

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF PRIVATE SECTOR)	
COLLEGES AND UNIVERSITIES,)	
)	
Plaintiff,)	Civil Action No.
)	1:11-cv-01314-JEB
)	
v.)	
)	
ARNE DUNCAN, in his official capacity as)	
Secretary of the Department of Education, and)	
UNITED STATES DEPARTMENT OF)	
EDUCATION,)	
)	
Defendants.)	
)	

DECLARATION OF EDUARDO OCHOA

Pursuant to 28 U.S.C. § 1746 I, Eduardo Ochoa, declare the following:

1. I have personal knowledge of the facts herein.
2. I serve as the U.S. Department of Education’s Assistant Secretary for Postsecondary Education. I assumed this role on July 1, 2010. I serve as the principal advisor to the Secretary of Education on higher-education issues and I oversee the administration of more than 60 programs that are designed to provide financial assistance to students enrolled in programs at eligible postsecondary education institutions.
3. The Department's Office of Postsecondary Education (OPE) supports higher education facilities and programs through financial support to eligible institutions, supports the recruitment and preparation of disadvantaged students for successful completion of college, promotes the study of foreign languages and international affairs, and supports international educational research and exchange activities. Notable among its programs are the eight TRIO programs, institutional development programs for minority institutions, teacher development programs, and the Fund for the Improvement of Postsecondary Education. OPE also reviews all regional and national accreditation agencies, so they, in turn, may be recognized by the Secretary to accredit institutions so that their students can receive federal financial aid and Pell grants. OPE also develops policy and regulations for the Pell grant, Federal student loan, and work-study programs.
4. Prior to joining the Department, I served for seven years as the provost and vice president for academic affairs at Sonoma State University, part of the California State University system. I earned my bachelor’s degree in physics, with a minor in philosophy, from Reed

College. I have a master's degree from Columbia University in New York in nuclear science and engineering. I hold a Ph.D. in economics from the New School for Social Research.

5. I worked on the Department's gainful employment regulations since joining the Department and through their June 13, 2011 issuance. I reviewed and approved the final regulations before they were issued. My review included approving the regulatory impact analysis (RIA) that is included with the final regulations.
6. After the Department issued the Notice of Proposed Rulemaking for gainful employment, we received more than 90,000 comments from interested parties. Several commenters discussed the relationship between repayment rate, one of the measures discussed in the proposed rule to measure student outcomes, and student demographics. Commenters suggested that there was a strong relationship between programs' Pell grant recipient rates and repayment rates. *See* 76 Fed. Reg. at 34459. Commenters also suggested that there was a strong relationship between programs' minority enrollment rates and repayment rates. *See id.*
7. In response to these comments, the Department analyzed the correlation between a number of different variables and repayment rates. The variables examined included student body characteristics such as the percent of students receiving Pell grants and the percent of students who are racial or ethnic minorities. The variables examined also included institutional characteristics such as per capital core expenses, institutional growth rate between 2006 and 2009, and graduation rates. Table 4 and Charts A and B appearing in the RIA on pages 34461, 34463 and 34464 of Volume 76, Number 113 of the Federal Register present data concerning the relationship between the variables and repayment rates. The correlation between race/ethnicity enrollment and repayment rates is included in Table 4 and Chart B.
8. In response to an argument raised by Plaintiff in this litigation, Department staff reexamined one variable included in the RIA. We concluded that the race/ethnicity analysis that appears in Chart B and the Full Model and Race/Ethnicity Only columns of Table 4 relied on a variable that represented a subset of minority students per institution, but should have relied on a variable including all minority students per institution. Using the wrong variable resulted in understating minority enrollment, and portions of the RIA that discuss or rely upon the minority student variable are affected.
9. No other portion of the analysis presented in the RIA is affected by relying on the wrong variable. In particular, the minority student variable was not used to calculate the Pell grant data presented in Chart A, the Pell Only column of Table 4, or elsewhere in the RIA. Accordingly, the Department's conclusions regarding the impact of Pell grant recipient rates on repayment rates are unaffected.
10. We have repeated the analysis presented in the RIA by using a percent total minority variable in order to measure the relationship between minority enrollment and repayment

rates. A corrected analysis using the percent total minority variable is presented in Exhibits A and B to this Declaration.

11. The Department has determined that this corrected analysis does not justify altering the regulations. Under the corrected analysis, the disparity in the percent of variance explained across the institutional sectors indicates that factors other than student demographics account for the success or failure of institutional repayment rates. The percent of total variance explained by minority enrollment remains less than the variance explained by the rate of Pell recipients.¹ Accordingly, the proper conclusion to be drawn from the analysis presented in Exhibits A and B is that the rule will measure which programs prepare their students for gainful employment; the results will not be predetermined by student demographics.
12. The Department is working on a correction to be published in the Federal Register containing the results set forth in Exhibits A and B. That correction will be published soon.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of December, 2011.



¹ The percent of total variance explained figures are not additive. Thus, it would be incorrect to conclude that minority enrollment and Pell rates together explain 43% of the total variance, even though Pell rates examined individually explain 23% and minority enrollment examined individually explains 20%.

