UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ASSOCIATION OF PROPRIETARY COLLEGES, Plaintiff, v. ARNE DUNCAN, in his official capacity as Secretary of the Department of Education, *et al.*, Defendants.	Civil Action No. 14-8838 (LAK)

BRIEF OF AMICI CURIAE
AIR FORCE SERGEANTS ASSOCIATION; AMERICAN FEDERATION OF TEACHERS, AFL-CIO; CENTER FOR PUBLIC INTEREST LAW; CENTER FOR RESPONSIBLE LENDING; CHILDREN'S ADVOCACY INSTITUTE; CONSUMER ACTION; CONSUMER FEDERATION OF CALIFORNIA; DEMOS; THE INSTITUTE FOR COLLEGE ACCESS & SUCCESS; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; MISSISSIPPI CENTER FOR JUSTICE; NEW ECONOMY PROJECT; PUBLIC CITIZEN, INC.; PUBLIC COUNSEL; PUBLIC GOOD LAW CENTER; PUBLIC LAW CENTER; SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU); UNITED STATES STUDENT ASSOCIATION; UNIVERSITY OF SAN DIEGO SCHOOL OF LAW VETERANS LEGAL CLINIC; VETERANS EDUCATION SUCCESS; VETERANS' STUDENT LOAN RELIEF FUND; VETJOBS; VIETNAM VETERANS OF AMERICA; WOODSTOCK INSTITUTE; AND YOUNG INVINCIBLES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF AMICI CURIAE'S INTEREST

Amici curiae are twenty-five groups that advocate for students and college access, civil rights, veterans, and consumers. Amici are deeply concerned that some career colleges that target low-income students, veterans, and others seeking to improve their financial lives are exploiting the federal Title IV student aid program, which is intended to help students access college. Collectively, amici have deep experience working with students affected by the Department of Education's Gainful Employment regulation at issue in this case. *See* Department of Education, Program Integrity: Gainful Employment Final Rule, 79 Fed. Reg. 64,890 (2014). They also have expertise related to career training programs regulated by the rule, including those programs provided by for-profit educational institutions, which receive billions of dollars each year in federal student aid and whose students hold nearly half of the nation's student loan defaults. Amici have been leading voices sounding the alarm on the for-profit college industry's harmful and sometimes unlawful practices, which frequently leave students saddled with a lifetime of debt and little to no improvement in their capacity to earn a living. Additional information about each organization is provided in the Appendix.

Nearly all of the amici participated in the rulemaking that led to the Gainful Employment rule. They urged the Department to adopt a robust rule that would protect students and taxpayers from career education programs that leave students worse off than when they started. They also submitted comments addressing the potential impact of various policy alternatives on students—including students of color, low-income students, and veterans—and described the critical need for the rule's protections. Although amici advocated for a stronger rule than the one ultimately issued, they believe that the Gainful Employment rule remains a valuable tool to address some of the most egregious, harmful conduct by career training programs. Accordingly, amici submit this brief to provide useful context regarding the need for the rule and the potential impact were the rule invalidated. Amici urge this Court to uphold the rule.

The plaintiff and defendants take no position on the participation of amici.

BACKGROUND

The federal government spends billions of dollars each year on student aid under Title IV of the Higher Education Act (HEA), 20 U.S.C. § 1070 *et seq*. This aid, which includes Stafford, PLUS, and Perkins loans and Pell grants, is the largest stream of federal postsecondary education funding. To obtain Title IV funds, students must attend an HEA-eligible institution. As a condition of eligibility, the HEA has long required certain postsecondary programs (hereinafter, career training programs) to provide "training to prepare students for gainful employment in a recognized occupation." 20 U.S.C. § 1001(b)(1); *id.* § 1002(a)(1), (b)(1)(A)(i). This requirement advances Congress's goal of ensuring that "training offered by these programs . . . equip[s] students to earn enough to repay their loans." Gainful Employment Rule, 79 Fed. Reg. at 64,893.

Career training programs—for example, those intended to prepare students to be hairdressers or barbers, medical assistants, nurses, or massage therapists—include nearly all programs at for-profit educational institutions, along with some others at public and private, non-profit schools. *Id.* at 64,890, 65,025. In FY 2010, more than 37,000 career training programs were offered in the United States, and those programs enrolled nearly 4 million students. *Id.* at 65,025. Students attending career training programs received $9.7 billion in federal student aid grants and approximately $26 billion in federal student aid loans. *Id.*

