ACCOUNTABILITY THAT WORKS:

Restoring Gainful Employment and Strengthening Higher Education Accountability Measures

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Across higher education sectors, too many students experience inconsistent programmatic quality and varying graduation rates, all while taking on loan debt that burdens them for years to come. These challenges grow as more institutions increase their online presence—a sector of higher education that, as it continues to rapidly emerge and expand, remains much less regulated than brick and mortar institutions.

During the three years prior to the pandemic, the number of students taking at least one class online—including those studying exclusively online—grew from about one-third to almost 40 percent,[1] with about 40 percent of these students studying at an institution located in another state.[2] There is no indication these numbers will decline, and as they continue to grow, students need a uniform, federal accountability standard to protect them regardless of where they attend school.[3]

Issued in 2014, the Gainful Employment (GE) Rule was designed to be a universal accountability floor, ensuring that career education programs leave their graduates with debts that are affordable relative to their eventual incomes. The rule distinguishes programs that provide training that leads to well-paying jobs from those that do not, based on the debt-to-income ratios of their graduates.[4] Although the rule worked to improve institutional quality while lowering costs and saving taxpayer money, the previous Administration, immediately after taking office, suspended implementation of the GE Rule and then rescinded it in 2019.[5]

Without the GE Rule, students subjected to poorly-performing career programs are left with excessive debt, and the institutions that operate those low-quality programs evade accountability. Restoring the rule is the most important thing the Department of Education can do now to advance institutional accountability.

A universal standard is important, particularly for students studying online and out of state. Currently, these students are only protected by federal law governing their institutions' access to Title IV financial aid and the state law of a distant state where they do not live, but where their institution is an active business enterprise. A functioning GE Rule provides a critical check on career education programs' inclination to promise students high earnings and plentiful job offers postgraduation, but not offer the kind of quality, robust programs necessary to fulfill those promises. Performance data and actions within this sector show why.

Students and taxpayers alike deserve the transparency a working GE Rule provides. This paper proposes several recommendations for the U.S. Department of Education (ED) to move toward this goal, including:

- Reinstate the 2014 GE Rule, with some modifications.
- Ensure an equity-focused approach.
- Restore the consumer disclosure template.
- Create stronger data systems.

Restoring Accountability to Advance Equity

Community colleges and public institutions offered 61 percent of the programs covered by the 2014 GE Rule, while for-profit institutions offered only one-third of covered programs.[6] And yet, for-profit colleges offered 98 percent of the programs that failed the rule's accountability measure,[7] meaning they could not demonstrate their graduates earned enough to cover the debt they took on to attend.

Black and Latinx students enrolled in a for-profit two-year program pay more than twice the cost they would pay to attend a program at a public college. They leave with $10,000 more debt, on average, than their peers attending a public two-year program.[8] Students at two- and four-year for-profit colleges combined borrow, on average, 83 percent more than their peers at public and nonprofit private institutions.[9] Moreover, one-third of students who have defaulted on loans since 2013 attended a for-profit college.[10]

Students at for-profit colleges also are less likely to be employed and more likely to earn less than their public college graduate peers. For instance, one research team found that, "for-profit students have 11 percent lower earnings after attendance than students in public institutions.[11] Another researcher found that, "51 percent of for-profit institutions leave the majority of their students earning less than a high school graduate, even 10 years after they enrolled in the institution."[12]

For students of color, the for-profit sector performs even worse—targeting communities of color and engaging in predatory practices.[13] Majority Black zip codes in the Midwest are 75 percent more likely, and majority Latinx zip codes are 110 percent more likely, to have a for-profit institution in their communities than majority-white communities.[14] According to this analysis, "majority-Latino zip codes have over twice as many for-profit schools as majority-white zip codes, and majority Black zip codes have over 50 percent more for-profit schools than predominately white zip codes."[15]

These institutions vow to help students find lucrative opportunities post-graduation, but too often fail to deliver. For example, for-profit institutions graduate their Black and Latinx students at lower rates than any other racial or ethnic group. Recent data show that the six-year graduation rate for Black students at for-profit institutions is only 18 percent, and 42 percent of Black borrowers and 31 percent of Latinx borrowers default within six years of starting at for-profit institutions.[16] This reality raises serious equity concerns, as heavy loan burdens are a major obstacle to intergenerational wealth and economic mobility for communities of color.[17]

The term "area career and technical education school" means, among other things, a public or nonprofit technical institution or career and technical education school used exclusively or principally for the provision of career and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institution or school admits, as regular students, individuals who have completed secondary school and individuals who have left secondary school. These programs specialize in skilled trades, as well as applied arts and sciences.[18] Essentially, they provide programs that allow graduates to enter the workforce with a specified skill or trade.

