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September 13, 2018

Ashley Higgins
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Docket ID ED-2018-OPE-0042
(Comments submitted electronically via: http://regulations.gov)

Dear Ms. Higgins:

Thank you for the opportunity to comment on the August 14, 2018, Notice of Proposed Rulemaking (Docket ID ED-2018-OPE-0042) regarding the Department of Education's proposal to rescind the gainful employment rule.

The Institute for College Access & Success (TICAS) is an independent, nonprofit 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 society.

The gainful employment rule is a critical safeguard that prevents hundreds of thousands of students from taking on debts they are unlikely to be able to repay. It has already proven its effectiveness, as colleges and trade schools have strengthened the value of the programs they offer students and closed the programs they could not improve. It will save taxpayers $5 billion over 10 years by eliminating subsidies to low-value programs.

In addition to our grave substantive concerns, we also have serious procedural concerns about the Department's rulemaking. Throughout its notice, the Department ignores the substantial factual record compiled over nearly nine years of rulemaking, misrepresents relevant research, and fails to consider obvious alternatives that could better achieve its objectives. Meanwhile, the Department is failing to enforce the existing regulations that were promulgated through the formal rulemaking process and upheld by the courts.

We urge the Department to abandon its proposal and instead immediately enforce the existing gainful employment regulation, as it is required to do under federal law. If you have any questions about our comments, please feel free to contact us by phone at (510) 318-7900, or by email at jkvaal@ticas.org, dcochrane@ticas.org, or brobertson@ticas.org.

Sincerely,

James Kvaal	Debbie Cochrane	Brett Robertson
President	Vice President	Policy Analyst

Notice of Proposed Rulemaking on Program Integrity: Gainful Employment
Docket ID ED–2018–OPE–0042

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I. The Gainful Employment Rule Is Successfully Addressing a Compelling Problem

A. The Goals of the Gainful Employment Rule Remain Essential

1. There Is Stronger Evidence Than Ever that the Gainful Employment Rule Is Needed

The gainful employment rule defines the longstanding statutory requirement that career education programs "prepare students for gainful employment in a recognized occupation." It ensures that career education program graduates are not routinely left with student loan debts they cannot afford to repay. Specifically, typical graduates' expected debt payments cannot exceed both 8 percent of their total income and 20 percent of their discretionary income. Programs that exceed these standards are placed in the "zone" and given three years to improve before losing eligibility for federal financial aid. Programs that exceed these standards by 50 percent – that is, their typical graduates' debt payments exceed both 12 percent and 30 percent – are given only two years to improve.

When the Department promulgated the gainful employment regulations in 2014, it clearly stated its purpose:

> "The regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private non-profit institutions such as community colleges.
>
> "Specifically, the Department is concerned that a number of GE programs: (1) do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to provide training, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or 'churn' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. We are also concerned about the growing evidence, from federal and state investigations and qui tam lawsuits, that many GE programs are engaging in aggressive and deceptive marketing and recruiting practices. As a result of these practices,

> prospective students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests."[1]

The Department set its 2014 goals on an extensive base of evidence that included research and analysis stretching back six years and including over 185,000 public comments over two rulemakings. It extensively documented the need for basic consumer protections within this sector. The Department noted that their preliminary analyses showed that, in 27 percent of gainful employment programs, the average graduate had incomes lower than a full-time worker making the federal minimum wage.[2]

Since 2014, the evidence has grown of serious problems within some gainful employment programs. As part of the implementation of the gainful employment rule, in 2017 the Department released data on career education programs. The data showed that more than 350,000 students graduated from the worst-performing programs, with nearly $7.5 billion in student debt they are unlikely to be able to repay.[3]

Additional academic research has confirmed that low-value occupational programs are widespread. One particularly compelling study found that many students experience small, statistically insignificant gains in annual earnings, suggesting that – after considering student debt – for-profit certificate programs do not pay off for the average student.[4] A 2017 Brookings Institute paper authored by economists Stephanie Riegg Cellini, Adam Looney, David Deming, and Jordan Matsudaira concluded that "the case for these rules is even stronger today than when the rules were written."[5] The same authors wrote in comments to the Department:

> "The results from a variety of recent research studies—made public after the initial GE Rulemaking began—suggest that a) the GE regulations successfully target the occupational programs that contribute most to this problem; b) concerns that the regulation may adversely affect college access are overstated; c) weakening the GE regulations will create significant burdens on taxpayers; and d) the GE information disclosure provisions are important, but the accountability provisions are also necessary. We recommend that the Department leave the rule in place as currently written."[6]

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[1] 79 FR 16426.
[2] 79 FR 16433-4.
[3] TICAS. 2018. "How Much Did Students Borrow to Attend the Worst-Performing Career Education Programs? The Need for a Strong Gainful Employment Rule." https://bit.ly/2CRcczP.
[4] Stephanie Riegg Cellini and Nicholas Turner. May 2016. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." National Bureau of Economic Research Working Paper No. 22287. http://www.nber.org/papers/w22287.pdf.
[5] Stephanie Riegg Cellini, Adam Looney, David Deming, and Jordan Matsudaira. August 4, 2017. Gainful Employment regulations will protect students and taxpayers. Don't change them." Brookings Institute. https://brook.gs/2wAObF7.
[6] Stephanie Riegg Cellini, Adam Looney, David Deming, and Jordan Matsudaira. July 13, 2017. Comment on the Department of Education's Federal Register notice (Docket ID ED-2017-OPE-0076). https://www.regulations.gov/document?D=ED-2017-OPE-0076-1710

The number of federal and state investigations into abusive practices at gainful employment programs has continued to grow. For example:

- The Federal Trade Commission requested information on a “broad spectrum” of matters related to possible deceptive or unfair business practices at the University of Phoenix, including marketing, recruiting, enrollment, financial aid, tuition and fees, academic programs, academic advising, student retention, billing and debt collection, complaints, accreditation, training, and military recruitment, according to a 2015 filing.[7] The California Attorney General is also investigating the business and practices of the University of Phoenix and related companies.[8]

- After an investigation into unlawful acts or practices related to the advertising, marketing, or origination of private student loans,[9] the Consumer Financial Protection Bureau found that Bridgepoint Education “engaged in deceptive acts and practices” and ordered it to discharge all outstanding private loans the institution made to its students and refund loan payments already made by borrowers.[10] In 2017 the California Attorney General sued Bridgepoint alleging false or misleading statements and unfair and fraudulent business practices.[11]

- In 2016, the Massachusetts Attorney General signed a consent agreement with the now-defunct American Career Institute, in which institution officials admitted to lying to students, fabricating records, and hiring "grossly unqualified" people as faculty.[12]

- In 2016, a court concluded that Globe University misrepresented the job opportunities available to their criminal justice graduates in a lawsuit brought by the Minnesota Attorney General.[13] The Department of Education denied Globe’s application for recertification, finding that Globe made substantial misrepresentations about the nature of its programs and the employability of its graduates.[14]

- In January 2016, the Department of Education reached a settlement with DeVry Education (now Adtalem Global Education) resolving allegations of unsubstantiated job placement claims in recruitment and advertising materials.[15] The FTC obtained a $100 million settlement due to

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[7] U.S. Securities and Exchange Commission. July 29, 2015. Form 8-K: Apollo Education Group, Inc. https://bit.ly/2NEgXkC.
[8] U.S. Securities and Exchange Commission. February 5, 2016. Form 8-K: Apollo Education Group, Inc. https://bit.ly/2QreGYv.
[9] U.S. Securities and Exchange Commission. August 14, 2015. Form 8-K: Bridgepoint Education, Inc. https://bit.ly/2x4khMj.
[10] U.S. Consumer Financial Protection Bureau. September 8, 2016. “Consent Order in the Matter of Bridgepoint Education, Inc.” https://bit.ly/2NbthJG.
[11] U.S. Securities and Exchange Commission. July 26, 2017. Form 10-Q: Bridgepoint Education, Inc. https://bit.ly/2CUcNki.
[12] Massachusetts v. The Career Institute, LLC. et al., No. 13-4128H (Mass. Super. Ct. June 1, 2016). https://www.mass.gov/files/documents/2016/08/xa/aci-consent-judgment.pdf.
[13] Office of the Minnesota Attorney General. November 11, 2016. “Attorney General Lori Swanson Obtains Court Order Awarding Injunction, Penalties, and Restitution for Minnesota School of Business and Globe University Fraudulently Misrepresenting the Job Opportunities Available to their Criminal Justice Graduates.” https://bit.ly/2p6EX1U.
[14] U.S. Department of Education. December 6, 2016. “Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Globe University.” https://bit.ly/2CUVFLr.
[15] U.S. Department of Education. October 13, 2016. “Settlement Agreement.” https://www2.ed.gov/documents/press-releases/devry-settlement-agreement.pdf.

deceptive recruiting practices.[16] Later investigations were launched by the attorneys general of Massachusetts and New York.[17]

- A three-year FTC investigation into Career Education Corporation was still ongoing as of August 2018.[18] Twenty-two state attorneys general have submitted civil investigative demands or subpoenas regarding violations of consumer protection laws.[19]

- In December 2015, Kaplan Higher Education was placed on provisional certification for ongoing Title IV participation.[20] A Securities and Exchange Commission review was still ongoing filing in August 2016.[21] Also in 2015, the Attorney General of Massachusetts settled a lawsuit with Kaplan after an investigation into Kaplan's harassing sales tactics and misleading recruitment materials.[22]

2. The Gainful Employment Rule Is Working

The gainful employment rules were designed to encourage colleges to improve the value of their programs for students and taxpayers. There is abundant evidence that – since it first became clear that the Department intended to establish the gainful employment rule – the rule has had the intended effect of improving the value of programs available to students. Colleges have sought to improve affordability and student outcomes. In other cases, colleges and programs that could not improve were closed.

After the Department published its first gainful employment proposal in June 2010, colleges' efforts to improve performance began almost immediately. In July 2010, the University of Phoenix created a free three-week orientation program.[23] The orientation program was part of the school's strategy "to reshape its student-body makeup so it includes students who are more likely to persist to a degree and repay their student loans."[24]

Two months later, Kaplan University announced its "Kaplan Commitment," allowing students to attend classes tuition-free for an introductory period. A response to the gainful employment proposal, Kaplan

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[16] Federal Trade Commission v. DeVry Education Group Inc. et al. No. 2:16-cv-00579 (U.S. District Court December 1, 2016). https://bit.ly/2NFsVKx; U.S. Federal Trade Commission. December 15, 2016. "DeVry University Agrees to $100 Million Settlement with FTC." https://bit.ly/2hAoJta.

[17] U.S. Securities and Exchange Commission. August 1, 2016. Form 8-K: DeVry Education Group, Inc. https://bit.ly/2NJ2KCP; Office of the New York State Attorney General. January 31, 2017. "A.G. Schneiderman Obtains Settlement With Devry University Providing $2.25 Million In Restitution For New York Graduates Who Were Misled About Employment And Salary Prospects After Graduation." https://on.ny.gov/2xddtuW.

[18] U.S. Securities and Exchange Commission. August 1, 2018. Form 10-Q: Career Education Corporation. https://bit.ly/2x71ksk.

[19] U.S. Securities and Exchange Commission. November 2, 2017. Form 10-Q: Career Education Corporation. https://bit.ly/2Ms3MhP.

[20] U.S. Securities and Exchange Commission. December 21, 2015. Form 8-K: Graham Holding Company. https://bit.ly/2x8tRxA.

[21] U.S. Securities and Exchange Commission. August 3, 2016. Form 10-Q: Graham Holding Company. https://bit.ly/2xc0QB6.

[22] Office of the Attorney General of Massachusetts. July 30, 2015. "AG Healey Secures Additional $2.3 Million for Students Misled By For-Profit Schools." https://bit.ly/1SWB7Og.

[23] Doug Lederman. July 1, 2010. "U. of Phoenix Will Require Free Orientation Program." *Inside Higher Ed.* https://www.insidehighered.com/quicktakes/2010/07/01/u-phoenix-will-require-free-orientation-program.

[24] Goldie Blumenstyk. November 11, 2010. "As For-Profit Colleges' Enrollment Growth Slows, Analysts See Signs of an Industry Reset." *The Chronicle of Higher Education.* https://bit.ly/2xgl5g6.

explained that the Kaplan Commitment would "lower the risk that the federal government lends money unnecessarily to students with a low chance of success."[25]

Other colleges responded by reducing tuition and increasing scholarships. In 2012, ITT noted that "The GE Requirements have and will continue to put downward pressure on tuition prices, so that students do not incur debt that exceeds the levels required for a program to remain eligible under Title IV Programs."[26] Strayer University announced a new scholarship to cut the cost of its degree by 30 percent, joining other for-profit colleges increasing their scholarship budgets in part to improve their standing on the gainful employment rules.[27]

In 2012, Barclays noted that colleges had made "substantial changes" over the past 18 months, including "introducing new program offerings, changing tuition, reducing the duration of programs, and even more dramatic steps including the closure of poorly performing campuses."[28] For example, Career Education Corporation announced that it was closing programs whose students were not becoming gainfully employed.[29] Another industry analyst predicted that "successful for-profit schools will focus on improving [their] value propositions by increasing transparency, retention, completion (and reducing time to completion), and employment prospects for students."[30] By 2013, the Atlantic noted that "the regulations, or the threat of them, have had a major effect on the for-profit sector."[31]

Since the revised gainful employment rule was finalized in October 2014, evidence of its beneficial impacts has continued to mount. Policy analysts continued to note its positive impact on the industry.[32] Colleges continued to eliminate costly programs and increase scholarship spending.[33] Some college

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[25] Theresa McCabe. September 30, 2010. "Washington Post's Kaplan Introduces Class Trials." *The Street.* https://bit.ly/2M9GGMG. ("The program is a response to recent pressure from the federal government and its assertion that for-profit institutions are not preparing students to pay back their loans once they graduate."); Kaplan Higher Education. September 27, 2010. "Kaplan Commitment Offers Debt-Free Trial for Students." *Business Wire.* https://bit.ly/2oPrKdt.

