COMMENTS

NO GAIN, ALL PAIN: HOW THE PRESENCE OF PREDATORY ONLINE GRADUATE PROGRAMS EXEMPLIFY THE NEED FOR A BETTER GAINFUL EMPLOYMENT RULE

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INTRODUCTION

> Earning a college degree or certificate should give every person in America a leg up in securing a bright future. But for too many people, student loan debt has hindered their ability to achieve their dreams . . . . Getting an education should set us free; not strap us down!
>
> —Miguel Cardona, Secretary of Education[1]

The above statement from Secretary of Education Miguel Cardona was included in an August 2022 press release announcing the Biden Administration's long-awaited plan regarding student loan debt cancellation.[2] "[T]argeted student debt cancellation" is one of many steps the Department of Education (Department) announced it is taking to protect student borrowers.[3] The Department's intention to reinstate the "Gainful Employment" Rule is included in these efforts.[4]

In 2019, the Trump Administration's Department repealed the Gainful Employment Rule enacted during the Obama Administration.[5] The Gainful Employment Rule required for-profit colleges to show that their graduates earned enough to repay their student loans or risk losing access to federal

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1. Press Release, U.S. Dep't of Educ., Biden-Harris Administration Announces Final Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation to Smooth Transition to Repayment (Aug. 24, 2022) [hereinafter Student Debt Cancellation Announcement], https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.

2. *Id.* The plan would cancel up to $20,000 in debt for borrowers with Department of Education (Department) loans depending on the borrower's income and whether they were a Pell Grant recipient. *Id.*

3. *See id.* (announcing, alongside the debt cancellation plan, the Department's reforms to loan repayment plans, reestablishment of "the enforcement unit in the Office of Federal Student Aid," and punishment of an accreditor that oversaw schools responsible for some of the worst for-profit scandals).

4. *See id.* (stating the Department "will also propose to reinstate and improve a rule to hold career programs accountable for leaving their graduates with unaffordable debt"); Negotiated Rulemaking Committee; Public Hearings, 86 Fed. Reg. 28,299, 28,300 (proposed May 26, 2021) (to be codified at 34 C.F.R. pts. 600–94).

5. Danielle Douglas-Gabriel, *Trump Administration Formally Rescinds Rule Governing Career Training Programs*, WASH. POST (June 28, 2019, 5:38 PM) [hereinafter Douglas-Gabriel, *Trump Admin Rescinds Rule*], https://www.washingtonpost.com/education/2019/06/28/trump-administration-formally-rescinds-rule-governing-career-training-programs/.

financial aid programs.[6] The Obama Administration created the Gainful Employment Rule to combat for-profit colleges' exploitative recruitment and economic practices.[7] While not perfect, the rule provided a framework for holding higher education institutions accountable for their graduates' employment outcomes.[8]

The student loan debt crisis in the United States has forced many to thoughtfully weigh the costs against the benefits to determine if college is worth it.[9] Between 2008 and 2018, higher education tuition in the United States increased by over 36%.[10] During that same period, the median income[11] in the country increased by only a little over 2%.[12]

Unsurprisingly, many students in the United States rely on loans to finance their education.[13] Unbearable student loan debt can leave a person stuck and unable to move into a higher socioeconomic status as promised.[14]

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6. *What to Know About the Gainful Employment Rule*, THE INST. FOR COLL. ACCESS & SUCCESS (2019), https://ticas.org/wp-content/uploads/2019/08/what_to_know_about_GE_fact-sheet-1.pdf.

7. *See* Allie Grasgreen, *Obama Pushes For-Profit Colleges to the Brink*, POLITICO (July 1, 2015, 5:17 AM), https://www.politico.com/story/2015/07/barack-obama-pushes-for-profit-colleges-to-the-brink-119613 (discussing the Department's goal of regulating the for-profit college industry under the Obama Administration as "fueled by complaints that for-profit colleges lure students with misleading promises" about previous graduates' earnings and debt incurred).

8. *See What to Know About the Gainful Employment Rule*, *supra* note 6 (noting the benefits of the rescinded Gainful Employment Rule included "improvement at colleges, . . . lower tuitions, . . . and other efforts to improve the value they offer students").

9. *See* Emma Kerr, *Is College Worth the Cost?*, U.S. NEWS (June 17, 2019, 11:02 AM), https://web.archive.org/web/20190619140225/https://www.usnews.com/education/best-colleges/paying-for-college/articles/2019-06-17/is-college-worth-the-cost (stating that students view a higher post-graduation salary as the largest benefit of attending college, but many students are not actually realizing the economic incentive post-graduation as research shows "annual wages for the bottom 25th percentile of college graduates are less than the median wages earned by a typical worker with a high school diploma").

10. Emma Kerr, *Why is College so Expensive?*, U.S. NEWS (Nov. 4, 2019, 9:00 AM) [hereinafter Kerr, *Why is College so Expensive?*], https://www.usnews.com/education/best-colleges/paying-for-college/articles/2019-11-04/why-is-college-so-expensive.

11. *Income vs. Earnings*, U.S. CENSUS BUREAU: RANDOM SAMPLINGS (Sept. 23, 2010), https://www.census.gov/newsroom/blogs/random-samplings/2010/09/income-vs-earnings.html (defining median income as the amount that half of households earned more than and half of households earned less than).

12. *See* Kerr, *Why is College so Expensive?*, *supra* note 10 (demonstrating how tuition rates have outpaced wages in the United States: 36% for tuition versus 2.1% for real median income).

13. *See id.*

14. *See* Abigail Johnson Hess, *CNBC Survey: 81% of Adults with Student Loans Say They've had to Delay Key Life Milestones*, CNBC (Jan. 28, 2022, 6:00 AM), https://cnb.cx/35B1IDH (stating

Furthermore, programs created by Congress to help students repay their loans, such as the Public Service Loan Forgiveness program, have not had the intended impact on the student loan debt crisis.[15]

Despite the concern over the expensiveness of education, many public and nonprofit institutions, including elite private universities, have joined forces with for-profit education technology companies to create pricey online course offerings.[16] These online offerings include online master's degree programs.[17] Graduates of these expensive online master's degree programs often struggle to find adequate employment to repay the massive amount of loans they took on to enroll.[18]

The predatory nature of for-profit colleges is frequently discussed and debated.[19] The conversation, however, rarely touches on the predatory

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many student borrowers have delayed life milestones such as "buying a home," "having a baby," or "getting married" because of their student loan debt).

15. *See* Anne Helen Petersen, *Here's Why so Many Americans Feel Cheated by Their Student Loans*, BUZZFEED NEWS (Feb. 9, 2019, 10:31 AM), https://www.buzzfeednews.com/article/annehelenpetersen/student-debt-college-public-service-loan-forgiveness. The Public Service Loan Forgiveness (PSLF) program allows borrowers to have their student loan debt forgiven after making 120 monthly payments while working for a qualifying public service employer. *Id.* However, the Department's data from 2018 showed that over 98% of PSLF applications were rejected. *Id.*

16. Jordan Weissmann, *Master's Degrees are the Second Biggest Scam in Higher Education*, SLATE (July 16, 2021, 12:57 PM), https://slate.com/business/2021/07/masters-degrees-debt-loans-worth-it.html.

17. *See* Lisa Bannon & Andrea Fuller, *USC Pushed a $115,000 Online Degree. Graduates Got Low Salaries, Huge Debts.*, WALL ST. J. (Nov. 9, 2021, 10:28 AM), https://www.wsj.com/articles/usc-online-social-work-masters-11636435900 (profiling graduates of a University of Southern California's (USC's) online master's program in which some graduates had over $100,000 in debt and salary offers under $50,000).

18. *See id.*

19. *See, e.g.*, Joseph Sipley, Note, *For-Profit Education and Federal Funding: Bad Outcomes for Students and Taxpayers*, 64 RUTGERS L. REV. 267, 274–78 (2011) (discussing for-profit college industry's engagement in fraudulent recruitment practices); Sarah Ann Schade, Note, *Reining in the Predatory Nature of For-Profit Colleges*, 56 U. AZ. L. REV. 317, 318, 322–28 (2014) (discussing for-profit college industry's use of misleading marketing strategies to attract students from vulnerable populations); Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 TENN. L. REV. 515, 527–33 (2012); Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum & Toby Merrill, *For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate*, HARV. L. REV. BLOG (July 30, 2018), https://blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/ (discussing the for-profit college industry's intentional targeting of racial minorities); *see also* Robert Shireman, *The Policies that Work—and Don't Work—to Stop Predatory For-Profit Colleges*, THE CENTURY FOUND. (May 20, 2019), https://tcf.org/content/report/policies-work-dont-work-stop-predatory-profit-colleges/?session=1 (discussing the predatory tactics of for-profit schools).

nature of programs at nonprofit institutions of higher learning, specifically their partnerships with Online Program Management (OPM) companies. These programs, like those at for-profit higher education institutions, leave students with insurmountable debt and weak employment prospects.[20]

Part I of this Comment outlines the Higher Education Act by evaluating the authority given to the Department to both administer federal student financial aid and its power over accreditation, the ban on incentive compensation, and how these relate to the predatory online graduate programs. Part II provides a retrospective analysis of the now-rescinded Gainful Employment Rule, which provides a useful framework for regulating online graduate programs. Part III discusses and critiques the Biden Administration's Gainful Employment Rule proposal and suggests (1) the Department administer federal student aid or (2) Congress expand the Department's quality assurance role so that the Department can promulgate a more expansive Gainful Employment Rule to encompass these programs.

