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August 4, 2017

Scott Filter
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Docket ID ED-2017-OPE-0090 on changes to gainful employment regulation

Dear Mr. Filter:

The Institute for College Access & Success (TICAS) is an independent, nonprofit, nonpartisan policy research organization that works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.

These comments are in response to the July 5, 2017 Federal Register notice soliciting input on the U.S. Department of Education's proposed one-year delay of the deadlines in the current gainful employment regulations (34 CFR 668.412 (d) and (e)) for providing key program cost and outcome information to students and on further delay of the deadline for all programs to file alternate earnings appeals.[1]

We strongly oppose the delay of implementation and enforcement of the gainful employment regulation. The Department is required by law and regulation to implement final regulations, and students and taxpayers have already waited long enough for protection from high-cost, low-quality career education programs. The Department cannot make changes in the regulation unless they are required by a court order or the product of the statutorily required process for altering regulations. As discussed in more detail in comments submitted on July 12, 2017,[2] the gainful employment regulation was finalized in 2014 and went into effect in 2015 after careful consideration and input by the public and a panel of negotiators including students, consumers, legal aid providers, veterans, representatives from every college type, state higher education officials, and state attorneys general. The for-profit college industry has filed multiple lawsuits seeking to block the rule, and every court decision has upheld the rule, three of them in its entirety.

The Department's July 5 notice provides no justification for the one-year delay in the regulation's requirements that students be provided key program cost and outcome information before enrolling in the program and that advertisements and promotional materials include prominent links to this information. The Department had already delayed implementation of this

[1] U.S. Department of Education. July 5, 2017. "Program Integrity: Gainful Employment; Announcement of applicable dates; requests for comments. Federal Register Notice, Docket ID ED-2017-OPE-0090. https://www.federalregister.gov/documents/2017/07/05/2017-14186/program-integrity-gainful-employment
[2] Coalition comments on proposed negotiated rulemaking to revise the gainful employment and borrower defense regulations. July 12, 2017. https://www.regulations.gov/document?D=ED-2017-OPE-0076-1591. TICAS detailed comments. July 12, 2017. https://www.regulations.gov/document?D=ED-2017-OPE-0076-1704.

requirement from April 3, 2017 to July 1, 2017. Students deserve to be provided this information before they enroll and the regulation requires it.

The Department cites the court ruling in *American Association of Cosmetology Schools (AACS) vs. DeVos* as the rationale for delaying for a second time the deadline for all programs to file alternative earnings appeals, despite the fact that the court order was narrowly tailored to apply only to AACS member schools. The deadline for all programs to submit appeals was already extended by the Department from March 10 to July 1, 2017. No justification was given for delaying the deadline for appeals from non-AACS schools for a second time. Neither were the specific changes the Department is proposing shared for the public to comment on.

Since the gainful employment regulation was finalized in 2014, the evidence of the need for it has only increased.[3] We urge the Department to implement it without delay, including ensuring schools are providing a prominent link to the disclosures on program websites, providing students with the disclosures before they enroll, appropriately and promptly resolving appeals, and generating the second year of program rates. We are extremely concerned that the Department has not yet used the data schools reported to it last fall to generate the draft completer lists needed to develop new program rates. The Department's statement that it has no timetable for sending completers lists to schools this year is deeply troubling.[4] The Department cannot in good faith negotiate the development of a new gainful employment regulation if it is not implementing and enforcing the current regulation as required by law.

Program Disclosures

We strongly oppose the delay of 34 CFR 668.412(d) and (e), the inclusion of the disclosure template in promotional materials and direct distribution of the disclosure template to prospective students. Delaying these provisions until July 1, 2018 means few students will have the information they need to make an informed decision about where to enroll, resulting in many students enrolling in programs that have high costs and poor outcomes when another college offers a higher quality program at a lower cost. As a result, students may have more student debt and fewer job prospects than they would have if armed with this information.

