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May 27, 2014

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Program Integrity: Gainful Employment
Docket ID ED-2-14-OPE-0039

Dear Secretary Duncan,

Thank you for the opportunity to comment on the proposed regulation of gainful employment programs. The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting low-income consumers through eliminating abusive financial practices, with a historical focus on mortgage lending reform. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and minority families, primarily through financing safe, affordable home loans.

The proposed rule takes an important first step towards reforming for-profit college lending, but it must be strengthened in key areas. As detailed below, we make the following recommendations to improve the proposed rule:

- Strengthen debt-to-earnings ratios. The current proposal would still leave many low-income students with unaffordable debt.
- Clarify that the debt-to-earnings metric measures poor performance on an individual basis, not relative to other programs.
- Reduce program size from 30 to 10 in the debt-to-earnings calculation; use a 10-year amortization period for all degrees and certificates; and use an interest rate that reflects the actual interest rates charged, such as the weighted average.

- Include Perkins loans, books, supplies, and materials in the loan amount used in the debt-to-earnings metric. Consider including housing costs where institutions significantly control borrowing for institution-affiliated housing.
- Close loopholes in the program-level cohort default rate ("pCDR"). Consider implementing a repayment rate metric.
- In the certification requirements, include institutional or programmatic accreditation if required by a large majority of employers.
- Clarify that certification applies to the occupational licensing requirements of the state where the program is offered or where the student intends to practice the occupation.
- Provide relief to borrowers who enroll in programs that lose eligibility.
- Cap enrollment in at-risk programs.

I. Gainful Employment Regulations Needed to Protect Students

Reforming for-profit college lending is a critical consumer protection need. For-profit colleges aggressively market their education programs and, in many cases, fail to provide a useful education to the students they enroll. For-profits target low-income students, students of color, and military servicemembers, who disproportionately bear the costs of for-profits' unfair and deceptive practices. Similar to predatory mortgage loans in the early 2000s, easy access to credit paired with strong, risk-free financial incentives to place consumers into those loans set the stage for consumer abuse. In the case of mortgages, predatory lenders profited from placing borrowers in unaffordable loans; just as for-profit colleges rely on students to take on debt that they are unable to afford.

The Department must take definitive action to protect the integrity of the federal student loan program. Because of wide-spread abuses, largely in the for-profit sector, the Title IV student aid program has been grossly perverted from its original purpose of helping low-income students achieve "gainful employment" through higher education. Compared to other institutions, they leave students with higher debt, lower graduation rates, lower earnings, and more unemployment. And as has been well-established by federal and state investigations, for-profit colleges often engage in misrepresentations and high-pressure sales tactics to enroll students and convince them to take out loans.

With 46% of all student loan defaults emanating from for-profit colleges, this federal program intended to help students is hurting them instead – wasting taxpayer dollars in the effort. The balance must be shifted back towards facilitating the promise of higher education, rather than exposing student borrowers to a failed market where they bear significant risk.

In the course of our work, we have reviewed hundreds of emails from former for-profit college students. They tell stories of hardship, embarrassment, despair, and anger; weddings, childbearing, and homeownership deferred; and sometimes deep depression and suicidality. Borrowers feel a grievous sense of betrayal, not only towards the for-profit colleges, but also towards the government that failed to protect them from predatory programs. Implicitly, student loan borrowers believe that the government would not extend them a loan for higher education

that did not provide even a slim promise of a return on their investment. We urge the Department to enact a strong rule, one which results in far fewer students reporting that "[g]oing to college was the worst mistake in my life."

The Department's proposed regulations would be an important step towards changing this harmful dynamic. While there is room for improvement, the Department's proposed rule properly identifies those programs that fail to use Title IV funds to prepare students for gainful employment, and so should not be permitted to further participate in Title IV programs.

II. For-Profit Colleges Blame Students for Being Minorities

For-profit college industry advocates have argued that "pre-enrollment characteristics" (e.g., race and income) are to blame for their students' poor results. They argue that the gainful employment rules unfairly single them out, and penalize them for enrolling low-income and students of color. This argument leads irrevocably to the conclusion that students of color are personally to blame for the sector's poor results -- a claim that must be rejected, if not excoriated, by the Department.

