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December 10, 2010

Chairman-Elect Darrell Issa
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman-Elect Issa:

One critical item among the many the House Committee on Oversight and Government Reform should investigate is the campaign by the Obama Administration and its Department of Education (DOE) to foist a proposed rule known as "Gainful Employment."

That proposed rule was purportedly offered as a tool for the DOE to protect students against allegedly overly-aggressive recruiters at for-profit, career colleges. Career colleges have flourished over the last decade because of their ability to nimbly respond to our changing economy, offer an education focusing on hands-on occupational training, and excel at serving non-traditional students who often have children, are working, are typically older and are more diverse than their peers at traditional schools.

The proposed rule, however, would declare academic programs ineligible for federal aid if some specified proportion of their graduates failed to meet an arbitrary income-to-loan payment ratio. As a consequence, those academic programs would be shut down.

Proponents of the rule allege that it is necessary to protect students and taxpayers. Unfortunately, those most likely to actually suffer from such a rule (minorities, first-generation college students, working parents) are the very people who most need the training necessary to secure and retain good jobs.

Our concern – and the topic of this request – focuses not on the substantive merits of the proposed rule, but rather the manner in which the Administration and DOE have sought to impose it.

First, it has been alleged that DOE officials colluded with Wall Street short-sellers. Those allegations suggest that DOE officials communicated with short-sellers to inform them of their intentions, providing certain traders with inside information potentially allowing for illegal financial advantage. The cooperation, however, was allegedly a two-way street. According to media accounts, these same short-sellers may have concocted elaborate schemes to cast a negative light on career colleges, helping them rationalize the proposed rule.

These allegations are sufficiently serious that Senators Tom Coburn (R – Oklahoma) and Richard Burr (R – North Carolina) have formally sought an investigation.¹

Now, this week brings news that the Government Accountability Office (GAO) published, withdrew, revised and republished a study in which it sent undercover “students” to several schools to capture information on recruiting policies, promises of post-graduation pay, federal and other funds for tuition and expenses, and more. That GAO report had been cited as vital evidence for the DOE and the Senate HELP Committee as they prepare to promulgate the Gainful Employment rule.

The *Washington Post* (whose parent company owns one of the largest for-profit schools) recently ran an article exposing that defective report, which we submit for your review.² The GAO’s numerous revisions are all clearly slanted in one direction – the original report inaccurately cast career colleges in a very unfavorable light, while the revisions indicate that the GAO’s undercover students may have intended to entrap career college admissions personnel.

At a minimum, an alarming pattern has emerged that points to the Department of Education specifically working to inflict economic harm upon these institutions, while possibly collaborating in the shadows with the very short-sellers on Wall Street who would most likely benefit from such activity.

Even more alarming is the possibility that the partisan campaign against career colleges may extend beyond political appointees at the DOE to include apolitical, respected GAO investigators. By the GAO’s own estimate, only 1 percent of reports are corrected, so an inquiry into the reasons behind this particular revision – with its original report clearly biased – is justified.

Accordingly, we respectfully urge you, Chairman-Elect Issa, to include the proposed Gainful Employment rule toward the top of the stack of issues you plan to investigate. Towards that end, we also intend to get to the bottom of this matter, using every available legal remedy at our disposal to expose any federal officials who may have exploited the rulemaking process to advantage some short-sellers, punish a successful industry, and pursue their own political agenda.

Thank you very much for your attention to this matter, and please do not hesitate to contact us if we can be of any assistance whatsoever.

Sincerely,

A handwritten signature in black ink that reads "Timothy L." with a stylized flourish at the end.

Timothy Lee
Vice President of Legal and Public Affairs
Center for Individual Freedom
CC: Members of the Committee on Oversight and Government Reform

¹ Coburn-Burr letter to Ms. Kathleen Tighe, Inspector General, U.S. Department of Education, November 17, 2010.

² *Washington Post*, “GAO Revises its report critical of practices at for-profit schools,” December 8, 2010, page A8