



February 10, 2023

Submitted via regulations.gov

Jean-Didier Gaina
U.S. Department of Education
400 Maryland Ave. S.W., Room 2C172
Washington, DC 20202.

Re: *Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs* (Docket ID: ED-2022-OUS-0140)

Dear Mr. Gaina,

As organizations that work with and represent student loan borrowers with unaffordable debt—often as the result of unscrupulous and deceptive recruitment—we appreciate the Department’s stated commitment to transparency and accountability. You have asked for feedback on several specific questions related to the possible construction and publication of a “Low-Financial-Value Programs” list, as well as general feedback on the concept and topic of value in higher education and the role of consumer disclosures. *See generally* 88 Fed. Reg. 1,567 (Jan. 11, 2023). We are pleased to have the opportunity to respond.

We have organized our response into three sections—focusing our attention on issues that were not directly posed by Request for Information. **First**, in response to the general topic and concept, we have doubts, based on direct experience with student loan borrowers, that the publication of any institutional or programmatic “watch list” could overcome the actual or perceived “seal of approval” created by an institution’s participation in the federal student aid program. Even when an institution or program may provide low-economic value, the mere fact that the government blesses an institution or program for participation in the Title IV programs carries substantial weight with prospective students. **Second**, in response to questions 1-3, we urge the Department to enhance public access to information that the Department collects during compliance and enforcement activities, regardless of any “watch list” that the government chooses to create. **Third**, we urge the Department to prioritize its collection of programmatic and institutional information as a means of focusing enforcement and oversight efforts, again separate and apart from the construction of any list.

I. The Single Most Influential Factor Leading Individuals to Enroll in Low-Value Programs Is the Endorsement of the Department of Education and Resultant Availability of Federal Funds to Attend Such Program

Based on our experiences representing and receiving complaints from students who have been scammed by predatory colleges, we are confident that students often assume that the ability to obtain a Pell Grant or federal student loan signals that the institution meets minimum quality standards. **If the school was of limited value, why would the Department permit it to participate in the Title IV programs and received thousands or millions of federal dollars?**

To a prospective student, no label or warning can overcome the fact that the government is willing to put its money behind the product that schools are offering, including money that it never intends to reclaim, such as Pell Grant funds. As Keli J., a resident of Texas who wasted her time and borrowed federal student loans to attend ITT, states, signing up was “clearly, a fail safe,” because of the government endorsement in the form of a Pell Grant. Or, as Jennifer R., from Alabama, puts it: “The FACT that the federal government and Department of Education approved of Virginia College helped me believe that Virginia College was a legitimate college that I could trust,” and “had Virginia College not been backed by the federal government, then I would have never attended Virginia College.” Toni L., who attended a predatory school operated by Career Education Corporation (currently Perdoceo), explains that she “trusted the federal government to release my loans to a trusted and approved entity.” And Shraddha B., a resident of Pennsylvania, stated, “I thought the U.S. Department of Education had oversight over this. If anything, when applying as a 19-year old, I thought [the school] was legitimate *because of that*.” This sentiment was echoed by Ashlei H., a resident of Missouri: “The main reason I chose Ross University was that I figured they had to be good for the government to have been giving them funding for so long—almost 40 years.”

The assumption that participation in Title IV signals programmatic quality is also reasonable. Under the Higher Education Act, to qualify an institution for participation in the Title IV programs, the Department must consider whether an institution is accurately describing the services it advertises (*i.e.*, if it advertises high value programs, is it offering those programs?). More specifically, the statute and regulations *require* that the Department consider, during the institutional certification and recertification process:

- (a) Whether the institution is able “to provide the services described in its official publications and statements”;¹
- (b) Whether the institution is “able to provide the administrative resources necessary to comply with [Title IV] requirements”;²
- (c) Whether the institution is able “to meet all of its financial obligations”;³
- (d) Whether, with respect to Gainful Employment programs, the institution can “demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student.”⁴

¹ HEA § 498(c)(1)(A), 20 U.S.C. § 1099c(c)(1)(A).

