

# United States Senate

WASHINGTON, DC 20510

June 20, 2023

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Docket ID ED-2023-OPE-0089

Dear Secretary Cardona:

We write in response to the U.S. Department of Education’s (“Department”) proposed rules regarding financial value transparency and gainful employment. The Biden-Harris Administration’s proposed regulations mark the strongest accountability framework for career training programs subject to gainful employment requirements (“career training programs”) to date, and would establish critically needed financial value transparency. We believe such regulations will make important progress to ensure program integrity, proper oversight, and accountability for institutions of higher education that receive taxpayer-funded federal financial aid. We urge the Department to keep these strong gainful employment and transparency provisions to protect students and taxpayers in the final rule.

Career training programs, which consist of all programs at for-profit colleges and non-degree-granting programs at public and private nonprofit colleges, have higher rates of unmanageable debt and low earnings compared to degree-granting public and nonprofit programs. According to the Department’s Regulatory Impact Analysis (RIA), approximately 425,000 students per year—representing nearly 15 percent of all Title IV recipients—attend career training programs where the typical graduate earns less than the typical high school graduate.<sup>1</sup> An additional nine percent of students enrolled in career training programs have unmanageable debt.<sup>2</sup> The Department’s RIA also showed that there are additional options for students. More than 90 percent of students enrolled in failing programs have at least one non-failing option within the same geographic area, credential level, and field, and these alternative programs generally leave borrowers with higher earnings, lower debt, or both.<sup>3</sup>

The data clearly and consistently show that for-profit colleges have a history fraught with abuse, fraud, and poor student outcomes. Under the 2014 GE rule that was rescinded by the previous administration in 2019, 98 percent of failing programs were at for-profit colleges,<sup>4</sup> and while for-profit colleges enrolled just eight percent of all postsecondary students, they accounted for more than 30 percent of all student loan defaults.<sup>5</sup> One study found that students attending a four-year program at a for-profit college are more likely to use federal loans, have larger debt

---

<sup>1</sup> 88 Fed. Reg. 32,420

<sup>2</sup> Id

<sup>3</sup> 88 Fed. Reg. 32,433

<sup>4</sup> <https://studentaid.gov/data-center/school/ge>

originations, default, and experience worse labor market outcomes compared to students who pursue a four-year degree at a public institution.<sup>6</sup>

The Department's proposal also would address the regulatory status quo governing the for-profit college industry, which has troubling racial and equity implications. For far too long, for-profit colleges have targeted vulnerable populations, including students of color, veterans, women, and low-income students, leading to widening disparities in educational and financial outcomes that already persist in our higher education system. For example, according to one report, while Black and Latino students make up 34 percent of college students, they represent 51 percent of students at for-profit colleges.<sup>7</sup> Unfortunately, the deregulation efforts of the previous Administration largely favored the interests of corporate executives over the interests of students, especially minority students. The Department's proposed rule will reinstate key requirements for institutions and protect more than 700,000 students per year who receive Title IV aid and enroll in failing career training programs.<sup>8</sup>

The Department's proposed reinstatement of the GE rule calls for a debt-to-earnings (DTE) standard similar to the DTE standard that existed under the 2014 GE rule. The proposed rule also includes a new earnings premium (EP). Both metrics are supported by existing statutory authority. Under the *General Education Provisions Act*, the Secretary has authority to "make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department," including the Title IV program.<sup>9</sup> Furthermore, the *Higher Education Act* (HEA) provides the Secretary the authority to establish eligibility requirements to administer Title IV aid to students.<sup>10</sup> The HEA also requires that career training programs lead to gainful employment in a recognized occupation,<sup>11</sup> suggesting the Department should consider the returns of such programs; both the earnings premium and debt-to-earnings measures fall comfortably within that framework.

We support the Department's proposed DTE standard. This much-needed accountability metric would compare the median earnings of career training program graduates to the median annual loan payments of these borrowers. A program would be considered "high-debt-burden" if graduates' loan payments were more than eight percent of their annual earnings and more than 20 percent of their discretionary earnings. According to the Department, career training programs account for only 15.2 percent of Title IV enrollments, but nearly 50 percent of all Title IV enrollments that fail the DTE standard and 65 percent of borrowers who default.<sup>12</sup> Under the Department's proposal, a program that fails the DTE metric in two out of three consecutive years would lose Title IV eligibility. We also support the Department's inclusion of federal, private, and institutional loans when calculating the DTE standard. By including all three loan types, the

---

<sup>5</sup> FY17 cohort default rate data, which was released in 2020;

<https://ticas.org/accountability/cohort-default-rates/ticas-analysis-of-official-three-year-cohort-default-rates-fy17/>

