



**Comments on U.S. Department of Education Proposed Gainful Employment Rules**  
**May 27, 2014**  
Docket ID: ED-2014-OPE-0039

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About NACAC

The National Association for College Admission Counseling (NACAC) submits the following comments in response to the Department's solicitation related to the proposed gainful employment rule.

NACAC is an Arlington, VA-based education association of more than 13,000 secondary school counselors, independent counselors, college admission and financial aid officers, enrollment managers, and organizations that work with students as they make the transition from high school to postsecondary education. The association, founded in 1937, is committed to maintaining high standards that foster ethical and social responsibility among those involved in the transition process, as outlined in the NACAC Statement of Principles of Good Practice. More information about NACAC is available at [www.nacacnet.org](http://www.nacacnet.org).

Introduction

In May 2013, NACAC submitted testimony to the Department of Education and noted that NACAC members' primary responsibility is to help students prepare for, apply to, and select a college that meets the student's academic, career, financial and other needs. An important component of this counseling role is to ensure that students identify and enroll in institutions that will successfully prepare them for life after education. Postsecondary institutions that fail to provide such preparation, particularly those that fail by way of an intentional model that seeks only to capitalize on enrollment without the required investment in and commitment to educating students, fail by any market standard for the delivery of a good or service.

NACAC's concern with the recurring problems with high-pressure sales tactics at unscrupulous institutions leads us to support the Department's efforts to fulfill Congress' intent to establish a pathway to Title IV eligibility for programs that provide students with an education that leads to gainful employment in a recognized occupation. Two different Congressional investigations in the past 20 years have emphasized the vulnerability of Title IV programs to waste, fraud and abuse, particularly in gainful employment programs. The Senate Permanent Subcommittee on Investigations, in 1990-91, recommended that Congress take action to more closely align eligibility for Title IV programs with labor market needs, going so far as to suggest that only those programs that educated students for employment in a profession in which there was a shortage of skilled workers be allowed to participate in Title IV programs, among other recommendations. Nearly 25 years after the Committee's recommendations, there has been, in contrast to the Committee's recommendations, a net reduction in the regulatory scope for GE programs. We believe it is appropriate for the Department to address this

issue now, particularly in light of abuses documented by the Senate Committee on Health, Education, Labor and Pensions (HELP) in 2012.

We wish to reiterate the Department's concern with the interconnectedness of program outcomes, including student indebtedness, with marketing and recruitment. As the Department notes,

*[T]he Government Accountability Office (GAO) and other investigators have found evidence of high-pressure sales and deceptive recruiting practices at some for-profit institutions...a more recent report by the Senate HELP Committee on the for-profit education sector found evidence that many of the most prominent for-profit institutions engage in aggressive sales practices and provide misleading information to prospective students. (FR, 16435)*

In general, NACAC wishes to emphasize provisions intended, as noted by the Department, to give institutions subject to the proposed rule every chance to improve and ultimately succeed. We believe that the Department has given institutions potentially excessive leniency in complying with the rule, though we commend the Department's willingness to accommodate institutions that make a good faith effort to comply with this new regulation. We further wish to note that students, particularly those who fall victim to predatory recruitment and enrollment tactics, generally are not afforded such leniency from the institution or, for that matter, the Department when asked to repay federal student loans. We appreciate the Department's emphasis on the benefits of the proposed regulations to students (FR, 16607-8), and wish to emphasize that the proposed rules represent an important shift in the imbalance of information that allows unscrupulous institutions to thrive.

#### Accountability

NACAC is supportive of the Department's proposed accountability structure. We have submitted joint comments as part of a coalition that includes recommendations advanced by consensus of the group, and include two additional observations here.

#### *Accrediting and Licensing Requirement for Title IV Eligibility*

In light of documented evidence of programs enrolling students in programs that claim to prepare students for gainful employment, yet fail to provide an education that qualifies students to sit for accrediting or licensing exams, NACAC supports the proposed requirement that an institution's Title IV eligibility be based, in part, on certifying that the program satisfies any applicable State or Federal program-level accrediting and licensing requirements for the occupations for which the program purports to prepare students to enter.

Programs that do not satisfy applicable State or Federal program-level accrediting and licensing requirements for the occupations for which the program purports to prepare students to enter simply should not be eligible to participate in federal student aid based on a plain language reading of the underlying statute.

#### *Disclosures for Institutions that are "In the Zone"*

We recommend that the Department consider disclosing information via the Department's web resources, such as College Navigator, the College Scorecard, and the Cost and Accountability Center, when an institution is "in the zone." Such disclosures will ensure that students and other users of

Department data sources will be able to access information about GE programs that are in jeopardy of losing their Title IV eligibility.