Indeed, for-profit colleges do enroll a disproportionate share of students of color and other nontraditional students. But this does not excuse for-profit colleges' poor performance; quite the opposite. Controlling for demographic characteristics such as race and income, for-profit colleges produce poorer results than other types of nonprofit educational institutions.[1] For-profit colleges are endangering the students of color who enroll disproportionately, and they merit the scrutiny they are receiving.

Targeting people of color and providing them with an inferior product cannot be justified on the grounds that an institution is providing services to students of color. In other consumer lending contexts, such conduct is called "reverse redlining," and has been held to violate consumer protection laws.[2] Similarly, for-profit colleges cannot justify their bad outcomes on the grounds of their students' "pre-enrollment characteristics." Such conduct is race discrimination, not a reason to evade regulation.[3]

For-profit colleges also argue that stricter regulation will harm students of color and low-income students because it will reduce their access to education. This argument implies that vulnerable students should assume an especially high, unregulated risk of failure and harmful default in order to access education. But we believe that students, especially students of color

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[1] Nicholas W. Hillman, *College on Credit: A Multilevel Analysis of Student Loan Default*, Review of Higher Education (Winter 2014).

[2] *See Hargraves v. Capital City Mortg. Corp.,* 140 F. Supp. 2d 7, 20 (D.D.C. 2000); Benjamin Howell, *A Parallel Evolution: The Reverse Redlining Theory,* 94 Cal. L. Rev. 101, 142 (2006); National Consumer Law Center, *Why Responsible Mortgage Lending is a Fair Housing Issue*, at https://www.nclc.org/images/pdf/credit_discrimination/fair-housing-brief.pdf. The City of Los Angeles recently sued Bank of America, Wells Fargo, and Citibank for damages to the city under a reverse redlining theory of mortgage discrimination. *See http://www.courthousenews.com/2013/12/09/63550.htm*.

[3] *Cf.* Second Amended Complaint, *Morgan v. Richmond School of Health and Technology,* No. 11-1066 (E.D. Va. filed Dec. 7 2011) (class action against for-profit college asserting Equal Credit Opportunity Act discrimination claim), *available at* http://www.relmanlaw.com/docs/RSHTsecondAmendedComplaint.pdf.

and low-income students, should not face such a high risk to access education. The gainful employment metrics are intended to mitigate the risk of the Title IV program to students while preserving access to education. In other consumer credit contexts, such as the Qualified Mortgage rules, the federal government has taken similar steps to balance responsible lending with preserving access to credit. As a lender, the Department must continue to ensure that institutions use the Title IV program responsibly and safely.

III. Gainful Employment Regulations Will Protect Servicemembers

For-profit colleges target veterans and servicemembers with high-pressure and abusive sales tactics. The Higher Education Act forbids for-profit education companies from receiving more than 90 percent of their revenues from federal education aid. But neither the G.I. Bill, nor Defense Department tuition assistance, are specifically named in the list of federal education aid. For-profit colleges count the G.I. Bill and military tuition assistance as private, non-federal dollars to help them avoid the 90% cap on federal aid. Because of this 90/10 loophole, for-profit colleges are eager to enroll students using the G.I. Bill and Defense Department tuition assistance – so eager that some predatory education companies engage in deceptive and aggressive marketing to sign up veterans and service members. The Gainful Employment rules would help protect servicemembers by eliminating poorly performing programs that would waste their military benefits and put them further in debt.

We also reject the argument made by for-profit colleges that the Gainful Employment rule will result in a significant share of students (especially those of color and low-income) to lose access to higher education opportunities entirely. In other contexts, the for-profit sector has embraced the concept of its "nimbleness" and ability to adapt to the market. Presumably, it should be able to adapt to the Gainful Employment rule and expand successful programs after failed programs close.

IV. The Debt and Default Metrics

The Department proposes two debt-related metrics to measure gainful employment. Each of these metrics appropriately defines gainful employment in terms of students' economic status after they leave school. A distressed economic status, as indicated by the debt metrics, indicates that the student has not been prepared for gainful employment.

Program graduates would be required to pass one of two defined student loan debt-to-earnings ratios ("D/E"): 8% of total pretax income, or 20% of discretionary income. These ratios compare post-graduation income to student loan debt only; other consumer debt is not included in the numerator. In addition, programs could not have a cohort default rate ("pCDR") of over 30%. D/E measures only graduates; pCDR measures all students who have attended the program.[4]

A. D/E and pCDR are Independent Metrics

[4] 79 Fed. Reg. 16426, 16427-8 (Mar. 25, 2014) [hereinafter "Notice"].

