

September 13, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2018-OPE-0042

Dear Secretary DeVos:

Thank you for the opportunity to comment on the U.S. Department of Education’s proposal to eliminate the 2014 federal “Gainful Employment” or “GE” rules. Across New York, from New York City¹ to Rochester,² Albany³ to Oneonta,⁴ New Yorkers are concerned about the impact of federal policies that would corrupt the quality of higher education while placing students deeper in debt. We are a coalition of New York college student-directed organizations, research centers, education advocates, legal services providers, college access counselors, consumer protection advocates, and community based organizations who are concerned about the proposed elimination of GE rules.

We believe that the 2014 GE rules serve as critical guardrails that help New Yorkers access high-quality and affordable career education while weeding out high-cost programs that load students with debt for worthless degrees. Removing these guardrails will harm New York students and lead to systemic harm, including increased inequality and a corruption of the higher education marketplace. New York has already engaged in public information campaigns around predatory for-profit schools and student debt. However, given the aggressive tactics used by unscrupulous for-profit school recruiters in New York, a disclosure and information approach from the federal government will not be as effective as the 2014 GE rules in preventing harmful effects.

¹ *The New York Times*, Editorial Board, “[The DeVos School for the Promotion of Student Debt](#),” Aug. 26, 2018, Yan Cao, *New York Daily News*, Opinion “[Rein in for-profit colleges: New York must crack down on a sector that the Trump administration is emboldening](#),” Aug. 15, 2018, included in Attachment A .

² *Democrat and Chronicle* (Rochester, NY), “[Report: Bryant and Stratton, other for-profit schools need more scrutiny](#),” April 12, 2018, included in Attachment A

³ Tom Hilliard and Matt A.V. Chaban, *The Times Union* (Albany, NY), Commentary, “[Sub-par for-profit colleges soak us all](#),” April 25, 2018, *The Times Union*, Editorial Board, “[A not-so-free education](#),” Aug. 14, 2018, included in Attachment A.

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The Daily Star (Oneonta, NY), Editorial Board, “[In Our Opinion: Trump's foxes are guarding the college henhouse](#),” Aug. 29, 2018, included in Attachment A.

I. Eliminating Gainful Employment Rules Will Harm New Yorkers and Expand Needless Debt

The Gainful Employment rules use a debt-to-earnings ratio to improve access to higher quality and more affordable career education options for thousands of New Yorkers. In the years just before the 2014 GE rules took effect, 14,030 students in New York enrolled in career education programs that failed, or nearly failed, gainful employment standards.⁵ These students collectively owe \$246,844,268 in student loan debt—debt that they will likely be unable to repay based on the low earnings associated with their failing or near-failing programs.⁶ The elimination of GE rules will place more students into unaffordable student loan debt, and corrupt the field of career education with the proliferation of high-debt, low-earnings programs.

The Notice of Proposed Rulemaking (NPRM) cites no evidence to show that elimination of the 2014 GE rules will reduce the burden of student loan debt and defaults, or improve earnings outcomes for students who enroll in career education programs. Our experience and research shows that the guardrails put in place by the 2014 GE rules are critical to reducing the burden of student debt and student loan defaults, and weeding out programs that set New Yorkers up for a lifetime of low earnings.

Moreover, the proposal to eliminate GE rules is not justified by your stated desire to collect more information on programs at public and private not-for-profit institutions. The 2014 GE rule covers career education programs across public, private, not-for-profit, and private, for-profit institutions, but 100 percent of failing programs in New York were at private, for-profit schools.⁷

2014 GE Rules Are Needed to Reduce Unfair Student Debt and Default

Research not addressed in the NPRM suggests that for-profit institutions in New York leave students with worse debt and default outcomes.

- *Default.* For-profit schools enroll only 7 percent of all New York students, but account for 1 in 4 New Yorkers who default on student loans within three years of repayment.⁸ In the first three years of repayment, student loan borrowers who attended for-profit institutions are over three times as likely to default, compared to peers at not-for-profit

⁵ The Institute for College Access and Success (TICAS), "[How Much Did Students Borrow to Attend the Worst-Performing Career Education Programs](#)" Aug. 2018, included as Attachment B.

