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Federal Overreach into American Higher Education

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Abstract: *If allowed to take effect, three regulations proposed by the U.S. Department of Education will raise costs for students and limit their educational opportunities. These regulations would require state authorization of higher education institutions, impose gainful employment requirements, and dictate a one-size-fits-all definition of a credit hour. Instead of restricting competition in higher education and discouraging innovation, the Education Department should explore fresh ideas in measuring educational outcomes and improving quality.*

The U.S. Department of Education (ED) has proposed 14 new regulations that call for aggressive new government involvement in American higher education. Three regulations in particular have attracted much attention and stand out as especially troubling. One regulation would require higher education institutions to obtain authorization from their state governments in order to participate in federal financial aid programs. Historically, nongovernmental accrediting agencies have played the leading role in this certification process. A second would require certain educational institutions to demonstrate that their graduates find gainful employment, and a third regulation would impose a federal definition of what constitutes a "credit hour" in higher education.

Higher education definitely needs serious reform. Costs have increased at more than twice the rate of inflation over the past three decades.[1] In 2008, Americans spent $432 billion on higher education,[2] which

Talking Points

- The federal government has proposed a new set of regulations that would drastically increase government involvement in higher education.
- One regulation would require higher education institutions to be accredited directly by states, instead of by independent, non-governmental agencies as is the current practice. This would effectively give states the authority to determine which institutions can operate.
- Gainful employment rules represent a de facto price control on for-profit institutions and would limit educational choices for America's most vulnerable student populations. A third regulation would impose a federal definition of "credit hour," which would fail to improve educational quality, but would limit educational options for nontraditional students.
- While higher education in the United States desperately needs reform, the proposed federal regulations move in the wrong direction by limiting competition among institutions of higher education, driving up costs, and limiting educational opportunities.

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equaled 3 percent of U.S. gross domestic product (GDP) and exceeded the GDPs of many countries, including Belgium and Switzerland.[3] Despite all of this investment, little information is available on student learning outcomes. More than 40 percent of students enrolled in bachelor's degree programs fail to graduate within six years.[4] Meanwhile, student loan debt ($830 billion as of June 2010) has recently surpassed credit card debt for Americans.[5] Clearly, the American higher education system is highly inefficient and needs serious improvement.

Yet the ED's solutions badly miss the mark. Instead of addressing cost escalation, transparency, and accountability in higher education, these proposals impose government regulations that will raise costs for students and limit their educational opportunities. This paper examines the issues of required state authorization, gainful employment, and credit hour definitions and shows how this new federal overreach into higher education will adversely affect higher education as a whole.

State Authorization of Higher Education Institutions

The proposed new regulations include an unprecedented requirement that all institutions offering post-secondary education programs must receive authorization from their state governments. Such authorizations would make them eligible to participate in federal financial aid programs under Title IV of the Higher Education Act (HEA). Because student participation in federal financial aid programs is crucial to the financial viability of most institutions, this move gives state governments substantial power to decide which institutions can offer higher education programs.

State Authorization Proposal. In the past, the ED understood the states' role in authorizing post-secondary institutions to be minimal, with no statutory requirement for state authorization. However, this new proposal calls for states "to take an active role in approving an institution."[6]

Under the proposed regulation, states must meet three specific conditions to establish sufficient oversight. First, authorization must be granted for the explicit purpose of offering educational programs beyond the secondary level. Second, this legal authorization must "be subject to adverse action" by the state. Finally, the state must have a developed process "to review and appropriately act on complaints concerning an institution, and to enforce applicable State laws." The regulation notes that an educational institution could also be authorized by the federal government or an Indian tribe where applicable. It also permits state constitutions to exempt religious institutions from the authorization requirement.[7]

The ED argues that these requirements are necessary to protect students from fraudulent diploma mills, but also asserts that the requirements allow variation in how oversight responsibilities are enacted by leaving the issue up to states themselves. The department cites uneasiness with higher education institutions gaining state authorization through business licenses or as nonprofit institutions, rather than explicitly as providers of post-secondary education programs. Furthermore, the department stressed a concern that "[s]tates are deferring all, or

