

To: Negotiated Rulemaking Committee
From: Yael Shavit and Adam Welle (representing State Attorneys General)
Subject: Preliminary Thoughts on Gainful Employment
Date: January 17, 2022

We write to offer our preliminary reaction to the Gainful Employment issue paper circulated last week. We are grateful for the opportunity to participate in this Negotiated Rulemaking and look forward to working with the Department to help design effective and meaningful regulations. At the outset, we would like to offer our perspective from years of addressing student complaints and undertaking investigations and enforcement actions against for-profit schools that have caused devastating harm to borrowers while enriching themselves through access to Title IV funds.

While we look forward to discussing additional ways to create robust protections for students, we feel strongly that the 2014 Gainful Employment Rule (“2014 Rule”) should serve as the baseline for the Department’s present rulemaking. The Department finalized the 2014 Rule following a thorough and extensive negotiated rulemaking process. The 2014 Rule established important protections for students and taxpayers, ensuring that those who enroll and take out student loans to attend career education programs receive education that will allow them, at a minimum, to repay those loans. The 2014 Rule also empowers prospective students to make informed decisions about their education by requiring schools to provide prospective students with important information about student outcomes at the programs they are considering.

State Attorneys General have devoted considerable time and resources to addressing the fallout from the lack of safeguards and standards that pre-dated the 2014 Rule. It is now clear that a large segment of for-profit institutions enrolled students in our states with false promises of a quality education and training, ultimately leaving students buried in debt and with no meaningful career prospects. Such institutions are only able to continue to engage in such destructive conduct because of their access to and support from Title IV funding. Through our experience undertaking investigations and enforcement in this space, and from the 2014 Rule’s effects for the brief period it operated, we can say with confidence that the metrics and process established by the 2014 Rule would have prevented many such schools from continuing to operate programs that harm borrowers.

In light of the 2014 Rule’s history of effective implementation, and the wealth of data and experience supporting its design, we strongly encourage the Department to adopt Gainful Employment regulations which incorporate the 2014 Rule as a baseline. While experience in the intervening years may have identified potential minor modifications and additional accountability metrics that could provide further protections for borrowers, we recommend that any additional metrics be added to the 2014 Rule’s metrics.

We further ask the Department to fulfill its obligation to ensure that borrowers are provided with critical information by restoring the Consumer Disclosures Template in its prior form and mandating that schools make all included disclosures. Prior to the removal of key data disclosures in 2018 and 2019, the Consumer Disclosures Template contained critical

information, including, inter alia, average graduate debt, monthly loan payment amounts, average graduate earnings, job placement data, licensure information, and employment fields. This information is critical for prospective students considering whether to enroll in a program, and there is no legitimate reason for withholding such information. Such data will further help prevent our states' consumers from being misled in making important decisions about their educational future and alleviate the need for enforcement actions by our offices.

We appreciate the Department's consideration.

Thank you,

Yael Shavit and Adam Welle (representing State Attorneys General)