, to find before OMB a proposal[1] that would make the President's higher education goals impossible to achieve. Equally surprising is the fact that the ED has never publicly presented *any* quantitative analysis to support this proposal. Instead, the ED has voiced concerns over student debt and private equity investment in higher education – concerns which can be addressed by less drastic measures that would support the President's goals.

This letter describes (1) how the GE proposal contradicts the President's goals, (2) how the GE proposal *is* economically significant, and (3) how alternative measures can simultaneously support the President's goals *and* address the ED's concerns.

The ED's GE Proposal Contradicts The President's Education Goals

The GE proposal presented by the ED attempts 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.

If adopted, the GE proposal would undermine the President's higher education goals by denying students educational access, limiting capacity, stifling innovation in education, curtailing the export of education and increasing unemployment. I describe each of these serious consequences below.

1. *The GE Proposal Would Deny Students Access to Degree Programs*

Several recent studies have found that one of the ED's GE proposal's unintended consequences is the elimination of degree programs. One such 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]

[1] We assume that the GE proposal before OMB is the same or similar proposal presented by the ED at the end of the January 2010 Negotiated Rulemaking session.
[2] What is Gainful Employment? What Is Affordable Debt?, Mark Kantrowitz, March 1, 2010, p. 1.

Kantrowitz further found that:

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

Another study conducted by Charles River Associates reaches similar conclusions, estimating that 18 percent of all private sector programs will be disqualified from participation in Title IV programs; this would eliminate 18 percent of certificate students and 40 percent of students in degree-granting programs. This means that hundreds of thousands of entering students would be displaced annually from private sector colleges.[4] 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.[5]

The 50 percent graduation rate exception that has been described publicly by third parties does little to lessen the impact of the ED's last public GE proposal. With the nation's median aggregate college graduation rate at less than 50 percent for all types of colleges (private, public and non-profit), even this exception would exclude the students at more than half of <u>all</u> colleges from participating in federal financial aid programs. Many of those excluded students are the very ones Congress was attempting to help through the Stafford and Pell programs – students for whom there are few other educational opportunities today.

2. *<u>The GE Proposal Would Limit Higher Education Capacity</u>*

> *"Of course, there are limits to what the government can do. The true engine of job growth in this country will always be the private sector."*
> - President Obama, The White House, May 7, 2010

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 for increasing the number of college graduates nationwide.

During 2006-2008, the proprietary sector invested $2.4 billion in capital expenditures, primarily to drive innovation and support capacity expansion.[6] The private-sector's contribution is even more significant given the cutbacks facing traditional colleges as a result

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[3] Ibid.
[4] Report on Gainful Employment, Charles Rivers Associates, April 2, 2010, prepared by Jonathan Guryan, PhD, and Matthew Thompson, PhD, p. 38.
[5] Executive Summary to Report on Gainful Employment, Charles Rivers Associates, April 2, 2010, prepared by Jonathan Guryan, PhD, and Matthew Thompson, PhD, p. 1.
[6] Parthenon Perspectives on Private Sector Post-Secondary Schools, February 24, 2010, by Robert Lytle, Roger Brinner and Chris Ross; p. 4.

of the current recession. Unemployment, under-employment and the threat of layoffs are pushing more individuals to re-think their educational goals at the same time that capacity at traditional institutions is shrinking. Private sector institutions have the capacity to expand.

Not only do private sector colleges attract more non-traditional students, we also help them graduate and achieve gainful employment at significantly higher rates. A recent report by The Parthenon Group, using the 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.[7]

3. *The GE Proposal Would Stifle Innovation In Higher Education*

> "*For, ultimately, I believe the success of the American economy depends not on the efforts of government, but on the innovation and enterprise of America's businesses. And it will be America's businesses that help us emerge from this period of economic crisis and economic turmoil.*"
>
> \- President Obama, Remarks To The Business Council, May 4, 2010

From online education to blended academic programs, from the use of data analysis to support student retention, to new methods for measuring student learning, some private sector institutions are re-defining higher education in the United States.[8] The private sector is making its educational programs available and convenient to non-traditional students, and it is experimenting with new pedagogies and technologies that improve student learning. While many traditional institutions are delivering largely the same education they offered generations ago, the private sector has become the primary source of innovation in U.S. higher education. Given time, some of these private-sector institutions will raise the bar for education in this country and around the world.