In 2014, the Department of Education adopted the Gainful Employment rule to address overwhelming evidence that some career training programs, particularly at for-profit institutions, were failing to prepare students for jobs that would enable them to repay their federal student debt, thus endangering the federal government's investment and leaving some students worse off than they would have been had they never pursued postsecondary education. The rule imposes, as a condition of continued receipt of Title IV funding, new accountability requirements by "defin[ing] what it means to prepare students for gainful employment in a recognized occupation," as the HEA requires. *Id.* at 64,890; 34 C.F.R. § 668.403 (setting forth gainful employment program framework). Schools must certify that they meet certain requirements with respect to their accreditation and the sufficiency of their programs to satisfy educational prerequisites for licensure or occupational certifications. 34 C.F.R. § 668.414. They must also demonstrate that their debt-to-earnings rates, which measure graduates' debt burden relative to their earnings, meet defined thresholds. *Id.* §§ 668.403, 668.404. In this way, the rule is designed to hold accountable those programs that do not adequately train students to obtain jobs in occupations for which the programs are offered or that offer training for low-paying occupations unjustified by a program's cost. Gainful Employment Rule, 79 Fed. Reg. at 65,036. Although programs at for-profit institutions account for only one-third of the nation's career training programs, *id.* at 65,025, the Department predicts that nearly all programs whose debt-to-earnings rates will be marginal or failing under the rule will be at for-profit institutions, *id.* at 65,065.

In addition to the accountability measures, the Gainful Employment rule imposes new transparency requirements for all career training programs that rely on federal Title IV funding. Schools must, among other things, make new disclosures to students, their families, and the public using a standardized template developed by the Department. 34 C.F.R. § 668.412. That template may include information such as students' loan repayment rates, loan default rates, and annual earnings rates, and program-specific information, such as total cost, job placement rates, and program length. *Id.*

SUMMARY OF ARGUMENT

As the administrative record in this case makes clear, the Gainful Employment rule is a reasonable response to a clear problem. The for-profit education industry, which is responsible for the vast majority of low-performing career training programs, often charges high prices to provide a low-quality education with few to no job placement opportunities and abysmal graduation rates. It has preyed on underserved populations of students, targeting them with shameful, and sometimes outright fraudulent, recruitment practices that have prompted numerous state and federal agencies to investigate and have resulted in significant enforcement actions. And the industry has saddled many students with a lifetime of debt that often ends in default, with devastating consequences for those students and the federal fisc. In light of these harms, it was reasonable for the Department to adopt an accountability rule that measures whether programs prepare students for jobs that enable them to repay their student loan debt and to impose basic disclosure requirements on institutions as a condition on their continued receipt of federal aid. Invalidation of the Gainful Employment rule would eviscerate these commonsense measures to protect students and U.S. taxpayers from some of the most egregious practices of the career training industry and to hold accountable institutions that subsist on federal money.

ARGUMENT

I. For-Profit Career Training Programs Charge High Prices That Leave Students Deeply in Debt.

Students enrolled in for-profit institutions often pay exceedingly high prices as compared to public or private non-profit alternatives. For example, "tuition and fees at for-profit colleges are twice what they are for equivalent programs at less-than-two-year public colleges and four times what they are for equivalent programs at two-year public institutions." Education Trust Comments, ED-2014-OPE-0039-1729, AR-H-074016. Although public institutions receive government subsidies that defray students' cost of attendance, evidence suggests that the high cost of for-profits remains even after controlling for these subsidies. Gainful Employment Rule, 79 Fed. Reg. at 65,032.

Unsurprisingly, students at for-profit programs are more likely than those at other institutions to rely on loans, including federal student aid, to finance their educations. *Id.* at 65,033. Based on a two-year investigation of the for-profit education industry, the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee concluded that 96 percent of students at for-profit schools have student loans, compared to 13 percent at community colleges, 48 percent at 4-year public colleges, and 57 percent at 4-year private, non-profit colleges. U.S. Senate Health, Education, Labor and Pensions Committee, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 7 (2012) (hereinafter HELP Report), AR-G-001365.

On average, students at for-profit schools also have larger amounts of debt than students who attend non-selective public or non-profit institutions. Gainful Employment Rule, 79 Fed. Reg. at 65,033. For example, 57 percent of those students who graduate with a Bachelor's degree from a for-profit school owe $30,000 or more in student loans, compared to 25 percent of those graduating from private, non-profit colleges and 12 percent graduating from public colleges. HELP Report at 7, AR-G-001365; *see also*, *e.g.*, Gainful Employment Rule, 79 Fed. Reg. at 65,033 (documenting higher median loan amounts among students attending for-profit certificate and Associate's degree programs than at public alternatives). In light of these higher debt levels, students must be able to secure higher-paying jobs to manage the monthly loan payments due shortly after the students leave college.