### Transparency

NACAC is supportive of the Department's effort to augment the gainful employment accountability rules with rules promoting transparency for students and families. Our support stems from the fundamental tenets observed by NACAC member institutions and expressed in the 'Member Conventions' contained in the association's Statement of Principles of Good Practice (SPGP), including

- Members will make protecting the best interests of all students a primary concern in the admission process;
- Members will provide accurate admission and financial aid information to students, empowering all participants in the process to act responsibly; and
- Members will be ethical and respectful in their counseling, recruiting and enrollment practices.

As the Department notes, programs that are subject to this proposed regulation qualify for Title IV eligibility exclusively on the condition that they provide training for "gainful employment in a recognized occupation." As the preponderance of evidence clearly suggests, many thousands of students have failed to obtain the promised training, and have either dropped out or defaulted on their student loans as a result.

We particularly agree with the Department's assertion in the draft regulations that

*[s]imply put, without reliable information, students, prospective students, and their families are vulnerable to inaccurate or misleading information when they make critical decisions about their educational investments and, based on that information, may enroll in poorly performing programs. Furthermore, without accurate and comparable information, the public, taxpayers, and the Government are in the dark as to the performance of these programs and the return on the Federal investment in these programs. (FR, 16436)*

### *Institutional Disclosures - General*

We support the Department's requirement that institutions place disclosures to prospective students prior to the students making a financial or enrollment commitment. We further support the disclosure as a stand-alone document, which a student must sign to ensure that the student has received the disclosure.

We have previously provided testimony, to both the Department and Congress, on our concern with high-pressure recruitment tactics at unscrupulous institutions. Moreover, such recruitment practices have been documented extensively, particularly by the report of the Senate Health, Education, Labor and Pensions (HELP) committee. (Senate HELP Committee report, 2013) Accordingly, we will simply reiterate our concern with the prevalence of high-pressure, unethical recruiting among many institutions that qualify for Title IV via gainful employment. We appreciate the Department's acknowledgement of these tactics in its proposed rule (FR, 16480), and agree that the Department is well within its rights to construct a regulatory mechanism to prevent such tactics from persisting and/or resurfacing in the future.

## *Institutional Disclosures – Optimal Format and Placement*

Format. We are supportive of the Department’s suggestion that the format of the disclosure be tested with consumers. We request that the Department include school counselors, advisors in community colleges, and others who work with students who could be interested in GE programs to ensure that both students and the professionals who serve them have input into the proposed disclosure form.

Placement. It is difficult to determine, beyond requiring institutions to provide ‘clear and conspicuous’ placement on their institutional web sites for a given disclosure, a standard recommendation for the most effective placement for information on a college web site. However, institutional web sites are not necessarily the point of entry for many students, particularly in GE programs. Accordingly, we recommend that the Department consider several additional options and issues.

1. **Department Disclosure.** In addition to requiring institutions to post GE disclosures in a clear and conspicuous manner, we recommend that the Department incorporate such disclosures widely in its resources, including (but not limited to) the College Navigator, College Scorecard, and Cost and Accountability web sites.
2. **Lead generation companies.** A great deal of marketing for gainful employment programs takes place through lead generation companies, many of which operate online. Many lead generators promote themselves as intermediaries that can help students seek training for jobs through postsecondary education programs. (Senate HELP Committee report, 2013) Given the prominence of lead generation companies in the marketing and recruitment process, we suggest that the Department consider the two additional possible disclosure requirements.
  - a. Require institutional disclosures to be posted prominently in any venue likely to serve as a student’s first point of interaction with the institution, including lead generation outlets. Since some lead generators provide information about colleges without their prior knowledge, our recommendation is that the Department develop an abbreviated format that would lead prospective students to institutions’ full disclosures for those institutions that contract with lead generators for recruitment.
  - b. Consider developing language that would require lead generation companies that work with GE programs/institutions to provide clear and conspicuous notice that students should consult with the U.S. Department of Education for information about GE programs, costs, outcomes, and other pertinent information as directed by the proposed rules.

## Conclusion

As noted in our 2013 testimony to the Department, we believe proceeding with the gainful employment regulation should not be a question of ‘whether,’ but ‘how.’ NACAC appreciates the Department’s effort to prevent further waste, fraud and abuse in the student aid programs.

For additional information on NACAC or if you have any questions about these comments, please contact David Hawkins, Director of Public Policy and Research at (703) 299-6809 or [dhawkins@nacacnet.org](mailto:dhawkins@nacacnet.org).