Proven Success: Regulations that Effectively Protect Students and Borrowers

As issued in 2014, the federal GE Rule ensured that career-education programs left their graduates with debts that were affordable relative to their actual incomes, while also providing consumers with key information about program costs and outcomes.

In order for a college program to pass the GE Rule, the majority of graduates' expected student loan payments had to be below both 8 percent of their total income and 20 percent of their discretionary income. Programs whose typical graduates' debt payments exceeded both 12 percent of total income and 30 percent of discretionary income failed. If a program failed for two consecutive years or stayed in "zone" status for four consecutive years, it lost its eligibility to participate in federal financial aid, meaning that students could not use federal grants or loans to attend that poorly performing program.

> "Zone" programs are those where typical graduates' estimated student loan payments exceed both 8 percent of total income and 20 percent of discretionary income; zone programs lose eligibility if they fail in four consecutive years.[19]

In January 2017, the Department released the first and only set of official career education program outcomes under the GE Rule. ED found that nine out of 10 colleges had no failing programs, but 803 programs (9 percent) failed the test because they consistently left students with more debt than they could repay.[20]

Anticipation of the rule prompted many schools to preemptively improve their programs, end failing programs, lower prices, and start providing more career placement assistance.[21] By 2018, according to one analysis, 500 of the 767 programs that had been identified as failing had closed.[22] More recently, researchers found that passing GE was associated with a decreased likelihood of a program or institution closing, and that programs passing GE were located at colleges with slightly better default and loan repayment outcomes.[23]

Notably, women, students of color, and students from low-income backgrounds benefited the most from the GE Rule because it ensured the programs they attended were of sufficient quality. Although Black and Latinx students combined make up only 36 percent of all students enrolled in undergraduate study, they represent more than half (51 percent) of undergraduates at for-profit colleges.[24] Given this attendance pattern, for-profit colleges have a disproportionally large and unfortunately negative impact on students of color.

Student Protections and The Value of a GE Rule

Data from 2017, the first and only year of GE's effect, highlighted the importance and value of a strong GE Rule to protect students. At that time, 2,616 institutions—including 1,541 for-profit institutions—had at least one program that qualified as a career education program under the rule.[25] As of 2020, 81 percent of institutions with at least one career education program were still in operation.[26] Those schools operate 83 percent of career education programs that ED evaluated using the 2014 rule.[27]

Of the 712 institutions with at least one zone or failing program, 468 (65 percent) were still enrolling students as of 2020.[28] More importantly, of the 535 institutions that had over half of their programs designated as zone or failing under the prior rule, 340 (64 percent) still operated in 2020.[29] These 340 institutions are still operating 1,963 programs, accounting for 51 percent of all failing and warning zone programs under the GE Rule.[30]

State-level analysis shows a similar trend. In both California and Florida, for example, 66 percent of career education programs are operated by schools where over 50 percent of their programs were identified as zone or failing under the prior GE Rule. In New York, that number is 78 percent; in Georgia, 95 percent.[31]

Center for Excellence in Higher Education (CEHE)

The Center for Excellence in Higher Education was a Utah-based company that owned and managed several institutions that closed in August 2021 following withdrawal of accreditation and increased financial oversight by the U.S. Department of Education. A Colorado state court had previously made detailed findings of fraud by the school and its owners at a trial following a lengthy investigation by the State Attorney General.[32] CEHE used deceptive practices to enroll students and made false and misleading representations about potential wages and employment opportunities.[33]

Given the misrepresentations, GE data would have likely shown early on that CEHE students were not landing the jobs necessary to pay down their debt. Nearly 7,000 former students now have debt but little path to completing a quality program because of the school's abrupt closure.[34]

Even with the initial, proactive closure of many low-quality programs when the GE Rule went into effect, a large number of institutions offering myriad career education programs across the country remain in business. Data from programs that failed or fell in the zone under the 2014 GE Rule confirms the need to reinstitute oversight.

The demographics of students caught up in institutions with failing programs mirror the demographics of for-profit attendance writ large—Black and Latinx students are disproportionately represented. For example, in 2019-20 there were:

- 482,000 students attending nonprofit, public, or for-profit schools where over half of their career education programs had previously been designated as zone or failing;
- 189,000 Black and Latinx students attending nonprofit, public, or for-profit schools where over half of the career education programs had previously been designated as zone or failing; and
- 166,000 Black and Latinx students stuck in for-profit institutions where over half of the career education programs had failed or fallen in the zone under the 2014 rule.[35]

The 2014 gainful employment regulation established both accountability for these programs and a transparency framework known as the consumer disclosure template. Institutions were required to provide current and prospective students with information about each of their programs that prepared students for gainful employment in a recognized occupation using the template provided by the Secretary.[36] Objectives of the transparency framework included providing:

- Students and families the information they needed to make an informed decision before enrolling in a career education program.
- Taxpayers with information to better safeguard federal dollars.
- Institutions with information that allowed them to improve their programs.[37]

The regulation gave the Department the flexibility "to tailor the disclosure in a way that will be most useful to students and minimize burden to institutions." To that end, the Department developed a template that included program length, percent of students graduating on time; tuition, fees and supplies; room and board; percent of students who borrow money; average graduate debt; average monthly loan payment;

average earnings of graduates; job placement rates; whether the program meets licensure requirements; and the fields in which students obtained jobs.