1. U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2009*, April 2010, pp. 477–479, Table 334, at *http://nces.ed.gov/programs/digest/d09/tables/dt09_334.asp?referrer=list* (October 26, 2010).
2. *Ibid.*, p. 47, Table 26, at *http://nces.ed.gov/programs/digest/d09/tables/dt09_026.asp?referrer=list* (October 26, 2010).
3. Organisation for Economic Co-operation and Development, "Country Statistical Profiles 2010," OECD Stat Extracts, at *http://stats.oecd.org/Index.aspx?DatasetCode=CSP2010* (October 26, 2010).
4. U.S. Department of Education, *Digest of Education Statistics 2009*, pp. 469–472, Table 331, at *http://nces.ed.gov/programs/digest/d09/tables/dt09_331.asp?referrer=list* (October 26, 2010).
5. Andrew Gillen, "The Amazing College Debt Bubble," Manhattan Institute, September 20, 2010, at *http://www.mindingthecampus.com/originals/2010/09/the_amazing_college_debt_bubbl.html* (October 26, 2010).
6. *Federal Register*, Vol. 75, No. 117, June 18, 2010, p. 34813, at *http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf* (October 26, 2010).
7. *Ibid.*

nearly all, of their oversight responsibilities to accrediting agencies…or are providing exemptions for a subset of institutions for other reasons."[8]

Accrediting Agencies' Historical Role. Historically, independent accrediting agencies, not state or federal agencies, have been charged with ensuring a minimum quality level in institutions receiving federal funding. While this decentralized system of oversight that relies on nongovernmental accrediting agencies seems ideal, in practice it has proved unsatisfactory in actually ensuring institutional quality. However, the ED's proposal does not address the problems that confront accrediting agencies.

Accreditation's most fundamental flaw is that accrediting agencies have failed to provide the public with meaningful information about the quality of various institutions of higher education. Because the accrediting agency reports are not made public, students and taxpayers are left to judge the institutions on whether they are "accredited" or "not accredited." Furthermore, accreditors operate much like a cartel, restricting competition and maintaining low standards. While accreditation has failed to guarantee quality or to safeguard Title IV funds, the Education Department's proposed regulations would undermine much of the accreditor's authority and fail to address any of the current system's shortcomings, while adding new problems of its own.

Institutional Quality. The Obama Administration's proposal to increase state involvement in authorization will not improve the quality of higher education institutions. Adding a layer of bureaucracy by putting state governments in a position to authorize higher education institutions creates a perverse incentive to authorize lower-quality institutions in order to secure federal funding and political goodwill. Having well-funded institutions of higher education in a state is politically and financially advantageous to state governments. By accepting federal funds, state governments can reduce their own budgets for higher education while maintaining the political goodwill of citizens who desire well-funded higher education. As a result, states could find it advantageous to authorize any institution that the public supports. Because of this incentive, state governments are poorly positioned to uphold high standards.

Politicization. Perhaps the most troubling consequence of giving the states unprecedented authority to determine which institutions can provide educational services is that it opens the system to politicization.

Historically, one strength of the American higher education system has been its diversity of institutions with widely ranging missions. This proposal would subject institutions to the whims of state bureaucrats who have the power of "adverse action" and who are charged to "respond appropriately" to complaints about institutions.[9] This politicization gives states the power to restrict authorization to institutions on political or other non-educational grounds. Furthermore, this could open the door for states to dictate course curricula at the institutions.

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This is particularly concerning to providers of private and religious higher education. In a letter sent to the Department of Education on July 30, 2010, former Senator William Armstrong (R–CO), the president of Colorado Christian University, expressed concern about the proposed rules. Armstrong warned that they would "subject both public (government owned and operated) colleges and universities and private schools to 'substantive' regulation by state government."[10]

8. *Ibid.*
9. The rules are vague about the definition of "adverse action." Representative Mike Coffman (R–CO) has suggested that adverse action "presumably means individual states will have to establish guidelines, standards and requirements against which institutions will be judged, approved or denied." Mike Coffman, letter to Arne Duncan, U.S. Secretary of Education, September 16, 2010, at *http://coffman.house.gov/images/stories/doe_secduncan_state_authorization.pdf* (October 26, 2010).

Higher education is supposed to provide students with a diversity of ideas and views about the world and the way it works. Usurping this academic freedom of thought for political purposes runs counter to American traditions.

