June 20, 2023

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

Submitted electronically

Re: Docket ID ED–2023–OPE–0089

Dear Assistant Secretary Paydar,

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (Docket ID ED–2023–OPE–0089) regarding the Department of Education’s proposed rules for Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit (ATB). The Institute for College Access & Success (TICAS) is a nonprofit, nonpartisan organization working to advance affordability, accountability, and equity in higher education. Both organizationally and in collaboration with a diverse set of partners, TICAS has long advocated for stronger student and borrower protections in the form of institutional accountability measures, including the gainful employment rule.

We appreciate the Department’s ongoing efforts to make borrowers whole who have experienced fraud because they pursued postsecondary education; streamline repayment programs while mitigating chances of borrowers falling into default; and implement needed regulations that better protect students and taxpayers from waste, fraud, and abuse. This regulatory package includes many needed and welcome steps toward ensuring a higher education landscape in which students and taxpayers are protected, and we welcome the comprehensive approach the Department has undertaken.

These measures should also be seen as part of a larger racial equity agenda. We have seen – too often and for too long – low-quality and even predatory programs targeting Black and Latino students, driving up debts and providing credentials of little to no value. Nine out of 10 Black and Latino students who graduated in 2015-16 from a for-profit undergraduate degree program borrowed, and they borrowed at least $10,000 more, on average, than those attending public colleges.¹ Federal data from 2019 revealed both that students attending for-profit colleges had the worst default rates across all institution types

and that Black for-profit students were more likely to default. One-third of all borrowers defaulted within six years of starting at a private for-profit institution, including 42 percent of Black borrowers.²

Without stronger protections, programs that cost more than they should; burden students of color, low-income students, women, first-generation students, and student veterans with more debt than they can repay; and provide low-quality training for designated career fields will continue to operate. Below, we discuss why the proposed regulations are needed, while also providing feedback on ways to further strengthen the proposals.

**Financial Value Transparency and Gainful Employment.** First issued in 2011, the gainful employment (GE) rule required career education programs to ensure their graduates were not left with unaffordable debts. To meet the GE rule’s minimum standard, the expected debt payments of a program’s typical graduate could not exceed 8 percent of their earnings and 20 percent of their discretionary earnings. If programs failed to show improved outcomes for the graduates within three years, they stood to lose eligibility for federal financial aid. Even prior to its implementation, the GE rule encouraged colleges to improve the value of their programs for students, as the prospect of sanctions prompted many schools to eliminate their worst performing programs and implement reforms to improve graduate outcomes.³

The prior GE rule brought critical quality improvements to the for-profit college sector, as nearly all educational programs offered at for-profit institutions fell under the rule’s purview.⁴ According to one analysis, 65 percent of for-profit programs that were failing the gainful employment rule in early 2017 were no longer enrolling students as of August 2018.⁵ The GE rule not only elevated quality of for-profit career education offerings but also shielded students from investing time and money in programs that left them with debts they were unlikely to have sufficient income opportunities to ever repay.

Revocation of the safeguards in the GE rule in 2019 cost taxpayers an estimated $6.9 billion as high-cost, low-value programs flourished once again. Restoration of the debt-to-earnings metric is a critical means to address programs that do not serve students. By ensuring career programs do not leave students with debts they cannot repay, the debt-to-earnings test in the proposed GE rule addresses student debt before it is taken on. Data provided by the Department clearly demonstrates that the debt-to-earnings metric continues to identify high-cost, high-enrollment programs that are cause for serious concern. We note the prevalence of programs at risk of failing the proposed rule at national online for-profit colleges, including programs at former for-profit colleges that have been or are in the process of being acquired by public colleges. We also note that some of these programs have disproportionately large enrollment.