A. A Regretful Choice: A Look into USC's Online Master of Social Work Program

When Susan Fowler enrolled in the University of Southern California's (USC's) online Master of Social Work (MSW) program, she assumingly did so with the hopes of increasing her job prospects.[21] Instead, she graduated in 2018 with almost $200,000 of student debt from USC's program.[22] Fowler regrets enrolling in USC because she could have received the same degree from another college for a fraction of the price and would likely have the same job opportunities.[23] Fowler currently earns $48,000 as a social worker—not nearly enough to make any meaningful impact on her student loan debt balance.[24] The amount of student debt Fowler undertook to complete USC's program was not unique to her. Another USC MSW student mentions debt totaling $167,000 from the program while only earning $59,000 a year.[25] Similarly, another graduate states that she makes $16.95 per hour at a nonprofit while having $138,000 in debt from

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20. *See* Bannon & Fuller, *supra* note 17; Grasgreen, *supra* note 7 (noting that graduates of for-profit colleges face higher student loan default rates and worse career outcomes compared to graduates from other institutions).

21. *See* Bannon & Fuller, *supra* note 17.

22. *Id.*

23. *See id.* (stating that while Master's in Social Work (MSW) graduates from California State University, Long Beach borrow significantly less than USC students, their median earnings are $59,000—almost 14% higher than that of USC graduates).

24. *See id.*

25. *See id.* (discussing Mauri Jackson, a USC MSW graduate, who has undergraduate and graduate debt totaling $243,000).

her time at USC.[26] USC's prestige and esteem as an elite private university persuaded the graduates to enroll in the expensive MSW program, without proportional occupational payoff.[27]

Unbeknownst to the graduates, USC tasked 2U, the OPM, which created the online program, with attracting students to the social work program by using marketing tactics like those used by for-profit universities.[28] These marketing tactics included bombarding prospective applicants with calls and emails and selecting students with low grade point averages to maximize enrollment.[29] USC and 2U even created offensive marketing profiles resembling different racial and socioeconomic groups to target those groups for enrollment in the program.[30] One striking example is "Needy Nelly," a caricature of a Black woman who recruiters would have to "hand-hold" through the application process due to her frequent calls and emails about the application process.[31]

Following the publication of the *Wall Street Journal*'s article, titled *USC Pushed a $115,000 Online Degree, Graduates Got Low Salaries, Huge Debts*, detailing the exploitative tactics surrounding USC's MSW program, the university announced it would reduce the program's tuition and reevaluate its relationship with 2U and their tuition-sharing agreement.[32] The article cited the tuition-sharing agreement as a factor that encouraged USC and 2U's predatory tactics.[33]

The high-debt-to-income situation in which these USC graduates found themselves is not unique to USC.[34] Other articles have profiled graduates of other universities' graduate-level programs who have massive debt amounts and are unlikely to obtain employment sufficient to pay off those debts.[35]

26. *See id.* (profiling Patrice Dorsey-Ross, a USC MSW graduate, who started a GoFundMe fundraiser to help pay down her student loan debt).

27. *See id.* (quoting a graduate of the program describing USC as "one of those schools where rich people go or geniuses go").

28. *Id.*

29. *See id.* (noting that 2U received instructions to target prospective students with grade point averages as low as 2.5).

30. *See id.* (detailing examples of the caricatures used by USC and 2U to train recruiters).

31. *Id.*

32. Editorial, *USC Tarnishes Its Reputation Again, this Time with For-Profit Recruitment Tactics*, L.A. TIMES (Nov. 12, 2021, 3:00 AM) [hereinafter *USC Tarnishes Its Reputation Again*], https://www.latimes.com/opinion/story/2021-11-12/another-usc-embarrassment-for-prof it-recruitment-tactics-left-social-work-students-laden-with-deb.

33. *See id.*; Bannon & Fuller, *supra* note 17 (detailing the tuition-sharing agreement between USC and 2U which was a shared source of revenue for both parties).

34. *USC Tarnishes its Reputation Again*, *supra* note 32.

35. *See* Melissa Korn & Andrea Fuller, *'Financially Hobbled for Life': The Elite Master's Degrees That*

Even Congress has taken notice of OPMs and their potential problems.[36] In 2020, Senator Elizabeth Warren of Massachusetts and other Senators wrote to major OPMs, including 2U, to share the senators' concerns about these companies' business practices and contributions to the student loan debt crisis.[37]

OPMs are structured to generate profit from student tuition and use weak oversight to increase enrollment and maximize profits at the expense of vulnerable students.[38] OPMs typically pocket between 40%–65% of program tuition through contracts that can last up to five years.[39] OPMs thrive in collaborations with universities on master's degree and certificate programs because they do not have the same restrictions as bachelor's degree programs.[40] For instance, graduate programs are not obligated to divulge admissions data.[41] Therefore, an institution can deviate from its normal admissions standards to increase the number of potential students, thereby maximizing profit.[42] OPM-run programs are alarming because they potentially "expose students to the same risks involved with enrolling in a for-profit college," such as massive student debt balances, weak job prospects, or worthless degrees, "but with even less protection than those students receive."[43]

Don't Pay Off, WALL ST. J. (July 8, 2021, 9:59 AM), https://www.wsj.com/articles/financially-hobbled-for-life-the-elite-masters-degrees-that-dont-pay-off-11625752773 (detailing the story of Zack Morrison, a graduate of Columbia University's Master of Fine Arts film program, who has $300,000 in loans).

36. *See* Teaganne Finn, *Senate Democrats Probe Impact of Online Degree Programs on High Student Debt Loads*, NBC NEWS (Jan. 16, 2022, 11:06 AM), https://www.nbcnews.com/politics/congress/senate-democrats-probe-impact-online-degree-programs-high-student-debt-n1287578 (discussing a letter sent to eight OPMs from three Senators).

37. *Id.*

38. *See* Kevin Carey, *The Creeping Capitalist Takeover of Higher Education*, HUFFPOST: HIGHLINE (Apr. 1, 2019), https://www.huffpost.com/highline/article/capitalist-takeover-college/ (detailing examples of exploitative practices by OPMs).

39. *Id.*

40. *See id.* (explaining the differences in restrictions between the programs).

41. *Id.*

42. *Id.*

43. Stephanie Hall & Taela Dudley, *Dear Colleges: Take Control of Your Online Courses*, THE CENTURY FOUND. (Sept. 12, 2019), https://tcf.org/content/report/dear-colleges-take-control-online-courses/?session=1 (stating that there is less protection because OPMs operate "under the guise of a public institution, wherein public interest is assumed to be the chief priority").

I. THE DEPARTMENT OF EDUCATION AND OPMS

A. Title IV of the Higher Education Act

The Higher Education Act (HEA) of 1965 defines the scope of the Department's regulation over institutions of higher education and federal student aid.[44] Congress last reauthorized the HEA in 2008, which expired in 2013, and only extended the authorization without any significant amendments to the Act.[45] Congress seemed close to reauthorizing the HEA in 2020, but the COVID-19 pandemic halted the momentum and Congress failed to reauthorize it.[46] Thus, the HEA is currently operating under its 2008 reauthorization.[47]

Under Title IV of the HEA, the Department governs the administration of federal student financial aid used by students to finance their education at eligible institutions.[48] Eligible institutions are divided into three categories: (1) institutions of higher education (public or private nonprofit), (2) proprietary institutions of higher education (private for-profit), and (3) postsecondary vocational institutions.[49] The Department requires that institutions apply for eligibility certification to access their federal student aid programs.[50] The Department's approval of an institution's request for

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44. *See* Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 ("An Act to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education."); *see also* 20 U.S.C. § 1001 (defining an "institution of higher education" under the Higher Education Act (HEA)).

45. *Higher Education Act*, AACRAO, https://www.aacrao.org/advocacy/issues/higher-education-act (last visited Nov 12., 2022).

46. Kery Murakami, *The Higher Education Act and the Pandemic*, INSIDE HIGHER ED (Apr. 15, 2020), https://www.insidehighered.com/news/2020/04/15/senate-committee-was-close-deal-higher-ed-then-came-pandemic.

47. *Higher Education Act*, *supra* note 45.

48. 20 U.S.C. § 1070(a) (stating purpose of Title IV is "to assist in making available the benefits of postsecondary education to eligible students" by providing grants, assisting states with providing financial aid, and "providing assistance to institutions of higher education"); *see also* § 1070(b) ("The Secretary [of Education] shall . . . carry out programs to achieve the purposes of this part.").