That's the kind of ambition we have at Kaplan. Our goal is to be the world's best educator by 2020. We are committed to offering students the most direct and efficient path to achieve their learning outcomes. We respectfully submit that the Administration should be encouraging innovation and challenges to the *status quo* — not using the regulatory process to stifle innovation and eliminate competition for incumbent institutions and processes.

4. *The GE Proposal Would Obstruct An Important New U.S. Export Opportunity*

"*In a time when millions of Americans are out of work, boosting our exports is a short-term imperative. Our exports support millions of American jobs. . . .*

[7] Ibid; p. 8; Source: NCES BPS 2004-2006.

[8] See, e.g., Seeing What's Next, Clayton M. Christensen, Scott D. Anthony, Erik A. Roth, Harvard Business School Press, 2004; Chapter Five.

"We need to remind ourselves, we still have the most innovative economy in the world. We still have the most productive workers in the world. We have the finest universities in the world. We have the most dynamic and competitive markets in the world.

"And that's why, for the first time, the United States of America is launching a single, comprehensive strategy to promote American exports . . . ."

- President Obama, Remarks at the Export-Import Bank's Annual Conference, March 11, 2010

The United States has long been a popular destination for international students. These students get a sense of the values and freedoms we enjoy here in the U.S., while their spending is a valuable contribution to the American economy. It is worth noting that these students pay their own way, as they typically are not eligible for federal student aid.

We believe, however, that the power of education as a leading U.S. export market is just beginning. Our own experience working with universities around the world is that there is a deep and growing desire for the expertise, processes, technology, pedagogy, curriculum and commitment to educational quality we have developed here in the U.S. It leaves us certain that we are on the cusp of a significant expansion of U.S. export capabilities in higher education. Already a quarter of our revenue is outside of the U.S., mostly derived from applying our U.S. capabilities to new markets.

Leading universities in nations around the world have asked us to help them to provide Western-style education to non-Western students. They would prefer to work with us rather than local universities because the competitive American higher education system has led us to develop state-of-the-art capabilities.

As a result, we can employ more people and deliver more taxable income here in the U.S., and invest even more in our capabilities, for the benefit of our students, both domestically and abroad. It is a virtuous cycle that would be threatened by the ED's proposed draconian GE measures, which would dramatically undermine America's leading-edge capabilities and investment in higher education and would provide international competitors the opportunity they need to capture for themselves the markets in which we believe American higher education should succeed.

5. _The GE Proposal Would Increase Unemployment_

"Jobs must be our number one focus in 2010 . . . ."

- President Obama, State Of The Union Address, January 27, 2010

As described above, the GE proposal would result in millions of students being denied access to college and therefore lacking the skills to obtain jobs. In addition, the GE proposal would result in significant job loss among the hundreds of thousands of faculty members, administrators, and staff who work at private post-secondary institutions, and among those who work in non-degree programs at public and independent institutions. Each faculty or school administration job lost represents the loss of an individual who helps students build their professional skills. These job losses have a negative multiplier effect as the students left untaught will never have the opportunity to use their new skills to improve their lives and strengthen the economy.

The GE Proposal Is Economically Significant

As stated above, the GE proposal will affect millions of students. According to IPEDS[9] data, the average tuition for a proprietary sector program is $10,000 - $14,000. If one simply multiplies the number of students affected by the average tuition, it becomes abundantly clear that the GE proposal's annual effect on the U.S. economy could easily run in the billions of dollars. It is difficult to fathom how the ED's draft regulations could not have been labeled as "economically significant regulatory action" when they were logged in at OMB on April 12, 2010. Under Executive Order 12866, Section 3(f)(1), a regulation is considered significant, and requires a higher level of economic scrutiny, if it is likely to result in a regulation that may:

> *Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.*

Clearly, the proposed GE regulation will have an annual effect well in excess of $100 million and only a review of incomplete data could have led to the conclusion that the draft GE proposal does not represent economically significant regulatory action. Kaplan respectfully requests that the OMB re-classify the ED's draft regulations and subject them to the required level of scrutiny.

