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Sent: Wednesday, January 06, 2010 1:27 PM
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McGaughy; lgodown@pstrategies.com; William Dunn
Subject: NegReg: Program Integrity
Attachments: NegReg Suggestions.pdf

David and Ann:

We hope you had a nice holiday.

As we have outlined in previous correspondence, the problems of waste, fraud and abuse that pervade postsecondary education stem from the reckless behavior of Title IV recruiting machines.

In light of the upcoming negotiated rulemaking session concerning program integrity, we wanted to share with you a few specific suggestions that address Title IV loopholes currently being exploited by these Title IV recruiting machines.

We fully support the Department in its efforts to restore program integrity in postsecondary education and hope you will consider our suggestions as the process moves forward.

Thank you again for your time.

Best,

Kent McGaughy

Antal Desai

Improving Program Integrity in Postsecondary Education

January 2010

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Postsecondary education in the United States is in crisis, making this negotiated rulemaking session one of the most important Department of Education (DoEd) initiatives in the last 20 years. Program integrity is severely lacking in the most rapidly growing sector of postsecondary education. During this negotiated rulemaking session, the Department of Education (DoEd) has the opportunity to restore program integrity by implementing meaningful safeguards, by imposing responsibility on schools to educate, and by imposing severe consequences on those that do not.

- **Illegitimate, recruiting-centric, direct marketing machines** have returned to postsecondary education and are proliferating like a virus. Today, Title IV recruiting machines posing as "schools" siphon \$20 billion annually (and growing) in Title IV funds away from legitimate educational institutions.
- These Title IV recruiting machines are essentially well-lawyered combinations of a subprime loan originator (front-end) and a diploma mill (back-end). They combine the fraudulent reverse-redlining techniques associated with subprime loan originators with the pay-for-degree schemes associated with diploma mills.
- Title IV recruiting machines not only **waste Title IV funding** but they also **wreck student lives**.
 - DoEd projects that students attending 2-year proprietary schools will ultimately default on **47 percent** of the dollars they borrow. A student who defaults on her loans is literally ruined financially.
 - Students seeking post-secondary education in order to improve their economic prospects are being defrauded by Title IV recruiting machines. By luring students to borrow tens of thousands of dollars for educations they do not deliver, the Title IV recruiting machines **severely harm the underprivileged population they purport to serve**.
 - Meanwhile, Title IV recruiting machines are among the most profitable businesses in the world, a fact which further perpetuates the vicious circle.
- **Current laws and regulations governing program integrity were implemented during the 1990s without foreknowledge that the internet would facilitate the ability of a new breed of Title IV recruiting machines to circumvent Post-Nunn safeguards.** Because current regulations do not fully acknowledge the modern Title IV recruiting machines, enforcement has also been compromised.
- It is critical to restore program integrity by implementing regulations that eliminate loopholes and grey areas. It is equally critical to provide enforcement bodies with ample ability to facilitate the enforcement process.
- In key areas of abuse, it is absolutely critical that enforcement be timely, swift, decisive and impactful. Across multiple areas of regulatory noncompliance, a **zero-tolerance** policy that results in immediate dismissal from Title IV aid programs is the only long-term solution to restoring program integrity.

Issue #3: Misrepresentation of Information to Students and Prospective Students Enrollment personnel at Title IV recruiting machines systematically misrepresent information to potential students. DoEd must institute a zero-tolerance policy for schools that misrepresent information.

- Title IV recruiting machines invariably blame misrepresentations on "rogue" enrollment counselors. They insist that problems identified are isolated and not systemic. As illustrated by recent reports from both the GAO and the OIG, misrepresentation in post-secondary education is rampant and systemic. High-pressure, sales-oriented Title IV recruiting machines foster a culture of misrepresentation in order to "hit the numbers."
- **Misrepresenting information to potential students is an ingrained component of the recruiting pitch offered by enrollment counselors at Title IV recruiting machines.** Under current policy, the cost of misrepresentation is low. A zero-tolerance policy is necessary to stop misrepresentation in postsecondary education.
 - DoEd should set up a task force within OIG-DoEd. The task force should conduct systematic checks of randomly selected schools. The DoEd should institute a **zero-tolerance policy** where one violation of information rules results in a four year probation period and where a second violation of information rules results in immediate suspension of Title IV eligibility for 4 years.
- In addition to DoEd's proposed regulatory language, we recommend that DoEd create a standard plain-English representation form that schools would provide to prospective students prior to their application for federal financial aid. Students would be required to initialize each representation and then sign the form, which schools would then be required to keep on file. The DoEd form would disclose and require acknowledgement of the following:
 - Total cost of degree or certificate including tuition, fees, books and other expenses, including room and board if applicable ("cost of contemplated education").
 - The total cost of the contemplated education factoring in the cost of debt assuming 100% of education is financed with federal student loans at prevailing interest rates.
 - Student's annual payment assuming normal 10-year amortization.
 - Annual income required to pay off debt in 5 and 10 years assuming 10% of pre-tax income is used to pay down debt.
 - 6-year cohort graduation rates for program, degree type (bachelors, masters, etc.) and school.
 - Most recent cumulative lifetime default rates for school organized by cohort.
 - Most recent job placement rates by degree type and across overall school [for institutions subject to gainful employment requirements].
 - School and program accreditation.
 - Disclaimer that accreditation does not guarantee transfer of credits and that transferability of credits is subject to policies at school to which the student desires to transfer.
 - List of any legal, regulatory or accreditation actions facing the school.