49. *See* OFF. OF FED. STUDENT AID, U.S. DEP'T OF EDUC., VOLUME 2 – SCHOOL ELIGIBILITY AND OPERATIONS 2-2 to -7 (2021) [hereinafter SCHOOL ELIGIBILITY AND OPERATIONS], https://fsapartners.ed.gov/sites/default/files/attachments/2021-02/2021FSAHbkVol2Master.pdf; ALEXANDRA HEGJI, CONG. RSCH. SERV., R43159, INSTITUTIONAL ELIGIBILITY FOR PARTICIPATION IN TITLE IV STUDENT FINANCIAL AID PROGRAMS 17 (2019) [hereinafter CRS, ELIGIBILITY] (detailing requirements for educational programs to qualify for federal student aid).

50. *See* United States v. Educ. Mgmt. Corp., 871 F. Supp. 2d 433, 439 (W.D. Pa. 2012) (quoting Ass'n of Accredited Cosmetology Schs. v. Alexander, 979 F.2d 859, 860

"certification" is contingent on the institution complying with applicable statutes and regulations.[51] After the Department approves a prospective institution's application, the institution signs a "Program Participation Agreement," which outlines the terms for Title IV participation and is necessary to receive and distribute federal student aid.[52] The agreement "automatically terminates" when the school is deemed to be an ineligible institution.[53] An institution can become ineligible if the Department finds noncompliance with Title IV rules.[54] Institutions that violate Title IV conduct can face "fines, limitations, suspensions, emergency actions, [to] terminations."[55]

Federal student financial aid programs include: (1) grants, (2) federal work-study, and (3) federal student loans.[56] The Department lends three main types of federal student loans to student borrowers: Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans.[57] Particularly relevant are Direct Unsubsidized Loans and Direct PLUS Loans, which are the loans primarily used by graduate or professional students.[58] Direct Unsubsidized Loans accumulate interest from the time they are issued, and are frequently issued because eligibility for Direct Unsubsidized Loans are not determined by financial need.[59] Direct PLUS Loans are given to graduate or professional students to cover additional "education expenses not covered by other

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(D.C. Cir. 1992)); *see also* SCHOOL ELIGIBILITY AND OPERATIONS, *supra* note 49, at 2-9 to -11 (outlining institutional eligibility process).

51. *See Educ. Mgmt. Corp.*, 871 F. Supp. 2d at 439 (quoting *Cosmetology Schs.*, 979 F.2d at 860).

52. *See Program Participation Agreement (PPA)*, STUDENT AID REFERENCE DESK, https://www.studentaidrefdesk.org/term/Program_Participation_Agreement_PPA/Statutory_Authority/Regulation/ED_References (last visited Nov. 12, 2022) (detailing the purpose and significance of Program Participation Agreements).

53. SCHOOL ELIGIBILITY AND OPERATIONS, *supra* note 49, at 2-21.

54. *See* CRS, ELIGIBILITY *supra* note 49, at 5, 9, 22–23.

55. *See id.* at 18 (explaining how the Department may impose several sanctions, such as fines, limitations, and suspensions, on institutions for statutory and regulatory violations).

56. *Types of Financial Aid: Loans, Grants, and Work-Study Programs*, OFF. OF FED. STUDENT AID, https://studentaid.gov/understand-aid/types/ (last visited Nov. 12, 2022).

57. *See Types of Financial Aid: Loans*, OFF. OF FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans (last visited Nov. 12, 2022).

58. *See id.* Direct Subsidized Loans are irrelevant to this discussion because only undergraduate students receive them. *Id.*

59. *See Types of Financial Aid: Subsidized and Unsubsidized Loans*, OFF. OF FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans/subsidized-unsubsidized (last visited Nov. 12, 2022) (explaining how much an individual can borrow and what happens when an individual fails to pay the interest while attending school).

financial aid."[60] The graduate students profiled primarily used federal student aid, specifically Graduate PLUS Loans, to finance their education.[61] According to data compiled in a 2019 study, "households with graduate degrees owed 56[%] of the outstanding education debt."[62] Graduate programs also disproportionately comprise the share of federal student loans issued yearly compared to their share of total student enrollment.[63]

With billions of dollars involved, the debt and employment prospects of students enrolled in OPM graduate programs should be of importance to the Department if it is serious about tackling the student loan debt crisis.

1. Department of Education's Quality Assurance Authority

The HEA also affords the Department another regulatory power over postsecondary institutions through its quality assurance authority.[64] Quality assurance refers to ensuring that an institution "meet[s], and maintain[s], minimum standards of quality and integrity regarding academics, administration, and related services."[65] The Department implements quality assurance via accreditation.[66] While the Department retains the ability to distribute federal funding, private accrediting agencies and the

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60. *See Types of Financial Aid: PLUS Loans*, OFF. OF FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans/plus (last visited Nov. 12, 2022).

61. *See* Bannon & Fuller, *supra* note 17.

62. Sandy Baum & Adam Looney, *Who Owes the Most in Student Loans: New Data from the Fed*, BROOKINGS INST. (Oct. 9, 2020), https://www.brookings.edu/blog/up-front/2020/10/09/who-owes-the-most-in-student-loans-new-data-from-the-fed/ (analyzing why households in the upper half of the income distribution and those with graduate degrees hold a disproportionate share of student loan debt).

63. *See* Ben Miller, *Graduate School Debt*, CTR. FOR AM. PROGRESS, tbl.1 (Jan. 13, 2020), https://www.americanprogress.org/article/graduate-school-debt/ (showing that graduate students comprise 15% of all higher education students yet make up 40% of the loans issued by the federal government each year).

64. *See Overview of Accreditation in the United States*, U.S. DEP'T OF EDUC., https://www2.ed.gov/admins/finaid/accred/accreditation.html (Oct. 27, 2022) [hereinafter *Overview of Accreditation*] (discussing the goal of accreditation for ensuring that institutions of higher education meet acceptable levels of quality).

65. *Accreditation and Quality Assurance*, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-accreditation.html (Feb. 21, 2008) (detailing the process of accreditation for ensuring that schools meet a standard of quality regarding academics and administration).

66. *See* 20 U.S.C. § 1099(a)–(b) (outlining the role of the states and accrediting agencies in ensuring program integrity or quality).

states have major roles in the accreditation process.[67] The states act in a "consumer protection role" by monitoring "fraud and abuse" at institutions of higher education within their jurisdiction.[68]

Accrediting agencies are private, nonprofit educational associations.[69] The Department's role in accreditation is to approve accrediting agencies found to be "reliable authorities as to the quality of education or training provided by institutions of higher education."[70] Under the HEA, the Department can revoke recognition from an accreditor deemed to be "ineffective in its performance."[71] The HEA provides and limits the standards the Department can use to evaluate accrediting agencies for recognition.[72] Chiefly, the HEA prohibits the Department from using the recognition process to influence the standards accrediting agencies use in evaluating institutional quality.[73]

Once the Department recognizes these accrediting agencies, they create criteria to measure institutional quality and then evaluate the institutions.[74] Institutions satisfying the criteria are deemed "accredited."[75] Institutions are required to be accredited to participate in Title IV financial aid programs.[76]

Accrediting agencies also have the power to revoke accreditation if it determines an institution is not meeting quality standards.[77] Accrediting

67. *Overview of Accreditation*, *supra* note 64 (explaining the role of accrediting agencies in evaluating educational institutions); *see* Matthew Adam Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 U.C. IRVINE L. REV. 1, 10–12 (2020) (detailing the distributed approach to higher education accountability between the Department of Education, the states, and institutions).

68. Bruckner, *supra* note 67, at 15–16 (stating that states have acted to "protect students" from predatory institutions of higher education by establishing "tuition recovery funds" and "ensuring that the [institutions] have 'basic operational safeguards'").

69. *Overview of Accreditation*, *supra* note 64.

70. *Id.*

71. ALEXANDRA HEGJI, CONG. RSCH. SERV., R43826, AN OVERVIEW OF ACCREDITATION OF HIGHER EDUCATION IN THE UNITED STATES 9 (2020).

72. Cerin Lindgrensavage, *Regulatory Oversight of Student Financial Aid Through Accreditation of Institutions of Higher Education*, 45 J.L. & EDUC. 327, 340 (2016) (citing 20 U.S.C. § 1099b(g)).

73. *Id.* at 339–40 (citing § 1099b(g)).

74. *See Overview of Accreditation*, *supra* note 64 (outlining accrediting agencies' role).

75. *Id.*

76. *See* CRS, ELIGIBILITY *supra* note 49, at 3 (providing requirements for an institution to participate in Title IV programs).