Certain groups of students—including students of color, low-income students, veterans, and women—feel acutely the impact of for-profits' high costs (and their poor quality and outcomes, as discussed below). These students are targeted for enrollment by for-profit institutions and matriculate there in large numbers. *See*, *e.g.*, NAACP Legal Defense and Educational Fund Comments at 2, ED-2014-OPE-0039-1927, AR-H-087119; National Education Association Comments at 1, 3, ED-2014-OPE-0039-1412, AR-H-053446-48; American Association of University Women (AAUW) Comments at 1, ED-2014-OPE-0039-2072, AR-H-090032. In some cases, their enrollment has skyrocketed in recent years. *See*, *e.g.*, Education Trust Comments at 2-3, AR-H-74015-16 (noting that "[b]etween 2004 and 2009, African American enrollment in for-profit college bachelor's degree programs increased by 218 percent, compared with a 24 percent increase in public four-year university programs"); Veterans Education Success Comments at 2, ED-2014-OPE-0039-2363, AR-H-106994 (explaining that for-profits' recruitment of veterans and students in the military increased more than 200 percent in just one year).

These students, like for-profit students more generally, often find that student loans are necessary to finance their education. And to keep up with costs, they must in turn borrow more. In one recent year, 74 percent of African American students and 72 percent of Hispanic students attending for-profit colleges took out federal loans to finance their education, compared to 24 percent and 27 percent, respectively, of their peers at other institutions. Education Trust Comments at 4, AR-H-074017; *see also* AAUW Comments at 1, AR-H-090032 (stating that women who enroll in for-profit colleges are more than twice as likely to take out federal student loans than women at other colleges and universities).

II. Despite Taking Large Amounts of Federal Money, For-Profit Career Training Programs Routinely Offer Students an Inferior Education With Little Support.

Because their students must frequently borrow—often from the federal government—to attend, career training programs at for-profit institutions rely heavily on federal money to keep their doors open and their profits up. One recent analysis of the finances of thirty for-profit colleges concluded that the schools received more than 79 percent of their revenue from federal Title IV aid. *See* HELP Report at 24, AR-G-001382. That share was even larger when other forms of federal educational assistance, such as military-related education aid, were included. *See id.* In addition, federal student aid used at career training programs has increased dramatically in recent years. For example, between the 2000-01 and 2009-10 school years, for-profit schools' receipt of federal Pell grants increased from $1.1 billion to $7.5 billion. *Id.* at 25, AR-G-001383. The Apollo Group, the parent company of the University of Phoenix, saw students' Pell grants increase from $24 million in 2000-01 to an eye-popping $1.2 *billion* in 2010-11. *Id.* at 26, AR-G-001384.

Despite this flood of federal cash, some for-profit career training programs are notorious for providing students with a substandard education, marked by poor quality instructors, few if any student support services, and high rates of withdrawal. The National Consumer Law Center (NCLC), which frequently provides legal assistance to students attending for-profit programs, noted in the rulemaking that its clients often "complained about unqualified instructors, a school's failure to provide books or other materials, the lack of up-to-date, operational or sufficient instructional equipment, and internships that do not involve any of the skills the students have learned." NCLC Comment at 4, ED-2014-OPE-0039-0585, AR-H-029557; *see also*, *e.g.*, Veterans' Student Loan Relief Fund Fact Sheet, ED-2014-OPE-0039-2368, AR-H-107861-66 (collecting veterans' experiences with low program quality at for-profit schools).

Low program quality is due in part to relatively low expenditures on instruction: Instead of directing additional funding to improve instructional quality, many for-profit schools use students' tuition and fees to pad school profit margins and pay for recruitment and marketing. HELP Report at 6, AR-G-001364. On average, for-profit institutions that responded to a document request by the Senate HELP Committee spent $2,050 per student on instruction in 2009—a spending level that generally fell below that for public and non-profit schools. *Id.* at 86-87, AR-G-001444-45. In 2009, the Apollo Group spent less than $900 per student on instruction, compared to per-student costs exceeding $11,000 at the University of Arizona, a public school. *See* HELP Report Part II at 289-90, *as cited in* Veterans Education Success Comment at 3, AR-H-106995, *available at* http://www.help.senate.gov/imo/media/for_profit_report/PartII/Apollo.pdf. For-profit schools keep instructional costs low in part by using part-time faculty, a tactic that may lead to worse student outcomes. HELP Report at 94-95, AR-G-001452-53. At those institutions examined by the HELP Committee, 80 percent of faculty were part-time. *Id.* at 94, AR-G-001452. At one school, Bridgepoint, more than 98 percent of faculty were part-time. *Id.*

For-profit schools often cut corners with respect to student support services as well. The HELP Committee found that for-profit institutions included in its analysis employed roughly ten recruiters for every career services professional. *Id.* at 7, AR-G-001365. Two of the largest for-profit schools "provide[d] *no* career services" at all. *Id.* at 162, AR-G-001520.