In 2018 and 2019, the Department eliminated reporting elements from the consumer disclosure template, leaving the template with only three pieces of information for prospective students to view: program costs, program length, and whether the program meets licensure requirements. Notably, the Department removed all of the elements related to earnings, expected loan payments, debt, and job placement.[38]

The consumer disclosures template needs to be restored. While disclosures alone cannot protect students, a workable accountability regime accompanied by a robust transparency mechanism can. Together, a robust accountability measure that removes federal financial aid eligibility from career education programs that consistently fail the debt-to-earnings metric and a transparent, easy to understand set of consumer disclosures can provide the protection both students and taxpayers need.

Accrediting Council for Independent Colleges & Schools (ACICS)

ACICS was one of the nation's largest accrediting agencies, overseeing over 720 institutions that enrolled almost half a million students, and accredited well-known defunct institutions such as ITT Technical Institute and Corinthian Colleges.[39] Researchers found that programs accredited by ACICS were less likely to pass GE and more likely to close in the 2017-18 academic year than those that it did not accredit.[40] ACICS-approved schools were also more likely to face state or federal investigation than other schools.[41]

Presented with this history of repeated, significant, and systemic noncompliance with the recognition criteria for accrediting agencies, the Department of Education terminated ACICS's recognition in 2021. This was the second time the Department had taken such action, initially revoking ACICS' recognition in 2016 only to have it reinstated by the then-Secretary of Education two years later.

The colleges accredited by ACICS have been scrambling to find new accreditors since at least 2016, leaving ACICS with only 60 schools under its supervision when its recognition was terminated.[42] Many of these remaining schools have not been able to find a new accreditor because of their low-quality programs.

Strengthening Protections from the Previous Gainful Employment Rule

Students lost vital protections when the Department rescinded the GE Rule in 2019, leaving them vulnerable to unscrupulous colleges and saddled with debts they cannot afford to repay. This scenario demonstrates both the urgency and importance of reinstating the 2014 rule, while also considering some additional modifications that might further protect students and taxpayer dollars.

Potential Modifications to the 2014 Rule

As a baseline, the 2014 rule can be reinstated with minor revisions. One such revision would clarify that states and consumer groups have standing to ensure the rule is implemented—and to challenge its repeal. In addition, some researchers have suggested going further by adopting new or additional accountability metrics.[43] For instance, ED could use a repayment rate in conjunction with a high school earnings metric.[44] Other researchers have suggested an earnings premium,[45] as well as potentially including non-completers within the existing debt-to-earnings ratio.[46]

Restoration of the GE Rule is the most straightforward approach to advancing accountability, given the rich data and administrative history showing the prior rule's effectiveness. However, the Department should also explore new accountability metrics—such as the options listed above—that contribute to a clear, fair, and comprehensive accountability framework.[47]

The administration also should work to discharge the loans of students whose programs lose eligibility through the rule. Under the borrower defense to repayment language the Department has proposed during the first negotiated rulemaking table this year, borrowers would be eligible for discharge of their loans if "[t]he Secretary sanctioned or otherwise took adverse action against the institution at which the borrower enrolled." Discharging loans for borrowers whose schools failed to adequately prepare them for gainful employment protects students from bearing the burden of low-quality programs that fail to provide the education and training students need to succeed in their chosen careers. It also aligns with the theory underlying the two rules—programs must set students on a path where they are earning more than they owe in debt. If they do not, students should not be saddled with the debt they took on to pay for the underperforming program.

The GE Rule also must work in partnership with other accountability provisions such as those contained in institutions' Program Participation Agreements (PPAs), the closed school discharge regulations, and, eventually, cohort default rates. The GE Rule was never meant to bear the full burden of institutional accountability; rather, it should be a baseline requirement that eliminates the lowest-quality programs and most unscrupulous schools.