[26] U.S. Securities and Exchange Commission. February 24, 2012. Form 10-K: ITT Educational Services, Inc. https://www.sec.gov/Archives/edgar/data/922475/000119312512077917/d231471d10k.htm

[27] Paul Fain. August 10, 2012. "Discounts at For-Profits?" *Inside Higher Ed.* https://bit.ly/2MVrAjt.

[28] Barclays U.S. Education Services. August 15, 2012. "Another Challenging Quarter in the Books."

[29] Career Education Corporation Q1 2012 Earnings Call Transcript May 11, 2012. https://bit.ly/2p5AuMQ ("we're looking at capping programs, eliminating programs and teach-outs where appropriate, where we can't get appropriate placements and get our students gainfully employed"); Career Education's (CECO) Q2 2014 Earnings Call Transcript. August 7, 2014. https://bit.ly/2MtaiEW. ("we're tailoring the offering in locales to best meet the needs of students and employers in those locales. … Part of this is, obviously, in a part of best positioning the company for gainful employment"); and Career Education's (CECO) Q3 2014 Earnings Call Transcript. November 6, 2014. https://bit.ly/2Oj5rbs ("Where appropriate, we're also adding new programs that should fare better under gainful employment.").

[30] William Blair and Company. December 10, 2012. "What's Next in For-Profit Education: Highlights From Trade Association Meeting."

[31] Chadwick Matlin. September 20, 2013. "The Reform of For-Profit Colleges: Can They Give Up Their Predatory Ways?" *The Atlantic.* https://bit.ly/2OlogdN.

[32] David Bergeron. October 31, 2014. "Examining Gainful Employment in Career Education." Center for American Progress. https://ampr.gs/2CtEQqI. ("Since 2010, there has been evidence of a ripple effect based on the prospect of a future rule. This rule will keep the pressure on for-profit institutions to improve—and the nation's students will be better served as a result"); Protopsaltis, Spiros and Libby Masiuk. November 30, 2017. "Why the Trump Administration Should Heed History of Bipartisan Efforts." Center on Budget and Policy Priorities. https://bit.ly/2M2Cw9z ("initial evidence … suggests that the rule prompted the industry to make needed reforms.")

[33] Andy Thomason. June 23, 2015. "Gainful-Employment Rule Survives For-Profit Group's Court Challenge." *The Chronicle of Higher Education.* https://bit.ly/2MUijI9.

officials noted that they had spent years attempting to improve the value they offered students in order to improve their standing on the gainful employment metrics.[34]

According to the New America Foundation, 65 percent of failing programs in the first cohort of gainful employment data were no longer enrolling students as of August 2018.[35] As New America's Kevin Carey noted in an earlier version of this analysis, "The gainful employment test turns out to be an accurate way of identifying programs that for-profit colleges themselves don't think are worth saving, as well as identifying programs run by colleges that are on the brink of bankruptcy and dissolution."[36]

B. Congress Appropriately Defined the Scope of the Gainful Employment Rule

1. The Scope of the Gainful Employment Rule Was Defined by Congress

The Department proposes to repeal the gainful employment rule because it does not cover all programs, creating inequities that disfavor career programs and for-profit colleges.[37] However, it was Congress that imposed the gainful employment requirement on some programs but not others.

Sections 101 and 102 of the Higher Education Act (HEA) define what it means to be an institution of higher education that is eligible for federal student aid. Simply described, section 101 defines an eligible institution as one that is public or nonprofit, accredited, degree-granting, and authorized by the state in which it is located.[38] Section 102 authorizes for-profit colleges and vocational institutions that offer "an eligible program of training to prepare students for gainful employment in a recognized occupation."[39] As articulated in the Department's 2011 gainful employment NPRM, "this structure for eligibility at the program level and the institutional level is longstanding and has been retained through many amendments to the HEA."[40] Moreover, both the 2011 and 2014 NPRMs provide legislative history that

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[34] Capella Education's (CPLA) Q3 2016 Earnings Call Transcript. October 26, 2016. https://bit.ly/2MrkrCb ("based on the current information, we don't expect the impact from the gainful employment related data release. We have taken, and we'll continue to take steps, to improve affordability and outcomes for our programs, and we'll continue to make necessary adjustments. Our goal is to create the most direct path between learning and employment without waste of time, effort, or money, and we are well on our way"); American Public Education's (APEI) Q3 2016 Earnings Call Transcript. November 7, 2016. https://bit.ly/2NDpLXY ("In summary I am encouraged by the notable progress we've made with respect to improving student persistence and reducing bad debt expense at APUS while simultaneously improving the student experience, diversifying our program offerings and maintaining our affordability. Our progress is important to our long-term success especially in the face of regulatory headwinds. According to the Department of Education's draft that earnings rates, none at APUS or HCON's degree programs were identified as failing or in the warning zone for gainful employment regulations"); DeVry Education Group (DV) Q1 2017 Earnings Call Transcript. November 1, 2016. https://bit.ly/2uSUq7g ("we've been working on this for quite some time, right? So we can back into a lot of those numbers and effects on the programs and we have been taking a really conservative approach to that, to say what's going to fall in there and how can we be ahead of the game as it relates to that. And to the extent that those programs can remain in place and we can address some of the affordability for students, obviously that's a win-win for us").

[35] New America. September 13, 2018. *Comments on Proposed Gainful Employment Rule.* https://bit.ly/2x8XNJY.

[36] Kevin Carey, June 30, 2017. "DeVos Is Discarding College Policies That New Evidence Shows Are Effective." *The New York Times.* https://nyti.ms/2uzTcNi.

[37] 83 FR 40171, 40174.

[38] 20 U.S.C. 1001(b)(1).

[39] 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A).

[40] 76 FR 34392.

informs the creation of the requirement that certain programs “prepare students for gainful employment in a recognized occupation.”[41]

The Department’s 2018 NPRM overlooks this statutory distinction and fails to discuss either section 102 of the HEA or the legislative history behind the distinction among higher education programs. In several places, it instead asserts that the statutory delineations run counter to the Department's beliefs about what is appropriate (emphasis added):

> “Generally, we are concerned that *it is not appropriate* to require these types of disclosures for only one type of program when such information would be valuable for all programs and institutions that receive title IV, HEA funds.”[42]
>
> “[T]he Department *does not believe it is appropriate* to attach punitive actions to program-level outcomes published by some programs but not others.”[43]
>
> “[T]he GE regulations targeted proprietary institutions, aiming to eliminate poor performers and “bad actors” in the sector. While bad actors do exist in the proprietary sector, the Department *believes* that there are good and bad actors in all sectors and that the Department, States, and accreditors have distinct roles and responsibilities in holding all bad actors accountable.”[44]
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> “We further *believe* the GE regulations reinforce an inaccurate and outdated belief that career and vocational programs are less valuable to students and less valued by society, and that these programs should be held to a higher degree of accountability than traditional two- and four-year degree programs that may have less market value.”[45]

The role of the Department’s rulemaking is to implement the law as defined by Congress, not to amend it according to what it believes is appropriate. Congress elected to include most degree programs at for-profit colleges within the definition of gainful employment. It may be that the Department would prefer to treat all programs the same, but it cannot ignore the distinctions drawn by Congress.

2. The Scope of the Gainful Employment Rule Is Justified by the Performance of For-Profit Colleges

In 2014, the Department recognized that the gainful employment rule has a disproportionate impact on programs operated by for-profit colleges. It noted that:

> “[T]he outcomes of students who attend for-profit educational institutions are of particular concern. There is growing evidence of troubling practices at many of these institutions. ...

[41] 76 FR 34385, 79 FR 16425.
[42] 83 FR 40173.
[43] 83 FR 40174.
[44] 83 FR 40174.
[45] 83 FR 40171.

> "For-profit institutions typically charge higher tuitions than do public postsecondary institutions. Average tuition and fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions. Attending a two-year for-profit institution costs a student four times as much as attending a community college. Not surprisingly then, students enrolled in for-profit institutions accumulate far greater debt than students at public institutions. ...
>
> "Although more expensive, there is growing evidence that many for-profit programs may not prepare students as well as comparable programs at public institutions. ...
>
> "An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions of 30 prominent for-profit institutions found that they spend almost 23 percent of their revenues on marketing and recruiting, but merely 17 percent on instruction. Among the institutions that provided useable data to the committee, schools employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff. ...
>
> "The higher costs of for-profit institutions, and the consequently greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether for-profit programs lead to earnings that justify the investment made by students. As we stated in connection with the 2011 Prior Rule, this 'value proposition' is what 'distinguishes programs "that lead to gainful employment in a recognized occupation."'"[46]

More recent data confirm the poorer performance of some for-profit college programs. Students entering for-profit colleges in 2003-04 were four times more likely to default on a federal student loan within 12 years than students who started at public colleges. Almost half of students who first attended for-profit colleges in 2003-04 defaulted within 12 years. In fact, for-profit college *graduates* were more likely to default than public and nonprofit college *dropouts*.[47]

A related analysis examined colleges where most students borrow and fewer than half of borrowers have paid down even $1 of their loan principal, seven years into repayment. For-profit colleges make up almost three-quarters (73%) of schools where most borrow and few can repay, even though they are only 31 percent of all schools in this analysis. In fact, at half (50%) of all for-profit colleges, most students borrow and few can repay, compared to fewer than 10 percent of all public and nonprofit colleges.[48]

Academic research underscores these concerns. A number of recent studies, conducted by leading economists of education and released since 2014, emphasize the generally inferior outcomes of students from for-profit colleges on measures of debt, earnings, loan default, employment, employer perception, equity, and more.[49] For reasons that are unclear, the Department does not discuss this research within the NPRM. A selection of these studies is summarized in Appendix A.

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[46] 79 FR 16434.
[47] TICAS. 2018. "Students at Greatest Risk of Loan Default." https://bit.ly/2rb8doK.
[48] TICAS. 2018. "Colleges where most students borrow and few repay." https://bit.ly/2L344fu.
[49] *See e.g.,* Stephanie Riegg Cellini and Nicholas Turner. 2016. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." NBER Working Paper No. 22287. http://www.nber.org/papers/w22287.pdf; Tiffany Chou, Adam Looney, and Tara Watson. 2017. "Measuring Loan Outcomes at

C. The Department's Regulatory Impact Analysis Fails to Properly Account for the Benefits of the Gainful Employment Rule

As described in the NPRM, Executive Order 13563 directs agencies to "propose or adopt regulations only on a reasoned determination that their benefits justify their costs," using "the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." However, the NPRM fails to account for the single most important impact of the rule: the benefits to students of higher earnings and lower debts.

In its 2014 NPRM, the Department estimated that the gainful employment rule would lead to lifetime earnings gains between $11 billion and $36 billion, as programs improve quality and students transfer to better performing programs.[50] While we do not have the data needed to replicate the analysis conducted by the Department in 2014, our analysis of the first release of debt-to-earnings outcomes data in January 2017 suggests that, if anything, the Department underestimated the future earnings gains of students due to the gainful employment rule.

Using that data, TICAS' analysis found large differences in debt and earnings between graduates from better- and worse-performing programs (our methodology is described in Appendix B). Had the earnings and debt loads of graduates from failing and zone programs been brought in line with those of passing programs – either because the poorly performing programs improved or because students instead enrolled in better performing programs – that single cohort of graduates would have had $1.4 billion in higher earnings and nearly $300 million less in expected debt payments in a single year.[51] Greater economic benefits would grow over time as this initial cohort of students continued in their careers and additional cohorts of graduates benefited from stronger programs. These expected benefits dwarf the other economic impacts of the rule identified by the Department.[52]

Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability." NBER Working Paper No. 23118. http://www.nber.org/papers/w23118.pdf; Adam Looney and Constantine Yannelis. 2015. "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. https://brook.gs/2dyGn0k; David Deming, Claudia Goldin, and Lawrence Katz. 2013. "For-Profit Colleges." The Future of Children. https://bit.ly/2NLkXj0; Luis Armona Rajashri Chakrabarti Michael F. Lovenheim. 2017. "How Does For-Profit College Attendance Affect Student Loans, Defaults, and Earnings?" Federal Reserve Bank of New York. https://nyfed.org/2xaO5XL; Rajeev Darolia, Cory Koedel, Paco Martorell, Katie Wilson, and Francisco Perez-Arce. 2014 "Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from a Field Experiment." RAND working paper. https://www.rand.org/pubs/working_papers/WR1054.html; Rajeev Darolia, Cory Koedel, Paco Martorell, Katie Wilson, and Francisco Perez-Arce. 2016. "The Value of Postsecondary Credentials in the Labor Market: An Experimental Study." American Economic Review. https://www.aeaweb.org/articles?id=10.1257/aer.20141757; Rajashri Chakrabarti and Michelle Jiang. September 5, 2018. "Education's role in earnings employment and economic mobility." Liberty Street Economics, Federal Reserve Bank of New York. https://nyfed.org/2M78cdK. For more detail, see Appendix A.

