

July 31, 2019

VIA ELECTRONIC MAIL

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Re: Information Quality Request Appeal

To whom it may concern:

This is an Appeal of the U.S. Department of Education’s (the “Department”) response to the National Student Legal Defense Network’s (“Student Defense”) Petition for Correction and Disclosure (“Petition”)—submitted on September 5, 2018—in accordance with the Information Quality Act (“IQA”), the Office of Management and Budget’s (“OMB”) information and quality guidelines,¹ and the Department’s IQA guidelines.²

¹ In April 2019, OMB issued a memorandum requiring all agencies, including the Department, to update their IQA guidelines to “to reflect recent innovations in information generation, access, management, and use, and to help agencies address common problems with maintaining information quality.” *See* Memorandum from Russell T. Vought, Acting Dir., Office of Mgmt. and Budget on Improving Implementation of the Information Quality Act to the Heads of Executive Departments and Agencies 1 (Apr. 24, 2019). The memorandum instructed agencies to update their IQA guidelines in twenty separate ways and set a deadline of ninety days to do so. *Id.* at 2. The Department’s current IQA guidelines, attached hereto as Exhibit A (hereinafter the “ED Guidelines”), note this directive and state that the Department is “in the process of revising the[] guidelines.” Ex. A at 1. Because OMB’s July 24, 2019 deadline has already passed, however, the Department is currently out of compliance.

² The Department has failed to provide clear and consistent guidance on how to submit an appeal. In the Department’s current PDF version of the IQA Guidelines, the Department instructs the public to submit appeals to the Department’s Chief Information Officer. Ex. A at 14–15. At the time the Petition was filed, however, the PDF version instructed the public to submit appeals to the Principal Deputy Assistant Secretary in the Office of Management. *See* Ex. B, Petition at *26. In the current non-PDF version (https://www2.ed.gov/policy/gen/guid/iq/igq_5a.html), the Department instructs the public to submit appeals to the Director of the Information Collection Clearance Division. Out of an abundance of caution, we are providing this Appeal by email to both currently suggested recipients.

Student Defense’s Petition³ focused on the Department’s August 2018 publication of a Notice of Proposed Rulemaking (“NPRM”) that proposed to “rescind” the Department’s Gainful Employment regulation.⁴ As stated in the Petition, the NPRM included an abundance of factual claims without disclosing the underlying sources or methodologies, a clear failure to comply with the IQA. Additionally, as the Petition noted, where the NPRM did cite sources, it still violated the IQA by repeatedly stating conclusions that were not clearly supported by the evidence. These failures rendered meaningless the entire purpose of the public comment period.

On July 1, 2019, the Department responded to the Petition by issuing a final rule that rescinded the Gainful Employment regulation.⁵ Although the Department included sufficient information to resolve some of the IQA violations identified in the NPRM, its response is nevertheless insufficient for two reasons. First, the proper response to an IQA violation is to rescind the original NPRM and, if the Department so chooses, reissue a new version that fully complies with the IQA. Rather than doing so here, the Department has instead opted to issue a new document with new information. Second, the vast majority of the Department’s responses to the Petition were inadequate, incomplete, or in error. As a result, Student Defense hereby submits this Appeal and again demands that the Department rescind the NPRM and its accompanying final rule.

Specific IQA Violations on Appeal

Irrespective of how to properly remedy an IQA violation, many of the challenged statements from the NPRM have not been sufficiently addressed. The charts below provide: (1) a specific description of information disseminated in the NPRM that violates the IQA; (2) the basis for each IQA violation, including, where appropriate, an explanation of why a particular statement contains inaccurate, unreliable, or misleading information; and (3) the Department’s response to each violation.⁶ Following each challenged statement, we explain the basis for the appeal.

³ Student Defense incorporates by reference its prior arguments regarding the grounds for disclosure and correction under the IQA. Ex. B at *4–*5.

⁴ See generally Program Integrity: Gainful Employment, 83 Fed. Reg. 40,167 (Aug. 14, 2018).

⁵ See Email from Stephanie Valentine, OM Information Quality, to Robyn Bitner, Student Defense (Sept. 10, 2018), <https://www2.ed.gov/policy/gen/guid/iq/ed-response-iqa-bitner.pdf>. Although the Department initially alleged that Student Defense’s Petition was “not considered a proper request under the Information Quality Act,” *id.*, the Department later apologized and clarified—consistent with the ED Guidelines—that “[a] response . . . will be provided as part of the department’s response under the Notice of Proposed Rulemaking,” see Exhibit C, Email Correspondence at *1. See also Ex. A at 13 (specifying that “[c]omments about information on which the Department has sought public comment, such as rulemaking or studies cited in a rulemaking, will be responded to through the public comment process, or through an individual response if there was no published process for responding to all comments”). The Department then included a response to the Petition in the preamble to the final rule, attached hereto as Exhibit D. See also Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392, 31,426–35 (July 1, 2019). Although the Department also stated that “[o]nce final, the response w[ould] be provided to [Student Defense],” Ex. C at at *1, we have received no direct communication from the Department with its response. Consequently, we are treating the statements in the preamble to the final rule as the Department’s official response to the Petition.