III. Many Students Leave For-Profit Institutions Without Graduating, and Graduates Often Have Low Earning Potential and Few Job Prospects.

Many students never graduate from for-profit career training programs, where the student withdrawal rates are often higher than those at public or private non-profit programs. Gainful Employment Rule, 79 Fed. Reg. at 65,033. The HELP Report concluded that more than half a million students (or 54 percent) who enrolled in 2008-2009 in a for-profit institution examined by the Committee dropped out without a degree or certificate by the middle of 2010. HELP Report at 73, AR-G-001431. At some institutions, withdrawal rates were even higher. For example, 59 percent of students who enrolled in 2009-10 at Ashford University, a school operated by Bridgepoint Education, withdrew *in a single year*. *Id.* at 128, AR-G-001486.

A variety of factors contribute to these high withdrawal rates, including low program quality and students' inability to continue to pay their share of the high cost of a for-profit education. *See, e.g., id.* at 43-44, AR-G-001401-02 (describing internal documents from for-profit institutions that discuss the impact various changes in tuition and fees will have on enrollment). Students may also find themselves unprepared for or incapable of completing the programs because, in their quest to obtain federal student aid, for-profit institutions often admit students who have no realistic prospect of graduating. For example, a former DeVry salesman testified before Congress that the company instructed recruiters to enroll service members even if they were not ready for the program or were going to be deployed. Veterans Education Success Comments at 5, AR-H-106997. One report indicated that the for-profit school Ashford University "signed up a Marine with traumatic brain injury convalescing in a military hospital" who was injured to such an extent that, although he knew that he had enrolled at the school, he could not remember what course he was taking. *Id.* at 4, AR-H-106996. In another case, a woman "was pressured into signing up for a proprietary school medical assistant program even though she dropped out of school in ninth grade and had only a sixth grade reading level." NCLC Comment at 5, AR-H-029558. Unsurprisingly, that student did not complete the course and defaulted on her student loan. *Id.* In another example, a person with limited English skills was misled into signing up for a cosmetology program after a Spanish-speaking representative falsely told her that the school's instructors were bilingual. *Id.* at 6, AR-H-029559. Although students' reasons for withdrawal vary, one thing is certain: Many students incur loan debt before withdrawing, and without the credential they sought, they receive little to no bump in earning potential that would enable them to repay that debt.

Even students who graduate from for-profit programs struggle to pay off their loans due to low earning potential and few job prospects. *See* Gainful Employment Rule, 79 Fed. Reg. at 65,031. For example, more than a quarter of career training programs that will be subject to the debt-to-earnings measures under the challenged rule produce graduates with mean and median earnings below $15,080 per year, the earnings of a full-time worker earning the federal minimum wage. *Id.* In addition, for-profit schools often have abysmal records with respect to job placement. The National Consumer Law Center reported that "[a] large percentage of the many clients [it had] represented attended for-profit schools" and "[o]nly a handful reported finding a job in the field related to their program of instruction." NCLC Comments at 1, AR-H-029554. Indeed, many of NCLC's clients were "told by employers that they never hire graduates from the for-profit schools they attend." *Id.* at 5, AR-H-029558.

IV. Some For-Profit Educational Institutions Engage in Shameful and Fraudulent Recruitment Practices.

Given the for-profit industry's high prices and poor outcomes, one would expect that demand for the industry's schools would decline. However, for-profit schools continue to attract new students, in part by engaging in aggressive recruitment practices. All too frequently, those practices mislead potential students and their families as to the cost of the education on offer and its value, thus thwarting typical market forces that would discourage students from attending.

For-profit schools' recruitment efforts can be relentless. The Senate HELP Committee concluded that, among the schools it analyzed, "almost 23 percent of revenues were spent on marketing and recruiting" (compared to 17 percent on instruction). HELP Report at 6, AR-G-

001364; *accord* Gainful Employment Rule, 79 Fed. Reg. at 65,033 (citing same). In recent years, for-profits have received criticism in particular for their aggressive marketing toward veterans and service members.[1] For example, one commenter told the Department about an individual who provided his name to a website that promised to help veterans access their military-related education funding. Veterans Education Success Comments at 4, AR-H-106996. In reality, the website was a service for for-profit colleges to identify potential recruits, and within three to four days, the individual received more than 70 phone calls and 300 e-mails from for-profit schools. *Id.* The recruitment onslaught continued for more than a year. *Id.* Kaplan, a for-profit company, has even "operate[d] recruiting sites fronted as 'study centers' inside military and VA hospitals." *Id.* at 5, AR-H-106997.

