U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue, SW, 5th floor
Washington, DC 20202

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Docket ID #: ED-2023-OPE-0089

To Whom It May Concern,

Thank you for the opportunity to provide comments on the Department of Education's proposed regulations on gainful employment and financial value transparency, financial responsibility, administrative capability, certification procedures, and ability to benefit.

New America's higher education program is a team of researchers, writers, and advocates from diverse backgrounds who shed light on the thorniest issues in higher education and develop student-centered federal policy recommendations. We are dedicated to making higher education more equitable, inclusive, and accountable so that everyone has the chance to obtain an affordable, high-quality education after high school. We are a voice for students in policy discussions dominated by institutional interests, making us well-suited to respond to this request. We welcome the opportunity to discuss our comments further, and our contact information is included at the end of this letter.

We applaud the Department for taking on this ambitious and much-needed regulatory agenda. Our comments strongly support the proposed rules, especially where they increase consumer information and protection for students and reduce the chances that taxpayer dollars go to poorly performing and predatory institutions. Through these rules, the Department is taking important steps toward ensuring that:

- **Our higher education system holds everyone accountable.** Students should not be left worse off than if they had never attended school. Institutions have a responsibility towards their students and to taxpayers; those that consistently put students in harm's way must improve or lose taxpayer funding. The Department has a key role in developing, carrying out, and enforcing regulations ensuring institutions and contractors are acting in the best interest of students and borrowers.

- **Families and taxpayers understand costs and outcomes.** Students need clear and consistent information about the colleges and universities they are interested in attending. Students and their families need to know how much going to these institutions will cost, and what the likelihood is that they will graduate and earn a living wage. Americans must have confidence that their tax dollars are being put to good use.

Below, we have provided detailed information and comments on each proposed regulation. In addition to our support, we highlight areas where the proposed rules might require technical changes or can be made more robust.

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Gainful Employment (GE)

General Provisions

The new GE regulations that the Department has proposed will ensure that graduates of career-oriented programs are on the pathway to a living wage and that their credential offers enough of a return to pay down their student loan debt. By implementing measures that ensure

both accountability and transparency, the Department will take a stand against predatory practices and safeguard the futures of students and the hard-earned money of taxpayers.

In the intervening years since GE was dismantled, students have been harmed and taxpayer dollars have been wasted. Take Maria, for example, a student who enrolled in a program that would have failed GE.[1] She thought her associate degree would help her become an entrepreneur, but she has only been able to find low-wage and hourly employment in the retail sector. She's watched her debt balloon and has landed in default on her student loans. If she had attended the nearby community college, which had a similar passing program at a much lower cost, her trajectory would have likely looked a lot different.

Or consider the experience of Samer Hassan who provided public comment to the Department during the rulemaking process.[2] He enrolled in a certified nursing assistant program that promised him and other students a pathway out of poverty. The school advertised that he would earn good wages helping his community—one instructor even promised $50,000 starting salaries if students "played their cards right." Instead, he found himself working in a low-wage job upon graduation, with no room for growth and economic stability. Samer emphasized, "My story illustrates why the Department of Education should write strong gainful employment rules that prioritize protecting students and hold programs accountable for poor outcomes."

Academic research confirms that low-quality programs *cause* low earnings and poor outcomes (it is not simply that low-quality programs accept more disadvantaged students). Many researchers have found that students at for-profit schools have higher default rates and lower earnings, even after statistically controlling for student characteristics like race, family income, and standardized test scores.[3] Researchers at the Federal Reserve recently used a new method to isolate the causal effect of attending a for-profit school instead of a public school.[4] They found that for-profit enrollment caused the default rate among four-year students to almost double.

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[1] Tia Caldwell, "A New Blog Series on Gainful Employment," EdCentral (blog), New America, April 25, 2023, https://www.newamerica.org/education-policy/edcentral/blog-series-gainful-employment/.

[2] Department of Education, Office of Postsecondary Education, Institutional and Programmatic Eligibility Committee Meeting (transcript), Session 3, Day 4, Afternoon, March 17, 2022, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/transcrmar17pm.pdf.

[3] Please see Yuen Ting Liu and Clive Belfield, *Evaluating For-Profit Higher Education: Evidence from the Education Longitudinal Study* (New York, NY: Center for Analysis of Postsecondary Education and Employment: September 2014), https://eric.ed.gov/?id=ED549157; and Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse Than We Thought* (Washington, DC: Brookings Institution, January 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/; and Adam Looney and Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions they Attended Contributed to Rising Loan Defaults* (Washington, DC: Brookings Institutions, 2015), https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/.

[4] Luis Armona, Rajashri Chakrabarti, and Michael Lovenheim, "Student Debt and Default: The Role of For-Profit Colleges," *Journal of Financial Economics* 144, no. 1 (April 2022): 67-92. https://doi.org/10.1016/j.jfineco.2021.12.008.

The defaults occur because for-profits saddle students with higher debt and, as confirmed in other studies, lower post-graduate earnings.[5]

The flipside of the fact that poor-quality programs cause worse outcomes is that students who attend higher-quality programs will have better outcomes. A study of the last time the government cut off federal aid to low-quality schools in the 1990s found that people who would have enrolled in for-profit schools instead attended their local community college, where they went on to have fewer defaults and higher earnings.[6]

Low-financial-value career-oriented programs have been allowed to flourish too long. The new rules proposed by the Department will go a long way in protecting students and taxpayers. New America supports the GE rule and related financial value transparency the Department has put forth. Below we detail our support and highlight ways in which GE and financial value transparency can be strengthened even further.

SUPPORT: Earnings measured at three years (§ 668.2)

Available research suggests that incomes and loan outcomes three years after graduation are highly correlated with future outcomes. By year three, evidence shows that we can predict the long-term outcomes of whether a loan is performing (paid off or being paid down) or not performing (growing balances or in default). A majority of loans (79 percent) in either status at year three stayed in that same status by year 15.[7] Additionally, state Unemployment Insurance earnings data show that earnings of college graduates measured two years after graduation have a 0.67 correlation coefficient with earnings at seven years; the correlation at four years is 0.87. (The paper did not show seven and three year earnings correlations, but presumably the measure is somewhere in-between.) Early and later earnings correlations are even higher for subbaccalaureate institutions, which are more likely to be affected by GE, with year two and year seven earnings correlated 0.92.[8]

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[5] Please see Stephanie Riegg Cellini and Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data* (Cambridge, MA: National Bureau of Economic Research, January 2018), https://www.nber.org/system/files/working_papers/w22287/w22287.pdf; and David Deming, Noam Yuchtman, Amira Abulafi, Claudia Goldin, and Lawrence F. Katz, “The Value of Postsecondary Credentials in the Labor Market: An Experimental Study,” *American Economic Review* 106, no.3 (March 2016): 778-806,https://www.aeaweb.org/articles?id=10.1257/aer.20141757.

[6] Stephanie Cellini, Rajeev Darolia, and Lesley Turner, “Where Do Students Go When For-Profit Colleges Lose Federal Aid?” *American Economic Journal: Economic Policy* 12, no.2 (May 2020): 46-83, https://www.aeaweb.org/articles?id=10.1257/pol.20180265.

[7] Tiffany Chou, Adam Looney, and Tara Watson, *Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability* (Cambridge, MA: National Bureau of Economic Research, February, 2017), https://www.nber.org/system/files/working_papers/w23118/w23118.pdf.

[8] See tables 3.6 and 3.13 in Veronica Minaya and Judith Scott-Clayton, “Labor Market Outcomes and Postsecondary Accountability: Are Imperfect Metrics Better than None?” in *Productivity in Higher Education,* ed. Caroline Hoxby and Kevin Stange, (Chicago, Illinois: University of Chicago Press, 2019), 67-104, https://www.nber.org/system/files/chapters/c13876/c13876.pdf.

These high correlations mean that the three-year earnings measure provides accurate information about how well college programs serve their students. It is, of course, true that waiting longer would yield even more accurate information about the long-term financial well-being of graduates. But GE must provide consumer protection in a timely manner. Three years strikes the right balance between accuracy and timeliness. Three years also corresponds to the maximum length of time students can pause their loans through forbearances, implying that the Department expects students to have found their financial footing after three years in repayment.

In addition, measuring earnings at three years using the GE parameters originally designed for earnings measured at two years (such as the age of the high school graduates for the earnings threshold and the D/E passage rates) provides colleges a generous and reasonable cushion. Further pushing back the earnings measurement may require a recalibration of these parameters, and would sacrifice timeliness for little gain in accuracy.

SUPPORT: Tax records accurately reflect cosmetology wages (§ 668.405)

The for-profit sector has repeatedly argued that a minimum income threshold for GE is unfair to programs like cosmetology, where tips make up a l portion of income. Indeed, recent studies funded by cosmetology schools and industry players claim to show far higher salaries for cosmetologists than appear in federal earnings data and the GE data the Department released. One such report claims to show drastically higher earnings levels—on average, $79,000 compared to Bureau of Labor Statistics average annualized earnings of about $36,000.[9] It is important to note that the report is industry-funded, authored by Q'nity Institute (an arm of which provides financial literacy curricula to cosmetology schools to sell to students in their kits). The report even states that "there will be perceived and actual conflicts of interest in undertaking this market research." The report was sponsored by some well-known cosmetology companies such as Aveda, Wella Company, and Pivot Point, who have a vested interest in seeking to imply the earnings of cosmetology graduates are better than unbiased federal data show.

The report also relies on a biased, self-selected sample of salons that vastly overstate earnings for the average cosmetologist. As the report notes, the U.S. Bureau of Labor Statistics shows average annual earnings for the roughly 300,000 cosmetologists in the U.S. to be nearly $43,000 lower than the Q'nity estimate.[10] These figures are corroborated by other reliable government sources that draw on large randomized samples of individuals that are nationally

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[9] Office of Information and Regulatory Affairs, Office of Management and Budget, "View EO 12866 Meeting 1840-AD57 requestor Q'nity, Inc." https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD57&meetingId=193423&acronym=1840-ED/OPE, accessed June 20, 2023.
[10] U.S. Bureau of Labor Statistics, "Occupational Employment and Wages, May 2022, 39-5012 Hairdressers, Hairstylists, and Cosmetologists," https://www.bls.gov/oes/current/oes395012.htm#(1), accessed June 20, 2023.

representative, which finds median earnings for full-time year-round working cosmetologists in 2021 were $31,311.[11]

Unbiased and rigorous academic research confirms that tax law evasion via unreported, tipped income is, in reality, a marginal problem in the cosmetology field. For instance, analysis of IRS sources shows that this unreported income is likely around 8 percent of income in the sector—not enough to explain the poor performance of many cosmetology programs, or to change the outcomes of more than a handful of programs on the GE tests.[12] The Department is right to not make any adjustments based on potential income underreporting.

SUPPORT: Immediate enforcement (§ 668.408(b))

New America supports the Department's plan to collect data next year and begin enforcement as soon as possible. After the 2014 GE rule, colleges had years to build up infrastructure for the required data reporting. In addition, collecting many of the required data, such as the enrollment statuses of students, is necessary for the basic functioning of a school. Moreover, for decades, the Higher Education Act (HEA) has required that career-oriented programs lead to gainful employment. Programs have benefited from lax enforcement of this provision for many years, but participating in Title IV is a privilege that comes with quality standards and responsibilities.

There is also no need to slow things down because of the rulemaking process, which has been fair, robust, and provided adequate time for response.[13] The last GE draft suggested by the Department was very similar to the language in this NPRM,[14] as was the accompanying data.[15] This gave organizations a year and half to consider likely GE parameters and use the data to understand their effect. The transparency provisions are also not new, and the Department put out a request for information (RFI) asking for feedback on evaluating low-financial value

[11] U.S. Census Bureau, "Full-Time, Year-Round Workers & Median Earnings by Sex & Occupation," https://www.census.gov/data/tables/time-series/demo/industry-occupation/median-earnings.html, accessed June 20, 2023.
[12] Stephanie Riegg Cellini and Kathryn Blanchard, *Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income* (Washington, DC: Postsecondary Equity & Economics Research Project, January 2022), https://www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.
[13] U.S. Department of Education, "Negotiated Rulemaking for Higher Education 2021-22," https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn, accessed June 20, 2023.
[14] U.S. Department of Education, Office of Postsecondary Education, "Issue Paper 3: Gainful Employment, Session 3: March 14-18, 2022, " https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/isspap3gainempl.pdf, accessed June 20, 2023.
[15] U.S. Department of Education, Notice of Proposed Rulemaking, "2022 Program Performance Data Description," https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprm-2022ppd-description.pdf.

programs in January.[16] In short, interested parties have had thirty days to review these specific proposals, on top of months and years to consider the details of this policy space.