Issue #4: Incentive Compensation

The law is clear: paying commissions to enrollment personnel to "recruit" is a conflict of interest. Recruiter incentive compensation in all forms should be banned from academia.

- We fully support the DoEd's desire to eliminate all of the safe harbors.
- Enrollment counselors in legitimate educational institutions "advise" students, while enrollment counselors in Title IV recruiting machines "recruit" students.
- The major flaw with incentive compensation is that it allows schools to pay recruiters for the volume of students recruited, without regard for students' best academic and economic interests. When schools pay incentive compensation, they create irresistible incentives to act in a fiduciarily irresponsible manner.
- The current incentive compensation safe harbors encourage unfoward Title IV recruiting machines with high pressure sales cultures to prey upon the underprivileged and underserved.
 - The safe harbors provide institutions with wide latitude to side-step the rules, consequently making enforcement of recruiting violations extremely difficult despite intentional misconduct by violators.
 - Current safe harbors regarding internet activities and third-party recruiting provide the most room for abuse.
- In addition to eliminating the safe harbors, we strongly advocate that the DoEd eliminate recruitment and recruiter quotas. The quota system is the foundation upon which incentive compensation systems (and, in turn, reckless sales cultures) are based.
 - As with incentive compensation, recruiter quotas reward volume and therefore facilitate fiduciarily irresponsible recruiting behavior.
 - With a quota system still in place, institutions would easily circumvent even a full incentive compensation ban.
 - Recruiters who exceed quotas would be promoted. Recruiters who miss quotas would be fired. The fiduciarily irresponsible sales culture mentality would continue.
- The DoEd should establish a special task force to monitor compliance with the incentive compensation ban. The task force should conduct systematic checks of randomly selected schools, particularly focusing upon schools that employ greater than 100 enrollment counselors. The DoEd should institute a zero-tolerance enforcement policy where violations of the incentive compensation ban result in immediate suspension of Title IV aid eligibility for 4 years.

Issue #5: State Authorization as a Component of Institutional Eligibility
A well-functioning regulatory triad in postsecondary education is vital to ensure that Title IV aid is disbursed only to students attending legitimate educational institutions to ensure that students receive the education they deserve.

- We fully support the DoEd proposal to require schools to receive explicit state authorization to receive Title IV aid. If a state is not providing oversight, then students in that state should not be eligible to receive Title IV aid. The intent of the triad construct is to provide a set of checks and balances so that failure or dysfunction by one member of the triad will be caught and corrected by the others. The current system is failing.
- States should monitor authorized institutions with a consumer protection agenda in mind.
 - We recommend that the DoEd require each state licensing body to set up a consumer protection agency (CPA) or liaise with existing CPAs within their state to monitor representations to students and investigate student claims.
 - DoEd should provide states with guidance on which issues to monitor and then hold states accountable to these guidelines.
- Recent OIG investigations into accreditation have exposed that accreditation agencies are not performing their gatekeeper function. Due to major conflicts of interest, accrediting agencies are allowing Title IV recruiting machines to proliferate despite obviously substandard academic quality and horrendous student outcomes.
- Because current regulations do not explicitly require state authorization, some states do not possess an oversight body. In states where oversight is nonexistent and where the accrediting agencies are not performing their gatekeeper function, the triad has only one leg (DoEd). Consequently, the triad construct must be reestablished and strengthened to provide real protection to students and taxpayers.
- While requiring structured, active involvement from the states would increase the administrative burden at the state level in the short-term, such involvement is imperative for the long-term viability of the triad and is necessary to provide DoEd, students and taxpayers with appropriate protections.
 - Title IV recruiting machines are opposed to state authorization requirements because such regulation translates into their being able to get away with less.
 - Distance education has become the vehicle of choice for Title IV recruiting machines since these programs escape scrutiny in many states. Empowering states to closely monitor these high-abuse potential programs would materially curb waste, fraud and abuse in distance education.
- We would like to submit one suggestion regarding the DoEd's proposed regulatory language:
 - Section (b) states that the Secretary considers an institution to be legally authorized if the State monitors academic quality.
 - Section (b) (1) states that "The State may rely on accrediting agencies recognized by the Secretary under 34 CFR part 602" to monitor academic quality.
 - We strongly recommend that the DoEd remove section (b) (1). Allowing schools to receive state authorization based on a "seal of approval" from accrediting agencies is the equivalent of not requiring state authorization at all.

