apei AMERICAN PUBLIC EDUCATION, INC.

July 12, 2017

VIA WWW.REGULATIONS.GOV

Wendy Macias
U.S. Department of Education
400 Maryland Ave. SW, Room 6C111
Washington, DC 20202

Re: Docket ID ED-2017-OPE-0076 – Gainful employment negotiated rulemaking committee

Dear Ms. Macias:

American Public Education, Inc. ("APEI") appreciates the opportunity to submit comments to the U.S. Department of Education ("ED" or the "Department") in response to the June 16, 2017 notice of ED's intention to establish two negotiated rulemaking committees to prepare proposed regulations for the Federal Student Aid programs authorized under Title IV of the Higher Education Act of 1965, as amended ("Title IV"). In particular, APEI submits the following comments for consideration in connection with the committee to be convened to revise the gainful employment ("GE") regulations published by the Department on October 23, 2014 (79 Fed. Reg. 64,889) (the "final regulations").[1]

For purposes of these comments, APEI takes as a starting point the final regulations. APEI notes that ED has extended the compliance date for institutions to comply with certain provisions of the final regulations;[2] nevertheless, APEI expects that ED representatives and

[1] APEI separately is submitting comments for consideration in connection with the committee to be convened to develop proposed regulations to revise the regulations on borrower defenses to repayment of Federal student loans and other matters, published November 1, 2016 (81 Fed. Reg. 75926).

[2] Gainful Employment Electronic Announcement #106 – Extension of Compliance Date for Certain Disclosure Requirements and Alternate Earnings Appeals (June 30, 2017), available at https://ifap.ed.gov/eannouncements/063017GEEA106ExtensionComplDateEnhancDisclosures.html.

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the non-federal members of the negotiated rulemaking committee likely will begin their work by considering the relative costs and benefits of the final regulations.

Background on APEI

APEI is a publicly-traded institution that provides online and on-campus postsecondary education. Originally established in 1991 to serve the needs of a highly mobile military, APEI is guided by a strong sense of social responsibility and a commitment to serving our students and the broader community. Today, we serve more than 88,000 adult learners worldwide and offer more than 100 degree and certificate programs through two wholly owned subsidiaries: American Public University System ("APUS"), which encompasses American Public University and American Military University, and National Education Seminars, Inc., which we refer to as Hondros College of Nursing ("HCON"). Our mission is to prepare our students for leadership and service in a diverse and changing world, and to help them reach their full potential by providing quality, affordable, innovative education programs.

APEI is proud to serve as one of the leaders of the proprietary education sector in this country. Under the Department's final 2015 debt-to-earnings ("D/E") rates released in January 2017, none of the APUS or HCON gainful employment programs were identified as failing or in the warning zone. However, as described below, we are deeply concerned that the final regulations are fundamentally unfair to the extent that they do not apply to all Title IV programs across all sectors of higher education. We are also concerned that certain aspects of the accountability and transparency framework in the final regulations are based solely on data related to Title IV recipients rather than all students enrolled in the GE program and therefore may be incomplete or misleading to students. More generally, we are concerned that the D/E metrics underlying the final regulations' accountability framework are neither accurate nor meaningful.

Fair and equal application of regulations

Although we share ED's concern that some students complete education programs that leave them with "unaffordable levels of loan debt",[3] the rising cost of higher education and student loan debt are not issues unique to students who attend proprietary institutions. Among students who borrow to finance their postsecondary education, average debt levels have increased across all sectors: average debt levels at public institutions are up 25% since 2008, and average debt levels have increased by 15% at non-profit institutions in the same time period, compared to 26% at proprietary institutions.[4] In addition, public and private non-profit institutions are often more expensive than proprietary institutions. For example, for the 2016-2017 school year, the average published tuition and fees for proprietary institutions was $16,000, compared to $33,480 at private non-profit institutions and $24,930 at public out-of-state institutions.[5] The final regulations unfairly target the proprietary sector, holding that sector primarily responsible for an issue of broader concern.

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[3] 79 Fed. Reg. at 64,890.

[4] The Institute for College Access & Success, Quick Facts about Student Debt (Mar. 2014), http://projectonstudentdebt.org/files/pub//Debt_Facts_and_Sources.pdf.

[5] The College Board, Trends in College Pricing 2016, at 9, https://trends.collegeboard.org/sites/default/files/2016-trends-college-pricing-web_0.pdf.