[50] 79 FR 16632.

[51] Calculations by TICAS using data from the U.S. Department of Education, Gainful Employment Information, https://studentaid.ed.gov/sa/node/274. Calculations identify average earnings and debt differences between passing and failing or zone programs within the same field (CIP code and credential level), using the official pass/fail/zone rate as of April 25, 2018. Averages are weighted by the number of completers within the cohort period. The cohort period is either two years (2010-11 and 2011-12) or four years (2008-09 through 2011-12), depending on the program's size. See Appendix B for full methodology.

[52] The Department projects "an annual economic benefit of approximately $209 million in reduced paperwork burden and increased transfers to Pell Grant recipients and student loan borrowers and subsequently institutions of about $518 million annually" (83 FR 40177).

The Department's decision to rescind the gainful employment regulation without considering its most obvious cost is arbitrary. Its 2014 analyses of earnings benefits to students demonstrate that it understands these benefits and methods for estimating them, rendering their exclusion in the 2018 cost-benefit particularly troubling.

Moreover, even if the Department had considered this cost, the fact that it greatly exceeds the rule's benefits would also render the rule arbitrary. In his review of regulatory agency requirements under the Administrative Procedures Act (APA), Harvard law professor Cass Sunstein writes that "agencies must avoid arbitrariness, and a regulation that imposes costs without conferring benefits is arbitrary. The same is true of a regulation that increases risks on net, or that imposes very high costs for trivial gains."[53]

D. Repealing the Gainful Employment Rule Will Have No Impact on the Department's Goal of Filling 6 Million Jobs

The Department observes that "[a]t a time when 6 million jobs remain unfilled due to the lack of qualified workers, the Department is re-evaluating the wisdom of a regulatory regime that creates additional burden for, and restricts, programs designed to increase opportunities for workforce readiness."[54] However, repealing the gainful employment will not reduce the number of unfilled jobs for several reasons.

The Department cites data from the Bureau of Labor Statistics' (BLS) Job Openings and Labor Turnover Survey (JOLTS); the most recent JOLTS data show 6.9 million job openings.[55] However, this survey measures the number of job openings, without regard to the number "unfilled due the lack of qualified workers." According to BLS, healthy economies require some "frictional unemployment," or temporary gaps as workers enter the labor force or move from one job to another.[56] Further, BLS also reports record low levels of unemployment (3.9%), a rate that is actually below the level many economists consider to be full employment.[57]

There is no evidence that these unfilled jobs relate in any way – in occupational code, credential level, or geography – to career education programs negatively impacted by the gainful employment rule. For example, the JOLTS data show that the industry with the most unfilled positions is "trade,

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[53] Cass Sunstein. 2017. "Cost-Benefit Analysis and Arbitrariness Review." Harvard Environmental Law Review. http://harvardelr.com/wp-content/uploads/2015/10/Sunstein.pdf

[54] 83 FR 40171.

[55] U.S. Department of Labor. July 2018. "Job Openings and Labor Turnover Summary." https://www.bls.gov/news.release/jolts.nr0.htm.

[56] U.S. Department of Labor, Bureau of Labor Statistics. November 2017. "Full Employment: An Assumption with BLS Projections." https://www.bls.gov/opub/mlr/2017/article/full-employment-an-assumption-within-bls-projections.htm

[57] Ibid; U.S. Department of Labor, Bureau of Labor Statistics. September 13, 2018. "Labor Force Statistics from the Current Population Survey." https://data.bls.gov/timeseries/LNS14000000; Jay Zagorsky. May 4, 2018. What is full employment? An economist explains the latest jobs data. *The Conversation.* https://bit.ly/2CRrYdS. "Economists technically define full employment as any time a country has a jobless rate equal or below what is known as the 'non-accelerating inflation rate of unemployment' ... At the moment, the Congressional Budget Office puts NAIRU at 4.6 percent, a little above the 3.9 percent unemployment rate. That means the U.S. is at full employment,"

transportation, and utilities,"[58] whereas the most failing and zone gainful employment programs are in medical assisting and cosmetology.[59]

Additionally, the gainful employment rule supports high-quality workforce training opportunities by continuing federal support to programs that deliver value to students and taxpayers and cutting off subsidies to ones that do not. When programs receive failing or zone ratings, schools can and frequently do respond by reducing costs and enhancing quality, improving the value proposition for students and taxpayers. When programs close, students can and do seek out better options where they will be better served.

II. Gainful Employment Must Have Strong Accountability Measures

A. The Debt-to-Earnings Ratio Is Well Grounded in Research and Practice

As explained above, to pass the gainful employment rule the debt payments of a program's typical graduate cannot be both greater than 8 percent of their earnings and 20 percent of their discretionary earnings. The Department now argues that the 8 percent threshold for the debt-to-earnings ratio is flawed. It asserts that the ratio is founded on a single research paper, authored by Sandy Baum and Saul Schwartz, which the Department now believes it previously misinterpreted.[60]

The Department writes, "In promulgating the 2011 and 2014 regulations, the Department cited as justification for the 8 percent D/E rates threshold a research paper published in 2006 by Baum and Schwartz." This is false. In developing the 2011 rule, the Department attributed the 8 percent threshold to a "proposal made during negotiated rulemaking" based upon underwriting practices and benchmarks used by other studies and state agencies.[61] In 2014, it cited a number of studies and administrative agencies applying the 8 percent standard.[62] In both cases, it correctly described Baum and Schwartz as advocates for the 20 percent standard who acknowledge that the 8 percent standard was commonly used and not unreasonable.

Similarly, in upholding the 8 percent standard, the U.S. District Court also recognized that it was grounded in a body of research and practice independent of the Baum and Schwartz paper. It upheld the standard despite acknowledging that Baum and Schwartz were "critical of the 8 percent cutoff."[63]

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[58] U.S. Department of Labor. July 2018. "Job Openings and Labor Turnover Summary. Table A." https://www.bls.gov/news.release/jolts.a.htm#jolts_tablea.f.1

[59] Calculations by TICAS using data from the U.S. Department of Education, Gainful Employment Information, https://studentaid.ed.gov/sa/node/274. Calculations identify the share of failing or zone programs that have a given 4-digit CIP code, using the official gainful employment pass/zone/fail rate as of April 25, 2018.

[60] 83 FR 40168, citing Sandy Baum and Saul Schwartz. 2006. "How Much Debt Is Too Much? Defining Benchmarks for Manageable Student Debt." The College Board. https://bit.ly/2OiG2yD.

[61] 75 FR 43620; 76 FR 34398.

[62] 79 FR 65036.

[63] Association of Private Sector Colleges and Universities v. Duncan, et al. Civil Action No. 14-1870 (U.S. District Court, June 23, 2015). https://bit.ly/2p7be92.

In fact, in their original paper, Baum and Schwartz write, “the payment-to-income ratio should never exceed 18 to 20 percent of discretionary income.”[64] This standard is stricter than the current rule, which allows payments to exceed 20 percent of discretionary income as long as they do not also exceed 8 percent of total income. Baum has since written that the 2018 NPRM “misrepresented my research” and is “illogical” because her research supports the view that the “GE rules are, if anything, too permissive.”[65] Indeed, over 2,000 programs were above the 20 percent standard but nonetheless passed because they were below the 8 percent standard.[66]

Nowhere in the NPRM does the Department raise concerns with the 20 percent standard. If the Department no longer believes that the evidence supports the 8 percent threshold, it could eliminate it and simply retain the 20 percent standard. However, the Department apparently failed to consider this obvious alternative.

Some for-profit college leaders have recognized that the debt-to-earnings metric reflects the value of their programs. For example, J. Kevin Gilligan of Cappella said, “The basis of our confidence is our high-quality educational offering and the differentiated career outcomes of our graduates that are consistently reflected in outcome surveys and confirmed in data released as part of the initial gainful employment rules.”[67]

Brian E. Mueller of Grand Canyon Education said, “We understand that there have been bad actors in the for-profit space. … Grand Canyon University has no problem with current or proposed rules to regulate for-profit institutions.”[68] On a later date, he added, “We believe the gainful employment data recently released by the Department of Education provide some indication of the value of a GCU degree.”[69]

[64] 79 FR 65036; *see also* 79 FR 65103 (“See also S. Baum, “Gainful Employment,” posting to The Chronicle of Higher Education, http://chronicle.com/blogs/innovations/gainful-employment/26770, in which Baum described the 2006 study as such: ‘This paper traced the history of the long-time rule of thumb that students who had to pay more than 8 percent of their incomes for student loans might face difficulties and looked for better guidelines. It concluded that manageable payment-to-income ratios increase with incomes, but that no former student should have to pay more than 20 percent of their discretionary income for all student loans from all sources.’”)

[65] Sandy Baum. August 22, 2018. “DeVos misrepresents the evidence in seeking gainful employment deregulation.” The Urban Institute. https://urbn.is/2xcHriD.

[66] Calculations by TICAS using data from the U.S. Department of Education, Gainful Employment Debt to Earnings data spreadsheet, https://studentaid.ed.gov/sa/sites/default/files/GE-DMYR-2015-Final-Rates.xls. Calculations use the debt-to-earnings rates as of April 25, 2018 and include transitional rates, when available. 2,245 programs passed using the debt-to-earnings annual rate (8 percent standard) for the regular or transitional cohort, despite being rated as failing or zone using the debt-to-earnings discretionary income rate (20 percent standard) for the regular or transitional cohort. In contrast, only 260 programs passed using the discretionary income rate (20 percent standard), despite being rated as failing or zone using the annual rate (8 percent standard).

[67] Capella Education's (CPLA) Q2 2014 Earnings Call Transcript. July 19, 2014. https://bit.ly/2p5XiMy.

[68] Grand Canyon Education (LOPE) Q1 2016 Earnings Call Transcript. May 10, 2016. https://bit.ly/2xdN68b.

[69] Grand Canyon Education (LOPE) Q4 2016 Results - Earnings Call Transcript. February 16, 2017. https://bit.ly/2x7uVBJ.

B. The Debt-to-Earnings Ratio Is Particularly Important for Students of Color and Women

The Department expresses concern that the gainful employment rule could reduce educational opportunities for women and minority students.[70] In fact, women, students of color, and low-income students have the most to gain from the accountability standards imposed by the gainful employment rule.

Disadvantaged students disproportionately enroll at low-quality for-profit colleges. Black and Hispanic/Latino students make up 36 percent of undergraduates at all colleges, but they represent more than half (51%) of undergraduates at for-profit colleges.[71] More than half (53%) of women at for-profit colleges have dependent children and 30 percent have at least two children.[72] These vulnerable students will benefit most when colleges are compelled to either improve the value of poor performing programs or stop using federal student loans. For these reasons, the civil rights community concluded in 2014 that "it is imperative that strong gainful employment rules are put in place."[73]

Again, the Department overlooks the substantial evidence it amassed in previously exploring this issue. In 2014, it conducted extensive empirical analysis before concluding, "the regulations do not disproportionately negatively affect programs serving minorities, economically disadvantaged students, first-generation college students, women, and other underserved groups of students."[74] Specifically, it found that "the percentage of Pell Grant recipients and the percentage of students with minority status account for less than 2 percent of the variation in annual earnings rates."[75] Courts considering the rule have specifically recognized this analysis.[76]

Since the existing rule was finalized in 2014, research has provided even stronger evidence that student demographics do not drive student loan outcomes. Adam Looney and Constantine Yannelis found that, while changing demographics play a role in the increase in default rates, "much of the increase in default rates, particularly among nontraditional borrowers, cannot be explained simply by factors like

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[70] Adam Looney and Constantine Yannelis. September 2015. "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. https://brook.gs/2dyGn0k.

[71] Calculations by TICAS on data from U.S. Department of Education, National Postsecondary Student Aid Study 2015-16. Figures represent undergraduate students who attended a postsecondary institution during the 2015-16 academic year.

[72] Calculations by TICAS on data from the U.S. Department of Education, National Postsecondary Student Aid Study 2015-16. Figures are for undergraduate women attending for-profit colleges.

[73] Center for Responsible Lending, Children's Defense Fund, Lawyer's Committee for Civil Rights, The Leadership Conference, MALDEF, The NAACP, the NAACP Legal Defense Fund, National Council of La Raza. 2014."Gainful Employment: A Civil Rights Perspective." https://bit.ly/1KlSJ37.

[74] U.S. Federal Register. October 31, 2014. "Program Integrity: Gainful Employment Final Rule." https://bit.ly/2Qs08ru. P. 64910.

[75] 79 FR 16544.

