

College America Services, Inc.

August 25, 2010

Mr. Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

An Open Letter

Re: Petition for Redress of an Injustice

Dear Secretary Duncan:

I petition you to correct a monstrous injustice.

An orchestrated, well-coordinated, massive attack has been made – and is continuing – on private sector colleges and universities using false and misleading information, by people with financial and political interests in seeing the demise of this education sector. The false, absurd, out-of-context accusations and the publishing of incomplete, erroneous and misleading “repayment” data (which excluded those paying interest only and those who were on a lawful deferment and a lawful forbearance – *without disclosure*) were followed up by the media resulting in the destruction of billions in market value for investors and private colleges and universities (short-sellers profited). Private colleges are being vilified. The animus is thick. Onerous and punitive regulations are proposed and harsh new legislation is looming. The consequence of all this to education in America is dire.

Private sector colleges and universities are for-profit (since when, in America, did for-profit become a pejorative and a slur); they are growing rapidly (that’s a good thing) and are successful; and they market strongly. Many successful companies market aggressively. The campaign to elect President Obama was extraordinary, aggressive, and obviously successful. Daily I receive mail, phone calls, and many requests for money from a multitude of political campaigns, sometimes several a day.

I understand the problem is *unethical* marketing. But let me be clear: neither I nor most private colleges would ever tolerate false or fraudulent admissions practices. We would be sued to death; we would lose money; we would ultimately go out of business and regulators would be justified in going after us as committing fraud. It would be suicide.

I agree that the undercover videos were appalling, but let’s be fair. This was a purposeful, contrived sting operation that asked unrealistic questions, such as, can I exclude my inheritance of \$250,000 from my application for student financial aid. Such questions were asked at 15 pre-selected colleges – not a random sample. With the volume of financial aid regulations, the admissions representative’s (now joining the unemployed roll along with

most of the other 14) answer, while intolerable, could be more benevolently interpreted as ignorance and stupidity rather than fraud. Better training of admissions and financial aid advisors is crucial, but no college would think to train admissions staff on questions that are so unusual, if not unheard of, from real students in this sector. The fact is this is far from typical.

Moral Principles

There is an important moral principle regarding errors of knowledge versus immorality. Policy makers must be clear about the difference between *errors of knowledge* and *breaches of morality*. An error of knowledge is not a moral flaw (no one is omniscient) provided one is willing to correct such error. Private colleges do need to better train admissions staff to safeguard against errors of knowledge. Most colleges do and, as I write, efforts are being redoubled. On the other hand, a refusal to learn, a willful evasion, is a breach of morality. Unfortunately, this is exactly what is happening among those who are attacking private education – they are failing to study what is really going on, failing to adhere to the facts and logic, and are accepting anecdotes and inflammatory self-serving “testimony” from a short-seller as truth. Such is a travesty.

To irrationally generalize and condemn all “for-profit” colleges (condemn all for a few bad operators) is wrong and immoral. To assign guilt because one belongs to a class, guilt because you are a “for-profit” college, is also immoral. It is wrong to fixate on some awful videos from some colleges to condemn all and assume all are rotten, top to bottom, and to use this as an excuse to take a club to the entire sector. Justice requires a scrupulous study of facts to find the truth, to judge a specific case, and only then to act — to support the good and punish the bad, and to punish only the bad. To punish the good is an injustice.

Fallacies of Logic

There are two fallacies in play with respect to the attack on for-profit higher educational institutions. First is *the fallacy of misleading or omitting context* – misrepresenting, omitting or quoting statements out of context. The proper context is higher education. A fair and balanced presentation must include all sectors of higher education. A logical evaluation can only be done by comparing the costs dollar-for-dollar (including subsidies and all tax benefits) and the results produced side-by-side from non-profits, for-profits, and public institutions. *To assess a thing, something comparable is required*. Anything less would be incomplete and out of context. I suspect that the reason this is not being done is that the results might be better than what people expect or want to see.

Second is *the fallacy of slanting* – omitting, deemphasizing, or over-emphasizing certain points to the exclusion of others. All evidence that is important and relevant should be taken into account. As Exhibit One, having a biased short-seller testify in front of Congress without disclosure (*the fallacy of prejudice*) is a dramatic example of encouraging slanted testimony.

To have an honest hearing, we must examine private sector education in the full context of all higher education – the good as well as the bad. Perhaps private sector education would stand up, or perhaps not. Let the chips fall where they may. A full, in context review would be highly beneficial for all educational institutions and would be crucial to and support our nation’s education goals.