College Costs and Competition. Much like the accreditation system, this proposal would impose another costly bureaucratic requirement, which would raise college costs without providing commensurate benefits. A reasonable function of accreditation includes providing transparency about the quality of institutions to the public. The current accreditation system does a poor job of ensuring quality, but the ED's proposal would not noticeably change this. This proposal, however, would impose new costs on higher education. First, complying with this requirement to obtain and maintain state authorization would compel institutions to wade through a second bureaucratic process. Resources devoted to maintaining compliance would be unavailable for uses that are more closely aligned with the academy's core mission, such as providing quality educational instruction to students or promoting faculty research.

Second, this proposal will increase costs by restricting competition. The language of the ED's proposal, which stresses concerns about an overreliance on accrediting agencies and exemptions given to certain subsets of institutions, suggests that the Obama Administration believes some existing institutions should not be authorized. Putting institutions out of business by revoking their authorizations will reduce competition. Competition among a multitude of providers drives down prices as they seek to attract cost-conscious consumers.[11] Imposing these bureaucratic requirements would also create barriers to entry into the higher education market, which will also reduce competition and drive prices higher.

This proposal would particularly raise costs for online institutions because they would need to obtain authorization from each state in which they operate. Richard Bishirjian, president of the online Yorktown University, has stated that this requirement could be prohibitively costly for online institutions.[12] Gaining the initial authorization in every state would be a significant undertaking, but maintaining the authorizations would be even more difficult. Requirements vary from state to state, and some probably contradict each other. The proposal does provide "that State legal authorization could include reciprocal agreements between appropriate State agencies."[13] However, this wording is unclear whether these "reciprocal agreements" are between agencies of different states or simply agencies within a single state. Even assuming the optimistic interpretation that agencies of different states can enter into reciprocal agreements, online institutions would still find it difficult to sort through all of the complexities associated with maintaining authorization.

Shutting out online institutions would restrict competition, raise costs, and limit the educational opportunities of many of America's most underserved students.

The great benefit of online education is that it can serve students regardless of their locations. This sector has shown great innovation and has the potential to greatly enhance educational opportunities for students from all backgrounds, including those who have historically been underserved by traditional higher education. Yet this proposal would limit the ability of online institutions to flourish, not because of quality issues, but because of bureaucratic red tape. Shutting out online institutions would restrict competition, raise costs, and

10. Bill Armstrong, "Notice of Proposed Rulemaking Published in Federal Register, 6/18/2010," letter to Jessica Finkel, U.S. Department of Education, July 30, 2010, at *http://www.ccu.edu/centennial/blog/post/2010/08/03/Breaking-Potential-Government-Takeover-of-Private-Colleges.aspx* (October 26, 2010).
11. For example, see N. Gregory Mankiw, *Principles of Microeconomics,* 5th ed. (Mason, Ohio: South-Western Cengage Learning, 2009).
12. Richard Bishirjian, "Preparing the Scapegoats for Slaughter," John William Pope Center for Higher Education Policy, July 30, 2010, at *http://www.popecenter.org/commentaries/article.html?id=2384* (October 26, 2010).
13. *Federal Register*, June 18, 2010, p. 34813.

limit the educational opportunities of many of America's most underserved students.

A Deeply Flawed Proposal. Forcing institutions of higher education to obtain state government authorization to participate in Title IV financial aid programs is a deeply flawed proposal. Although this would be a step away from the current ineffective system of accreditation, it would do nothing to convey information about the quality of various institutions' educational products. However, it would open higher education to unprecedented politicization, restrict competition, discourage innovation, and raise costs for students.

Gainful Employment Regulations

The Higher Education Act defines a for-profit higher education institution or vocational-based program as "an eligible program of training that prepares students for gainful employment in a recognized occupation."[14] The ED's proposed regulations lay out how for-profit and vocational programs would be required to comply with this definition. The full proposal was released as a separate 94-page document on July 23, 2010. If adopted, these rules would put many programs out of business, thus restricting competition in higher education, damaging student options, and further raising college costs.