⁶ *Id.*

⁷ Federal Student Aid Data Center, "[GE program earnings data](#)," Jan. 2017, data analyzed by The Century Foundation (TCF) & included as Attachment C.

⁸ Yan Cao, TCF, "[Grading New York Colleges](#)," March 2018, included as Attachment D.

colleges.⁹ Over twelve years, the default rate among for-profit school students climbs to 47 percent, over four times the rates at public and not-for-profit colleges in New York.¹⁰

- *Two-year degree-granting schools.* The default rates for students who start at community colleges is corrupted by the substantially higher default rate of students who subsequently transfer to for-profit schools. “If not for students later attending for-profits, community college entrants would have lower default rates than public four-year entrants.”¹¹ The twelve-year default rates are 10.9 percent for two-year public college entrants who never attend a for-profit college and 46.5 percent for for-profit college entrants.¹²
- *Four-year degree-granting schools.* Students at four-year for-profit colleges in New York are more likely to go into debt, take on larger debts, and are more likely to default when compared to students at public and private not-for-profit colleges.¹³

2014 GE Rules Are Needed to Improve Earnings and Employment Outcomes

Research not addressed in the NPRM suggests that for-profit institutions in New York leave students with worse earnings and employment outcomes.

- *Earning less than a high school graduate.* More than a third (38 percent) of New York for-profit schools place students into loan debt, only for these indebted students to earn even less than the average high school graduate with no college experience.¹⁴
- *Poverty-level wages at degree-granting schools.* Nearly 1 in 10 for-profit college programs at degree-granting schools in New York left graduates with median annual earnings below the 2015 federal poverty threshold of \$12,331.¹⁵
- *Non-degree for-profit schools.* “[C]ertificate-seeking students in for-profit institutions are 1.5 percentage points less likely to be employed and, conditional on employment, have 11 percent lower earnings after attendance than students in public institutions.”¹⁶

⁹ Thomas P. DiNapoli, New York State Comptroller, “[Student Loan Debt in New York State](#),” Sept. 2016, excerpt included as Attachment E.

¹⁰ “[Grading New York Colleges](#),” included as Attachment D.

¹¹ Judith Scott-Clayton, Brookings, “[The looming student loan default crisis is worse than we thought](#),” Jan. 2018, excerpt included as Attachment F.

¹² *Id.*

¹³ Center for Responsible Lending, [New York - For-Profit Colleges: Less Favorable Outcomes, Deeper Debt For Students](#), Dec. 2017, included as Attachment G .

¹⁴ “[Grading New York Colleges](#),” included as Attachment D.

¹⁵ Tom Hilliard, Center for an Urban Future, “[Keeping New York’s For-Profit Colleges On Track](#),” April 2018, included as Attachment H.

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Stephanie Riegg Cellini and Nicholas Turner, “Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data,” May 2016, revised Jan. 2018, available at <http://www.nber.org/papers/w22287>.

- *Four-year degrees.* Six years after enrollment, for-profit college students are 4 percent less likely to be employed and suffer 17 percent lower earnings relative to their counterparts who attended private not-for-profit colleges.¹⁷

II. Eliminating Gainful Employment Rules Will Systematically Harm New York’s College and Career Education Landscape

In 2015, more than \$37 million in state Tuition Assistance Program (TAP) dollars went to New York for-profit colleges with at least one program that failed or nearly failed the U.S.

Department of Education’s standard for post-college outcomes. What’s more, \$31 million went to colleges where more than 70 percent of former students could not make a single payment to their loan principal after three years repayment. As noted earlier, 14,030 New York students collectively owe \$246,844,268 in student loan debt for attending schools that failed or nearly failed the GE guidelines.¹⁸ These harms to New York taxpayers and students will continue and worsen if the 2014 GE rules are eliminated.

Eliminating the GE rules will also cause systemic harm to New York’s college and career education landscape. New York advocates have relied on the 2014 GE rules to promote the development of a strong college and career education landscape in New York.¹⁹ The elimination of GE rules would increase inequality and make it more difficult for responsible educators to compete against unscrupulous for-profit institutions.