The new gainful employment disclosure template is a big improvement. It contains key information that the old template did not, including: a much more meaningful completion rate,[5] the share of students attending the program who borrow money to pay for it, a typical graduate's earnings after leaving the program, and whether the program meets state professional licensure

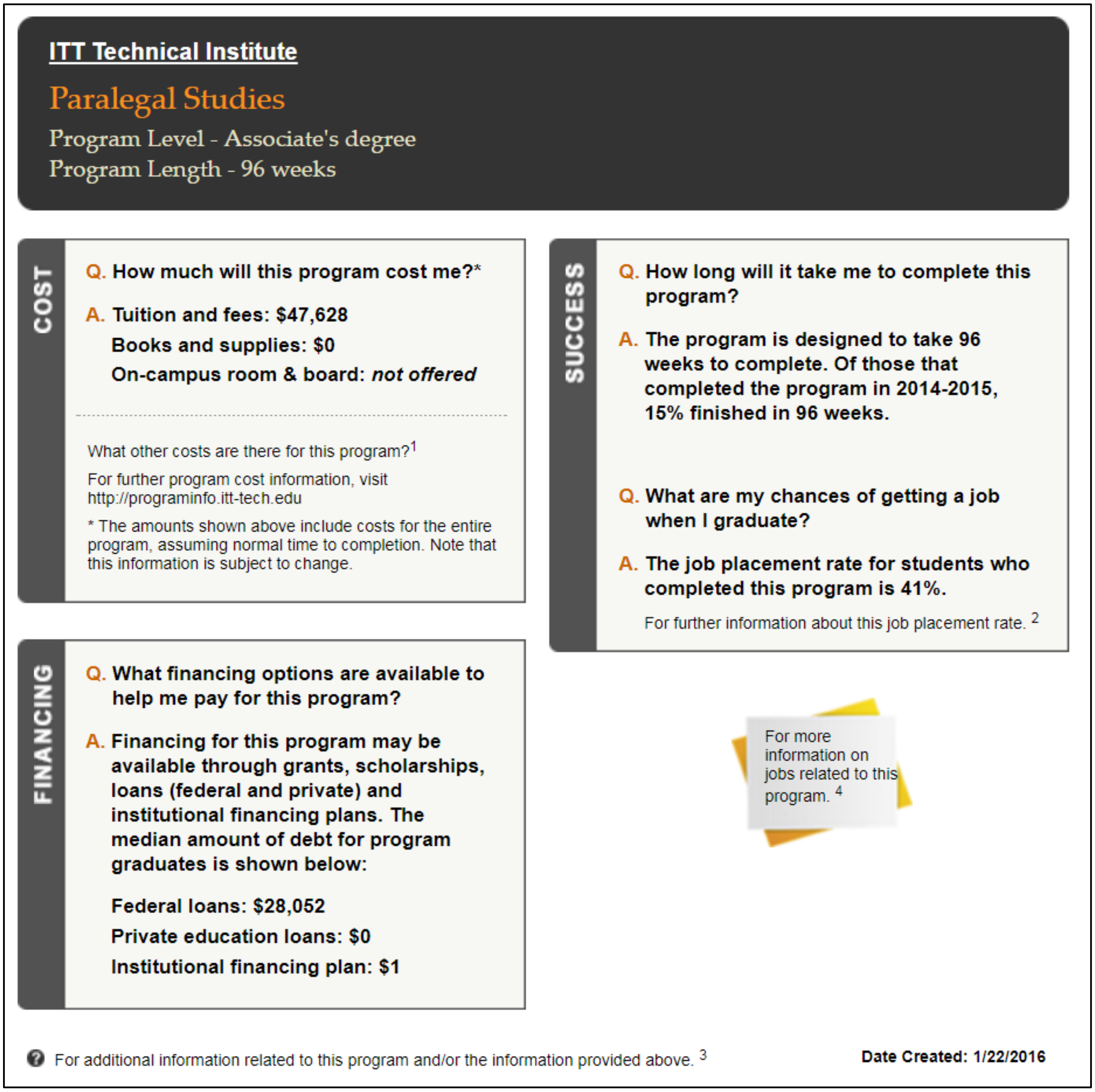
[3] See, for example, comments from Stephanie Cellini, David Deming, Adam Looney, and Jordan Matsudaira on proposed negotiated rulemaking to revise the gainful employment and borrower defense regulations. July 12, 2017. https://www.regulations.gov/document?D=ED-2017-OPE-0076-1710. See also TICAS. June 12, 2017. http://www.ticas.org/blog/same-program-different-results-why-gainful-employment-rule-needed.