The Gainful Employment Proposal. The proposed regulation on gainful employment imposes several initial requirements that require institutions to provide various types of information. For-profit and vocational training institutions would be forced to report about which programs students completed and the private loans and institutional aid that they received. These institutions would also be required to disclose on their Web sites information on the occupations that their programs prepare students to enter, the average graduation rate for on-time completion, program costs, median loan debt incurred from Title IV programs, private loans, and institutional financing plans. Beginning on June 30, 2013, they must also disclose the job placement rates of their graduates.[15]

The ED opened the proposal to public comment and received more than 90,000 submissions.[16] Although the final rule was originally scheduled for publication on November 1, 2010, the ED has postponed publication of the gainful employment portion until early 2011. However, Secretary of Education Arne Duncan insists that the rule will still go into effect around July 1, 2012, as originally planned.[17]

The bulk of the gainful employment proposal lays out qualifications for Title IV eligibility and the consequences of not qualifying. The ED plans to use a two-part test to assess compliance with the gainful employment requirement: measuring the ratio of students' loan debt to postgraduate earnings and measuring the rate of loan repayment for all students, regardless of whether they graduate.[18] Based on these measures, programs would be classified as eligible, restricted, or ineligible.

Eligible Programs. Fully eligible programs would be expected to achieve a federal loan repayment rate (i.e., the percentage of loans to their students that are being paid down) of 45 percent. Students or graduates of the program would need to maintain a median loan-to-earnings ratio under 20 percent of discretionary income or less than 8 percent of total income. Programs that meet both criteria would be fully eligible for Title IV participation. Programs that only meet one of these criteria would remain fully eligible provided that they disclose their data on both criteria to the public.[19]

14. *Ibid.*, p. 34809.
15. *Ibid.*
16. Jennifer Epstein, "Timeline Shift for 'Gainful' Rules," *Inside Higher Ed,* September 24, 2010, at *http://www.insidehighered.com/news/2010/09/24/timeline* (October 26, 2010).
17. U.S. Department of Education, "Department on Track to Implement Gainful Employment Regulations; New Schedule Provides Additional Time to Consider Extensive Public Input," September 24, 2010, at *http://www.ed.gov/news/press-releases/department-track-implement-gainful-employment-regulations-new-schedule-provides-* (October 26, 2010).
18. *Federal Register*, Vol. 75, No. 142, July 26, 2010, p. 43619, at *http://edocket.access.gpo.gov/2010/pdf/2010-17845.pdf* (October 26, 2010).

Restricted Programs. Programs that do not meet the 45 percent loan repayment rate or the median debt-to-earnings ratio but have a federal loan repayment rate of at least 35 percent would be restricted. This would mean that students in these programs could continue to receive Title IV aid, provided they are warned of possible repayment problems. Employers not affiliated with the institution would need to affirm "that the curriculum of the program aligns with recognized occupations at those employers' businesses and that there are projected job vacancies or expected demand for those occupations." Finally, the ED would limit enrollment in Title IV programs for students from these programs to the average enrollment of the previous three years.[20]

Ineligible Programs. Programs with federal loan repayment rates below 35 percent and median debt-to-earnings ratios above 30 percent of discretionary income and 12 percent of total income would be ineligible for Title IV funding. However, students enrolled in these programs would be allowed one additional year of Title IV funding if the institution agrees to warn them of the program's high debt-to-earnings ratio.[21]

Projected Impact. The ED estimates this regulation's impact on for-profit and vocational-based programs and, by extension, their students will exceed $100 million. The proposed gainful employment regulation would mean that "5 percent of all programs would no longer be eligible to offer their students federal student aid and 55 percent of all programs would be required to warn their students about high debt-to-earnings ratios."[22] Nevertheless, the ED asserts that it has completed a rigorous analysis and has "determined that the benefits justify the costs."[23]

Independent analyses disagree. The Parthenon Group points out that data limitations plague the ED's analysis. When accounting for these limitations, Parthenon asserts that approximately 30 percent of students enrolled in programs affected by the gainful employment requirements would find their programs ineligible. Moreover, Parthenon estimates that the regulations could cause 400,000 students to leave post-secondary education each year. Lifetime earnings would decline by approximately 15 percent, resulting in lost tax revenue of $400 million. Ultimately, Parthenon estimates that the gainful employment regulation would lead to "$5.3 billion in annual taxpayer burden to reduce $1.9 billion in possible losses stemming from federal student loan defaults."[24]