As the Department notes[5], D/E and pCDR are separate metrics designed to measure different aspects of gainful employment. As such, they function independently and identify different ways programs may fail to prepare students for gainful employment. D/E measures the financial status of graduates only, since they have obtained the full income-enhancing benefit (if any) of their degree. It would not be appropriate to include non-completers in this metric, since their earnings have not been fully impacted by the program. pCDR, in contrast, measures the financial status of graduates and non-graduates via their default rates. The default rates reflect whether loans have posed an insurmountable burden to the borrower (or risk to the lender), independent of their earnings. Since some programs have large percentages of non-completers, the rule must include a metric that takes non-completers into account.

B. Debt to Earnings Ratio ("D/E") - § 668.403 and 404

The proposed rule bases the D/E metric on a sound underlying assumption: a program that prepares a graduate for gainful employment will lead to an income sufficient to make the repayment of student loan debt affordable. Too little income compared to debt indicates that the student has not been prepared for gainful employment by the school. As the Department correctly observes, the D/E rate "identifies programs that fail to adequately prepare students with the occupational skills needed to obtain employment or that train students for occupations with low demand and low wages."

The proposed rule uses baseline DTE ratios of 20% of discretionary income to student loan debt; or 8% of pretax income to student loan debt as the passing rates. The Department then proposes to multiply these by 50% to arrive at a fail rate of 30% discretionary income and 12% pre-tax. Programs that fall between would be in the "zone," and risk failing unless they improved. A single year of poor performance would not result in sanctions. Instead, programs must fail (or stay in the zone) several years in a row in order to be disqualified from Title IV eligibility.

The 8% pretax and 20% discretionary income limits should be further tightened. According to the Notice, "the passing threshold of 8 percent … has been a fairly common mortgage underwriting standard … [e]ight percent represents the difference between the typical ratios used by lenders for the limit of total debt service payments to pretax income, 36 percent, and housing payments to pretax income, 28 percent."[6]

Although we agree that the concept of using D/E as a metric to measure gainful employment is amply supported, the thresholds could be too high and run the risk of missing some programs that do not sufficiently educate their participants. In the proposed rule, a program could pass even if it had a pretax D/E of 8%. But for many low-income borrowers who have not

[5] *Id.* at 16437.

[6] Notice at 16443. Fannie Mae's basic manual underwriting criteria is 36% D/E. Fannie Mae, Selling Guide, Debt-to-Income Ratios, *https://www.fanniemae.com/content/guide/selling/b3/6/02.html*. Major commercial banks' and other providers' consumer websites also recommend a 28/36% front-end and back-end DTI. *See, e.g.,* http://www.schwabsavingsfundamentals.com/public/savings/how-to-save-for-a-home; https://www.chase.com/content/dam/chasecom/en/mortgage/documents/mortgage_homebuyers_guide.pdf; http://www.quickenloans.com/blog/why-you-shouldnt-use-30-percent-rule; https://www.usbank.com/calculators/jsp/MortgageQualifier.jsp#17.

seen their incomes enhanced by their studies, 8% of pretax income or 20% of discretionary income could still be an unsupportable debt level, especially if they have other non-mortgage consumer debt. For example, according to the National Center for Children in Poverty, a single mother with two children living in Des Moines, Iowa would need an income of $41,000 a year or $20/hour to keep her children out of poverty. This basic budget includes little room for a student loan debt of 8% of her pretax or 20% of her discretionary income, let alone other consumer debt not included in the 8%[7] – but a program which left her with that debt level would still pass.

In addition to tightening the thresholds, the Department should make several additional changes to the metric to ensure that it properly reflects the debt burden faced by graduates. These include:

Reducing the covered program size from 30 to 10. In the current proposal, programs smaller than 30 students would not be subject to the D/E metrics. This creates opportunities for evasion, allowing schools to reduce program size in order to escape regulation, and fails to hold small programs accountable. As the Department's own statistical analysis indicates, decreasing covered program size to 10 would still yield an extremely high level of accuracy.[8] Thus, reducing the program size to 10 would protect the rule's integrity while still allowing a high level of accuracy.