[4] See, for example, Sen. Durbin. Press Release. August 3, 2017. "Durbin to DeVos: Why Won't You Stand for Students and Hold For-Profit Colleges Accountable?" http://bit.ly/2hsAFAQ.

[5] The new template displays the share of *students* who complete on time, while the old template displayed the share of *students who completed* who did so on time. The completion rate on the old template is less useful for students trying to assess whether they're likely to complete on time. For example, a program with 10 students where 3 completed and 2 did so on time would show a 66% on-time completion rate in the old template (2 of 3 completers) but a 20% on-time completion rate in the new template (2 of 10 students).

requirements. The information provided and the more consumer-friendly format can better help students make critical decisions about their education. Figures 1 and 2 below illustrate the differences between the old and new disclosure templates.

***Figure 1*: Old disclosure from a failing program**[6]



ITT Technical Institute

Paralegal Studies

Program Level - Associate's degree
Program Length - 96 weeks

COST

Q. How much will this program cost me?*

A. Tuition and fees: $47,628

Books and supplies: $0

On-campus room & board: *not offered*

What other costs are there for this program?[1]

For further program cost information, visit http://programinfo.itt-tech.edu

* The amounts shown above include costs for the entire program, assuming normal time to completion. Note that this information is subject to change.

FINANCING

Q. What financing options are available to help me pay for this program?

A. Financing for this program may be available through grants, scholarships, loans (federal and private) and institutional financing plans. The median amount of debt for program graduates is shown below:

Federal loans: $28,052

Private education loans: $0

Institutional financing plan: $1

SUCCESS

Q. How long will it take me to complete this program?

A. The program is designed to take 96 weeks to complete. Of those that completed the program in 2014-2015, 15% finished in 96 weeks.

Q. What are my chances of getting a job when I graduate?

A. The job placement rate for students who completed this program is 41%.

For further information about this job placement rate. [2]

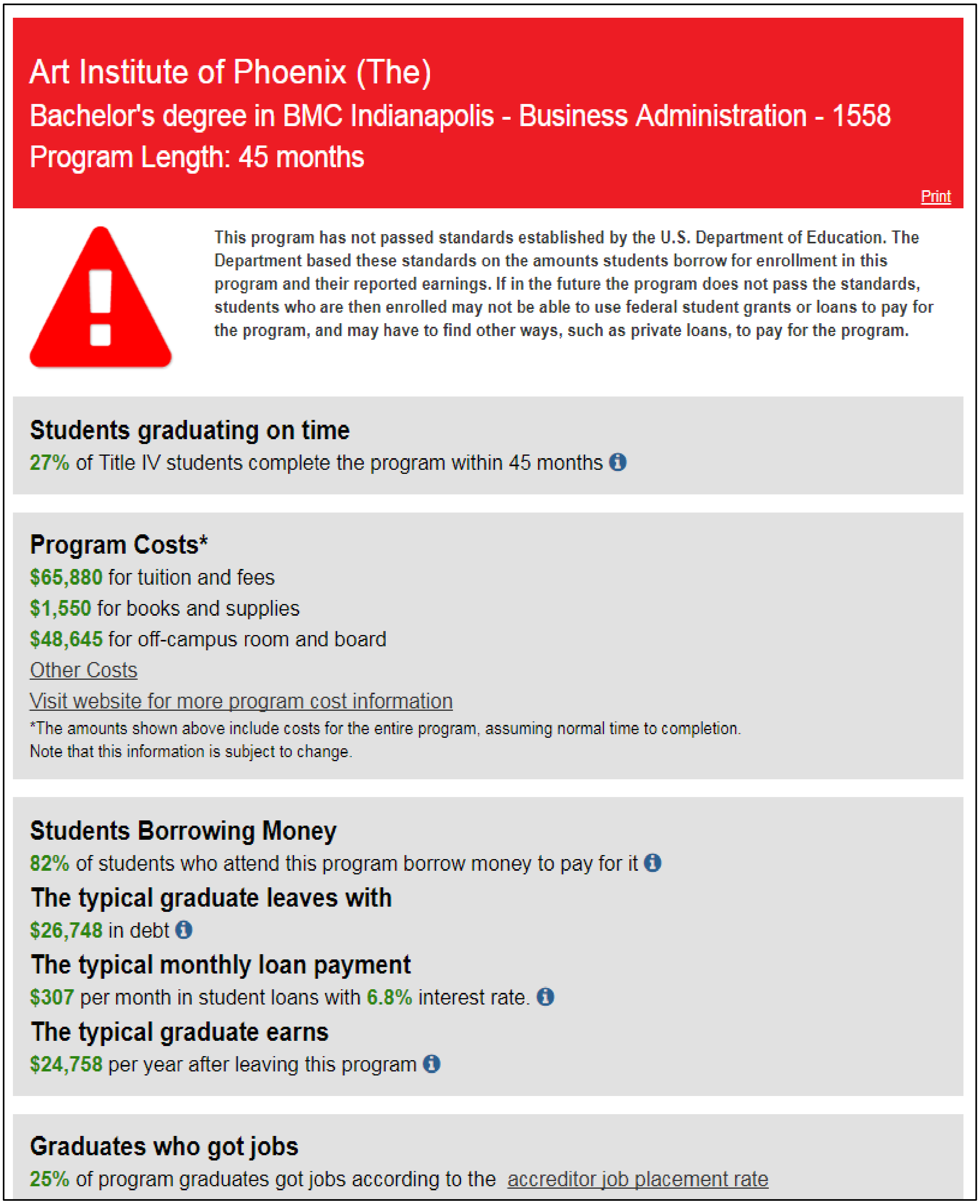
For more information on jobs related to this program. [4]