Charles River Associates finds similar negative effects. Its study suggests that 18 percent of for-profit programs would be ruled ineligible, affecting 33 percent of all students enrolled in for-profit higher education. Given the recent growth of the for-profit sector, it estimates that this regulation would shut out 5.4 million would-be students by 2020.[25]

Implications of the Gainful Employment Regulations. Higher education is in need of serious reform. Better indicators of actual educational outcomes of students are crucial to giving students and taxpayers the information they need to hold colleges and universities accountable. The ED optimistically views the gainful employment regulation as a

19. *Ibid.*
20. *Ibid.*
21. *Ibid.*
22. U.S. Department of Education, "Proposed Rule Links Federal Student Aid to Loan Repayment Rates and Debt-to-Earnings Levels for Career College Graduates," July 23, 2010, at *http://www.ed.gov/news/press-releases/proposed-rule-links-federal-student-aid-loan-repayment-rates-and-debt-earnings* (October 26, 2010).
23. *Federal Register*, July 26, 2010, p. 43629.
24. Roger Brinner, "U.S. Department of Education Public Comment: Assessment of Missouri Estimate of Impact," Parthenon Group, September 9, 2010, p. 3, at *http://www.parthenon.com/ThoughtLeadership/ParthenonPublicCommentonGainfulEmployment* (October 26, 2010).
25. Jonathan Guryan and Matthew Thompson, "Report on Gainful Employment: Executive Summary," Charles River Associates, March 29, 2010, p. 1, at *http://www.career.org/iMISPublic/AM/CM/ContentDisplay.cfm?ContentFileID=12392&MicrositeID=0&FusePreview=Yes* (October 26, 2010).

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move toward demanding outcomes-based assessments of higher education. Furthermore, the ED believes that it would target some of the "diploma mill" bad actors that are simply benefiting at taxpayer expense without providing useful training to students. Finally, it argues that the information will help students to evaluate the economic advantage of earning a college degree and demonstrate that obtaining a degree does not guarantee economic prosperity.

However, this proposal suffers from several serious problems. Rather than enhancing competition and reining in exploding costs, the ED's proposal will do the opposite. Students who have traditionally been shut out from higher educational opportunities will be harmed the most.

First, the strict repayment rates and earnings ratios serve as a de facto price control that would greatly limit educational offerings. Mark Kantrowitz asserts that the 8 percent debt-to-income ratio is too strict. His analysis suggests that this requirement "would preclude for-profit colleges from offering Bachelor's degree programs…[and] eliminate many Associate's degree programs at for-profit colleges."[26] The ED regulations would set loan limits for students at for-profit institutions, but these institutions would lack the legal authority to enforce the lower loan limits. To comply with the gainful employment regulations, they will be forced to lower tuition levels to reduce the amount of loan money needed. Thus, this proposal indirectly imposes a price ceiling on for-profit and vocational institutions.

Second, this proposal imposes costly new regulations on a single subset of institutions, placing them at a competitive disadvantage with nonprofit institutions. This will drive up costs for students at both types of institutions by limiting competition.

Critics of for-profit higher education claim that these institutions rely heavily on federal subsidies to remain financially viable. This is true. However, it ignores the reality that profit-seeking institutions must compete with heavily subsidized nonprofit institutions. To gain these federal subsidies, they must provide something of value to students.[27]

Third, the gainful employment regulation would restrict student choice. Education Sector, an education think tank, estimates that approximately 67 associate's programs for medical and clinical assistants, 22 programs in culinary arts, 21 programs in health technician fields, and 18 programs in accounting and bookkeeping technology would be ruled ineligible.[28] These fields closely match the industries that the Bureau of Labor Statistics (BLS) expects to experience the largest job growth between 2008 and 2018.[29] The gainful employment restrictions appear to target the very industries best poised to absorb new graduates in the coming decade.

Flawed Methodology. Students have much to lose from the proposed gainful employment regulations. While its defenders claim that the gainful employment requirement will protect students in programs that do not provide reasonable future earnings, using median figures for calculating the debt-to-earnings and debt-to-income ratios is a flawed methodology. All students in a program that does not meet the required thresholds will be deemed ineligible for Title IV participation.

