Arnold Ventures

Gainful Employment Regulations Will Hold Career Education Programs Accountable for Poor Outcomes

The Department of Education recently reinstated and strengthened federal regulations that will require career education programs to meet certain labor market outcomes standards for their graduates or risk losing access to federal financial aid. The final regulations are set to take effect in July 2024.

BACKGROUND ON GAINFUL EMPLOYMENT PROGRAMS

The original *Higher Education Act*, passed by Congress in 1965 and signed into law by President Lyndon Johnson – who called postsecondary education "no longer a luxury, but a necessity" – provided access to federal financial aid only for public and nonprofit colleges. Just a few years later, through updates to the law in 1968 and again in 1972, Congress responded to the calls from for-profit colleges and agreed to include them as eligible for federal financial aid. But there was a caveat, included in light of the rise in post-World War II for-profit scams financed with GI Bill dollars: Congress required that only for-profit programs that prepared students for "gainful employment in a recognized occupation," and non-degree programs in any sector that met the same requirement, would qualify.

While that term was largely undefined for decades, by the start of the Obama Administration in 2009, the Education Department found itself contending with a growing for-profit problem. With the Great Recession underway, college enrollment spiked, as it often does when the economy is in a downswing and jobs are harder to find. Between 2006 and 2010, for-profit college enrollment increased by 76 percent. Scandals followed, with investigations by lawmakers revealing widespread predatory practices, unmanageable debt loads, and poor outcomes for students.

The Obama Administration took action, publishing the first of the gainful employment regulations in late 2010; the rule sought to define "gainful employment" by the debt loads and repayment outcomes of graduates. While the 2010 regulation was later struck down by a court, the Administration revised and reissued the regulations in 2014. Under that 2014 regulation, programs would be evaluated against two forms of a debt-to-earnings rate. Programs that failed to meet certain ratio thresholds would be required to provide warnings to their prospective and current students; and programs that continued to fail without showing improvement would lose access to federal financial aid altogether.

In 2017, then-Education Secretary Betsy DeVos initiated a rulemaking process that dismantled the 2014 rule, after having delayed and weakened some of its components to prevent full implementation before that. From when that rescission was finalized, gainful employment programs were not required to demonstrate they meet the applicable terms in the statute. New regulations finalized in October 2023 will put strengthened standards back into effect.

CHANGING BEHAVIOR AND PROTECTING STUDENTS: THE LEGACY OF THE 2014 RULE

The Department published the first year of debt-to-earnings rates under the gainful employment rules in January 2017 – and even while no program could have lost eligibility under the rule after a single year failing the standards, the impact was notable. While virtually all of the approximately 800 failing programs were at for-profit colleges, a notable exception was Harvard University's graduate certificate program in theater, which reported average loan debt of over $78,000 and post-graduate earnings of just $36,000. Harvard quickly halted admissions for the program as a direct result of the failure.

Harvard wasn't alone in taking action after the data were released. A review of failing programs suggested that many of the programs had shuttered, in some cases because poor-performing and predatory colleges shut down entirely and in other cases because failing programs were shuttered after being labeled as failing. Meanwhile, research showed that programs that passed the GE tests were less likely to see either program or college closures. According to estimates from the Trump Administration, rescinding the rule would increase costs by over $5 billion in taxpayer-financed federal aid that would go to programs that couldn't pass the 2014 rule's tests.