We agree with previous commenters that any regulations concerning accountability and transparency related to student loan debt and other student outcomes should apply equally to programs and institutions across all sectors (see 79 Fed. Reg. at 64,978). For example, if the Department believes that the D/E rates in the final regulations are meaningful measures of the quality of educational programs, those measures and the related accountability framework should be applied to programs offered by all institutions that participate in the Title IV programs, regardless of whether the Higher Education Act requires those programs to prepare students for gainful employment. Many prospective students consider a variety of programs before deciding where to enroll—for example, a student might consider enrolling in similar programs offered by a local public community college, a private college, and a proprietary institution. Under the final regulations, the student would only be presented with D/E rates and disclosure information for the program offered by the proprietary institution. Any indication that the program offered by the proprietary institution is failing or "in the zone" with respect to the D/E rates might steer the prospective student to enroll in one of the other institutions' programs. However, those programs in fact might have higher D/E rates—which may exceed the thresholds to be categorized as passing—but such rates are neither calculated nor disclosed under the final regulations. The resulting disclosures would not necessarily have value "in and of themselves"[6] and could be misleading to students because of a lack of comparability across institutions in different sectors. As written, the final regulations do not in practice support the Department's efforts to enable individual consumers to make informed choices.

Representativeness of D/E rates and disclosures based only on information about Title IV recipients

Under the final regulations, the D/E rates would be calculated based only on data for students who received Title IV program aid for enrolling in the relevant GE program—not all students who are enrolled in the GE program (34 C.F.R. § 668.402) (defining "student" as "[a]n individual who received Title IV, HEA program funds for enrolling in the GE program"). Similarly, reporting and disclosure requirements would be based only on students who received Title IV program aid for enrolling in the relevant GE program. Although the Department previously articulated why it believes it is appropriate to define the term "student" as limited to individuals who received Title IV program funds for enrolling in the applicable GE program (see 79 Fed. Reg. at 64,899), we do not find the Department's justification compelling. For example, ED has claimed that by limiting the D/E rates measure to Title IV recipients, the Department can effectively evaluate how the GE program is performing with respect to the students who receive the Federal benefit of the Title IV programs. Id. However, ED has not explained how it can assess whether a program prepares all students for gainful employment based only on outcomes measures of Title IV recipients. Id. Specifically, ED assumes that Title IV recipients are more like other Title IV recipients than other students who are enrolled in the program, but it has no pointed to any evidence to support that conclusion. Especially where the number of Title IV recipients enrolled in a particular GE program is relatively small as compared to total program enrollment, making assessments based only on the subset of Title IV recipients may result in the Department providing prospective students with incomplete or misleading information.

[6] 79 Fed. Reg. at 64,978.

This concern about the representativeness of the group of students from which metrics are calculated is also applicable to the disclosures the Department would calculate for a GE program. For example, whether or not a student completes successfully a GE program is unlikely to be linked to the student's receipt of Title IV funds—or, if it is, ED has not provided any evidence to support that conclusion. (§ 668.412(a)(2)). As a result, it is not clear that prospective students reviewing GE program completion rate data would have appropriate context for that disclosure. Similarly, ED has not provided any evidence to suggest that the disclosure of mean or median earnings as calculated under the final regulations (i.e., based only upon earnings of program completers who received Title IV funds) is a more precise assessment than a mean or median earnings disclosure calculated on the basis of all program completers regardless of Title IV status. (§ 668.412(a)(11)). In general, where a disclosure item is intended to convey the "average" outcome, including more students in the calculation would make the measure more accurate and informative for students.

We understand that the approach in the final rules is aligned with the *APSCU v. Duncan* court's interpretation of relevant law regarding the Department's authority to maintain records in NSLDS (see 79 Fed. Reg. at 64,899). Nevertheless, we encourage the negotiated rulemaking committee to consider alternative approaches to an accountability and transparency framework that would reflect the experience and outcomes of all students enrolled in a GE program. If legal limitations prevent the development of fair and accurate measures, then the Department should not implement new regulations that depend upon incomplete information.

Accurate and meaningful debt-to-earnings measures and accountability framework

We continue to believe that the D/E measures and the related accountability framework are flawed because ED has not been able to demonstrate that they bear any relationship to the quality of a program or students' long-term earnings. If the Department determines that it is effective to have gainful employment regulations that entail some means of measuring debt and earnings for so-called GE programs, we urge ED to work hard to develop measures that are accurate and meaningful, and which account for the wide diversity across higher education in terms of educational programs, employment outcomes, geography, and student demographics, among other factors.

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Thank you for your consideration of these comments.

Sincerely,

Thomas A. Beckett
Senior Vice President & General Counsel