77. *See* Marissa Alayna Navarro, *How a College Accrediting Agency Failed to Protect Students From a Decade of Fraud*, CTR. FOR AM. PROGRESS 2 (June 3, 2021), https://www.americanprogress.org/wp-content/uploads/2021/06/ACCSC-CEHE-brief.pdf (noting that the Accrediting Commission of Career Schools and Colleges (ACCSC) withdrew the Center for Excellence in Higher Education's (CEHE)—a company that owned and operated several colleges—accreditation in April 2021).

agencies rarely elect to use this power.[78] However, when they do, it has serious consequences for the institutions because they lose their ability to participate in Title IV student aid funding.[79] For instance, in 2002, the Southern Association of Colleges and Schools Commission on Colleges, an accrediting agency, revoked the accreditation of Morris Brown College due to credible accusations of financial misconduct by the school's leaders.[80] As a result, Morris Brown saw its enrollment drop dramatically and struggled to repair its image.[81]

The Department's role within quality assurance is concerning because accrediting agencies and states can willfully ignore[82] or lack the resources to respond to the bad acts of higher education institutions.[83] For example, for over thirteen years, little was done regarding credible claims that an institution abused Title IV funding while simultaneously under investigation by federal officials.[84] During this time, various due process protections hindered the accrediting agency's ability to immediately revoke the institution's accreditation.[85] These protections include time to remedy the "deficiencies" the accrediting agency found and the opportunity to appeal revocation of their accreditation.[86] Institutions can also appeal a decision to revoke their accreditation in court.[87] Thus, accrediting agencies are discouraged from immediately acting to revoke accreditation due to the

78. *See id*; *see also Colleges That Lost Accreditation*, WALL ST. J., https://graphics.wsj.com/table/ACCREDITlost (showing that only eighteen institutions of higher education have lost their accreditation since 2000).

79. *See* Emma Whitford, *Back From 2 Decades on the Brink*, INSIDE HIGHER ED, (Jan. 12, 2021), https://www.insidehighered.com/news/2021/01/12/morris-brown's-accreditation-would-mean-'resurrection'-hbcu-long-brink-closure (detailing the twenty-year journey of Morris Brown College to regain accreditation).

80. *Id.* (noting that two former school officials later pleaded guilty to federal fraud charges).

81. *Id.* (describing the new Morris Brown administration's efforts to restore trust by prioritizing transparency).

82. *See* Navarro, *supra* note 77, at 1, 7–15 (detailing how the ACCSC, an accrediting agency, failed to act when it prolonged withdrawing accreditation from colleges operated by CEHE despite an abundance of evidence supporting revocation of its accreditation).

83. *Id.* at 5 ("Accrediting agencies are small nonprofits, funded by colleges' membership dues . . . .").

84. *See id.* at 1(detailing how CEHE, failed to act even when notified thirty times about potential violations by its accrediting institution, a state agency, and the federal government).

85. *See* 20 U.S.C. § 1099b(a)(6)–(8) (outlining the process for when an accrediting agency determines an institution is not compliant with its quality standards); Navarro, *supra* note 77, at 4 (noting how accreditation legislation provides due process protections for institutions during the accreditation removal process but "no similar protections for accreditors when they take action").

86. Navarro, *supra* note 77, at 4.

87. *Id.* at 4–5.

"threat[s] of a court battle" from better staffed and funded colleges.[88] In sum, these protections can halt or lengthen the accreditation revocation process that allows predatory institutions to continue to enroll unsuspecting students and to access prized Title IV funding while being investigated.[89]

There is adequate space for quality assurance improvements. The Department must fill this void and protect student consumers.

2. *Department of Education's Position on OPMs: The 2011 Guidance Excluding OPMs from Title IV's Prohibition on Incentive Compensation*

Because the federal government, via the Department, directly lends to student borrowers, students and taxpayers are "on the hook" for any defaulted student loans.[90] Thus, there is virtually no "economic incentive" for institutions to cap the number of students they enroll because they have already been paid in full.[91] A 1991 Senate report noted the potential for institutions to abuse Title IV federal funding because of the lack of "economic incentive" and federal oversight.[92] Likely in response to this Senate report's findings, Congress enacted the Incentive Compensation Ban when it reauthorized the HEA in 1992.[93]

The Incentive Compensation Ban makes it illegal for an institution to pay their employees or third-party entities in exchange for their "success in securing [student] enrollment[s]."[94] The idea behind the ban was that it would mitigate

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88. *Id.* at 5 (explaining that accrediting agencies have "fewer staff and less funding devoted to oversight than what colleges' corporate owners can devote to fighting back").

89. *See id.* at 4–5 (noting that CEHE colleges were not compliant with ACCSC standards for close to a decade).

90. *See* Neetu Arnold, *The Federal Student Loan System Isn't Worth It for Students or Taxpayers*, NEWSWEEK (June 7, 2021, 5:30 AM), https://www.newsweek.com/federal-student-loan-system-isnt-worth-it-students-taxpayers-opinion-1596975 (discussing how unrecovered defaulted student loan debt will be absorbed by the taxpayer in the overall federal debt).

91. United States v. Educ. Mgmt. Corp., 871 F. Supp. 2d 433, 439–40 (W.D. Pa. 2012) (detailing the moral hazard created by federal student loan programs).

92. *Id.* at 439 ("[T]he ready availability of . . . student loans and the weak system responsible for them . . . [left] hundreds of thousands of students with little or no training, no jobs, and significant debts that they cannot possibly repay. [T]he . . . taxpayer [is on the hook] for the billions . . . in . . . losses." (quoting S. REP. NO. 102-58 (May 17, 1991) (internal quotation marks omitted))).

93. *See* Higher Education Amendments of 1992, Pub. L. No. 102-325, sec. 490, § 487(a)(20), 106 Stat. 448, 627 (codified as amended at 20 U.S.C. § 1094(a)(20)); *see also Educ. Mgmt. Corp.*, 871 F. Supp. 2d at 439 (explaining that a lack of economic incentive for limited student enrollments has led some schools to abuse government funding) (citing S. REP. NO. 102-58 (May 17, 1991)).

94. 20 U.S.C. § 1094(a)(20); *see* Press Release, U.S. Dep't of Just., California University

the risk that an institution would purposefully enroll "poorly qualified students" who are unlikely to repay federal loans while the institution reaps the monetary benefit.[95] Ultimately, the goal of banning incentive compensation is to safeguard the "educational needs of the students."[96] When signing the Program Participation Agreement, the institution agrees it will not grant incentive compensation to its admission staff or recruiters.[97]

In March 2011, the Department issued guidance clarifying that it was legal to share revenue with an "unrelated third party" entity if the "recruiting was part of a . . . 'bundled services'" package.[98] This guidance meant that OPM programs would be excluded from the incentive compensation prohibition because OPMs meet the "bundled services" exemption by providing "marketing" and "support services" to their university partners.[99] Marketing includes "broad dissemination of informational brochures or the collection of contact information," which is eligible for "incentive compensation."[100] Thus, OPMs are legally able to employ predatory marketing tactics to increase enrollment in their programs and continue to draw their revenues from the tuition of the programs they manage.[101] In fact, 2U stated to shareholders in their Form 10-K Annual Report filed with the U.S. Securities and Exchange Commission that it "relies in part" on the Department's 2011 "bundled services" guidance for their "tuition revenue-shar[ing]" operation with universities.[102]

to Pay $225,000 for Allegedly Violating Ban on Incentive Compensation (Oct. 19, 2020)[hereinafter Press Release, U.S. Dep't of Just.], https://www.justice.gov/opa/pr/california-university-pay-225000-allegedly-violating-ban-incentive-compensation; *see also Federal Ban on Incentive Compensation for Student Recruiting Activities or the Awarding of Federal Financial Aid*, GOUCHER COLL. (2020), https://www.goucher.edu/policies/documents/Incentive-Compensation-Policy.pdf (Incentive Compensation Ban policy).

95. *Educ. Mgmt. Corp.*, 871 F. Supp. 2d at 440 (quoting United States *ex rel.* Main v. Oakland City Univ., 426 F.3d 914, 916 (7th Cir. 2005)).

96. Press Release, U.S. Dep't of Just., *supra* note 94.

97. CRS, ELIGIBILITY *supra* note 49, at 19.

98. Carey, *supra* note 38 (stating the Department believed that universities "wouldn't risk their reputations by offering shoddy degrees or defrauding students" as the thought process behind the exception); *Program Integrity Questions and Answers - Incentive Compensation*, U.S. DEP'T OF EDUC. [hereinafter *Program Integrity*], https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html (June 29, 2022).

99. *See* Carey, *supra* note 38; *Program Integrity Questions and Answers – Incentive Compensation*, *supra* note 98.

100. CRS, ELIGIBILITY *supra* note 49, at 20.

101. *See Program Integrity*, *supra* note 98; Carey, *supra* note 38 (stating that OPMs fall under the "bundled services" exception to the Incentive Compensation Ban).

102. Natalie Schwartz, *Are Tuition-Share Agreements Between Colleges and OPMs on Solid Legal*

The tuition-sharing arrangement is enticing to many colleges and universities since they can experiment with offering online courses while minimizing any potential financial loss by passing the costs off to the OPM.[103] These arrangements are only likely to increase because the COVID-19 pandemic increased the demand for remote learning options, and OPMs offered their services to help institutions meet the demand.[104] In short, the 2011 Department guidance legitimized the OPM business model and helped spawn the current billion dollar industry.

II. A RETROSPECTIVE LOOK AT THE DEPARTMENT OF EDUCATION'S GAINFUL EMPLOYMENT RULE

Every year, millions of students borrow billions of dollars in student loans, made available through Title IV, to finance their postsecondary education.[105] The Department's now rescinded Gainful Employment Rule used to protect some of these student borrowers.[106] In 2011, the Obama Administration introduced the Gainful Employment Rule and implemented it in 2014 under the Department's statutory authority in § 1221e-3 and § 1374 of the HEA.[107] Under these sections, the Department has the power to create (1) rules and regulations governing Department-administered programs,[108] and (2) rules necessary for the Secretary to fully carry out the functions of the Department.[109]

Footing?, HIGHER ED DIVE (June 18, 2021) [hereinafter Schwartz, *Legal Footing*], https://www.highereddive.com/news/are-tuition-share-agreements-between-colleges-and-opms-on-solid-legal-footi/602051/; 2U, INC., Annual Report (Form 10-K) (Feb. 25, 2021), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001459417/f76785eb-8715-487c-8717-560d7a8239f1.pdf.