[76] *See* Association of Proprietary Colleges v. Duncan, 107 F. Supp. 3d 332, 364–65 (S.D.N.Y. 2015) stating the association's argument about student demographics "appears utterly to disregard the extensive statistical analysis underlying the GE rules." See Association of Private Sector Colleges & Universities v. Duncan, 110 F. Supp. 3d 176, 196 (D.D.C. 2015) stating "....there is no basis for the claim—on this record, at least— that any particular group of students will suffer special harm under these regulations. And in any event, the Department gave all these alleged harms their due, producing an eighty-page Regulatory Impact Analysis that weighed the positive and negative implications of its debt-to-earnings test."

their family background or labor market outcomes, suggesting that factors we cannot observe, such as the quality of the education received... may also be driving up default."[77]

Looking specifically at students' economic backgrounds, Raj Chetty and his colleagues demonstrated that there is substantial variation in the ability of colleges to help students from low-income families graduate and go on to earn high incomes. While they found great variation in students' later earnings from one college to the next, within each college there was a small gap between students from high-income families and those from low-income families, suggesting that "most colleges successfully 'level the playing field' across students with different socioeconomic backgrounds."[78]

A recent literature review of the highest-quality studies on the topic concluded that students attending for-profit colleges typically pay more and borrow larger loans, but earn no more – or even less than – similar students attending public colleges. The pattern applies across a range of student groups including federal aid recipients, first-time college students, and others.[79]

A recent TICAS analysis found that many failing and zone gainful employment programs had nearby programs of the same type that enrolled demographically similar students yet performed better under the rule (see Appendix C). These comparisons show that program performance cannot be explained by demographic factors, and students have alternative options for enrollment if poor-performing programs close. For example:

- In Birmingham (AL), graduates from the criminal justice administration bachelor's degree program at Strayer University typically earned almost twice as much and owed $6,600 (20 percent) less than graduates from the same program at Virginia College.

- In South Plainfield (NJ), graduates from the dental assisting certificate program at Central Career School typically earned $6,600 more per year and owed about half as much as graduates from the same program at Everest Institute.

Finally, the sole study cited as evidence that students' demographic characteristics "play a significant role in determining student outcomes" is an analysis of the Beginning Postsecondary Student survey that looks at college persistence and attainment. These measures have no bearing on the gainful employment rule, which considers post-completion outcomes for those who graduate.[80]

[77] Adam Looney and Constantine Yannelis. "The Consequences of Student Loan Credit Expansions: Evidence from Three Decades of Default Cycles" Unpublished paper provided by the authors.
[78] Raj Chetty, John N. Friedman, Emmanuel Saez, Nicholas Turner, and Danny Yagan. July 2017. "Mobility Report Cards: The Role of Colleges in Intergenerational Mobility." National Bureau of Economic Research Working Paper No. 23618. https://bit.ly/2k1cnKG.
[79] Stephanie Riegg Cellini and Cory Koedel. July 2017. "The Case for Limiting Federal Student Aid to For-Profit Colleges." Journal of Policy Analysis and Management: Point/Counterpoint. https://onlinelibrary.wiley.com/doi/pdf/10.1002/pam.22008
[80] 83 FR 40174, citing National Center for Education Statistics. November 1996. "Nontraditional Undergraduates: Trends in Enrollment from 1986 to 1992 and Persistence and Attainment Among 1989-90 Beginning Postsecondary Students." https://bit.ly/2QroKR2.

C. Criticisms of the Debt-to-Earnings Ratio Do Not Hold Water

The Department raises a series of concerns about the impact of the debt-to-earnings ratio on certain groups of individuals. In addition to students of color and women, discussed in Section B, the Department mentions adult students, students in geographic areas with lower pay scales, students graduating at times of a weak economy and a weak job market, students graduating at times of a strong economy and high interest rates, students who seek part-time work, students who start their own businesses, and students whose earnings may vary based upon work history, college major, personal ambition, and lifestyle choices. It also expresses concern that the rule would "penalize" institutions that do not receive other forms of public funding or that choose to deliver costly but high-quality programs.

First, the Department's concerns evince a lack of understanding of the purpose of the rule. Gainful employment exists to prevent students from being left with debts they cannot afford to repay. The rule sets a maximum threshold for affordable debt, above which the Department has determined that loan payments are unaffordable. The maximum threshold of affordability does not vary based upon the circumstances of the debt. For example, the Department's logic would justify larger debt burdens for students of color, precisely because their earnings may be lower.

Second, the Department overlooks the fact that the gainful employment rules hold colleges accountable for typical students, not each individual student. Both typical debt and typical earnings are measured by either the median or the mean, whichever is more favorable to the college. When the earnings of particular graduates cannot be assessed, the Department removes the most indebted students from the calculation, making the calculation more lenient for the school. Each metric incorporates data from students over two or four years. Eligibility determinations are made over the course of three or four years. As a result, the decision of a single student to work part time, for example, will have little or no bearing on a college's debt-to-earnings ratio. A college will be held accountable only if it routinely leaves students with debts they cannot afford to repay.

Third, the Department neither conducts empirical analysis to document its concerns nor considers its own past work. It possesses all of the data it needs to determine whether these hypothetical problems are both real and significant, but neither conducts the analysis nor makes the data available. As described above, in 2014 the agency produced both descriptive statistics and a regression analysis on the impact of the rule on certain groups.[81]

Fourth, the Department's concern over whether the rule "penalizes" colleges themselves is misplaced. The gainful employment rule gives colleges every opportunity to improve the value their programs offer to students and taxpayers, and many have. Student aid programs exist to give students an opportunity to earn a quality college degree, not to provide unending taxpayer subsidies to low-quality career colleges that leave students unable to repay their debts.

The existing gainful employment rule provides safeguards to reduce any fluctuation of debt-to-earnings rates, including considering at least two graduating classes in each metric and requiring programs to fail

[81] 79 FR 64910.

every measure at least three times. It creates an intermediate "zone" designation to provide a "tolerance" for programs that narrowly miss acceptable debt-to-earnings ratios.[82]

The Department also overstates the likely impact of weak economic conditions, for which it cites a paper from Jaison Abel and Richard Deitz.[83] However, those authors found that "[c]ontrary to popular perception, we show that only a small fraction of recent graduates worked in a low-skilled service job following the Great Recession." While there was a rise of workers with college degrees working in jobs that did not require degrees, "underemployed college graduates were more likely to be working in these higher paying non-college jobs than similarly aged young workers without a college degree."

Regarding the impact of the economy, the Department argues that the debt-to-earnings metric over-identifies failing programs in both good times (because interest rates may be higher) and bad (because unemployment may be higher).[84] However, no set of economic conditions justify asking graduates assume unaffordable debts.

We believe the current rule's methodology appropriately reflects the economic realities faced by borrowers. However, if it remains concerned over potential volatility in interest rates, it could modify the rule to use a static historical average.

D. The 10-Year Amortization Period Is Appropriate

The Department questions whether the debt-to-earnings ratio should assume loans are repaid in the standard term of 10 years, given "the increased availability of [income driven] repayment plans with longer repayment timelines."[85]

While the standard repayment plan is based upon 10 years of payments, students have always had options for extended repayment plans. Income-driven repayment plans have existed since 1994, decades prior to the publication of the 2014 gainful employment rule, and have been available to all federal student loan borrowers since 2009.[86] The extended and graduated repayment plans also allow students to repay their loans over more than 10 years.

However, as the Department noted in 2014, "data show that a substantial majority of borrowers entering repayment in 2012, regardless of credential level, are in the standard repayment option of 10

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[82] 79 FR 16443 ("Upon further consideration of this issue and analysis of the GE Data, we believe that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a "tolerance" into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries for a zone rather than as the passing thresholds.")

[83] 83 FR 40172, citing Jaison R. Abel and Richard Deitz. September 2016. "Underemployment in the Early Careers of College Graduates Following the Great Recession." National Bureau of Economic Research. Working Paper No. 22654. http://www.nber.org/papers/w22654.pdf.

[84] 83 FR 40172.

[85] 83 FR 40172.

[86] The White House. June 7, 2012. "Income Based Repayment: Everything You Need to Know." https://bit.ly/2C6w4cw.

years."[87] As of March 2018, the Department's data show that six in 10 (60%) federal loan borrowers are in a repayment plan of 10 years or less.[88]

An additional three in 10 borrowers (29%) are enrolled in income-driven repayment;[89] these borrowers repay in more than 10 years only if their debts are large relative to their income, a status known as "partial financial hardship." While the availability of these plans is an important safety net for individual borrowers, their usage should not serve as an excuse to protect colleges that routinely leave their students needing relief from their standard loan payment. The Department even asserts in the NPRM that income-driven repayment plans can lead "institutions to charge high prices," an acknowledgement that using an amortization period aligned with the maximum repayment period available under income-driven plans would be an inappropriate barometer of affordable debt.[90]

As a result, the standard repayment is the appropriate assumption when examining the likely outcomes of a typical borrower. Indeed, the current gainful employment rule's amortization periods, which extend to longer than 10 years for students who complete bachelor's degrees and graduate programs, are inappropriately long.[91]

E. Students Can Find Better Alternatives to the Worst-Performing Programs

Closing the worst-performing programs does not mean that many students will lose access to educational opportunity. Students are typically able to find alternative programs with better performance.

As discussed on page 16, a recent TICAS analysis identified several failing and zone programs located near programs that performed better under the rule, while enrolling demographically similar students.[92] These examples show that students have alternative options for where to enroll even if poorly performing programs close.

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[87] 79 FR 16452.

[88] Calculations by TICAS using data from the U.S. Department of Education, Federal Student Aid Data Center, "Portfolio by Repayment Plan" and "Portfolio by Loan Status," https://studentaid.ed.gov/sa/node/412. Accessed June 21, 2018. Figures include borrowers with Direct Loans and/or Department-held FFEL Loans who are in repayment, deferment, or forbearance. Calculations consider both fixed and graduated repayment plans with a period of 10 years or less. Because the borrower counts are based at the loan level, borrowers with loans in different repayment plans are counted more than once. Data are not available for borrowers with commercially-held FFEL loans.

[89] Calculations by TICAS using data from the U.S. Department of Education, Federal Student Aid Data Center, "Portfolio by Loan Status," https://studentaid.ed.gov/sa/node/412. Accessed June 21, 2018. Figures include borrowers with Direct Loans and/or Department-held FFEL Loans who are in repayment, deferment, or forbearance. The Department announced that 7.2 million unique DL and ED-held FFEL borrowers are enrolled in income-driven plans, as of March 31, 2018. See U.S. Department of Education. June 20, 2018. "Federal Student Aid Posts New Reports to FSA Data Center," https://bit.ly/2p5wjRf .

[90] 83 FR 40172.

[91] For more on concerns about amortization periods longer than 10 years, see TICAS comments on the 2014 rule: https://ticas.org/sites/default/files/pub_files/TICAS_GE_NPRM_Comments.pdf.

[92] TICAS. 2018. *Examples of Nearby Career Education Programs with Very Different Outcomes.* https://bit.ly/2x6I1zq.

Work by Stephanie Cellini, Rajeev Darolia, and Lesley Turner concludes that holding colleges accountable for outcomes does not deny students access to college. They write, "Enrollment losses due to for-profit sanctions are offset by enrollment increases within local community colleges."[93]

The Department cites one study, by Nicholas Hillman and Taylor Weichman, to suggest that cutting off federal financial aid to low-performing programs may result in students in some locations losing access to educational opportunity, justifying repeal of the rule.[94] In a comment in response to this NPRM, Hillman calls the Department's assertion "inconsistent" with his findings. He writes, "Convenience certainly matters in choosing a college, but students living in education deserts do not have the luxury of shopping around for lower-cost options. When a local market has several high-cost and high-risk colleges and no public options, regulators have an even greater responsibility to protect consumers." Hillman concludes, "My research would defend keeping GE rules in tact to protect consumers, especially those living in education deserts where options are most constrained."[95]

F. The Department Should Require Colleges to Certify that their Programs Meet Licensure Requirements

The Department's 2014 rule requires colleges to certify that their gainful employment programs satisfy any applicable state or federal program-level accrediting and licensing requirements. This requirement protects students from enrolling in programs that cannot lead to the intended jobs.[96]

In the 2018 negotiated rulemaking, several negotiators led by community college and for-profit college representatives sought to strengthen these certification requirements. The negotiators argued that programs should certify that they meet relevant requirements in the states from which students enroll, not simply the state in which the school is located. Yet the Department rejected this proposal from the regulated entities. In the words of the community college negotiator:

> "I think I'm generally frustrated that it feels like an area where there was some level of at least understanding that it's vital that a student is able to sit for licensure for a program they're paying with the goal of meeting licensure requirements in that state, and we've backed away from that to where it's a disclosure that I think most of us think is a relatively meaningless disclosure. Jennifer and I had a long conversation with a number of people sitting around this table about how we can make these disclosures in connection with the certification work in a way that's a reasonable burden to an institution as well as be meaningful disclosure and requirements for the part of the student. And I feel like we made a lot of progress on that, and I'm just generally disappointed that it feels like a huge backtrack from that area of conversation."[97]

[93] Stephanie R. Cellini, Rajeev Darolia, Lesley J. Turner. 2018. "Where Do Students Go when For-Profit Colleges Lose Federal Aid?" National Bureau of Economic Research. Working Paper No 22967. http://www.nber.org/papers/w22967

[94] 83 FR 40171, citing Nicholas Hillman and Taylor Weichman. 2016. "Education Deserts: The Continued Significance of 'Place' in the Twenty-First Century." American Council on Education. https://bit.ly/2NItCTi.

[95] Nick Hillman. September 12, 2018. Comments on the Gainful Employment Notice of Proposed Rulemaking. https://www.regulations.gov/document?D=ED-2018-OPE-0042-13086.

[96] 79 FR 16427.

[97] *See* U.S. Department of Education. March 14, 2018. "Transcript of negotiated rulemaking." https://bit.ly/2Oh5aWd.

Although this proposal was advanced at the negotiating table, the Department does not discuss it in the NPRM. Instead, rather than strengthening these certification requirements, it now proposes to eliminate them with no stated rationale.