² HEA § 498(c)(1)(B), 20 U.S.C. § 1099c(c)(1)(B).

³ HEA § 498(c)(1)(C), 20 U.S.C. § 1099c(c)(1)(C).

⁴ 34 C.F.R. § 668.14(b)(26).

Congress has also charged the Department with conditioning an institution’s participation in the Direct Loan program with its compliance with a “quality assurance system” that “ensure[s] that the institution is complying with program requirements and meeting program objectives.” Nevertheless, despite the statutory directive for the Department to “develop [such a system] in consultation with institutions of higher education,”⁵ the Department has *never* done so and instead relies exclusively on institutional accreditors to be the sole judge of educational quality.

Unfortunately, despite the Department’s statutory obligations, we have seen far too many examples of institutions that continue to participate in the Title IV programs despite abysmal record of regulatory compliance, consumer protection issues, and lackluster quality.⁶

We commend the Department’s current efforts to identify schools and programs that are not providing value to students, but this initiative must be accompanied by consequences for those failing programs. It makes little sense to permit schools to participate in Title IV and, at the same time, list them as “low value” to the public. It’s confusing, at best, and would lead to further erosion of the public’s confidence in the value of higher education and the stewardship of the Department in particular. And what good does this do for the student who is not well-positioned to determine if the underlying data means the school is or is not a wise investment of time and money? As researchers have concluded, information alone is not enough to steer students away from poorly performing schools.⁷ In particular, communities of color would be impacted negatively if all the Department did is release information without taking concrete action to limit the participation of schools offering low value programs.⁸

In 2019, the Institute for College Access and Success—then led by current Under Secretary of Education James Kvaal—wisely wrote to the Department that there is “no evidence” to “support[] information disclosures as a standalone strategy to improve students’ decision making processes across the board or more broadly improve their awareness or comprehension of higher education

⁵ HEA § 454(a)(4), 20 U.S.C. § 1087d(a)(4).

⁶ See, e.g., Student Defense, *A Blank Check: U.S. Department of Education Renews Contracts with Troubled For-Profit Colleges* (Nov. 2022), https://www.defendstudents.org/news/body/NSLDN_BRIEF_Failing-to-Hold-Wrongdoers-Accountable_FINAL.pdf.

⁷ Dominique J. Baker, et al., *Why information alone is not enough to improve higher education outcomes*, Brookings (Dec. 14, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/>.

⁸ A 2016 study that measured the effects of College Scorecard data on students found that some student changed their application behavior in response to Scorecard, but critically these changes were concentrated among white students, Asian students, and those coming from well-resourced high schools. The authors found no significant impacts on Black and Hispanic students’ college choices. See Michael Hurwitz & Jonathan Smith, *Student Responsiveness to Earnings Data in the College Scorecard*, College Board (Aug. 2016), <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/oira/policy/seminars/College-Score-Card.pdf>.

options.”⁹ As Mr. Kvaal put it: **“Even the Best Disclosures Do Not Protect Students.”** (emphasis added).

We agree with this sentiment, insofar that disclosures must be accompanied with accountability measures, but we are troubled by the lack of concrete enforcement actions taken by the Department in recent years.¹⁰ Although well-designed and implemented disclosures do provide *some* value, lists that simply “name and shame” schools or programs—without other accountability measures—will neither remedy wrongs nor alter institutional behavior.¹¹ In contrast, regulations and enforcement actions that consider quality, outcomes, and institutional behavior—and *have consequences* when programs fail to meet standards—make an impact. Take, for example, the 2014 Gainful Employment (GE) Rule. Although never fully implemented because of the Trump Administration’s Repeal, and this Administration’s ongoing defense of that Repeal, the first year of Debt-to-Earnings rates established that approximately 8.6% of “gainful employment” programs had failed the Department’s metrics. As now-Undersecretary Kvaal and former Secretary Duncan highlighted in *The Washington Post* in 2019, the gainful employment rule was sorely needed in 2014 and the *consequences* of failure was “actually driv[ing] career colleges to improve.”