103. *See* Schwartz, *Legal Footing*, *supra* note 102 (discussing how OPMs provide the initial capital to start online programs meaning universities take on little cost to create these profitable programs).

104. *See* Natalie Schwartz, *Colleges Look to OPMs as Pandemic Intensifies Shift Online*, HIGHER ED DIVE (Oct. 20, 2020), https://www.highereddive.com/news/colleges-look-to-opms-as-pandemic-intensifies-shift-online/586831/ (quoting 2U co-founder Chip Paucek as saying the company's offerings had "unprecedented demand" during the pandemic).

105. *See* CONG. BUDGET OFF., FEDERAL AID FOR POSTSECONDARY STUDENTS (2018), https://www.cbo.gov/publication/53736; Miller, *supra* note 63 (providing a table showing almost $93 billion in student loans issued in a single year).

106. *See* Douglas-Gabriel, *Trump Admin Rescinds Rule*, *supra* note 5.

107. 20 U.S.C. §§ 1221e-3, 3474; *see* Ass'n of Priv. Sector Colls. & Univs. v. Duncan (*APSCU I*), 870 F. Supp. 2d 133,141, 143 (D.D.C. 2012); Ass'n of Priv. Sector Colls. & Univs. v. Duncan (*APSCU II*), 110 F. Supp. 3d 176, 203 (D.D.C. 2015) (holding that the Gainful Employment rule was a proper use of the Department of Education's authority found in many provisions of the HEA, specifically §§ 1221e-3, 3474).

108. 20 U.S.C. § 1221e-3.

109. § 3474.

When Congress initially passed the provisions of the HEA requiring certain proprietary institutions to "prepare students for gainful employment in a recognized occupation," it did not precisely define "gainful employment."[110] The Obama Administration's promulgation of the Gainful Employment Rule sought to clarify its meaning.[111] The rule defined "gainful employment" as "jobs paying enough to cover the student's educational debt."[112] To determine the income sufficient to cover the educational debt, the Department created the "debt-to-earnings-test."[113] The debt-to-earnings test consisted of two metrics.[114] First, the "debt-to-discretionary income" metric was determined by "dividing the median annual loan payment for a program's students by those same students' discretionary income."[115] The second metric was the "debt-to-annual-income" metric calculated by "dividing the median annual loan payment for a program's students by the mean or median annual earnings of those students, whichever is greater."[116]

The Department used the percentages from the metrics to determine if an institution's program passed or failed the Gainful Employment Rule.[117] A program passed and remained Title IV-eligible if its graduates' median loan payment was "less than or equal to either 20% of discretionary income *or* 8% of annual earnings."[118] Therefore, satisfying just one of the debt-to-earnings test metrics satisfied the rule requirement.[119] A graduate program fails in contrast, by not satisfying both metrics.[120] Failure of both metrics meant the possibility of losing access to Title IV funding.[121] Losing access to Title IV funding was a serious punishment, as 91% of private for-profit institutions' revenue comes from

110. § 1002(b)(1)(A)(i), (c)(1)(A); *APSCU II*, 110 F. Supp. 3d at 182 ("Congress did not explain what it meant by 'prepare' or 'gainful employment' or 'recognized occupation'" in the HEA).

111. *See APSCU II*, 110 F. Supp. 3d at 181–84; *What to Know About the Gainful Employment Rule*, *supra* note 6 (discussing the history of the Gainful Employment rule promulgation).

112. *APSCU II*, 110 F. Supp. 3d at 177, 185–86, 190 (holding that the Department of Education's view that the Act's use of the term "gainful employment" meant "jobs paying enough to cover student's educational debt" was reasonable despite Congress failing to define the term).

113. *Id.* at 182–83.

114. *Id.* at 183.

115. *Id.* (citing 34 C.F.R. § 668.404(a)(1)).

116. *Id.* (citing § 668.404(a)(2)).

117. *Id.*

118. *Id.* (citing § 668.403(c)(1)).

119. *Id.* at 183.

120. *Id.*

121. *Id.* ("A program loses eligibility for all Title IV financial aid if it fails the debt-to-earnings test for two out of three consecutive years, or if it has debt-to-earnings scores that are in the zone or failing for four consecutive years.").

tuition and fees, which can be paid for through Title IV federal financial aid.[122]

Furthermore, under the Gainful Employment Rule, institutions had a duty to disclose certain information to prospective students.[123] The Gainful Employment Rule required institutions to provide prospective students with information about previous graduates' debt, employment outcomes, and ability to repay their debt using a Gainful Employment Disclosure Template (GEDT).[124] The GEDT also aided institutions in creating a website to disclose the information on their applicable programs.[125] Overall, the Gainful Employment Rule made institutions within the rule's purview accountable to the Department for students' outcomes while increasing transparency between schools and prospective students.

In 2019, the Department, under then-Education Secretary Betsy DeVos, rescinded the Gainful Employment Rule almost entirely.[126] The Department's decision to rescind the Gainful Employment Rule was controversial and subject to legal challenges.[127] Proponents of the Gainful Employment Rule argued that the rule prevented "waste" of student aid funding and improved education quality by eliminating bad programs from accessing federal funds.[128] Secretary DeVos and the for-profit school sector supported rescinding the rule because it did not consider factors that they argued could determine a graduate's earnings and ability to pay other than the program's quality.[129] These factors included the "demographics and socioeconomic status" of the loan borrowers.[130] Along these same lines, for-profit sector representatives argued that the rule would also unfairly impact Historically Black Colleges and

122. INST. OF EDUC. SCIS., U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION: POSTSECONDARY INSTITUTION REVENUES 1, 2 (2022) https://nces.ed.gov/programs/coe/pdf/2022/cud_508.pdf.

123. *Gainful Employment Disclosure Template*, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/offices/list/ope/ge-template.html (Nov. 5, 2022).

124. *Id.* Some notable disclosure language on the Gainful Employment Disclosure Template (GEDT) included: his program will cost $[XX,XXX] if completed within normal time" and "[o]f the students who completed this program within normal time, the typical graduate leaves with $ [XX,XXX] of debt." *Id.*

125. *Id.*

126. Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392 (July 1, 2019).

127. *See generally* Press Release, Off. of Att'y Gen. Commonwealth of Pa., AG Shapiro Leading 18 States to Stop Trump Administration's Illegal Elimination of Safeguards for College Students (June 24, 2020), https://www.attorneygeneral.gov/taking-action/ag-shapiro-leading-18-states-to-stop-trump-administrations-illegal-elimination-of-safeguards-for-college-students/.

128. *What to Know About the Gainful Employment Rule*, *supra* note 6; Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,396.

129. Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392.

130. *Id.* at 31,393.

Universities (HBCUs) because, like for-profit universities, HBCUs' students are mostly racial minorities and from poorer economic backgrounds who will face "systemic racial wage discrimination" in the workforce.[131] So, the for-profit schools argued that the "systemic racial wage discrimination" in the workforce hinders their students' wages and ability to repay their loans, not the universities themselves.[132] While racism does negatively impact the potential earnings for graduates, this does not absolve schools of the insurmountable student loan balances their graduates accumulate.[133]

For-profit colleges also argued for the Department to rescind the rule because it "wrongfully target[ed]" them while overlooking "programs that [resulted] in lesser outcomes and higher student debt" at other institutions.[134] This was a fair critique since programs like USC's would have faced no discipline when the rule was implemented for overwhelmingly producing graduates who failed to find employment sufficient to repay their massive loan amounts like for-profit institutions.[135] In sum, since the Department rescinded the rule in 2019, there is currently no regulation defining what "gainful employment" is nor setting the metrics for measuring it.

Presently, the Department encourages prospective students to use College Scorecard to assist them in deciding which postsecondary institution to enroll in.[136] College Scorecard is a website that allows prospective students to compare colleges for costs, majors offered, and other factors.[137] In the same notice rescinding the Gainful Employment Rule, the Department noted that President Trump's Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities would expand the data provided on College Scorecard.[138] This new data would

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131. Kyle Southern & Riegg Cellini, Opinion, *For-Profit Colleges are Not Allies of HBCUs*, CHRON. HIGHER EDUC. (Jan. 20, 2022), https://www.chronicle.com/article/for-profit-colleges-are-not-allies-of-hbcus (describing how for-profit schools opposing the Gainful Employment rule have cited the rule's potential to disparately impact Historically Black Colleges and Universities (HBCUs) despite no HBCU program failing the Gainful Employment Rule when it was implemented).

132. *Id.*

133. *Id.*

134. Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,392.

135. *See* Bannon & Fuller, *supra* note 17 (discussing how USC's MSW graduates accumulate more debt and earn less income than students in similar programs at other institutions).