III. Nonexistent Disclosures Are No Substitute for Accountability

A. Despite Its Rhetoric, the Department Repeals All Gainful Employment Disclosures

1. The Department Repeals the 2014 Disclosure Requirements.

On its first page, the NPRM claims that its goal is to "adequately inform student enrollment choices and create a framework that enables students, parents, and the public to hold institutions of higher education accountable [through] program-level outcomes data."[98] Despite these claims, the NPRM actually repeals all of the disclosure requirements in the existing rule without replacing them.

The 2014 regulations require colleges to disclose to prospective students certain information about its gainful employment programs. These include key information on the program's cost, debt, completion rates, job placement, and licensure requirements. Colleges must update this information annually and make it prominently available in their promotional materials and web site.

In 2014 the Department enumerated three crucial functions that these disclosures serve: informing student decisions, safeguarding taxpayer dollars, and helping colleges improve.[99] While including robust accountability measures are the best way to accomplish these goals, high-quality disclosures can contribute to these valuable objectives, as our review of the literature on disclosures indicates (see discussion below and Appendix D). In its newest proposal, the Department does not account for how they will accomplish these goals in the absence of any disclosure requirements.

The Department states that "it is more useful to students and parents to publish actual median earnings and debt data" than it is to rely upon more complicated debt-to-earnings ratios.[100] However, it proposes repealing disclosures that include median earnings and debt data, along with the use of debt-to-earnings ratios.

The NPRM is not the first step this administration has taken to weaken these disclosures. In January 2018, the Department used the discretion provided under 668.412(a) to modify the required disclosure elements and eliminate the requirement that programs disclose their graduates' median earnings.[101] Its NPRM statement now about the utility of such information runs counter to both its own proposal as well as its own past practice.

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[98] 83 FR 40168.
[99] Ibid.
[100] 83 FR 40174.
[101] U.S. Department of Education. January 19, 2018. "Gainful Employment Electronic Announcement #110 - Release of the 2018 GE Disclosure Template." https://bit.ly/2xbUUax. (At the same time, the Department allowed programs to begin disclosing more than two job placement rates, obfuscating the meaning of any of them.)

2. The Department Fails to Outline an Alternative Proposal

The Department states its intent to disclose program-level outcomes at all colleges and universities, better accomplishing the goals of the gainful employment rule. However, it makes no such proposal. Instead it merely describes vague, non-binding concepts that are impossible to evaluate. For example, the Department fails to describe what data it plans to make available, when it will publish it, how it will verify it for accuracy, or how it will communicate this information to students in a manner that is effective in influencing decisions.

A Department representative at the gainful employment negotiations made clear that program-level earnings data would not be available until 2021 at the earliest.[102] If this information remains accurate, prospective students would be denied employment outcome information for years to come.

While the Department seeks to provide more data for students, its cost-benefit analysis assumes that it does not take any such step. It does not estimate the costs and benefits of expanding disclosure requirements to all colleges. In fact, it tabulates as benefits for its approach that colleges will no longer have to report or verify data and that students will not spend time reviewing it.[103]

The result will be less accurate data that is seen by fewer students. For example, colleges would no longer have to report data on private and institutional loans, making data on student borrowing less accurate. Because colleges will no longer verify the identity of their graduates by program, earnings information may also be less accurate. Such a disclosure regime will be indisputably less effective at providing accurate information to students, yet the costs of less accurate, less widely used data are not considered.

On one page the Department criticizes the existing disclosures for excluding programs with fewer than 10 graduates.[104] However, these restrictions – which were established to comply with the Privacy Act – also apply to the College Scorecard. It is not clear if the Department intends to remove those privacy protections in the context of the College Scorecard. To the extent the Department is concerned about the accuracy of these exemptions, it could assess the accuracy of the reported information by comparing the gainful employment disclosures with data reported to IPEDS.

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[102] From the GE negotiation transcripts (Cynthia Hammond): "Okay, so we started collecting program-level data for all enrollment reporting for all institutions, all types of programs, in the 14-15 award year. I will tell you guys right now, it's not great data. Not all schools did it. But we at least have some data for that. And it gets better year by year as more and more schools report program-level enrollment. So if we were to do a debt-to-earnings rate using that 2014-15 award year data--let's say we used it even though it's not complete--the five- and six-year-out earnings year for that would be 2019. And because it's a calendar year earnings, it wouldn't actually be available from Social Security until a year and one month after the end of the calendar year. So that makes it February of 2021." Page 62 here: https://bit.ly/2Oh5aWd.

[103] 83 FR 40178.

[104] 83 FR 40173.

B. The Department Has Not Justified Repeal of These Requirements

1. There Is No Evidence that the 2014 Rule Understated Burden

The Department concludes that “the disclosure requirements included in the GE regulations are more burdensome than originally anticipated.”[105] Yet it provides no new analysis of what it anticipates this burden to be. In terms of burden on institutions, its assessment of the benefit of the repeal is virtually identical to what was anticipated in the 2014 rule as a cost.

The Department proceeds to argue that large colleges cannot “distribute paper or electronic disclosures to all the prospective students in contact with the institution.” In the very next sentence, it explains that, “[a]lthough in decades past, institutions may have included these materials in the packets mailed to a prospective student's home; many institutions no longer mail paper documents, and instead rely on web-based materials and electronic enrollment agreements.”[106] It is unclear why the increasing propensity of electronic communications would hinder the electronic dissemination of critical information.

The Department also states that “the American Association of Community Colleges pointed to the regulations' extensive reporting and disclosure requirements.”[107] While AACC does comment on the burden of disclosure, their comment also unambiguously supports accountability measures to hold institutions accountable for program performance and the debt-to-earnings approach in particular:

> “The last administration was right to focus its GE eligibility metrics on whether students who complete GE programs are subsequently able to repay their student loans without undue burden in a reasonable time period. These debt-to-earnings measures are far more meaningful for holding institutions accountable for the programs they offer, and impactful for students, than the Higher Education Act’s cohort default rate-related penalties. The early evidence is that numerous programs that did not provide good value to students were voluntarily terminated by institutions because of the regulation that took effect last July.”[108]

2. Concerns over Job Placement Rates Do Not Justify a Full Repeal of Disclosure Requirements

Under gainful employment rules promulgated in 2010 and 2014, career education programs must disclose to prospective students relevant information about their program offerings and outcomes, including job placement rates if colleges are otherwise required to calculate them for their programs.

The Department’s NPRM calls attention to “variation in methodologies used by institutions to determine and report in-field job placement rates,” concluding that there is “a troubling degree of inconsistency and potential error exists in job placement rates reported by GE programs that could mislead students in

[105] 83 FR 40168.
[106] 83 FR 40173.
[107] 83 FR 40175.
[108] American Association of Community Colleges. September 20, 2017. Comments on Docket ID ED-2017-OS-0074-15336. https://bit.ly/2xaDtI5.

making an enrollment decision."[109] These inconsistencies are now being used by the Department to argue for the repeal of gainful employment disclosures.

Although the placement rate calculation methodology does vary, there is no new information to justify the Department's new reasoning. These differences were known when the Department first required placement rates to be disclosed. Its intent at the time was for colleges to disclose the best program-level job placement rates available, without unnecessarily increasing burden, while simultaneously working on a standardized rate to facilitate comparisons. As the Department explained in 2010:

> "Until the IPEDS-developed placement rate methodology is implemented, an institution that is required by its accrediting agency or State to calculate a placement rate, or that otherwise calculates a placement rate, must disclose that rate under the current provisions in § 668.41(d)(5). However, under new § 668.6(b), the institution must disclose on its Web site and promotional materials the placement rate for each program that is subject to the gainful employment provisions if that information is available or can be determined from institutional placement rate calculations. Consequently, to satisfy the new disclosure requirements, an institution that calculates a placement rate for one or more programs would disclose that rate under § 668.6(b) by identifying the accrediting agency or State agency under whose requirements the rate was calculated. Otherwise, if an accrediting agency or State requires an institution to calculate a placement rate only at the institutional level, the institution must use the agency or State methodology to calculate the placement rate for each of its programs from information it already collects and must disclose the program-specific placement rates in accordance with § 668.6(b)."[110]

The Department's efforts to standardize job placement rate were unsuccessful, as a technical panel of experts convened for the purpose was unable to come to consensus. As such, the requirement that colleges disclose career education program job placement rates already required to be calculated by states or accrediting agencies remains in place.

The Department's new view – that disclosing no placement rate is a better option than disclosing the best available placement rate – is perplexing given that the Department intends to revisit the issue of a standardized job placement rate in its upcoming rulemaking.[111] Repealing the rule in response to these concerns is a permanent, broad solution to a temporary, narrow problem.

Finally, while we do not recommend this approach, the Department could simply remove job placement rates and retain the other disclosure requirements. This alternative was not discussed by the Department.

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[109] 83 FR 40173.
[110] 75 FR 66838.
[111] 83 FR 36814-36816 .

C. Disclosure Is No Substitute for Accountability

1. Even the Best Disclosures Do Not Protect Students

The disclosure of key data elements can inform student choices and help colleges improve, but no evidence to date supports information disclosures as a standalone strategy to improve students' decision making processes across the board or more broadly improve their awareness or comprehension of higher education options. While well-designed and implemented disclosures can be an important component of a broader strategy to achieve these goals, the available evidence suggests that disclosures are no substitute for accountability.

In order to better understand the impact of information disclosures in general, and in particular in the realm of higher education, we completed a literature review on the efficacy of disclosures. These results are summarized here and discussed in full in Appendix D.

There are many barriers to disclosures realizing their intended impact, including consumers' persistent cognitive biases and financial and structural constraints. However, some evidence suggests that, under specific conditions, well-designed and faithfully implemented disclosures can lead to more informed consumers whose preferences or choices may reflect the new information. The format through which information is presented and the method by which it is delivered affects both whether students read it and how much they understand it. However, the research on information disclosures categorically does not support a reliance on disclosures as a sole means of increasing consumer awareness and comprehension or achieving behavioral changes or improved outcomes for consumers in any setting (including higher education).

The body of research on disclosures is complicated by the fact that they can take many different forms and are used in different markets that vary in complexity. There is furthermore limited empirical research on the impacts of mandatory disclosures on student comprehension and choices in US higher education specifically, either through direct or indirect delivery. However, existing literature on the full array of disclosures in US higher education shows inconsistent and limited impact on students' behavior.

The current NPRM has low expectations for the impact of disclosures. It notes in their net budget impact statement that "[g]enerally, the Department does not attribute a significant budget impact to disclosure requirements absent substantial evidence that such information will change borrower or institutional behavior."[112] Such expectations are in line with available research, but not with the Department's stated goals.

2. Disclosures Are No Match for Deceptive and High-Pressure Recruiting Tactics

Strategies based on informing consumer choice must consider for-profit colleges' history of deceptive, high-pressure, and even fraudulent recruiting tactics. The U.S. Senate HELP Committee, led by Senator Tom Harkin, documented at length the "aggressive and sometimes misleading and deceptive recruiting practices" of for-profit colleges. The Committee found that "in order to achieve company enrollment

[112] 83 FR 40180.

goals, recruiting managers at some companies created a boiler-room atmosphere, in which hitting an enrollment quota was the recruiters' highest priority." It also found that:

> "[M]any companies used tactics that misled prospective students with regard to the cost of the program, the availability and obligations of federal aid, the time to complete the program, the completion rates of other students, the job placement rate of other students, the transferability of the credit, or the reputation and accreditation of the school."

When the Government Accountability Office investigated the marketing and recruitment of for-profit colleges, they found problems everywhere they looked: "Undercover tests at 15 for-profit colleges found that 4 colleges encouraged fraudulent practices and that all 15 made deceptive or otherwise questionable statements to GAO's undercover applicants."[113] Over a quarter of undercover applicants were told by recruiters to falsify their financial aid forms in order to qualify for more financial aid.

3. Disclosures Alone Do Not Meet the Statutory Requirement

The Department has proposed removing accountability provisions from the gainful employment rule entirely, seeing the purpose of the gainful employment rule as to "adequately inform student enrollment choices and create a framework that enables students, parents, and the public to hold institutions of higher education accountable.[114] However, as the Department noted in 2011:

> "[D]isclosures alone cannot serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as ''preparing students for gainful employment in a recognized occupation'' because it disclosed the fact that it had failed to do so."[115]

Building on that statement, in 2014, the Department clearly articulated the purpose behind the accountability framework it enumerated:

> "The accountability framework defines what it means to prepare students for gainful employment by establishing measures that will assess whether programs provide quality education and training that allow students to pay back their student loan debt."[116]

Disclosures alone cannot meet the statutory requirement of permitting Title IV funding to flow to career education programs only if they prepare students for gainful employment in a recognized occupation. Under a disclosure-only framework, colleges with poorly performing programs would simply need to disclose the programs' poor performance but not actually improve or close the program. This protects neither students nor taxpayers.

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[113] U.S. Government Accountability Office. August 4, 2010. "For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices." https://www.gao.gov/assets/130/125197.pdf
[114] 83 FR 40168.
[115] 76 FR 34497.
[116] 79 FR 65024.

D. The Department Should Require Colleges to Disclose Letters of Credit

The Department also proposes to eliminate disclosures around institutions that are required to post letters of credit. This information is important for alerting current and prospective students about potential financial problems at their college. It is also important information for the general public to be aware of in order to cultivate wise stewardship of tax dollars.