Eliminating 2014 GE Rules Will Increase Economic and Racial Inequality

For-profit institutions exacerbate problems of economic and racial inequality in New York, presenting an important civil rights concern that is not addressed in this NPRM.²⁰

- For-profit institutions tend to enroll students from low-income backgrounds and lock them into a lifetime of low earnings with very little likelihood for upward social mobility compared to public or private not-for-profit schools.²¹

¹⁷ Rajashri Chakrabarti and Michelle Jiang, Federal Reserve Bank of New York, “[Education’s Role in Earnings, Employment, and Economic Mobility](#),” Sept. 5, 2018, included as Attachment I. This data is based on enrollment at four-year colleges and is controlled for college location, cohort size, racial composition, gender composition, family income, and parental education.

¹⁸ “[How Much Did Students Borrow](#),” included as Attachment B.

¹⁹ The Education Trust – New York, “[Memorandum in opposition to bill A7697/S5891](#),” Dec. 15, 2017, included as Attachment J.

²⁰ Mamie Lynch, Jennifer Engle, And José L. Cruz, The Education Trust, “Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities,” Nov. 2010 (“Low-income students and students of color are getting access, but not much success.”), https://1k9g11yevnfp2lpq1dhrqe17-wpengine.netdna-ssl.com/wp-content/uploads/2013/10/Subprime_report_1.pdf.

²¹ Chetty, et al., “[Mobility Report Cards: The Role of Colleges in Intergenerational Mobility](#),” July 2017, excerpted and available at Attachment K,

- Attendance at four-year for-profit colleges widened income disparities in data analyzed by the New York Federal Reserve Bank, “increasing the earnings gap by \$7,428 (+117 percent), compared with attendance at private not-for-profit colleges. In contrast, four-year public college attendance serves as an equalizer by decreasing the earnings gap by \$1,584 (-25%) compared with four-year not-for-profit college.”²²
- Many of the for-profit institutions in New York with the worst debt and earnings outcomes target and enroll a student body where a majority of attendees are first-generation students and/or students who identify as Black or Hispanic.²³

Eliminating Gainful Employment Regulations Will Disadvantage Responsible Actors, Placing Failing Schools on Equal Footing with Schools that Serve Students Well

For-profit institutions are uniquely incentivized to increase profits by raising tuition. The evidence below suggests that eliminating the 2014 GE rules will eliminate positive incentives that have led for-profit institutions to reduce tuition and improve programming.

- A New York for-profit college owner stated that the 2014 Gainful Employment rule forced his college to reduce tuition and increase institutional aid to avoid failing the debt-to-earnings metrics. This is the type of positive change that the 2014 GE rule incentivized. However, the elimination of GE alters the incentives, and could contribute to a further rise in the already-inflated prices charged by for-profit schools.
- “For-profit owned institutions are better at capturing government subsidies” with private equity owned schools raising tuition faster than other schools, which, in turn, leads to higher levels of student loan debt.²⁴ The 2014 GE rules counteract the tendency of for-profit institutions, and especially private-equity-owned schools, to charge students inflated prices. In New York, Bryant & Stratton College—which was partially owned by private equity²⁵—is among the for-profit schools that would have to reduce tuition or improve outcomes across many programs to keep federal subsidies under the GE rules.²⁶
- For-profit schools tend to increase tuition when financial aid becomes more readily available.²⁷ Tuition is 75 percent higher at for-profit schools that are eligible for federal

²² [Education’s Role in Earnings, Employment, and Economic Mobility](#),” included as Attachment I.

²³ “[Grading New York Colleges](#),” included as Attachment D.

²⁴ Charlie Eaton, Sabrina T. Howell & Constantine Yannelis, “When Investor Incentives and Consumer Interests Diverge: Private Equity in Higher Education,” March 18, 2018, [http://www.haas.berkeley.edu/groups/finance/seminars/Seminar%20Paper%20-%20Sabrina%20Howell%2003.22.18\(2\).pdf](http://www.haas.berkeley.edu/groups/finance/seminars/Seminar%20Paper%20-%20Sabrina%20Howell%2003.22.18(2).pdf).

²⁵ John L. D’Agati, “Transfer of Degree-Conferring Authority Based Upon a Change of Ownership or Control of Bryant & Stratton College,” Oct. 5, 2017, <https://www.regents.nysed.gov/common/regents/files/1017brca2.pdf>.

²⁶ “[GE program earnings data](#),” analyzed by TCF & included as Attachment C.