136. *See* Press Release, U.S. Dep't of Educ., New Updates to College Scorecard Make Tool More Useful for Students and Families with Data About College Costs, Graduation Rates, and Post-College Earnings (Feb. 7, 2022) [hereinafter College Scorecard Update], https://www.ed.gov/news/press-releases/new-updates-college-scorecard-make-tool-more-useful-students-and-families-data-about-college-costs-graduation-rates-and-post-college-earnings.

137. *Id.*

138. Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,394.

include the median "student loan debt" balance and the "monthly payment associated with that debt" for graduates of an institution's program.[139] The Biden Administration also recently released additional updates to the College Scorecard.[140] One notable update is the ability to view the "cumulative" debt of an institution's students in a particular "field of study."[141] While the College Scorecard is useful because it increases transparency around the cost of college, it fails to act as an accountability tool on institutions since it carries no penalties or sanctions for universities with poor student debt data. Overall, the Department views the College Scorecard as a tool for protecting student borrowers, in the absence of a Gainful Employment Rule, by helping them make informed enrollment decisions.[142]

Recently, however, the Department under the Biden Administration signaled it will start the process of promulgating a new Gainful Employment Rule rather than reinstating the rescinded version of the rule.[143] According to the new rulemaking agenda, however, for-profit colleges and career programs will still be the primary focus of any new Gainful Employment Rule.[144] Furthermore, the 2011 Department guidance exempting OPMs from the HEA's prohibition on incentive-based compensation has not been overruled by legislation, regulation, or additional guidance allowing OPMs

139. *Id.*

140. *See* College Scorecard Update, *supra* note 136.

141. *Id.*

142. *See id.*; Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,394 (noting the College Scorecard shares data that "all students [can use] to make informed enrollment and borrowing decisions").

143. *See* Department of Education Negotiated Rulemaking Committee; Public Hearings, 86 Fed. Reg. 28,299, 28,300 (May 26, 2021) (to be codified at 34 C.F.R. pts. 600–94) (listing Gainful Employment as a topic the Department suggests for regulation); *see also* Danielle Douglas-Gabriel, *Biden Administration Clashes with Consumer Groups Over the Reinstatement of Obama-Era Career Training Regulation*, WASH. POST (Nov. 18, 2021), https://www.washingtonpost.com/education/2021/11/17/gainful-employment-rule-biden-administration/; Decl. of James Richard Kvaal at 5, Am. Fed'n of Tchrs. v. Cardona, No. 20-cv-455, 2021 WL 4461187 (N.D. Cal. Sept. 29, 2021) (noting that current Under Secretary of Education, James Kvaal, stated that reimplementing the prior version of the Gainful Employment rule would be difficult and "cause considerable disruption"), *appeal filed*, *sub nom.* California v. Cardona, No. 21-16980 (9th Cir. Nov. 24, 2021).

144. *See* Department of Education Negotiated Rulemaking Committee; Public Hearings, 86 Fed. Reg. at 28,300 (listing Gainful Employment regulations formerly located at 34 C.F.R. Subpart Q prior to rescission as a topic the Department suggests for regulation). Subpart Q mainly applied to for-profit colleges and career programs. *See* Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,396.

to continue their questionable recruitment practices.[145] If the Department truly wishes to protect student borrowers, these actions must be reconsidered.

III. RECOMMENDATIONS

A. New and Improved Gainful Employment Rule

The Department recently engaged in negotiated rulemaking[146] sessions in which they considered promulgating a new Gainful Employment Rule.[147] During the February 2022 session, the Department issued a redlined version of a new Gainful Employment Rule as an issue paper.[148] In the redlined Gainful Employment Rule issue paper, "Gainful Employment Program[s]" are defined as programs "offered by an institution under [34 C.F.R.] § 668.8(c)(3) or (d)."[149] 34 C.F.R. § 668.8(c)(3) defines programs as those that are "at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation."[150] Section 668.8(d) defines "eligible program[s]" as those at "a proprietary [for-profit] institution of higher education or postsecondary vocational institution."[151] In sum, this

145. *See Program Integrity*, *supra* note 89 (continuing to list "bundled services" under "[t]ypes of payment that are not direct or indirect payment of incentive compensation").

146. The HEA requires the Department to use negotiated rulemaking for Title IV programs and meet with "representatives of the parties [(negotiators)] who will be affected significantly by the [proposed] regulations," to create a Notice of Proposed Rulemaking (NPRM). *The Negotiated Rulemaking Process for Title IV Regulations - Frequently Asked Questions*, U.S. DEP'T OF EDUC. [hereinafter *Title IV Negotiated Rulemaking FAQs*], https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html (May 25, 2021).

147. *See* Department of Education Negotiated Rulemaking Committee; Public Hearings, 86 Fed. Reg. at 28,299–300 (listing Gainful Employment as a topic the Department of Education suggests for regulation).

148. *Negotiated Rulemaking for Higher Education 2021-22*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html (Oct. 31, 2022). During negotiated rulemaking, the Department provides Issue Papers summarizing the issue and points of discussion before each session. *See* OFF. OF POSTSECONDARY EDUC., U.S. DEP'T OF EDUC., ISSUE PAPER 3: GAINFUL EMPLOYMENT SESSION 2: FEBRUARY 14–18, 2022, at 1, 6, (2022) [hereinafter ISSUE PAPER 3], https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/3ge.pdf. The papers are subsequently updated to incorporate "draft regulatory language" reflecting previous discussions and agreements between the Department and negotiators on the issue. *Title IV Negotiated Rulemaking FAQs*, *supra* note 146.

149. ISSUE PAPER 3, *supra* note 148.

150. Institution of Higher Education, 34 C.F.R. § 668.8(c)(3) (2019).

151. Proprietary Institution of Higher Education and Postsecondary Vocational Institution, 34 C.F.R. § 668.8(d) (2019).

redlined proposal is similar to the 2014 rule in that only career programs and for-profit institutions' programs would be subjected to losing access to Title IV funding for failing the debt-to-earnings test.[152] However, unlike the 2014 rule, the new proposal would require that *all* institutions report on their programs' students earnings and debts.[153]

While a great start, under this redlined proposal, USC's MSW graduate program and institutions with similarly performing programs would not face a threat of reduced access to Title IV funding for the failure of their students to obtain employment that would reasonably allow them to pay off the debt incurred for that degree. Some suggest just regulating programs like USC's as "for-profit" or as proprietary institutions under a gainful employment rule.[154] This would be tougher to implement given that the Department has asserted it does not view these programs as proprietary institutions.[155] Rather, the Department should find a Title IV provision that allows the Department to expand the rule's scope.

Therefore, when promulgating a new gainful employment rule, the Department should consider expanding the scope of the rule to programs at all types of postsecondary institutions—public, for-profit, private (non-profit and for-profit). A critique of the 2014 rule was that it targeted a small subset of programs—for-profit career programs—for loss of access to Title IV funding, although other programs had similar outcomes.[156] This ultimately left many students unprotected by the benefits of the rule. The Department has argued it does not have the authority to "expand" the scope because the HEA uses the phrase "gainful employment" when it explicitly references programs at vocational and proprietary institutions.[157] The HEA, however, does give the Department the power to "promulgate" rules supervising the

152. ISSUE PAPER 3, *supra* note 148, at 3 (outlining the institutions that the Gainful Employment rule's debt-to-earnings test would apply to).

153. *See id.* (proposing expanding the Gainful Employment Rule's disclosure provision to apply to more institutions); Eric Kelderman, *'Gainful Employment' Rule Is Back on the Table, as Biden Administration Takes Aim at For-Profit Colleges*, CHRON. HIGHER EDUC. (Feb. 8, 2022), https://www.chronicle.com/article/gainful-employment-rule-is-back-on-the-table-as-biden-administration-takes-aim-at-for-profit-colleges?cid=gen_sign_in.

154. *See* Weissmann, *supra* note 16 (quoting Kevin Carey, an education policy expert, who suggests regulating predatory master's degree programs as "for-profit" institutions under a gainful employment rule).

155. *See* Proprietary Institution of Higher Education, 34 C.F.R. § 600.5(a)(1) (2021) (limiting proprietary institutions to those that are "not a public or private nonprofit educational institution").

156. Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392, 31,394 (July 1, 2019).

157. *Id.*

"operation . . . [and] programs administered" under its purview.[158] Therefore, a newer rule should apply to *all* institution types and programs under the Department's authority to distribute Title IV student assistance funding. The Department should promulgate further requirements, in addition to those outlined in the HEA, for an institution to receive access to Title IV student assistance funds.[159] These requirements would function the same as the Gainful Employment Rule, particularly in measuring a program's graduates' debt-to-earnings and when revoking access to Title IV funds, but under a different statutory provision.

