STUDENT BORROWER PROTECTION CENTER

February 10, 2022

Secretary Miguel Cardona
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

RE: Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs (Docket No. ED-2022-OUS-0140)

Dear Secretary Cardona,

We appreciate the opportunity to comment on the Department of Education's (ED) Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs ("RFI" or "the RFI"). The RFI marks a positive step forward for student loan borrower protection and the elimination of predatory or otherwise harmfully ineffective programs from the Title IV federal financial aid system.

Students attend college to achieve the American dream and to secure a baseline of financial stability. Yet due to skyrocketing tuition and fees, the rising costs of basic necessities including housing and childcare, stagnant or waning wages, and a decline in grant aid relative to the cost of attending college, students are now effectively forced to borrow for most courses of study. This status quo applies even to programs at public institutitons. Given this reality, families should be able to trust that the gatekeepers of Title IV aid are safeguarding students and ensuring that the programs that borrowers take on federal student loans to attend are not setting them up for financial ruin.

Unfortunately, decades of lawsuits, high-profile failures, and immeasurable borrower harm reveal that any such trust is misplaced.[1] Instead, ED continues to allow notoriously low-value or

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[1] *See, e.g.,* Project on Predatory Student Lending*, Dreams Destroyed: How ITT Technical Institute Defrauded a Generation of Students*, Harvard Legal Servs. Ctr., Feb. 2022, https://static1.squarespace.com/static/62d6e418e8d8517940207135/t/62e1a2ab87017e0158ab20b2/1658954418410/ITT-Report.pdf; Press Release, Senator Dick Durbin*,* Senators Call for Attorney General Investigation of Corinthian Colleges Failure (May 6, 2015), https://www.durbin.senate.gov/newsroom/press-releases/senators-call-for-attorney-general-investigation-of-corinthian-colleges-failure, Stacy Cowley, *For-Profit College Chain Closes, Shutting Out Nearly 20,000 Students*, N.Y. Times, Dec. 6, 2018, https://www.nytimes.com/2018/12/06/business/education-corporation-of-america-closing.html; Peg Brickley, *End of the Line for For-Profit School Operator Education Management*, Wall Street J., July 2, 2018, https://www.wsj.com/articles/end-of-the-line-for-for-profit-school-operator-education-management-1530565143; Press Release, NYC Department of Consumer Affairs, Department of Consumer Affairs Files Charges Against Berkeley College for Deceptive and Predatory Practices (Oct. 19, 2018), https://www.nyc.gov/site/dca/media/pr101918-DCA-Berkeley-Investigation.page.

outright predatory postsecondary courses to continue trapping students in debt for years on end,[2] with the spigot of federal dollars often closing only when schools are already on the brink of insolvency or fail to meet certain incredibly lenient minima for student outcomes.[3] Worse, as with all aspects of the federal student loan system,[4] the fallout of these failures lands hardest on Black, Latino, and low-income communities.[5]

It is long past due for ED to adopt a proactive and preventative approach to the proliferation of low-value programs. Accordingly, we offer the following comments in response to the RFI:

Disclosure is not enough; to protect students, ED will need to robustly fulfill its roles as a gatekeeper of Title IV funds and as a law enforcement agency

The disclosure-based regulatory regime that ED appears to be gesturing toward with this RFI, which would effectively create a "shame list" of low-value programs, is insufficient to protect students. In fact, ED has already seen similar tactics generate little impact on the postsecondary landscape in prior administrations. As a part of the 2008 reauthorization of the Higher Education Act, for example, Congress required ED to produce a similar shame list beginning in 2011 of institutions that charged students high tuition, fees, and net prices.[6] The goal of this exercise was to shine a spotlight on programs that were unaffordable relative to others in their sector. Yet research suggests that this initiative had little to no impact on either the affordability of these programs or their total enrollment.[7] Similarly, ED has already produced annual data since 2015 on student-facing prices, enrollment levels, and the ability of borrowers to repay their loans over

