

Gainful Employment Rule Questions & Answers

July 11, 2016

What is the purpose of the Education Department's gainful employment regulation?

- The regulation enforces the Higher Education Act's requirement that all career education programs receiving federal student aid "prepare students for gainful employment in a recognized occupation."
- The rule is needed to protect students and taxpayers from over-priced, poor-quality education programs that consistently saddle students with debts they cannot repay and degrees or certificates they cannot use.

To which types of schools does the gainful employment regulation apply?

- The rule applies to *all* sectors of higher education: public, non-profit, and for-profit. In fact, the *majority* (61%) of covered programs are at public colleges.¹
- Federal law specifies which programs are required to "prepare students for gainful employment in a recognized occupation" in order to participate in federal student aid programs. The regulation follows this statutory definition of career education program, which includes virtually all programs at for-profit colleges and all programs of less than two years at public and non-profit colleges.

Why is the gainful employment regulation needed?

- We cannot afford to waste taxpayer dollars on over-priced, ineffective career education programs that do not prepare students for employment. Such programs, often sold through deceptive recruiting practices, leave students worse off than when they started. The Department of Education has an obligation to enforce federal law by preventing student aid from going to such programs.
- The gainful employment rule saves money. CBO projects that repealing the rule would increase spending by *\$1.3 billion* over 10 years.²

What are the main components of the regulation?

- It has two components: accountability and transparency.
- The accountability component distinguishes between programs that provide affordable training that leads to well-paying jobs and those that don't based on the debt-to-income ratios of their graduates.
- The transparency component requires institutions to provide key consumer information, such as what the typical graduate earns, how much debt they have, and what share of students graduate and find employment in the specified field.

What impact on student access to college will the rule have?

- Defining gainful employment is one of the best ways to *increase* student access to quality, affordable education and training.
- That's why organizations that advocate for students and college access, veterans, consumers and civil rights all [called on the Administration](#) to issue a strong regulation³ and [strongly oppose legislation](#) to repeal it.⁴
- The rule has no impact on *student* eligibility for federal grants and loans. It affects only which *programs* are eligible.

Does the rule give schools time to improve their programs?

- The rule gives schools ample time to improve. While some for-profit college industry lobbyists are telling Congress it does not, industry executives have told their investors they have ample time:
 - [Lincoln Educational Services CEO and ASPCU member](#): "We spent a number of years and significant resources preparing to operate under any version of the gainful employment rule and....we are prepared to operate under the new version of the rule with minor future adjustments to operations."⁵
 - [Career Education Corp. CEO and APSCU member](#): "In addition, we have adequate time to make any program changes, and don't feel the need to necessarily rush any decisions....The Gainful Employment regulations should not impede our getting to EBITDA positive [profitability] for our ongoing operations next year or our continued progress thereafter."⁶

How soon could a program lose eligibility for Title IV aid?

- Programs have time after the regulation takes effect to improve and achieve passing rates.
- In addition, during the first five to seven years of implementation, programs will be held to an easier "transition period" standard.⁷ During this transition period, an alternative debt-to-income calculation will be made so that institutions benefit from any immediate reductions in cost they make.

Can a program lose Title IV eligibility based on just one year's performance?

- Programs cannot lose eligibility based on their performance in any one year. As a result, one cannot determine how many programs will lose eligibility based on a one-year snapshot of program performance.
- Programs only lose eligibility if they fail the rule's measures for two years in a three-year period or spend four consecutive years in the 'zone' between passing and failing.⁸ That means a program in the zone has *three more years* to improve to achieve passing results.

Is it true that 842,000 students are enrolled in programs that will lose eligibility?

- *No, it is not true.* 842,000 is the number of students the Department estimated were enrolled in failing or zone programs *in 2008-2009* (most were in zone programs). Since that time, many schools have made changes to improve their performance in anticipation of the GE regulation, while others have shut down after exposure of misconduct and years of declining enrollment. So the number of students in failing or zone programs is certainly lower today. And even for that 2008-2009 period, 74% of programs were passing, only 9% of programs were failing, and 17% were in the zone between passing and failing.
- The only programs that will lose eligibility under the rule are those that are consistently leaving students with debts they cannot repay, leaving students worse off than before.

Are the 8% and 20% debt-to-income tests reasonable?

- The rule's 8% total income threshold and 20% discretionary income threshold for passing programs are based on multiple studies, expert recommendations, state guidelines, and industry practice, and were determined to be reasonable by the courts.⁹
- Moreover, the rule includes only debt up to the cost of tuition, fees, books, supplies and equipment, excluding some student loan debt. Also, lenders typically recommend that *all* non-mortgage loan payments not exceed 8% of income, not just student loan payments.

Does an NCES study show that the debt-to-income thresholds are unreasonable?

- No. The NCES study calculates debt ratios *very* differently than the GE regulation, resulting in non-comparable and much higher debt ratios than under the regulation.¹⁰ Among the many differences, the NCES study includes:
 - only students who borrow, while the GE rates include non-borrowers who receive federal aid, resulting in a lower median debts;
 - all student loan debt, while the GE rates only include debt up to the cost of tuition, fees, books, equipment and supplies; and
 - only earnings from the graduate's primary employment one year after graduating, while the GE rates includes *all* earnings reported to the Social Security Administration *three and four years* after completion.