⁶ In its Petition, Student Defense provided a chart that gave a specific description of information disseminated in the NPRM that violates the IQA and the basis for each IQA violation, including an explanation of why particular statements contained inaccurate, unreliable, or misleading information. See Ex. B, Petition at *5–*14. The first two columns of the charts contained herein are identical to the original chart submitted in that Petition. The third column contains information taken from the Department’s response to the Petition in the final rule.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“In promulgating the 2011 and 2014 regulations, the Department cited as justification for the 8 percent D/E rates threshold a research paper published in 2006 by Baum and Schwartz that described the 8 percent threshold as a commonly used mortgage eligibility standard. However, the Baum & Schwartz paper makes clear that the 8 percent mortgage eligibility standard ‘has no particular merit or justification’ when proposed as a benchmark for manageable student loan debt. . . . Upon further review, we believe that the recognition by Baum and Schwartz that the 8 percent mortgage eligibility standard ‘has no particular merit or justification’ when proposed as a benchmark for manageable student loan debt is more significant than the Department previously acknowledged and raises questions about the reasonableness of the 8 percent threshold as a critical, high-stakes test of purported program performance.”⁷</p>	<p>1. Fails to present conclusions that are strongly supported by the data</p> <p>a. This failure has been highlighted recently by Sandy Baum, the co-author of the 2006 study cited by the Department. In that post, Baum stated that “the Department of Education has misrepresented my research, creating a misleading impression of evidence-based policymaking. The Department cites my work as evidence that the GE standard is based on an inappropriate metric, but the paper cited in fact presents evidence that would support making the GE rules stronger.”⁸</p> <p>b. Baum further asserts that “[the Department is] correct that we were skeptical of [the 8 percent] standard for determining affordable payments for individual borrowers, but incorrect in using that skepticism to defend repealing the rule. In fact, our examination of a range of evidence about reasonable debt burdens for students would best be interpreted as supporting a stricter standard.”⁹ That is because Baum and her co-author’s “research set a</p>	<p>“The Department is aware of and respects Ms. Baum’s opinion that the 2014 Rule should not be rescinded. However, that does not change the fact that in their earlier paper, Baum’s [sic] and Schwartz’s [sic] state that the eight percent mortgage eligibility standard has ‘no particular merit or justification’ as a benchmark for manageable student loan debt. Since this paper was cited in the 2014 Rule as the source of the eight percent threshold, it is relevant that even the authors of the paper are skeptical of the merit of the 8 percent threshold as a student debt standard. It is not only appropriate, but essential, that the Department points out that upon a more careful reading of the paper, we realize that the paper does not support the eight percent threshold, but instead clearly refutes it for the purpose of establishing manageable student loan debt. . . . [T]he commenter did . . . not provide a specific threshold for what the number should be and the negotiating committee similarly was unable to identify a reliable threshold for the D/E rates measure.”¹¹</p>

⁷ 83 Fed. Reg. at 40,171.

⁸ Sandy Baum, “DeVos Misrepresents the Evidence in Seeking Gainful Employment Deregulation,” *Urban Wire: Education and Training* (Aug. 22, 2018), <https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation>.

⁹ *Id.*

¹¹ 84 Fed. Reg. at 31,426.

	<p>guideline for a level of debt payments <i>no individual student</i> should exceed. Under GE, half of a program’s graduates could exceed this limit before sanctions would kick in.”¹⁰</p>	
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Basis for Appeal: The Department’s response is inadequate and in error. It fails to sufficiently and adequately address Dr. Baum’s argument that, although she and her co-author were skeptical of the eight percent standard for determining affordable student loan payments, such skepticism was not meant to “clearly refute[] [that threshold].” Rather, Ms. Baum’s blog post clarified that their skepticism should “support[] a stricter standard” for the level of debt payments that no student loan borrower should exceed. In other words, a proper reading of Dr. Baum’s work suggests that the Department should *lower* the D/E rates threshold to below eight percent, not eliminate the standard altogether. But under the guise of “a more careful reading of th[at] paper,” the Department ignores Dr. Baum’s clarification and further distorts her research.¹²

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“Research published subsequent to the promulgation of the GE regulations adds to the Department’s concern about the validity of using D/E rates as to determine whether or not a program should be allowed to continue to participate in title IV programs.”¹³</p>	<ol style="list-style-type: none"> 1. Fails to identify data sources, including whether it is peer-reviewed and scientific evidence-based 2. Fails to confirm and document the reliability of the data and acknowledge any shortcomings or explicit errors 3. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to 	<p>“The Department has used well-respected, peer-reviewed references to substantiate its reasons throughout these final regulations for believing that D/E rates could be influenced by a number of factors other than program quality.”¹⁴</p>

¹⁰ Sandy Baum, “DeVos Misrepresents the Evidence in Seeking Gainful Employment Deregulation,” *Urban Wire: Education and Training* (Aug. 22, 2018), <https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation>.

¹² The Department also included a discussion of Dr. Baum’s work elsewhere in the final rule. See 84 Fed. Reg. at 31,407. But that discussion does not ameliorate the Department’s IQA violation here.

In addition, the Department has mischaracterized Dr. Baum’s research in other ways. In a letter to the editor published after the Department issued its final rule rescinding the Gainful Employment regulation, Dr. Baum—together with her co-author, Dr. Harry Holzer—asserted that the Department, once again, “seriously distort[ed]” their findings about the value of an associate degree in liberal arts from a community college. See Sandy Baum & Harry Holzer, “DOE’s Justification for Rescinding Gainful Employment Rules Distorts Research,” *The Chronicle of Higher Education* (July 3, 2019), <https://www.chronicle.com/blogs/letters/does-justification-for-rescinding-gainful-employment-rules-distorts-research/>. The Department used their research to argue that the Gainful Employment rule unfairly singled out for-profit colleges. *Id.* But “the problems [their research identified] that some community college students face in no way justify loosening the accountability for for-profit colleges.” *Id.* Disputes like these only further highlight the Department’s failure to disseminate quality information in the NPRM.

¹³ 83 Fed. Reg. at 40,171.

¹⁴ 84 Fed. Reg. at 31,427.

	reproduce it, or understand the steps involved in producing it”	
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Basis for Appeal: The Department’s response is inadequate and incomplete. As an initial matter, it fails to identify with any specificity the “well-respected, peer-reviewed references” that provide support for its assertion in the NPRM that D/E rates can be influenced by factors other than program quality. In addition, the Department’s claim that a reference is “well-respected” or “peer-reviewed” does not make it true. If the Department opts to characterize research this way, it must be precise and specific in order to comply with the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
“[T]he highest quality programs could fail the D/E rates measures simply because it costs more to deliver the highest quality program and as a result the debt level is higher.” ¹⁵	<ol style="list-style-type: none"> 1. Fails to identify data sources 2. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	“The Department cites research from CSU Sacramento that serves as evidence that high quality career and technical education programs can be more than four times as expensive to run as general studies programs.” ¹⁶

