PROTECT STUDENTS AND TAXPAYERS

June 20, 2023

The Honorable Nasser H. Paydar, Ph.D.
Assistant Secretary for Postsecondary Education
U.S. Department of Education

Submitted electronically

Re: Docket ID ED–2023–OPE–0089

Dear Assistant Secretary Paydar,

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (Docket ID ED–2023–OPE–0089) regarding the Department of Education's proposed gainful employment rule and other proposals to enhance transparency and accountability in higher education. We represent a broad coalition of organizations working on behalf of students, veterans, faculty and staff, civil rights advocates, researchers, and other stakeholders concerned about institutions receiving Title IV funds that rely on deceptive and fraudulent tactics to lure students into programs that provide little or no value.

We are pleased that the Department seeks to improve gainful employment (GE) requirements to protect students and taxpayers from low-quality career education programs. The proposed GE rule should be an essential tool to reduce the number of programs that do not serve students or taxpayers. Such programs leave borrowers struggling with burdensome student loan debt and unable to benefit from the programs in which they have invested. We appreciate the thoughtful addition of new transparency measures and an earnings premium to the GE rule, and we support the additional accountability proposals included in the NPRM.

Collectively, the safeguards in this set of proposed regulations will advance accountability and transparency and deter the kinds of predatory, wasteful, and abusive practices that have driven up student debt, depleted veterans' education benefits, and left graduates with limited career prospects – all while wasting far too many taxpayer resources on career programs that do not deliver for students.

Financial Value Transparency and Gainful Employment. First issued in 2011, the gainful employment (GE) rule required career education programs to ensure their graduates were not left with debts they

could not afford to repay. To meet the GE rule's minimum standard, the expected debt payments of a program's typical graduate could not exceed 8 percent of their earnings and 20 percent of their discretionary earnings. If programs failed to improve graduate outcomes within three years, they lost eligibility for federal financial aid. Even prior to its implementation, the GE rule encouraged colleges to improve the value of their programs for students, as the prospect of sanctions prompted many schools to eliminate their worst performing programs and implement reforms to improve their graduates' outcomes.[1]

The debt-to-earnings test in the 2014 GE rule brought quality improvements to the for-profit college sector, as nearly all educational programs offered at for-profit institutions fell under the rule's purview.[2] According to one analysis, 65 percent of for-profit programs that were failing the gainful employment rule in early 2017 no longer enrolled students as of August 2018.[3] The rule led to lower tuition, new career program scholarships, and increased use of trial periods. Additional research indicates the 2017 GE data release "affect[ed] the likelihood of program and college closure" among low performers.[4]

The GE rule not only elevated the quality of for-profit career education offerings but also shielded students from investing time and money in low-financial-value programs. We strongly support the Department's reinstatement of this important measure and expect that implementation of the debt-to-earnings metric will once again drive important program improvements while saving taxpayers billions of dollars.

Although the GE rule applies to all Higher Education Act-defined career education programs across sectors, the debt-to-earnings requirements of the rule primarily offer guardrails against high-cost, low-quality for-profit college programs. This protection is particularly important to prevent student loan borrowers from going into default.

The GE rule acts as a critical protection for Black and Latino students, who are disproportionately enrolled by the for-profit sector and saddled with high levels of debt as a result. Black and Latino students account for nearly half of all students at for-profit schools yet only one-third of all

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[1] From Barclays U.S. Education Services, "Another Challenging Quarter in the Books," August 15, 2012: "Over the past eighteen months, many of our covered companies have made substantial changes to their offerings in an attempt to position better for the changing regulatory environment. This has included teaching out programs, introducing new program offerings, changing tuition, reducing the duration of programs, and even more dramatic steps including the closure of poorly performing campuses." See also K. Carey, "DeVos Is Discarding College Policies That New Evidence Shows Are Effective." *The New York Times*. June 30, 2017. https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html.

[2] 79 FR 64889

[3] Comments of Clare McCann, Deputy Director for Federal Policy, Higher Education Initiative, New America, in response to Gainful Employment notice of proposed rulemaking. September 13, 2018. http://bit.ly/31xemvZ.