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³ From Barclays U.S. Education Services, “Another Challenging Quarter in the Books,” August 15, 2012: “Over the past eighteen months, many of our covered companies have made substantial changes to their offerings in an attempt to position better for the changing regulatory environment. This has included teaching out programs, introducing new program offerings, changing tuition, reducing the duration of programs, and even more dramatic steps including the closure of poorly performing campuses.” See also K. Carey, “DeVos Is Discarding College Policies That New Evidence Shows Are Effective.” The New York Times. June 30, 2017. [https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html](https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html).
⁴ 79 FR 64889
Programs that do not serve large groups of online students are a particular cause for concern addressed with the debt-to-earnings metric.

Guardrails for for-profit programs, including the GE rule, are critical for protecting student loan borrowers from default. For-profit colleges enroll only 10 percent of students but account for half of all student loan defaults.6 Students attending for-profit colleges take out loans more often and for larger amounts than students who attended public community colleges. Researchers recently found that 60 percent of for-profit attendees reported relying on student loans to pay for college, compared to only 28 percent of community college students.7 This reliance on student loans increases the risk of default for borrowers attending for-profits, particularly when low-quality programs leave graduates with essentially worthless degrees.

In addition to shouldering a disproportionate share of student loan debt and default, students at for-profit schools are more likely to file complaints about their institutions to the Department of Education. The Office of Federal Student Aid reports that for-profit schools accounted for 38 percent of all student complaints in 2022 despite for-profit schools receiving just 13 percent of aid volume.8

Although we are concerned about low wages in essential workforce sectors, available data indicate the high cost of programs operated for profit relative to comparable programs at public institutions represents the most prevalent cause of concern. For-profit programs producing the majority of medical assistants, for example, are more expensive than those at community colleges. According to our analysis, for-profit medical assistant certificate programs for which data are available and would be projected to fail the proposed rule saddle their graduates with a median debt load of $17,150 – nearly three times the median of $5,758 for programs across all sectors.9

Further research indicates students at failing GE programs – especially Pell Grant recipients – often have access to a nearby community college program that would come at substantially lower cost and substantially lower likelihood of winding up in default on their student loans.10

We recognize the sometimes-stark disparities in earnings and associated quality of life across varying regions even within the same state. We appreciate the Department’s attention to these varying economic disparities – especially conditions often, but not exclusively separating higher-earning urban and lower-earning rural areas. We would support a variety of potential approaches to accounting for


these disparities when and where greater data coverage makes local and regional differences more apparent.

Similarly, the Department has a compelling interest in ensuring every prospective student can access and complete a high-quality postsecondary credential. A disclosure site to which institutions must direct students matriculating to non-GE programs that lead to high debt loads must feature readily accessible, transparent data on program debt and completion, and it should be disseminated intentionally to reach students disproportionately harmed by the for-profit sector, including Black and Latino students and students from low-income backgrounds.

We acknowledge the historic and ongoing inequitable funding received by Historically Black Colleges and Universities, many minority-serving institutions, and community colleges. Some stakeholders have expressed concern that requiring students to acknowledge the potential high debt burden they will take on by enrolling in programs on the disclosure site could deter enrollment at institutions that serve as gateways to higher education and rewarding career fields, even if those fields may not be among the most lucrative. We encourage the Department to incorporate a metric of institutional support dedicated to instruction, direct academic support, and community service (as opposed to recruiting and marketing activities). This metric would provide additional context to inform college choice decisions and highlight institutions with demonstrable commitments to student success and community engagement – commitments at the core of HBCU, MSI, and community college missions.

We especially value programs that increase the number of qualified professionals in a wide array of public service professions, and we support continued improvements in the Public Service Loan Forgiveness program to provide a pathway to loan discharges after a period of repayment for professionals in eligible fields. We support continued improvements to PSLF and streamlining of other programs that provide pathways out of student debt for borrowers.

Institutions can and should provide additional information to inform students’ choices, even while recognizing the host of factors that may inform college choice processes (which may include geographic proximity, family ties, and other intangible connections). In conjunction with the GE rule, an equity-centered disclosure process for high-debt programs should provide students with critical protection and mitigate post-completion debt burdens.