Basis for Appeal: The Department’s response is inadequate and incomplete. It provides only a single, partial citation—which includes three last names and no other identifying information—for the CSU Sacramento study. After searching the final rule, we assume that the full citation can be found at footnote 37.¹⁷ The text accompanying that footnote states that “[career and technical]-focused education can be four or five times more expensive to administer than liberal arts or general studies education.”¹⁸ Although the Department does not note with *any* specificity where this data is located in the CSU Sacramento study, it appears to come from Figure 1. But that figure refers to the institutional costs of running career and technical education programs at community colleges, *not* the cost of running similar programs at proprietary schools. Although the Department argued in the NPRM that it costs more to deliver “the highest quality program,” it provided a source that compares career and technical education and general studies programs at one type of school. Thus, the Department’s response fails to meet its obligations under the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
“Other research findings suggest that D/E rates-based eligibility creates unnecessary barriers for institutions or programs that serve larger proportions of women and minority students. Such research indicates that even with a college education, women and minorities, on average, earn less than white	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed sources 2. Fails to acknowledge any shortcomings or explicit errors in the data 3. Fails to present conclusions that are strongly supported by the data 	“The NPRM cites data provided by the College Board that points to disparities in earnings between men and women and people of color. The College Board is a reliable and trusted source of data, and its publications undergo rigorous peer review prior to publication. ...

¹⁵ 83 Fed. Reg. at 40,171.
¹⁶ 84 Fed. Reg. at 31,427 (including a citation to “Shullock, Lewis and Tan”).
¹⁷ 84 Fed. Reg. at 31,399 n.37.
¹⁸ 84 Fed. Reg. at 31,399.

<p>men who also have a college degree, and in many cases, less than white men who do not have a college degree.”¹⁹</p>	<p>a. Indeed, the source cited by the Department does not draw this same conclusion. For example, the cited table appears to relate to graduates of <i>bachelor’s degree</i> programs, not gainful employment programs.</p> <p>4. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it”</p>	<p>While [the data cited from the U.S. Census Bureau’s Current Population Survey] did not address GE programs specifically, the point is that there are general earnings disparities based on race and gender. Programs that serve large proportions of women and minorities, therefore, would likely post lower earnings than programs of similar quality primarily serving whites and males. . . . The Department agrees that our statement is an vpolation of the data provided, but this extrapolation is well reasoned and supported by other research. Given that proprietary institutions serve the largest proportions of women and minority students, and that some GE programs . . . serve much larger proportions of female students, it is likely that student demographics will impact earnings among these programs.”²⁰</p>
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Basis for Appeal: The Department’s response is inadequate and incomplete. The NPRM states that “D/E rates-based eligibility creates unnecessary barriers for institutions or programs that serve large proportions of women and minority students.”²¹ Because the Department refers to “D/E rates-based eligibility,” it is natural to conclude that the “institutions or programs” involved are GE programs. But, as noted in the Petition, the Department’s source relates to graduates of bachelor’s degree programs only. Despite this obvious mismatch, the NPRM nevertheless states that the cited research “indicates” that “even with a college education, women and minorities, on average, earn less than white men who also have a college degree, and in many cases, less than white men who do not have a college degree.”²² After being pressed on this point, the Department now concedes that “the [cited] research did not address GE programs” and that its statement in the NPRM was an “extrapolation of the data provided.”²³ But the NPRM did not make this point clear to the public. Moreover, the Department now asserts that its “extrapolation is well reasoned and supported by other research.”²⁴ But it fails to identify anywhere in the NPRM or the final rule the source of this “other research,” a clear violation of the IQA. Finally, the Department admits in the preamble to the

¹⁹ 83 Fed. Reg. at 40,171 (citing Jennifer Ma et al., “Education Pays 2016: The Benefits of Higher Education for Individuals and Society,” *CollegeBoard Trends in Higher Education Series* Figure 2.4 (2016), <https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>).

²⁰ 84 Fed. Reg. at 31,427.

²¹ 83 Fed. Reg. at 40.171.

²² *Id.*

²³ 84 Fed. Reg. at 31,427.

²⁴ *Id.*

final rule that it has “not analyzed the racial or ethnic demographics of students served by programs that failed the 2015 D/E calculations.”²⁵ There is also no evidence to suggest that the Department analyzed the gender demographics of those same students. Of course, the Department has the capacity to undertake this sort of analysis to support the factual statements that it makes. Rather than doing so, the Department has chosen instead to rely upon an “extrapolation” of external research that focuses on the wrong type of program. For these reasons, the Department’s response is insufficient to remedy its IQA violation.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[D]ue to a number of concerns with the calculation and relevance of the debt level included in the rates[,] we do not believe that the D/E rates measure achieves a level of accuracy that it should alone determine whether or not a program can participate in title IV programs.”²⁶</p>	<ol style="list-style-type: none"> 1. Fails to clearly describe the research study approach 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 4. Fails to undergo peer review 5. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“No research is needed to show that a student in a 20-year repayment plan will pay a lower monthly and annual payment than one in a 10-year repayment plan as this is a well understood mathematical fact. Since REPAYE created an opportunity for all students to qualify for 20- to 25-year repayment term . . . it is unreasonable to use a 10- or 15-year amortization period to calculate the annual cost of student loan repayment just because GE programs tend to serve a larger proportion of non-traditional students. . . . The 2015 REPAYE regulations, coupled with the gainful employment rule, established a double standard that sanctions proprietary institutions if their graduates need income driven repayment programs to repay their loans, and promises graduates of non-profit institutions income-based repayment and loan forgiveness in return for irresponsibly borrowing.”²⁷</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to identify any sources to support its assertion that the D/E rates are not accurate enough to determine Title IV eligibility. It also fails to identify any sources regarding its consideration of alternative measures or thresholds, as well as their potential accuracy. In addition, rather than address the data quality issue, the Department engages instead in a policy debate about the impact of a particular income-based repayment plan (REPAYE) on the D/E rates, which measure the average total debt load compared to earnings of an identified group of students.²⁸

²⁵ 84 Fed. Reg. at 31,414.

²⁶ 83 Fed. Reg. at 40,171.

²⁷ 84 Fed. Reg. at 31,428.