Will schools have an opportunity to appeal their program debt-to-income rates?

- Yes. Schools may appeal to have their program's debt-to-income rates recalculated using alternate earnings data from an institutional survey or a state-sponsored data system.

Should the gainful employment measures be "adjusted" for student demographics?

- No. Career education programs should prepare all students for gainful employment and not have different standards for different students.
- Passing, zone, and failing career education programs have very similar proportions of low-income, non-traditional, female, white, Black, and Hispanic students.¹¹
- Historically Black Colleges and Universities (HBCUs) enroll many students from low-income families, yet *all* of their GE programs *easily pass* the rule's tests.¹²

- An [issue brief](#) on gainful employment by leading civil rights, consumer and education organizations argues that student demographics “should not be a basis to evade regulation that seeks to protect the very same low-income students and students of color.”¹³

Why use actual earnings data to determine student debt burden, rather than data from schools or national averages from the Labor Department?

- Federal wage data provide an accurate, unbiased measure that cannot be gamed or manipulated. Unfortunately, some schools have been found to report inflated salaries and job placement rates.¹⁴ Further, national averages may overstate or understate actual salaries depending on the quality of the program, local job market, and local cost of living.

What is the status of the gainful employment regulation?

- The final regulation was issued in October 2014 and went into effect July 1, 2015. Consumer disclosures are already required under a regulation that went into effect in 2011 and will be improved under the new regulation.
- *Two federal district courts have upheld the regulation in its entirety and an appellate court unanimously affirmed the one that was appealed.*¹⁵ Organizations that advocate for students, college access, civil rights, veterans and consumers filed amicus briefs urging the district and appellate courts to uphold the regulation.¹⁶

¹ Federal Register, October 31, 2014, p. 65000.

² CBO preliminary estimate of permanently prohibiting the Department of Education from implementing any rulemaking relating to “gainful employment” and from making any future rules related to “gainful employment,” July 7, 2016. Estimate includes both mandatory and discretionary spending.

³ Comments on draft gainful employment regulation signed by 53 organizations, May 27, 2014, <http://bit.ly/1piT6E6>

⁴ Coalition letter strongly opposing the “Academic Freedom through Regulatory Relief Act” (HR 970, S 559), April 23, 2015, <http://bit.ly/1ISpcPD>

⁵ Lincoln Educational Services Corporation CEO Shaun McAlmont, quarterly earnings call transcript, November 4, 2014, <http://bit.ly/1PAOfMN>

⁶ Career Education Corporation CEO Scott Steffey, quarterly earnings call transcript, November 6, 2014, <http://bit.ly/1AoZLmq>

⁷ The transition period is five years for programs that are one year or less, six years for programs that are between one and two years, and seven years for programs that are longer than two years.

⁸ A program is considered passing if the annual loan payment of its typical graduate is less than or equal to either 8% of total earnings OR 20% of discretionary income. Failing programs are those whose graduates have annual loan payments greater than 12% of total earnings AND greater than 30% of discretionary earnings. Zone programs fall in between passing and failing.

⁹ Federal Register, October 31, 2014, pp. 64918-23. The May 27, 2015 federal court ruling states: “The Court concludes, in all the circumstances, that the GE Rules—and the D/E rates contained therein—were the product of ‘reasoned decisionmaking.’” See the full May 27 court ruling at <http://t.co/B14xZugddT>. The separate June 23, 2015 court ruling concurs: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv1870-31. The March 8, 2016 appellate court ruling is available at bit.ly/1Lbtypm.

¹⁰ Ben Miller, “Beware This Gainful Employment Comparison,” New America, December 6, 2013, <http://www.edcentral.org/beware-gainful-employment-comparison/>. Federal Register, October 31, 2014, pp. 64921-22.

¹¹ Federal Register, October 31, 2014, p.65045. The for-profit college industry’s own study concluded that, even after accounting for differences in student demographics, students attending for-profit colleges are twice as likely to default as students at other colleges. See “Report on Gainful Employment,” prepared by Charles River Associates for the Career College Association (renamed APSCU), April 2, 2010. Available at <http://1.usa.gov/1HOHAdu>

¹² <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2012-informational-rates033114-508.xls>

¹³ “Gainful Employment: A Civil Rights Perspective,” October 2014. Available at <http://bit.ly/1K1SJ37>

¹⁴ Stephen Burd, “The For-Profit College Job Placement Rate Scandal Revisited,” *Washington Monthly*, April 16, 2015, http://www.washingtonmonthly.com/college_guide/blog/the_forprofit_college_job_plac.php

¹⁵ The May 27, 2015 district court ruling on the APC lawsuit is available at <http://www.republicreport.org/wp-content/uploads/2015/05/Doc.-64-Opinion.pdf>. The June 23, 2015 district court ruling on the APSCU lawsuit is available at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv1870-31. The March 8, 2016 appellate court ruling is available at bit.ly/1Lbtypm.

¹⁶ See “28 Groups Urge Court to Protect Students and Taxpayers, Uphold Department of Education ‘Gainful Employment’ Rule,” press release available at <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=5434>. The amicus brief filed with the U.S. Appeals Court is available at <http://bit.ly/1YukzI4>.