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STRONGER THAN EVER: THE RETURN OF THE GE RULE

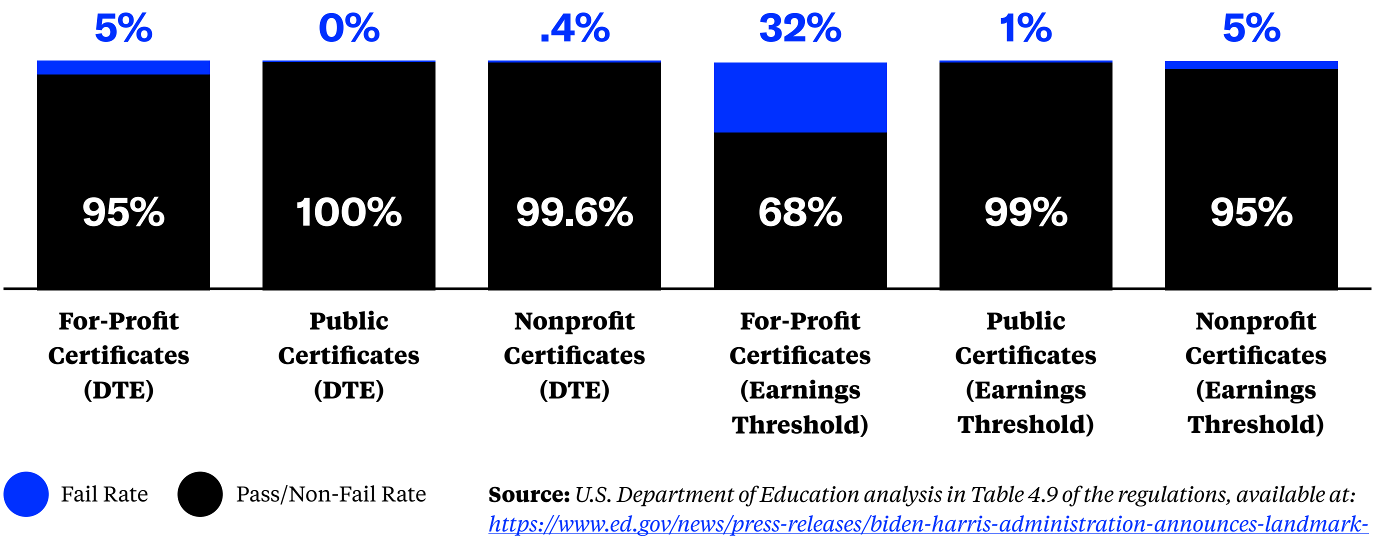
When the Biden-Harris Administration took office in 2021, it faced an added set of challenges. While reports of predatory practices, aggressive recruitment, and poor outcomes persisted, particularly in the for-profit sector, the pandemic was also raging. During the early days of the emergency, higher education enrollment declined, particularly at community colleges – but for-profit college enrollment *grew* over the same timeframe. First-time students, in particular, enrolled at for-profit colleges even while they stayed away from the public institutions that are often more affordable.

Those changes were particularly concerning in light of persistently poor outcomes in the for-profit sector. While two-year for-profit colleges report higher graduation rates than public schools, those graduates are often earning very low-value credentials. Just one in three for-profit certificate programs has labor market outcomes worse than the wages of a typical high school graduate; fewer than one percent of public certificate programs do. Among bachelor's degree programs, both graduation rates and labor market outcomes are much worse in the for-profit sector. Only about one in four bachelor's degree-seeking students (23%) at a for-profit college graduates within six years, compared with 42 percent of public college students and 57 percent of nonprofit college students. Worse, more than 100 bachelor's degree programs in the for-profit sector leave graduates with unaffordable levels of debt relative to their earnings.

In May 2021, the Administration began the rulemaking process to once again put in place regulations governing gainful employment programs. In October 2023, following negotiations with key stakeholders in the field and the review of more than 7,500 written comments from the field, the Department issued new regulations that would not only reinstate, but also strengthen, those rules, as compared with the 2014 regulations. The final rules will use the same debt-to-earnings rates as were used in 2014, generally speaking, but will also require gainful employment programs to meet a minimum floor for earnings, equivalent to the median earnings of a high school graduate in the state where the program was located (called the earnings premium measure). In addition, all programs, across all sectors, will be required to disclose their outcomes to prospective students; and even graduate programs in the public and nonprofit sectors (which generally aren't subject to the GE requirements) will be required to warn students about their high-debt programs and seek students' attestation that they received the warning before enrolling them in those programs.

These are important updates to the rules. According to analysis by the Education Department, borrowers from programs that fail these two gainful employment measures are far more likely to struggle to afford to repay their loans. If those borrowers repaid on the newest income-driven repayment plan, [SAVE](), the typical borrower who attended a program that failed the earnings premium test would repay just 12 percent of what they originally borrowed – with the remainder forgiven at the taxpayers' expense – compared with 77 percent for a borrower from a passing program. The typical borrower who attended a program failing the debt-to-earnings test would repay just 29 percent of their original balance. Analysis from the proposed regulations confirmed that borrowers in failing GE programs were at a much higher risk of default; GE programs make up only about 15 percent of federally aided students, but half of students in high-debt programs and more than 65 percent of borrowers who default on their loans.

Percentage of Programs Failing the Proposed Debt-to-Earnings Rates and Earnings Threshold, By Sector



Source: *U.S. Department of Education analysis in Table 4.9 of the regulations, available at: https://www.ed.gov/news/press-releases/biden-harris-administration-announces-landmark-final-rules-protect-consumers-unaffordable-student-debt-and-increase-transparency*

The Department's final regulations are set to take effect on July 1, 2024 – a new chapter in the long history of gainful employment. With those new rules in place, students and taxpayers will see stronger protections from low- value and often overpriced programs in the for-profit and nondegree sectors – an important start toward ensuring a greater return on investment, since those sectors often show the poorest outcomes.

Still, more work remains: While the poorest-performing programs are heavily concentrated in the for-profit and certificate sectors, they are not the only ones continuing to receive federal financial aid. As lawmakers consider additional updates to the Higher Education Act, reforms will be needed to ensure postsecondary education truly pays off.

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