Reducing the amortization period used to calculate annual debt burden to 10 years for all programs. The Department proposes an overly long amortization schedule: 10 years for certificates and associate degrees; 15 years for bachelor's and master's degrees; and 20 years for doctoral or professional degrees. The Department should instead use 10 years for all degrees. As the Department noted, "the substantial majority of borrowers entering repayment in 2012, regardless of credential level, are in the standard repayment option of 10 years."[9] The longer periods do not reflect the amortization schedules that students actually have upon graduation, and unjustifiably lower the annual debt payments considered in the D/E metric. Accordingly, the D/E metric should also use a 10-year amortization schedule for all borrowers.

Using an interest rate that reflects the actual cost of the loan. The Department should compute a weighted, actual average interest rate, or another method that closely approximates the actual interest accrued.

Including private student loans; Perkins loans; books, equipment, and supplies; and housing costs. The Department reasoned that books and supplies should be included because "institutions can exercise control over this portion of the amount the student may borrow."[10] Because federal loan funds are available, schools have a strong incentive to encourage students to borrow for housing costs, and it is clear that many schools do so. This is particularly true where the institution offers housing. For example, one proprietary school offers to place students in its "college-sponsored" housing as part of the financial aid process. This school advertises

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[7] Kinsey Alden Dinan, National Center for Children in Poverty, *Budgeting for Basic Needs* (March 2009), at http://www.nccp.org/publications/pub_858.html.

[8] Notice at 16445. Programs must fail repeatedly, reducing any risk of error caused by the smaller program size.

[9] Notice at 16452.

[10] Notice at 16453.

that "college-sponsored housing offers you numerous advantages such as the ability to include these costs in your financial plan" and "[s]ome of the benefits of student housing are … financial aid may cover all housing costs for those who apply."[11] This institution may indeed be "exercising control" over the amount the student borrows for housing. Their marketing practices may steer students towards particular accommodations by suggesting that students can only use financial aid for college-sponsored housing, and not for other, cheaper alternatives. Even without these representations, packaging housing as part of the financial aid process (especially if rent is dispersed directly to the institution from loan proceeds) discourages consumers from comparison shopping and almost certainly gives the institution-affiliated housing a market advantage over other, possibly cheaper forms of housing. Accordingly, the institution may be exercising considerable control over student borrowing for housing, and these costs should be included in the debt metric.

Ensuring that private student loans are reported. The proposed rule requires schools to include the "total amount the student received from private student loans for enrollment in the program that the institution is, or should reasonably be, aware of."[12] This gives too much discretion to the schools to report private student loan balances, and may allow evasion. Private student loans have been an expensive, predatory form of financing for-profit college educations.[13] In some cases, schools may use private student loans as a way to evade the 90/10 rule.[14] For-profit college student borrower private loans at twice the rate of students in other comparable non-profit programs.[15] Private loan interest rates are generally much higher than Title IV loans, and for-profit colleges have been accused of engaging in illegal conduct to induce students to take out these loans.[16]

Because of the risks associated with private student loans, and in order to ensure that the D/E metric accurately reflects loan burdens, institutions should be required to affirmatively assess whether their students have private student loans. Finally, "private student loan" should be defined broadly to include all forms of credit used to pay for higher education expenses, including open-ended accounts such as credit cards; closed-ended and installment loans; and home equity loans.

C. Clarify that the D/E Metric Identifies Poorly Performing Programs

In several places in the Notice, the Department makes reference to the "worst" programs. The Notice mentions that the debt metrics will "identify the worst performing programs;" the "lowest performing programs;" and "the very worst performers."[17] While we agree that these programs will be the worst performers, it is important that the Department clarify that these programs are being judged as individuals according to the Department's standards of "gainful

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[11] *See* http://www.artinstitutes.edu/arlington/student-consumer-information/student-housing-costs.aspx; http://content.artinstitutes.edu/assets/documents/hollywood/housing-brochure.pdf.
[12] Notice at 16443-4.
[13] Deanne Loonin, National Consumer Law Center, *Piling It On: The Growth of Proprietary School Loans and the Consequences for Students* (Jan. 2011).
[14] *Id.*
[15] Consumer Financial Protection Bureau, *Private Student Loans* (Aug. 29, 2012) at 33.
[16] *Consumer Financial Protection Bureau v. ITT*, No. 14-292, S.D. Ind. (Feb. 26, 2014).
[17] Notice at 16443.

employment." They will not face sanctions because they are the "worst" or "lowest performing" relative to other programs, but because, as the Department rightly notes, they "exhibit poor outcomes and unacceptable debt levels" by their own rights.