Recruiters at some schools also exploit students' emotions to make them feel vulnerable and therefore more likely to enroll. As one admissions employee for Argosy University Online admitted, recruiters would attempt to uncover students' previous mistakes during the admissions process. *Id.* "You basically take all that failure and all those bad decisions, and you spin it around and right back in their face as guilt" to induce them to enroll and take out loans. *Id*. Likewise, the Senate HELP Report describes evidence, including school training manuals, internal memoranda, and undercover visits by the Government Accountability Office, showing that schools have targeted students' pain—such as students' feelings about "dead-end job[s]" or their "inability to support their children"—as a recruiting tactic. HELP Report at 60, AR-G-001418.

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[1] Under federal law, career training programs must obtain at least 10 percent of their revenues from non-Title IV sources. 20 U.S.C. § 1094(a)(24), (d). This requirement, called the "90/10" rule, creates strong incentives for schools to recruit veterans and service members, who have access to federal student aid programs that do not originate under Title IV. That some for-profit schools cannot find a sufficient number of students, families, and employers willing to pay any amount out-of-pocket for a for-profit education to meet the 90/10 requirement is telling with respect to the quality of education on offer at many for-profit programs.

Substantial record evidence also demonstrates that some for-profit institutions mislead or outright lie to students about material information, including program cost, job placement rates, and accreditation. Some of this evidence comes straight from former recruiters in the industry. For example, a DeVry salesman charged with recruiting veterans stated that he was "instructed to pose as a 'military advisor' affiliated with the Pentagon"; four other DeVry salesmen subsequently told Congress that they were instructed to do the same thing. Veterans Education Success Comments at 5, AR-H-106997. And a former recruiter at for-profit South University stated, "It just got to the point where I felt like I was lying to these people on a regular basis. . . . Honestly, I just felt dirty doing the things I was doing. It's almost like they were trying to make me take advantage of people's belief in what this education was going to get them, when I didn't buy into it myself." *Id.* at 6, AR-H-106998.

The administrative record also contains numerous stories of students who were surprised by the full program cost. *See*, *e.g.*, HELP Report at 54, AR-G-001412; Veterans' Student Loan Relief Fund Fact Sheet, AR-H-107861-66. These students' confusion is likely no accident: Some for-profit schools seem to train their employees not to provide students with a total cost of the program during the recruitment process. For example, one former recruiter for a for-profit college explained that he was trained to state the cost of the program only for each term. As he noted, "often times the student will automatically assume there are only two or three terms like a traditional school, and there is [sic] in reality, five per year." HELP Report at 54, AR-G-001412. Another school's internal training manual instructed recruiters to give non-answers to a student's first two questions about program cost and, if asked a third time, "to state the cost per credit hour, but not the number of credits required to graduate in the program." *Id.* at 54-55, AR-H-

001412-13. The manual even expressly stated: "Do not give out the complete program cost." *Id.* at 55, AR-H-001413.

For-profit companies are also adept at manipulating data with respect to their job placement success, thereby giving students (and in some cases, accreditors) false information about students' prospects. As one example, the Attorney General of New York discovered that Career Education Corporation had inflated its graduates' job placement rates in disclosures to students, accreditors, and the state. Press Release, A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement With For-Profit Education Company That Inflated Job Placement Rates To Attract Students (Aug. 19, 2013), at 1, AR-G-000001. The state alleged that company employees had counted graduates' "employment at single one-day health fairs, including fairs initiated at the request" of the company, as job placements, and had mischaracterized "graduates' job duties in order to improperly count such students as employed in the field in which the student trained or a related field." *Id.* Although the company did not admit wrongdoing, it entered into a $10.25 million settlement with the state, which included an agreement to pay more than $9 million toward restitution for eligible consumers. *Id.* As part of the Attorney General's investigation, the company audited its job placement reports and "announced that it was revising placement rates for 49 of its campuses, and that 36 of those no longer met its accreditor's standards for placement." HELP Report at 164, AR-G-001522.

Many students also report being misled about a particular program's accreditation, its sufficiency for students to seek professional certification or licensure, and the transferability of its credits to other schools. "Too many programs exploit the confusion between national, regional, and programmatic accreditation." American Federation of Teachers Comments at 4, ED-2014-OPE-0039-1620, AR-H-063295. For-profit schools may have only national accreditation, for example, which impairs students' ability to obtain licensure or certification under some circumstances and to transfer their credits with for-profit institutions to non-profit private or public schools.

Many students, "especially first-in-the-family college students, . . . do not find out until it is too late" that the programs they are attending do not meet necessary certification or licensing exam criteria. Consumer Federation of California, et al., Comments at 31, ED-2014-OPE-0039-1932, AR-087180. One commenter described to the Department the story of a Marine Corporal, who stated, "When I attempted to transfer my units from [the for-profit] Brown Mackie to [a public college], I found out that none of my units transferred because they didn't have the right level of accreditation." Veterans Education Success Comments at 8, AR-H-110059. Another former student of a for-profit, a single mother with two kids, testified in a congressional hearing that only after she finished a sonography program at a for-profit college did she learn that it lacked programmatic accreditation. *Id.* at 13, AR-H-110064.