²⁷ David O. Lucca, Taylor Nadauld, Karen Shen, Federal Reserve Bank of New York, “[Credit Supply and the Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs](#),” Feb. 2017, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf.

student loan programs under Title IV of the Higher Education Act, when compared against tuition at comparable for-profit schools that do not use Title IV subsidies.²⁸

- Earnings calls between investors and executives of a for-profit college revealed that “Title IV loan limit increases appear to directly affect how this institution chose to set its tuition.”²⁹ By eliminating the checks on schools that overburden students with debt that they cannot afford to repay, this NPRM is effectively an increase in the availability of financial aid to low-quality schools. New York students and taxpayers would bear the burden in higher tuition costs and greater student loan debt.

III. Data and Disclosure Rules Are Not Sufficient to Protect Students from Unscrupulous For-Profit Institutions

Finally, our experience suggests that even when data is effectively shared with consumers, disclosures are not enough to avoid harmful abuses. New York has experience engaging in large, public awareness campaigns to disseminate information about harmful for-profit schools, but information campaigns can only do so much to prevent harm to students. For example, New York City’s “Know Before You Enroll” campaign raised awareness and knowledge about the harmful impacts and practices of bad actors among local for-profit institutions.³⁰ But even after the campaign was launched, students continued to be harmed by for-profit school practices.³¹

We disagree with the premise that the proposal to eliminate Gainful Employment guardrails is justified by your belief that students “have a responsibility when enrolling at an institution or taking student loans to be sure they have explored their options carefully” and must “weigh... the available information to make an informed choice.” Even under the best case scenario—when students have the benefit of a counselor to guide them through accurate data on college and career options—students are overwhelmed by data and are greatly influenced by the aggressive marketing tactics used by for-profit career schools.³²

²⁸ Stephanie Riegg Cellini and Claudia Goldin, “Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges,” *American Economic Journal: Economic Policy* 6, no. 4, November 2014, 174–206, <http://dx.doi.org/10.1257/pol.6.4.174>.

²⁹ Lucca, et al., at 15.

³⁰ New York City, Office of Workforce Development, “Overview of Know Before You Enroll,” Nov. 2011, http://www.nyc.gov/html/ohcd/html/policy/know_before_you_enroll.shtml

³¹ Federal Reserve Bank of New York & New York City Dep’t of Consumer Affairs (“DCA”), “Student Loan Borrowing Across NYC Neighborhoods,” Dec. 2017 (describing how defaults can lead to “difficulty accessing credit to cover emergency expenses,” “wage or tax refund garnishment,” and “further financial insecurity,” for student loan borrowers across New York City), <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/community-development/credit-conditions/student-loan-borrowing-nyc-neighborhoods.pdf>.

³² Rajeev Darolia, Casandra Harper, “[Information Use and Attention Deferral in College Student Loan Decisions](https://www.newyorkfed.org/medialibrary/media/research/education_seminar_series/daroliaharper_debtletter_april2017.pdf?la=en),” April 2017, (findings from the experimental use of debt letters, which attempt to foster more informed borrowing decisions, “suggest that information alone is not sufficient to drive systematically different borrowing choices among students”), https://www.newyorkfed.org/medialibrary/media/research/education_seminar_series/daroliaharper_debtletter_april2017.pdf?la=en.

The NPRM cites no evidence that disclosure alone will aid students in avoiding harmful schools and predatory student loan debts, or that a disclosure-only regime will protect students better than do the guardrails set in place by the 2014 GE rules. Our experience shows that failing schools do not want students to know that they are failing. A policy that disregards the tricky tactics of predatory schools and places the burden on students to sift through confusing, inaccurate, and even false information will only lead to more harm, waste, and abuse.³³

For-profit institutions' recruitment tactics that undermine a disclosure approach include the following:

- *Pressure.* New York for-profit colleges use high-pressure sales tactics, including falsely claiming there is limited availability for enrollment, in order to pressure potential students to sign up without engaging in additional research. Recruiters pressure students to make an immediate decision to block them from exploring their options carefully. Recruiters at one New York for-profit school also bombarded potential customers by calling, texting, mailing, and emailing a prospective student and the student's parent multiple times a day over the course of several months.
- *Commandeering.* For-profit college recruiters in New York "undermined federally-mandated disclosures" by commandeering the financial aid application process, "rushing applicants through key disclosures," and cheating on mandatory tests intended to establish students' comprehension of financial aid processes as a precondition of taking on student loan debt.³⁴
- *Misrepresenting costs and debt.* Investigators also found that for-profit recruiters in New York "misrepresented the cost of attendance" and "downplayed the obligation to repay student loans," making it more likely that a potential student would enroll without understanding the financial consequences of taking on student loan debt.³⁵
- *Misrepresenting outcomes.* Investigators and advocates found that for-profit recruiters in New York misrepresent the earnings and employment outcomes students can expect.³⁶

³³ Under the U.S. Department of Education's proposed rules for borrower defense, the Department's own projections suggest that unscrupulous colleges will be able to retain more than 98 percent of the student loan revenue obtained through the use of illegal misrepresentations, leaving in place a strong incentive for profit-seeking institutions to engage in such tactics. Calculations by TICAS using data from U.S. Department of Education, 83 FR 37242 (see Table 5),

https://ticas.org/sites/default/files/pub_files/coalition_comments_on_borrower_defense_2018.pdf.

³⁴ New York City's Department of Consumer Affairs (DCA), [Attorney Affirmation in Motion to Compel](#), May 31, 2017, available as Attachment L

³⁵ *Id.*

³⁶ Office of the New York Attorney General, "[A.G. Schneiderman Obtains Settlement With DeVry University Providing \\$2.25 Million In Restitution For New York Graduates Who Were Misled About Employment And Salary Prospects After Graduation](#)," Jan. 2017, ("DeVry used misleading claims to lure in students who were simply seeking a college degree, greatly exaggerating job and salary prospects for graduates").

- *False disparagement of competitors.* New York for-profit college recruiters disparage lower-cost, low-debt public colleges. For example, a for-profit college recruiter told an undercover investigator that a public college would force students to take out loans when, in fact, the rate of indebtedness is much higher at for-profit colleges.³⁷ Recruiters for another for-profit school made a practice of approaching students who were waiting in line to enroll at a community college and promising a “faster line” for enrollment. These recruiters did not say that the for-profit school was more expensive and had worse employment and earnings outcomes.
- *Undermining disclosure requirements.* A recent study found that for-profit schools are experts at technically complying with disclosure requirements while hiding or downplaying negative facts. For example, one school trained recruiters to always highlight that the median earning for medical assistants is \$32,480, and downplay a required disclosure that graduates from that school’s medical assistant program only earned \$19,497.³⁸ This pattern of emphasizing generalized facts to undermine required disclosures is consistent with recruitment tactics we have observed in New York.
- *Limiting Transparency:* A for-profit college in New York tried to limit transparency by seeking a meeting to alter the practices of a college counselor who shared negative outcomes data with potential students. For-profit college representatives wanted the counselor to stop sharing negative data. When the counselor declined to meet, for-profit college representatives reached out to his principal.

Thank you for considering these comments. We urge you to preserve the 2014 Gainful Employment rules and improve them in ways that are consistent with the experiences and data described here.

Sincerely,

Yan Cao, The Century Foundation
 The Center for an Urban Future
 College Access Consortium of New York, Inc.
 The Education Trust–New York
 Empire Justice Center
 Dr. Gail O. Mellow, President, on behalf of LaGuardia Community College
 Goddard Riverside
 The Legal Aid Society of NYC
 Legal Services New York City

³⁷ *Id.*, see also [New York - For-Profit Colleges: Less Favorable Outcomes, Deeper Debt For Students](#), included as Attachment G.

³⁸ Robin Howarth, Whitney Barkley, Robert Lang, Center for Responsible Lending, “Gainful Employment and Credentialism in Healthcare Support Fields: Findings from the Gainful Employment Data, Website Disclosures, and a Focus Group of For-Profit College Borrowers,” June 2018, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-bitter-pill-jun2018.pdf>.

Mobilization for Justice, Inc.
New York Communities for Change
New York Legal Assistance Group
The New York Public Interest Research Group (NYPIRG)
New Yorkers for Responsible Lending
The Urban Assembly
Western New York Law Center
Young Invincibles - Northeast, on behalf of Young Invincibles