Enforcement should also not be delayed due to the COVID-19 pandemic. First, the high school earnings premium automatically adapts to labor market disruptions, so it continues to be a good measure of a program's value-add. Second, average annual income during the years of the pandemic—even in 2020—shows no break with previous trends.[17]

SUPPORT: Limited appeals (§ 668.603)

We agree with the Department that the previous appeals process created an administrative headache with little upside. This GE rule has been carefully constructed to be fair and workable in a wide range of situations. In addition, the data used to calculate passage rates—tax and NSLDS data—is the best administrative data available.

SUPPORT: No GE zones

As written, the GE rule will help programs that are close to passing understand where they need to make improvements in order to help their graduates succeed financially. Schools will have access to their programs' GE rates and thus will know which programs fail or are close to failing. Any prudently managed school will notice if any of its programs are close to failing GE and be able to make adjustments to ensure the future success of the schools' programs and students. There is no need for the Department of Education to publish a specific zone, a provision that was previously burdensome to administer.[18]

RECOMMENDATION: Calculate a passage rate for all GE programs (§ 668.16(t))

There must be a system to prevent small programs from avoiding oversight entirely. In the § 668.16(t) portion of the "Administrative Capability" section below, we suggest a method for counting schools as not administratively capable if more than 50 percent of their students or Title IV funds are in poor performing GE programs, counting small programs. This change will be key to ensuring the effectiveness of the GE rule, since it would encourage schools which offer mostly GE programs to consider the quality of their smaller programs. The provision will also greatly cut down on the incentives for for-profit colleges to subdivide programs to skirt GE metrics.

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[16] 88 FR 1567, https://www.federalregister.gov/documents/2023/01/11/2022-28606/request-for-information-regarding-public-transparency-for-low-financial-value-postsecondary-programs.

[17] U.S. Department of Education, National Center for Education Statistics, "Annual Earnings by Educational Attainment," https://nces.ed.gov/programs/coe/indicator/cba/annual-earnings#3, accessed June 20, 2023.

[18] 88 FR 32300, https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative#p-176.

RECOMMENDATION: Identify programs with a four-digit CIP code (§ 668.2)

New America is concerned about GE's coverage rates, which may limit the effectiveness of the new transparency and consumer protection provisions. Using IPEDS data, the Urban Institute reported that 76 percent "of six-digit programs in the GE data are the only six-digit program with data within their four-digit program." Among the four-digit CIP codes that did have more than one six-digit program, only 10 percent have different outcomes from each other.[19] This means rolling up programs would not lose much granularity but would increase coverage by three to five percentage points.[20] An alternative could be to use the six-digit CIP code for programs that have data but roll up any remaining programs to the four-digit CIP code to increase coverage.

RECOMMENDATION: Provide more information on the minimum n-size (§ 668.403(f) & § 668.404(d))

The NPRM proposes that programs with less than 30 IRS-matched graduates over four years will not be evaluated using the GE metrics.[21] In 2014, the Department wrote that the 30 student limit was chosen partially to minimize the chance of failing a program based on the outsized influence of one student. But passing a program that is not helping graduates lead to gainful employment is arguably a greater error than failing a borderline program. Automatically passing small programs increases the risk of this error, and this risk should be considered when choosing an *n*-size. Additionally, this GE rule has a lower chance of incorrectly failing programs compared to the 2014 rule since earnings are measured at three years instead of two years. In fact, the Department explained that, "this later measurement of income would provide a buffer *more than sufficient* to counter possible error introduced by the statistical noise added by the IRS."[22] This change may require reconsidering whether 30 data points still strikes the right balance between minimizing errors and protecting student privacy.

We hope that any reconsideration would include analysis of *n*-sizes beyond the 10 and 30 discussed in the NPRM. It is possible that, for instance, 20 or 15 matched samples strike the correct balance. Additionally, it may be appropriate to allow the minimum *n*-size to vary by program depending on the specific privacy considerations, rather than setting a one-size-fits-all *n*-size. In making a determination, the Department should consider the extent of the IRS's added statistical noise at different *n*-sizes in addition to 30,[23] as well as the minimum *n*-size for which the IRS will usually report data.

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[19] Erica Blom, Robert Kelchen, Carina Chien, and Kristin Blagg, "How to Make Gainful Employment More Inclusive," *Urban Wire* (blog), March 31, 2021, https://www.urban.org/urban-wire/how-make-gainful-employment-more-inclusive.

[20] 88 FR 32300, https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative#p-1471.

[21] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-495.

[22] 88 FR 32300, https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative#p-538.

[23] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-536.

One option for balancing these considerations is to use more flexible wording to allow for increased coverage if privacy techniques improve, without requiring another rule-making. For instance, the Department could require that programs have an *n*-size of five above the minimum *n*-size required by the federal agency with earnings data or above an n-size that corresponds with an acceptable amount of statistical noise. Even more flexible wording could be, "the Secretary shall annually specify the procedure for identifying the minimum *n*-size in the Federal Register, with *n*-sizes not to exceed 30 or fall below 10, based on a consideration of the impact of statistical noise and any minimum *n*-sizes required by the federal agency with earnings data."

Debt-to-Earnings (D/E) Test

SUPPORT: Students and the public support D/E

Preventing programs that saddle students with unaffordable debt from issuing loans has widespread support among the public and among students. New America's 2023 nationally representative Varying Degrees survey found that 72 percent of Americans support the idea that colleges and universities should lose some access to taxpayer dollars if they lead to high student loan debt relative to their earnings.[24] The survey also asked more specifically about GE programs and found 79 percent support a D/E measure.[25]

In focus groups New America convened with defaulted borrowers, participants volunteered that the government should not allow loans to be taken out at low-quality programs. One student borrower said, "If you are going to school for X, Y, Z, and this is how much you can make in that degree after you come out of school, there needs to be some type of cap on how much you can borrow." Another said, "There should be some sort of oversight or some government that's monitoring this, and not just allowing [colleges] just to give away loans so easily. Maybe then it would save people trouble later in life, like some of us seem to be experiencing."[26] Indeed, because the debt-to-earnings test (as part of a gainful employment rule) was not in place, many of the focus groups participants spent decades with debt and jobs that did not lift them out of material hardship. In addition, they had experienced garnished tax refunds and paychecks as well as destroyed credit scores that pushed them deeper into poverty.[27]

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[24] Data forthcoming in Varying Degrees 2023 to be published August 2023, please visit http://www.varyingdegrees.org.
[25] Question text: "Vocational programs in recognized occupations at colleges and universities are generally at for-profit institutions or are non-degree awarding programs at non-profit public or private institutions. How much do you support or oppose the idea that these vocational programs should lose eligibility for federal financial aid if these programs have consistently left students deeply in debt relative to their earnings?"
[26] Sarah Sattelmeyer and Tia Caldwell, *In Default and Left Behind* (Washington, DC: New America, November 2022), https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/methods.
[27] Tia Caldwell, "A New Blog Series on Gainful Employment Regulations," EdCentral (blog), April 25, 2023, https://www.newamerica.org/education-policy/edcentral/blog-series-gainful-employment/.

SUPPORT: D/E ratios are based on strong evidence

Both of the ratios used for the debt-to-earnings test are based on strong research about unaffordable debt levels. The annual ratio originated from a mortgage underwriting standard for the maximum amount of non-mortgage debt (including student loans) that a person should hold and is still commonly cited as a rule of thumb for assessing whether debt is manageable.[28] The discretionary ratio also has a strong research base, since it was suggested by academics who reviewed patterns in spending habits, college wage premiums, financial aid needs analysis measures, and borrowers' reported well-being.[29]

New America's own analysis of the nationally representative 2019 Survey of Household Economics and Decisionmaking found that borrowers with student loan payments above 8 percent of income or 20 percent of discretionary income experienced greater hardship than those with payments below these thresholds (See Table 1).[30] Borrowers paying more than these thresholds are significantly more likely to have fallen behind on their student loans and other bills, to have inadequate retirement savings, and to need food assistance. And they are more likely than other borrowers to regret attending college. This suggests that the D/E metrics are well-considered and evidence-based measures of unaffordable debt.

[28] See, for example: Laura Trapley and Sarah Silbert, "The 28/36 Rule Lays Out How Much Debt You Can Have and Still Qualify for Most Mortgages," *Business Insider,* November 3, 2022, https://www.businessinsider.com/personal-finance/28-36-rule-mortgages; Julie Compton, "How Much House Can You Afford? The 28/36 Rule Will Help You Decide," *NBC News*, September 7, 2018, https://www.nbcnews.com/better/pop-culture/how-much-house-can-you-afford-28-36-rule-will-ncna907491; Elvis Picardo, "What Is a Reasonable Amount of Debt? This Rule Can Help You Know," *Investopedia*, March 28, 2023, https://www.investopedia.com/ask/answers/12/reasonable-amount-of-debt.asp; and Miranda Marquit, "Buying a House With Student Loan Debt: Here's How to Do it," *Lendingtree*, February 16, 2021, https://www.lendingtree.com/student/buy-house-with-student-loan-debt/.
[29] Sandy Baum and Saul Schwarz, *How Much Debt Is Too Much? Defining Benchmarks for Manageable Student Debt* (New York, NY: The College Board, 2006), https://files.eric.ed.gov/fulltext/ED562688.pdf.
[30] Board of Governors of the Federal Reserve System, "Survey of Household Economics and Decisionmaking 2022," https://www.federalreserve.gov/consumerscommunities/shed.htm, accessed June 20, 2023.

TABLE 1.

Student Loan Borrowers Repaying More than 8 Percent of Income or 20 Percent of Discretionary Income Are More Likely to Experience Hardship

	Payments below 8 percent of income	▼ Payments above 8 percent of income	Payments below 20 percent of discretionary income	Payments above 20 percent of discretionary income
Feel retirement savings are off track*	45	64	45	63
Cannot pay some bills this month	16	27	14	32
Are behind on student loans	11	26	11	28
Wish they had attended less college**	11	22	11	23
Received food stamps last year	4	19	2	22

Author's analysis of the 2019 Survey of Household Economics and Decisionmaking (SHED). The payment ratio was approximated with the midpoint of the income and loan payment answer ranges. Borrowers who said their loan payments were $0 were excluded from the calculation.

*Among those not already retired.
**Among those not currently in school.

RECOMMENDATION: Require programs to pass both D/E ratios (§ 668.402(c))

As we noted above, there is strong evidence that both D/E ratios result in unaffordable debt for most borrowers. But the regulations would let programs pass the D/E test by passing *either* ratio, limiting the utility of each ratio. This means that all programs that pass the discretionary ratio pass the D/E test. That includes programs with loan payments as high as 15 percent of total median income, well above the 8 percent annual threshold. Meanwhile, programs that pass the annual ratio (and the high school earnings premium) can have up to 50 percent of median discretionary income going to loan payments—well above the 20 percent discretionary ratio.

A simple way to fix this is to require that career-oriented programs pass *both* ratios in order to receive federal financial aid. Another possible solution is to rein in the discretionary ratio, originally intended to be the absolute maximum permissible debt for any given student (researchers note that there are,"virtually no circumstances under which higher debt service ratios would be reasonable").[31] Raising the discretionary income level to 225 percent of the

[31] Sandy Baum and Saul Schwarz, *How Much Debt Is Too Much? Defining Benchmarks for Manageable Student Debt* (New York, NY: The College Board, 2006), https://files.eric.ed.gov/fulltext/ED562688.pdf.

federal poverty guidelines is a reasonable way to make the discretionary income appropriate as a threshold that half of students can exceed. As the Department has already pointed out, this higher measure of discretionary income is better aligned with the alleviation of material hardship[32] and the minimum wage.[33] This may make 225 percent of the poverty guidelines a better measure of whether students can afford more than a $0 monthly payment and a better threshold for evaluating unaffordable debt in an accountability measure.

RECOMMENDATION: Include Parent PLUS debt in D/E (§ 668.403 (b))

Unlike the proposal that was last seen at the last session of the programmatic eligibility negotiated rulemaking, the Department's proposed rule excludes Parent PLUS debt from the D/E measure. Parent PLUS debt should be included to avoid undercounting debt obligations and introducing a major loophole.

If borrowed, Parent PLUS loans must be used to finance the student's education, so they are just as much a debt-financed cost of a college program as loans taken out in a student's own name. In fact, many families and schools use Parent PLUS loans as an alternative to other federal loans. Approximately 20 percent of undergraduates use Parent PLUS loans without exhausting all of their own borrowing capacity.[34] And, according to federal data, Parent PLUS loans make up more than half of the total federal loan disbursements at over 100 colleges.[35] Given many schools' and families' reliance on Parent PLUS loans, excluding these loans from D/E calculations underestimates the amount of debt families are taking on for educational programs.