There is a real problem with tuition¹. It has increased too fast in all sectors of education. Much of the problem comes from existing regulations. The so-called 90/10 regulation is one of the worst regulations ever promulgated. *It has actually driven up tuition.* Colleges have had to raise tuition to meet the 90/10 ratio because, on the other side, colleges must, by law, give students all the financial aid they request. For-profit colleges are prohibited from discouraging students from borrowing every penny their heart desires for tuition and all living expenses. Some students do carry too much debt given the salaries they make – not from the higher level programs such as Nursing or Respiratory Therapy (open to more qualified students), but from the more modest programs such as Medical Assisting, Pharmacy Assisting, and Radiological Technician that are open to those who have not done so well in high school and who are not as well prepared for the rigors of higher level programs. So, shall we kill those programs? Deny those students? That cannot be right. Some effective solutions to the real problems would be:

1. Kill the misguided 90/10 ratio requirement,
2. Allow colleges and universities to limit (or counsel) student borrowing; and
3. Level the playing field: provide private college and university students with similar subsidies that public colleges enjoy.

Private for-profit colleges help the most difficult (sometimes desperate) students of any sector of education: low income or no income, unemployed (at 12% in California and 14% in Nevada), those on welfare, single mothers, minorities, and the homeless. (While many homeless cannot be admitted, those who oppose trying to educate homeless people are morally bankrupt.) Given the very troubled and difficult student population served by private education, it is impressive that the default rate is as low as it is. While graduation and employment rates could be and should be higher, in today's economy it is remarkable that so many students are graduating and becoming employed. Many colleges and universities boast over a 90% employment rate of their graduates. These facts must be taken into account, understood and appreciated.

There are those who want to hurt private colleges for financial or political reasons, who want to drive stock values down to make a few pieces of ill-gotten silver. But as your department has said, the proposed gainful employment regulations will mean that hundreds of thousands of would-be students would be shut out of the education they desperately need. To work to hurt private colleges by hurting students – on the backs of students – is nasty and cruel.

Unfortunately, these attacks have apparently caused you to believe that your department is not aggressively pursuing bad actors, and it is your intention to increase enforcement (certainly stronger reviews of admissions are needed). With respect, Mr. Secretary, you are mistaken. Your reviewers are professional, thorough, relentless and uncompromising (and usually costly for any college they review). And, the possibility of a visit from the Office of the Inspector General is a fate not worth contemplating. Further, accreditors and state

¹ To compare tuition rates of private colleges with public colleges is unfair and illogical. We all know that public colleges (community colleges) receive huge state and federal subsidies which, when taken into consideration, make the tuitions approximately equal. When you consider that community colleges don't pay rent, don't pay property taxes or any other kind of taxes, private colleges are a better deal for taxpayers.

regulators are relentless and demanding. What other businesses are subjected to such rigorous oversight and regulation as:

- mandatory annual financial statement audits,
- annual financial aid compliance audits,
- periodic on-site Department of Education Program Reviews with a team of reviewers,
- Office of Inspector General on-site reviews and investigations,
- state reporting requirements, compliance audits, and on-site reviews, and
- regular accreditation reports, reviews, and on-site visits with large teams of reviewers.

And any one of these agencies can close a college, and have frequently done so. So how could more regulations and even stricter supervision be called for? This is unjust to our students, the colleges, and is a waste of taxpayer money.

Finally, I abide by another moral principle: *Never accept an unearned guilt.* If one has done wrong, has earned guilt, then it must never be left uncorrected. Are all private colleges guilty? Of course not! Most? No. A few? Yes. We know that the percentage of bad actors is no more than in other fields, whether in business, healthcare, or politics.

Some of my colleagues have accepted an unearned guilt, but speaking personally and for most private educators I say: not guilty! Mr. Secretary, I refuse to accept an unearned guilt. Not only that, I am proud of my productive work, proud of the colleges, proud of dedicated staff, and very proud of the students who strive for a better life. Pride to me means the intention and activity of seeking the best and doing the best possible. In philosophic terms, pride means “value ambitiousness” – to seek the highest and best. And that is what most of us do.

Mr. Secretary, there is a huge success story here. Private colleges and universities are producing graduates and getting young people back to work. Please end this injustice and focus on the success, support it, and let it grow.

Sincerely,

Carl B. Barney
Chairman

CB:rm

cc: Senator Harkin

*P.O. Box 1157 • 20 Somers Drive • Crystal Bay, Nevada 89402
Phone: 801-288-0600 • Fax: 775-562-8800*