D. Program Cohort Default Rate ("pCDR") and Repayment Rate

The Department proposes to use the default rates of individual programs' student cohorts as a second, independent debt metric. Unlike D/E rates, the pCDR would include both program graduates and students who do not complete the program. The pCDR would largely echo the statutory institution-level cohort default rate (iCDR), which disqualifies institutions from Title IV programs if they have default rates of greater than 30% for three years in a row.

We agree that debt repayment status, including defaults, are an accurate tool to assess whether a program has prepared students for "gainful employment." A program fails to prepare students for "gainful employment" if they don't complete, or if they can't find employment (whether or not they have completed). Recent research indicates that unemployment and failure to complete a program are risk factors for student loan default.[18] Thus, high default rates may signal lack of preparation for gainful employment. Furthermore, enrollment in a for-profit college is itself one of the "strongest predictors" of default. Even controlling for student characteristics, the mere fact of attending a for-profit college increases the odds of defaulting.[19] Thus, high default rates appear to be related to the school itself and the way it fails to prepare students for gainful employment – and not exclusively to student characteristics that the institution cannot control, like race, as some have suggested.

We also agree that it is reasonable for the Department to borrow the three year, 30% default rate from the statutory iCDR. The Department has reasonably adopted a standard that Congress has already indicated signals the limits of acceptability for Title IV eligibility.

In addition to the current proposal, we strongly recommend that the Department proactively address efforts to circumvent the pCDR metric using deferment and forbearance to manipulate institution-level cohort default rates. Although default is an accurate way to measure gainful employment, unscrupulous institutions might too easily evade the proposed pCDR metric. Institutions currently use deferment and forbearance to evade the institution-level cohort default rates. The Secretary himself acknowledged in a February 27, 2013 letter to interested Senators that "some institutions are aggressively pursuing their former students to compel them to request forbearance from their loan servicer."[20] Student loan servicers have also been known to game default rates by putting borrowers into forbearance or deferment in order to make their books look better to investors, and may also be motivated under current frameworks to put students into inappropriate deferments and forbearances.[21]

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[18] *See* Hillman, *supra* n. 1.
[19] *Id.*
[20] *See* http://www.republicreport.org/wp-content/uploads/2013/03/Duncan-to-Harkin-2-27-CDR-90-10.pdf.
[21] *See, e.g., In re SLM Securities Litigation*, No. 08-1029 (S.D.N.Y. Sept. 24, 2010), *available at* http://securities.stanford.edu/filings-documents/1039/SLM_01/2010924_r01o_08CV01029.pdf.

pCDR will not be an effective metric until the Department takes steps to stop evasions by amending and enforcing the Program Integrity rules. This may include developing tools to identify institutions that game default rates through examining spikes in default rates after the pCDR and iCDR periods are over; prohibiting attempts to inappropriately influence students to enter forbearance or deferments that are not in their financial interest, such as by giving them gift cards; and ensuring that student loan servicers only offer deferments and forbearances that are in the student's financial interests.

Since pCDR can be evaded, the Department should also consider adding a repayment rate metric to the Gainful Employment regulations to measure the financial status of both graduates and non-completers. A repayment rate metric would identify programs with an unacceptable proportion of borrowers who are not reducing their loan balances, including students who are in deferment and forbearance (other than military and in-school deferments). The repayment rate metric would limit the ability of institutions to evade accountability by pushing students into deferment, since most of these students would be counted as non-repayers regardless of their status.

The proposed rule does not include a repayment rate metric because of the Department's perception that it is too difficult to establish a legally defensible threshold. In the first Gainful Employment rule, the Department enacted a repayment rate metric and set the threshold at 35% of loans successfully amortizing. But this threshold was thrown out by a court on the grounds that it was unsupported by a "'reasoned explanation' other than that it would identify the worst performing quartile."[22] Notably, the court did not hold that a repayment rate is not an appropriate measure of gainful employment; it only found fault in the Department's justifying the 35% threshold on the grounds that it would be failed by the bottom 25% of programs.[23]

The Department now says that it cannot re-enact a repayment rate metric because it has "found no expert studies or industry practice that would provide the kind of factual support for identifying a particular loan repayment rate as an appropriate threshold … nor has it found alternative support or arguments in support of a threshold."[24] But the Department of Education has the authority to set a repayment rate based on its own internal analysis of the gainful employment risk in its loan portfolio, and it should exercise this authority.