Worse, the omission will create a loophole allowing high-debt programs to pass the D/E test by directing families toward Parent PLUS loans. The federal government already made this mistake once. In the 1990s, Congress introduced the Cohort Default Rate (CDR) to cut off federal financial aid to colleges whose student borrowers had high default rates. But Congress failed to consider Parent PLUS loans. Over time, the CDR became toothless as colleges learned how to skirt the rule,[36] including by encouraging Parent PLUS debt over other federal student loans.[37] (Income-driven repayment plans, forbearances, and school closures also played a role in the declining number of CDR failures.) This time around, the Parent PLUS loophole must be closed so that the GE regulations remain effective.

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[32] 88 FR 1894, https://www.federalregister.gov/d/2022-28605/p-157.
[33] 88 FR 1894, https://www.federalregister.gov/documents/2023/01/11/2022-28605/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program#p-161.
[34] Sandy Baum, Kristin Blagg, and Rachel Fishman, *Reshaping Parent PLUS Loans* (Washington, DC: The Urban Institute, April 2019), https://www.urban.org/sites/default/files/publication/100106/2019_04_30_reshaping_parent_plus_loans_finalizedv2.pdf.
[35] Authors' calculation using U.S. Department of Education data: https://studentaid.gov/data-center/student/title-iv.
[36] U.S. Government Accountability Office, *Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates* (Washington, DC: Government Accountability Office, April 2018), https://www.gao.gov/assets/gao-18-163.pdf.
[37] Rachel Fishman, *The Parent Trap: Parent PLUS Loans and Intergenrational Borrowing* (Washington, DC: New America, January 2014), https://static.newamerica.org/attachments/748-the-parent-trap/Corrected-20140110-ParentTrap.pdf.

Today, even before experiencing new incentives to push Parent PLUS loans, about 90 programs—almost exclusively at for-profit institutions—would pass only because of this loophole.[38] One of these is a bachelor's degree that produces median earnings of around $38,000 and median debt, excluding Parent PLUS loans, of $27,000. The April 2022 dataset released by the Department last year reveals that this program's median debt with Parent PLUS loans is over $20,000 higher, at $50,000. Using this accurate accounting, it is clear that the degree is not worth its costs, whether those costs are accounted for under the name of a student or his or her parents.

Only including Parent PLUS debt in D/E's median debt measure will close this loophole, but there are other steps the Department could take to limit the damage. The NPRM suggested that the requirement that schools offer adequate financial aid counseling could help mitigate the risk of abuse.[39] But to more fully cut down on abuse of the Parent PLUS loophole, this requirement must be strengthened. Schools with at least half GE programs and at least 25 percent of GE students using Parent PLUS loans that have at least one program that passes gainful employment but would have failed with the inclusion of Parent PLUS loans (or all failing programs) should be recognized as having failed to provide adequate financial counseling. Additionally, the Department should prohibit institutions from including Parent PLUS or non-federal loans in the information they provide to students. (We include more details in the § 668.16(h) portion of the "Administrative Capability" section.)

SUGGESTED REDLINE:
(d) Loan debt and assessed charges. (1) In determining the loan debt for a student, the Secretary includes— (i) The amount of Title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments except for those related to false certification, borrower defense discharges, or debt relief initiated by the Secretary as a result of a national emergency) for enrollment in the program, excluding ~~Direct PLUS Loans made to parents of dependent students and~~ Direct Unsubsidized Loans that were converted from TEACH Grants

RECOMMENDATION: Use a 10-year amortization timeline for all programs (§ 668.403(b)(2))

The proposed repayment time is 20 years for doctoral programs and first professional graduate programs, 15 years for master's and bachelor's degrees, and 10 years for certificate programs and associate degrees.[40] Instead of different timelines for different types of programs, the D/E ratios should use a 10-year repayment timeline for all GE programs.

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[38] Author's comparison of the median debt measure in the Program Performance Data (PPD) (which excludes Parent PLUS debt from the median) and the April 2022 data (which includes Parent PLUS debt in the median). Please see: U.S. Department of Education, Notice of Proposed Rulemaking, "2022 Program Performance Data Description," https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprm-2022ppd-description.pdf.
[39] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-504.
[40] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-1443.

When a given loan amount is spread over a longer time period, the monthly loan payment is lower. As a result, a longer repayment timeline makes it easier for the calculated loan payments to be a passing percentage of earnings. For instance, a program with median earnings of $40,000 could pass D/E with debt of $35,000 using a 10-year repayment timeline. This program's debt could be much higher ($58,000) using a 20-year repayment timeline (and a 4 percent interest rate).

There is no reason bachelor's degrees and some graduate programs should be held to lower standards than other programs via a longer D/E amortization period. Lowering standards for longer programs fails to respect students' time as one of their highest costs of enrollment. When students spend years pursuing an educational program, they are giving up time they could have spent working, being present with their family, or in another educational program.

During the 2014 regulatory process, some argued that more debt was an unavoidable part of long graduate-level programs.[41] But recent evidence shows that only in the for-profit sector do longer programs always lead to more debt. A 2018 report found that half of the students who earned a research doctorate from public and nonprofit universities had accumulated absolutely no debt. At for-profit universities, on the other hand, only 5 percent of doctoral graduates left without debt.[42] For-profit graduate students take out 80 percent more debt across all graduate degrees, not just doctoral programs.[43] These more expensive programs are not the best chance historically disadvantaged students have for upward mobility. Students are done no favors when promised economic returns, but given a substandard education and decades of debt.

Nor does the fact that graduate and bachelor's degree borrowers tend to take longer to repay their loans justify lower GE standards. These borrowers take longer to repay their loans because they are more likely to have debt that they can only afford with the help of tax-payer funded repayment relief (like income-driven repayment plans and loan deferments and forbearances). Originally, federal student loan borrowers had only one repayment option: repay in equal installments over ten years. As the Department has noted, other repayment plans were introduced later to shield students from the financial pain of large debt balances and lower than expected returns to education.[44]

These repayment relief options shift the direct costs of unaffordable debt from students to taxpayers. But even with cheaper borrowing, students suffer from college programs that do not lead to gainful employment—paying in lost time, disappointing career outcomes, additional

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[41] 79 FR 64889, https://www.federalregister.gov/d/2014-25594/p-675.
[42] Sandy Baum and Patricia Steele, *Graduate and Professional School Debt: How Much Students Borrow* (Washington, DC: AccessLex Institute and The Urban Institute, January 2018), https://www.urban.org/sites/default/files/publication/95626/graduate-and-professional-school-debt.pdf.
[43] Jaymes Pyne and Eric Grodsky, "Inequality and Opportunity in a Perfect Storm of Graduate Student Debt," *Sociology of Education* 93, no. 1 (September 19, 2019): 20-39, https://doi.org/10.1177/0038040719876245.
[44] 88 FR 1894, https://www.federalregister.gov/documents/2023/01/11/2022-28605/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program#p-42.

stress, and out-of-pocket costs. The government pays directly, wasting taxpayer dollars on programs that do not increase prosperity or labor market skills. Since low-quality college programs continue to be costly, accommodations in the loan repayment system should not be used as an excuse to lower GE accountability thresholds. In fact, the NPRM notes that, "it would be negligent to lower our accountability standards [...] as a result" of income-driven repayment plans, but fails to connect that 15- and 20-year amortization timelines *are* influenced by income-driven repayment plans.[45]

Nor should standards be lowered because the repayment relief may result in some students choosing to borrow more. The median debt measure was carefully designed to only include debt that students take out for the costs directly under a school's control: the costs of tuition, fees, and supplies. Even if students take advantage of loan subsidization to borrow more for their cost of living expenses, programs' debt-to-earnings ratios would not be affected. Schools will continue to be able to lower students' countable debt by lowering tuition or offering more grant aid.

Gainful employment should instead judge programs by whether they produce debt that would be affordable *even if taxpayers did not provide repayment relief*. The best way to abstract away from these repayment relief options is to use the 10-year repayment timeline for which the system was originally designed. Under a 20-year period, passing programs may saddle their students with unreasonable debt loads *double* their yearly income. With a consistent 10-year amortization timeframe, the rule would keep all programs' allowable debt within sight of the rule of thumb that loan balances should be less than 100 percent of earnings.[46] Any longer repayment period would fall into the trap of replicating—not regulating—patterns of unsustainable student loan debt.

SUGGESTED REDLINE:
§ 668.403(b)(2) Amortizing the median loan debt~~—(i)(A) Over~~ over a 10-year repayment period ~~a program that leads to an undergraduate certificate, a postbaccalaureate certificate, an associate degree, or a graduate certificate; (B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or (C) Over a 20-year repayment period for any other program; and~~

RECOMMENDATION: Missing IRS matches should not result in more favorable D/E rates (§ 668.405(d)(2))

In the proposed rule, programs with graduates who could not be matched with IRS earnings would have the highest amount of debt removed from the median debt calculation. This is not a reasonable way to approximate the unmatched student's debt. No adjustment should be made since the best estimate of a missing student's debt is the median debt among the student's peers.

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[45] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-150.
[46] Annie Nova, "Follow This Rule of Thumb to Avoid Taking on Too Much Student Debt, College Experts Say," *CNBC,* March 24, 2023, https://www.cnbc.com/2023/03/24/follow-this-rule-of-thumb-to-avoid-taking-on-too-much-student-debt.html.

This provision is an unnecessary giveaway to institutions in the context of a rule that already has many cushions built in to provide schools leeway. In addition, it creates worrisome incentives, because schools themselves are in charge of verifying the list of their recent graduates (§ 668.405(b)(1)(iii)). This policy may tempt schools to do a poor job verifying student names. More importantly, it underestimates median debt, and should be scrapped.

Gainful Employment Earnings Premium Measure

SUPPORT: Students and the public support an earnings premium

An earnings premium enjoys widespread support. New America's 2023 Varying Degrees Survey found that 74 percent of Americans (and 77 percent of currently-enrolled students) agree that colleges and universities should lose some access to taxpayer dollars if they have low rates of graduates earning a living wage.[47] (The high school earnings premium is below the living wage in most cases.)

Like seen with D/E support, New America's survey also found that the public strongly supports a high school earnings premium for GE programs. Nearly 8 in 10 (78 percent) support the policy that GE programs should lose federal financial aid if they consistently fail to help graduates earn more than those who completed only high school.[48]

Additionally, students consistently report that they go to college because they want to make more money than they would if they did not attend more school. A nationally representative survey of undergraduate decision making conducted by New America in 2015 found that the top three reasons students chose to enroll in college were to improve their employment opportunities, to make more money, and to get a good job. Ninety percent said making more money was important in their decision to attend college, including 70 percent who said it was very important.[49] More recently, a *New York Times* focus group of high school seniors applying to college found that all participants said that they chose to go to college to gain a credential that would help them secure a job.[50] We also found support for an earnings premium in focus groups

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[47] Varying Degrees 2023 will be published in August 2023 at https://www.varyingdegrees.org. When asked this same question last year, 74 percent of Americans agreed see Rachel Fishman, Sophie Nguyen, and Louisa Woodhouse, *Varying Degrees 2022: New America's Sixth Annual Survey on Higher Education* (Washington, DC: New America, July 2022), https://www.newamerica.org/education-policy/reports/varying-degrees-2022/findings/.

[48] Question wording: "Vocational programs in recognized occupations at colleges and universities are generally at for-profit institutions or are non-degree awarding programs at non-profit public or private institutions. How much do you support or oppose the idea that these vocational programs should lose eligibility for federal financial aid if these programs have consistently failed to help graduates earn more than those who completed only high school?"

[49] Rachel Fishman, "College Decisions Survey: Deciding to Go to College," *EdCentral* (Blog), May 28, 2015, https://www.newamerica.org/education-policy/edcentral/collegedecisions/.

[50] Kristen Soltis Anderson and Patrick Healy, "Harvard or Happiness? 11 High School Seniors Debate College Rankings," *The New York Times*, January 25, 2023, https://www.nytimes.com/interactive/2023/01/25/opinion/high-school-seniors-college-focus-group.html.

with defaulted borrowers, in which many participants said they regretted their time in college because they did not get a financial return on their investment.[51]

SUPPORT: The high school earnings premium is based on strong evidence

The high school earnings premium is a common-sense, evidenced-based way to protect students. An earnings premium is needed in addition to the D/E test because, although not all students borrow for their programs, many use federal financial aid and all contribute their own time and money to complete programs. The high school earnings premium, in particular, is an intuitive and easy to understand measure.

We are also persuaded by Figure 3.2 in the NPRM, which shows that the high school earnings premium is a reasonable approximation of students' pre-college earnings.[52] Comparing pre-college earnings to post-college earnings is ideal for approximating students' counterfactual earnings had they not attended college. (If we could know counterfactual earnings, we could calculate the causal effect of a program on earnings.) Since it is impossible to get pre-college earnings for all programs, the high school earnings premium is the best available metric for measuring whether programs contribute to students' ability to earn higher wages in GE.