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[2] *See, e.g.,* Patricia Cohen, *For-Profit Colleges Accused of Fraud Still Receive U.S. Funds*, N.Y. Times, Oct. 12, 2015, https://www.nytimes.com/2015/10/13/business/for-profit-colleges-accused-of-fraud-still-receive-us-funds.html; *see also* Bill Chappell, *University of Phoenix Reaches $191 Million Settlement with FTC, Including Debt Relief*, Nat'l Pub. Radio, Dec. 10, 2019, https://www.npr.org/2019/12/10/786738760/university-of-phoenix-reaches-191-million-settlement-with-ftc-including-debt-rel (note that the University of Phoenix system generally still has access to Title IV funds); Press Release, U.S. Dep't of Educ., Education Department Approves $415 Million in Borrower Defense Claims Including for Former DeVry University Students (Feb. 16, 2022), https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students (note that DeVry University generally still has access to Title IV funds).
[3] *See, e.g.,* Michael Itzkowitz, *Why the Cohort Default Rate Is Insufficient*, Third Way, Nov. 7, 2017, https://www.thirdway.org/report/why-the-cohort-default-rate-is-insufficient.
[4] Kat Welbeck, *Communities of Color in Crisis: Examining Racial Disparities in Student Loan Debt and Borrower Outcomes*, Student Borrower Prot. Ctr., Jan. 8, 2020, https://protectborrowers.org/communities-of-color-in-crisis-examining-racial-disparities-in-student-loan-debt-and-borrower-outcomes/.
[5] *See, e.g.,* Peter Smith and Leslie Parrish, *Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures*, Ctr. for Responsible Lending, Oct. 2014, https://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf.
[6] 20 U.S.C. § 1015(a) (2018).
[7] Dominique Baker, *"Name and Shame": An Effective Strategy for College Tuition Accountability?*, 42(3) Am. Educ. Rsch. Ass'n at 393, 393 (2020), https://journals.sagepub.com/doi/abs/10.3102/0162373720937672.

time at different institutions and programs via the College Scorecard.[8] While these data have been essential in helping the public gain a better understanding of the programs that provide little value or that load students up with unpayable debt, they have not eliminated the fundamental problem of these low-value programs taking advantage of students.[9] In short, simply issuing and publicizing a list of low-value programs will not be enough to rein in the schools currently offering those harmful courses. ED will have to take more concrete action than it appears to be contemplating here to cut these programs off from federal student aid, and to hold the schools offering them accountable.

Of course, requiring new disclosures around low-value programs does not necessarily come at the expense of ED also intervening more directly to rein in these courses' harmful conduct. In the current case, however, we fear that it might. It is concerning, for example, that ED has still not published a notice of proposed rulemaking for its Gainful Employment rule,[10] and that its new enforcement office has not taken a single public action to date.[11] We are aware that ED intends to publish and implement a revised Gainful Employment rule by 2024, and that its enforcement office was established only slightly more than a year ago. In addition, we appreciate that ED plans to ask the "low-financial-value" postsecondary programs it identifies through the metrics considered under this RFI for improvement plans, and we note the additional steps ED has outlined to install more direct control and accountability over Title IV.[12] Nevertheless, in light of the history of oversight failures cited above,[13] it is incumbent on ED to prove that it understands that borrowers will not be safe until it begins affirmatively weeding out bad actors. Doing so will require robust enforcement and far more careful consideration of which programs can access federal funds in the first place.

With these concerns in mind, we are particularly troubled by ED's stated intention to eventually require students enrolling in certain low-value programs to "acknowledge a warning" stating that their course of choice "consistently leaves graduates overindebted or with very low earnings."[14]

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[8] Amanda Stone, *Weekly Address: A New College Scorecard*, The White House, Sept. 12, 2015, https://obamawhitehouse.archives.gov/blog/2015/09/12/weekly-address-new-college-scorecard.