The Department writes that it “believes that matters such as the calculation of an institution's composite score and requirements regarding letters of credit are complex and beyond the level of understanding of a typical high school graduate.”[117] A student does not need to understand the math behind why a school has to post a letter of credit to be entitled to the knowledge that an institution has challenges to its financial viability. Just as a student need not understand the calculation of the debt-to-earnings ratio in order to benefit from the information it provides about a program’s quality, likewise students and taxpayers benefit from greater knowledge of the financial condition of institutions.

[117] 83 FR 40176.

Appendix A: New Research Relevant to the Gainful Employment Rule

Since 2014, new data and research have provided even more evidence of the need for accountability in career education programs. None of the following studies below were cited in the NPRM:

- Stephanie Cellini and Nicholas Turner provided evidence that many gainful employment programs have little or no economic value.[118] Cellini and Turner found that, on average, students who attend for-profit certificate programs experience only "small, statistically insignificant gains in annual earnings." The lack of statistical significance means that it is possible that the average for-profit student in fact experiences no income gain from their attendance at all. Coupled with the debt taken on by students to attend these programs, their finding "suggests that for-profit certificate programs do not pay off for the average student."

- Tiffany Chou, Adam Looney, and Tara Watson examine cohort repayment rates – or the extent to which loan balances are getting paid off over time – and identify underperformance of bachelor and higher degree programs at for-profit colleges.[119] They find that "[a]t bachelors-granting institutions, public and private non-profit schools both tend to have relatively good repayment rates… [but that] among for-profit schools, there are almost no schools with repayment rates above 20 percent." The problem is even worse for for-profit colleges at the graduate level: "nearly all borrowers at for-profit graduate schools attend institutions with poor graduate repayment rates."

- Looney and Constantine Yannelis, in examining the impact of borrower and institutional characteristics contributed to rising loan defaults, provide more evidence of widespread problems at some types of gainful employment programs.[120] The authors find that between 2000 and 2011, there was substantial growth in both for-profit college enrollment and student default rates. They conclude that "to the extent that there is a [student loan] crisis, it is concentrated among borrowers who attended for-profit schools."

- Luis Armona, Rajashri Chakrabarti, and Michael F. Lovenheim assess the outcomes of for-profit college students.[121] The authors find that on the whole for-profit colleges have worse outcomes, finding that "[s]tudents who attend for-profit institutions take on more educational debt, have worse labor market outcomes, and are more likely to default than students attending similarly selective public schools." Their study specifically controls for differences in student body characteristics. They find that for-profit college results are worst for four-year students, finding that "for-profit enrollment leads to more loans, higher loan amounts, an increased likelihood of

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[118] Stephanie Riegg Cellini and Nicholas Turner. 2016. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." NBER Working Paper No. 22287. http://www.nber.org/papers/w22287.pdf.

[119] Tiffany Chou, Adam Looney, and Tara Watson. 2017. "Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability." NBER Working Paper No. 23118. http://www.nber.org/papers/w23118.pdf.

[120] Adam Looney and Constantine Yannelis. 2015. "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. https://www.brookings.edu/wp-content/uploads/2016/07/ConferenceDraft_LooneyYannelis_StudentLoanDefaults.pdf.

[121] Armona, Chakrabarti & Lovenheim. 2017. *How Does For-Profit College Attendance Affect Student Loans, Defaults, and Earnings?* Federal Reserve Bank of New York. https://nyfed.org/2xaO5XL.

borrowing, an increased risk of default, and worse labor market outcomes." They note that two-year students also have more loans, higher defaults, and lower earnings than students at other institutions. The authors' summary is that "[o]ur results point to low returns to for-profit enrollment."

- Darolia et. al. designed an experiment to test the labor market value of a for-profit degree with their paper through a field experiment.[122] They found that employers did not prefer students with for-profit degrees, even compared to students with no degree. They concluded, "The labor market payoff to attending a for-profit college may be limited, especially in comparison to the much-cheaper community college alternative."

- Deming et. al. expanded on Darolia et. al.'s work.[123] They find that for "business job vacancies that require a bachelor's degree, employers strongly prefer applicants with degrees from public institutions as opposed to applicants with degrees from for-profits." They note that this difference in preference varies across institutions, suggesting that within the for-profit college space employers understand that there are differences in the quality of the education students receive. They also find that "employers hiring for health jobs with no certificate or license requirements (primarily medical assistant jobs) strongly prefer applicants with certificates from public institutions, compared with applicants with a for-profit certificate or no credential at all." Taking these findings together, the authors conclude that "More generally, our results support the idea that employers view a credential from a for-profit institution as a negative signal of applicant quality in the absence of objective measures."

- Rajashri Chakrabarti and Michelle Jiang's paper "Education's Role in Earnings, Employment, and Economic Mobility" explores the outcomes of for-profit college attendance for four-year-degree students.[124] They find that "for-profit college attendance leads to 17 percent lower earnings relative to attendance at private not-for-profit four-year colleges." They also find that while attendance at public schools decreases earnings gaps, attending for-profit schools massively increases the earnings gap by over 100 percent. This analysis demonstrates that as a whole, for-profit colleges are not only bad investments for individuals, but also exacerbate economic inequality. The authors conclude, "These findings have important implications for policy, specifically for 'gainful employment' regulations, which stipulate that educational programs must offer worthwhile preparation in a recognized occupation to be eligible for student-assistance funding under the Higher Education Act, and the recent start of a rollback of these provisions."

[122] Rajeev Darolia, Cory Koedel, Paco Martorell, Katie Wilson, and Francisco Perez-Arce. 2014 "Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from a Field Experiment." RAND working paper. https://www.rand.org/pubs/working_papers/WR1054.html.

[123] Rajeev Darolia, Cory Koedel, Paco Martorell, Katie Wilson, and Francisco Perez-Arce. 2016. "The Value of Postsecondary Credentials in the Labor Market: An Experimental Study." American Economic Review. https://www.aeaweb.org/articles?id=10.1257/aer.20141757.

[124] Rajashri Chakrabarti and Michelle Jiang. September 5, 2018. "Education's role in earnings employment and economic mobility." Liberty Street Economics, Federal Reserve Bank of New York. https://nyfed.org/2M78cdK.

Appendix B: Methodology for TICAS Analysis of Earnings and Debt Differences Between Failing/Zone and Passing GE Programs

Using the one round of gainful employment data released by the Department, TICAS' analysis found large differences in debt and earnings between graduates from better- and worse-performing programs. Had the earnings and debt loads of graduates from failing and zone programs been brought in line with those of passing programs – either because the poorly performing programs improved or because students instead enrolled in better performing programs – that single cohort of graduates would have had $1.4 billion in higher earnings and nearly $300 million less in expected debt payments in a single year.

Detailed numbers:

- If students at failing or zone gainful employment programs had instead completed a passing program in their field, their annual earnings would have been, on average, $4,400 higher (20 percent higher) and their annual loan payment would have been, on average, $900 lower (38 percent lower)

- If all students at failing or zone gainful employment programs had instead completed a passing program in their field, their annual earnings would have been, in total, more than $1.4 billion higher and their annual loan payments would have been, in total, almost $300 million lower.

Methodology notes:

- Calculations use data from the U.S. Department of Education, Gainful Employment Information, GE Program Earnings Data, and Debt to Earnings Data, https://studentaid.ed.gov/sa/node/274. Official pass/zone/fail rates are as of April 2018 and include changes from successful appeals. However, the Department has not posted revised debt or earnings data as the result of those appeals.

- Calculations identify average earnings and debt differences between passing and failing or zone programs within the same field (CIP code and credential level), and only include fields where there are both passing and failing/zone programs.

    - In other words - for a completer in a given field (e.g., medical assisting undergraduate certificate programs), what is the average earnings and debt difference if they attended a passing program vs. a failing/zone program?

    - This approach accounts for differences in the distribution of fields that were more likely to have passing vs. failing or zone programs, unlike an approach that just calculates the average earnings and debt for all passing programs and compares them to the averages for all failing and zone programs.

- In this analysis, annual earnings are calculated as the higher of mean or median annual earnings, and the annual loan payment is calculated as the lower of the loan payment for the regular cohort or the transitional cohort (if available).

- Averages are weighted by the number of completers within the cohort period.

- This calculation may be an underestimate of the earnings differential because the gainful employment data for degree programs only include for-profit colleges. Students at failing/zone degree programs at a for-profit college could transfer to a degree program at a public or nonprofit college, which may have higher earnings than passing degree programs at other for-profit colleges.

- Due to data limitations, the earnings and debt data, as well as student counts, are limited to completers only - specifically, Title-IV-receiving students who completed a given program in its applicable cohort period. The cohort period is either two years (2010-11 and 2011-12) or four years (2008-09 through 2011-12), depending on each program's size. For more information, see the Department of Education's June 30, 2015 Dear Colleague Letter, "Regulatory Requirements Related to Gainful Employment Programs," https://ifap.ed.gov/dpcletters/GEN1512.html.

Appendix C: Examples of Nearby Career Education Programs with Very Different Outcomes

Better Options Exist for Students in the Worst-Performing Programs

The gainful employment rule enforces the Higher Education Act's requirement that all career education programs receiving federal student aid "prepare students for gainful employment in a recognized occupation." The rule uses debt-to-earnings ratios to assess whether career education programs at public, nonprofit, and for-profit colleges are leaving their graduates with reasonable debt burdens. Programs that exceed allowable thresholds—those consistently leaving their graduates with more debt than they can repay—must improve or lose eligibility for federal funding. The gainful employment rule also provides consumers with key information about program costs and outcomes so they can make an informed decision about where to enroll.

The Department of Education has proposed rescinding the gainful employment rule completely, arguing that programs' performance under the rule can be explained by factors like student characteristics and economic background, program field, and school location. However, **similarly located career education programs serving similar students can have very different outcomes.**

The 10 comparisons below show programs with poor outcomes located near schools offering the same program at a much lower cost and/or with much better outcomes.[125] In each set of comparisons, the colleges offering each program serve students with similar demographic profiles.[126] These comparisons demonstrate the need for the gainful employment rule to prevent poorly performing programs from continuing to bilk students and taxpayers, and to keep unscrupulous schools from enrolling as many students as possible without regard to the quality of the training or job prospects.

[125] All tuition and fees figures are from the most recent gainful employment disclosures available. All debt figures include federal, private, and institutional loan debt. Total median debt figures were calculated by TICAS using the amortization periods and interest rates described in regulation (34 CFR 668.404(b)(2)). All other data are from the Education Department's debt-to-earnings rate data, as released in April 2018. Unless otherwise noted, the programs were still enrolling new students as of August 2018.

[126] This analysis accounts for the share of undergraduates at each college who are Black, the share who are Hispanic, and the share who received federal Pell Grants, using data from the U.S. Department of Education's College Scorecard, as released in April 2018. In all comparisons, the share of each group of students at failing or zone programs was no more than 10 percentage points higher than the share at passing programs.

Business Administration and Management Master's Degree Programs - Birmingham, AL

Of two business administration and management master's degree programs in Birmingham, the graduates from Strayer University ***earned about 50 percent ($16,700) more per year and owed $6,400 less*** than graduates from Virginia College.

	Strayer University[127] For-profit college PASS	Virginia College[128] For-profit college ZONE[129]
Tuition & Fees	$30,200	Not available
Median Annual Earnings	$49,110	$32,376
Median Annual Loan Payment	$2,835	$3,521
Total Median Debt	$26,614	$33,054

Criminal Justice Administration Bachelor's Degree Programs - Birmingham, AL

Graduates from the criminal justice administration bachelor's degree program at Strayer University ***earned almost twice as much and owed $6,600 (20 percent) less*** than graduates from the same program at Virginia College.

	Strayer University[130] For-profit college PASS	Virginia College[131] For-profit college FAIL
Tuition & Fees	$59,450	Not available
Median Annual Earnings	$36,633	$19,293
Median Annual Loan Payment	$2,853	$3,556
Total Median Debt	$26,783	$33,383

[127] OPEID: 001459, UNITID: 450377, Birmingham, AL, CIP code: 530201, master's degree.
[128] OPEID: 030106, UNITID: 420307, Birmingham, AL, CIP code: 530201, master's degree. This college no longer offers this program at its Birmingham campus.
[129] Programs lose eligibility if they fail for two years in a three-year period, or if they fail or are in the "zone" between passing and failing for four consecutive years. This means programs in the zone have three years to improve their outcomes.
[130] OPEID: 001459, UNITID: 450377, Birmingham, AL, CIP code: 430103, bachelor's degree.
[131] OPEID: 030106, UNITID: 420307, Birmingham, AL, CIP code: 430103, bachelor's degree. This college no longer offers this program at its Birmingham campus.

Medical Insurance and Billing Certificate Programs – Phoenix, AZ

Graduates of Carrington College's medical insurance and billing certificate program graduated with ***one-third less debt*** than graduates of the same program at nearby Florida Career College. The Carrington College graduates also earned $2,300 more.

	Carrington College[132] For-profit college PASS	Florida Career College[133] For-profit college ZONE
Tuition & Fees	$13,092	Not available
Median Annual Earnings	$21,501	$19,162
Median Annual Loan Payment	$1,311	$1,914
Total Median Debt	$9,493	$13,860

Fashion and Apparel Design Associate's Degree Programs – San Francisco, CA

Graduates of the Fashion Institute of Design and Merchandising's fashion and apparel design associate's degree program had ***$6,800 (36 percent) less debt*** than graduates of the same program at nearby Academy of Art University. The Fashion Institute of Design and Merchandising graduates also earned slightly more.

