



May 27, 2014

The Honorable Arne Duncan
Secretary
U.S. Department of Education
c/o Ashley Higgins
U.S. Department of Education
1990 K Street NW., Room 8037
Washington, DC 20006-8502

RE: Gainful Employment Notice of Proposed Rulemaking, Docket ID ED-02014-OPE-0039

Dear Secretary Duncan:

The Business Coalition for Fair Competition (BCFC) is deeply concerned the Proposed Rulemaking on “Gainful Employment” unfairly targets private enterprise, creates unfair direct government and government-sponsored competition with the private sector, and will result in an unlevel playing field for private sector, for-profit schools.

BCFC is a coalition of trade associations, businesses, individuals, think tanks, and organizations dedicated to free enterprise, relief from unfair government sponsored competition, and smaller, more efficient government. The mission of BCFC is to advocate for public policies that promote the utilization of and reliance upon the private sector by government at all levels and that eliminate unfair government-sponsored competition with private, for profit enterprise. The proposed Gainful Employment regulation is aimed solely at harming private sector higher education companies and will hurt students benefiting from their program offerings.

Private sector universities and colleges provide education and job training for nearly four million students across the country and add competition and innovation to the higher education marketplace. From health and IT to construction and engineering-related fields, these schools prepare students to be career ready for jobs available in today’s economy. At the same time, private sector schools also pay taxes – about \$1.7 billion since 2010 – while receiving no direct taxpayer subsidies, unlike their public and non-profit competitors.

Similarly, public and non-profit institutions are also shielded from the harm this proposed regulation will cause for the private sector. The targeted nature of the debt-to-income ratio accountability metric only impacting private sector schools makes hollow the proposal’s stated goal of addressing the larger issue of growing student loan debt. Research from the National Center for Education Statistics shows debt-to-income problems persist with programs at public, non-profit, and private sector schools alike. However, as the Washington Post’s editorial board wrote on April 27th, “degree programs in the for-profit sector would have to meet the stringent new standards but degree programs offered by public and private nonprofit institutions would not.” This is an unlevel playing field.

Unfortunately, singling out education-related private companies by all levels of government has become all too common since the federal takeover of the student loan program. In this instance, once again, the proposed regulation would eliminate the competition business brings to the marketplace and contradict President Obama's Executive Order 13563 to protect the private sector from harmful, job-killing regulation. Shielding the higher education space from private enterprise is no way to "promote economic growth, innovation, competitiveness, and job creation," as that Executive Order seeks to encourage.

Each time Congress has authorized a White House Conference on Small Business – a convention of small business men and women who adopt a platform of issues for action by Congress and the executive Branch – unfair government competition with and duplication of the private sector has been a top concern.

In 1980, the first White House Conference on Small Business made unfair competition one of its highest-ranked issues. It said, "The Federal Government shall be required by statute to contract out to small business those supplies and services that the private sector can provide. The government should not compete with the private sector by accomplishing these efforts with its own or non-profit personnel and facilities."

In 1986, the second White House Conference made this one of its top three issues. It said, "Government at all levels has failed to protect small business from damaging levels of unfair competition. At the federal, state and local levels, therefore, laws, regulations and policies should ... prohibit direct, government created competition in which government organizations perform commercial services ... New laws at all levels, particularly at the federal level, should require strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property."

And the 1995 White House Conference again made this a priority issue when its plank read, "Congress should enact legislation that would prohibit government agencies and tax exempt and anti-trust exempt organizations from engaging in commercial activities in direct competition with small businesses." That was among the top 15 vote getters at the 1995 Conference and was number one among all the procurement-related issues in the final balloting.

BCFC respectfully urges the Department of Education to abandon this effort to damage private sector colleges and universities and exacerbate the already intolerable degree to which the government engages in and perpetuates unfair competition with private enterprise.

Sincerely,



John Palatiello
President
Business Coalition for Fair Competition

Cc: Winslow Sargeant, Ph.D., Chief Counsel for Advocacy, Small Business Administration