For additional information related to this program and/or the information provided above. [3]

Date Created: 1/22/2016

[6] This program disclosure was found at http://programinfo.itt-tech.edu/posi/ind/aspls/index_print.html. Accessed August 3, 2017.

***Figure 2*: New disclosure from a failing program (excerpt)**[7]



Art Institute of Phoenix (The)
Bachelor's degree in BMC Indianapolis - Business Administration - 1558
Program Length: 45 months

Print

This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.

Students graduating on time
27% of Title IV students complete the program within 45 months

Program Costs*
$65,880 for tuition and fees
$1,550 for books and supplies
$48,645 for off-campus room and board
Other Costs
Visit website for more program cost information
*The amounts shown above include costs for the entire program, assuming normal time to completion. Note that this information is subject to change.

Students Borrowing Money
82% of students who attend this program borrow money to pay for it
The typical graduate leaves with
$26,748 in debt
The typical monthly loan payment
$307 per month in student loans with 6.8% interest rate.
The typical graduate earns
$24,758 per year after leaving this program

Graduates who got jobs
25% of program graduates got jobs according to the accreditor job placement rate

Importantly, the new disclosure (Figure 2) provides a meaningful warning about failing or zone programs that could lose eligibility for funding in the next year. Not only does the new

[7] This program disclosure was found at http://ge.brownmackie.edu/programoffering/1558. Accessed August 3, 2017.

disclosure clearly signal to the viewer by using an attention-catching red symbol that there is a potential problem with the program, but it explains that the program has not passed federal standards and that current and prospective students may lose access to federal student aid if the program does not improve. The old disclosure provided less information in a less useful way. Upon seeing the old disclosure (Figure 1), students would not know that the program did not meet standards established by the government, nor would they have any reason to think that they could lose access to student aid if they enrolled.

Prospective students must receive disclosures *before* enrolling or registering.

A key part of the gainful employment rule is the requirement that students be provided clear, accurate, and comparable information about the cost and outcomes for that program before they enroll or register, and that the information include a warning if a program could lose eligibility for federal grants and loans the next year if it does not improve.