	Fashion Institute of Design and Merchandising[134] For-profit college PASS	Academy of Art University[135] For-profit college ZONE
Tuition & Fees	$65,956	$60,917
Median Annual Earnings	$25,457	$23,586
Median Annual Loan Payment	$1,657	$2,593
Total Median Debt	$11,999	$18,777

[132] OPEID: 021006, UNITID: 103893, Phoenix, AZ, CIP code: 510714, undergraduate certificate.
[133] OPEID: 023058, UNITID: 487481, Phoenix, AZ, CIP code: 510714, undergraduate certificate. This college no longer has a campus in Phoenix.
[134] OPEID: 011112, UNITID: 114390, San Francisco, CA, CIP code: 500407, associate's degree.
[135] OPEID: 007531, UNITID: 108232, San Francisco, CA, CIP code: 500407, associate's degree.

Veterinary Technician and Veterinary Assistant Associate's Degree - Indianapolis, IN

While graduates from the veterinary technician associate's degree program at Harrison College earned slightly more than those at International Business College, Harrison College graduates ***owed $11,200 more*** than graduates from International Business College.

	International Business College[136] For-profit college PASS	Harrison College[137] For-profit college FAIL
Tuition & Fees	$32,530	$38,400
Median Annual Earnings	$23,317	$24,334
Median Annual Loan Payment	$1,881	$3,427
Total Median Debt	$13,621	$24,816

Dental Assisting Certificate Programs - South Plainfield, NJ

Graduates from the dental assisting certificate program at Everest Institute typically ***owed twice as much*** as graduates of the same program at Central Career School. Graduates from Central Career School's program also earned $6,600 more per year.

	Central Career School[138] For-profit college PASS	Everest Institute[139] Nonprofit college ZONE
Tuition & Fees	$12,440	$14,286
Median Annual Earnings	$23,322	$16,710
Median Annual Loan Payment	$758	$1,476
Total Median Debt	$5,489	$10,688

[136] OPEID: 004579, UNITID: 151467, Indianapolis, IN, CIP code: 510808, associate's degree.
[137] OPEID: 021584, UNITID: 151166, Indianapolis, IN, CIP code: 510808, associate's degree.
[138] OPEID: 033243, UNITID: 436003, South Plainfield, NJ, CIP code: 510601, undergraduate certificate.
[139] OPEID: 009828, UNITID: 449629, South Plainfield, NJ, CIP code: 510601, undergraduate certificate. This college has changed its name to Alterius Career College, and no longer enrolls students at its South Plainfield campus.

Medical Assistant Certificate Program - Albuquerque, NM

Graduates from the medical assisting certificate program at Carrington College ***earned $4,100 more and owed $1,100 less*** than graduates in the same program at Brown Mackie College.

	Carrington College[140] For-profit college PASS	Brown Mackie College[141] For-profit college ZONE
Tuition & Fees	$14,322	Not available
Median Annual Earnings	$20,796	$16,686
Median Annual Loan Payment	$1,311	$1,469
Total Median Debt	$9,493	$10,637

Dental Assisting Certificate Programs – Erie, PA

Of two dental assisting certificate programs in Erie, PA, the graduates from the Great Lakes Institute of Technology ***earned $5,800 more per year and had $3,700 less in debt*** than Fortis Institute graduates.

	Great Lakes Institute of Technology[142] For-profit college PASS	Fortis Institute[143] For-profit college ZONE
Tuition & Fees	$16,858	$18,296
Median Annual Earnings	$22,286	$16,521
Median Annual Loan Payment	$1,148	$1,656
Total Median Debt	$8,313	$11,992

[140] OPEID: 021006, UNITID: 442602, Albuquerque, NM, CIP code: 510801, undergraduate certificate.
[141] OPEID: 040513, UNITID: 460039, Albuquerque, NM, CIP code: 510801, undergraduate certificate. This program was reported under The Art Institute of Phoenix; both chains are owned by the publicly traded Education Management Corporation (EDMC). EDMC announced in 2016 that it was closing all Brown Mackie campuses due to decreased enrollment.
[142] OPEID: 021122, UNITID: 213181, Erie, PA, CIP code: 510601, undergraduate certificate.
[143] OPEID: 030108, UNITID: 216418, Erie, PA, CIP code: 510601, undergraduate certificate.

Dental Assisting Certificate Programs - Austin, TX

Of two dental assisting certificate programs in Austin, TX, the graduates from the College of Healthcare Professions ***earned $9,100 more per year and had significantly less debt*** than Everest Institute graduates.

	The College of Healthcare Professions[144] For-profit college PASS	Everest Institute[145] Nonprofit college ZONE
Tuition & Fees	$16,400	$15,055
Median Annual Earnings	$25,842	$16,710
Median Annual Loan Payment	$1,051	$1,476
Total Median Debt	$7,611	$10,688

Medical and Clinical Assistant Certificate Programs – El Paso, TX

Of two medical assisting certificate programs in El Paso, TX, the graduates from Pima Medical Institute typically ***earned $6,400 more per year and had $4,100 less in debt*** than graduates from Southwest University at El Paso.

	Pima Medical Institute [146] For-profit college PASS	Southwest University at El Paso[147] For-profit college ZONE
Tuition & Fees	$14,380	$16,085
Median Annual Earnings	$21,669	$15,269
Median Annual Loan Payment	$1,035	$1,598
Total Median Debt	$7,495	$11,572

[144] OPEID: 034263, UNITID: 437635, Austin, TX, CIP code: 510601, undergraduate certificate.
[145] OPEID: 009828 UNITID: 442727, Austin, TX, CIP code: 510601, undergraduate certificate. This college has changed its name to Alterius Career College, and no longer offers this program at its Austin campus.
[146] OPEID: 022171, UNITID: 486813, El Paso, TX, CIP code: 510801, undergraduate certificate.
[147] OPEID: 041317, UNITID: 451556, El Paso, TX, CIP code: 510801, undergraduate certificate.

Appendix D: TICAS Literature Review on Efficacy of Disclosures

There are a number of reasons why information disclosure is an alluring policy option for preventing abusive or exploitative consumer practices. The strategy aligns with free market principles that rely on accurate and available information to support consumer autonomy and prevent market failure; it is relatively inexpensive to implement; and there is widespread belief that more information can never hurt. [148] Given these appeals, even diverse stakeholders may easily find consensus in mandating some type of information disclosure. However, years of research into the effects of information disclosure on consumer behavior across a range of industries including education, mortgages, financial services, and healthcare has yielded incredibly mixed results.

The body of research on disclosures is complicated by the fact that they are used in different markets that vary in complexity, and often rely on unclear mechanisms for achieving a variety of often opaque goals.[149] Disclosures can be voluntary or mandated, and be made passively available or actively delivered to consumers in different ways. For example, direct disclosures (which can be received upon request or provided without inquiry) may be provided via verbal communication, product labeling, paper mailings or forms that may or may not require affirmation of receipt, direction to a specific website or webpage, or even text messages; indirect disclosures make information broadly publicly available, for example through a website (with a range of efforts to raise awareness of the resource) or public signage (with a range of degrees of visibility).

There is some evidence that, under specific conditions, well-designed and faithfully implemented disclosures can lead to more informed consumers whose preferences or choices may reflect the new information. However, there are many barriers to disclosures realizing their intended impact, including consumers' persistent cognitive biases and financial/structural constraints. While certain conditions may increase the ability of information disclosure to improve consumer understanding and/or alter consumer behavior, there is little evidence that disclosures alone meaningfully impact decision-making across the board. There is furthermore broad agreement that disclosures alone are an insufficient policy strategy for preventing abusive or exploitative practices.[150] At the same time, research offers clear

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[148] Carl E. Schneider and Omri Ben-Shahar, "The Failure of Mandated Disclosure," John M. Olin Program in Law and Economics Working Paper No. 516 (2010), https://bit.ly/2N9oh8e.

[149] For example, disclosures can aim to make information accessible, broadly raise awareness, improve consumer comprehension, improve consumers' decision-making processes, and/or alter behavior/choices of either the consumer or disclosee. Disclosures can also aim to change industry and/or government behavior. See Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; and David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[150] Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://urbn.is/2N7UnRP; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; Debra Pogrund Stark, Jessica M. Choplin, and Mark A. LeBoeuf "Ineffective in Any Form: How Confirmation Bias and Distractions Undermine Improved Home-Loan Disclosures," *The Yale Law Journal* 122 (2013): 377, https://bit.ly/2CTWMuH. U.S. Department of Housing and Urban Development and U.S. Department of Treasury, "Curbing Predatory Home Mortgage Lending: A Joint Report," (2000), https://archives.hud.gov/reports/treasrpt.pdf ; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

caution that poorly designed information disclosures and overreliance on information disclosure as a standalone regulatory strategy can cause real harm.[151]

Existing research on information disclosures categorically does not support a reliance on disclosures as a sole means of increasing consumer awareness and comprehension, or achieving behavioral changes or improved outcomes for consumers in any setting (including higher education). However, current literature reveals some promising guidelines for designing and implementing disclosures to best position them to have a positive impact.

Weak Evidence for the Impact of Information Disclosure on Behavior

A wide body of research on the impact of mandating disclosures in non-higher education markets provides little consistent evidence that disclosures impact decision-making. On the one hand, specific types of disclosures have resulted in changed industry (but not consumer) behavior in some settings, for example, through energy efficiency labeling in the appliance industry and OSHA Hazardous Communication Standards in the workplace.[152] In the food industry, restaurant display of hygiene grade cards have been shown to impact both industry and consumer behavior,[153] and in financial services, disclosure requirements in the Credit Card Accountability Responsibility and Disclosure (CARD) Act have only modest impacts on consumer behavior, with larger benefits for those with low-credit scores.[154] On the other hand, in the healthcare space, consumers do not at all appear to seek out, understand, or use publicly available data on hospitals, health professionals and healthcare organization performance;[155] in housing, mandatory mortgage counseling does not affect behavior of low-FICO applicants,[156] and even

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[151] Kevin Carey and Andrew Kelly, "The Truth Behind Higher Education Disclosure Laws," Education Sector: Washington, D.C. (2011), https://www.air.org/sites/default/files/Higher-Education-Disclosure-Laws.pdf; Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research (2011), http://www.voced.edu.au/content/ngv%3A45357; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Bureau of Economics of the Federal Trade Commission (2007), https://bit.ly/2Namdgq; U.S. Department of Housing and Urban Development and U.S. Department of Treasury, "Curbing Predatory Home Mortgage Lending: A Joint Report," (2000), https://archives.hud.gov/reports/treasrpt.pdf; Carl E. Schneider and Omri Ben-Shahar, "The Failure of Mandated Disclosure," John M. Olin Program in Law and Economics Working Paper No. 516 (2010), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1519&context=law_and_economics; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[152] George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[153] Ginger Jin and Phillip Leslie, "The Effect of Information on Product Quality: Evidence from Restaurant Hygiene Grade Cards" *Quarterly Journal of Economics* 118, no. 2 (2003): 409-451, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=322883.

[154] Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney, and Johannes Stroebel, "Regulating Consumer Financial Products: Evidence from Credit Cards," *The Quarterly Journal of Economics* 130, no. 1 (2014): 111-164; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[155] Martin N. Marshall, Paul G. Shekelle, Sheila Leatherman, and Robert H, Brook, "The Public Release of Performance Data: What Do We Expect to Gain? A Review of the Evidence," *Jama* 281, no. 14 (2000): 1866-1874, https://www.ncbi.nlm.nih.gov/pubmed/10770149.

[156] Sumit Agarwal, Gene Amromin, Itzhak Ben-David, Souphala Chomsisengphet, and Douglas Evanoff, "The Effectiveness of Mandatory Mortgage Counseling: Can One Dissuade Borrowers from Choosing Risky Mortgages?" NBER Working Paper 19920 (2014), http://www.nber.org/papers/w19920.

better-designed mortgage disclosures leave distracted borrowers susceptible to confirmation bias that causes them to miss important information on disclosures;[157] and in consumer products, on-product warnings have no measurable impact on user behavior and product safety.[158] Research has also identified unintended effects of mandatory disclosures, including crowding out other useful information or causing consumers to ignore overwhelming or confusing information,[159] or insulating fraudulent or deceptive actors where non-informational protections are lacking.[160] For example, conflict of interest disclosures can actually increase pressure to comply with untrustworthy advice[161] and three-quarters of consumers think the existence of a privacy policy implies privacy protection.[162]

There is limited empirical research on the impacts of mandatory disclosures on student comprehension and choices in US higher education specifically, either through direct or indirect delivery. However, existing literature on the full array of disclosures in US higher education shows inconsistent and limited impact on students' behavior. While directly providing low information college-enrolled students or parents with program-level labor market outcomes or other information may impact self-reported probability of major preference,[163] other evidence suggests students may update their beliefs about expected outcomes without changing their preference.[164] Mail delivered informational guidance to high-achieving, low-income students has been shown to affect their application and enrollment decisions,[165] but directly providing information about local tuition costs and financial aid information to low- and moderate-income high school students only impacted college enrollment decisions when that

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[157] Debra Pogrund Stark, Jessica M. Choplin, and Mark A. LeBoeuf "Ineffective in Any Form: How Confirmation Bias and Distractions Undermine Improved Home-Loan Disclosures," *The Yale Law Journal* 122 (2013): 377, https://bit.ly/2CTWMuH.