The Senate HELP Committee also examined accreditation-related online information provided by for-profit companies and found it lacking in some instances. For example, it analyzed programs offering Clinical Psychology Doctorates; some states require accreditation by the American Psychological Association for an individual to receive a license to practice as a psychologist. One institution offering this program, Argosy University, correctly noted on its website that some of its campuses were accredited, but it did not mention on the same page "that two of its [eleven] programs were not accredited, nor that graduates from those two programs would not be able to practice in several States." HELP Report at 109, AR-G-001467. The University of the Rockies, another school with this type of program, noted on its website that its program was not accredited by the association and that accreditation was required to practice in some States, but it failed to list the states in which that requirement would apply. *Id.* at 109-10, AR-G-001467-68. Concord Law School, which is owned by the for-profit company Kaplan and was not accredited by the American Bar Association (ABA), stated on its JD web page that graduates were eligible to sit for the California Bar Exam (which does not require a degree from an accredited law school), but it did "not mention that the program was not accredited by the [ABA] and that as a result, even students who ultimately passed the California Bar Exam would not be allowed to sit for the required bar examination in many other States." *Id.* at 109, AR-G-001467; *see also id.* at 104, AR-G-001462 (stating that a prospective student would have had to "click on a small-print section titled 'Concord Law School accreditation and disclosure information' and to read multiple small-print paragraphs" to learn this information).

Misleading and false recruitment practices have led numerous government entities to investigate and take action against for-profit institutions. At the time of the Gainful Employment rulemaking, more than two dozen state attorneys general, the U.S. Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, and the Consumer Financial Protection Bureau had investigated for-profit companies. David Halperin Comments at 5, ED-2014-OPE-0039-1820, AR-H-075394; *see also* The Institute for College Access and Success (TICAS) Comments at 1-2, ED-2014-OPE-0039-1935, AR-H-087209-10. Although many of those investigations were pending or had settled without companies' admissions of guilt, allegations by these government entities are consistent with other accounts regarding problems within the industry. *See* David Halperin Comments at 5, AR-075394; *see also id.* Attachment, AR-H-075401-22 (collecting descriptions of government investigations and actions regarding for-profit colleges).

In 2013, for example, the Attorney General of Colorado entered into a $3.3 million settlement with Argosy University, Denver, involving allegations that the school misled students about the accreditation of its doctorate of education program in counseling psychology. Press Release, Attorney General Suthers Announces Consumer Protection Settlement with Argosy University (Dec. 5, 2013), http://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_consumer_protection_settlement_argosy_unive, *as cited in* TICAS Comments at 2, AR-H-087210. The Attorney General concluded that Argosy had engaged in "a long and elaborate pattern of deceptive behavior," including statements that led students to believe that the program was seeking accreditation by the American Psychological Association when it was not. *See id.* The state observed that the school's deceptive behavior began in 2007, and as of 2013, no student in the program "ha[d] become licensed as a psychologist in Colorado or any other state." *Id.*

V. Students at For-Profit Institutions Often Default on Student Loans, With Devastating Consequences.

For-profit institutions' toxic mix of high student debt, low program quality, and poor employment prospects unsurprisingly leads to high rates of student loan default. The Department estimated that more than one in five students who attend career training programs subject to the accountability metrics in the rule will default on their federal student loans within the first three years of repayment. Gainful Employment Rule, 79 Fed. Reg. at 65,031. Student loan default rates are "consistently . . . highest among students attending for-profit institutions." *Id.* at 65,033; *see also* HELP Report at 114, AR-G-001472 (stating that students who attend for-profit schools "default at nearly three times the rate of students who attend[] other types of institutions"). As a result, nearly half of all student loan defaults are held by students who attended for-profit educational institutions. HELP Report at 114, AR-G-001472.

While the default rates among for-profit schools are high, the rates at some schools are downright shocking. For example, internal e-mails between executives at Apollo Group, a large for-profit company, estimated lifetime default rates for students in a two-year program in one of the company's schools to be greater than 77 percent. HELP Report at 117, AR-G-001475. An analysis conducted by the Institute for College Access and Success (TICAS) "found 114 programs—all at for-profit colleges—where there were more defaulters in a single cohort year of defaults than there were graduates in a two-year period." TICAS Comments at 3, AR-H-087211. Put another way, students receiving federal aid to attend these "parasitic programs" were "more likely to default than they [we]re to complete the credential they sought." *Id.*