Disclosures can enable students to distinguish quality programs from inferior ones. There are thousands of career education programs offered at locations across the country and online that are *not* leaving graduates with huge debts they cannot repay, including programs at for-profit, public, and nonprofit colleges whose graduates find jobs in their fields of study and earn over $60,000 a year. Some of these programs are located near failing and zone programs that charge much more and have far worse outcomes.

There are numerous examples of programs with high costs and poor outcomes located near schools offering the same program at a much lower cost and/or with much better outcomes.[8] For example, there are two for-profit colleges in Harrisburg that offer medical/clinical assisting certificate programs. The graduates of Keystone Technical Institute typically earn $10,000 more and have significantly less debt than Brightwood Career Institute graduates. In another example, graduates of the public Miami Dade College's medical/clinical assisting certificate program typically have no debt and twice the income of graduates of the same program at the nearby for-profit Florida Education Institute, where students typically graduate with $9,000 of debt and earn less than $14,000 a year—less than the federal minimum wage working full time. Students deserve to be provided this information before then enroll. This will better empower students to enroll in programs that provide higher quality training, minimize their student loan debt, and improve their job prospects.

Ads and promotional materials about specific programs need to include a prominent and clearly labeled link to the disclosures.

The gainful employment regulation requires advertisements and promotional materials about specific covered programs to contain a clearly labeled and prominent link to the disclosure template. This helps ensure that prospective students exposed to advertising and marketing have the information they need to make an informed decision about where to enroll. With some schools spending millions of dollars on slick marketing and advertising promoting specific programs, it's particularly important that prospective students have access to clear, accurate, and comparable program cost and outcome information.

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[8] TICAS. June 12, 2017. *Examples of Nearby Career Education Programs with Very Different Outcomes.* http://ticas.org/sites/default/files/u159/ge_comparisons_factsheet.pdf.

Alternate Earnings Appeals

The additional appeal flexibility granted to American Association of Cosmetology Schools (AACS) must be limited to AACS schools and retain key provisions to ensure integrity.

The Department cannot use the *AACS v. DeVos* decision to grant additional appeal time and flexibility to all failing programs. To "avoid upending the entire GE regulatory scheme," the judge explicitly limited appeal flexibility to AACS member schools. Expanding this flexibility to all career education programs requires changing the regulation, which itself requires negotiation and opportunity for comment. The Department has not yet taken these steps, and so must enforce the rule as it currently stands. Regardless of whether the Department plans to change the appeal options for failing and zone career education programs in the upcoming negotiated rulemaking process, it cannot unilaterally make changes to the regulation in the meantime.

Nor could such a broad application of appeal flexibility be justified. AACS schools were granted additional appeal flexibility after arguing that the earnings of cosmetology graduates, who frequently receive cash tips and/or are self employed, may be particularly understated in the Social Security Administration data which reflect only reported earnings. However, we concur with the comments submitted by Ben Miller whose analysis demonstrates that hundreds of the failing and zone gainful employment programs are in fields in which tips and self employment are nonexistent, such as medical assisting.[9] Providing all such programs another opportunity to appeal, including those that had not previously chosen to appeal within the rule's prescribed timeframe, as well as giving them more time to appeal, simply delays accountability and meaningful transparency since programs with pending appeals are not required to warn students.

Also of great import is the specific additional flexibility that will be granted to appealing AACS programs. The 50% and 80% standards delineated for the appeals process were designed, with National Center for Education Statistics (NCES) norms and standards in mind, to ensure that alternate earnings data used in appeals are reliable, accurate, and do not suffer from nonresponse bias. As outlined in Ben Miller's comments, these standards are reasonable and justifiable. While the court order prohibits the Department from holding AACS member appeals to specific response rate standards, it does not alter the Department's authority to hold AACS members to other quantitative requirements, such as the nonresponse bias requirements, to ensure that the AACS member' alternate earnings data are representative of their program graduates. It is imperative that the Department require the use of accepted statistical practices to identify bias in earnings estimates derived from survey respondents rather than from the full completer cohort, and to use accepted statistical decision rules in determining whether to grant appeals.