At bottom: if programs are of little or no value to students or the public, there is little reason to either encourage student investment of time and money or commit taxpayer funds to support the institution. For this reason, the Department must not rest on simply identifying and publicizing “low-financial value programs.”¹²

II. The Department Could Enhance Public Accountability by Making Certain Information Already in Its Possession Available to the Public in a Timely Fashion and Through a Single Portal

The Department collects and compiles voluminous data and information about Title IV schools. To the extent that the information is made public, much is outdated and disparately located across multiple platforms. And notably lacking is any information about a school or program’s compliance with the standards of its regulators, including accreditors or state and federal agencies with oversight

⁹ See Letter from James Kvaal, President, TICAS, et al., to Ashley Higgins, U.S. Dep’t of Educ. (Sept. 13, 2018), https://downloads.regulations.gov/ED-2018-OPE-0042-13819/attachment_1.pdf.

¹⁰ See generally, e.g., U.S. Gov’t Accountability Off., GAO-23-104832, *Higher Education: Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges* (Dec. 2022), <https://www.gao.gov/assets/820/813957.pdf> (accessible version).

¹¹ Dominique J. Baker, *The limits of naming and shaming in higher education*, Brookings (July 16, 2020), <https://www.brookings.edu/blog/brown-center-chalkboard/2020/07/16/the-limits-of-naming-and-shaming-in-higher-education/>.

¹² We recognize, as the Department suggests in its inquiry, that not every postsecondary program is designed to provide purely economic benefits to the student. But here too, the Department has tools at its disposal. The Department has, for example, the ability to differentiate among Title IV programs when making institutional eligibility decisions. Differentiation could be used to enable *federal* investment (via Pell Grants or other programs), without enabling *students* to incur substantial debt via the Direct Loan program.

and enforcement authority including, of course, the U.S. Department of Education. Students, therefore, face the daunting task of not only locating data but also understanding it and using it to make financial decisions. The Department should consider creating a single information portal that presents the same data points for each school/program.

Currently, the Department makes data publicly available via the College Scorecard, College Navigator, and the FSA Data Center. Even putting aside other sources of information—*e.g.*, from accreditors, states, or others—there is no reason why a government entity cannot compile information into a single, readily accessible format.

Compounding this lack of accessibility, the Department also has a long history of allowing its release of data and information to become outdated. In January 2022, our organizations wrote to the Department to request that the Department update its public release of information.¹³ Much of the information we sought concerned the compliance of schools and programs with the Department's own regulations. Although some updates have been made since that letter, the passage of time demands that information again be updated. For example, as of February 2023, the FSA Data Center is reporting financial responsibility composite scores from 2019-2020, and letters of credit from Award Year 2019.¹⁴ The release of Final Program Review Determinations has not been updated past Fiscal Year 2020. Scorecard also reports old data. For example, median earnings are based on 2018 and 2019 numbers (inflation adjusted to 2020 dollars).

In addition to updating that information, the following data—which the Department collects or could collect—should also be made available in a single portal:

- School-specific borrower defense claims, including whether the Department has sought/obtained recoupment;
- Whether a school has ever been suspended or deemed ineligible to participate in Title IV, and the reasons why;
- Whether the school is on a provisional PPA, for how long, and for what reasons;
- Whether any owner or operator of the school has ever been suspended or debarred from participating in Title IV;
- Whether a school is owned and operated by a private equity firm or foreign investor;
- Programmatic licensure rates (as known/appropriate, potentially in coordination with accreditors or professional licensing agencies);
- Whether a school or program has been denied or deferred accreditation, or had special requirements placed on it by an accreditor;
- Default rates;

¹³ Letter from Dan Zibel, Vice President & Chief Counsel, Student Defense & Eileen Connor, Dir., Project on Predatory Student Lending to Sec'y Miguel Cardona, U.S. Dep't of Edu. (Jan. 13, 2022), <https://defendstudents.org/news/student-defense-project-on-predatory-student-lending-call-for-increased-transparency-from-department-of-education-ahead-of-rulemaking>.