Issue #6: Gainful Employment in a Recognized Occupation

Title IV recruiting machines burden their students with astoundingly high debt levels unsupported by the educations they provide. With the right gainful employment regulations and auditing functions in place, Title IV recruiting machines will be held accountable. They will have to deliver gainful employment to students, or they will lose access to Title IV.

- In its most recent cohort default rate release, DoEd projects that students attending 2-year proprietary schools will ultimately default on **47 percent** of the dollars they borrow. While schools in this sector are reporting record profitability, students are being burdened with loans for educations they are not receiving.
- Since the law states that vocational and proprietary schools are only eligible for Title IV because they prepare students for gainful employment, it is unequivocally prudent to hold schools accountable for the tuition and fees they charge.

Consider the following framework:

- Programs with low graduation rates will have unacceptably low levels of gainful employment. We recommend that the DoEd establish minimum graduation thresholds for Title IV eligibility.
 - DoEd should require all institutions and programs subject to the gainful employment requirement to demonstrate that two-thirds of students who enroll in a given program (defined by degree or certificate title) graduate within six years. Schools that fail to achieve this metric should lose Title IV eligibility immediately (schools / programs could then reapply for Title IV and undergo a DoEd audit once they meet threshold requirements for 2 consecutive years).
- For programs that exceed minimum graduation thresholds, we recommend that the DoEd calibrate lending in relation to a graduate's starting salary, specifically:
 - **Total Title IV loans** for a given program should not exceed 33 percent of expected median starting salary for an entry-level position in a particular field. Expected starting salaries should be benchmarked against either BLS data or actual graduate income levels in the 1st full calendar year following graduation (schools would provide the DoEd this data annually for all graduates).
 - A student expected to earn \$40,000 in annual income would not take on more than \$13,200 in loans. Assuming tuition is financed with Title IV loans that charge 6% interest and assuming that the student is allocating 10 percent of pre-tax income to pay-down debt, the student would be debt free in 5 years. This ratio of debt to income offers the student and taxpayers an acceptable probability of successful payoff.
 - Each year, schools participating in Title IV would submit social security data for all graduates to the DoEd. DoEd would randomly compare income data reported by schools with actual income data from the IRS. Schools where median income levels deviate from the IRS data would become ineligible for Title IV.
- Schools subject to gainful employment requirement must have skin in the game.
 - Title IV recruiting machines are analogous to sub-prime loan originators in housing. These recruiting machines are paid tuition upon loan origination and suffer consequences only when loans defaults exceed 25 percent within a manipulated 2-year timeframe. Title IV recruiting machines are, therefore, incentivized to maximize loan volumes, regardless of loan quality because loan defaults can be managed within a 2-year (or soon to be 3-year) window. Until Title IV recruiting machines are made to suffer economic consequences when they make bad loans, they will continue to saddle borrowers with unpayable debts and DoEd with loans that will inevitably default.
 - To promote responsible loan origination and to cushion DoEd and taxpayers from default-related losses, require gainful employment schools to pay DoEd 15% of the face value of every defaulted loan.

Issue #7: Definition of Credit Hour

Current credit hour policies are designed for traditional educational programs. Title IV recruiting machines, particularly those operating online, exploit grey areas and award degrees in a manner that closely resembles a time-released diploma mill. With the proliferation of online education, it is critically important to develop online-specific credit hour / program length requirements and then hold online schools accountable.