Furthermore, in a program in which this median figure falls just short of the threshold, nearly half of the program's students would indeed qualify if the requirements were applied individually instead of across an entire program.[30] Yet these students would be barred from the program, not because

26. Mark Kantrowitz, "What Is Gainful Employment? What Is Affordable Debt?" FinAid, March 1, 2010, p. 1, at *http://www.finaid.org/educators/20100301gainfulemployment.pdf* (October 26, 2010).

27. Daniel L. Bennett, Adam R. Lucchesi, and Richard K. Vedder, "For-Profit Higher Education: Growth, Innovation and Regulation," Center for College Affordability and Productivity, July 2010, p. 5, at *http://www.centerforcollegeaffordability.org/uploads/ForProfit_HigherEd.pdf* (October 26, 2010).

28. Ben Miller, "Are You Gainfully Employed? Setting Standards for For-Profit Degrees," Education Sector, September 2010, at *http://www.educationsector.org/sites/default/files/publications/Gainful-Report_RELEASE.pdf* (October 26, 2010).

29. U.S. Bureau of Labor Statistics, "Occupations with the Largest Job Growth," modified December 10, 2009, at *http://www.bls.gov/emp/ep_table_104.htm* (October 26, 2010).

they are in serious danger of incurring overly burdensome debt, but because bureaucratic regulations demand it. Thus, the very regulations that are intended to save students from themselves by capping debt loads, would likely severely limit the potential of many deserving students.

Harm to Minority and Low-Income Students. Despite the Administration's rhetoric stressing the need to help traditionally disadvantaged students, the gainful employment regulations would harm minority and low-income students the most. In 2004, students at for-profit institutions had median incomes that averaged only 60.1 percent of the earnings of students at public institutions and 49.4 percent of the earnings of students at private, non-profit institutions.[31] For-profit students are also more likely to be first-generation college students than students at traditional institutions.[32] Additionally, data show that nearly 40 percent of students at for-profit institutions in 2007 were racial minorities, a significantly higher percentage than in the non-profit sectors.[33] Gainful employment regulations would threaten to reverse these positive developments and hurt vulnerable students the most.

Higher education desperately needs outcomes-based information, but the proposed gainful employment regulations seem more concerned with imposing de facto price controls on for-profit institutions to curtail expansion than protecting students. As proposed, this regulation would unfairly target a single sector, harm competition, increase costs, and limit educational choices for America's most underserved student populations.

Federal Definition of a Credit Hour

The ED cites language in the HEA to justify regulations that provide a federal definition of an academic credit hour. Specifically, the HEA states that Title IV eligible programs must provide "600 clock hours, 16 semester hours, or 24 quarter hours" of instruction.[34] To comply with this, the ED asserts a need to create a uniform definition of a credit hour. However, such a definition would simply impose another costly regulation on higher education that would discourage innovation and invite federal regulation.

The Credit Hour Definition. The proposed regulation would measure a credit hour in higher education in terms of the time that a student is engaged in academic activity based on commonly accepted definitions. Specifically, the proposal defines one credit hour as "[o]ne hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks" under a semester model and for 10 weeks to 12 weeks under a quarter system.[35] To allow some flexibility, the proposal permits institutions meeting accreditation standards to provide "institutionally established equivalencies as represented by learning outcomes and verified achievement."[36]

The proposal also revises the method for converting clock hours to credit hours. Under the proposed formula, 37.5 clock hours in semester programs or 25 clock hours in quarterly programs equal one credit hour. Programs meeting accreditors' standards would be authorized to substitute 7.5 clock hours in semester programs or 5.0 hours in quarterly programs for work completed outside of class. However, the semester programs must maintain 30 hours of strictly instructional time, and the quarterly programs must maintain 20 hours.

Accrediting and state authorization agencies would be responsible for assessing whether institu-

30. Kantrowitz, "What Is Gainful Employment?" p. 6.
31. U.S. Government Accountability office, *Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid*, August 2009, at *http://www.gao.gov/new.items/d09600.pdf* (October 30, 2010).
32. *Ibid.*, p. 19.
33. Bennett *et al.*, "For Profit Higher Education," p. 12.
34. *Federal Register*, June 18, 2010, p. 34809.
35. *Ibid.*, p. 34872.
36. *Ibid.*, p. 34810.

tions' credit-granting practices conform to reasonable practices in higher education. If they are in violation, these agencies are required to "promptly notify" the U.S. Secretary of Education.[37]

Unintended Consequences of the Definition. The ED argues that this proposal is necessary to ensure that "students at different institutions are treated equitably in awarding of [Title IV] funds."[38] However, the policy would have far-reaching unintended consequences that would further limit educational options to students without improving quality.