The high school earnings premium has other advantages. The earnings of high school graduates are responsive to labor market conditions, such that in labor market downturns the threshold will automatically become more lenient. This is especially true because the measure includes unemployed high school graduates, meaning that the threshold will automatically respond not only to changes in wages but also to changes in the unemployment rate. As a result, the test will remain a fair measure of how much a program improves earnings, even in the face of labor market downturns and disruptions (such as the COVID-19 pandemic).

The threshold also provides colleges a cushion because, although it is a good approximation of counterfactual earnings, it errs on the side of being too low. According to an analysis comparing the high school wage premium to MIT's living wage calculator,[53] the high school earnings premium is lower than the living wage in 46 states. For single-earner families with a child, the gainful employment threshold is, on average, $47,000 below a living wage.[54] Thus the threshold

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[51] Sarah Sattelmeyer and Tia Caldwell, *In Default and Left Behind* (Washington, DC: New America, November, 2022), https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/key-finding-1-before-borrowers-entered-default-they-did-not-receive-the-benefits-promised-by-higher-education.

[52] 88 FR 32300, https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative#p-1464.

[53] Massachusetts Institute of Technology, "Living Wage Calculator," https://livingwage.mit.edu/, accessed June 20, 2023.

[54] Tia Caldwell, "An Earnings Threshold Would Sanction Only Low-Value College Programs," *EdCentral* (blog), April 25, 2023, https://www.newamerica.org/education-policy/edcentral/gainful-employment-earnings-threshold-living-wage/. Please note: These numbers differ slightly from the ones we reported in the RFI on low-financial-value programs (Docket ID ED-2022-OUS-0140) because MIT recently released more updated living wage numbers.

is likely much lower than what students hope for when they attend college, and as shown in Figure 3.2, it is also lower than actual pre-college earnings for most types of certificate programs. The low bar means the earnings premium is a fair threshold to use for all programs, regardless of the local labor market circumstances or the socioeconomic makeup of the student body. Policymakers can be absolutely certain that failing programs are undeserving of continued public subsidy.

Lastly, the high school earnings premium measure is a sound metric because evidence shows it would help low-income, students of color, and otherwise disadvantaged students (rather than simply penalizing schools that enroll many of these students). Researchers using the NSLDS and tax data found that schools in which more students make $25,000 ten years after enrollment (a similar metric to the high school earnings premium) are more likely to increase the earnings of students who come from low-income families. At these schools, around 70 percent of students from low-income backgrounds make over $25,000 five years into repayment, compared to around 30 percent at the schools with the fewest earning over $25,000.[55] This is yet another piece of evidence that school quality matters for outcomes, not just (or even primarily) the income or demographics of students.

RECOMMENDATION: Increase the earnings premium for graduate programs (§ 668.2)

The GE earnings premium is designed to test whether most students earn more because of their educational investment. Doing this by comparing program wages to the wages of high school graduates makes sense for undergraduate students, whose alternative to college is entering the labor force with a high school diploma. But the earnings of high school graduates are not a good measure of the counterfactual earnings of graduate-level students. These students consider whether to return to school *after* earning a bachelor's degree. For more education and an advanced degree to pay off, they must make more than they would with a bachelor's degree.

Because of this mismatched threshold, only 1 percent of for-profit graduate students would be in programs that fail the earnings premium—and almost every single one of those programs would fail the D/E test anyway. This minuscule failure rate is inconsistent with the evidence that many for-profit graduate programs result in small or no wage increases. Compared to their peers at public and nonprofit graduate programs, for-profit graduate students earn over $10,000 *less* three years after completing their degrees. According to one economist, wage returns on their entire educational investment "appear limited."[56] Disappointing earnings make these for-profit

[55] Tiffany Chou, Adam Looney, and Tara Watson, *Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability* (Cambridge, MA: National Bureau of Economic Research, February 2017), https://www.nber.org/system/files/working_papers/w23118/w23118.pdf.
[56] Robert Valletta, *Recent Flattening in the Higher Education Wage Premium: Polarization, Skill Downgrading, or Both?* (Cambridge, MA: National Bureau of Economic Research, December 2016), https://doi.org/10.3386/w22935.

graduate students more likely to default[57] on their unusually high debt burdens (80 percent higher than graduate students at public schools).[58]

The Department must use a higher earnings premium for graduate programs to ensure these programs leave their students better off. We like a proposal that compares the median earnings of graduate-level programs to the median earnings of 25 to 34-year-olds working in the same state with bachelor's degrees in the same broad field as the graduate program. In 2019 dollars, this threshold ranged from a national average of about $40,000 for arts and humanities fields to almost $60,000 for STEM and health-related fields. By comparison, the high school earnings premium averages around $25,000.[59]

A for-profit college in Virginia offers one of the programs that passes the high school earnings premium but would not pass the example bachelor's degree threshold. The median working graduate of this program, three years after earning her master's in health administrative services, makes about $44,000, which is $19,000 *less* than the median young Virginian with just a bachelor's degree in similar fields. A program like this does not deserve federal subsidies.

SUGGESTED REDLINE:

§ 668.2

Earnings threshold. Based on data from a Federal agency with earnings data,

1) For programs that require only a high school diploma or equivalent for enrollment, the median earnings for working adults aged 25–34, who either worked during the year or indicated they were unemployed when interviewed, with only a high school diploma (or recognized equivalent)
2) For programs that require a bachelor's degree or equivalent for enrollment, the median earnings for working adults aged 25–34, who either worked during the year or indicated they were unemployed when interviewed, with a bachelor's degree (or recognized equivalent) in the same broad field[60] as the program

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[57] U.S. Congressional Budget Office, "The Volume and Repayment of Federal Student Loans: 1995 to 2017," November 10, 2020, https://www.cbo.gov/publication/56706.

[58] Jaymes Pyne and Eric Grodsky, "Inequality and Opportunity in a Perfect Storm of Graduate Student Debt," *Sociology of Education* 93, no.1 (September 20, 2019): 20-39, https://doi.org/10.1177/0038040719876245.

[59] Jordan Matsudaira and Lesley Turner, *Towards a Framework for Accountability for Federal Financial Assistance Programs in Postsecondary Education* (Washington, DC: Brookings Institution, November 2020), https://www.brookings.edu/research/towards-a-framework-for-accountability-for-federal-financial-assistance-programs-in-postsecondary-education/. Please note: A more lenient option could be to require that master's students make more than the bottom 25 percent of bachelor's degree holders in the same broad field, to recognize that people may choose to go to graduate school because their wages are lower than expected. Alternatively, the threshold could use the lower of the median earnings in the broad field or the median earnings for all students in the state with a bachelor's degree, to reflect the fact that some people who majored in low-earning undergraduate majors may switch into higher earning STEM fields for graduate school.

[60] Ibid. Please see appendix: https://www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner-Appendices-B-and-C.pdf Note: that "broad field" would need to be defined based on the list on page B.3 of the researcher's paper.

§ 668.404(b)(2)
(2) The Secretary ~~uses the median annual earnings of students with a high school diploma or GED using data from the Census Bureau to~~ calculates the earnings threshold described in § 668.2.

RECOMMENDATION: Include non-completers in the earnings premium

The NPRM proposes evaluating college quality considering only the earnings of students who graduate. But college programs have an obligation to benefit *all* students who invest time, money, and energy in them, not just the students who graduate. By leaving out the earnings of non-completers, the GE tests ignore the experiences of *most* students, since only two-thirds of bachelor's students[61] and less than a third of certificate and associate degree students complete their degrees.[62]

Leaving out non-completers will make some low-quality programs look more effective than they are, helping these programs skirt GE sanctions. Non-completers tend to earn lower wages than students who graduate. This is both because students learn skills throughout their programs and because of selection bias. The students who are able to finish their college program even with limited support may also be more employable regardless of their education.[63]

Excluding non-completers also makes gainful employment's missing data problem even worse. Including non-completers could more than double the number of earnings observations available at many programs, thereby cutting down on the number of programs that are not evaluated because of missing data.

College representatives have countered that completion rates are a reflection of their students, not their institution. But a host of research shows graduation rates *are* under the control of schools.[64] In 2014, for instance, a study isolated the effect of attending a given college, holding the student constant. The authors concluded that "college quality has a substantial impact on

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[61] U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, "Table 326.15 Percentage distribution of first-time, full-time bachelor's degree-seeking students at 4-year postsecondary institutions 6 years after entry," https://nces.ed.gov/programs/digest/d21/tables/dt21_326.15.asp, accessed June 20, 2023.

[62] U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, "Table 326.27 Number of degree/certificate-seeking undergraduate students entering a postsecondary institution and percentage of students 4, 6, and 8 years after entry," https://nces.ed.gov/programs/digest/d21/tables/dt21_326.27.asp?current=yes, accessed June 20, 2023.

[63] Matt Giani, Paul Attewell, and David Walling, "The Value of an Incomplete Degree: Heterogeneity in the Labor Market Benefits of College Non-Completion," *Journal of Higher Education* 91, no.4 (August 2019): 514-539, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7455049/.

[64] Tatiana Melguizo, "Quality Matters: Assessing the Impact of Attending More Selective Institutions on College Completion Rates of Minorities," *Research in Higher Education* 49, (November 2007): 214-236, https://doi.org/10.1007/s11162-007-9076-1; and Audrey Light and Wayne Strayer, "Determinants of College Completion: School Quality or Student Ability?" *The Journal of Human Resources* 35, no.2 (Spring 2000): 299-332, https://doi.org/10.2307/146327.

college completion rates."[65] More recent research has only bolstered this finding. For example, a 2022 review of research found that institutions have many levers to increase graduation, including offering more financial aid, improving advising and academic support, and fostering social integration.[66]

During the 2014 regulatory process, the Department expressed a commitment to "holding GE programs accountable for the outcomes of students who do not complete a program and ensuring that institutions make strong efforts to increase completion rates."[67] Then, the Department felt the D/E metric under consideration was not the right way to do this, since non-completers may acquire less debt. (We think this metric could and perhaps should include non-completers anyway to better capture most students' experiences.) In contrast, the earnings premium has no odd incentive effects from the inclusion of non-completers. The addition of non-completers would incentivize colleges to help all students learn valuable labor market skills, no matter where students are in their college journey.

RECOMMENDATION: Consider adjusting the earnings premium in areas with persistent poverty (§ 668.2)

Directed Question

"We invite public comments concerning the possible use of an established list, such as a list of persistent poverty counties compiled by the Economic Development Administration, to identify such locales, along with comments on what specific adjustments, if any, the Department should make to the earnings threshold to accommodate in a fair and data-informed manner programs serving those populations."[68]

As we mentioned above, the earnings threshold is a low bar both in terms of ensuring that graduates earn enough to live on and as an estimate of most students' counterfactual earnings. It is also generous in measuring earnings at three years after graduation, instead of at two years. These factors make the threshold appropriate as a bare minimum consumer protection, regardless of circumstances. Meanwhile, there is no need to adjust the debt-to-earnings test to labor market conditions because it is a ratio, and programs whose graduates work in low wage labor markets need to distribute less debt in order to leave students better off.

The Department should be careful not to remove basic consumer protections for disadvantaged groups. Students growing up in high poverty areas have an even more acute need for their educational investments to provide value and a living wage. Given this, New America is against

[65] Sarah Cohodes and Joshua Goodman, "Merit Aid, College Quality, and College Completion: Massachusetts' Adams Scholarship as an In-Kind Subsidy," *American Economic Journal* 6, no.4 (October 2014): 251-285), https://doi.org/10.1257/app.6.4.251.
[66] Carmen Aina, Eliana Baici, Giorgia Casalone, and Francesco Pastore, "The Determinants of University Dropout: A Review of the Socio-Economic Literature," *Socio-Economic Planning Sciences* 79, (February 2022), https://doi.org/10.1016/j.seps.2021.101102.
[67] 79 FR 64889, https://www.federalregister.gov/d/2014-25594/p-343.
[68] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-11.

blanket exceptions to GE and related transparency rules. (As noted below, this is one reason we hope to see required disclosures for non-GE programs that fail the earnings threshold.)