Data Improvements Needed to Implement the GE Rule

To measure compliance, the 2014 GE Rule relied on a multi-step process under which institutions provided a list of student completers from each covered program to the Department. ED acquired aggregate earnings data for those students from the Social Security Administration (SSA).[48] Then, the Department used the aggregate earnings data to calculate the necessary debt-to-earnings ratios for each program. SSA provided the earnings data to the Department several times, but SSA did not renew the data-sharing memorandum of understanding with the Department when it expired in 2018.[49]

The College Scorecard allows debt-to-earnings ratios to be calculated at the program level.[50] But the earnings data contained within the Scorecard only reflect earnings two years after graduation for federal financial aid recipients, and data is self-reported by institutions.[51] To accurately track whether a program prepares its graduates for gainful employment in a chosen profession over the long-term, the Department needs to extend the reporting timeframe for gathering earnings data to at least four years. Extending this timeline would reflect the four-year metric included on the Scorecard prior to 2017—a metric that, along with six- and eight-year indicators—should now be restored.

Non-identifiable Internal Revenue Service (IRS) data represents another potential source of information to make GE determinations. The FUTURE Act, passed by Congress in December 2019, prompted a narrow data-sharing agreement between the Department and the IRS to simplify the process for students applying for federal financial aid.[52]

This agreement could be expanded to provide the Department of Education with the most accurate aggregate earnings data, which could then be reflected in an updated College Scorecard and used to enforce a redesigned GE Rule.

A strong GE Rule, combined with other measures, would allow the Department to look more broadly at the ability of all of an institution's graduates to repay their loans. It would also provide a robust system of legal, administrative, and financial safeguards for the federal government's investment in student aid. When paired with the College Scorecard, this accountability system also provides transparent, accessible information about college and program quality to students and their families, allowing them to more accurately gauge the ability of a program to carry out its career-preparation promises.

Recommendations

Students need the transparency a working GE Rule provides. Taxpayers deserve to know that their dollars are funding programs that assist students in achieving the promise of a brighter economic future. To achieve these ends, we recommend:

» Reinstating the Gainful Employment Rule. First and foremost, the Department of Education should reinstate the 2014 GE Rule. Students in career education programs have lacked adequate protections since the Department stopped enforcing and then rescinded the rule in 2019. As part of reinstating the 2014 rule, the Department should consider modifications that increase protections for students and can be readily understood by institutions and policymakers alike. For example, ED should, to the extent possible, clarify that states and consumer groups have standing to ensure the rule is implemented—and to challenge its repeal. The Department should also explore including non-completers within the debt-to-earnings metric and consider additional quality assurance metrics such as adding a metric that compares the earnings of programs' students to those of high school graduates. The primary focus should be to ensure that a new rule, designed to ensure that students are deriving value from programs at colleges receiving Title IV funds, is transparent, fair, implemented in a timely fashion, and can withstand legal scrutiny. It also should consider protections–such as loan discharge–for students enrolled in programs that lose eligibility.

» Ensuring Equity Considerations are Front and Center. The GE Rule must, first and foremost, reflect a commitment by the Department to ensuring equity in how career education programs serve historically marginalized students at risk of bearing the brunt of the programs' failure to satisfy the rule's requirements. One way the rule's metrics could better center equity is by uplifting the use of disaggregated data on program enrollees, which would highlight the disproportionate targeting of and impact on Black and Latinx students by these programs. In addition, the Department should publish analyses of student demographics across zone schools and programs so that colleges operating poorly-performing career programs are held accountable for the outcomes of their enrolled students historically marginalized by the postsecondary system.

» Restoring the Consumer Disclosures Template. When deciding whether to enroll in a career education program, students need sufficient information about the quality of the program, what kind of debt they might incur, and the likelihood that their earnings after completion will be higher than their current earnings. At minimum, they should be able to determine if they will be able to repay any debt they will incur to attend. Today, that information is not available. But the Department can bring it back by restoring the prior consumer template. In taking this step, the Department should consider whether any additional information is necessary to ensure students have access to all the data they need to make an informed choice about enrollment.

» Creating Stronger Data Systems. The effects of severed data connections and dismantled internal data systems within the Department require not just new data sharing agreements but the reconstruction of a data infrastructure to fully implement a new GE regulation. The Department should immediately begin steps to rebuild the internal infrastructure and capacity necessary to collect GE data and calculate debt-to-earnings ratios. This new structure should be flexible enough to adjust in future years, but also stable enough not to be dismantled with every shift of administration. Moreover, the Department should expand its data sharing agreement with the IRS under the FUTURE Act to replace the MOU with SSA that expired. At minimum, the Department should restore the four-, six-, and eight-year earnings metrics that were available on the College Scorecard before 2017.

With the GE Rule repealed, there are currently no guarantees that the amount of debt a student can take on to pay for a high-cost career education program will lead to anything more than extremely limited career prospects. As the for-profit college industry seeks to enhance profitability and push back against regulatory guardrails, the Department must strengthen key accountability mechanisms that have proven successful in protecting students and improving the value offered by colleges.

Acknowledgments

The Institute for College Access & Success (TICAS) is a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education. To learn more about TICAS, visit ticas.org and follow us on Twitter and Instagram: @TICAS_org.

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