²⁸ *Id.*

Despite the fact that millions of borrowers who attended GE programs are not enrolled in REPAYE, the Department nevertheless claims that the “REPAYE program renders the 20 percent debt-to-discretionary income threshold in the 2014 Rule obsolete since *no borrower would ever be required* to pay more than 10 percent of their discretionary income.”²⁹ Even if true, the fact that so many borrowers would need to enroll in REPAYE long enough to have their debts forgiven is—contrary to the Department’s statements—evidence that GE programs are failing to produce graduates with sufficient earnings. Ultimately, the Department’s policy arguments are beside the point and insufficient to resolve its violation of the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[I]ncreased availability of [income-driven] repayment plans with longer repayment timelines is inconsistent with the repayment assumptions reflected in the shorter amortization periods used for the D/E rates calculation in the GE regulations.”³⁰</p>	<ol style="list-style-type: none"> 1. Fails to rely upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 4. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“This comment is a statement of fact, which is substantiated by information provided on the Federal Student Aid website.”³¹</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. While the FSA website does include a description of income-driven repayment plans—which may permit longer repayment timeframes—available to borrowers, nothing on that website indicates when each plan became available or why the availability of such plans is inconsistent with the assumptions made in the 2014 Gainful Employment rule. Thus, the Department’s response does not support its factual assertion.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[A] program’s D/E rates can be negatively affected by the fact that it enrolls a large number of adult students who have higher Federal borrowing limits, thus higher debt levels, and may be more likely than a traditionally aged student to seek part-time work after graduation in order to balance family and work responsibilities.”³²</p>	<ol style="list-style-type: none"> 1. Fails to rely upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 	<p>“It is a statement of fact that independent students have higher Federal loan borrowing limits, because Congress established those higher limits for independent students (which include students over the age of 25, graduate students, married students, and students with dependents). Independent students can borrow up to \$57,500 for undergraduate studies whereas dependent students can borrow only \$31,000. Simple mathematics</p>

²⁹ 84 Fed. Reg. at 31,407 (emphasis added).
³⁰ 83 Fed. Reg. at 40,172.
³¹ 84 Fed. Reg. at 31,428 (citing “studentaid.ed.gov/sa/repay-loans/understand/plans”).
³² 83 Fed. Reg. at 40,172.

		<p>explain that if a larger proportion of students can borrow \$57,500 rather than \$31,000 to complete a bachelor’s degree, the median debt level will be higher at an institution that serves a large [sic] portion of independent students than dependent students. . . . Therefore, it is not surprising that institutions serving larger proportions of independent students will have higher median borrowing levels, and since proprietary institutions serve the highest portion of independent students, it is not unreasonable that these institutions would have higher median debt levels, which they do. Data reported by Pew proves that the percentage of college graduates who work part-time rather than full-time increased from 15 percent in 2000 to 23 percent in 2011. We have addressed concerns about data regarding adult students working part-time and the gender gap in earnings earlier in these final regulations. Research provided by the Center for American Progress substantiates that even among college graduates, women tend to earn less than men, in part because they select lower paying majors and in part because of time spent out of the workforce raising children. The Pew Research Center confirms that a higher percentage of women take time out of their career or work part-time because of child-rearing responsibilities.”³³</p>
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Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to identify any sources to show how an institution’s D/E rates are negatively impacted by enrolling larger numbers of independent students who may seek part-time work after graduation. It also fails to include any sources about the exact number of independent vs. dependent students enrolled in GE programs and the number of those

³³ 84 Fed. Reg. at 31,428 (citing “studentaid.ed.gov/sa/fafsa/filling-out/dependency,” “www.urban.org/sites/default/alfresco/publication-pdfs/2000191-Student-Debt-Who-Borrows-Most-What-Lies-Ahead.pdf,” “cdn.americanprogress.org/wp-content/uploads/2016/09/06111119/HigherEdWageGap.pdf,” and “www.pewsocialtrends.org/2013/12/11/10-findings-about-women-in-the-workplace/”).

graduates who go on to work part-time. Instead, the Department mentions that federal borrowing limits are higher for independent students than dependent students and claims, without any evidence, that proprietary institutions serve the highest portion of independent students and, therefore, have higher median debt levels. In making this claim, the Department ignores the fact that the cost of attendance plays a more direct role in student debt levels, that proprietary institutions typically charge much higher tuition for comparable GE programs, and that GE program graduates often find it difficult to secure jobs with sufficient earnings to pay off their student loan debt. Although the Department does include a citation to Pew research demonstrating that the number of college graduates seeking part-time work increased slightly from 2000 to 2011, such data is not limited to GE program graduates. Moreover, the Department provides no recent data to show that this trend continues today. Finally, the Department cites research from the Center for American Progress and Pew demonstrating that women earn less than men after graduation and more often prioritize raising a family for portions of their career. But again, the Department fails to show how this data applies to GE programs specifically. For all of these reasons, the Department’s IQA violation remains.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[I]t is the cost of administering the program that determines the cost of tuition and fees.”³⁴</p>	<ol style="list-style-type: none"> 1. Fails to rely upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 4. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“The Department did not state that it is the cost of administering academic programs that determines tuition and fees. To the contrary, the Department made clear in the NPRM that at most non-profit institutions, direct taxpayer appropriations and tuition surpluses generated from the low-cost programs the institution administers are used to offset the financial demands of higher cost programs. . . . [I]n some cases, the cost of tuition and fees is driven by the higher cost of administering some programs. The Shulock, Lewis[,] and Tan Study provides peer[-]reviewed research to support this position.”³⁵</p>

Basis for Appeal: The Department’s response is in error. The Department’s claim that it “did not state that it is the cost of administering academic programs that determines tuition and fees” is false.³⁶ One only needs to check the NPRM, which states: “[I]t is the cost of administering the program that determines the cost of tuition and fees.”³⁷ We do not understand how the Department is now refuting the existence of a statement that it undeniably published in the *Federal Register*.

³⁴ 83 Fed. Reg. at 40,172.

³⁵ 84 Fed. Reg. at 31,429.

³⁶ *Id.*

³⁷ 83 Fed. Reg. at 40,172.