<sup>6</sup> [https://www.nber.org/system/files/working\\_papers/w25042/w25042.pdf](https://www.nber.org/system/files/working_papers/w25042/w25042.pdf) (p 28-29)

<sup>7</sup> <https://www.nclc.org/wp-content/uploads/2022/08/report-gainful-employment-civil-rights-oct2019-1.pdf>

<sup>8</sup> 88 Fed. Reg. 23,420

<sup>9</sup> 20 U.S.C. 1221e-3

<sup>10</sup> 20 U.S.C. 1099c

<sup>11</sup> 20 U.S.C. 1002(b)(1)(A), (c)(1)(A)

<sup>12</sup> 88 Fed. Reg. 32,308

Department can determine a complete picture of a student's financial burden as a result of attending the program. It also prevents institutions from steering students away from federal loans and toward private or institutional loans to evade accountability under the rules.

The Department's new EP test would require that the typical graduate from a career training program earn at least as much as a typical high school graduate between the ages of 25 to 34 and who is in the labor force in their state. The median earnings of a high school graduate are approximately \$25,000 nationally, which corresponds to an hourly wage of \$12.50, below the state minimum wage in some states. If a graduate's earnings three years after graduating are equal or less than this, the program would be considered "low-earning." Similar to the DTE standard, if a career training program failed the EP test two out of three consecutive years, it would lose Title IV eligibility.

We support the Department's creation of the EP test, which would ensure that programs that claim to prepare students for gainful employment deliver on their promises and leave students better off after pursuing higher education. The HEA generally requires that students complete a high school education before being eligible for federal financial aid.<sup>13</sup> The HEA also requires that career training programs "prepare students for gainful employment in a recognized occupation."<sup>14</sup> Career training programs are meant to improve graduates' earnings and employment outcomes compared to a high school degree. According to survey data from 2,000 young people between the ages of 16 and 19, college affordability and future earning potential were the two most important factors guiding their decisions to apply and enroll in college.<sup>15</sup>

The HEA gives the Department authority to collect and publish information on its programs, including Title IV, to inform the public and measure its programs' effectiveness.<sup>16</sup> We also support the Department's proposal to increase transparency measures for students, including the creation of a website to house information, such as career training programs and non-career training programs' cost of attendance, median loan debt, earnings of graduates, programmatic accreditation, and licensure exam passage rates. As the cost of college generally has increased,<sup>17</sup> this data would help students and parents make high-quality postsecondary decisions by providing them with a full picture of what a family could expect to pay and how much graduates can expect to earn.

We further applaud the Department's move to require institutions of higher education to provide a link to the Department's disclosure website. We also commend the Department's proposal to mandate that students provide acknowledgement that they have seen warnings of "high-debt-burden" programs before the Department disburses Title IV aid, and the proposed rule's "cooling off" period, which requires three days between the student seeing "high-debt-burden" warnings and using Title IV aid to enroll at an institution. Due to the importance of providing students with postsecondary financial-value information, we urge the Department to prioritize establishing the disclosure website in a timely manner.

---

<sup>13</sup> 20 U.S.C. 1001(a)(1)

<sup>14</sup> 20 U.S.C. 1002(b)(1)(A), (c)(1)(A)

<sup>15</sup> <https://www.nytimes.com/2023/03/27/opinion/problem-college-rankings.html>

<sup>16</sup> 20 U.S.C. 1231a

<sup>17</sup> [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_330.10.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_330.10.asp)

We encourage the Department to consider the unique circumstance of Historically Black Colleges and Universities and other Minority Serving Institutions (MSIs), which have special missions and play an important role in educating students. The Department can do this by providing technical assistance to MSIs that have programs that fail gainful employment, helping to ensure they come into compliance.

The Department's proposed rule is an important step forward in supporting students and improving accountability for institutions of higher education. After four years without the GE rule, we strongly urge the Department to issue the final rule by November 1, 2023, so that the rule can take effect on July 1, 2024. Additionally, we urge the Department to continue efforts to protect students and taxpayers outside the rulemaking process, including by immediately and efficiently using its current oversight and enforcement authorities to hold bad actors accountable. Thank you for your attention to our requests.

Sincerely,



Richard J. Durbin  
United States Senator



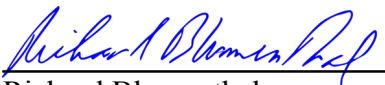
Bernard Sanders  
United States Senator



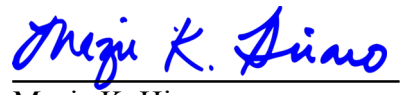
Elizabeth Warren  
United States Senator



Sherrod Brown  
United States Senator



Richard Blumenthal  
United States Senator



Mazie K. Hirono  
United States Senator



---

Chris Van Hollen  
United States Senator