[9] *See, e.g.,* David Halperin, *More Predatory For-Profit Colleges Collapsing, More Students in Peril*, Republic Rep., Jan. 23, 2023, https://www.republicreport.org/2023/more-predatory-for-profit-colleges-collapsing-more-students-in-peril/.

[10] Proposed Rule to Amend 34 C.F.R. §§ 600, 668, No. 1840-AD57, filed May 26, 2021, available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1840-AD57.

[11] Press Release, U.S. Dep't of Educ., Department of Education to Establish an Enforcement Office Within Federal Student Aid (Oct. 8, 2021), https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid.

[12] *Fact Sheet: Increasing College Accountability*, U.S. Dep't of Educ., 2021, available at https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/accountabiltyfactsheetfin.pdf (noting that ED plans to strengthen "rules for approving and renewing colleges' participation in the federal financial aid programs," to increase "collaboration with accreditors," and more) [Hereinafter "Dep't of Educ. Fact Sheet"].

[13] *See supra* notes 1-3.

[14] Dep't of Educ. Fact Sheet, *supra* note 12.

ED notes it will draw from the list of "low-financial-value" programs discussed in this RFI to identify which programs will require such a notice. Under this "acknowledgment" policy, ED envisions a future where it will flag certain programs as being so risky as to merit students *signing a waiver affirming that the program they are about to attend is almost certain to harm them*—but where ED will nevertheless allow those programs to access Title IV dollars. That future is not one in which borrowers would be safe from predatory actors.

Moreover, this acknowledgement policy fails to grasp that students frequently attend colleges or enroll in degree programs based more on convenience than on perceived quality. Nearly two-thirds of undergraduates attend a two-year or four-year degree program within 25 miles of home,[15] and the disruptions caused by the COVID-19 pandemic meant that many students have recently not had a real or perceived choice in where they could enroll. In addition, this policy fails to comprehend that low-value schools have proven unfortunately adept at rushing students through the enrollment process and using high-pressure tactics to ensure that students sign documents that they might not yet have read or fully understood.[16]

Instead of a policy that requires students to make incredibly difficult decisions about whether to attend programs that might be predatory or low-value, ED should consider building specific "quality assurance" metrics such as those ED is asking for commenters to identify in this RFI directly into schools' Program Participation Agreements (PPAs). In particular, experts on the Title IV system have pointed out that ED already has the power to set thresholds for institutional and programmatic quality measures such as completion rates and loan repayment rates through these contracts, which serve as schools' access point for federal aid dollars.[17] Installing these provisions in schools' PPAs would serve as a substantive failsafe for accountability in ways that a simple name-and-shame list—however important—could never hope to accomplish.

ED must broaden its vision of accountability to appropriately reflect the evolution of the higher education landscape

The RFI notes ED's assessment that the phenomenon of "postsecondary programs that saddle students with levels of debt far out of proportion to the income they earn after leaving their program" is "especially concentrated among undergraduate certificate programs and graduate

[15] Nick Hillman, *Place Matters: A Closer Look at Education Deserts*, Third Way, May 21, 2019, https://www.jstor.org/stable/resrep41709#metadata_info_tab_contents.

[16] *For Profit Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, U.S. Senate Committee on Health, Educ., Lab., and Pensions, July 30, 2012, at 55, https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf (describing how for-profit college staff use a "Boiler-Room Sales Atmosphere" and associated strategies to enroll students).

[17] Daniel A. Zibel and Aaron Ament, *Protection and the Unseen: How the US Department of Education's Underdeveloped Authorities Can Protect Students and Promote Equity in Higher Education*, Brookings, Oct. 2020, at 15 https://www.defendstudents.org/news/body/docket/100-Day-Docket-Direct-Loan-Authority.pdf.

programs."[18] However, beyond indicating these two areas of preliminary concern, the RFI does not state an intention for ED to limit its search for "low-financial-value" programs to any particular corner of the postsecondary space.

This holistic starting point is welcome, as ED has historically failed to appropriately supervise the full sweep of programs that touch the Title IV system as it has evolved over time.[19] In particular, many schools that receive Title IV aid have recently developed dubious technology training "bootcamps" facilitated by third-party for-profit contractors referred to as Online Program Managers (OPMs).[20] Schools' arrangements with these firms blur both ethical and financial lines between college, lender, and loan servicer, all while often leaving students with thousands of dollars in predatory private loans taken on under the brand names of well-known and often public institutions. But ED has historically fallen short of meaningfully scrutinizing these courses and programs.[21] For example, the Government Accountability Office noted in a 2022 report that ED does not even know "the exact number of OPM arrangements" that Title IV-eligible schools have entered into, that ED's auditors lack basic information regarding how to examine these relationships, and that the bootcamp-type programs that schools offer via OPMs are particularly likely to go unsupervised.[22]

The consequences of ED's lack of attention to these emerging OPM-based programs have been dire for borrowers. As we outlined in a June 2022 letter to the CFPB,[23] the OPM industry's own data show that these programs fail to provide any career value to a majority of students, leaving them with few job prospects even as they are buried under piles of hugely expensive private

[18] *Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs*, U.S. Dep't of Educ., No. ED-2022-OUS-0140 (2022), at 5, https://www2.ed.gov/about/offices/list/ope/rfilowfinvalprog.

[19] Letter from Student Borrower Protection Center to Rohit Chopra, Director, Consumer Financial Protection Bureau (June 8, 2022), https://protectborrowers.org/wp-content/uploads/2022/06/SBPC_TCF_CFPB-OPM-letter.pdf.

[20] Margaret Mattes, *The Private Side of Public Higher Education*, The Century Found., Aug. 7, 2017, https://tcf.org/content/report/private-side-public-higher-education/; *Pushing Predatory Products: How Public Universities Are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit*, Student Borrower Prot. Ctr., June 2021, https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/ [Hereinafter "SBPC, *Pushing Predatory Products*"].

[21] *See* SBPC, *Pushing Predatory Products*, *supra* note 20.

[22] Report to Congressional Requesters, *Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*, GAO-22-104463, U.S. Gov't Accountability Off., Apr. 2022, at 11, https://www.gao.gov/assets/gao-22-104463.pdf; Letter from SBPC to Rohit Chopra, *supra* note 19, at 1-2.

[23] Letter from SBPC to Rohit Chopra, *supra* note 19.

student loans.[24] These debts arise through back-room deals between schools, OPMs, and creditors, and they expose students to loans marked by sky-high interest rates, the full gamut of junk fees, and a wide range of contractual pitfalls.[25] Students take on these debts in part based on representations that schools make pursuant to deals with OPMs and lenders that a given loan product is safe, recommended, or otherwise the only financing option available.[26] Worse, students regularly report that bootcamp curricula are of little more worth than materials that can be found for free online, that they did not know until their bootcamp began that it was being provided by a for-profit third-party contractor, and that promises of career services staff with industry connections often give way to students searching aimlessly for jobs on LinkedIn.[27]

Alongside these findings, schools have been caught admitting that OPM-based bootcamps are not a centrally pedagogical exercise, but rather an "opportunit[y] for revenue generation . . . ."[28]

ED already has a wide range of tools at its disposal to hold schools and OPMs accountable for wrongdoing related to their bootcamp offerings.[29] It is long past due for the agency to get to work using them. Indeed, no list of "low-financial-value" programs will excuse ED from its obligation to make OPMs, schools, and lenders answer for existing violations of the law,[30] or from the agency's longstanding duty to close the so-called "bundled services" loophole that allows OPMs' harmful business models to exist in the first place.[31]

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[24] *Finding New Career Paths: Gaining In-Demand Skills and a High Return on Investment*, 2U and Gallup, 2021, at 9, https://www.gallup.com/analytics/393335/2u-boot-camp-grad-study-2021.aspx (finding that 53 percent of attendees at bootcamps provided by the largest firm in the space, 2U, report that bootcamp attendance "Did not impact my job situation at all."); Julie Ray, *Tech Boot Camps Linked to Higher Pay, STEM Jobs*, Gallup Blog, May 10, 2022, https://news.gallup.com/opinion/gallup/392477/tech-boot-camps-linked-higher-pay-stem-jobs-grads.aspx (finding that the job placement rate for 2U bootcamp attendees who enroll with the goal of pivoting into a career in the tech sector ultimately do so is only one-in-three, and that the rate for Black bootcamp attendees is closer to one-in-four).

[25] SBPC, *Pushing Predatory Products*, *supra* note 20, at 12.

[26] *See, e.g.*, Statement of Jonathan Hammond to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, June 2022, available at https://protectborrowers.org/wp-content/uploads/2022/06/Hearing-Statement-J.-Hammond.pdf.

[27] *Id.*; u/_Onofre_, *Various Universities Offering the Same Bootcamp Program? Is This a Scam?*, Reddit (Nov. 5, 2020, 1:18 PM), https://www.reddit.com/r/codingbootcamp/comments/jonwhg/various_universities_offering_the_same_bootcamp/.

[28] John C. Volin, *Report to the University Senate on Undergraduate Education & Instruction*, Univ. of Conn., Sept. 30, 2019, at 7, https://perma.cc/ZX8R-WA67.

[29] Letter from Sabita Soneji and Leora Friedman, Tycko & Zavareei LLP, to Seth Frotman, Executive Director, Student Borrower Protection Center, Aug. 19, 2021, https://protectborrowers.org/wp-content/uploads/2021/08/Legal-Landscape-Private-Student-Lenders.pdf.

[30] Ben Kaufman, *ED, the CFPB, and Borrowers Can All Hold School and Creditors Accountable for Predatory Lending Schemes*, Student Borrower Prot. Ctr., Aug. 19, 2021, https://protectborrowers.org/ed-the-cfpb-and-borrowers-can-all-hold-school-and-creditors-accountable-for-predatory-lending-schemes/.

[31] Stephanie Hall, *Memo to College Leaders: Revising Your OPM Contracts Is in Your Best Interest*, The Century Found., Mar. 31, 2022, https://tcf.org/content/report/memo-to-college-leaders-revising-your-opm-contracts-is-in-your-best-interest/.

Still—noting again that ED should not mistake the measurement of bootcamp students' outcomes for appropriate policymaking and enforcement—it is clear that the "low-financial-value" metrics contemplated in the RFI could be helpful in informing more robust efforts to rein in OPMs. Accordingly, we recommend that ED collect and publish measures of borrowing, repayment, delinquency, and default on the private student loans that borrowers take on to attend OPM-facilitated programs housed at Title IV-eligible institutions, including bootcamps. These metrics are particularly important in instances where private loans are the only options available for students, but they will also be useful for Title IV-eligible programs, where protections such as income-driven repayment (IDR) could mask the presence of distress for federal student loan borrowers.

Further, ED should review the contracts that OPMs enter into with schools to identify terms that are likely to lead to conflicts of interest, such as "the establishment of steering committees or other governing bodies that give the OPM an official and regular role in decision making," "higher shares of revenue paid to the OPM as enrollment increases," and "OPM control over marketing and recruiting, in the name of [the] school."[32] Conflicts that could lead to a school putting anything other than students' best interests first in their OPM offerings should be an immediate red flag for the possible presence of a "low-financial-value" program or for the risk that a given program's quality could eventually diminish.

Finally, any effort that ED undertakes to measure the financial burdens that programs place on students should consider how each of the metrics it examines breaks out across in-person and increasingly relevant online-only course options.

ED must take a broad view of what "accountability" and "low-financial-value" mean for postsecondary programs, as well as how to measure each

As the existence of this RFI suggests, there is no single, obvious definition of what constitutes a "low-financial-value" program, or how to measure it. Accordingly, ED will need to take a holistic, innovative approach to thinking about program quality and the wide range of circumstances that can influence a given course's financial impact on students.

First, ED will need to recognize that certain programs are extremely socially beneficial while being severely undervalued by society at large, and that any financial harm that arises from this disconnect may be attributable more to ED than to the programs themselves. For example, while graduates of various courses in social work, nursing, and other public service fields produce

[32] *Id.*

value that far exceeds their wages,[33] ED has historically underutilized its capacity to grant these borrowers badly-needed relief on their federal student loans through protections such as IDR[34] and the Public Service Loan Forgiveness program.[35] A course that purports to launch its graduates into the high-salary tech industry but whose graduates cannot attain those jobs is different in kind than a program that consistently succeeds in securing graduates careers in vital but lower-paying fields. ED should therefore tread lightly before determining that programs in societally essential fields are of "low-financial-value," even if graduates have high levels of debt and relatively low incomes or rates of loan repayment. After all, public service workers decided only that they wanted to help the world. It was ED that decided that such work should often be financially devastating.

Similarly, ED should hesitate before condemning courses of study as being "low-financial-value" simply because students who enroll in them tend to build large balances while utilizing IDR. Few organizations are as aware as ours of the shortcomings of existing IDR plans,[36] including how snowballing balances can crush low-income borrowers under unconscionable interest burdens[37] and how the eventual promise of debt cancellation after decades of repayment has generally proven to be a lie.[38] As stated above and discussed in a letter submitted today in response to ED's Notice of Proposed Rulemaking on Improving Income-Driven Repayment, however, IDR remains a vital protection, and many of its shortcomings are unnecessary design choices that ED itself made.[39] It is not obvious, then, what it would mean for ED to penalize a given program as

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[33] Keith A. Bender and John S. Heywood, *Out of Balance? Comparing Public and Private Sector Compensation Over 20 Years*, Ctr. for State & Local Gov't Excellence, April 2010, at 3, www.slge.org/wpcontent/uploads/2011/12/Out-ofBalance_FINAL-REPORT_10-183.pdf (finding that on average, public sector jobs require much more education than those in the private sector, and wages and salaries of state and local employees are lower than those for private sector workers with comparable earnings determinants).
[34] *Driving Down Distress? The Principles & Incomplete History of Income-Driven Repayment*, Student Borrower Prot. Ctr., Sept. 2021, https://protectborrowers.org/idr-history-report/.
[35] Letter from Student Borrower Protection Center to Secretary Miguel Cardona, U.S. Dep't of Educ., Aug. 11, 2022, https://protectborrowers.org/wp-content/uploads/2022/08/2022.08.11-SBPC-Comment-to-PSLF-NPRM.pdf.
[36] *Income-Driven Repayment*, Student Borrower Prot. Ctr., https://protectborrowers.org/income-driven-repayment/ (last visited Feb. 2, 2023).
[37] Mark Huelsman, *Driving Runaway Debt: How IDR's Current Design Buries Borrowers Under Billions of Dollars in Unaffordable Interest*, Student Borrower Prot. Ctr., Sept. 2021, https://protectborrowers.org/driving-runaway-debt-how-idrs-current-design-buries-borrowers-under-billions-of-dollars-in-unaffordable-interest/.
[38] *Federal Student Aid: Education Needs to Take Steps to Ensure Eligible Loans Receive Income-Driven Repayment Forgiveness*, U.S. Gov't Accountability Off., Mar. 21, 2022, https://www.gao.gov/products/gao-22-103720 (noting that as of June 2021, only 132 borrowers have received federal student debt cancellation via IDR). Note that in 2021, ED reported that more than 4.4 million borrowers had been in repayment for 20 or more years. Responses to Data Request by Senator Elizabeth Warren, U.S. Dep't of Educ., Apr. 2, 2021, at 1, available at https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf.
[39] Student Borrower Prot. Ctr., Comment Letter on Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program (Feb. 10, 2023), https://protectborrowers.org/wp-content/uploads/2023/02/SBPC_IDR_2023.pdf.

being “low-financial-value” under the terms of IDR when ED itself writes those terms, except to blame students for ED’s own failures.

Along the same lines, ED should understand in its assessment of “low-financial-value” programs that preventing runaway tuition is its own responsibility as the key gatekeeper of Title IV aid—not students’. Concerningly, the RFI states that “[a]lthough the affordable monthly payments on IDR plans provide a critical safety net to borrowers, they do not address the underlying problems stemming from the high prices charged by some institutions and low graduation rates across postsecondary education over the last few decades.”[40] That is true—but neither does shifting responsibility to borrowers. After all, students almost universally do not borrow based on the expectation of accessing IDR (they barely utilize IDR relative to the amount they would benefit from it even after taking on debt[41]); instead, schools design programs around the expectation that students will be able to rely on IDR. For ED to address the problem of runaway tuition by villainizing the use of IDR and blaming students for attending programs on an ED-provided red-flag list instead of holding *schools* accountable for their own tuition-setting is to completely misunderstand the issue at hand.

Looking more broadly, ED will need to note and incorporate into its thinking that many of the most important indicia of “low-financial-value” programs do not necessarily pertain directly to students’ finances. For example, many of the schools that have delivered the most notoriously low-value programs in the history of the federal student aid system spent far more on advertising and recruitment than on teaching.[42] Attention to this specific metric could have been an early red flag for the presence of low-quality programs even before eventual financial hardship for graduates arose. Additionally, ED should examine how institutions are calculating the non-tuition-related aspects of their stated Cost of Attendance, including housing and other allowances, and whether those costs are outliers relative to schools in a similar geographic area and sector.[43] Awareness of the total price that institutions are charging students and whether their charges are in line with those of their peers could serve as an early warning sign that certain colleges might be inflating students’ debts by hiking up add-on costs. Further, given the tight link between course completion and student loan default rates, ED should consider whether those

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[40] *Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs, supra* note 18, at 5.

[41] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers Are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, Student Borrower Prot. Ctr., Nov. 2, 2020, https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/.

[42] Stephanie Riegg Cellini and Latika Chaudhary, *Commercials for College? Advertising in Higher Education*, Brookings, May 19, 2020, at tb. 2, https://www.brookings.edu/research/commercials-for-college-advertising-in-higher-education/#.

[43] David Tandberg, Robert Kelchen, and Sarah Pingel, *Cost of Living Estimates for Financial Aid Purposes: Should States Get Involved?*, SHEEO, Mar. 20, 2018, https://sheeoed.medium.com/cost-of-living-estimates-for-financial-aid-purposes-should-states-get-involved-a9a80fabc158.

who borrow in a given program are completing that course of study, how long it generally takes them, and whether those students go on to complete a degree or credential at any institution. In doing so, ED may better and more quickly understand which institutions or programs are effectively a dead-end for students due to credits not transferring, or due to institutional policies that limit the ability of students to achieve their educational aspirations. These policies could include but are not limited to transcript withholding.

Finally, consideration of any measures ED might collect should involve appropriate flexibility for minority-serving institutions such as Historically Black Colleges and Universities. These schools deliver key resources to historically marginalized communities while being critically underfunded relative to the value they provide.[44] It would be unfair to ignore the question of how suitable any metric or threshold for student financial outcomes might be for these unique institutions.

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We appreciate the opportunity to comment on this important RFI. With ED's collaboration, we may finally be one step closer to ending the history of abuse and borrower harm that has plagued the Title IV space.

Sincerely,

Student Borrower Protection Center

[44] *ACE Brief Illustrates HBCU Funding Inequities*, Am. Council on Educ., Jan. 22, 2019, https://www.acenet.edu/News-Room/Pages/ACE-Brief-Illustrates-HBCU-Funding-Inequities.aspx.