However, we recognize that it is possible for a few isolated local markets to have quite different wage levels than surrounding areas. We are open to limited adjustments in these cases to improve the accuracy (but not waive) the earnings threshold. The Department could use restricted level 5-year files from the Census Bureau's American Community Survey (ACS) to calculate an alternative, county-level earnings premium for just persistent poverty counties. To prevent abuses by schools seeking a more lenient GE rule, to receive the adjustment schools must already be located in the persistent poverty country before the enactment of the final rule. The schools should also have to attest that at least half of their students live in the persistent poverty county. (We do not support county-level earnings thresholds except in these exceptional cases, because county-level data is less comprehensive and most college-educated students are quite mobile. A new study found half of recent college graduates are living outside of the metro area of their college, although rates tend to be lower for two-year and less selective schools.[69])

Transparency and Reporting

SUPPORT: Students and the public support greater transparency

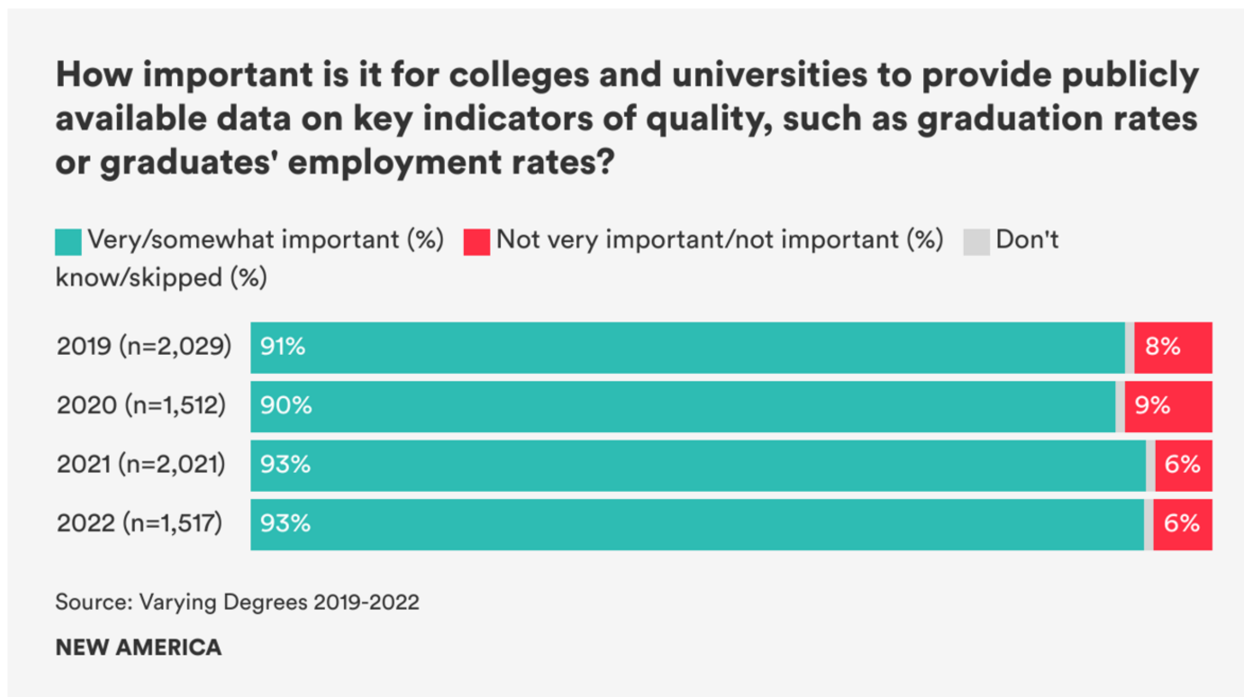
In focus groups with defaulted borrowers that New America conducted last year, we repeatedly heard that borrowers wished they had more information about loans and college outcomes. Many borrowers told us that they would have done things differently if they knew what their return on investment would have been before they enrolled in school. For instance, one borrower voiced a common sentiment in saying, "Coming out of undergrad, I guess I felt with an undergrad degree, I was going to be making big bucks, but that didn't happen. I felt like I wanted a refund."[70]

Some borrowers even told us that they now take it upon themselves to provide others with basic information about what they should expect to earn after college. One participant said, "I'm always warning people" to "make sure that [your loans are] not very much and you could be on top of them, because you're probably not going to graduate college and make $70,000 a year. You might make half that." This type of key information about earnings must be required information for colleges to report; it cannot be left to students to try to warn each other.

[69] Jonathan Conzelmann, Steven Hemelt, Brad Hershbein, Shawn Martin, Andrew Simon and Kevin Stange, *Grads on the Go: Measuring College-Specific Labor Markets for Graduates* (Cambridge, MA: National Bureau of Economic Research, May 2022), https://www.nber.org/system/files/working_papers/w30088/w30088.pdf, pg 13. The study finds about two-thirds of graduates are living in state five years after graduation, making the state-level earnings premium measure appropriate.
[70] Sarah Sattelmeyer and Tia Caldwell, *In Default and Left Behind* (Washington, DC: New America, November, 2022), https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/introduction-and-overview.

New America's 2022 Varying Degrees survey shows that the general public agrees that more transparency is needed. Over 90 percent of Americans think that it is important, "for colleges and universities to provide publicly available data on key indicators of quality, such as graduation rates or graduates' employment rates."[71] (See Figure 1.) Forthcoming data from our 2023 survey similarly shows that support is now 92 percent.

Figure 1.



SUPPORT: Transparency and disclosures are based on strong evidence

Research shows that students have poor information about the expected return on investment of college, but do adjust expectations when given more information. With available sources of information, many students overestimate eventual earnings. A recent NBER study found that the average student entering college in 2001 overestimated their earnings at age 28 by $18,000.[72] Students also tend to underestimate the difference in wages between those with and without college degrees, perhaps leading to under investment in college attendance and college completion.[73] These studies also find that students from low-income backgrounds are

[71] Rachel Fishman, Sophie Nguyen, and Louisa Woodhouse, *Varying Degrees 2022: New America's Sixth Annual Survey on Higher Education* (Washington, DC: New America, July 2022), https://www.newamerica.org/education-policy/reports/varying-degrees-2022/findings.
[72] Thomas Crossley, Yifan Gong, Todd Stinebrickner, and Ralph Stinebrickner, *Examining Income Expectations in the College and Early Post-College Periods: New Distributional Tests of Rational Expectations* (Cambridge, MA: National Burau of Economic Research, January 2021), https://www.nber.org/system/files/working_papers/w28353/w28353.pdf.
[73] Zachary Bleemer and Basit Zafar, "Intended College Attendance: Evidence from an Experiment on College Returns and Costs," *Journal of Public Economics* 157, C (2018): 184-211, https://ideas.repec.org/a/eee/pubeco/v157y2018icp184-211.html.

particularly likely to have poor information.[74] For instance, one experiment in Chile found that low-income students who enrolled in low-earning programs overestimated future wages by *over* 100 percent.[75]

This lack of information reflects poorly on institutions—who advertise to, guide, and recruit students—and the government, which is in charge of ensuring students invest their federal dollars prudently. Students are busy, overloaded with new information, and often lacking unbiased data-driven guidance about how to make college decisions. Yet when they are provided with clear, easy-to-understand information like that proposed in this NPRM, they do adjust their college decisions.

An experiment in which community college students were given information about typical program earnings and asked to make a hypothetical major choice found "that a 10 percent increase in salary is associated with a 14 to 18 percent increase in the probability of choosing a specific category of majors."[76] Hastings, Neilson and Zimmerman worked with the government of Chile to provide information about likely college returns via a web portal (quite similar to the proposed disclosure website) to a random sample of prospective students in the process of choosing their college program. Students who received the information were on track to earn 1.4 percent higher wages than the control group. The disclosure website was particularly impactful for low-income students. The authors conclude: "treatment causes low-income students to reduce their demand for low-return degrees by 4.6%, and increases the likelihood they remain in college for at least four years," resulting in a projected 3.2 percent wage increase.

Importantly, these promising outcomes occur only if students actually see the disclosure information. One study found no impact from a disclosure website that saw very little traffic, and had no more clicks among the treatment group than the control group.[77] This demonstrates the importance of making the disclosure website ubiquitous and integrating the disclosures into the enrollment process (as is proposed for failing programs in this NPRM).

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[74] Helen Kilber, "College is a Big Investment: Does Receiving College Scorecard Information Help Students Evaluate Which One Offers The Best 'Bang for the Buck?'" (University of Washington, 2019), https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/43941/Kilber_washington_0250E_19969.pdf.

[75] Justine Hastings, Christopher Neilson, and Seth Zimmerman, *The Effects of Earnings Disclosure on College Enrollment Decisions* (Cambridge, MA: National Bureau of Economic Research, June 2015), https://www.nber.org/system/files/working_papers/w21300/w21300.pdf.

[76] Rachel Baker, Eric Bettinger, Brian Jacob, and Ioana Marinescu, "The Effect of Labor Market Information on Community College Students' Major Choice," *Economics of Education Review* 65, (August 2018): 18-30, https://www.sciencedirect.com/science/article/abs/pii/S0272775718300566; and Matthew Wiswall and Basit Zafar, "Determinants of College Major Choice: Identification Using an Information Experiment," *The Review of Economic Studies* 82, no. 2 (April 2015): 791-824, https://academic.oup.com/restud/article-abstract/82/2/791/1585624?redirectedFrom=fulltext.

[77] Kristin Blagg, Matthew Chingos, Claire Graves, Anna Nicotera, and Lauren Shaw, *Rethinking Consumer Information in Higher Education* (Washington, DC: The Urban Institute, July 2017), https://www.urban.org/sites/default/files/publication/91666/rethinking_consumer_information_in_higher_education_3.pdf.

SUPPORT: Transparency helps students of color without harming public or nonprofit colleges

Some stakeholders may worry that the financial transparency provisions will harm public and nonprofit institutions that serve high percentages of students of color. But data suggest any fallout would be minimal. First, disclosures are unlikely to produce widespread changes in student behavior (and are thus only part of an accountability solution). Several studies have shown that student choices are responsive to wage expectations, but are more influenced by academic ability and interest in courses.[78] As mentioned previously, when a disclosure website was introduced in Chile, the website caused real and impressive increases in student outcomes, but programs in the lowest third of return on investment only lost 3.3 percent of enrollment.[79] Thus schools with programs that must provide disclosures will be encouraged to improve these programs, but will not face a hemorrhaging of students.

In addition, minority-serving institutions (MSIs) provide high enough quality programs such that few schools would lose much Title IV funding or have to issue disclosures with attestations. Our analysis of the 2022 Program Performance Data (PPD) shows that only 11 percent of MSIs, Historically Black Colleges and Universities, Hispanic-Serving Institutions, and tribal colleges have more than 25 percent of students in failing GE or non-GE programs (see Figure 2), only 3 percent have more than 25 percent of students in programs that would require a disclosure (see Figure 3), and only 1 percent have more than 25 percent of students in programs that could lose Title IV aid (shown in Figure 2 and Figure 3).[80]

[78] Rachel Baker, Eric Bettinger, Brian Jacob, and Ioana Marinescu, “The Effect of Labor Market Information on Community College Students’ Major Choice,” *Economics of Education Review* 65, (August 2018): 18-30, https://www.sciencedirect.com/science/article/abs/pii/S0272775718300566
[79] Justine Hastings, Christopher Neilson, and Seth Zimmerman, *The Effects of Earnings Disclosure on College Enrollment Decisions* (Cambridge, MA: National Bureau of Economic Research, June 2015), https://www.nber.org/system/files/working_papers/w21300/w21300.pdf, pg. 4.
[80] Tia Caldwell, “New Data Confirms MSIs Would Be Minimally Affected by Gainful Employment,” *EdCentral* (Blog), June 13, 2023, https://www.newamerica.org/education-policy/edcentral/new-data-msis-gainful-employment/.

Figure 2.