[4] R. Kelchen and Z. Liu. "Did Gainful Employment Regulations Result in College and Program Closures?" *Education Finance and Policy*, *17*(3), 454–478. https://doi.org/10.1162/edfp_a_00340.

undergraduate students.[5] Nine out of 10 Black and Latino students who graduated in 2015-16 from a for-profit undergraduate degree program borrowed, and they borrowed at least $10,000 more, on average, than those attending public colleges.[6]

Federal data from 2019 revealed both that students attending for-profit colleges had the worst default rates across all institutional types and that Black for-profit students were more likely to default; one-third of all borrowers defaulted within six years of starting at a private for-profit institution, including 42 percent of Black borrowers.[7] Additionally, for-profit colleges enroll only 10 percent of students but account for half of all student loan defaults.[8]

Students attending for-profit colleges take out loans more often and for larger amounts than students who attend public community colleges.[9] Researchers recently found that 60 percent of for-profit attendees reported relying on student loans to pay for college, compared to only 28 percent of community college students.[10]

Instead of providing quality educational opportunities and promoting economic mobility for marginalized students, for-profit colleges often do the opposite. The GE rule works to protect Black and Latino students by requiring for-profit colleges to improve the value of their programs or face the loss of federal aid.

***Earnings Premium*.** In addition to high-debt GE programs, we are concerned about the prevalence of low-quality programs that may have much of their costs covered by financial aid (such as Pell Grants) but nonetheless leave their completers so little earning potential that they might have been better off not attending. The addition of an earnings premium to the GE rule raises the bar for program accountability and aligns with the baseline expectation that students who pursue postsecondary career training programs should not find themselves worse off financially than if they only held a high school diploma. By requiring programs demonstrate the median income for the majority of their completers exceeds the median high school graduate's earnings for their state,[11] the Department would set the floor for at least a minimal earnings premium.

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[5] Student Borrower Protection Center. *Mapping Exploitation: Examining For-Profit Colleges as Financial Predators in Communities of Color*. July 2021. http://bit.ly/3Z9hyuY.

[6] The Leadership Conference Education Fund. *Gainful Employment: A Civil Rights Perspective*. 2019. https://bit.ly/3mzbcmw.

[7] B. Miller. *The Continued Student Loan Crisis for Black Borrowers*. Center for American Progress. December 2, 2019. https://ampr.gs/3FNgN43.

[8] A. Looney and C. Yannelis. "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults." Brookings Papers on Economic Activity, Fall 2015.https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPEA.pdf.

[9] L. Armona, R. Chakrabarti, and M. F. Lovenheim. "Student Debt and Default: The Role of For-Profit Colleges." *Journal of Financial Economics*, *144*(1), 67-92. https://doi.org/10.1016/j.jfineco.2021.12.008.

[10] Public Agenda. *Who Profits? Students' Experiences at For-Profit Colleges*. January 31, 2023. https://bit.ly/3SKYB0m.

[11] Or national median, where applicable.

Based on analysis from several signatories, we see a notable prevalence of programs that struggle to meet the proposed threshold concentrated in a small set of career categories. These programs include cosmetology, medical assistant and allied health fields, and criminal justice/security. Implementation of the GE rule, as proposed, would encourage programs in these fields to improve rather than continue to churn out students who do not realize the economic benefit of enhanced earnings – especially when institutions make false or misleading promises about the potential earnings available to completers in these fields. Moreover, as the Department rightly notes in the NPRM, it should not be in the business of encouraging under-reporting of income in fields with tipped wages (e.g., cosmetology).

Community colleges, minority-serving institutions, and Historically Black Colleges and Universities serve important roles in offering access to historically marginalized students, including students from low-income families and students of color. They often do so with fewer resources than peer institutions, largely because of histories and ongoing practices of systemic inequitable funding.[12] Despite these constraints, programs in those sectors overall fare far better than those in the for-profit sector; this success is consistent with past findings that for-profit college programs come at a higher cost, offer lower quality, and leave students worse off relative to other sectors.[13]

We recognize the sometimes-stark disparities in earnings and associated quality of life across varying regions even within the same state. We appreciate the Department's attention to these varying economic disparities – especially conditions often, but not exclusively separating higher-earning urban and lower-earning rural areas. We would support a variety of potential approaches to account for these disparities in holding programs at institutions across sectors to account under the proposed earnings premium. In designing such a provision, the Department must take care to design it in such a way that would guard against predatory, low-quality programs using any regional designations where institutions might be exempted or provided additional opportunity to improve.[14] The Department should also seek to identify resources and technical assistance that could be targeted to qualifying institutions to bolster student outcomes while mitigating the effects of funding inequities.

Non-GE Program Transparency and Disclosure. We welcome the Department's efforts to reinstate the GE rule alongside other efforts to ensure students have information they need about the costs of all postsecondary programs. We strongly support the College Scorecard and applaud the addition of program-specific earnings information, where available.