Congress could also step in and amend the HEA to include the exact phrase "prepare students for gainful employment" as a requirement for all institutions of higher education.[160] This may provide continuity, especially since this area of regulation is political and could be subject to legal challenges or changes from administration to administration.[161] Given that the student loan debt crisis will continue to increase, protections for student borrowers should not be easily subjected to the whims of political leaders.[162]

B. Empower the Department of Education to use its Quality Assurance Authority to Enforce Debt-to-Income Reporting and Monitoring at Institutions

Accreditors have not been the best in ensuring program quality in the past,[163] and the HEA has limited the Department's ability to set the standards

158. 20 U.S.C. § 1221e-3; *see* Ass'n of Priv. Sector Colls. & Univs. v. Duncan (*APSCU II)*, 110 F. Supp. 3d 176, 199, 203 (D.D.C. 2015) (holding that § 1221e-3 of the HEA gives the Department broad authority "to make, promulgate, . . . and amend rules and regulations governing . . . programs administered by[] the Department.").

159. *See APSCU II*, 110 F. Supp. 3d at 199 (noting that 20 U.S.C. § 1221e-3 grants the Department broad authority to create rules for the programs they administer, with Title IV being one of those programs).

160. *See* Program Integrity: Gainful Employment, 84 Fed. Reg. at 31,394 (stating that "without a statutory change, there was no way to expand the G[ainful] E[mployment] regulations to apply to all institutions").

161. *Compare* Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392 (Trump Administration rescinding the Gainful Employment Rule), *with* Program Integrity: Gainful Employment 79 Fed. Reg. 64,889 (Oct. 31, 2014) (Obama Administration creating the Gainful Employment Rule).

162. See Abigail Johnson Hess, *U.S. Student Debt has Increased by More than 100% Over the Past 10 Years*, CNBC (Dec. 22, 2020, 9:45 AM), https://www.cnbc.com/2020/12/22/us-student-debt-has-increased-by-more-than-100percent-over-past-10-years.html (stating that total outstanding student loan debt has doubled from $845 billion in 2010 to $1.7 trillion in 2020).

163. *See* Navarro, *supra* note 77 (describing how accrediting agencies failed to intervene upon learning of serious misconduct by an institution under its purview).

by which accreditors evaluate.[164] Therefore, Congress should amend the HEA and grant the Department a more active role in the accreditation process. A bill was introduced in Congress in 2016 that would give the Department such authority. The Accreditation Reform and Enhanced Accountability Act (AREAA) would amend § 496 in the HEA to allow the Secretary of Education to establish further criteria for evaluating accreditors for recognition.[165] The AREAA would have also allowed the Department to demand accrediting agencies use factors such as "student earnings after graduation" and loan repayment rate in their evaluation of colleges.[166] If AREAA were reintroduced and passed, the Department, in a more expansive role, would have clear power to direct accreditors to revoke accreditation after receiving annual reports from its partner accrediting agencies on institutions failing the debt-to-earnings test. Accreditation is required to obtain crucial Title IV funding; therefore, threatening to revoke accreditation for a particular program or the entire institution could be a powerful tool.[167]

As for now, there is some room for the Department to act under its current quality assurance authority.[168] The Department announced alongside its "student debt cancellation" plan that it intends to "publish[] an annual watch list" of programs that produce graduates with the "worst debt levels."[169] The Department, using its quality assurance power, should note on this list the accreditor for each offending school to heighten public awareness of negligent accreditors. The Department should also create and publish a separate list of accreditors that accredit a significant number of schools with the worst debt-to-earnings numbers for their graduates. Some public policy experts have already compiled this data.[170] Institutions and programs

164. Lindgrensavage, *supra* note 72, at 339–40.

165. Accreditation Reform and Enhanced Accountability Act (AREAA), S. 3380, 114th Cong. § 3 (2016).

166. *Id.* § 4; *see* Press Release, Sen. Elizabeth Warren, Senators Warren, Durbin, and Schatz Introduce Bill to Reform Higher Education Accreditation and Strengthen Accountability for Students and Taxpayers (Sept. 22, 2016), https://www.warren.senate.gov/newsroom/press-releases/senators-warren-durbin-and-schatz-introduce-bill-to-reform-higher-education-accreditation-and-strengthen-accountability-for-students-and-taxpayers (stating the AREAA would "[require] accreditors to consider student outcomes").

167. *See* CRS, ELIGIBILITY *supra* note 49, at 9.

168. *See supra* Part I.A (summarizing the Department's quality assurance authority).

169. Student Debt Cancellation Announcement, *supra* note 1.

170. Andrew Gillen, *Which College Accreditors are Failing Students?*, TEX. PUB. POL'Y FOUND. 5–6, 14 (2022), https://www.texaspolicy.com/wp-content/uploads/2022/09/2022-09-RR-NGT-Which-College-Accreditors-are-Failing-Students%E2%80%93Gillen.pdf (comparing the seven "most important and dominant" regional accreditors using the "debt as a percent

appearing on the "watch-list" will have to provide the Department with "institutional improvement plans" for how they intend to reduce the debt levels.[171] A similar request for an improvement plan from accreditors is likely not possible given that the HEA limits the standards for evaluating accreditors for recognition.[172] Ultimately, the hope is that the shame that comes from being included on a watch list may increase public scrutiny and awareness of programs and their accreditors that fail to prepare students for post-graduate success.

C. Critiques of the Department of Education's Proposed Accountability Metrics

In the redlined Gainful Employment Rule proposal released during the February 2022 negotiated rulemaking session, the Department asked for feedback about other accountability metrics to assess passing under the Gainful Employment test.[173] These metrics included comparing the median earnings of a program's graduates to that of a "high school graduate in that same state;" to a certain "multiple of the Federal Poverty Guideline" income that would allow the graduate to "afford basic necessities;" or to the earnings of a "full-time minimum wage worker."[174]

Regarding online graduate programs, these metrics have both positive and negative aspects. First, all these proposed metrics are on the low end of potential incomes. For instance, the minimum wage metric would allow a program to pass the Gainful Employment test if the "median graduate earns at least that of a full-time minimum wage worker."[175] The minimum wage of the state or area where the graduate resides would better serve the intention of the Gainful Employment Rule because of the variation in cost-of-living across the country[176] and state minimum wage laws.[177] However, scholarship has shown that the

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of earnings" performance of graduates of the schools they accredit and advocating for states to use this data to evaluate accreditor performance).

171. Student Debt Cancellation Announcement, *supra* note 1.

172. Lindgrensavage, *supra* note 72, at 339–40.

173. ISSUE PAPER 3, *supra* note 148, at 18.

174. *Id.*

175. *Id.* The Department is soliciting feedback on whether the minimum wage under this metric should be the minimum wage of the state in which the graduate resides or the federal minimum wage. *Id.*

176. *See Cost of Living Data Series*, MO. ECON. RSCH. & INFO. CTR., https://meric.mo.gov/data/cost-living-data-series (last visited Nov. 12, 2021) (providing data that shows the variation of cost of living in the United States as of 2021).

177. *Consolidated Minimum Wage Table*, U.S. DEP'T OF LAB., https://www.dol.gov/agencies/whd/mw-consolidated (Oct. 1, 2022) (providing the minimum wage required, if any,

minimum wage, whether federal or state, is not nearly enough for an average individual to afford basic living costs including housing, transportation, or food.[178] Basic living costs usually do not include debt, particularly educational debt like student loans, in its calculation of basic living costs.[179]

Moreover, under such a metric, graduates could earn barely above minimum wage, and a program would escape sanctions from the Department even though that income would be insufficient to repay any student loan debt incurred by the graduate. Admittedly, the Department does allow graduates to repay their loans in an amount proportional to their income, which, "if . . . low enough," could mean the graduate pays nothing each month.[180] However, this undercuts the purpose of accountability in education costs because the institution receives the money from the Department, and the student remains burdened with the debt.[181]

Additionally, a metric using a multiple of the Federal Poverty Guideline, where a program passes when its "median graduate earns enough to afford basic necessities," has similar flaws to the minimum wage metric.[182] The problem is that the amount a person needs to earn to afford basic necessities does not include student loan debt in its calculation.[183] Again, the ultimate

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in each state or territory). Currently, thirty-three states and territories have a minimum wage above the federal minimum wage of $7.25 an hour, with Washington, D.C. having the highest at $16.10 an hour, and twenty-two states or territories have a minimum wage equal to or superseded by the federal minimum wage. *Id.*

178. *See* Braeden Waddell, *Report: $15 Hourly Wage Isn't Livable Anywhere in the U.S.*, U.S. NEWS (Aug. 6, 2021, 5:02 PM), https://www.usnews.com/news/best-states/articles/2021-08-06/report-15-hourly-wage-isnt-livable-anywhere-in-the-us; DREXEL UNIV. CTR. FOR HUNGER-FREE COMMUNITIES, MINIMUM WAGE IS NOT ENOUGH: A TRUE LIVING WAGE IS NECESSARY TO REDUCE POVERTY AND IMPROVE HEALTH 1 (2021) (providing data that shows how current and proposed federal minimum wage levels would not cover health care, food, or housing for an average family in any state).

179. *See* Elise Gould & Zane Mokhiber, *The Economic Policy Institute's Family Budget Calculator*, ECON. POL'Y INST. (Mar. 1, 2022), https://www.epi.org/publication/family-budget-calculator-documentation/ (stating that a budget a family needs for an "adequate standard of living" includes "housing, food, transportation, [childcare], health care, taxes, and 'other necessities'" such as "household supplies").