NPRM STATEMENT	IQA VIOLATION	ED RESPONSE
<p>“Programs that serve large proportions of adult learners may have very different outcomes from those that serve large proportions of traditionally aged learners.”³⁸</p>	<ol style="list-style-type: none"> 1. Fails to rely upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 4. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“The Department offers as evidence to support the statement made in the NPRM data from the NCES Study of Persistence and Attainment of Nontraditional Students.”³⁹</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to explain how the cited research, which took place in 1994 on a cohort of students from the 1989-1990 school year, remains reliable today. Over the past thirty years, higher education and higher education finance have changed dramatically, requiring updated data to justify the Department’s policymaking to comply with the IQA.⁴⁰

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[T]he first set of D/E rates, published in 2016, revealed that the D/E rates, and particularly earnings, vary significantly from one occupation to the next, and across geographic regions within a single occupation.”⁴¹</p>	<ol style="list-style-type: none"> 1. Fails to clearly describe the research study approach 2. Fails to confirm and document the reliability of the data 3. Fails to undergo peer review 4. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to 	<p>None</p>

³⁸ 83 Fed. Reg. at 40,172.

³⁹ 84 Fed. Reg. at 31,429 (citing “nces.ed.gov/pubs/web/97578g.asp”).

⁴⁰ See, e.g., Ronald Brownstein, “American Higher Education Hits a Dangerous Milestone,” *The Atlantic* (May 3, 2018), <https://www.theatlantic.com/politics/archive/2018/05/american-higher-education-hits-a-dangerous-milestone/559457/> (“In 1992, tuition accounted for slightly less than three-tenths of the total educational revenue for public colleges and universities. But by 2017, tuition supplied nearly half of the total revenue. In 28 states last year, tuition provided more revenue than public appropriations That was the first time a majority of states funded post-secondary education mostly through tuition.”); *id.* (“This historic shift away from tax dollars funding the bulk of public higher education comes precisely as the nation’s youth population is crossing a succession of milestones to become more racially diverse than ever. . . . More diversity among students means higher education is drawing more deeply on those who have faced economic and academic inequities that reduce their odds of success.”); Michael Mitchell et al., “A Lost Decade in Higher Education Funding,” *Center on Budget and Policy Priorities* (Aug. 23, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-higher-education-funding> (“The funding decline has contributed to . . . reduced quality on campuses as colleges have had to balance budgets by reducing faculty, limiting course offerings, and in some cases closing campuses. At a time when the benefit of a college education has never been greater, state policymakers have made going to college less affordable and less accessible to the students most in need.”).

⁴¹ 83 Fed. Reg. at 40,172.

	reproduce it, or understand the steps involved in producing it”	
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Basis for Appeal: The Department’s response is inadequate and incomplete because it did not include a response to this specific IQA violation.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
“Table 1—Number and Percentage of GE 2015 Programs That Would Pass, Fail, or Fall into the Zone Using Different Interest Rates” ⁴²	<ol style="list-style-type: none"> 1. Fails to clearly describe the research study approach and data collection technique 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 4. Fails to undergo peer review 5. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“[This table] from the NPRM . . . w[as] provided by a negotiator who is an economist at Columbia and Cornell Universities and the Urban Institute, and who was one of the designers of the College Scorecard during the Obama Administration. Although he built his own model to calculate the impact of changing interest rates, the source of the underlying debt and earnings data was provided by the Department in the data files provided along with the 2015 GE results.”⁴³</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to explain the methodology underlying the economist’s “own model” and whether the economist’s findings underwent peer review. As a result, the Department’s response is still not accompanied by enough supporting documentation to allow a member of the public to understand the steps involved in producing it.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
“[T]he Department now recognizes that assigning a 10-year amortization period to graduates of certificate and associate degree programs for the purpose of calculating D/E rates creates is an unacceptable and unnecessary double standard since the REPAYE plan regulations promulgated in 2015 provide a 20-year amortization period for those same graduates.” ⁴⁴	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific evidence-based research 	None

Basis for Appeal: The Department’s response is inadequate and incomplete because it did not include a response to this specific IQA violation.

⁴² 83 Fed. Reg. at 40,172.
⁴³ 84 Fed. Reg. at 31,432.
⁴⁴ 83 Fed. Reg. at 40,172–73.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“There is significant variation in methodologies used by institutions to determine and report in-field job placement rates, which could mislead students into choosing a lower performing program that simply appears to be higher performing because a less rigorous methodology was employed to calculate in-field job placement rates.”⁴⁵</p>	<ol style="list-style-type: none"> 1. Fails to clearly describe the research study approach and data collection technique 2. Fails to clearly identify data source 3. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>“The Department cited in the NPRM the findings of the Technical Review Panel (TRP), convened in response to the 2011 GE regulations to address the confusion created by multiple job placement rate definitions. This TRP is a trusted source, as is the external research that was retained to provide background research on job placement rates.”⁴⁶</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. While it mentions the TRP’s findings and other “external research” on job placement rates, it fails to identify the TRP findings with a specific citation, citing only a “background paper” prepared for the TRP. We assume that the Department is referring to a TRP report cited in the NPRM at footnote 13.⁴⁷ But that report—first considered by the Department when it promulgated the Gainful Employment rule in 2014—was published in 2011. The Department provides no evidence that the report’s findings remain true today, particularly with the heightened focus on job placement rates following the collapse of Corinthian Colleges, Inc. More importantly, the fact that there are differing methodologies for calculating a job placement rate does not, by itself, mean that one involves a “a less rigorous methodology” than another. For that reason, the Department continues to violate the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“The Department also believes that it underestimated the burden associated with distributing the disclosures directly to prospective students. . . . A negotiator representing financial aid officials confirmed our concerns, stating that large campuses, such as community colleges that serve tens of thousands of students and are in contact with many more prospective students, would not be able to, for example, distribute paper or electronic disclosures to all the prospective students in contact with the institution.”⁴⁸</p>	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific-evidence based research 2. Fails to confirm and document the reliability of the data 	<p>“[T]he Department did not require the negotiator to provide data to substantiate her claim. Nonetheless, while the Department cited regulatory burden as a contributing factor to its decision to rescind the GE regulations, it was not the primary reasons [sic] for making this decision. The primary reason . . . is evidence that the D/E rates measure is not a reliable proxy for quality.”⁴⁹</p>

⁴⁵ 83 Fed. Reg. at 40,173.

⁴⁶ 84 Fed. Reg. at 31,429 (citing “nces.ed.gov/npec/data/Calculating_Placement_Rates_Background_Paper.pdf”).

⁴⁷ 83 Fed. Reg. at 40,173 n.12.