Borrowers who default face severe consequences, including loan balances that balloon, ruined credit, and the constant threat of wage garnishment, tax refund seizures, and Social Security offsets. *See, e.g.*, Gainful Employment Rule, 79 Fed. Reg. at 65,031. Although federal law penalizes postsecondary institutions whose students have certain high rates of default on federal loans within three years of when the students must begin repaying their loans, 20 U.S.C. § 1085(a), (m), some for-profit schools see reducing default rates as an easily managed cost of doing business, even without improving program quality or job placement. For instance, some schools "hire people to call former students on the verge of default and push them into deferment or forbearance to keep them out of default during the three-year window." Massachusetts Attorney General Comments at 2, ED-2014-OPE-0039-2048, AR-H-089193. As the Massachusetts Attorney General's Office told the Department, these individuals "do this often without regard for the student's best interests . . . and sometimes with the use of incentives like an iTunes or Starbucks gift card." *Id.* Although these students are not formally in default during the period in which default rates are measured, they are still unable to repay their loans, are likely to end up owing more debt due to accruing interest, and may still default after the measurement time period ends. Thus, the share of a program's students who are repaying their loans, can be quite small. For example, one commenter found that in Kaplan University's bachelor's degree program in legal studies, "only 24 percent of the debt incurred by students to attend that program was being paid down." TICAS Comments at 8, AR-H-087216.

*   *   *

For far too long, for-profit educational institutions have charged vulnerable students high prices for a second-class education. Although they often point to the enrollment of students of color, low-income students, and veterans to tout their role in increasing access to higher education, the schools saddle these students with debts that the students may never be able to repay and provide them with few if any skills to help them advance. And, in some cases, for-profit institutions mislead or lie to students, their families, and the public.

The Department of Education rightly recognized that the federal government should not foot the bill for these cynical and shameful industry practices, and the Gainful Employment rule, although not as strong as amici would have wished, provides a valuable tool to address them by conditioning receipt of federal money on basic accountability and transparency requirements. Holding career college programs accountable for preparing students for gainful employment, as the law has long required, will encourage colleges to invest in program quality, keep costs reasonable, and enroll only those students for whom their programs are an appropriate fit. For the sake of students and U.S. taxpayers, the rule should be upheld.

CONCLUSION

For the foregoing reasons, the Association of Proprietary Colleges' motion for summary judgment should be denied and the Department's cross-motion for summary judgment granted.

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Respectfully submitted,

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APPENDIX OF AMICI DESCRIPTIONS

Air Force Sergeants Association
The Air Force Sergeants Association represents its 110,000 dues-paying members by advocating for their interests to America's elected officials and military leaders. It is a federally-chartered, 501(c)(19) veterans' service organization headquartered in Suitland, Maryland.

American Federation of Teachers, AFL-CIO
The American Federation of Teachers is a union of 1.6 million professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

Center for Public Interest Law
The Center for Public Interest Law (CPIL), founded in 1980 at the University of San Diego School of Law, serves as an academic center of research and advocacy in regulatory and public interest law. In addition to its academic program, in which law student interns learn the substantive law governing the operation and decision making of state regulatory agencies, CPIL has an advocacy component in which it represents the interests of the unorganized and underrepresented in California's legislature, courts, and regulatory agencies.

Center for Responsible Lending
The Center for Responsible Lending is a nonprofit, non-partisan research and policy advocacy organization that works to protect homeownership and family wealth by fighting predatory lending practices. Since we began in 2002, we have witnessed, studied, and fought against outrageous lending abuses that strip billions of dollars from American families. CRL strives to advance financial opportunity, security, and wealth for families and communities. We are particularly focused on promoting fair and sustainable lending practices and ending abusive financial practices that have a disproportionate impact on people of color, low and moderate income families, and other populations including immigrants, students, seniors, women, and military personnel. These populations have too often received reduced access to responsible products and are intentionally targeted for predatory lending. Our affiliation with Self-Help, a lender to traditionally underserved borrowers, confirms that fairness and opportunity can be at the center of a thriving financial marketplace for all.

Children's Advocacy Institute
The Children's Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989, is one of the nation's premier academic, research, and advocacy organizations working to improve the lives of children and youth. In addition to its academic component, in which CAI trains law students and attorneys to be effective child advocates, CAI seeks to leverage change for children and youth through impact litigation, regulatory and legislative advocacy, research and public education at the state and federal levels.

Consumer Action
Through multilingual financial education materials, community outreach, and issue-focused advocacy, Consumer Action empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper.

Consumer Federation of California
The Consumer Federation of California is a non-profit advocacy organization. Since 1960, CFC has been a voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies and advocates before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Demos
Demos is a public policy and research organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Demos views an affordable, quality higher education system as a pillar of our nation's commitment to equity and upward mobility and believes that a robust Gainful Employment rule is key to ending abusive practices among some institutions in our higher education system and ensuring that students are not overburdened by debt from institutions that provide little value in the job market.

