COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

August 27, 2012

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Duncan:

On October 29, 2010, the Department of Education finalized its program integrity rules, which significantly expanded the department's authority to require institutions of higher education offering programs leading to gainful employment to obtain approval of new academic programs before awarding Title IV funds to students enrolled in those programs. Under the new regulations, proprietary institutions of higher education must seek and obtain prior approval for *all* programs before beginning any new instructional program.

Prior to these regulations, the department only required approval for new "non-degree programs" or new academic programs representing an increased "level of offering" (e.g., the first program at a master's level for an institution that did not previously offer such programs). This requirement applied equally to public non-profit, private non-profit and proprietary institutions of higher education.

On June 30, 2012, the U.S. District Court for the District of Columbia issued its decision in *Association of Private Sector Colleges and Universities v. Duncan*, which contested the gainful employment regulations. In its decision, the court struck down the program approval component of the gainful employment regulations finding the department's rationale for this requirement no longer applicable because the court struck down the underlying regulations.

Since that time, it has come to my attention that the department may be attempting to circumvent the court ruling and expand its current authority to approve certain new programs. In particular, I have heard the department has unilaterally decided to require provisionally certified institutions of higher education to seek approval for program participation agreements (PPAs) – the agreement all institutions must sign to participate in the federal student aid programs. The department took these steps without notifying institutions of the changes to their agreement. In

addition, it appears the department is specifically targeting provisionally certified proprietary institutions in its changes, which is a clear departure from past interpretation. Interestingly, once a number of institutions complained to the department about the change, the new provision was removed from their PPAs.

Over the past four years, the Obama administration has promised to be open and transparent, yet it continues to pursue policies circumventing the congressional process, issue vague executive orders with which institutions are expected to comply, and develop regulatory and sub-regulatory guidance that often contradict what institutions have been told by department employees. In this case, the department is pushing its policy goals in an attempt to circumvent a court order. As such, I respectfully request a response to the following:

1. Provide a breakdown, by sector, of provisionally certified and fully certified institutions of higher education.
2. Why has the Department of Education changed PPAs for provisionally certified institutions of higher education?
    a. If these changes are being done to clarify the PPAs, why were they not made in concert with previous changes to the Federal Student Aid Handbook?
    b. Why are the changes only appearing in the PPAs following the court ruling in *Association of Private Sector Colleges and Universities v. Duncan* and applicable to proprietary institutions of higher education specifically?
3. Are the restrictions placed on provisionally certified institutions' PPAs meant to be exhaustive or illustrative?
4. What is the Department of Education's legal authority to change a PPA previously executed by an institution and the department without notification? What is the department's legal authority to change a PPA simultaneously and more broadly to a group of institutions instead of on a case-by-case basis on institution-specific factual circumstances (which would itself implicate due process considerations)?
5. Are any PPAs of fully certified institutions, proprietary or non-profit, being changed?
6. Provide a list of any and all regulatory citations and non-regulatory guidance affecting the approval of new institutional programs issued by the department since January 1, 2009. Provide an explanation of the department's enforcement of any and all changes to the approval of new programs since January 1, 2009.
7. Did the department specifically and consistently enforce a new program approval process at the degree level prior to the implementation of the program integrity regulations?
8. Provide select detailed examples of situations in which the department changed the PPAs for provisionally certified and fully certified institutions without requiring the institutions to re-sign their PPAs. Please note whether institutions were informed about the changes in each situation.

I would appreciate a response by September 7, 2012. If you have any questions about this request, please contact Amy Jones with the committee staff at 202-225-6558 or amy.jones@mail.house.gov.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce