U.S. Department of Education
Attention: Ashley Higgins
1990 K Street NW
Room 8037
Washington, DC 20006-8502
Filed via regulations.gov on May 27, 2014

Re: Comments on the Proposed Rule on Program Integrity: Gainful Employment [Docket ID ED–2014–OPE–0039]

To whom it may concern:

Young Invincibles is a non-profit, non-partisan organization that works to expand economic opportunity for young people ages 18 to 34. We thank you for the opportunity to comment on the Notice of Proposed Rulemaking regarding the gainful employment (GE) regulation (NPRM).

Young Invincibles represented students throughout the gainful employment negotiated rulemaking process. Though we appreciate the years of effort that the Department of Education (the Department) has put into crafting a GE rule to protect students from predatory schools, the draft rule is too weak to achieve this goal. Many programs that leave students with enormous amounts of debt and few job prospects will continue to receive federal financial aid under the proposed language.

We were further disappointed when the Department issued a weakened draft regulation that made several adjustments proposed by the for-profit college industry at the expense of students and taxpayers. Worse, the draft rule appears to lack *any* of the recommendations called for by a coalition of more than 50 organizations that work on behalf of students and college access, veterans, consumers, and civil rights. The Department now has a rare opportunity to learn from the experiences of actual students who have been through these programs and ensure that taxpayer dollars do not continue to benefit failing schools. For these reasons, Young Invincibles urges the Department of Education to protect students who attend gainful employment programs and taxpayers who pay for them by promulgating a strong rule. The rule should:

1. **Provide relief for students in programs that lose eligibility**
2. **Strengthen core accountability standards and close loopholes**
3. **Fix the glaring problem with the certification requirement**
4. **Limit enrollment in poorly performing programs until they improve**
5. **Strengthen consumer information and disclosures**

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I. Background

Sarah Sertic is a young woman from Northern Virginia. While Sarah was exploring her college options, Art Institute, a for-profit education company in Arlington, VA, recruited her with promising statistics, flashy brochures, and success stories. But after Sarah enrolled, she realized that there was no way that Art Institute graduates were doing so well. The school promised that students would find a job in "the industry" with no descriptions of the types of jobs, the location of the jobs, or the salary. She later found out that the school promoted flat-out lies.

She also told us that Art Institute tried to sell students expensive products. For example, she remembers that the school tried to coerce her into buying an expensive camera package, even though she already had a suitable one from her previous work. It turns out that sales staff at the school had sales quotas that they were required to fill.

Sarah ultimately had to drop out of Art Institute one semester before graduation because she was $5000 short of tuition. Sarah left with $18,000 of federal student loan debt. Later, Sarah tried to take courses at a community college and found that all of the credits she took at the Art Institute were not transferable, even though she had spent two years there and was about to graduate.

After she left Art Institute, Sarah discovered that industry professionals did not respect the Art Institute and would not hire its graduates. She also learned quickly that Art Institute never prepared her for the practical, business side of photography. For example, Art Institute never taught Sarah to prepare for portfolio reviews or put together a CV for fine arts. These were all things that she ultimately had to learn on her own. Fortunately, Sarah's talent and perseverance gave rise to her own business based in Lorton, VA.

Not every student has had as successful of an outcome as Sarah has. We frequently hear from students across the country about how big promises from for-profit education programs turn into mountains of debt with few job prospects in sight. We appreciate that the Department's NPRM illustrates many of the concerning trends in the for-profit education sector. They bear repeating here because Sarah's story turns out to be the story of all too many students.

For profit education companies enroll roughly 10 percent of students nationwide, but despite this, they take 25 percent of Pell Grants and Stafford Loan dollars and account for *nearly 50 percent of the nation's federal student loan defaults*.[1] How can one sector with a relatively small proportion of students account for so much financial distress? The answer lies in a toxic mix of high tuition, high debt, and poor education.

For-profit college programs have every incentive to collect revenue, and thus have little motivation to keep costs down. Most for-profit institutions charge higher tuition than comparable programs at community colleges or flagship state public universities.[2] An associate's degree at a proprietary school costs students, on average, four times more than one at a local community college.[3] The Education Trust found that most for-profit institutions require students with family income less than $30,000 to contribute more than 100 percent of their average household income toward college costs and offer students a less than one-in-four chance at graduating.[4]

Unsurprisingly, high tuition leads to high debt levels. Students who earn bachelor's degrees at for-profit colleges have, on average, far more debt ($31,000) than students who graduate from public ($8000) and nonprofit ($17,000) institutions.[5] It would be one thing if the high cost of these degrees came with a high return, but too often students are left with debt and few job prospects. Many students realize this quickly and withdraw with plenty of debt, but without the accompanying degree. Withdrawal rates are a much larger problem at publically traded for-profit education companies than they are at other institutions, indicating a mismatch between profit incentives and student success.[6] At

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[1] U.S. Senate Health, Education, Labor and Pensions Committee, *For Profit Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, July 30, 2012, 3, http://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.

[2] Ibid.

[3] Ibid.

[4] The Education Trust, *Priced Out: How the Wrong Financial-Aid Policies Hurt Low-Income Students*, 7, http://www.edtrust.org/sites/edtrust.org/files/PricedOutFINAL.pdf.

[5] The College Board, Analysis of NPSAS:08 in Trends in Student Aid, 2009.

[6] U.S. Senate Health, Education, Labor and Pensions Committee, *For Profit Education: The Failure to*

fifteen publically traded for-profit education companies between 2008 and 2009, more than half of the students withdrew from their programs.[7] As the Department's own NPRM makes clear, 72 percent of graduates earn less than those with a high school diploma.[8] In an age when getting a credential or degree beyond high school is essential for economic security, this is a dismal track record for success.

We do not contend that all for-profits schools perform poorly. However, there is an undeniable trend in this sector where schools rack up major profits at the expense of students drowning in debt and taxpayers footing the bill. A strong gainful employment rule should require the worst actors to improve or face ineligibility for federal financial aid. Below we share our recommendations on how the Department can improve the NPRM to create a rule that protects students and taxpayers.

II. Provide relief for borrowers in programs that lose Title IV eligibility

Fundamentally, the gainful employment rule relies on students to test whether programs meet basic quality standards. Having removed approval requirements from a previous draft, the current NPRM takes a "wait and see" approach to whether new programs adequately prepare students for gainful employment. It will do the same for already existing programs to allow them a chance to respond to the new regulatory environment. The scheme may make sense from an institutional perspective, but it makes little sense from a taxpayer perspective and is deeply unfair to the students who borrow large sums to attend failing schools.

The Department included a partial borrower relief provision in an earlier draft of the rule only to remove it in the current NPRM. We appreciate the invitation to comment and strongly urge the department to include a borrower relief provision in the final draft of the rule to better protect students and taxpayers.

Part of the problem lies in the dearth of information about college outcomes. In fact, students attending colleges of all types lack vital data about the outcomes their schools produce. They have no way of comparing their likely wages garnered from attending a program to their likely debt levels when they leave. Even if the Department releases debt to earnings ratios for programs that fall under the gainful employment rule, the numbers will appear opaque. New programs will be even harder to assess. They lack an established track record, so students will have even fewer consumer data to help them decide whether these programs are right for them.

In this information-poor environment, students are particularly vulnerable to aggressive calls from salespeople at predatory schools. Investigations frequently expose marketers and sales teams misrepresenting facts, making false promises, and, in many cases, engaging in outright fraud. Students see the seal of the Department of Education through

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Safeguard the Federal Investment and Ensure Student Success, 88, http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.
[7] Ibid.
[8] Program Integrity: Gainful Employment 600-668 Office of Postsecondary Education, Department of Education; Notice of proposed rulemaking, 29 Federal Register 57 (25 March 2014), pp. 16535.

the federal financial aid available to them and assume the school has some legitimacy. Only later will they discover the truth.

This scenario is unfair to students and poor public policy from the taxpayers perspective. With little information about the success of programs, students bear the entirety of the risk of the NPRM's regulatory scheme. It will take years to determine whether a program adequately protects students for gainful employment. A four-year gainful employment program could see eight or more cohorts of students take out debt only to discover that their program leads to few prospects in the job market. In this situation, the program's eventual loss of eligibility for federal financial aid is a good thing, but it is of little solace to the borrowers already burdened with debt they cannot possibly afford to repay. The Department has made its decision to rely nearly entirely on students to determine whether programs will pass or fail without providing students with sufficient information to protect themselves. The Department owes these students some form of insurance in case their schools turn out to perform poorly.

Not only does this policy expect students to unfairly bear the brunt of the risk in this scenario, but it also creates poor incentives. Institutions receive all of the benefit in federal financial aid revenue should a program succeed, while borrowers and taxpayers bear the burden should the program fail. Students carry debt they cannot earn enough to repay and they receive little return on their financial aid investment. Requiring schools to fund borrower relief ensures they must take into account the risk to other parties of creating a poor program.

Our preferred solution, as we made clear during the negotiated rulemaking process, is to discharge the debt of students who attended failing schools, reinstate any lost Pell grant eligibility, and re-collect as much lost funding as possible from the failed program's institution. This is the fairest resolution for two reasons. First, because the Department has relied on students to test whether a program performs, it should ensure that students are not harmed by the financial distress that results. Second, a full loan discharge would allow students the option to pursue an education that actually makes a difference in their lives rather than struggle to repay debt for a program that the Department acknowledges failed to adequately prepare them to repay their debt. Third, the institution is ultimately responsible for the failed program and should compensate taxpayers for as much of the lost investment as possible.

If the Department continues to resist full discharges, we think it should bring back the model based on a letter of credit or set-aside agreements from the previous draft and strengthen it to adequately protect students. We appreciated the inclusion of at least some form of borrower relief in an earlier draft by requiring schools to post a letter of credit if they are a year away from losing eligibility for Title IV aid under an accountability framework. However, the earlier model can be strengthened in two ways.

First, the Department should require a letter of credit or set aside (or both) in a sufficient amount to relieve borrowers of all debt incurred during the applicable award year. In the prior draft, the borrower relief would only be sufficient to reduce student debt burdens to the point that they would pass the debt-to-income ratio test for the final award year before the school lost eligibility. For borrowers, this would amount to a tiny fraction of the total debt they incurred during their time in school. Relieving them of all debt incurred during the year before the school failed the performance test would go further toward repairing the financial damage done by borrowing to attend a failing school.

Second, the Department should require a letter of credit or set aside as soon as a school enters the zone period. At that moment, the Department has sufficient information to be concerned about the success of the program and borrowers who attended that school. It makes little sense to wait and see whether the school will improve without taking any action to protect the students involved. Under our proposal, any school that enters a failing or zone period in any year would need to post a letter of credit or set aside from the department sufficient to discharge all debt incurred by students in the following award year. It would continue to do this until the school passed both DTEs and pCDR metrics and was not in danger of losing eligibility for Title IV aid during the following year. Though not perfect, we feel the greater borrower relief and quicker action by the Department would significantly improve the prospects of students who attended failing schools.

Lastly, the Department should reinstate Pell eligibility for students who attended failing or zone programs. It is fundamentally unfair to disqualify hardworking low- and moderate-income students who do the right thing by attending an institution of higher education only to receive little education and few job prospects. Students who are lured into predatory programs and use up their Pell dollars attending poorly performing programs deserve a second chance at a postsecondary degree.

We strongly urge the department to include borrower relief in the final draft of the gainful employment regulation. The current scheme relies entirely on students to determine if programs perform adequately, gives students little to no up front information to determine which schools are likely to be successful, and leaves students the worst off of any actor if their schools fail the test. It is an unfair scheme and poor public policy. Students deserve better from the United States Department of Education.

III. Strengthen core accountability standards and close loopholes

While including borrower relief is essential for a fair rule, the Department must also strengthen accountability standards to adequately protect students and taxpayers. We agree broadly with the framework that the Department uses to assess programs based on the performance of their completers and all Title IV enrollees independently. Debt to Earnings ratios (DTE) are also a useful metric. However, the current DTE framework allows too many poorly performing programs to pass. Moreover, though program level Cohort Default Rates (pCDR) provide some limited protection, predatory institutions already have an established scheme for manipulating their scores.

We recommend that the Department strengthen the DTE and pCDR metrics and include a third metric based on repayment rates of former students. YI includes an analysis of census data below to support a repayment rate of 45 percent using the repayment rate definition in the 2011 final rule. We believe the Department has a solid rational basis to use this figure.

A. Debt to Earnings Metrics

The NPRM currently requires programs to meet one of two DTE standards in order to pass and maintain eligibility for Title IV aid. Borrowers must pay less than eight percent of their annual pretax income in student debt or less than twenty percent of their discretionary income. Failing in any two out of three years removes eligibility for Title IV financial aid. The Department also creates a zone level between 8 and 12 percent of annual income and 20 and 30 percent of annual income. Spending four consecutive years in the zone without passing also disqualifies a program for Title IV aid. Although it marks an improvement over the 2011 final rule, several problems exist with this framework.

1. *DTE Standards are Too Low*

First, the passing standards set a very low bar. The Department cites research from The Institute for College Access and Success (TICAS) and Sandy Baum about student debt affordability to set these baselines.[9] However, the Department ignores key takeaways from the paper. Baum et. al. state that debt payments "should never exceed 18 to 20 percent of a borrower's discretionary income.[10] In its current form, a program could routinely graduate borrowers who pay greater than 20 percent of their discretionary income in debt service and pass this leg of the test so long as the average debt service remained below 20 percent.

Consistent with this research, Congress recently enacted policy that would limit borrower payments to 10 percent of their discretionary income. In 2010, the Student Aid and Fiscal Responsibility Act amended the Income Based Repayment program on Federal Student Loans, lowering the maximum payment from 15 percent of discretionary income to 10 percent of discretionary income. Both the research literature and congressional policy suggest a discretionary DTE rate far below the 20 percent chosen in the NPRM. Given the weight of the evidence, we are concerned that the Department asked whether it should loosen the DTE requirements. If anything, the Department should enforce stricter standards.

2. *Using Annual and Discretionary DTE tests are Inconsistent and Harmful to Students*

Second, the Department's current framework contains an inconsistency that undermines the DTE metric. Namely, programs may pass either the annual DTE standard or the discretionary DTE standard. However, the entire point of a discretionary earnings standard recognizes that consumers have fixed expenditures on things like food and shelter. Below a certain income level, essentially all of an individual's income goes towards basic needs. The Department sets the standard at 150 percent of the federal

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[9] 79 Fed. Reg. 16442.

[10] Sandy Baum and Saul Schwartz, *How Much Debt Is Too Much? Defining Benchmarks for Manageable Student debt.* 12, http://ticas.org/files/pub/Manageable_Debt_FINAL_4.20.06.pdf.

poverty level, which is consistent with other areas of policy, including Congress's choice in creating formulas for income-based repayment of student loans.

By allowing a program to fail its discretionary income earning ratio test, but pass the annual earnings test, the rule leads to absurd scenarios. Hundreds of programs whose graduates pay more than their entire discretionary incomes in education debt service pass the DTE metric.[11] For example, a program could pass even if it had a pretax DTE of exactly eight percent. But for many low-income student loan borrowers who have not seen their incomes enhanced by their studies, eight percent of their pretax income would still be an unlivable debt-to-earnings ratio, especially because these borrowers are likely to have other types of 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 an hour to keep her children out of poverty.[12] Her very tight budget has no place for student loan debt of eight percent of her pretax income or twenty percent of her discretionary income. However, under the proposed rule, the program that left her with this level of debt would still pass the Department's standard.

3. *Improve Rationale for DTE Metrics*

Finally, we are concerned by the rationale provided by the Department for the DTE metrics. The NPRM states that the Department:

> believe[s] that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a "tolerance" into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries ... adopting this approach is consistent with the Department's objectives in this rulemaking of identifying poorly performing programs... .[13]

The justification for the Department's standards appears to rely on identifying the comparatively worst programs.

This is faulty for two reasons. First, the Department should screen out programs based on whether they adequately serve students, regardless of how they compare to other poorly performing programs. Whether a student is gainfully employed has little to do with the relative performance of other programs in the sector. Second, basing the Department's reasoning on the relative performance of other programs risks running afoul of the court's test for arbitrariness. The court already upheld the DTE requirements based on well-grounded research into affordability.

The Department should rest its reasoning on this research and clarify that the purpose of DTE is to set a standard and regulate poorly performing programs

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[11] The Institute for College Access and Success, *Where More Default Than Graduate: Career Education Program Parasites,* (May 15, 2014), http://views.ticas.org/?p=1301.

[12] National Center for Children in Poverty, *Budgeting for Basic Needs: A Struggle for Working Families,* http://www.nccp.org/publications/pub_858.html.

[13] 79 Fed. Reg. 6443.

independently, not as they compare to other programs. It argues persuasively when it notes that:

> the D/E rates measure identifies programs that fail to adequately provide students with the occupational skills needed to obtain employment or that train students for occupations with low demand and low wages. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.[14]

The Department should stick with this line of reasoning throughout the final rule.

B. Loopholes in the Debt to Earnings Metric

We are also concerned that the NPRM leaves open substantial loopholes in the DTE metric that benefit institutions over students and taxpayers. For example, some companies can limit program size or exclude the debt of graduates who enroll in a program for just one day. Below we identify these loopholes and recommend ways to close them.

1. Exemptions from Debt to Earnings Calculations are Over

The Department's DTE standard exempts too large a category of borrowers from the calculation, leaving institutions with the opportunity to game the system. The NPRM is broader than in the draft released in fall 2013. Previously, students excluded from the standard had to have military-related deferments for 60 days or be enrolled in another program for at least 60 days on a half-time basis or more.[15] The current draft rule leaves out a minimum time period on either military deferment or enrollment.[16] An unscrupulous institution could enroll a student part time for a very short period of time, perhaps even as short as one day, thereby removing the student from the DTE calculation. At a minimum, the Department should bring back the previous, stronger standard.

2. The Department Should Include the Full Cost of Attendance in its DTE Metric

The Department removed debt incurred for living expenses, books, supplies, and equipment from the DTE rates calculation during a previous draft of the rule. The NPRM now includes loans taken out for books, supplies, and equipment and seeks comment on the addition. We appreciate the change, but continue to urge the Department to reconsider its decision to remove living expenses from the DTE rates.

The economic reality for students is that many must borrow for living expenses in addition to tuition and supplies in order to attend a post-secondary school. This is particularly true of gainful employment programs that more often serve low-income independent students who cannot rely on family support. The majority of students at schools of all types work at least part time during school. Yet with limited hours available

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[14] 79 Fed. Reg. 16442.
[15] Department of Education, *Subpart Q: Gainful Employment (GE) Programs*, 8, http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-draft.pdf.
[16] 79 Fed. Reg. 16543.

during the day, time spent working detracts from time spent studying. Indeed, economic research demonstrates that working more than 10-15 hours per week reduces student performance. In order to be successful, students often must borrow to pay for some living expenses. Removing living expenses from the DTE calculation ignores these economic facts, and we strongly urge the Department to include them in the final rule.

Apart from the discussion over Cost of Attendance, we appreciate that the Department expanded the standard to include books, supplies and equipment. In our work with students who attended for-profit schools, we have heard that institutions, particularly for-profit education companies, will require that students purchase expensive products in order to enroll in a course. Sarah Sertic's experience is again instructive here. The Art Institute forced her to purchase an expensive camera package to enroll in a photography course, even though she already had suitable equipment. She told us that the Art Institute salespeople had quotas to sell these types of products to students. This behavior can significantly increase the amounts of debt that students who attend these programs incur. To ensure institutions are held accountable for the additional debt, we strongly recommend that the Department continue to include books, supplies, and equipment in the final rule's DTE calculation.

3. *The Department Should use 10-year Amortization Periods for the DTE Calculation*

Another problem with the DTE calculation concerns the amortization schedule the Department uses to determine borrowers' monthly payments. Previous drafts relied on a 10-year amortization schedule for all credential levels, however, the NPRM includes significantly lengthened amortization periods. The Department seeks comment on whether it should return to the 10-year amortization period, and we strongly urge it to do so.

A key problem is that the proposed amortization periods do not reflect the experience of actual borrowers. According to the Department's own data published in the NPRM, the *vast majority* of borrowers entering repayment in 2012, regardless of credential level, are in 10-year payment plans. Between 80 percent and 90 percent of students who attended two-year and four-year institutions are in 10-year repayment plans, and even 63 percent of graduate students are in 10-year plans.[17]

The proposed amortization periods also do not reflect the actual repayment periods over a broad period of time and economic cycles. When the Department looked at actual repayment periods, rather than the plans current borrowers are in, the data showed that a majority of borrowers (54 percent) who entered repayment between 1993 and 2002 had repaid their loans in full within 10 years upon entering repayment, and about 65 percent had repaid their loans within 12 years.[18] The majority of borrowers of all credential levels repay their loans in 10 years or less and the overwhelming majority do so well before 15 years.

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[17] 79 Fed. Reg. 16452.

[18] 79 Fed. Reg. 16452.

Not only do the amortization periods conflict with borrower experience, but they significantly weaken the rule. The NPRM suggest that the amortization period used has a significant impact on the debt to earnings rates. According to Tables 57 and 58, when 10-year and 20-year amortization periods are applied, the DTE failure rates for bachelor's degree programs drop from 45.5 percent (for 10-year amortization) to 25.8 percent (for 20-year amortization). Some of these programs are clearly poorly performing. For example, Grand Canyon's BA program in elementary education and teaching has *more than four times as many students default as graduate.* Using a 10-year amortization period, this program fails the gainful employment rule; using the proposed 15-year amortization period for BA programs, this program is in the zone rather than failing. It is difficult to justify giving a program that serves its students so poorly anything but a failing grade. The Department should reinstate the 10-year amortization period to prevent predatory schools evading the rule.

4. The Department Should Use an N-Size of 10 when Calculating its DTE Rates

The Department further weakened the DTE metric when it decided to only include schools with an n-size of 30 in the NPRM rather than an n-size of 10. We appreciate that the Department is open to feedback on whether to revert back to the earlier n-size and believe it should do so.

We have two concerns with the n-size of 30. First, the larger n-size creates a potential loophole where schools would have the ability to adjust their program size to evade the regulation. Though we appreciate that the four-year cohort reduces the chance of this occurring, we do think it is still a possibility.

Second, the larger n-size allows a number of failing programs to pass the rule. According to the Department, an n-size of 10 will cover programs with 75 percent of all gainful students enrolled while a DTE metric with an n-size of 30 would only cover 60 percent of enrollment in gainful employment programs. Moreover, the reduction in coverage would allow hundreds of failing programs to pass the rule. By moving to a larger n-size the Department estimates that over 300 hundred programs that would fail would not longer beheld accountable by the DTE metrics.[19] An additional 439 programs in the "zone" would evade regulation. In short the larger N size creates a loophole in the rule large enough for hundreds of failing programs to continue to receive Title IV aid.

Were there real concerns with the accuracy of the DTE metric with an n-size of 10, we would be more hesitant, however the Department's own data demonstrates that this is not the case. By the Department's own statistical analysis, the odds of a program that is near failing actually losing eligibility under the rule is 1.4 percent.[20] And these are only programs on the margin. For all intents and purposes, the chance that a randomly chosen program would lose eligibility when it actually passed approach zero. Given the demonstrated accuracy of the metrics with an n-size of 10, there is little justification for weakening the standard and allowing hundreds of failing programs access to federal financial aid.

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[19] 79 Fed. Reg. 16634.
[20] 79 Fed. Reg. 16445.

C. Program Level Cohort Default Rate

We appreciate the Department's awareness that the DTE metrics alone will not sufficiently protect students as they only test the outcomes for a program's graduates. Given that some schools have programs so poor that few students ever complete, it is essential to hold institutions accountable for these kinds of programs. While pCDRs could provide a backstop against these low-performing schools, we are concerned that pCDRs do not provide sufficient protection.

A key problem is that unscrupulous institutions already have a strategy to evade the three-year institutional CDR metrics (iCDR) currently in place. There are widespread and well-documented reports of schools encouraging their students to use forbearance or deferment periods to avoid default.[21] This allows schools to evade accountability until the three-year window closes and the Department stops tracking defaults for that cohort. Students pay the consequences as they reenter repayment, but no one is watching or holding schools accountable. Moreover, few institutions actually fail the relatively low standards currently in place. The Department bases its pCDR thresholds on the iCDR standard: setting a failing pCDR at 30 percent or greater. Schools lose eligibility when failing for three consecutive years. Given the low iCDR failure rates, the pCDR thresholds effectively target outlier programs at schools that already have average passing iCDR rates (often thanks to CDR manipulation). Given the success that institutions have had in limiting their exposure to iCDR, we believe many will simply be able to "game" their way out of pCDR by targeting manipulation tactics at their worst programs.

To avoid this scenario, we recommend that the Department take two courses of action. First, the Department should close loopholes to ensure that pCDR is an effective metric. For example, the Department should monitor and flag inexplicable spikes in default rates after the pCDR measuring periods conclude. It should also prevent institutions and servicers from enacting wholesale deferment and forbearance campaigns regardless of the financial interests of individual borrowers.

Even with these protections in place, we believe that pCDRs will not do enough to protect students and that the Department should pursue an additional metric. pCDR only measures the proportion of borrowers who experience significant financial hardship. While it is fair to say that students in default are not gainfully employed to an extent sufficient to repay their debt, the converse does not follow: namely students who are not in default are not necessarily gainfully employed. As the CDR manipulation makes clear, they may be struggling just as much to make payments but have managed to enter deference or forbearance. A repayment rate is a more accurate measure of student success regardless of whether a student completes the program or leaves with the tools they need

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21 See e.g. United States Senate Health, Education, Labor And Pensions Committee, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, (Washington, DC: 2012), 150, accessed May 27, 2014, http://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf; see also The Institute for College Access and Success, *Steps the Education Department Should Immediately Take to Curb Default Rate Manipulation*, (Berkeley CA: 2012), accessed May 27, 2014, http://www.ticas.org/files/pub/TICAS_memo_on_CDR_evasion_082112.pdf

to be successful before the program ends. As a result, we recommend that the Department accompany pCDR with a metric to measure repayment.

D. Include a Repayment Rate Metric in the Final Rule

Repayment rates are generally a better indicator of student success upon leaving a program than pCDR. It is more difficult to game pCDR than repayment rates as borrowers must actually be able to repay their debt. Moreover, repayment rates more closely measure success than pCDRs, which only measure the frequency of the worst possible repayment outcomes. For these reasons we urge the Department to include a repayment measure in the final rule.

From the NPRM it appears that the Department considers the loan repayment rate of former gainful employment program students relevant, but requires a rational basis for setting a repayment rate standard.[22] The bar is not high. The Department must simply set a standard and show a rational connection between the facts offered to support it and its eventual conclusion.[23] We believe several possible reasoned arguments exist for setting a repayment rate standard in the final rule. We would prefer that the department used the repayment rate definition from the 2011 NPRM and set a minimum repayment rate at 45 percent. However, we offer other reasonable options as well.

1. Setting a Repayment Rate Metric at 45% Based on the Experience of High School Graduates Nationally

Sara Sertic, who we reference above, took out loans to attend an institution of higher education that she believed would lead to a better career. She was right to do so. The wages for young people with merely a high school diploma have fallen dramatically over the previous several decades.[24] Achieving economic security during the 21st century often requires a post-secondary credential.[25] This does not imply that no one with simply a high school diploma ever achieves financial success, but it does indicate that the chance of doing so with only a high school diploma is sufficiently small that obtaining a post-secondary credential is highly advisable. We propose basing a repayment rate metric on this well-researched basis.

The theory is that in order to receive federal financial aid, a post-secondary gainful employment program should make its graduates, on average, better off than high school students. Students attend post-secondary programs in order to improve their economic chances. Taxpayers also invest in post-secondary career programs, in part, to achieve the economic gains everyone benefits from when more members of society have a postsecondary credential.

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[22] 79 Fed. Reg. 16447.

[23] *Association of Private Colleges And Universities* v. Duncan, 870 F.Supp.2d 133, 143 (D.D.C. 2012).

[24] Paul Taylor et al., *The Rising Cost of Not Going to* College, (Washington DC: The Pew Research Center, 2014): 5, accessed May 27, 2014, http://www.pewsocialtrends.org/2014/02/11/the-rising-cost-of-not-going-to-college/

[25] *See* Anthony Carnevale et al., *The College Payoff*, (Washington DC: The Georgetown Center on Education and the Workforce, 2011) accessed May 27, 204 *http://cew.georgetown.edu/collegepayoff*

We recommend that the Department of Education use census data to estimate the economic success of gainful employment programs compared to high school graduates nationally in the context of repayment rates. As we note above, some Americans with only a high school diploma do achieve financial success to the point that they would be able to finance some level of student loan debt if they had any. We believe that a gainful employment program should leave its graduates better off financially than students with simply a secondary level diploma. In other words, more gainful employment graduates should be able to repay some debt on student loans than young people with simply a high school diploma. It is a low bar, to be sure, but one with plenty of economic support and clear baselines on which to base a reasoned analysis.

To set this bar, Young Invincibles performed a preliminary analysis here upon which we believe the Department can build. We summarize in text and provide a more detailed methodology in Appendix 1. We began by asking what proportion of the population of high school graduates are in the labor force are capable of repaying at least some of their debt?

We based our calculation on the discretionary income thresholds present in the current rule's DTE metrics and those set by Congress for income based repayment plans. Essentially, Congress has based policy around the idea that individuals earning less than 1.5 times the federal poverty level cannot afford even minimal payments on federal student loans. Conversely, we assume for the purposes of our calculation that individuals earning more than this amount could at least pay something. From this baseline, we further eliminated people qualifying for social safety net benefits or who are active in the armed forces.

We also constrained our analysis to young adults aged 25-34-years-old because older workers typically earn much higher salaries due to their previous work experience. Although we know that career colleges typically enroll many students who do not come straight from high school, we know that many of these students are still in their young adult years. Moreover, since the accountability metrics in the rule measure student outcomes for the first few years after students leave, we feel it is appropriate to compare college graduates to a population of high school graduates near to when those graduates actually left high school.

Our analysis of 2013 Current Population Survey (CPS) data estimates that 46.2 percent of young adults with a high school diploma could possibly afford some level of student debt payments. We would recommend reducing the threshold to 45 percent to account for additional populations of borrowers we cannot account for due to limitations in CPS data (e.g. borrowers engaged in national service may defer their payments). The Department itself identified a similar threshold in a much earlier draft of the rule dating to the initial program integrity rulemaking process.[26] Our analysis suggests the Department assertions were valid then, and still are now.

We would further recommend that the department weight the repayment rate for the final draft of the rule based on the original outstanding principal balance of the loans as the

[26] Program Integrity: Gainful Employment; Proposed Rule, 75 Fed. Reg. 43618

Department planned to do in the 2011 final rule.[27] Our analysis of individuals earning greater than 150 percent of the federal poverty level does not take into account relative loan sizes, but the Department can and should account for loan sizes in setting its repayment rate standard.

It is worth noting that the standard we propose here is quite low. We are certain that many of the high school graduates earning more than 150 percent of the federal poverty would struggle with debt payments, particularly if they had high levels of student debt. For comparison, doing the same analysis for bachelor's level graduates would produce a repayment rate of greater than 70 percent. However, we do not seek to set an unreasonable standard for career programs or hold them to the average performance of other similar programs. Rather, in the same way a professional standard of conduct governs medical practice, the structure of these rules sets a minimum standard for school performance for receiving federal financial aid. We believe a post-secondary institution that does receive aid should perform better on average than the average secondary school.

Relatedly, the Department should take note that it would have some flexibility in setting the final standard. After identifying a baseline standard the courts will allow for raising or lowering the baseline to provide some tolerance above or below that amount.[28]

We also note that setting the standard here at 150 of the federal poverty level does not correlate perfectly with the ability to repay debt. Surely some people earning more than 150 percent of the federal poverty level would struggle to repay some of their loans. However, the threshold has several advantages. It is well recognized in Congressional policy and previous department practice already upheld by a court. It is also consistent with the discretionary DTE metric set forth in the NPRM. In fact, eliminating the annual DTE metric and adding a repayment rate metric would lead to an internally consistent and stronger rule for students.

We believe that basing a repayment rate metric on income standards set by Congress and economic analysis of the value of post-secondary education would provide more than enough facts for setting a reasoned repayment rate. Should the Department prefer another method, however, we believe that other viable options exist.

2. *Setting a Repayment Rate Based on Negative Amortization.*

During the negotiated rulemaking last fall, the Department proposed a draft rule that included a repayment rate metric based on preventing negative amortization. In order to pass, a program's borrowers would need to reduce the total original outstanding loan balance by at least a dollar over the previous year. The standard, while low, had a strong basis in lending industry guidelines. As the National Consumer Law Center (NCLC) and the Institute for College Access and Success (TICAS) note in their public comments, consumer finance experts consider that negative loan amortization, where loan principal does not decrease, is risky. In 2009, the Office of the Comptroller of the Currency (OCC)

[27] Program Integrity Gainful Employment Gainful Employment--Debt Measures, 34 C.F.R. §668.7(b) (2012).

[28] *Association of Private Colleges And Universities*, Duncan 870 F.Supp.2d at 152.

recommended a prohibition on negative amortization mortgages.[29] "California outright banned these kinds of loans in 2010.[30] Despite the support in the literature, the Department removed the negative amortization repayment metric from the following draft of the rule citing data concerns.[31] As an alternative to the 45 percent repayment rate metric we suggest above, we would support including a repayment rate metric based on negative amortization.

3. *Expert Panel to Determine Repayment Rate Metric*

As a final alternative, several other commenters have suggested setting up a panel of experts to determine the proper repayment rate threshold. We would support this as a third option and believe it would provide sufficient rational basis upon which to set a repayment threshold.

E. Keep Metrics Independent Rather than Making them Alternative

The Department notes that under the previous gainful employment rule released in 2011, programs could pass *either* the DTE metrics *or* the repayment metric. That has changed in the most recent NPRM where programs must pass both the DTE and pCDR. The Department asks whether it should revert back to using alternative metrics in the 2011 rule.

We believe creating alternative metrics would severely weaken the rule and replace it with an arbitrary and meaningless standard. In fact the Department makes the correct and compelling case for having independent metrics.[32] Namely, the DTE and pCDR metrics capture different types of performance, and both are essential. DTE measures whether the degree a program provides equips graduates with the skills they need to obtain a job and whether the price of the credential is commensurate with graduates' eventual earnings. However, many of the worst acting programs have huge numbers of borrowers who leave school with debt and no degree. Their debt levels may be lower than program completers, but without the degree, these students are often even worse off in the labor market. pCDR offers an independent test to help prevent low completion rate schools from gaming the rule. As we note above, the test would be even stronger with a repayment rate standard as a third, independent metric given the well known weakness of pCDRs.

Making the test alternative rather than independent would create an incoherent rule. A program could become a degree mill handing out worthless degrees or a withdrawal factory having few completers and many dropouts with no degrees so long as it did not do both. Indeed these are not made-up scenarios. Over a hundred schools currently have more defaults than completers, and nearly a quarter of those would survive even the

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[29] U.S. Department of the Treasury, Office of the Comptroller of the Currency, *Comptroller Dugan Urges Regulators Around the World To Set Minimum Mortgage Underwriting Standards* (Washington DC: 2009),access May 27, 2014, http://www.occ.gov/news-issuances/news-releases/2009/nr-occ-2009-143.html.

[30] California Assembly Bill No. 260 (2009): ftp://leginfo.public.ca.gov/pub/09-10/bill/asm/ab_0251-0300/ab_260_bill_20091011_chaptered.pdf.

[31] 79 Fed. Reg. 16447.

[32] 79 Fed. Reg. 16442.

current standards.[33] The Department should maintain the independent metric structure to protect students against poorly performing programs of all types.

Relatedly, the Department also questions whether it would be possible to accomplish the intended goals of gainful employment without establishing a two-metric eligibility framework.[34] We doubt this is the case and strongly urge the Department to maintain the multiple metric accountability scheme. The Department's own analysis suggests that DTE and pCDR capture different kinds of performance.[35]

IV. Close The Certification Loophole

A final loophole we will address here concerns the certification requirement included in the NPRM. We thank the Department for drafting a rule that states that programs must prepare students for any state or federal licensing or exam requirements. This is an improvement over the 2011 rule, which was less clear and allowed programs to get away with running programs that did not prepare students for licensing exams necessary to work in an occupation, despite recruiting and holding itself as a legitimate school that would prepare students for particular careers. However, under the draft language of this rule, there remain glaring problems.

First, we have transparency and accountability concerns with this portion of the NPRM. Schools also do not need to identify which programs lead to occupations or which certificates or licenses are needed. They also do not need to identify which programs or prerequisites students must take for licensing exams. It seems as though the Department's main method of enforcement would rely on students themselves to report shortcomings or a chance occurrence years later to lead the Department to investigate the problem. In other words, the rule lacks oversight up front and contributes little to no new data or information for students to make better decisions about their education. The Department should amend the rule to ensure that students do not bear the burden of going into debt while attending useless programs. It must also ensure that problems like these are not allowed to progress without action for years.

Second, the rule is limited to those states where a school is located, or areas within the metropolitan area. Neither the preamble nor the rule define or reference a definition for "in the state in which the institution is located." The Department DE seemed to intend to apply the rule only to the state requirements where the school was physically located. This is a problem. For-profit education companies operate numerous distance education programs. Such a rule would be arbitrarily limited and help only a tiny subset of students.

Third, institutions, not students, should be burdened by having to disclose information about the programs. Institutions should also be tasked with responding to market requirements for jobs in fields that they instruct in. Asking students to collect information about licensing exams or certification requirements is asking them to waste more time in a failing program that does not provide this information up front. How many more hours would be spent by each of tens of thousands of students having to research the needed

[33] The Institute for College Access and Success, *Where More Default Than Graduate: Career Education Program Parasites,* (May 15, 2014), http://views.ticas.org/?p=1301
[34] 79 Fed. Reg. 16447.
[35] Ibid.

certification or licensing exam criteria for themselves? Institutions would be able to perform this requirement once rather than thousands of students taking this on themselves. It should be the institution's job. Institutions are well-funded and should demonstrate that they are keyed in to the industries that they prepare their students to work in. The Department must ensure that this is reflected in the rule.

Fourth, we have concerns that the certification portion of the rule fails to require that programs meet widely accepted minimum standards for particular occupations. Many occupations, especially in the health field, are generally unavailable to students who have not completed programs that meet certain criteria. Students who attend programs that don't meet widely accepted minimum standards are caught in a catch-22. They may find that there is an alternative route to qualify to take the exam. However, that route requires a certain number of years of experience in the very occupation for which they cannot find work, without the certification to take the exam. The educational requirements, for example, program accreditation by a particular professional organization, are widely accepted minimum standards, yet many of these occupations do not require passing an official state license exam. These widely accepted standards need to be addressed.

For instance, to be a medical assistant in California, no license or certification is required, but to be able to carry out normal functions of a medical assistant, such as drawing blood or giving injections, the individual must have a certain number of hours of training. Because no license or certification is required by California, this section of the rule appears not to apply. But, realistically, to get a medical assistant job in California a student would have to have received certain training. Additionally, according to the Bureau of Labor Statistics Occupational Handbook, employers themselves prefer medical assistants who are certified.[36]

For the reasons explained above, the Department should add a new subsection to the rule that requires each program to satisfy widely accepted minimum standards for certification or a similar credential. Students must not complete their programs only to find that they have no real opportunities in their field of study because they lacked training that they needed. By closing these loopholes, the Department would be responding to questionable industry practices that are well known. Attorneys general have investigated numerous for-profit education companies for potentially illegal behavior. Press coverage on the issue is rife with examples of exploitative behavior. Without the Department's swift action, we fear that these practices would continue at the expense of students and taxpayers.

V. Limit enrollment in poorly performing programs until they improve.

A strong rule should both target poorly performing programs and encourage improvement throughout the industry. The most effective way for the Department to encourage programs to improve is with financial disincentives. The Department seeks specific comment on whether enrollment limits should be imposed on programs that could become ineligible and how those limits could be practically implemented. We feel

[36] "How to Become a Medical Assistant," last modified May 24, 2014, http://www.bls.gov/ooh/healthcare/medical-assistants.htm#tab-4.

that the rule should incorporate enrollment limits as the main financial incentive to improve their programs for students.

Under the proposed regulation, poorly performing programs can increase the number of students they enroll, without limit, right up until the day they lose eligibility. Shockingly, 193 programs at 93 different for-profit education companies failed all three original rule tests, yet every single one of these programs, no matter how poor student outcomes are, continues to receive unlimited federal funding at students' and taxpayers' expense.[37] Allowing schools to boost the enrollment in shoddy programs puts the bottom line of the institution above the quality of students' educational experience. The Department must ensure that these programs face a choice between raising their standards or stopping recruitment of students. We recommend that the Department limit enrollment in programs in the zone or failing based to the number of enrollees during the previous year.

VI. Consumer Information and Disclosures

Young Invincibles supports the Department's strategy to consumer test disclosure information to determine what most helps students make decisions about gainful employment programs. Some students may indeed benefit by being able to research the performance of schools before they chose to enroll. We offer several points to keep in mind as the Department develops its disclosures.

First, students often cite job placement rates as a key concern when applying for college.[38] Several studies including YI's own research support this claim.[39] However, because the Department refuses to require consistent definitions for job placement rates some of the most important information for student decisions will remain unavailable.

Second, many terms the Department uses in its rule will be difficult to understand and may require additional explanation. For example, though the terms "default" and "repayment rates" are helpful tools to policy makers, consumers will struggle to understand what these arcane terms mean. To the extent the Department includes these in any consumer disclosure, it will need to provide some explanation. Even then, consumers may struggle to understand the terms and may benefit more from other pieces of information such as average debt levels of program graduates.

Third, more information will not always be helpful. Our generation must sift through more information on a daily basis than any before it. Bombarding prospective students with statistics about various programs could prove counterproductive and actually make it more difficult for them to make decisions. Generally, a few relevant pieces of information will be much more effective than a disclosure with reams of data. On example where this could cause a problem is in the area of completion rates. The Department "concluded that the benefits of ensuring consistent and accurate calculations

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[37] The Institute for College Access and Success, *Comments to Department of Education on Intent to Establish Negotiated Rule Making Federal Register Number 2013-08891*, (Berkeley CA: 2013).
[38] "Americans Say Graduates' Jobs Status Key to College Choice" last modified May 27, 2014, http://www.gallup.com/poll/163268/americans-say-graduates-jobs-status-key-college-choice.aspx.
[39] Unpublished data from Healey C. Whitsett and Rory O'Sullivan, *Lost Without a Map: A Survey About Student Experiences Navigating the Financial Aid Process*, (Philadelphia PA: NERA Economic Consulting, 2012).

reducing burden on institutions and providing an opportunity for the Department to obtain data outweigh concerns about limiting disclosure to students who received Title IV/HEA program funds."[40] We are in favor of the Department collecting more data for policymaking purposes, but we disagree with its analysis regarding disclosures. Including all of the completion rates the Department collects will render the disclosures meaningless to most students.

VII. Conclusion

We appreciate the opportunity to comment on the NPRM and we hope that the Department considers student perspectives like Sarah's in drafting a final rule. Respectfully, we thank the Department for its years of effort to protect students and taxpayers. If you have any questions regarding our comments, please reach out to Rory O'Sullivan at rory.osullivan@younginvincibles.org.

Sincerely,

Young Invincibles

[40] 79 Fed. Reg. 16483.

Appendix 1

Our ratio is calculated as:

$$= \frac{\text{Population with a high school diploma who can reasonably make student loan payments}}{\text{Total population with a high school diploma}}$$

In order to produce an estimate of the population who can repay some portion of student loans, we utilized a number of criteria. First, we removed anyone who is currently enrolled in school because they do not have to pay their loans back until the conclusion of their program. Second, we assumed that anyone who is unemployed or not in the labor force cannot pay student loans because they would likely qualify for forbearance or deferment. We also eliminate those who have a job but earn too little to repay anything on student loans. Because this metric is based on Congress' use of 150% of the Federal Poverty Limit (FPL) in income based repayment plan formulas as well as the Department's own choice of that threshold in the NPRM, we believe this threshold is a meaningful indicator of ability to repay. We also eliminated from the numerator anyone receiving social safety net benefits such as food stamps, SSI, heating or rent subsidies, and welfare income based on the theory that persons receiving these benefits have no additional income to repay student loan debt. Finally, we excluded members of the armed forces on active military duty as they would be allowed to defer as well.

Finally, for our analysis, we narrowed the entire population to 25-34-year-olds because older workers typically earn much higher salaries due to their lengthier workplace experience. Although we know that career colleges typically enroll many students who do not come straight from high school; many of these students are still in their young adult years. Moreover, since the accountability metrics in the rule measure student outcomes for the first few years after students leave, we believe it is appropriate to compare them to a population of high school graduates closer to when those graduates actually matriculated from high school. This logic leaves us with the following ratio of the 25-34-year old population:

$$= \frac{\begin{array}{c}\text{Population with a high school diploma, not in school, with a job, who earn} > 150\%\ \text{FPL,}\\ \text{do not recieve social safety net benefits, and are not actively serving in the military}\end{array}}{\text{Total population with a high school diploma}}$$

In order to test this ratio, we analyzed 2013 Current Population Survey (CPS) March Supplement data. At the time of the survey, there were approximately 41.8 million 25-34-year-olds in the United States. In Table 1 we show the results of applying the ratio to 25-34-year-olds with a high school degree, associate's degree, or bachelor's degree, as their terminal degree. Of the nearly 11 million 25-34-year-olds with a high school diploma as their terminal degree, we estimate that approximately 46.2 percent could possibly afford some level of student debt payments. Putting this number in perspective, we estimate that over 70 percent of the approximately 10.3 million bachelor's degree holders could repay their loans under the same formula. We would recommend reducing the threshold to 45 percent to account for additional populations of borrowers we cannot account for due to limitations in CPS data (e.g. borrowers who are in engaged national service can defer their payments). The Department itself identified a similar threshold in a much earlier draft of the rule dating to the initial program integrity rulemaking process.[41] Our analysis suggests the Department assertions were valid then, and still are now.

41 Program Integrity: Gainful Employment; Proposed Rule, 75 Fed. Reg. 43618.