[158] McCarthy et al. (1984) in George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[159] James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Bureau of Economics of the Federal Trade Commission (2007), https://bit.ly/2Namdgq; David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[160] Carl E. Schneider and Omri Ben-Shahar, "The Failure of Mandated Disclosure," John M. Olin Program in Law and Economics Working Paper No. 516 (2010), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1519&context=law_and_economics.

[161] George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[162] George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[163] Rachel Baker, Eric Bettinger, Brian Jacob, and Ionaa Marinescu, "The Effect of Labor Market Information on Community College Students' Major Choice," NBER Working Paper 23333 (2017), http://www.nber.org/papers/w23333; Matthew Wiswall and Basit Zafar, "Determinants of College Major Choice: Identification using an Information Experiment," Federal Reserve Bank of New York: New York, NY, Staff Report No. 500 (2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr500.pdf; Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357.

[164] Alex Ruder and Michelle Van Noy, "Adjusting Expectations: The Impact of Labor Market Information on How Undergraduates View Majors and Careers," Rutgers Education and Employment Research Center: Piscataway Township, NJ (2018), https://smlr.rutgers.edu/sites/default/files/documents/Centers/eerc_majorchoice_issue_brief_final_0.pdf.

[165] Caroline Hoxby and Sarah Turner, "Expanding College Opportunities for High-Achieving, Low Income Students," Discussion Paper 12-014. Stanford Institute for Economic Policy Research: Stanford, CA (2013), https://siepr.stanford.edu/sites/default/files/publications/12-014paper_6.pdf.

information was accompanied with help in filing the FAFSA.[166] Including earnings data and more personalized information on a well-designed and widely-advertised website has no impact on student choice of college or major, but the addition of earnings data to the College Scorecard was associated with increased applications to higher median earning colleges from higher-income high school students.[167] While the impact of disclosures is variable and modest at best, research seeking to identify the effects of different types of information disclosures on behavior and decision-making among different groups of students has produced notable insights on the critical role of disclosure design and implementation.

Best Practices in Disclosure Design and Implementation

The means by which a consumer is exposed to or receives information has critical implications for its ability to achieve any intended impact. Similarly, both the content and format of disclosures affects a consumer's ability to process that information, which – along with actually receiving the information – is a necessary condition for influencing decision-making.[168] Unsurprisingly, how information is presented affects both whether students read it and how much they understand it.[169] In short, well designed disclosures that are actually read and understood by consumers are most likely to be able to achieve their intended aim.

Basic compliance with requirements to provide information, and assurance that consumers receive it are chief among disclosures' basic conditions needed to either increase consumer understanding or subsequently impact behavior. A 2011 survey of 152 four-year colleges found widespread non-compliance for particular disclosures, including that only one in four of the sampled institutions disclose six-year graduation rates for Pell Grant recipients, despite a federal requirement to do so.[170] Consumers have little means by which they can know that information is missing, [171] and generally do not seek out new information on their own, even if they are aware of its existence.[172]

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[166] Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos, and Lisa Sanbonmatsu, "The Role of Application Assistance and Information in College Decisions: Results from the H&R Block FAFSA Experiment," *Quarterly Journal of Economics* 127, issue 3 (2012): 1205-1242, https://academic.oup.com/qje/article-abstract/127/3/1205/1921970.

[167] Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education; Michael Hurwitz and Jonathan Smith, "Student Responsiveness to Earnings Data in the College Scorecard," *SSRN Electronic Journal* (2017), https://ssrn.com/abstract=2768157.

[168] Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr.

[169] Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education; James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Bureau of Economics of the Federal Trade Commission (2007), https://bit.ly/2Namdgq.

[170] Kevin Carey and Andrew Kelly, "The Truth Behind Higher Education Disclosure Laws," Education Sector: Washington, D.C. (2011), https://www.air.org/sites/default/files/Higher-Education-Disclosure-Laws.pdf.

[171] George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[172] Martin N. Marshall, Paul G. Shekelle, Sheila Leatherman, and Robert H, Brook, "The Public Release of Performance Data: What Do We Expect to Gain? A Review of the Evidence," *Jama* 281, no. 14 (2000): 1866-1874, https://www.ncbi.nlm.nih.gov/pubmed/10770149; Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education.

When accurate information disclosures are provided as required, they should be designed to specifically account for consumers' known cognitive biases and limited attention spans.[173] In practice, this means simplifying information to reduce information overload[174] (while also avoiding overemphasis on a single metric or leaving out needed context[175]), and providing salient and actionable information in a timely manner[176] that enables consumers to easily make comparisons across alternatives (including by using a consistent format and standardized terms).[177] While categorical labels, rankings, and ratings systems are

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[173] Debra Pogrund Stark, Jessica M. Choplin, and Mark A. LeBoeuf "Ineffective in Any Form: How Confirmation Bias and Distractions Undermine Improved Home-Loan Disclosures," *The Yale Law Journal* 122 (2013): 377, https://bit.ly/2CTWMuH; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf; Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[174] George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf; Michael Luca and Jonathan Smith, "Salience in Quality Disclosure: Evidence from the U.S. News College Rankings," *Journal of Economics & Management Strategy* 22, no. 1 (2013): 58-77, http://nrs.harvard.edu/urn-3:HUL.InstRepos:27022531; Carl E. Schneider and Omri Ben-Shahar, "The Failure of Mandated Disclosure," John M. Olin Program in Law and Economics Working Paper No. 516 (2010), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1519&context=law_and_economics; Sumit Agarwal, Souphala Chomsisenghet, Neale Mahoney, and Johannes Stroebel, "Regulating Consumer Financial Products: Evidence from Credit Cards," *The Quarterly Journal of Economics* 130, issue 1 (2015): 111-164, https://academic.oup.com/qje/article-abstract/130/1/111/2338025; Randall S. Kroszner, "Creating More Effective Consumer Disclosures," Speech, George Washington University School of Business, Financial Services Research Program Policy Forum, Washington, D.C. (May 23, 2007), https://www.federalreserve.gov/newsevents/speech/kroszner20070523a.htm; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr.

[175] Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357; Kevin Carey and Andrew Kelly, "The Truth Behind Higher Education Disclosure Laws," Education Sector: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357; James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Bureau of Economics of the Federal Trade Commission (2007), https://bit.ly/2Namdgq.

[176] Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; Sumit Agarwal, Gene Amromin, Itzhak Ben-David, Souphala Chomsisengphet, and Douglas Evanoff, "The Effectiveness of Mandatory Mortgage Counseling: Can One Dissuade Borrowers from Choosing Risky Mortgages?" NBER Working Paper 19920 (2014), http://www.nber.org/papers/w19920; Randall S. Kroszner, "Creating More Effective Consumer Disclosures," Speech, George Washington University School of Business, Financial Services Research Program Policy Forum, Washington, D.C. (May 23, 2007), https://www.federalreserve.gov/newsevents/speech/kroszner20070523a.htm; Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education; David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[177] Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357; Kevin Carey and Andrew Kelly, "The Truth Behind Higher Education Disclosure Laws," Education Sector: Washington, D.C. (2011), https://www.air.org/sites/default/files/Higher-Education-Disclosure-Laws.pdf; Julie Margetta Morgan and Gadi Dechter, "Improving the College Scorecard: Using Student Feedback to Create an Effective Disclosure," Center for American Progress: Washington, D.C. (2012), https://www.americanprogress.org/wp-content/uploads/2012/11/CollegeScorecard-4.pdf;

effective ways to communicate complex information and enable comparisons,[178] the best way to ensure that disclosures reflect these principles and avoid unintended consequences is to require that they be robustly consumer-tested.[179]

Well-designed and delivered disclosures have potential to impact awareness or behavior especially for consumers who have inaccurate or low baseline information,[180] when they are received from a trusted source,[181] and where consumers have legitimate options to choose from.[182] It is a troubling irony that students who stand to benefit the most from effective information disclosures also face the biggest

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Kristen Blagg, Matthew M. Chingos, Claire Graces, Anna Nicotera, and Lauren Shaw, "Rethinking Consumer Information in Higher Education," Urban Institute: Washington, D.C. (2017), https://www.urban.org/research/publication/rethinking-consumer-information-higher-education; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[178] Michael Luca and Jonathan Smith, "Salience in Quality Disclosure: Evidence from the U.S. News College Rankings," Journal of Economics & Management Strategy 22, no. 1 (2013): 58-77, http://nrs.harvard.edu/urn-3:HUL.InstRepos:27022531; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf.

[179] Carl E. Schneider and Omri Ben-Shahar, "The Failure of Mandated Disclosure," John M. Olin Program in Law and Economics Working Paper No. 516 (2010), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1519&context=law_and_economics; Julie Margetta Morgan and Gadi Dechter, "Improving the College Scorecard: Using Student Feedback to Create an Effective Disclosure," Center for American Progress: Washington, D.C. (2012), https://www.americanprogress.org/wp-content/uploads/2012/11/CollegeScorecard-4.pdf; Randall S. Kroszner, "Creating More Effective Consumer Disclosures," Speech, George Washington University School of Business, Financial Services Research Program Policy Forum, Washington, D.C. (May 23, 2007), https://www.federalreserve.gov/newsevents/speech/kroszner20070523a.htm; James M. Lacko and Janis K. Pappalardo, "Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms," Bureau of Economics of the Federal Trade Commission (2007), https://bit.ly/2Namdgq; Julie Williams, "Remarks by Julie L. Williams Action Comptroller of the Currency Before Women in Housing and Finance and the Exchequer Club," Speech, Washington, D.C. (January 12, 2005), https://www.occ.gov/news-issuances/speeches/2005/pub-speech-2005-1.pdf.

[180] Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357; Michael Hurwitz and Jonathan Smith, "Student Responsiveness to Earnings Data in the College Scorecard," *SSRN Electronic Journal* (2017), https://ssrn.com/abstract=2768157; George Loewenstein, Cass Sunstein, and Russell Golman, "Disclosure: Psychology Changes Everything," *Annual Review of Economics* 6 (2014): 391-419, https://www.cmu.edu/dietrich/sds/docs/loewenstein/DisclosureChgsEverything.pdf; Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[181] Caroline Hoxby and Sarah Turner, "Expanding College Opportunities for High-Achieving, Low Income Students," Discussion Paper 12-014. Stanford Institute for Economic Policy Research: Stanford, CA (2013), https://siepr.stanford.edu/sites/default/files/publications/12-014paper_6.pdf; David Dranove and Ginger Zhe Jin, "Quality Disclosure and Certification: Theory and Practice," Journal of Economic Literature 48, no. 4 (2010), https://www.aeaweb.org/articles?id=10.1257/jel.48.4.935.

[182] Paula J. Dalley, "The Use and Misuse of Disclosure As a Regulatory System," *Florida State University Law Review* 34, issue 4 (2007): 113-19, https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr; Kristen Blagg and Matthew M. Chingos, "Choice Deserts: How Geography Limits the Potential Impacts of Earnings Data on Higher Education," Urban Institute: Washington, D.C. (2016), https://www.urban.org/sites/default/files/publication/86581/choice_deserts_1.pdf; James R. Osamuda, "Predatory Ed: The Conflict Between Public Good and For-Profit Higher Education," *Journal of College and University Law* 38, no. 1 (2011), https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1211&context=fac_articles.

barriers to accessing, understanding, and being able to use new information. For the most disadvantaged students, economic, technological, and geographic constraints beyond their control may render information – however well-designed and delivered – less meaningful at best, and useless at worst.[183] For example, nearly two thirds of Virginia students live in areas where only a single program is offered, or sufficient data are not available to provide them program comparisons. [184] This not only undermines the idea of informed choice, but also suggests that the least needy students may disproportionately enjoy the benefits of information disclosures. Unaddressed relative structural advantages may thus be a key factor in explaining why providing better data on labor market outcomes for specific educational programs has inconsistent impact, even when students understand the information and update their beliefs accordingly.

Using disclosures to protect students

Although no evidence to date supports sole reliance on information disclosures to help students make optimal decisions or even improve their awareness or comprehension of higher education options, well designed and implemented disclosures can be an important component of a broader strategy to achieve these goals. As such, attention and resources should be dedicated to ensuring that disclosures to students have a clearly identified mechanism for achieving a stated goal, are specifically designed with robust consumer-testing to achieve that end, are reliably delivered to students, and are easy to understand and use in comparing alternatives. Additionally, more work should be done to better isolate those factors that may contribute to significant and positive effects of different types of disclosures on decision-making.

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[183] Kristen Blagg and Matthew M. Chingos, "Choice Deserts: How Geography Limits the Potential Impacts of Earnings Data on Higher Education," Urban Institute: Washington, D.C. (2016), https://www.urban.org/sites/default/files/publication/86581/choice_deserts_1.pdf; Victoria Rosenboom and Kristin Blagg, "Disconnected from Higher Education: How Geography and Internet Speed Limit Access to Higher Education," Urban Institute: Washington, D.C. (2018), https://www.urban.org/sites/default/files/publication/96191/disconnected_from_higher_education.pdf; Andrew Kelly and Mark Schneider, "Filling in the Blanks: How Information Can Affect Choice in Higher Education," American Enterprise Institute for Public Policy Research: Washington, D.C. (2011), http://www.voced.edu.au/content/ngv%3A45357.

[184] Kristen Blagg and Matthew M. Chingos, "Choice Deserts: How Geography Limits the Potential Impacts of Earnings Data on Higher Education," Urban Institute: Washington, D.C. (2016), https://www.urban.org/sites/default/files/publication/86581/choice_deserts_1.pdf.