The Department is an expert agency, with a mandate to administer a large loan portfolio funded by taxpayer dollars. In this capacity, it has ample legal authority to develop a repayment rate threshold based on its own assessment of the unique risks in its loan portfolio – as long as that threshold rests on an assessment of gainful employment, rather than consideration of unrelated factors. In the same way that financial institutions must examine their loan portfolios for safety and soundness and compliance risks, such as capital adequacy, liquidity, and

[22] *APSCU v. Duncan*, 870 F. Supp. 2d. 133 (D.D.C. 2012).
[23] *Id.*
[24] Notice at 16439.

compliance with consumer protection laws, the Department should examine the performance of its loan portfolio to identify "gainful employment risks."[25]

As a lender, the Department acts like a financial institution; thus, it is appropriate to import banking supervision concepts like risk-based examination standards. To set a reasonable repayment rate threshold which identifies gainful employment risk, the Department should undertake its own reasoned study of the repayment rates in its loan portfolio to identify criteria that it believes signals unacceptable risk to itself and an unacceptable level of financial stress to borrowers – both of which are factors indicating that the loans have not facilitated the "gainful employment" of borrowers.

V. Certification Requirements, §668.414

The proposed rule would require that all existing and new programs meet accreditation and occupational licensing requirements to be eligible to participate in Title IV programs. Institutions must certify that their programs are all included in the institution's accreditation; are programmatically accredited if required by a state or Federal entity; and meet any state certification, or licensure "that is needed … to practice or find employment in an occupation that the program prepares students to enter."[26]

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[25] The Department should be guided by the history of federal bank regulation and federal deposit insurance. Federal bank supervision is in part a response to the moral hazard created by federal deposit insurance. The Federal government required deposit insurance after the Great Depression to ward off future bank runs. But government subsidized deposit insurance may lead to a "moral hazard:" it incentivizes banks to take investment risks that they might not have without the comfort of insurance. As a result, Federal bank regulation required that banks adhere to "safety and soundness" requirements. Loan portfolio management, which identifies risks in advance, is one of the primary functions of "safety and soundness" supervision.

As the Office of the Comptroller of the Currency explains, "Lending is the principal business activity for most commercial banks. The loan portfolio is typically the largest asset and the predominate source of revenue. As such, it is one of the greatest sources of risk to a bank's safety and soundness. Whether due to lax credit standards, poor portfolio risk management, or weakness in the economy, loan portfolio problems have historically been the major cause of bank losses and failures. Effective management of the loan portfolio and the credit function is fundamental to a bank's safety and soundness. Loan portfolio management (LPM) is the process by which risks that are inherent in the credit process are managed and controlled. Because review of the LPM process is so important, it is a primary supervisory activity. Assessing LPM involves evaluating the steps bank management takes to identify and control risk throughout the credit process. The assessment focuses on what management does to identify issues before they become problems." Office of the Comptroller of the Currency, Comptroller's Handbook, Loan Portfolio Management, at http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/lpm.pdf.

Although the Title IV program is not identical to federal deposit insurance and the moral hazards it created, the parallels are instructive. In the absence of underwriting or risk-retention standards, the Title IV program creates a significant moral hazard at the institutional level. Schools can arrange loans with little to no consequence to themselves if the loans do not perform. The Department and the students absorb all the risk if schools indulge in the moral hazard and arrange loans that will default. In order to mitigate this moral hazard, the Department must develop metrics, such as a repayment rate, to apply to its own loan portfolio to detect and correct the risk. Note that default rates are not a sufficient metric, since student loan default takes a extraordinarily long time compared to other forms of consumer credit. Borrowers will show signs of distress far sooner than they default.

[26] Notice at 16486.

These requirements are a crucial, independent component of the proposed rule. Twenty-nine percent of the workforce is currently required to have an occupational license, and occupational licensing requirements are expanding rapidly.[27] Many gainful employment programs are intended to prepare students to work in heavily regulated occupations that require state licensing or examinations, such as health care. State laws and regulations may impose specific educational pre-requisites for these licenses or exams, such as course length and clinical experience.