⁴⁸ 83 Fed. Reg. at 40,173.

⁴⁹ 84 Fed. Reg. at 31,429.

Basis for Appeal: The Department’s response is inadequate and incomplete. Essentially, the Department concedes that it does not have the supporting data to justify its assertion in the NPRM that institutions will be unable to distribute disclosures to all prospective students. It also fails to identify sources for its claim that it “underestimated the burden associated with distributing the disclosures directly to prospective students,” instead claiming that regulatory burden “was not the primary reasons [sic] for [rescinding the Gainful Employment regulation].” Whether a statement is a reason for the Department’s action is not relevant under the IQA. Rather; the point of the IQA is to ensure that the Department makes factually accurate and supportable statements. The Department has failed to meet that standard here.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“The Department believes that the best way to provide disclosures to students is through a data tool that is populated with data that comes directly from the Department, and that allows prospective students to compare all institutions through a single portal, ensuring that important consumer information is available to students while minimizing institutional burden.”⁵⁰</p>	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources <ol style="list-style-type: none"> a. Specifically, in the 2014 Rule, the Department stated that it “would conduct consumer testing” to determine how to make student disclosures as meaningful as possible.⁵¹ The NPRM fails to acknowledge whether such testing occurred, including the results of that testing. The NPRM also fails to state any other basis for the Department’s conclusions. 	<p>“The Department did conduct consumer testing on the disclosure template after the 2014 Rule went into effect, the results of which proved that disclosures are typically very confusing to students, that the results presented are frequently misinterpreted, and that in general, students find disclosures most meaningful when they provide information about the students included in the disclosures, including what course loads the students were taking.”⁵²</p>

Basis for Appeal: The Department’s response is inadequate, incomplete, and in error. It fails to cite any consumer testing that supports what the Department now believes to be “the best way to provide disclosures to students.” Instead, it identifies a single source of consumer testing that it conducted on 2014 student disclosure templates. But that source states:

[D]ata collected from these two focus groups cannot be generalized; the people who participated may not necessarily be representative of the larger population of students who may benefit from GE

⁵⁰ 83 Fed. Reg. at 40,173.

⁵¹ See, e.g., 34 C.F.R. §§ 668.410(a)(3), 668.412(a). See also 79 Fed. Reg. 64,890, 64,966 (Oct. 31, 2014) (“The regulations include text for the student warnings. The Secretary will use consumer testing to inform any modifications to the text that have the potential to improve the warning’s effectiveness. As a part of the consumer testing process, we will seek input from a wide variety of sources[.]”); *id.* at 64,969 (noting that while “direct delivery” of warnings to students “make it most likely that students receive . . . and review” the information, the Department would conduct consumer testing regarding the “most effective delivery methods”).

⁵² 84 Fed. Reg. at 31,430 (citing “Bozeman, Holly, and Meaghan Mingo, ‘Summary Report for the Gainful Employment Focus Groups,’ Prepared for the U.S. Department of Education, February 10, 2016, www2.ed.gov/about/offices/list/ope/summaryrptgefocus216.pdf”).

information. Additionally, the numbers involved were too small to justify extrapolation to the larger community.⁵³

Despite this clear statement not to apply its findings to the broader population of students attending GE programs, the Department nevertheless does exactly that to justify its policy decision. As a result, the Department continues to violate the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[T]he Department does not believe it is appropriate to attach punitive actions to program-level outcomes published by some programs but not others. In addition, the Department believes that it is more useful to students and parents to publish actual median earnings and debt data rather than to utilize a complicated equation to calculate D/E rates that students and parents may not understand and that cannot be directly compared with the debt and earnings outcomes published by non-GE programs.”⁵⁴</p>	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 	<p>“Elsewhere in this document, the Department has provided adequate support for its assertion that the D/E rates measure is not sufficiently accurate or reliable to serve as the sole determinant of punitive action against a program or institution. The Department conducted significant consumer testing prior to the launch of the College Scorecard to better understand which data are most relevant to students and parents.”⁵⁵</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. As mentioned *supra*, Appeal at 7–8, it fails to identify any sources to support its assertion that the D/E rates are not accurate enough to determine Title IV eligibility. It also fails to identify any sources regarding its consideration of alternative measures or thresholds, as well as their potential accuracy. Finally, it fails to identify any sources for the “significant consumer testing” it conducted prior to the launch of the College Scorecard anywhere in the NPRM or final rule, including whether that testing concluded whether it is more effective to provide students with the D/E rate measures or median earnings and debt data.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“The Department has reviewed additional research findings, including those published by the Department in follow-up to the Beginning Postsecondary Survey of 1994, and determined that student demographics and socioeconomic status play a significant role in determining student outcomes.”⁵⁶</p>	<ol style="list-style-type: none"> 1. Fails to identify data sources <ol style="list-style-type: none"> a. Specifically, the website cited by the Department links to the Beginning Postsecondary Survey of 1994’s findings, and not the “additional research” mentioned by the Department, including the 	<p>“The Department misstated the name of the reference from which it drew data regarding outcomes of non-traditional students. The NPRM should have said that “The Department has reviewed additional research findings, including the 1994 follow-up on 1989-00 Beginning Postsecondary Survey, which</p>

⁵³ Holly Bozeman et al., “Summary Report for the Gainful Employment Focus Group,” *Westat* 1-4 (Feb. 10, 2016), <https://www2.ed.gov/about/offices/list/ope/summaryrptgefocust216.pdf>.

⁵⁴ 83 Fed. Reg. at 40,174.

⁵⁵ 84 Fed. Reg. at 31,430.

⁵⁶ 83 Fed. Reg. at 40,174.