180. *Income-Driven Repayment Plans*, OFF. OF FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited Nov. 12, 2022) ("If your income is low enough, your payment could be as low as $0 per month.").

181. *See* United States v. Educ. Mgmt. Corp., 871 F. Supp. 2d 433, 439 (W.D. Pa. 2012) (stating that institutions "receive payment in full").

182. *See* ISSUE PAPER 3, *supra* note 148, at 18.

183. *See* Gould & Mokhiber, *supra* note 179 (stating that a budget a family needs for an "adequate standard of living" or basic necessities includes "housing, food, transportation, [childcare], health care, taxes, and 'other necessities'" such as "household supplies").

purpose of the Gainful Employment Rule would be circumvented because graduates may not have sufficient income to pay back their loans in addition to their basic necessities. Individuals enroll in these programs to increase their income earning potential and deserve a rule that makes institutions accountable for their graduates being unable to do that.

D. Potential Impact on Other Higher Education Act Accountability Provisions

The HEA, § 498(c), orders for-profit and nonprofit institutions to provide the Department with audited financial statements that certify the institutions as "financially responsible" and thus worthy of participating in Title IV programs.[184] The Department uses the financial statements to create composite scores that ascertain an institution's "financial health."[185] The Department makes it clear that it does not view the scores as demonstrating an institution's "educational quality."[186] Rather, it is an "accountability tool" that the Department uses to warn a college that it is at risk of failure due to financial trouble.[187]

During its 2021–2022 negotiated rulemaking session, the Department released a redline of its financial responsibility regulations.[188] Under the redlined version, the Department will reinstate whether an institution "received at least 10 percent of its title IV . . . [funds] . . . from gainful employment (GE) programs that are 'failing'" as a determinative factor of financial responsibility.[189] The most recent Gainful Employment Rule redline proposal, if promulgated as is, would not capture programs such as USC's online MSW program for the debt-to-earnings test used to determine access to Title IV funds.[190] Therefore, USC, for example, would not have its financial responsibility score negatively impacted if the two redlines were enacted together, even though a significant amount of

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184. *Financial Responsibility Composite Scores*, OFF. OF FED. STUDENT AID, https://studentaid.gov/data-center/school/composite-scores (last visited Nov. 12, 2022).

185. *Id.*

186. *See id.* ("These ratios gauge the fundamental elements of the financial health of an institution, not the educational quality of an institution.").

187. Shelbe Klebs, *Five Facts You Need to Know About Financial Responsibility Scores*, THIRD WAY (Aug. 26, 2020), https://www.thirdway.org/one-pager/five-facts-you-need-to-know-about-financial-responsibility-scores.

188. OFF. OF POSTSECONDARY EDUC., U.S. DEP'T OF EDUC., ISSUE PAPER 4: FINANCIAL RESPONSIBILITY, SESSION 3: MARCH 14–18, 2022, at 1, 10 (2022) [hereinafter ISSUE PAPER 4], https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/isspap4finresp.pdf.

189. *Id.* at 12.

190. *See supra* Part III.A (discussing how the Gainful Employment redline proposal would not include OPM degree programs).

its graduates failed to obtain jobs paying enough to repay their loans from the program.[191] Given that USC created the MSW online program to not only educate, but also to generate revenue for the university, it is only logical to include the earnings of its graduates in assessing the university's financial acumen and responsibility.[192]

Current Department regulations list an accrediting agency's actions as an occurrence that could negatively affect an institution's financial responsibility score.[193] These actions include being placed on probation by an accrediting agency or being subject to a status that places the institution's accreditation at jeopardy.[194] If Congress granted the Department stronger accreditation power to hold institutions accountable for their graduate's financial outcomes by accounting for student outcomes (earnings and loan repayment), the use of financial responsibility scores would be a great addition.[195]

All in all, the use of financial responsibility score factors would greatly complement the expansive Gainful Employment Rule proposed here by adding another layer of accountability on institutions.[196]

E. Clarify Scope of Incentive Compensation Ban

The Department should also issue guidance that clarifies that OPMs in tuition-sharing partnerships with universities are subject to the HEA's ban on incentive compensation. Recently, the Government Accountability Office released a report that recommended the Department (1) instruct independent auditors to inquire into whether OPM contracts are violating the incentive compensation ban, and (2) require colleges to disclose certain information about their OPM contracts to auditors during "annual compliance audits and program reviews."[197] The Department agreed to

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191. *Id.*

192. *See* ISSUE PAPER 4, *supra* note 188; Bannon & Fuller, *supra* note 17 (stating USC created their "online master's-degree programs to increase access to its classes and generate new revenue").

193. 34 C.F.R. § 668.171(d)(1).

194. *Id.*

195. *See supra* Part III.B (arguing for Congress to enhance the Department of Education's accreditation power in regulating program quality).

196. *See supra* Part III.A & B (arguing for the Department of Education to use its power to administer Title IV funds and quality assurance power to promulgate more expansive Gainful Employment Rule).

197. Natalie Schwartz, *College Contracts with OPMs Need Better Oversight, Watchdog Says*, HIGHER ED DIVE (May 5, 2022) [hereinafter Schwartz, *Oversight*], https://www.highered

the recommendations and stated they are "considering revising the [2011] guidance."[198] This is encouraging. Tuition-sharing partnerships promote aggressive recruiting practices and tactics because, logically, increasing enrollment will likewise increase revenue via tuition, of which OPMs can receive a percentage.[199] Thus, there is an incentive to seek out potential enrollees from disadvantaged backgrounds, whether racial, economic, or academic, who are more susceptible to the barrage of marketing calls, emails, and messages.[200] Members of these groups are more likely to need and qualify for federal student aid, a guaranteed source of income for the programs, because the funds are disbursed directly to the institutions. However, these groups are also just as likely to find repaying the loans difficult or to default.[201] Thus, by allowing the 2011 guidance to remain valid authority, the Department fails to protect student borrowers and harms itself. The Department will continue to bleed millions of dollars in loans of which it will never see a cent.

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dive.com/news/college-contracts-with-opms-need-better-oversight-watchdog-says/623299/. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-104463, HIGHER EDUCATION NEEDS TO STRENGTHEN ITS APPROACH TO MONITORING COLLEGES ARRANGEMENTS WITH ONLINE PROGRAM MANAGERS 24 (2022) [hereinafter GAO REPORT].

198. Schwartz, *Oversight*, *supra* note 197; *see* GAO REPORT, *supra* note 197, at 26–27 (letter from Richard Cordray, Chief Operating Officer of the Department of Education's Federal Student Aid Office that states the Department agrees with the GAO's recommendations).

199. *See TCF Analysis of 70+ University-OPM Contracts Reveals Increasing Risks to Students, Public Education*, THE CENTURY FOUND. (Sept. 12, 2019), https://tcf.org/content/about-tcf/tcf-analysis-70-university-opm-contracts-reveals-increasing-risks-students-public-education/ (outlining the mechanics of OPM and university partnership agreements).

200. *See* Bannon & Fuller, *supra* note 17.

201. *See* Ben Miller, *Who Are Student Loan Defaulters?*, CTR. FOR. AM. PROGRESS (Dec. 14, 2017), https://www.americanprogress.org/article/student-loan-defaulters/ (stating that student loan defaulters are more likely to "come from underrepresented backgrounds"); *see also* Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, CTR. FOR. AM. PROGRESS (Dec. 2, 2019), https://www.americanprogress.org/article/continued-student-loan-crisis-black-borrowers/ (providing data showing that Black borrowers default on their student loans higher than other racial groups).

CONCLUSION

Overall, the Department must protect students from and mitigate areas that contribute to the increasing student loan debt crisis.[202] OPM-run graduate programs are one of those contributing areas.[203] The discussion of OPMs and the enormous debt burden incurred by graduates from their course offerings is especially relevant because of the rise in remote learning the COVID-19 pandemic caused.[204] Not surprisingly, OPMs have offered their services to help.[205] Transparency about the earnings and debt for graduates of all institutions' programs achieved through the Department's implementation of an expansive gainful employment rule, will protect future student borrowers by helping them make more informed decisions about their academic future. Additionally, a more expansive rule will hold institutions of higher learning accountable for not providing their graduates with the economic benefits commensurate with what they paid for their degree. It is long overdue for the Department to deploy more stringent tactics in the battle against the student loan debt crisis.

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202. *See* Johnson Hess, *supra* note 162 (stating that student loan debt has doubled from $845 billion in 2010 to $1.7 trillion in 2020).

203. *See* Finn, *supra* note 36 (stating that Congress is inquiring into OPMs' effect on student loan debt crisis).

204. Sean Gallagher & Jason Palmer, *The Pandemic Pushed Universities Online. The Change Was Long Overdue.*, HARV. BUS. REV. (Sept. 29, 2020), https://hbr.org/2020/09/the-pandemic-pushed-universities-online-the-change-was-long-overdue.

205. Michael Vasquez, *Online Program Management Firms are Thriving. And These Democrats Want Answers.*, CHRON. HIGHER EDUC. (Jan. 14, 2022), https://www.chronicle.com/article/online-program-management-firms-are-thriving-and-these-democrats-want-answers?cid2=gen_login_refresh&cid=gen_sign_in.