¹⁴ Federal Student Aid Data Center, <https://studentaid.gov/data-center/school> (last visited Feb. 8, 2022).

- Earnings information;
- Attrition and completion rates.

The Department should also update its systems within the Office of Hearings and Appeals to make pleadings in enforcement proceedings (Subpart G) and compliance appeals (Subpart H) publicly accessible.

III. The Department Should Enhance Program-Level Information Collection and Analysis in Order to Strengthen Oversight and Enforcement

We urge the Department to prioritize oversight and enforcement, and to tailor any program-level information collection to those functions, rather than expend resources developing a list of “low-value” programs. The data points identified above *may* inform prospective students and the public—but they certainly *ought to* inform the Department’s actions as gatekeeper of federal student aid programs.

The United States Government Accountability Office (GAO) released a report last year focused on oversight and enforcement of just one of the Department’s regulations—the prohibition on “substantial misrepresentation.”¹⁵ Indeed, misrepresentations by an institution about key facts, including whether course credits earned at the institution are transferable, whether the program qualifies a student to sit for a certification or license, or whether graduates of the program typically obtain jobs, are a problem. As the GAO observed, “colleges themselves are a key source of information on which students base their decisions, but if colleges provide information that is inaccurate or misleading they risk harming students.”¹⁶ Yet the GAO report showed that the Department’s enforcement of all of its regulations—not just substantial misrepresentation—is inadequate. The Department oversees over 5,000 institutions and opened just 4 investigations between 2017 and 2021. Regional offices conduct routine program reviews, but the main purpose of those reviews is to identify monetary liabilities to the Department. Only 4 of the 1,300 program reviews that took place between 2016 and 2021 identified substantial misrepresentation.

According to the GAO report, the Department is in the process of completing written procedures for selecting and investigating colleges, including a risk assessment metric. We encourage the Department to incorporate outcome measures, such as those identified above, into its risk assessment. Further, we believe there are certain areas in which the Department should collect additional information, in order to inform its enforcement priorities.

First, the Department should ensure that prospective and enrolled students have access to both attrition rates and post-graduate earnings information at a programmatic level. Such information is critical for students to assess the economic returns of a particular program. By providing both

¹⁵ U.S. Gov’t Accountability Off., GAO-23-104832, *supra* note 10.

¹⁶ *Id.*

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earnings and attrition information, students will be better positioned to understand the relative likelihood of achieving certain economic outcomes.¹⁷

Second, programs with poor student outcomes can only be perpetuated by intensive marketing and recruiting campaigns. The Department must pay close attention to programs and institutions that invest significant revenue in marketing and recruiting, particularly in an open-enrollment environment. Institutions that use affiliate marketing, lead generation, call centers, auto-dialers, and other tools of sale should be scrutinized. The first step would be to require institutions to report this information.

Third, the Department should gather information about online programs facilitated by a third party (often called an Online Program Manager (OPM)). Often, such programs are offered as a version of a brick-and-mortar program—but the Department does not require institutions to disaggregate reporting of student metrics by residential and online. By requiring schools to separately report data on online and brick-and-mortar programs, the Department could increase transparency and counteract marketing schemes that, in order to increase enrollment, intentionally or effectively mask poor outcomes (and/or lower quality education).

IV. Conclusion

Disclosures, standing alone, are insufficient to protect students. To promote value across higher education, the Department must take meaningful steps to ensure that students do not unknowingly enroll in low-value programs. No label or warning can overcome the fact that the government is willing to put its money behind the product that schools are offering. To the extent the Department does create more robust programmatic and institutional disclosures, they should be timely and posted in a single portal to be most useful to consumers who are making critical financial decisions about their education.

Thank you for the opportunity to comment.

Sincerely,

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Project on Predatory Student Lending

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¹⁷ See, Stephanie Riegg Cellini & Kathryn J. Blanchard, *Using a High School Earnings Benchmark to Measure College Student Success*, Postsecondary Equity & Economics Research Project (Feb. 2022), https://www.peerresearchproject.org/peer/research/body/2022.3.3-PEER_HSEarnings-Updated.pdf.