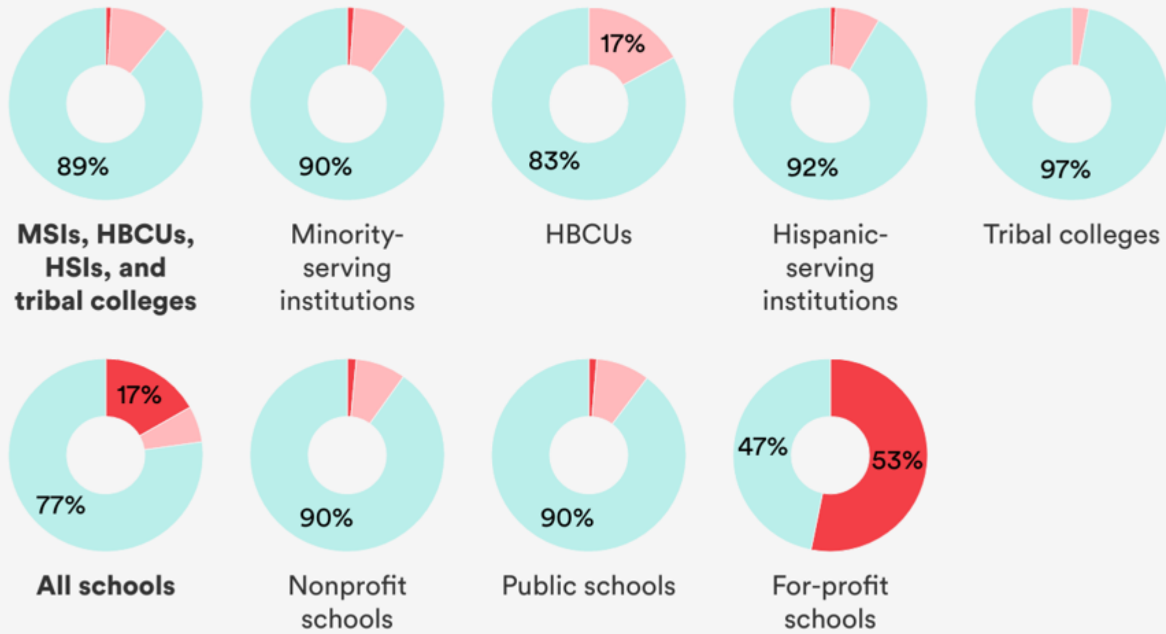
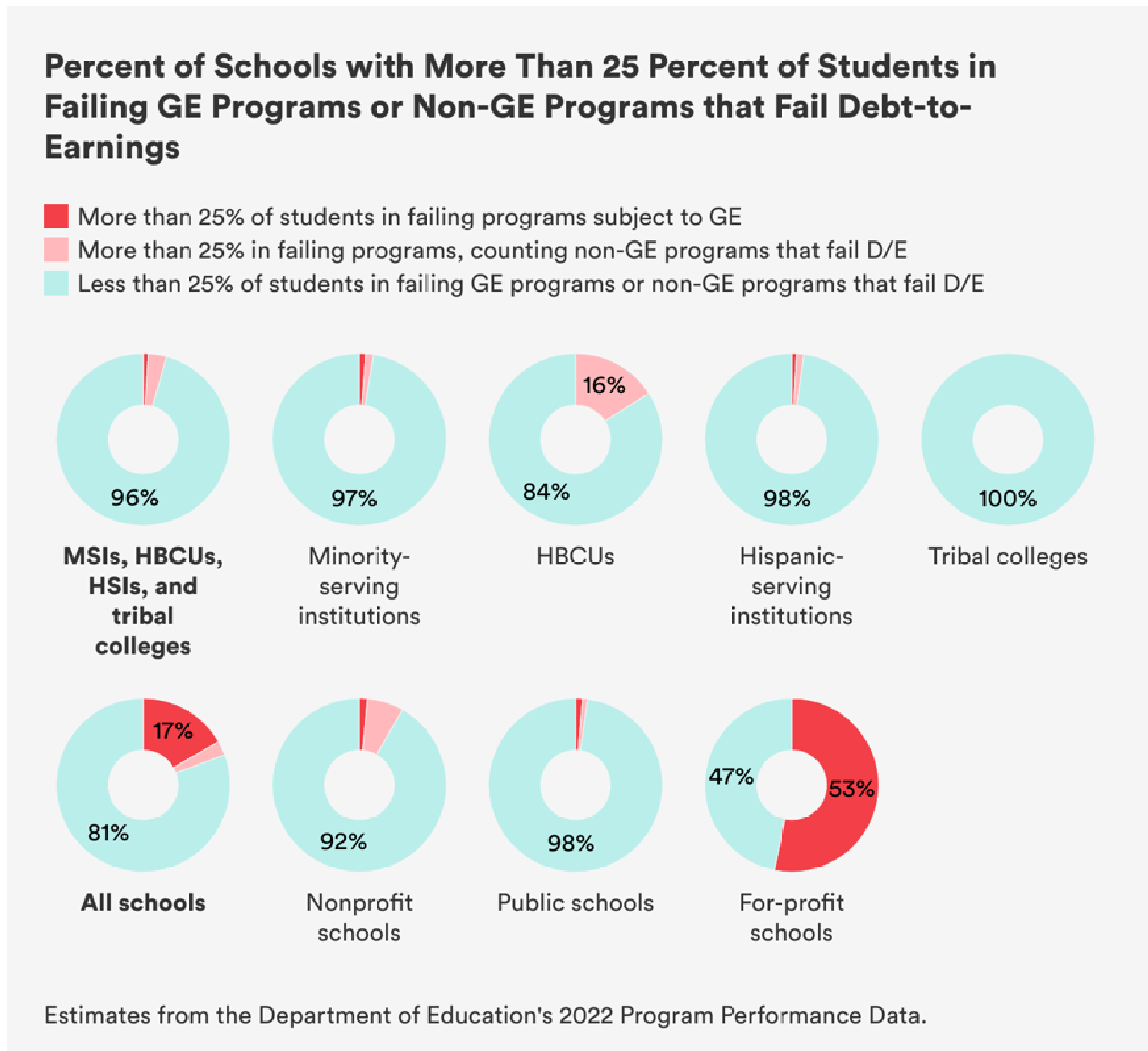


Figure 3.



The vast majority of programs at nonprofit and public colleges pass the proposed regulations, not just because many are exempt from GE, but because their programs are of high enough quality to pass the tests. And almost all public and nonprofit schools with some failures have many non-failing programs they can direct students to instead.

We hope that interested stakeholders will appreciate that this change is worth the benefit to students of color. We also hope that no provisions are adopted waiving transparency requirements for institutions serving many low-income or minority students. Obscuring information from historically marginalized students will not do them any favors. Students in low-income and disadvantaged areas have just as much of a right to know about the expected outcomes of their college program as all students. In fact, these students benefit the most from more transparency, as studies consistently find that low-income people and those with lower

educational attainment have more inaccurate ideas about the value of a college education and therefore are particularly likely to shift to better programs after receiving more information.[81]

RECOMMENDATION: Require attestations for non-GE programs that fail the earnings threshold (§ 668.407)

Directed Question

"The Department also understands that many students seeking to enroll in non-GE programs may place high importance on improving their earnings and would benefit if the regulations provided for acknowledgements when a non-GE program is low-earning. We further welcome public comments on whether the acknowledgement requirements should apply to all programs, or to GE programs and some subset of non-GE programs, that are low-earning."[82]

Students at all schools deserve to know if their program tends to lead to low wages. As noted above, the vast majority (90 percent) of all college students say they went to school partially or mainly to earn more money than they would have without a degree.[83] The fact that this preference is expressed by such a high proportion of students means that the preference extends to most students in all sectors, not just students enrolled in short-term credentials or in for-profit colleges. It is disingenuous and unfair to students to claim that most do not want to make a financial return on their college investment or to make enough money to support themselves at a minimal standard of living.[84]

Given the overwhelming majority of students' stated rationale for attending school, we disagree that requiring acknowledgement risks "conveying that economic gain is more important than nonpecuniary considerations."[85] Providing clear information during a confusing enrollment process –dominated by students' hopes for the future and colleges' promises of success — is the best way to respect students' stated desires. Students who are attending school for nonpecuniary reasons can still simply choose to enroll in low-earnings programs.

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[81] Zachary Bleemer and Basit Zafar, "Intended College Attendance: Evidence From an Experiment on College Returns and Costs," *Journal of Public Economics* 157, (January 2018): 184-211, https://www.sciencedirect.com/science/article/abs/pii/S004727271730186X; Justine Hastings, Christopher Neilson, and Seth Zimmerman, *The Effects of Earnings Disclosure on College Enrollment Decisions* (Cambridge, MA: National Bureau of Economic Research, June 2015), https://www.nber.org/system/files/working_papers/w21300/w21300.pdf; and Helen Kilber, "College is a Big Investment: Does Receiving College Scorecard Information Help Students Evaluate Which One Offers The Best 'Bang for the Buck?'" (University of Washington, 2019), https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/43941/Kilber_washington_0250E_19969.pdf, pg. 8.

[82] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-12.

[83] Rachel Fishman, "College Decisions Survey: Deciding to Go to College," *EdCentral* (blog), May 28, 2015, https://www.newamerica.org/education-policy/edcentral/collegedecisions/.

[84] Tia Caldwell, "An Earnings Threshold Would Sanction Only Low-Value College Programs," *EdCentral* (blog), April 25, 2023, https://www.newamerica.org/education-policy/edcentral/gainful-employment-earnings-threshold-living-wage/.

[85] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-570.

We also disagree that "students' ability to pursue nonpecuniary goals" are jeopardized by unaffordable debt but *not* low earnings,[86] since decades of research show that low incomes are associated with many other adverse outcomes. The NPRM itself notes that people who attend college and have earnings below the high school earnings threshold have double the rates of being food insecure and trouble paying bills as those with higher incomes.[87] Hunger and inability to afford other necessities are clear barriers to achieving higher-order goals.

RECOMMENDATION: Require certain students to see a list of all failing programs (§ 668.407)

Directed Question

"The Department is aware that in some cases, students may transfer from one program to another or may not immediately declare a major upon enrolling in an eligible non-GE program. We welcome public comments about how to best address these situations"[88]

We suggest that the Department develop a disclosure website containing a list of all of a school's programs for these situations. The online list should include all programs at the school, with failing programs in the credential level of the enrolling student at the top of the list. Programs that fail, pass, or have no information should be clearly marked as such. In addition, we recommend that the school's all-programs GE passage rate (a D/E and earnings premium measure using all GE graduates in a school, described in our administrative capability §668.16(t) section) be displayed in a note next to any GE programs that are too small to be evaluated.

Students should have to attest to seeing this list if they are seeking to enroll in a:

- School where more than 25 percent of students are in failing GE or non-GE programs (whether or not the student has declared a program of study).
- School with more than 25 percent of students in GE programs and a failing all-programs GE rate (whether or not the student has declared a program of study).
- GE program with missing data at a school that has a failing all-programs GE rate.
- Program (GE or otherwise) for which there is a failing program in the same four-digit CIP code.

This attestation would ensure that students who have a 25 percent chance or higher of enrolling in a program that leads to high debt or low-earnings (or a 25 percent chance if they choose to transfer) will know of these odds before choosing a school. These protections are necessary for

[86] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-570.
[87] 88 FR 32300, https://www.federalregister.gov/d/2023-09647/p-1378.
[88] 88 FR 32300, https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative#p-12.

both undecided majors and transfer students, because transferring programs is quite common. About a third of first-time associate and bachelor's degree students switch majors.[89]

Attesting to viewing the list of programs should also be required for students seeking to enroll in a GE program with missing data, if the all-program GE rate suggests the program likely leads to poor outcomes. Additionally, students enrolling in a passing or missing data program with another failing program in the same four-digit CIP code should also view the list. Since research suggests there are correlations in GE passage rates between six-digit programs with the same four-digit CIP code,[90] this would protect students in programs with missing data that are likely to be poor. It would also protect students who might be especially likely to transfer to a low-quality program, because programs closely related to their interests are failing.

If undecided students eventually choose to pursue a failing program or if declared students transfer into a failing program, they should be required to sign another attestation at the time of declaring their program of study. These students should be shown the same program-specific disclosure as those required in § 668.407 (amended to include disclosures for non-GE earnings threshold failures).

We think the combination of seeing a list of failing programs at enrollment (for students considering schools or programs that make them particularly likely to later enroll in a low-quality program), and a warning at the time of declaring a major comes closer to ensuring that students have enough information at each critical stage of their college education. These extra attestations are also necessary to prevent institutions from seeking to avoid the disclosures by encouraging new students to enroll as undecided majors or as majors in small programs.

RECOMMENDATION: Add distance education status to school reporting requirements (§ 668.408)

New America supports the increased reporting standards for schools, which will greatly improve oversight and transparency. Available research suggests that distance education programs tend to have worse outcomes than in-person programs.[91] This makes data on online status essential to helping students understand the likely outcome of their educational pursuits. We also hope the Department will require schools to identify the race and ethnicity of students in an effort to understand and reduce racial disparities in educational outcomes.

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[89] U.S. Department of Education, National Center for Education Statistics, "Data Point: Beginning College Students Who Change Their Majors Within 3 Years of Enrollment," (Washington, DC: U.S. Department of Education, December 2017), https://nces.ed.gov/pubs2018/2018434.pdf.

[90] Erica Blom, Robert Kelchen, Carina Chien, and Kristin Blagg, "How to Make Gainful Employment More Inclusive," *Urban Wire* (blog), March 31, 2021, https://www.urban.org/urban-wire/how-make-gainful-employment-more-inclusive.

[91] Di Xu and Shanna Smith Jaggars, "The Impact of Online Learning on Students' Course Outcomes: Evidence from a Large Community and Technical College System," *Economics of Education Review* 37, (December 2013): 46-57, https://www.sciencedirect.com/science/article/abs/pii/S0272775713001039; and Eric Bettinger, Lindsay Fox, Susanna Loeb, and Eric Taylor, "Virtual Classrooms: How Online College Courses Affect Student Success," *American Economic Review* 107, no.9 (September 2017): 2855-2875, https://www.aeaweb.org/articles?id=10.1257/aer.20151193.