By definition, a program which does not graduate students qualified to apply for a licensure or sit for an exam they are legally required to obtain in order to work in their field has failed to prepare them for "gainful employment in a recognized occupation." The proposed rule would impose an objective, outcome-based standard to ensure that graduates are legally eligible to participate in the occupation for which they have trained. The proposed rule would not impose any direct control over curriculum. It merely requires that programs meet the basic legal requirements to practice the occupation, where such requirements exist. The states and accreditors create the specific standards; the Department's rule would simply require that programs meet these standards.

Recent court cases demonstrate the need to ensure that programs prepare students for licensure. The Colorado state Attorney General recently settled a case against Argosy/EDMC, alleging that the school had offered a psychology counseling program that lacked the necessary programmatic accreditation required by the state for students to obtain a license to practice psychology.[28] In another recent case, the New Mexico Attorney General filed suit against ITT for failing to obtain proper programmatic accreditation of its nursing program before enrolling students, who would be unable to legally practice as nurses in the state.[29]

Although the proposed requirements appropriately address one crucial aspect of "gainful employment," they should be expanded and clarified in several ways:

Certification should be expanded to include programmatic or institutional accreditation, or other specific requirements required in practice by the vast majority of private employers. Even if there is no legal occupational licensing requirement, if the lack of accreditation universally bars a student from finding employment, then they have not been prepared for gainful employment in that field. A case recently filed by the Illinois Attorney General illustrates this need. According to the complaint, Alta/Westwood College, which was nationally accredited, offered "Criminal Justice" degrees advertised as leading to law enforcement positions, despite the fact that all law enforcement agencies in the region required regionally accredited degrees.[30] Institutions should not be permitted to offer programs that prepare students for occupations which uniformly reject their credentials for reasons of programmatic or institutional accreditation.

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[27] *See* http://www.princeton.edu/ceps/workingpapers/174krueger.pdf.

[28] *See* *http://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_consumer_protection_settlement_argosy_unive*.

[29] *See* http://www.insidehighered.com/sites/default/server_files/files/New%20Mexico%20ITT%20complaint.pdf.

[30] *See* http://www.cfpbmonitor.com/files/2014/04/REDACTED-COMPLAINT_03-20-2014_17-06-17-2.pdf.

The Department should clarify that the rule applies to occupational licensing requirements in each state where the student lives or intends to practice. The proposed rule language states that it extends to the occupational licensing requirements of the "State in which the institution is located or any State within the institution's MSA." In the final rule, the Department should clarify that programs offered online must qualify the student for practice where she lives, or intends to practice, not where the institution's brick-and-mortar campus is located. A rule that applied only to brick-and-mortar institutions, and not to online students located in a different state from the campus, would be arbitrary and capricious. Online students deserve protection as much as students at traditional campuses.

The Department should clarify that the certification requirements are intended to be an ongoing, independent component of the Gainful Employment rule, and that failure to adhere to them could lead to loss of eligibility. The Notice states that "[o]nce sufficient data are available … the accountability metrics [D/E and pCDR] would be the principal method for assessing a program's continuing eligibility for title IV, HEA program funds." The Department should clarify that the certification requirement will be in effect even when the D/E and pCDR metrics are fully operational. It should further clarify that any violation or falsification of the certification requirement would violate the institution's Program Participation Agreement (PPA) and the Gainful Employment rules, which would lead to loss of eligibility.

The Department must commit to enforcing the certification requirements through PPA review and transparency. The certification requirements hinge on institutions adhering to their PPAs. The Department should take steps to proactively review PPAs for compliance, and should make PPAs publicly available for review.

VI. Consequences, Warnings, and Disclosures

A. Borrower Relief and Enrollment Caps

Students who enroll in programs that lose eligibility to participate in Title IV should obtain relief from their student loan debt. The proposed rule makes efforts to soften its impact on institutions by allowing them to improve their performance and to ensure that the rule disqualifies only poorly performing programs. The Department must show similar concern for the fate of students. If they have taken out loans but have not been prepared for gainful employment, then they deserve relief – especially if the program was already "in the zone" when they enrolled. The Department was already aware that the program posed a heightened risk of default to the student, and yet extended credit to the student anyway. Both the Department and the institution bear a measure of responsibility if that student fails. We urge the Department to consider ways to provide relief to students, and require that programs at risk of failing retain some of the risk of the student loans. Relief should be complete, including forgiveness of all loans and restoration of Pell grant eligibility. Precedence for such relief exists already in the provisions for closed-school and false certification discharges.[31]

[31] 20 U.S.C. § 1087(c)(1).