	<p>Department’s own “follow-up.”</p> <ol style="list-style-type: none"> 2. Fails to confirm and document the reliability of the data 3. Fails to “be accompanied by supporting documentation that allows an external user to understand clearly the information and be able to reproduce it, or understand the steps involved in producing it” 	<p>determined that student demographics and socioeconomic status play a significant role in determining student outcomes. Other research reviewed included publications by the American Association of Colleges and Universities on the needs of adult learners, a publication about Adults Learners in Higher Education produced by the U.S. Department of Labor[,] and another research study that focused specifically on the needs of adult learners enrolled in online programs.”⁵⁷</p>
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Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to address why the data from a 1994 study on a cohort of students from the 1989-1990 school year remains reliable today. Again, nearly thirty years later, higher education and higher education finance have changed dramatically, requiring updated data to justify the Department’s policymaking to comply with the IQA.⁵⁸

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“The GE regulations failed to take into account the abundance of research that links student outcomes with a variety of socioeconomic and demographic risk factors.”⁵⁹</p>	<ol style="list-style-type: none"> 1. Fails to identify data sources 2. Fails to confirm and document the reliability of the data 	<p>“This sentence refers to the same NCES study referenced in the NPRM and above.”⁶⁰</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to identify which NCES study it relies upon to support this factual assertion. In the final rule, the Department cites three separate NCES studies regarding student outcomes and demographics, including one involving income, one involving non-traditional students, and one involving race and ethnicity. In the NPRM, the Department also cites an NCES study involving non-traditional students. But the Department does not indicate which of these studies is “the same NCES study referenced in the NPRM and above.” Moreover, it is hard to comprehend how a single study provides an “abundance of research” on any topic, much less one that the Department allegedly ignored in 2010 and 2014. The Department has failed yet again to remedy its violation of the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“The GE regulations underestimated the cost of delivering a program and practices within occupations that</p>	<ol style="list-style-type: none"> 1. Fails to present conclusions that are strongly supported by the data 	<p>“The Department relied on the Delisle and Cooper’s [sic] research and analysis to substantiate that</p>

⁵⁷ 84 Fed. Reg. at 31,430 (citing “www.aacu.org/publications-research/periodicals/research-adult-learners-supporting-needs-student-population-no,” “files.eric.ed.gov/fulltext/ED497801/pdf,” and “eric.ed.gov/?id=ED468117”).

⁵⁸ See *supra* note 40 for examples of sources that highlight these changes.

⁵⁹ 83 Fed. Reg. at 40,174.

⁶⁰ 84 Fed. Reg. at 31,430.

<p>may skew reported earnings. According to Delisle and Cooper, because public institutions receive State and local taxpayer subsidies, ‘even if a for-profit institution and a public institution have similar overall expenditures (costs) and graduate earnings (returns on investment), the for-profit institution will be more likely to fail the GE rule, since more of its costs are reflected in student debt.’ Non-profit, private institutions also, in general, charge higher tuition and have students who take on additional debt, including enrolling in majors that yield societal benefits, but not wages commensurate with the cost of the institution.”⁶¹</p>	<p>a. The Delisle and Cooper study cited by the Department does not support its conclusion that the GE regulations “underestimated the cost of delivering a program and practices within occupations that may skew reported earnings.”</p> <p>2. Fails to identify data sources</p>	<p>public institutions are often able to charge less for enrollment than private and proprietary institutions because they receive direct appropriations from a State or local government, are not required to purchase or rent their primary campus buildings or land, and enjoy substantial tax benefits. As such, they can charge the student a lower price for a program that has similar overall expenditures as another program sponsored by a private institution.”⁶²</p>
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Basis for Appeal: The Department’s response is inadequate, incomplete, and in error. It fails to identify any sources to substantiate its assertion that “the GE regulations underestimated the cost of delivering a program and practices within occupations that may skew reported earnings.” It also fails to identify a source for the assertion that non-profit, private institutions “in general[] charge higher tuition and have students who take on additional debt, including enrolling in majors that yield societal benefits, but not wages, commensurate with the cost of the institution.” More importantly, its response misses the point that it drew a conclusion that is not strongly supported by the Delisle and Cooper research. Although that research does hypothesize at the outset that the reason more GE programs fail the 2014 Gainful Employment rule is because they do not receive state or local appropriations, that same study later concludes that “for-profits are different,” charging “higher net tuition than their public counterparts, even after accounting for direct state appropriations.”⁶³ In fact, the study finds that:

Students graduating from certificate programs at for-profit institutions had an average net tuition of \$8,649, compared to \$1,052 for their peers at public institutions. This represents a difference of \$7,597, which is much higher than the average direct state subsidy of \$4,506 the public institutions in this analysis received. Direct appropriations do not account for the entire difference in net tuition between public and for-profit colleges, meaning other factors are still responsible for the disparity between the two sets of schools. As discussed earlier, for-profit institutions’ graduates also have lower earnings, on average, than public institutions’ graduates. Consequently, even if the median debt burdens across both types of institutions were equalized, a disparity would still remain in GE pass rates.⁶⁴

⁶¹ 83 Fed. Reg. at 40,174.

⁶² 84 Fed. Reg. at 31,431.

⁶³ Preston Cooper & Jason D. Delisle, “Measuring Quality or Subsidy? How State Appropriations Rig the Gainful Employment Test,” *American Enterprise Institute* 10 (Mar. 2017), <http://www.aei.org/wp-content/uploads/2017/03/Measuring-Quality-or-Subsidy.pdf>.

⁶⁴ *Id.*

The Department focuses exclusively on the Delisle and Cooper research’s hypotheses, and not the conclusions ultimately drawn from testing those hypotheses, in clear violation of the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“In the case of cosmetology programs, State licensure requirements and the high costs of delivering programs that require specialized facilities and expensive consumable supplies may make these programs expensive to operate, which may be why many public institutions do not offer them. In addition, graduates of cosmetology programs generally must build up their businesses over time, even if they rent a chair or are hired to work in a busy salon.”⁶⁵</p>	<ol style="list-style-type: none"> 1. Fails to identify data sources 2. Fails to confirm and document the reliability of the data 	<p>“Our statement was intended to give further examples of ways that cosmetology programs have been challenged in implementing the GE regulations. . . . It is unclear why public institutions do not operate cosmetology programs in greater numbers, but NCES data point to the limited number of enrollments in cosmetology programs among public colleges and universities.”⁶⁶</p>

Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to identify any sources that support its factual assertion that cosmetology programs struggle to comply with the 2014 Gainful Employment rule due to state licensure requirements and high operating costs. In addition, at the same time that it acknowledges that the Department does not know why more public institutions do not offer cosmetology programs, the Department nevertheless offers its (unsubstantiated) opinion about the underlying reasons. The Department’s response also mentions NCES data that lends support to its assertion that public institutions do not offer as many cosmetology programs, but fails to identify that source. Thus, the Department’s IQA violation remains.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“[S]ince a great deal of cosmetology income comes from tips, which many individuals fail to accurately report to the Internal Revenue Service, mean and median earnings figures produced by the Internal Revenue Service underrepresent the true earnings of many workers in this field in a way that institutions cannot control.”⁶⁷</p>	<ol style="list-style-type: none"> 1. Fails to present conclusions that are strongly supported by the data <ol style="list-style-type: none"> a. The IRS tax gap study cited by the Department does not support the Department’s specific conclusions about cosmetology graduates. The study is from 2012 and covers tax year 2006 only. 2. Fails to confirm and document the reliability of the data 	<p>“Throughout the 2014 and 2018 negotiations, as well as between those negotiations, the Department has heard from cosmetology programs and their representatives on this matter. . . . In the 2014 Rule, the Department admitted that individuals who work in barbering, cosmetology, food service, or web design may under report their income . . . and hoped that the alternate earnings appeal would provide an opportunity to correct earnings in those fields. . . .</p>

⁶⁵ 83 Fed. Reg. at 40,174.

⁶⁶ 84 Fed. Reg. at 31,431.

⁶⁷ 83 Fed. Reg. at 40,174.

		<p>However, the Department lost a lawsuit . . . and is no longer able to deny earnings appeals based on the failure of institutions to meet the survey response rates dictated by the 2014 Rule.”⁶⁸</p>
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Basis for Appeal: The Department’s response is inadequate and incomplete. It fails to provide data sources sufficient to support its assertion that cosmetologists routinely fail to report their tip income. Instead, the Department continues to rely upon a single study from the 2006 tax year along with anecdotal evidence. Rather than respond to the data quality issue, the Department also engages in a policy debate about the perceived problems with the alternate earnings appeals process, including a lawsuit regarding the survey response rate dictated by the 2014 rule. But that policy debate is irrelevant to the IQA. Thus, the Department’s violation remains.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
<p>“We believe that the analysis and assumptions with respect to earnings underlying the GE regulations are flawed.”⁶⁹</p>	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific evidence-based research 2. Fails to confirm and document the reliability of the data 	<p>“[T]he Department is referring to a claim made in the 2014 Rule that graduates of many GE programs were earning less than those of the average high school dropouts. Upon further review of the Department of Labor data used to make this claim, the Department has determined that the claim was inaccurate. First, the Department did not differentiate between program completers and program drop-outs in calculating earnings outcomes. . . . In addition, the figure used to represent the earnings of high school dropouts was derived by multiplying a weekly earnings figure by 52. . . . However, the BLS report on Contingent Workers shows that individuals without a high school diploma are more likely . . . to have employment that is not expected to last or that is described as temporary. Therefore, [the Department’s prior estimate] inflate[d] the likely earnings of high school drop outs. [This inflated figure] was compared to SSA earnings data for GE program graduates that included individuals working full-time, part-time,</p>

⁶⁸ 84 Fed. Reg. at 31,431.

⁶⁹ 83 Fed. Reg. at 40,175.

		individuals who are self-employed, and those who may not report some or all of their earned income. It is illogical that students would earn less after completing a postsecondary program than they would have had they not completed high school.” ⁷⁰
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Basis for Appeal: The Department’s response is inadequate, incomplete, and in error. Initially, it claims that the 2014 Gainful Employment rule erroneously lumped together completers and drop-outs to determine the earnings of GE program graduates. A few sentences later, the Department states that the earnings data was “for GE program graduates,” including those who had full-time or part-time jobs, were self-employed, or underreported some or all of their income. The former *would* be an inaccurate claim in need of correction. But from the Department’s reasoning, it is difficult to tell what actually took place with the GE earning calculations. In addition, the Department claims that it should not have previously determined the annual earnings of high school drop-outs by calculating their weekly earnings and multiplying that number by fifty-two. It argues that these drop-outs are more likely to have temporary employment. However, the Department cites a single source in support of this assertion that does not, in fact, make that same claim. Instead, that non-peer-reviewed source concludes only that contingent workers are twice as likely as noncontingent workers to have less than a high school diploma and more likely to work part-time. In other words, the Department response is insufficient under the IQA.

NPRM STATEMENT	IQA VIOLATION	DEPARTMENT RESPONSE
“There are student costs and benefits associated with enrollment in a program that would have otherwise lost eligibility to participate in the title IV, HEA programs under the GE regulations; however, the actual outcome for students enrolled in failing or zone programs under the GE regulations is unknown.” ⁷¹	<ol style="list-style-type: none"> 1. Fails to draw upon peer-reviewed, scientific evidence-based research 2. Fails to identify data sources 3. Fails to confirm and document the reliability of the data 	None

Basis for Appeal: The Department’s response is inadequate and incomplete because it did not include a response to this specific IQA violation.

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Pursuant to the ED Guidelines, this appeal must be subjected to an impartial review conducted by parties other than those who prepared the Department’s initial response.⁷² While we await the Department’s final

⁷⁰ 84 Fed. Reg. at 31,432.

⁷¹ 83 Fed. Reg. at 40,178.

⁷² All three versions of the guidelines make clear that “appeals are subjected to an impartial review that is conducted by parties other than those who prepared the Department’s decision.” *See, e.g.*, Ex. A at 15. In considering prior appeals, the Department has convened a review panel “made up of parties other than those who reviewed” or responded to the original

response, we reiterate our request that the Department rescind the NPRM and its corresponding final rule immediately and, if the Department desires, correct and reissue the NPRM with information that complies with the IQA. The Department should then reopen the public comment period.

If you would like to speak with us, or have any questions regarding this submission, please contact Student Defense's Counsel, Robyn Bitner, at robyn@nslidn.org.

Sincerely,

Student Defense

petition. *See, e.g.*, Letter from Winona H. Varnon, Principal Deputy Assistant Sec'y for Mgmt., U.S. Dep't of Educ., to Michael D. Hays & Jonathan C. Glass, Dow Lohnes (June 1, 2011), <https://www2.ed.gov/policy/gen/guid/iq/2011/dowlohnres-response.pdf>. We expect the Department to follow similar procedures here.