RECOMMENDATION: Translate the disclosure website (§ 668.43)

We support the new disclosure website as a way to increase transparency. While the regulations specify that failing programs must issue warnings in alternative languages for students who are not proficient in English (§ 668.605(d)), the NPRM does not contain similar language for the disclosure website. We recommend that the Secretary commit to producing the disclosure website in several languages and require institutions to show the website in these alternative languages for non-English speakers. The Department should produce the website in languages including Spanish, Chinese, Tagalog, Vietnamese, and Arabic, which are the most frequently spoken non-English languages in the United States.[92]

Financial Responsibility

Since the previous rulemaking on financial responsibility occurred in 1996-97, four changes in higher education require updates to financial oversight. First, an increased reliance on Title IV funds and student debt across higher education complicates the analysis and makes termination of Title IV eligibility tricky. Second, growth among for-profit conglomerates (often publicly traded or backed by private equity) poses a unique set of risks. Third, declining enrollment has challenged the nonprofit sector, with long-established schools facing financial decline. And fourth, mergers, acquisitions, new combinations of institutional structures, and conversions from for-profit to nonprofit status will continue to reshape higher education, requiring regulators to be nimble with the review of structural changes.

Financial oversight reform was overdue even before the pandemic. After decades in which institutional closures were few, far-between, and well-managed, the 2008 financial crisis led to rapid growth of for-profit schools, which were seen as countercyclical investments. Waves of closures followed as supersized schools like ITT Tech, and Corinthian Colleges were shown to be fraudulent, low-quality institutions and ran out of money.[93] Now, financial shocks from the pandemic have heightened both the need for improved accountability, especially among rapidly growing online programs, and the pressure to avoid closures by using Title IV as a bail-out fund.

A financially struggling school may cut corners, and provide services inferior to what the students and taxpayers paid for (and what regulators approved). The current system of financial stability review also falls short of monitoring all categories of financial obligations identified in statute. Critically, this inadequate system has too many blind spots, with taxpayers bearing the costs of multiple precipitous closures that evaded regulatory oversight.

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[92] U.S. Census Bureau, "What Languages Do We Speak in the United States?" https://www.census.gov/library/stories/2022/12/languages-we-speak-in-united-states.html, accessed June 20, 2023.

[93] The Project on Predatory Student Lending, "Proof of ITT Tech's Massive Scale of Fraud and Abuse," https://www.ppsl.org/itt, accessed June 20, 2023, and U.S. Department of Education, Education Department Approves $5.8 Billion Group Discharge to Cancel all Remaining Loans for 560,000 Borrowers who Attended Corinthian," June 1, 2022, https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges.

We are glad to see the Department's proposed regulations will strengthen its ability to provide effective financial oversight of institutions of higher education. All too often, students and taxpayers are the ones left bearing the costs when an institution closes or engages in fraud. As we have written in previous comments, the Department is not currently requiring enough in letters of credit to ensure that taxpayers are protected when it is required to cover liabilities from a school closing:

"Among the institutions with the largest amounts of closed school discharges paid out to students—62 institutions that closed between 1987 and 2016 and had over $1 million in closed school discharge liabilities—just six institutions had letters of credit on file, and only one had a letter of credit large enough to cover the entirety of the closed school discharge liabilities. Of 96 institutional closures in 2016 alone (through October), the Department had letters of credit on file from just 26 of them. Moreover, these data do not account for other types of financial liabilities that may be foisted on taxpayers—particularly potential borrower defense liabilities."[94]

The additions to the mandatory and discretionary financial triggers will help the Department require financial protection from institutions that appear to be experiencing high-risk financial events. We support all the proposed triggers and urge the Department to keep them all in the final regulation.

Administrative Capability

The Department has a responsibility to ensure the institutions participating in the Title IV aid programs are administratively capable of properly and effectively supporting students and managing the financial aid flowing to their programs. We strongly support the revision of these regulations to ensure institutions put sufficient resources behind administering Title IV programs. We also believe there are places where the regulations as proposed can be improved.

RECOMMENDATION: Providing adequate financial aid counseling and communications (§ 668.16(h))

We applaud the Department for including language requiring institutions to provide adequate financial aid counseling and communications to students and families as a condition of administrative capability. Figuring out how to pay for college is one of the biggest financial decisions people make in their lives. As part of the admissions and enrollment process, colleges provide accepted students with personalized information about how much school will cost and the federal, state, and institutional aid for which they are eligible. This information is provided in a variety of places, most commonly on financial aid offers (often misleadingly called "award letters") sent directly to students. But this information also appears on student web portals,

[94] New America's Higher Education Program Public Comments in response to ED-2018-OPE-0027-0001, https://s3.amazonaws.com/newamericadotorg/documents/New_America_Comments_BD_NPRM_2018-OPE-0027_FINAL.pdf.

institutional websites, and in counseling sessions. There is very little consistency for how higher education cost and aid information is communicated, leaving it up to the whims of institutions.

Unsurprisingly, this has led to confusion for students and families, particularly when it comes to financial aid offers. In an analysis of 455 different institutions' financial aid offers, New America and uAspire found that there were 136 unique terms for the federal unsubsidized loan, including 24 that didn't even include the word loan.[95] Most recently, the Government Accountability Office released a report showing that over 91 percent of colleges either do not include or understate the net price—the actual amount a student needs to pay after subtracting grant and scholarship aid—in their aid offers.[96]

The Department has an opportunity through these proposed regulations to help students and families get more transparent information about how much college will cost, what different sources of aid are available, which aid to prioritize accepting, and how to accept, decline, or adjust award amounts. We suggest the Department strengthen the proposed rule further by better defining financial aid "communication." The intent of the Department with these changes, according to the preamble text, is to improve financial aid offers, thus using the term "communication" is too broad. Instead, we suggest the Department clarify that this communication is "any communication made to the student detailing his or her financial aid package."

Further, according to the analysis by New America and uAspire, nearly 15 percent of financial aid offers included a PLUS loan as an "award," making the financial aid package appear far more generous than it really was.[97] Some even zeroed out aid packages, making it seem like students got a full ride, when instead families were taking on intergenerational higher education debt. For this reason, the Department should guard against institutions including Parent PLUS loans as a way to zero out their financial aid offers by excluding PLUS loans from having a listed amount during counseling or within financial aid offers. Instead, Parent PLUS loans, along with private education loans, state loans, institutional loans, and income-share agreements, should only be suggested as other options students and families can use to pay any remaining balance.

The Department should also further clarify what it means for institutions to counsel students and families to "accept the most beneficial types of financial assistance available to them"—namely, to prioritize accepting grants and scholarships first, followed by federal subsidized and unsubsidized loans, followed by other federal loan and private financing options. This will help ensure students and families accept the options that are most beneficial to them, including prioritizing loans with the lowest repayment rates, the most consumer protections, and the most generous forms of repayment. Some states have no-interest loans or generous loan

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

forgiveness programs for state-based loans, the Department should additionally consider whether those types of loans should be prioritized before federal PLUS and private loans.

SUGGESTED REDLINE:
(h) Provides adequate financial aid counseling with clear and accurate information to students who apply for title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling ~~and financial aid communications advise students and families to accept the most beneficial types of financial assistance available to them and include information regarding—~~ and any formal communication made to the student detailing his or her financial aid package include information regarding—

> (1) The cost of attendance of the institution as defined under section 472 of the HEA, including the individual components of those costs and a total of the estimated costs that will be owed directly to the institution, for students, based on their attendance status;
> (2) The source and amount of each type of aid offered, excluding an amount for Federal Parent PLUS loans, private education loans, state loans, institutional loans, and income-share agreements, separated by the type of the aid and whether it must be earned or repaid;
> (3) The net price, as determined by subtracting total grant or scholarship aid included in paragraph (h)(2) of this section from the cost of attendance in paragraph (h)(1) of this section;
> (4) The method by which aid is determined and disbursed, delivered, or applied to a student's account, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts; ~~and~~
> (5) Guidance to accept the most beneficial types of financial assistance available to them, including prioritizing grants and scholarships, followed by federal subsidized and federal unsubsidized loans before other aid options including Federal Parent PLUS Loans, Federal Grad PLUS loans, private education loans, state loans, institutional loans, and income-share agreements; and
> ~~(5)~~(6) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid, including the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

Additionally, if Parent PLUS debt is not included in D/E measure (we strongly urge the Department to include it), this provision must catch schools trying to avoid GE sanctions by increasing Parent PLUS debt. We propose an institutional accountability metric applying only to schools which have at least 50 percent of students in GE programs or 50 percent of Title IV aid in GE programs and at least 25 percent of GE students taking out Parent PLUS loans or 25 percent of the GE Title IV loan volume in Parent PLUS loans. If such schools have one or more GE programs that pass GE but would have failed with the inclusion of Parent PLUS loans, or all failing or missing-data GE programs, the school should be recognized as having failed to provide adequate financial counseling. Such schools would clearly be more interested in avoiding GE than providing good financial aid advice, given that Parent PLUS loans have less favorable

terms. These schools should be provisionally certified and subject to restrictions on the growth of their gainful employment programs.

SUPPORT: Timeliness of financial aid disbursements (§ 668.16(s))

We strongly support the changes to regulations that will require institutions to disburse financial aid to students in a timely manner. We encourage the Department to keep those proposed changes in any final regulation. In particular, we strongly encourage the Department to keep the following provisions in any final rule.

Institutions should not be considered administratively capable if they:

1. Have high withdrawal rates as a result of delayed disbursements
2. Fail to disburse funds before their published withdrawal date
3. The institution delays disbursements to ensure it passes the 90/10 rule calculations
4. Delay disbursements for so long that it causes late fees for students on tuition payments, housing, or other fees charged directly by the institutions to the student

SUPPORT: Protection against fraud (§ 668.16(p))

Ensuring institutions are not enrolling students using fake high school diplomas will help protect Title IV aid from abuse and fraud. This proposal is a welcome addition to the existing requirements that institutions must have a process to validate students' high school diplomas. We support these changes while noting the need for ways for students who attended now-closed high schools to prove that their diploma is valid. This is likely to become more of an issue as the college-going population continues to grow older rather than being made up predominantly of students coming straight from high school. Though some concerns have been raised by religious high schools and private high schools that are not state regulated, this proposal is clearly aimed at detecting fraudulent diplomas. Properly checking that students possess a valid high school diploma means institutions are ensuring the students they enroll are prepared for college level work and can succeed in their program of study. These regulations also help prevent institutions from using Title IV aid as a cash cow by enrolling students who are not properly prepared for college and should not be accessing Title IV dollars.

SUPPORT: Provision of adequate career counseling services (§ 668.16(q))

Institutions should, especially when they make lavish promises of future job prospects, provide students with the career services needed to help students achieve those promises. There are numerous examples of institutions claiming job placement rates that were in no way realistic, including DeVry University, Westwood College, and ITT Tech, particularly in its nursing

program.[98] We support proposed regulations requiring institutions to provide adequate career counseling services to ensure they are helping students move into jobs after graduation. We do note that this provision should include specific measures to define what the Department considers to be “adequate” career counseling services to ensure institutions have a benchmark to operate from when understanding compliance with this standard.

We also support requiring that institutions offering programs of study that require externships or clinical practice hours for course completion or licensure provide students with accessible opportunities to complete those requirements.

RECOMMENDATION: Provision of geographically accessible externships and clinical placements (§ 668.16(r))

During negotiations, some negotiators pushed for the Department to soften the language used in these regulations or to change language like “provide students with clinical or externship opportunities” to “provide students with information regarding clinical or externship opportunities.” We are glad that the Department has chosen a stronger approach to this regulation and encourage the Department to keep the regulation specific and properly define geographic accessibility to ensure this standard cannot be easily gamed.

While the new rules on ensuring that clinical placements and externships are “geographically accessible” under § 668.16(r) are laudable, the lack of definition as to what is considered “geographically accessible” is problematic. It is difficult to see how such a measure is properly enforceable without some type of definition. We suggest the Department add a concrete definition in § 668.16(r) to clarify what is and is not considered geographically accessible. Below we have provided one option that the Department could adopt.

The Department could use commuting zones defined by the Department of Agriculture’s Economic Research Service.[99] Commuting zones break up the country into 709 distinct areas based on the spatial distribution of an area's labor market. Using commuting zones would provide a reasonable approximation of the geographic areas that a student in a program requiring a clinical placement or externship is likely to look for a job within after graduation. Therefore, it is reasonable to use these zones as the definition for “geographically accessible.” Commuting zones also already account for different distances required when it comes to commuting in major metropolitan areas compared to more rural areas and thus have already factored in variations in the distance that institutions in less densely populated areas might claim requires a different approach for them.

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[98] U.S. Department of Education, “Education Department Approves $415 Million in Borrower Defense Claims Including for Former DeVry University Students,” February 16, 2022, https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students.
[99] U.S. Department of Agriculture, Economic Research Service, “Commuting Zones and Labor Market Areas,” https://www.ers.usda.gov/data-products/commuting-zones-and-labor-market-areas/documentation/, accessed June 20, 2023.

SUGGESTED REDLINE:

a. "To be considered "geographically accessible", clinical placements or externships offered to students must be located within the same commuting zone as the institution offering the placements. For online students who have to complete a clinical placement or externship, the placement offered must be located within the same commuting zone as their place of residence.

