February 10, 2023

The Honorable James Kvaal
Under Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED–2022–OUS–0140

Dear Under Secretary Kvaal:

Thank you for your and the Department's ongoing efforts to strengthen protections for students, borrowers, and taxpayers' investments in Title IV financial aid programs. Although the forthcoming borrower defense to repayment, closed school discharge, and other student-centered regulations will make important and needed advancements, we know more needs to be done to ensure every student can access and complete a high-quality postsecondary credential. Accordingly, these comments respond to the January 11, 2023, Federal Register request for information (Docket ID ED–2022–OUS–0140) regarding the Department of Education's intention to develop and publish an annual list of low-financial-value postsecondary programs.

We write as organizations advocating for greater equity in access and outcomes in higher education, especially for racially, ethnically, and economically marginalized student populations. The principal mission of the Lawyers' Committee for Civil Rights Under Law is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other people of color. The Institute for College Access & Success (TICAS) is a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education. UnidosUS serves the Hispanic community through research, policy analysis, and state and national advocacy efforts, as well as through program work in communities nationwide and through a network of over 300 affiliates across the country. Our shared commitment to advancing racial and economic equity through higher education compels us to comment on the proposed listing of low-financial-value programs, given a well-documented history of high-cost, low-value programs disproportionately enrolling students of color, low-income students, and first-generation students, among other targeted student populations.

We are deeply concerned about institutions receiving Title IV funds that rely on charging students high tuition, enroll them in low-quality programs, and leave them with only limited earning potential. Lack of oversight and transparency particularly endangers low-income students, students of color, women, first-generation students, and student veterans, all of whom are disproportionately targeted by predatory institutions.[1] Black and Latino students, in particular, are substantially more likely to be targeted by, and

[1] Student Borrower Protection Center. (2021). *Mapping exploitation: Examining for-profit colleges as financial predators in communities of color*, protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf; The Leadership Conference Education Fund (2019). *Gainful employment: A civil rights perspective*, https://bit.ly/3nDAYWk.

enrolled in, low-quality programs that often lure students in with false promises and then leave them with unaffordable loans and worthless degrees. Nine out of 10 Black and Latino students who graduated from a for-profit undergraduate degree program had to borrow, and they borrowed at least $10,000 more, on average, than students attending public colleges. Black students attending for-profit colleges are more than twice as likely — and Latino students more than four times as likely — to take out private loans as their peers at other types of colleges.[2]

This concern serves as the basis for our support of a strong gainful employment rule to serve as a baseline protection for students and taxpayers, with the rule applied to career education programs as required by federal law.[3] Data has consistently shown the disproportionate share of high-cost, low-quality programs are in the for-profit college sector, and we encourage the Department to remain focused on implementing, then enforcing the rule to encourage programmatic improvement and the closure of the most exploitative programs.[4]

According to the most recent Federal Student Aid annual report, "Borrowers who attended for-profit schools disproportionately submit complaints about their schools, relative to the share of Title IV aid funds disbursed for attendance at those schools. The sector accounts for 13 [percent] of annual aid volume but represents nearly three times (38 [percent]) that share of FSA's identified complaints."[5] This data, coupled with the lived experiences of so many students and borrowers, make it critical for the Department of Education to revive and strengthen protections, as well as enhance transparency about programs providing relatively low earnings potential even as students may take on substantial debt to pay for them. And, while we remain concerned about predatory and wasteful practices most seen in the for-profit sector, we are also concerned about the rise of for-profit-style practices – including the rise of incentive-based compensation for online program managers, as well as aggressive marketing of high cost online graduate programs – at nonprofit private and public institutions.[6]

Prior research has indicated accountability metrics with relatively low stakes compared to metrics that risk losing access to Title IV lead to little or no change in institutional behavior.[7] Other research has indicated, however, that disclosure of high-debt, low-quality programs can lead to programmatic improvements and institutions proactively shutting down their lowest-performing programs.[8] These dual findings show both the positive potential of the low-financial-value programs list and the need for care in designing a framework of metrics to serve as a basis for the list. Broad disclosure of select

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[2] The Leadership Conference Education Fund, 2019.

[3] §101(b)(1), 102(b)(1)(A)(i), and 102(c)(1)(A) of the Higher Education Act of 1965, as amended.

[4] U.S. Department of Education, "Education Department Releases Final Debt-to-Earnings Rates for Gainful Employment Programs," January 9, 2017, https://bit.ly/3ifBngI; U.S. Department of Education, Fact Sheet: Department of Education Announces Release of New Program-Level Gainful Employment Earnings Data, https://bit.ly/3sqwgyH.

[5] Office of Federal Student Aid. (2023). FY2022 Annual Report. U.S. Department of Education, https://ageowns.com/pdf/FY2022FSAAnnualReport.pdf, p. 144.

[6] Government Accountability Office. (2022). *Education needs to strengthen Its approach to monitoring colleges' arrangements with online program managers*. https://www.gao.gov/assets/gao-22-104463.pdf.

[7] Baker, D. J. (2020). "Name and shame": An effective strategy for college tuition accountability? *Educational Evaluation and Policy Analysis*, *42*(3).

[8] Kelchen, R. & Liu, Z. (2019). Did gainful employment regulations result in college and program closures? An empirical analysis. Working paper. https://kelchenoneducation.files.wordpress.com/2019/11/kelchen_liu_nov19.pdf.

metrics should make the college choice process more transparent for students considering any postsecondary program.

We share a belief that all students deserve resources and transparent information to make the most informed possible decisions about their investment in postsecondary education. Appropriately designed and disseminated, the low-financial-value programs list can be an important tool serving the interests of transparency and, where needed, program improvement. We are particularly encouraged by the Department's view that such transparency measures should form the basis for corrective action through school improvement plans for schools that demonstrate the most concerning metrics.

However, we are concerned about Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs) and other postsecondary institutions – including community colleges – that are persistently underfunded but serve critical roles as drivers of educational and economic opportunity. Even with fewer resources compared to better-funded counterparts, such institutions can enable graduates to narrow and close income gaps in the labor force.[9] Recognizing the importance of these institutions, we also affirm the potential value of a means of disclosure that can lead to programmatic improvements where needed.

To meet the goals of encouraging program improvement and improving transparency for the purpose of informing student college choice processes, we urge the Department – regardless of measures and metrics that ultimately go into the list's design – to foreground a set of equity-based principles. These principles include:

1. **Account for persistent underfunding of institutions tied to ongoing systemic racial inequities.** The Department should be especially attentive to the potential impact of listings on institutions in sectors with equity-oriented missions defined by law (e.g., HBCUs, HSIs, and Tribal Colleges and Universities, among others) that have been persistently underfunded.[10]
2. **Differentiate listings to compare programs within appropriate regional contexts.** Labor, workforce, and earnings contexts vary dramatically across the country, and more than half of first-year baccalaureate-seeking students are enrolled by institutions less than 100 miles from home.[11] Providing comparative data state-by-state or based on other regional definitions should help inform students' college choice processes.
3. **Affirm the value of informing students' college choice processes with readily accessible, transparent data.** Postsecondary programs of study represent a significant investment of time and resources. Readily accessible, program-level data should help inform students and their families when they consider where to go and how to pay.
4. **Distribute listings with an intentional communications strategy to reach historically marginalized communities.** Programs with high costs and low quality – disproportionately in the for-profit sector – systematically target students of color, from low-income backgrounds, and

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[9] Park, T. J., Flores, S. M., & Ryan, C. J. (2018). Labor market returns for graduates of Hispanic-Serving Institutions. *Research in Higher Education*, *59*(1), 29-53. https://doi.org/10.1007/s11162-017-9457-z.
[10] Russell Owens, L. & Elliott, K. (2017). "Can equity be bought? HBCUs and outcomes-based funding." The Education Trust, https://edtrust.org/the-equity-line/can-equity-bought-hbcus-outcomes-based-funding/.
[11] Stolzenberg, E. B., et al. (2019). The American freshman: National norms Fall 2019. Cooperative Institutional Research Program, Higher Education Research Institute, University of California, Los Angeles, heri.ucla.edu/monographs/TheAmericanFreshman2019.pdf.

who are first-generation.[12] Accordingly, the low-financial-value programs list should be designed and disseminated to empower students from these populations to avoid the misrepresentation that has left too many with high levels of student debt and poor earnings prospects.

Below, we respond to the Department's request for information across four areas of interest:

- Measures and metrics
- List structure
- Data elements
- Public dissemination

We respond in the order of questions presented by the Department in its request for information.

Measures and Metrics

Bearing in mind the equity principles above, we encourage the Department to model prospective measures as the basis for the low-financial-value programs list(s) that could include:

- **Debt-to-earnings ratio.** Using a debt-to-earnings ratio to identify programs of low financial value captures programs that leave students with an outsized amount of debt compared to their earnings — two key factors in students' decision-making.
- **Median annual earnings of graduating/completing students.** After completing a program, students should expect earnings beyond those of someone without postsecondary education. If a program is not adding value to students' earning potential, students and families should have access to that information.
- **Instructional spending.** According to one analysis, "Instructional spending at its base involves employing more faculty or reducing teaching loads and class sizes. It follows that [low] faculty–student ratios are linked to higher graduation rates and higher-paying jobs after college."[13] The Department should disaggregate reported data on institutional expenditures to better identify institutions that spend substantial portions of their revenue on marketing and advertising, as opposed to on faculty, staff, instructional delivery, and the student support services that lead to improved graduation rates.

Supplemental measures and metrics that should be disclosed for additional context to students and families should include:

- **Licensure pass rates.** For professional fields requiring passage of specific licensure exams to gain entry to the profession, the Department should collect and report passage rates disaggregated by race and ethnicity of completers who sat for such exams.
- **First- to second-term retention.** High percentages of new students leaving a program after one term or even less time would be a strong indicator of buyer's remorse or a lack of support from the institution. The Department should include retention rates disaggregated by race and ethnicity, as well as for Pell grant recipients and first-generation college students.

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[12] Student Borrower Protection Center, 2021; The Leadership Conference Education Fund, 2019.

[13] Hall, S. (2019). *How much education are students getting for their tuition dollar?* The Century Foundation, tcf.org/content/report/much-education-students-getting-tuition-dollar/.

- **Program completion rates.** As with retention, the Department should include completion rates disaggregated by race and ethnicity, as well as for Pell grant recipients and first-generation college students.

List Structure

The Department should strive to provide the most complete data, providing six-digit CIP code level data where possible and including four-digit CIP code level data when necessary for privacy concerns.

We encourage the Department to break down low-financial-value program list(s) by categories relevant to how students make decisions — including by geographic location and credential level. The Department should provide state-level lists of programs and/or lists of programs by Metropolitan Statistical Area. These geographic listings should reflect the place-bound nature of most prospective students' college choice processes. The data would then enable readily available information to inform choices between seemingly similar programs that may have widely varying outcomes in terms of financial value.

Data Elements

We present two potential metrics that the Department could use to substantially improve its ability to provide accurate data for the public to help understand the value created by a postsecondary program. Both would rely primarily on data collected from non-institutional sources:

- **Job placement rates.** As TICAS noted in 2018, "Job placement rates provide a textbook example of how the wide variation in definitions and calculations render the rates almost impossible to compare across schools. Calculations of how many of a school's graduates have obtained employment in their field of study vary widely."[14] The low-financial-value programs list(s), however, can be a needed vehicle to drive change toward more meaningful, comparable data on program completers securing employment in their chosen fields. Before incorporating job placement data, however, the Department must address the longstanding deficiencies in this data. The Department should work with accreditors to set a uniform definition of when a student may be counted as placed in a job in their field of study.
- **Truth in advertising.** Prospective students should be able to know if programs have engaged in misleading or deceptive advertising. Such marketing can falsely convey the likelihood of program completers finding work in their desired field and earning a sustainable income.[15] Data documenting deceptive advertising can and should be tracked by offices and agencies including Federal Student Aid's enforcement division, the Consumer Financial Protection Bureau, the Department of Veterans Affairs, and the Federal Trade Commission, among others. The Department should fully implement recommendations from a recent Government

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[14] Dalal, N., Stein, B., & Thompson, J. (2018). *Of metrics and markets: Measuring post-college employment success*. The Institute for College Access & Success, https://ticas.org/files/pub_files/of_metrics_markets.pdf.
[15] Halperin, D. (2022). New York for-profit college fined for deceptive subway ads. *Republic Report*, https://www.republicreport.org/2022/new-york-for-profit-college-fined-for-deceptive-subway-ads/.

Accountability Office report on the need for better enforcement procedures addressing substantial misrepresentation by colleges.[16]

Public Dissemination

The low-financial-value programs list(s) should be designed and disseminated in ways that most effectively meet students where they are, ensuring that disclosures are presented directly to students early and often. Any list(s) should be provided electronically to college counselors at high schools to help inform their guidance to students going through the college choice process, while mindful of the excessive student-to-counselor ratios in many schools across the country. Additional promising approaches to dissemination include:

- Targeted outreach campaigns to Title I high schools.
- Targeted outreach to predominately Black and Latino high schools.
- Direct outreach to TRIO, GEAR UP, and other college preparation programs supporting historically marginalized student populations.
- Partnering with local, regional, and national college access networks and college counseling professional associations to spread awareness of the low-financial-value programs list(s) and how students and their families can incorporate them into their college choice processes.
- Integrating data from the list(s) with the FAFSA, such that prospective students indicating interest in a low-financial-value program would receive a notification.
- Incorporating an indicator of a program's identification for low financial value on the College Scorecard.

In addition to these dissemination strategies, the Department should consider a requirement for programs on the low-financial-value list(s) to have enrolling students attest to their awareness of the listing. Student attestations, however, should not preclude eligibility for borrower defense, closed school discharge, or other relief programs provided by law.

Consistent with previous research-based recommendations, we encourage the Department to pilot and market test dissemination strategies with students from a diverse set of regions, demographic backgrounds, and policy contexts, as well as traditional-age and older prospective students.[17]

We share the view that students across program types and institutional sectors should have access to the data disclosures that a low-financial-value program list will provide. Furthermore, data from the list should not prevent defrauded borrowers from applying for or receiving loan discharges through borrower defense to repayment, closed school discharge, or others means established by law.

[16] Government Accountability Office. (2022). *Department of Education should improve enforcement procedures regarding substantial misrepresentation by colleges*. https://www.gao.gov/assets/gao-23-104832.pdf.

[17] Blagg, K., Shaw, L., Chingos, M., et al. (2017). *Rethinking consumer information in higher education*. Urban Institute, https://www.urban.org/sites/default/files/publication/91666/rethinking_consumer_information_in_higher_education_3.pdf.

Thank you for the opportunity to provide these comments and recommendations, as well as for your work to serve the interests of students and student loan borrowers. If you have any questions or need further clarification on any of the above responses to the Department's request for information, please contact Chavis Jones of The Lawyers' Committee for Civil Rights Under Law at cjones@lawyerscommittee.org; Kyle Southern of The Institute for College Access & Success at ksouthern@ticas.org; and Roxanne Garza of UnidosUs at rgarza@unidosus.org.

Sincerely,

Lawyers' Committee for Civil Rights Under Law
The Institute for College Access & Success
UnidosUS

Joined by:

Hispanic Federation
National Consumer Law Center (on behalf of its low-income clients)