Enforceability. Enforceability is the most practical problem confronting this proposal. The ED is attempting to create a blanket standard of course lengths and to delegate oversight to accrediting and state authorization agencies. Despite demands that courses termed "one credit hour" meet in class for one hour weekly and assign two hours of out-of-class work, these agencies will not be able to monitor what actually occurs in the classroom, much less out of it. The federal government can demand a specific number of instructional minutes, but enforcing compliance would be nearly impossible.

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Educational Quality. More importantly, this proposal has no way of assessing educational quality. Time spent in a classroom and on out-of-class work is simply an input into the educational process that tells nothing about learning outcomes. While one professor might deliver informative hour-long lectures that convey substantial knowledge to the students, another might show films that are only marginally related to the course subject. This proposal inappropriately treats both classes equally.

The major justification of standardizing credit hours is to allow for comparisons between institutions, but "[a]s a proxy for learning, credit doesn't hold up."[39] Similarly, basing Title IV funding decisions on credit-hour definitions is also inappropriate. Transparency about outcomes of higher education is needed, not federally defined course lengths.

The Effect on Online Institutions. This is seen as a way to rein in "credit inflation," but like many of the ED's proposals, it will particularly harm online institutions. The flexibility of online programs has attracted nontraditional students who work full-time. In 2007, more than half of for-profit institutions' students were over the age of 25.[40] To juggle both school and employment responsibilities, these students often desire programs that proceed at a slower pace.

However, to remain eligible for full funding from Title IV, there is a minimum credit-hour requirement. Online institutions have been criticized for granting students an overly large number of credits for courses, while simultaneously increasing the total number of credits needed to graduate. This enables their students to receive a steady stream of student loans, while progressing more slowly in their studies.[41]

This proposal would almost certainly be used to regulate this behavior. To a certain extent, this is justified. Simply giving away credits to attract more federal financial aid does not optimize scarce taxpayer resources. However, egregious credit inflation is most likely the practice of a few bad actors, not a systemic issue among online providers. Imposing stringent, standardized credit hour definitions on

37. Council for Higher Education Accreditation, "U.S. Department of Education Publishes Proposed Regulations Addressing Program Integrity and Student Aid Programs," *Federal Update*, June 28, 2010, at *http://www.chea.org/Government/FedUpdate/CHEA_FU11.html* (October 26, 2010).

38. *Federal Register*, June 18, 2010, p. 34811.

39. Sara Lipka, "Academic Credit: Colleges' Common Currency Has No Set Value," *The Chronicle of Higher Education*, October 17, 2010.

40. Bennett *et al.*, "For-Profit Higher Education," p. 10.

41. Goldie Blumenstyk, "New Federal Rule Threatens Practices and Revenue at For-Profit Colleges," *The Chronicle of Higher Education*, October 17, 2010, at *http://chronicle.com/article/Academic-Credit-New-Federal/124972* (October 26, 2010).

the entire sector could harm its ability to serve the working-student demographic.[42]

The proposal to standardize credit hours would impose a one-size-fits-all solution on an incredibly diverse range of higher education institutions.

The proposal to standardize credit hours would impose a one-size-fits-all solution on an incredibly diverse range of higher education institutions that serve students with specific educational needs. This proposal fails to measure educational quality and therefore would be a costly regulation that provides little, if any real benefit.

Limiting Access Through Regulation

In his 2009 State of the Union Address, President Barack Obama announced that "by 2020, America will once again have the highest proportion of college graduates in the world."[43] Achieving this aggressive goal would require the United States to increase its attainment rate among associate's and bachelor's degree holders from 40 percent to 60 percent of the country's population and the number of college graduates to at least 8 million in the coming decade.[44] Clearly, this agenda will require a vast expansion of access to higher education. Ironically, the Administration's proposed regulations will actually reduce access.