In order to further protect students from at-risk programs, the Department should also enact enrollment caps for "zone" or failing programs, rather than permitting schools to increase their enrollment in endangered programs and compound the risk to students and taxpayers.

B. Warnings and Disclosures

The Department proposes several warnings and disclosures to current and potential students as a way to alert them to failing or "zone" programs before they enroll or re-enroll. These measures are insufficient to protect students from harm. Although the proposed disclosures may provide valuable information to the public and motivated prospective students, disclosures alone cannot remedy a lack of substantive protections.

CRL has studied consumer disclosures in several other contexts. We have found that disclosures are inadequate to protect consumers in a wide range of consumer financial products. In particular, where the providers have a financial incentive to mislead the borrower, disclosures are unlikely to overcome the inherent information asymmetry. Further, the for-profit college industry's long history of high-pressure and deceptive sales tactics makes it even less likely that disclosures will work. As the Federal Reserve Board has noted, consumers simply may not have the capacity to process disclosure information properly when making decisions involving complex information. The Board accordingly warns that regulators should consider imposing substantive protections instead of relying on disclosures in some cases.[32]

CRL has found disclosures lacking the following contexts:

- **Payday loans**: Despite disclosure requirements requiring payday lenders to offer information on helpful repayment plans to troubled borrowers, few borrowers take the option, because the disclosure is inadequate to protect their interests.[33]
- **Overdraft**: Banks may only enroll consumers in overdraft coverage if the consumer affirmatively opts in. Banks must make certain disclosures intended to ensure that consumers understand the nature of overdraft before opting in. But a CRL survey found that the majority of consumers who chose overdraft services did not understand what they included, and may have opted in simply to stop the aggressive barrage of bank solicitations offering overdraft services.[34]
- **Mortgage Brokers Yield Spread Premium**: The Federal Reserve Board considered but rejected disclosure as a remedy to unfair mortgage broker mark-ups on mortgage loans (also called "yield spread premium"). The Board initially considered disclosures, but dropped them when consumer testing revealed that they did not work. The Board reasoned that the transaction was too complex for the consumer to understand, and that disclosures could not protect the consumer such a setting. No

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[32] Federal Reserve Board, *Designing Disclosures*, available at http://www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm#f8.
[33] Center for Responsible Lending, *Springing the Debt Trap*, http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.html.
[34] Center for Responsible Lending, Survey, April 26, 2011, http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html.

disclosure could remedy the imbalance of knowledge and power between the consumer and lender/broker.[35]

- **Auto Lending Markup**: Similar to mortgage brokers, some auto dealers receive compensation from finance companies by increasing the buyer's interest rate, a practice known as "markup". Markup can result in unfairness and discrimination, since the consumer does not understand the financial incentive the dealer has to increase his or her interest rate. Some states, such as North Carolina, have sought to remedy this practice by requiring better disclosures. But a CRL-commissioned poll of North Carolina voters found that an overwhelming majority—79%—were unaware of the practice, despite the general disclosure. Similarly, a California statewide poll commissioned by Consumers for Auto Reliability and Safety and CALPIRG found that most people surveyed thought that such practices were already illegal, despite the fact that a model form often used in auto transactions discloses the practice. Ninety-three percent of respondents favored requiring dealers to disclose the lowest interest rate for which the buyer qualified.[36]

We do fully support the disclosure of data for transparency and consumer education purposes, such as comparison shopping. However, when it comes to protecting students from risks once the transaction has already begun, the Department cannot rely solely on words on a page or computer screen, particularly when this information is communicated by for-profit college recruiters who benefit if the prospective student enrolls. Instead, it must provide substantive protections, like strong debt metrics, certification requirements, borrower relief, and enrollment caps.

VII. Conclusion

We thank the Department for its years of effort to protect students in gainful employment programs. These students stand to gain the most – or lose the most – from higher education debt. We urge the Department to promulgate a strong rule that protects students and taxpayers, and restores the integrity of the Title IV program.

Sincerely,

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[35] 74 Fed. Reg. 43232, 43281 (Aug. 26, 2009).

[36] Center for Responsible Lending, Comment to the Federal Trade Commission Auto Roundtable, http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/FTC-Comment-February-2-2012.pdf.