The Institute for College Access & Success
The Institute for College Access & Success (TICAS) is an independent, non-profit organization that works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.

League of United Latin American Citizens
The League of United Latin American Citizens (LULAC) is the nation's largest and oldest civil rights volunteer-based organization that empowers Hispanic Americans and builds strong Latino communities. Headquartered in Washington, DC, with 1,000 councils around the United States and Puerto Rico, LULAC's programs, services, and advocacy address the most important issues for Latinos, meeting critical needs of today and the future.

Mississippi Center for Justice
The Mississippi Center for Justice is a nonprofit, public interest law firm committed to advancing racial and economic justice. Supported and staffed by attorneys, community leaders, and volunteers, the Center develops and pursues strategies to combat discrimination and poverty statewide.

New Economy Project
New Economy Project works with New York City groups to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. New Economy Project employs a range of strategies—including direct representation, impact litigation, policy advocacy, coalition building, community education, and research—to address pressing economic justice issues. The issues raised in this litigation are of

vital interest to the communities that New Economy Project serves, as many low-income New Yorkers have been saddled by student loan debt incurred after attending sham, for-profit schools.

Public Citizen, Inc.
Public Citizen, Inc. is a non-profit consumer advocacy organization founded in 1971. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues, including consumer rights in the marketplace, financial regulation, and corporate accountability. Public Citizen supports robust regulation of predatory, for-profit educational institutions and student lending practices that leave many students of for-profit schools with overpriced educations that do not prepare them for the workplace.

Public Counsel
Public Counsel is the largest not-for-profit law firm of its kind in the nation. It is the public interest arm of the Los Angeles County and Beverly Hills Bar Associations and is also the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults, and families throughout Los Angeles County. In 2013, Public Counsel assisted more than 30,000 people with direct legal services and assisted hundreds of thousands more through filing impact lawsuits, influencing policy, and sponsoring legislation. Many of our clients, including foster youth, veterans, and at-risk students who are often the first in their families to go to college, suffer from the practices of for-profit colleges described in this brief.

Public Good Law Center
The Public Good Law Center is a public interest organization dedicated to the proposition that all are equal before the law. Through participation in cases of particular significance for consumer protection and civil rights, Public Good seeks to ensure that the protections of the law remain available to everyone.

Public Law Center
The Public Law Center is committed to providing access to justice to Orange County, California's low-income residents, and does so by providing free civil legal services, including counseling, individual representation, community education and strategic litigation and advocacy to challenge societal injustices. The Public Law Center regularly assists low-income students who have enrolled in for-profit schools because of false promises and misinformation and subsequently have to deal with paying for an education that they cannot use. The Public Law Center supports the Gainful Employment rule because it will allow students to make informed decisions about their education.

Service Employees International Union (SEIU)
The Service Employees International Union (SEIU) represents over two million members in health care, education, public services, and property services who, themselves or their families, need accessible, quality higher education and training opportunities. SEIU also unites over 23,000 faculty who are an important voice for a higher education system that prioritizes student learning, invests in educators, and reduces student debt to build a 21st century workforce.

United States Student Association

The United States Student Association, the country's oldest, largest, and most inclusive national student-led organization, develops current and future leaders and amplifies the student voice at the local, state, and national levels by mobilizing grassroots power to win concrete victories on student issues.

University of San Diego School of Law Veterans Legal Clinic

The University of San Diego School of Law Veterans Legal Clinic provides free legal services to veterans struggling to resolve disputes with for-profit education companies over the use of GI Bill funds and related loans. The Veterans Clinic also represents veterans appealing Veterans Affairs disability determinations and veterans seeking to change the characterization of service of their military discharge.

Veterans Education Success

Veterans Education Success is a non-profit organization dedicated to protecting and defending the integrity of the GI Bill and other federal education programs for veterans and service members. Veterans Education Success provides individual assistance to veterans who have been deceived or defrauded by predatory colleges.

Veterans' Student Loan Relief Fund

The Veterans' Student Loan Relief Fund is a national non-profit organization that provides grants to veterans who have been defrauded by for-profit schools.

VetJobs

Veteran-of-Foreign-Wars-sponsored VetJobs is the leading military job board on the internet, assisting transitioning military, veterans, National Guard and Reserve and their family members in finding quality employment.

Vietnam Veterans of America

Vietnam Veterans of America (VVA) is the nation's only congressionally chartered veterans service organization dedicated to the needs of Vietnam-era veterans and their families. VVA's founding principle is "Never again will one generation of veterans abandon another."

Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity.

Young Invincibles

Young Invincibles is a national research and advocacy organization committed to amplifying the voices of young adults ages 18 to 34 and expanding economic opportunity for the Millennial generation.