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The Department of Education's Newly Proposed Gainful Employment Regulations

Executive Summary

- The Department of Education recently issued a notice of proposed rulemaking on gainful employment that would restrict federal funding for for-profit higher education programs whose graduates do not meet a particular debt-to-earnings ratio or a specific earnings premium.
- The proposed earnings premium would unfairly compare the wages of recent graduates of for-profit colleges with a group of potentially more senior (and perhaps temporarily better compensated) high school diploma-holding peers.
- The rule is unlikely to improve accountability across higher education and would instead place financial restrictions on for-profit colleges while providing immunity to non-profit colleges even though many of their programs would also fail the new earnings premium criteria.

Introduction

On May 19, 2023, the Department of Education (ED) released proposed regulations on gainful employment (GE). The proposed GE regulations have their roots in the Obama Administration education regulatory agenda that was largely rescinded by the Trump Administration, and then proposed again by the Biden Administration. Proposed GE rules would set benchmarks on graduate outcomes of career-training programs. If a program fails to meet those criteria, it loses its access to federal funding, meaning that its current and future students will no longer be able to pay for their tuition with federal student loans. Notably, these proposed requirements would apply to all programs offered by for-profit higher education institutions, but only non-degree granting programs by non-profit institutions.

New Gainful Employment Criteria

ED states that schools would need to meet two criteria to receive federal funding:

1. Debt-to-earnings ratio: A program fails to meet this criterion if its graduates' debt payments are more than 8 percent of annual earnings three years after completion or 20 percent of discretionary earnings;[1]

[1] Discretionary earnings are defined as annual earnings less 150% of the applicable federal poverty guideline threshold.

2. Earnings premium: A program fails to meet this criterion if its graduates, three years after completion, earn less than that earned by 25–34-year-old aged individuals with at most a high school education in the state of the program.

ED estimates that roughly 700,000 students are enrolled in about 1,800 programs that would likely fail to meet the requirements established by these proposed regulations.[2] An analysis of Bureau of Labor Statistics data conducted by the American Action Forum found that the technical and trade and business management training sector has suffered job losses of 15 percent since 2012 when the Obama Administration finalized the first GE rule.[3]

Earnings Premium and Experience Comparisons Present Problems

Of note, the second criterion in some cases means that ED would compare the wages of graduates aged 25 or younger of for-profit programs against the wages of individuals who have been in the labor force for as many as nine additional years – a poor comparison. An analysis of 2022 Current Population Survey (CPS) data, for example, found the median total wage/income of individuals aged 25–34 with at most a high school diploma is about $32,000 per year.[4] The median total wage/income of individuals aged 23–25 with a two-year degree is about $29,800.

To illustrate the potential for unintended consequences, consider that this second group of students could include those who are 18 upon entering a two-year degree-granting program at a for-profit college. On the other hand, the median total wage/income of individuals aged 25–34 with a two-year degree is about $38,700. As a result of these trends, and under ED's proposed regulations, the agency would potentially punish for-profit schools that heavily enroll students below the 25–34 age bracket, even if these programs may not have performed poorly in the established outcomes. Indeed, the proposed GE rule may not take into account the earnings premium associated with experience and its interaction with post-secondary education.

At first glance, the proposed GE regulations appear quite reasonable. They would prevent federal loans from being spent on education programs that provide little value, and this would, in turn, prevent defaults on those loans. After all, post-secondary education programs that leave graduates with both large amounts of loan debt and low earning potential are decidedly undesirable, whether the schools offering those programs are for-profit or non-profit.

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[2] https://www.ed.gov/news/press-releases/department-education-releases-proposed-rules-accountability-certificate-and-profit-programs-and-transparency-unaffordable-student-debt

[3] Job Loss: Negative Effects of Gainful Employment Regulations - AAF (americanactionforum.org)

[4] Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles, J. Robert Warren and Michael Westberry. Integrated Public Use Microdata Series, Current Population Survey: Version 10.0 [dataset]. Minneapolis, MN: IPUMS, 2022. https://doi.org/10.18128/D030.V10.0

ED's College Scorecard displays numerous examples of two and four-year degree-granting programs offered by non-profit institutions that would fail the newly proposed GE rules.[5] These kinds of programs would be shielded from GE, however, simply because the institutions offering them are not for-profit. ED notes in defense of its proposed rules that "access to postsecondary programs that produce poor outcomes is not really access at all. These accountability measures will not only better protect students enrolled in low-financial-value programs, but will also encourage improvements across all of higher education."

Conclusion

ED's proposed GE rules would be unlikely to improve accountability across higher education. They would, instead, employ an earnings premium that would unfairly compare recent graduates of for-profit schools with a group of potentially more senior (and likely better compensated) high school diploma-holding peers. The rule does not apply to the degree-granting programs of non-profit higher education institutions, even though many of them would also fail to meet the requirements of the proposed earnings premium.

[5] https://collegescorecard.ed.gov/