First, it is important to note that the Administration's goal is wildly unrealistic and unwise. Much evidence suggests that America is already overinvested in higher education. Job growth projections from the BLS show that only eight of the 30 occupations expected to experience the greatest growth by 2018 require post-secondary training.[45] Furthermore, other BLS data show that many American college graduates are severely underemployed. Indeed, 29.8 percent of flight attendants, 17.4 percent of baggage porters and bellhops, 15.8 percent of telemarketers, and 15.2 percent of taxi drivers have at least a bachelor's degree.[46] Investments in higher education are subject to diminishing returns, a point that the Administration has not fully grasped.

Quality. American higher education is plagued by a dearth of information about the quality of the product it provides. The ED's proposals pay only lip service to measuring what students actually learn in college.

Affordability and Access. Competition in markets drives prices down. If these regulations are allowed to take effect, they will impose burdensome bureaucratic requirements on institutions, increasing their costs of compliance. Costs in the for-profit sector would be particularly high, especially considering that the far-reaching gainful employment rules would apply almost exclusively to them. These regulations ignore that, despite a few bad actors, the for-profit institutions have employed cost-saving technology to a much greater extent than traditional nonprofit institutions. Reducing the competitiveness of this sector, while imposing new regulatory costs on all institutions will further increase costs for students.

For-profit institutions enroll student populations that have been ill served by the traditional sector. Their flexible schedules meet the needs of older students who work while taking online courses. For-profit institutions also cater more to lower-income groups and racial minorities. Gainful employment rules, new authorization requirements that require licenses from multiple states, and an inflexible credit-hour definition threaten to put many for-profit schools out of business and lock their students out of higher education.

42. *Ibid.*

43. Barack Obama, address to Joint Session of Congress, February 24, 2009, at *http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Address-to-Joint-Session-of-Congress/* (October 26, 2010).

44. Lucia Graves, "Obama's Pledge: 'Eight Million More College Graduates By 2020,'" *The Huffington Post,* August 9, 2010, at *http://www.huffingtonpost.com/2010/08/09/obamas-pledge-eight-milli_n_676022.html* (October 26, 2010).

45. U.S. Bureau of Labor Statistics, "Occupations with the Largest Job Growth."

46. U.S. Bureau of Labor Statistics, "Education and Training Measurements for Workers 25 Years and Older by Detailed Occupation, 2008," modified October 12, 2010, at *http://www.bls.gov/emp/ep_table_111.htm* (October 26, 2010).

Government Involvement. Terry Hartle, a senior executive of the American Council on Higher Education, has called the ED's proposals "the most complicated regulatory package that the Department of Education has ever promulgated."[47] The Administration's proposed authorization regulations grant state governments the explicit power to determine which institutions can provide post-secondary educational training. Gainful employment requirements allow the federal government to impose a de facto price control on for-profit and vocational institutions. Finally, by enforcing a federal definition of a credit hour, the federal government is further expanding institutional oversight and imposing a one-size-fits-all "solution" on America's proudly diverse higher education landscape.

What the Education Department Should Do

U.S. higher education definitely needs serious reform. To foster an environment in which higher education can improve, the U.S. Department of Education should:

- **Scrap the proposed regulations on state authorization, gainful employment, and the federal definition of a credit hour.** The department should also review the other 11 proposed regulations to assess their unintended effects on educational quality, college costs, and student learning opportunities.
- **Explore ways to measure educational outcomes.** Students and taxpayers deserve to know what benefits a college education provides. The department should strive for information about learning outcomes and specifically avoid measures that focus on inputs, such as time spent sitting in the classroom.
- **Explore other ways to improve the quality and affordability of higher education.** This should include a thorough review of existing federal education programs and regulations. The department should focus on creating a competitive environment that provides incentives for institutions to be primarily focused on student needs.

Conclusion

If enacted, these new regulations will impose additional costs on already tuition-strapped students and the higher education institutions that they attend. Independent analyses suggest the costs to the economy will total in the billions of dollars. Furthermore, these regulations will increase the regulatory burden on higher education institutions and subject them to the whims of state bureaucrats.

Instead of limiting competition and reducing educational options for students, the U.S. Department of Education should explore fresh ideas in measuring educational outcomes and improving quality.

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47. Jennifer Epstein, "Splitting the Difference on Gainful Employment," *Inside Higher Ed*, July 23, 2010, at *http://www.insidehighered.com/news/2010/07/23/gainful* (October 26, 2010).