There Are Better Ways To Address The ED's Concerns While Simultaneously Supporting The President's Goals

While the ED has not specifically articulated the goals it is trying to address with its GE proposal, we believe the ED is focused on two[10] concerns:

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[9] Integrated Postsecondary Education Data System (IPEDS) is the core postsecondary education data collection program for the National Center for Education Statistics (NCES).

[10] Anecdotally, we've heard members of the ED express concern that proprietary schools educate 10% of the nation's students, yet those students receive 25% of the total Title IV funds. This is an extremely misleading "statistic," as it fails to take into account other government funds, such as appropriations, contracts and grants, of which proprietary schools receive only 1%. On a blended basis (Title IV spending combined with grants, contracts and appropriations), proprietary schools would receive only 6% of funding.

1. The concern that a material segment of students borrow more than their job prospects would enable them to repay.

2. The concern that certain investors may purchase schools with the intention of growing revenue by dramatically increasing enrollment without regard to educational quality, while drawing federal financial aid and increasing the overall student debt burden.

Kaplan shares the concern about student over-borrowing – an issue that exists at traditional intuitions as well as private-sector colleges. There are, however ways to address over-borrowing without denying students access to quality education. We also appreciate the ED's concerns about certain investors with short investment time horizons. These investors stand in stark contrast to institutions like Kaplan, which have a very long-term outlook on building enduring schools known for quality. We believe that the ED already has the necessary tools – particularly regarding new ownership approvals – to constrain short-term investors, without harming students across the sector. We have outlined some of these tools in prior correspondence with the ED and the list is enclosed for your reference.

Along with two sector colleagues, Kaplan has proposed an alternative to the GE proposal that would:

- Require that institutions disclose to students the information students need to make informed decisions prior to taking on debt, and
- Require that schools warn students prior to enrollment about programs that fail to meet a minimum debt-service-to-income ratio.

The metrics in our proposal resemble those in the ED's most recent public GE proposal, but with the following modifications:

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

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 several reasons why debt-service-to-income ratios such as those contained in the ED's GE proposal should not apply to degree programs:

a. The lifetime benefits conferred by degree programs, such as higher lifetime earnings, higher income growth rates, greater employability, better career advancement and job stability, do not readily lend themselves to a formulaic approach to measuring value using job codes and BLS statistics, which are based on first-year earnings.
b. The at-risk students the ED is seeking to protect are much more likely to enroll in non-degree programs than in degree programs.

c. When the GE statutory language was first included in the Higher Education Act of 1965 very few private sector schools were degree-granting. This indicates a clear lack of intent for the term to apply to degree programs.

2. *Alternatively, There Should Be A Tiered Approach*

Should degree programs be included in a GE regulation, we recommend different formulae in a tiered approach for non-degree programs, Associate's degree programs, and Bachelor's degree programs. Post-baccalaureate programs should 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, which would impact "outlier" programs, but not eliminate quality student opportunities:

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

3. *Any Formula Should Contain An Exclusion for Prior School Debt*

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

4. *Alternatives Worth Exploring*

There should be alternative routes to compliance with a debt-service-to-income ratio test. These include:

- Maintaining target graduate cohort default rates (GCDRs) at 12.5 percent over a two year and 15 percent over a three year period.
- Establishing a threshold for post-graduate employment rates. We recommend a minimum employment rate of 70 percent within six months following graduation. 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.

Again, I greatly appreciate the opportunity to provide Kaplan's input and respectfully urge that the gainful employment proposal be classified as an economically significant regulatory action subject to the required scrutiny and either withdrawn or significantly modified to avoid unintended damage to millions of our nation's future workers.

Sincerely,

Andrew S. Rosen

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

Cc: The Honorable Arne Duncan
The Honorable Anthony Miller

Education Department's Selected Enforcement Authorities

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)