- We support the spirit of the DoEd's draft regulations concerning credit hours. However, the recent OIG review of The Higher Learning Commission's accreditation decision regarding American Intercontinental University demonstrates why accrediting bodies should not be relied upon to determine or review credit hour and program length.¹¹ With the aid of understaffed, conflicted accreditation bodies and with the proliferation of online education, Title IV recruiting machines have found (and will continue to find) ways to circumvent formal credit hour and program length definitions.
- In addition to the draft language, we propose that the DoEd consider the following two suggestions:
 - DoEd should establish an online education task force whose function would be to review and approve credit hour and program length policies for schools where >50 percent of courses are taken online. The task force should model credit hour and program requirements for online programs upon successful online programs (defined as having graduation rates >75 percent; placement rates >80 percent; lifetime default rates <10 percent). These policies would be reevaluated every 3 years.
 - In addition to establishing online-specific minimum credit hour / program length requirements, we urge the DoEd to adopt **standardized testing requirements** for students attending schools subject to review from the online task force.
 - A disproportionate share of waste, fraud and abuse in postsecondary education occurs in open admission distance learning programs where neither credit hour / program length policies nor academic outcomes are measured. While Title IV recruiting machines can exploit definitional grey areas, they can not dodge outcomes.
 - Students attending schools subject to review by the online task force would be required to take a standardized proficiency exam administered by a 3rd party prior to graduation. Standardized testing would serve to ensure that Title IV dollars are delivering adequate educational outcomes. Programs in which less than 75 percent of a cohort passes the standardized test would be ineligible for Title IV aid.
 - These regulations would standardize the best practices of the most successful, innovative online programs and at the same time, would force online-centric schools to demonstrate minimum levels of academic achievement.

¹¹ HLC granted American Intercontinental University (AIU) accreditation with no limitation despite finding serious problems with the integrity of its programs and credit hours. AIU, a subsidiary of Career Education Corporation, is a for-profit school with 23,000 students (19,000 online) that grants associate's, bachelor's and master's degrees. OIG essentially found that HLC looked the other way after determining that AIU's program length and credit hour practices mirror a time-released diploma mill. "HLC's conclusion that AIU met all of its criteria for accreditation despite these significant issues suggests that either: 1) HLC does not have specific standards related to program length and credit hours, or 2) HLC has specific standards related to program length and credit hours, but (a) does not follow them or take effective action when faced with evidence of non-compliance or (b) the standards are low enough or lacking in specificity that they can be met by an institution like AIU..." (OIG Alert Memorandum - Control Number ED-OIG/L13J0006, 12/17/2009, page 7, emphasis added)

Issues #12 and #13: Return of Title IV

Current regulations essentially exempt internet-based Title IV recruiting machines from attendance regulations because their conflicted accreditors do not require schools to take attendance. Consequently, internet-based Title IV recruiting machines exploit Return of Title IV rules and steal Title IV funds by slow-playing drop-outs. Meanwhile, students are saddled with debt for instruction they have not received.

- Current regulations regarding the Return of Title IV funds were not developed with internet-based Title IV recruiting machines in mind. To the detriment of students and taxpayers, internet-based Title IV recruiting machines exploit Return of Title IV rules to maximize their take of Title IV funds. We estimate that this issue affects greater than 75% of students attending these schools.
- **We fully support the DoEd's proposed language regarding Issue #12: term-based programs with modules or compressed courses.** Internet-based Title IV recruiting machines, which typically operate on a term-based module or compressed course system, purposely include a short first course in order to capture Title IV funds for the entire term, regardless of whether the student attends any additional courses within the term.
 - A student should be considered a drop-out in a term-based program that includes multiple consecutive or overlapping classes within the term if the student does not complete the entire term.
- One of the most exploited loopholes in the Title IV program is the Return of Title IV rule regarding attendance (Issue #13). The DoEd should immediately adopt a **zero-tolerance** policy towards Title IV stealing.
 - Internet-based Title IV recruiting machines exploit attendance loopholes by delaying recognition of drop-outs despite having precise records of when a student stops attending class (last online classroom log-in). Title IV recruiting machines deliberately slow play their drop-outs in order to maximize their receipt of Title IV funds. Because some accreditors do not require schools to take attendance, current regulations provide these online recruiting schools tremendous leeway in determining when to recognize a drop-out.
 - In order to stop stealing from Title IV, we strongly advocate that the DoEd consider the following additions to its proposed regulatory language in Section 688.22:
 - To the end of section (b)(1), we propose the following: *For institutions where greater than 50% of the courses were taken online in the previous academic year, the Last Day of Attendance is defined as the last date the student either submits a post or assignment in the online classroom.*
 - To the end of section (b)(3)(i), we propose that an institution should also be required to take attendance if: (D) Greater than 50% of the institution's courses were taken online in the previous academic year.
 - Additionally, the DoEd should establish a Return of Title IV task force, whose singular mission would be to randomly conduct thorough audits of schools to check actual vs. reported drop-out dates. Schools where greater than 10% of sampled drop-out calculations are performed incorrectly would immediately lose Title IV eligibility for four years. In addition, DoEd would subsequently perform a more detailed audit of the violating school's 5-year historical Return of Title IV records. DoEd should demand reimbursement (including interest) for all funds the school has not properly returned to DoEd.