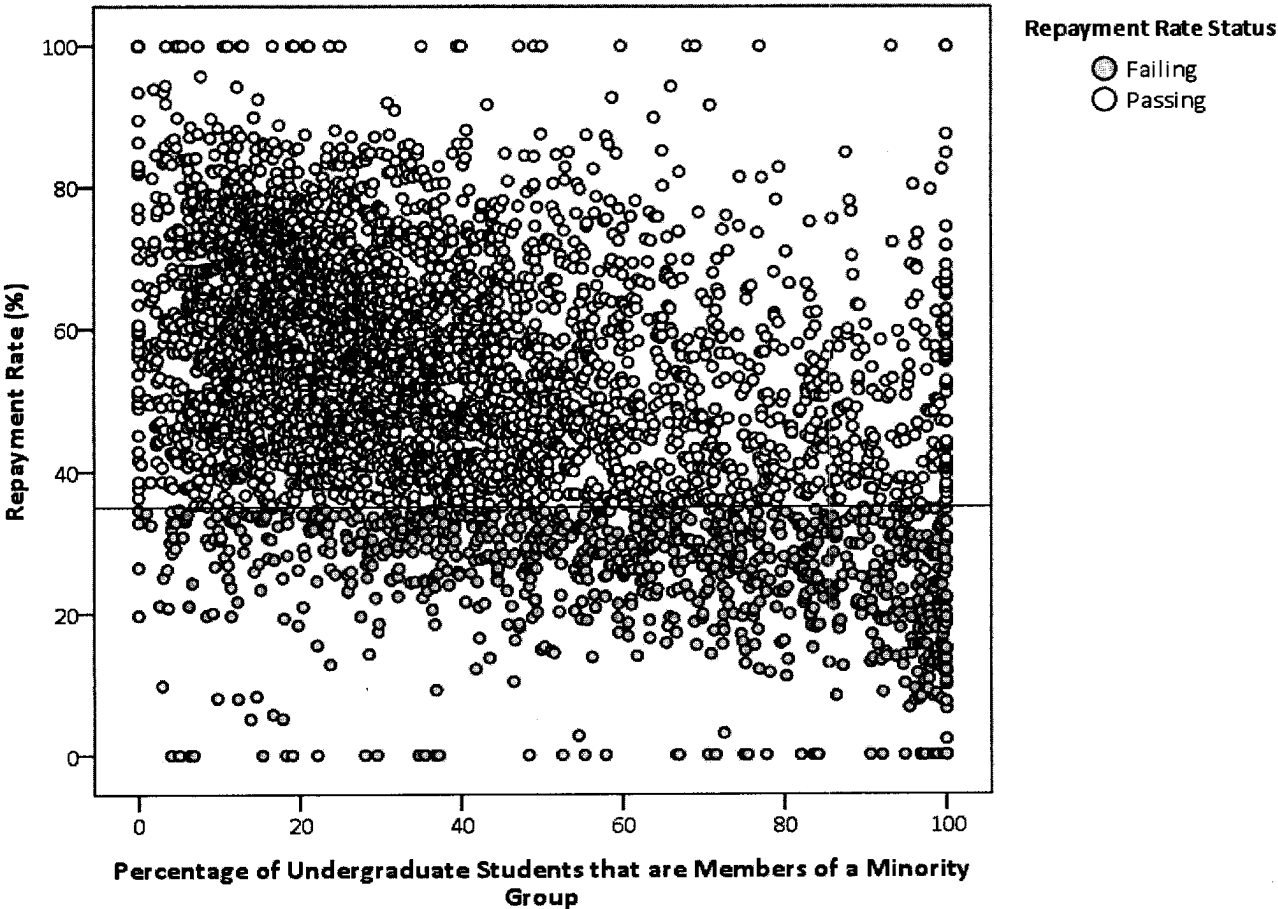
EXHIBIT A

	Full Model		Pell Only		Race/Ethnicity Only	
	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained
4-year Institutions						
Public	Yes	71	Yes	49	Yes	29
Private Nonprofit	Yes	61	Yes	41	Yes	31
Private For-profit	Yes	27	Yes	7	Yes	7
2-year Institutions						
Public	Yes	17	Yes	3	Yes	8
Private Nonprofit	Yes	64	Yes*	39	Yes	38
Private For-profit	Yes	47	Yes	26	Yes	19
Less-than-2-year Institutions						
Public	No		No		No	
Private Nonprofit	Yes	42	Yes	29	Yes	11
Private For-profit	Yes	28	Yes	16	Yes	14
Overall						
All Institutions	Yes	49	Yes	23	Yes	20

Source: NSLDS and IPEDS

*Table 4 included in the regulatory impact analysis published with the Federal Register on June 13, 2011, indicated that Pell Only was not predictive among 2-year private nonprofit institutions, when it should have indicated that it was predictive.

EXHIBIT B



Source: NSLDS and IPEDS