We are concerned that the Department would not “publish specific text” for institutions to convey acknowledgement requirements to students when entering a high-debt program. Leaving such broad discretion to institutions opens an evident risk of a patchwork approach that could provide many students with less clarity about their debt prospects than others. The Department is making important strides to clarify and standardize language in areas including financial aid offer letters; we encourage the Department to take a comparable approach to specifying language for newly required non-GE program disclosures.

**Financial Responsibility.** Our support for and suggested improvements to proposed Financial Responsibility regulations are detailed in comments submitted by the Protect Students and Taxpayers Coalition.

**Standards of Administrative Capability.** Our support for and suggested improvements to proposed Administrative Capability regulations are detailed in comments submitted by the Protect Students and Taxpayers Coalition.
**Certification Procedures.** We are encouraged by the Department’s direction to strengthen certification procedures. The Department has few requirements regarding programs designed to lead to licensure, and effectively no ability to hold institutions accountable for low passage rates. The proposed indicators would enable a fuller consideration of program quality and suitability to participate in Title IV.

In 2020, the Government Accountability Office found that in approximately one-third of examined for-profit to nonprofit college conversions over its study period, “former owners or other officials were insiders to the conversion.” Although the GAO recognized the Department’s recent efforts to review such conversions more rigorously, the report’s authors contended that until the Department “develops and implements [stronger] procedures for new conversions, potential improper benefit may go undetected.”

The GAO’s findings aligned with what other researchers have found over time: conversions to nonprofit status can run the risk of effectively funneling Title IV dollars into profit streams for principals carried over into leadership roles from an institution’s time as a recognized for-profit entity. In light of all these troubling findings, we support the Department’s intention to take a more “hands-on [approach to] initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status.”

We support the Department’s proposed restriction against institutions contracting with or hiring individuals, agencies, or organizations with histories of association in any year in which an institution incurred a loss of federal funds greater than 5 percent of its yearly Title IV funds. Federal policies should not encourage a carousel of for-profit college operators moving from one fraudulent institution to another.

We are concerned that the proposed language could be read to imply that institutions authorized to operate in multiple states pursuant to a reciprocity agreement are not required to comply with all generally applicable state laws. To address this problem, the provision should be revised to clarify that institutions that are authorized to operate in multiple states pursuant to a reciprocity agreement must follow all generally applicable state laws and those education-specific state laws that relate to closure, recruitment, and misrepresentations. We also recommend broadening the provision to require institutions authorized pursuant to a reciprocity agreement to comply with all consumer protection laws in states where programs are offered.

We also strongly support the Department’s proposal to prohibit transcript withholding for Return to Title IV, in addition to cases where a school makes an error or commits fraud or misconduct. This prohibition would ensure colleges do not penalize students forced to drop out before getting 60 percent of the way through their semesters by preventing them from enrolling elsewhere and using their

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credits. It also follows the Consumer Financial Protection Bureau’s finding that such transcript withholding practices constitute an abusive practice that should be stopped.\textsuperscript{13}

**Ability to Benefit.** We welcome the consensus negotiators reached on ability to benefit regulations. Amendments proposed in the NPRM should guide students toward high-quality programs that do not engage in the kinds of fraudulent practices perpetrated by Florida Career Colleges (FCC).\textsuperscript{14} In doing so, the regulations should decrease student borrowers’ likelihood of default. The proposed regulation requiring states report data disaggregated by race, gender, age, economic circumstances, and educational attainment should also inform efforts to advance educational equity through ability to benefit.

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Thank you for the opportunity to provide comments on behalf of TICAS, as well as for your work to serve the interests of students and student loan borrowers. If you have any questions or need any further clarification on any of the above responses to the Department’s Notice of Proposed Rulemaking, please contact Dr. Kyle Southern from our team at ksouthern@ticas.org.

Sincerely,

Sameer Gadkaree
President