Additionally, the *AACS v. DeVos* order leaves many appeal provisions untouched, and so the Department, too, must then leave them untouched. These provisions include requirements for independent audits of earnings surveys, and CEO certification that the results of alternate earnings surveys and State-provided earnings data are accurate and meet the required standards, both of which serve as safeguards that the appeal data submitted are meaningful.

[9] Comment from Ben Miller on the announcement of applicable dates for certain provisions of the gainful employment regulations. July 20, 2017. https://www.regulations.gov/document?D=ED-2017-OPE-0090-0007

Finally, while the order requires that AACS schools be given additional time to signal their intent to appeal and subsequently file appeals, the amount of additional time provided must not be any longer than the rule itself provides (e.g., 14 days to submit the intent to appeal). Retaining a meaningful timeline is particularly important given that appealing programs do not have to disclose their failing status until the appeal is resolved, and can continue to enroll unaware students at taxpayer expense in the meantime.

The current regulation must be enforced

The Department must produce program rates annually.

The regulation requires that program rates be developed each year, and we are extremely concerned that the Department does not appear to be doing so. On June 1, 2016, the Department sent draft completer lists to schools to review. Schools had until July 28 to submit corrections. Yet it is now August 4, 2017, and the Department has not yet used the data that schools reported to it last fall to generate the draft completer lists needed to develop new program rates. The Department's statement that it does not even have a timetable for sending completers lists to schools this year is deeply troubling.[10] New rates are needed to ensure that failing programs do not continue to receive federal funding and that students are warned about programs not meeting modest standards. What's more, if the Department is going to engage in negotiated rulemaking on gainful employment, the additional data are essential to inform the development and finalization of any changes in current regulations.

The Department must enforce the requirement that schools post the new template as required by the regulation by July 1, 2017.

Thousands of covered programs have now posted the new disclosure template,[11] including many that had done so as early as January, long before the initial April 3 deadline that was later delayed until July 1, 2017. However, some schools have buried the disclosures on their website, in violation of the regulation's requirement that any page containing academic, cost, financial aid, or admissions information about a covered program provide the disclosure template for that program or "a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program."

In addition, other programs, including some failing programs with abysmal outcomes, have not posted the new template at all, despite being required to do so by July 1, 2017. For example, Daymar College's associate degree program in criminal justice in Nashville, TN failed the debt-to-earnings rate measure.[12] According to its disclosure, which is dated December 2014, its graduates have a median debt of $20,895, and it only has a 25 percent on-time completion rate

[10] See Sen. Durbin. Press Release. August 3, 2017. "Durbin to DeVos: Why Won't You Stand for Students and Hold For-Profit Colleges Accountable?" http://bit.ly/2hsAFAQ.
[11] On August 3, 2017, a Google search of the terms "These disclosures are required by the U.S. Department of Education" and "students graduating on time" yielded 32,500 results.
[12] OPEID 004934, UNITID 220002, Nashville, TN, CIP Code: 430103, associate's degree.

and a 20 percent accreditor job placement rate.[13] Daymar College continues to post this old disclosure template, which does not include the most recent data, any earnings information, or the required warning that the program may lose eligibility for federal financial aid.

Students considering failing programs like this deserve to be warned and to have the most recent cost, earnings, completion, and job placement rate information for the particular program. We urge the Department to implement and enforce the regulation, including the disclosure requirements. In addition to promptly producing new rates and resolving appeals, the Department should send a Dear Colleague Letter reminding colleges of the requirement that any Web page containing academic, cost, financial aid, or admissions information about a covered program provide the disclosure template for that program or a "prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program."

Thank you for consideration of these comments. If you have any questions about our comments, please contact Pauline Abernathy, Debbie Cochrane, or Jennifer Wang by phone at (510) 318-7900, or by email at pabernathy@ticas.org, dcochrane@ticas.org, or jwang@ticas.org.

Sincerely,

Pauline Abernathy	Debbie Cochrane	Jennifer Wang
Executive Vice President	Vice President	DC Office Director

[13] The disclosure for Daymar College's criminal justice associate's degree program in Nashville, TN is posted at http://bit.ly/2v17UzO. More information about that program, including links to the disclosures, can be found at http://www.daymarcollege.edu/programs/criminal-justice. Accessed August 3, 2017.