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[12] In 2020, a Center for American Progress report found a community college-to-four-year public funding disparity of $78 billion nationally: V. Yuen. *The $78 Billion Community College Funding Shortfall*. October 2020. https://www.americanprogress.org/wp-content/uploads/sites/2/2020/10/Community-College-Shortfall6.pdf.

[13] S. R. Cellini and N. Turner. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." National Bureau of Economic Research working paper. 2018. https://www.nber.org/system/files/working_papers/w22287/w22287.pdf; D. Deming, et al. "The Value of Postsecondary Credentials in the Labor Market: An Experimental Study." *American Economic Review*, *106*(3), 778–806. 2016. http://dx.doi.org/10.1257/aer.20141757.

[14] See Student Borrower Protection Center, *Mapping Exploitation,* 2021, http://bit.ly/3Z9hyuY.

We similarly support the proposal to provide transparency to students regarding how non-career programs fare on the debt-to-earnings and earnings premiums metrics applied to GE-eligible programs, which are statutorily required to demonstrate they offer students gainful employment in a recognized occupation. We believe that careful consideration must be given to the potential impacts of the transparency measures – particularly the proposed student disclosures – on historically under-resourced institutions and regarding graduate programs that may offer pathways and long-term value. We refer you to the detailed comments of some of the undersigned for more detailed exploration of these issues.

Financial Responsibility. Institutions in financial precarity can enter a spiral that leads to precipitous closure, often with extreme negative consequences for students. Researchers recently found, for example, "college closures have an overwhelmingly negative impact on students, with students 71.3 percent less likely to re-enroll within one month and 50.1 percent less likely to earn a credential than students who did not experience a closure."[15] Given the evident danger for students and Title IV dollars posed by financially unstable institutions, we support the Department's efforts to strengthen financial responsibility regulations and put financial triggers in place. These measures would enable the Department to move quicker and more effectively to intervene with financially risky schools and protect against damage to both students and taxpayers by preventing precipitous college closures.[16]

We particularly appreciate and support the Department's proposed language to collect spending data regarding institutions' marketing, recruitment, and pre-enrollment activities. A clearer and accurate understanding of this information is critical to differentiate institutions that invest in students through instruction from those that primarily spend on finding and enticing students to enroll. The proposed step would enhance transparency and more fully account for how institutions direct (often taxpayer-backed) resources.

We also support the Department's proposed language to clarify that the Department may independently assess whether an institution has sufficiently resolved its auditor's concerns and whether opinions of doubt reflect a lack of financial responsibility (34 CFR 668.171(h)).

In the NPRM, the Department requests comments "as to whether an investigation as described in 34 CFR 668.171(f)(1)(iii) warrants inclusion in the final regulations as either a mandatory or discretionary financial trigger." We believe the issuance of a demand for information – including civil investigative demands, subpoenas, and requests for documents and information – constitutes sufficient cause for the Department to review and consider whether the school may have difficulty meeting its financial obligations.

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[15] State Higher Education Executive Officers and National Student Clearinghouse Research Center. *A Dream Derailed? Investigating the Impacts of College Closures on Student Outcomes*. 2022. https://sheeo.org/wp-content/uploads/2022/11/SHEEO_NSCRC_CollegeClosures_Report1.pdf.

[16] See, for example, U.S. Department of Education. "$5.8 Billion Group Discharge to Cancel all Remaining Loans for 560,000 Borrowers who Attended Corinthian." June 1, 2022. Press release. https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges.

Given that pending lawsuits are a mandatory trigger, we find it reasonable that an investigation by a government agency should serve as a discretionary trigger. We recommend explicit indication of these investigatory triggers and removal of "or other formal or informal inquiry" language. The Department may still include the language "or other formal or informal inquiry" in the reporting requirement, as such general inquiries may provide information relevant to the Department for other compliance activities.

Standards of Administrative Capability. Proposed amendments to administrative capability regulations should increase transparency for students, borrowers, and their families, enabling them to make more informed decisions about debt and covering the costs of college.

We support proposed provisions that would enhance clarity for students considering financial aid offer letters. The proposed 34 CFR 668.16(h) would enhance transparency and enable students and families to make more informed choices in considering how to pay for postsecondary programs and in comparing competing aid offers. Analysis of 455 different institutions' financial aid offers revealed 136 unique terms for the federal unsubsidized loan – two dozen of which failed to include the word loan.[17] The Government Accountability Office recently found more than 91 percent of colleges either do not include or understate their net price.[18] Regulatory requirements to enhance transparency of financial aid offers should ensure more clarity and standardization as students and families make their college choices. Signatories to these comments have recommended language to further strengthen the proposed regulations, and we encourage the Department to give this input serious consideration in finalizing the rules.