Additionally, the secretary should consider adding provisions addressing how and when career counseling is delivered. For example, suppose an institution enrolls most of its students online. In that case, it should offer online career counseling services where students can set up a time to speak with a career advisor remotely. Or consider an institution that offers most of its classes outside of normal business hours to accommodate the schedules of students working full-time. In that case, it should also offer career services during similar hours to ensure that it meets the clear need that its students have for flexible or alternative schedules and that the institution is likely using as a recruiting tool.

RECOMMENDATION: Ensure that institutions are not failing gainful employment (§ 668.16(t))

We support the Secretary's efforts to ensure that institutions of higher education are not considered administratively capable if they have GE programs where half or more of those programs are "failing." However, this provision must also encompass outcomes in small GE programs. The Department should create an all-programs GE test by applying the debt-to-earnings and earnings premium test on a pool of graduates from all of an institution's GE programs. Institutions that fail the all-programs test and have more than half of Title IV students or Title IV funds in GE programs should be declared not administratively capable under § 668.16(t).

The proposed rule explains that "when a majority of an institution's Title IV, HEA funds and enrollment is in failing GE programs, those results would indicate a more widespread and systemic set of concerns that is not limited to individual programs." We agree. Our proposal would simply add another way to calculate whether half of funds or enrollment are in failing programs but in a manner that includes small programs. A school that fails the all-programs GE rate and has more than 50 percent of students in GE programs exhibits the same lack of administrative capability as a school at which 50 percent of students are enrolled in failing GE programs (if not more, since failing only the all-program rate might demonstrate an attempt to avoid the GE regulations by having many small programs). This provision also has the advantage of encouraging schools that offer mostly GE programs to consider the quality of their smaller programs. And the provision will greatly cut down on the incentive to try to cheat the system by subdividing programs.

SUGGESTED REDLINE:

(§ 668.16) [...]The Secretary considers an institution to have that administrative capability if the institution— [...]
(t) Offers gainful employment (GE) programs subject to subpart S of this part and—

(1) At least half of its total title IV, HEA funds in the most recent award year are not from programs that are "failing" under subpart S; ~~and~~

(2) At least half of its full-time equivalent title IV-receiving students are not enrolled in programs that are "failing" under subpart S; and

(3) If at least half of its full-time equivalent title IV-receiving students or half of its total title IV, HEA funds in the most recent award year are in GE programs, the all-programs GE rate is not "failing"

Certification Procedures

The process by which institutions of higher education apply to participate in Title IV federal financial aid programs is an important tool for the Department. Each participating institution signs a program participation agreement (PPA) that commits them to comply with federal laws and regulations that govern these programs, including financial responsibility and administrative capability. That agreement between the Department and institutions provides the Department broad enforcement authority. However, the Department has not yet fully used this authority to enforce the provisions of these agreements and address issues of non-compliance. Instead, the Department has allowed institutions to remain in provisional status while institutions are out of compliance. We agree with the Department that this authority should be strengthened and are glad to see that these proposed regulations will give the Department additional tools to hold institutions accountable.

SUPPORT: Hold owners accountable in the event of fraud (§ 668.14(a)(3))

Taxpayers should not have to foot the bill due to fraud and mismanagement committed by owners and executives of for-profit colleges. When the department finds it should forgive student debt as a result of borrower defense claims that indicate widespread fraud, such as the recent cases cancelling debt for former students of institutions like Corinthian Colleges and Marinello Beauty Schools, it should be able to hold the companies and executives accountable for their fraud.[100] Failing to hold highly compensated executives accountable for fraud and mismanagement under their watch incentivizes repeat bad behavior. Without a significant change in approach from the Department, executives can act with impunity, knowing they will walk away with millions in compensation and leave taxpayers responsible for the financial harm they have caused.

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

Given the sums involved, it is unlikely that the Department would recover more than a fraction of the liabilities; that is only partially the point. By making it clear that the Department can and will hold individuals accountable, it disincentivizes the worst types of behavior and preemptively protects students from being harmed.

We strongly support holding owners accountable when the institutions they own and profit from incur financial liabilities. Requiring owners to sign PPAs, and making it clear that the Department will hold them financially liable for liabilities, is a common sense measure that should help deter institutions' wrongdoings.

RECOMMENDATION: Shorter timeline for certification and recertification institutions (§ 668.13(b)(3))

We support the elimination of the current § 668.13(b)(3), which currently provides institutions with automatic recertification if the Secretary fails to decide on granting or denying certification within 12 months of the expiration of an institution's current PPA. Eliminating the automatic timeframe will give the department greater flexibility in making decisions in the best interests of students and taxpayers rather than being forced to make a decision quickly.

Directed Question

The Department asked a directed question in this section of the proposed regulations. *"We seek feedback from commenters about whether to maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues."*

We recommend that at a minimum, the Department keep the two-year provision in place. Ultimately these regulations are focused on protecting students, and allowing institutions more time to keep enrolling students and potentially leaving those students worse off, is untenable. Extending this timeline any further, while potentially burdensome for the Department, could lead to real harm for students and the loss of taxpayer dollars. We encourage the Department to consider whether an even shorter timeframe of one year might be more appropriate.

RECOMMENDATION: Ensure that states can enforce consumer protection laws (§ 668.14(b))

We recognize that the suggested language in this section is an attempt to give states back some of the authority they have lost, but we believe that the changes might create unintended consequences by only focusing on the specific areas listed in the current language. To address the problem, we have provided suggestions for some technical changes that will alleviate some likely unintended consequences of the text as currently proposed.

SUGGESTED REDLINE

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2), the institution must determine that each program eligible for Title IV, HEA program funds—

...

(iii)

(A) Complies with all applicable State ~~consumer protection~~ laws**; and**

(B) For institutions covered by a State authorization reciprocity agreement as defined in 34 CFR 600.2, notwithstanding any limitations in that agreement, complies with all State higher education requirements, standards, or laws related to risk of institutional closure~~,~~ or to recruitment and marketing practices, and with all State general-purpose laws, including but not limited to those related to misrepresentations, fraud, or other illegal activity ~~including both generally applicable State laws and those specific to educational institutions~~;

SUPPORT: Limit program lengths for programs that require state licensure (§ 668.14(b)(32))

We are heartened to see the Department taking the issue of inflated program lengths seriously, especially given reports that program lengths have been deliberately inflated in some states.[101] We support the proposal to require that program lengths not exceed the hours required for state licensure or, where applicable, the hours required for licensure in a bordering state. Allowing programs to require up to 150 percent of the hours needed for licensure has created a situation ripe for abuse, with excessively long programs requiring students to spend more time and money than needed to complete their studies. These proposed changes will benefit students and reduce the taxpayer dollars spent on programs requiring licensure.

RECOMMENDATION: Prevent transcript withholding (§ 668.14(b)(33))

We are glad to see the Department taking up the issue of transcript withholding by adding provisions to restrict its use under § 668.14(b)(33). However, we believe that the rule could be strengthened. If, as the Department suggested during negotiations, it believes it cannot regulate more broadly on this issue and requires a strong link to Title IV programs, we suggest strengthening the provisions by barring transcript withholding for any student receiving Title IV financial aid.

[101] Meredith Kolodner and Sarah Butrymowicz, "A $21,000 Cosmetology School Debt, and a $9-an-Hour Job," *The New York Times,* December 26, 2018, https://www.nytimes.com/2018/12/26/business/cosmetology-school-debt-iowa.html.

An alternative approach could be to require that institutions do not withhold transcripts in their entirety but are permitted to remove classes or credits not paid for from a transcript. Currently, colleges will withhold transcripts in their entirety, often for relatively small debts. For example, if a student owes $1,000 for one class, but has paid for the rest of their education to that point, then the college could remove the single unpaid for class from the transcript until reasonable payment arrangements have been made but still be required to provide the student with the rest of their transcript. If this approach is adopted, transcripts must include graduation status to ensure that the removal of a class from the transcript does not make it appear that the student failed to graduate.

SUPPORT: Oversight for institutions at risk of closure (§ 668.14(e))

The proposed changes requiring schools at risk of closure to meet additional conditions should remain in the final regulations. Recent research from the State Higher Education Executives Officers Association (SHEEO) has shown the significant harm students suffer when their college closes suddenly.[102] The SHEEO report found that less than half of students impacted by a school closure ended up enrolling elsewhere and that less than half of those who did enroll completed their program of study. Given the significant threat that schools at risk of closure pose to students and taxpayers, we support the Department's proposals to set additional conditions on institutions deemed at risk of closure. We also suggest some additions to this proposal, as noted below.

RECOMMENDATION: Require teach-out agreements (§ 668.14(e))

Under the new §668.14(e) section, the Department has added conditions that the Secretary can require, including having institutions at risk of closure provide a teach-out plan or agreement. We applaud the additions and strengthening of these regulations. As the Department acknowledges, in the reasoning for the proposed rules, closures can happen very rapidly. As such, we suggest that requiring schools at risk of closure to have just a teach-out plan in place is insufficient. Teach-out plans require time, staff, and significant effort to convert into actual teach-out agreements, all things institutions at risk of closure often do not have at their disposal. Therefore, we believe the Department's position should be that institutions at risk of closure must submit teach-out agreements, not only plans.

[102] State Higher Education Executive Officers Association and the National Student Clearinghouse, *A Dream Derailed? Investigating the Impacts of College Closures on Student Outcomes* (Denver, CO: State Higher Education Executive Officers Association and the National Student Clearinghouse Research Center, 2022), https://sheeo.org/project/college-closures/.

SUPPORT: Limit risk from changes in ownership (§ 668.14(f))

We are firmly in favor of the proposed strengthening of change in ownership provisions. A recent GAO report suggested that a former owner or other senior institutional official played an inappropriate insider role in the transaction in a third of the conversions it reviewed.[103] Given these findings, the requirements that any institution attempting a conversion must continue to comply with the 90/10 rule, comply with restrictions on advertising itself as a non-profit, and provide reporting on any relationship between a former owner and the new entity are vital protections.

Ability To Benefit (ATB)

ATB provides an important pathway for students who do not have a high school diploma to receive federal financial aid to pursue education after high school. ATB was resurrected in 2014 after widespread fraud and abuse, concentrated in the for-profit sector, caused its demise in 2011.[104] The rulemaking on ATB was long overdue, and we applaud that the Department and negotiators reached consensus on this issue during the institutional and programmatic eligibility rulemaking. The new regulations will help ensure that the problems seen before 2011 don't reemerge.

SUPPORT: Ensure that "eligible career pathway" matches the WIOA definition *(*§ 668.2*)*

The resurrection of ATB in 2014 was never meant to be a full restoration to the original ATB program, which had resulted in fraud and abuse. Now, ATB programs must be effective and robust in order to qualify, and the way to do so is ensuring that "eligible career pathway" matches the definition of an eligible career pathway in the Workforce Investment and Opportunity Act (WIOA).[105] This definition in WIOA has now become a well-established practice. Workforce training must be contextualized and concurrent with GED and postsecondary instruction, and there must be other support in place such as counseling. We were pleased to see the Department use this same definition in newly proposed §668.2 General Definitions.

RECOMMENDATION: Ensure states maintain focus on helping those without a high school diploma (§ 668.157)

The two-year trial process for interim approval proposed by the Department will enable states to be creative and flexible, but the Department must provide rigorous oversight to the programs

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[103] U.S. Government Accountability Office, *Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions* (Washington, DC: Government Accountability Office, 2020),https://www.gao.gov/products/gao-21-89.
[104] Doug Lederman, "Ferreting Out Financial Aid Fraud," *Inside Higher Ed,* October 14, 2009, https://www.insidehighered.com/news/2009/10/15/ferreting-out-financial-aid-fraud.
[105] Public Law 113-128.

proposed by states to ensure that they meet the definition of eligible career pathway program, and to move immediately to cut off fraud and abuse. The Department has the authority to verify that each ABT proposal follows § 668.157 and is designed to help students without a high school diploma. One way the Department can do so is involving the Office of Career, Technical, and Adult Education (OCTAE) in the approval process given their expertise with determining eligible career pathways programs.

SUPPORT: Success rate calculation (§ 668.156(f))

Directed question

"We propose a success rate calculation under proposed § 668.156(f) and would like to receive public comments specific to this success rate calculation) to further inform this rulemaking. We specifically request comments on the proposed 85 percent threshold, the comparison groups in the calculation, the components of the calculation, and whether the success rate itself is an appropriate outcome indicator for the State process as well as any other information, thoughts, or opinions on the success rate calculation."

We believe the proposed 85 percent threshold is a fair standard and that the comparison groups will enable the Department to make apples-to-apples comparisons. It is important to maintain a fairly high threshold to ensure ability to benefit students are doing as well as similar peers and that the eligible career pathway programs are high-quality enough to prevent waste, fraud, and abuse of Title IV dollars.