Certification Procedures. Overall, the measures proposed by the Department would bring welcome added protections for students and taxpayers through certification procedures. For example, proposed language would strengthen protections for students, borrowers, and Title IV programs against unscrupulous institutional owner-operators and shadow for-profits attempting to convert to nonprofit status. We specifically support the Department's proposed restrictions for contracting with or hiring individuals, agencies, or organizations with histories of association with a problematic institution.

We support the proposed language for a new paragraph (e) at 34 CFR 668.13. This language would enable the Secretary to consider key measures concerning an institution's performance – including instructional spending rates and licensure pass rates – in certification decisions. The Department now has few requirements for programs designed to lead to licensure, and effectively no ability to hold institutions accountable for extremely low rates. The proposed addition would mitigate this problem.

Although we support the Department's intention in proposed 34 CFR 668.14(b)(32) to require institutions that are authorized to operate in certain states through reciprocity agreements to comply

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[17] New America and uAspire. *Decoding the Cost of College: The Case for Transparent Financial Aid Award Letters*. June 2018. https://d1y8sb8igg2f8e.cloudfront.net/documents/Decoding_the_Cost_of_College_Final_6218.pdf.
[18] U.S. Government Accountability Office. *Financial Aid Offers: Action Needed to Improve Information on College Costs and Student Aid*. November 2022. https://www.gao.gov/assets/gao-23-104708.pdf.

with state consumer protection laws related to closure, recruitment, and misrepresentations in those states, we believe the language could be further improved. To add clarity, the language should show that institutions that do not participate in a reciprocity agreement must comply with all applicable state laws in the states where they offer programs, including all consumer protection laws in states where programs are offered.

Conversions. We strongly support the Department's intention to take a more "hands-on [approach to] initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status. More rigorous review of conversion attempts – including reviews of IRS-institution communications – should empower the Department to guard against covert conversions and more effectively ensure that schools operating under Temporary Provisional Certification are subject to appropriate conditions.

Transcript Withholding. We also strongly support the Department's proposal to prohibit transcript withholding for Return to Title IV, in addition to cases where a school makes an error or commits fraud or misconduct. Last year, the Consumer Financial Protection Bureau found that "institutions took unreasonable advantage of the critical importance of official transcripts and institutions' relationship with consumers." The Bureau further determined blanket transcript withholding policies are abusive and directed institutions to cease their practice.[19] We support the prohibition proposed in this NPRM, as well as further action in the Department's anticipated next round of negotiated rulemaking.

Timeline for Review of Provisionally Certified Programs. In the NPRM, the Department asks for feedback on whether to "maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues." We recommend a one-year review period and encourage the Department to retain the two-year timeline as a maximum, rather than run the risk of additional years of low-quality, provisionally certified programs continuing to operate – largely at students' expense. The Department has historically failed students and taxpayers by virtue of its failure to adequately address institutions placed on provisional status. We strongly support efforts to improve this process but note that in no circumstance should the timeline for review be extended.

<u>Ability to Benefit</u>. We welcome the consensus negotiators reached on ability to benefit regulations. As recently evidenced by the Department's investigation and action against Florida Career Colleges, the Department must remain vigilant in safeguarding Title IV from fraudulent institutions seeking to cheat the system.[20]

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[19] Consumer Financial Protection Bureau. *Supervisory Highlights Student Loan Servicing Special Edition*. September 2022. https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

[20] U.S. Department of Education. "Federal Student Aid Denies Florida Career College Application to Continue Offering Federal Grants, Loans, and Work-Study Funds." Press release. April 11, 2023. https://www.ed.gov/news/press-releases/federal-student-aid-denies-florida-career-college-application-continue-offering-federal-grants-loans-and-work-study-funds.

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Thank you for the opportunity to provide comments on behalf of the undersigned organizations, as well as for your work to serve the interests of students and student loan borrowers. If you have any questions or need clarification on any of the above responses to the Department's Notice of Proposed Rulemaking, please contact Dr. Kyle Southern of The Institute for College Access & Success at ksouthern@ticas.org.

Sincerely,

American Federation of Teachers
National Association for College Admission Counseling (NACAC)
National Consumer Law Center (on behalf of its low-income clients)
New America, Higher Education Program
Project on Predatory Student Lending
The Education Trust
The Institute for College Access & Success
UnidosUS
University of California Student Association
Veterans Education Success
Amber Villalobos, Fellow, The Century Foundation
David Halperin, Attorney