Association of Private Colleges

US Department of Education Releases New Gainful Employment and Financial Value Transparency Regulation

APC's Statement on GE/FVT Regulations

On October 10th, the U.S. Department of Education released its final Gainful Employment (GE) rule. The Association of Private Colleges (APC) is dismayed that the Department once again moved forward with regulations that single out one sector of higher education by primarily targeting for-profit institutions under the banner of protecting students. APC continues to believe that the gainful employment regulations should apply to all sectors of higher education equally. Student debt challenges and weak graduation outcomes – especially for minority and low-income students – are pervasive across the higher education landscape. Clear policy guidance and strong enforcement across all sectors of higher education is the best way to improve student outcomes and protect American taxpayers.

APC has always supported strong regulations that protect students at all institutions, public, private non-profit and proprietary. However, this rule does not achieve its stated goals, to ensure that students enrolled in certain higher education programs receive a quality education that adequately prepares them for gainful employment. The new GE regulation misses the mark because it focuses primarily on students enrolled at for-profit institutions and ignores students attending programs at public and non-profit institutions that do not pass the metric. This rule could have protected all students, but instead it is nothing more than another thinly veiled effort to punish the for-profit sector.

Gainful Employment Implementation Timeline

Who Does it Apply To?

- All programs at proprietary institutions
- Non-degree/certificate programs at non-profit and public institutions

What are the GE Metrics?

GE is a two Part Test:

1. A debt-to-earnings rate that compares the median annual payments on loan debt borrowed for the program to the median earnings of its Federally aided graduates. For a program to pass, its graduates' debt payments must be no more than 8% of annual earnings or 20% of discretionary earnings, which is defined as annual earnings minus 150% of the Federal poverty guideline for a single individual (about $21,870 in 2023).

2. A new earnings premium test that measures whether the typical graduate from a program who received Federal aid is earning at least as much as a typical high school graduate in the labor force (i.e., either working or unemployed) in their State between the ages of 25 and 34. This is equal to roughly $25,000 nationally and $25,534 in New York State.

Institutions must pass both of these metrics! Failure of one or both metrics for 2 out of 3 consecutive years results in loss of Title IV for that program.

APC's Concerns with GE

There are significant differences between the GE regulation that was put in place in 2014 under the Obama administration, then rescinded in 2019 under the Trump administration and now promulgated again under the Biden administration that are concerning.

- The Department of Education's sole focus on the proprietary sector…
  - The Department's own data shows poor outcomes for low-income and minority students is prevalent in all sectors.
- In the DE metric – they have removed the Zone and moved the line for program failure from 12% to 8% for annual DE and from 30% to 20% for discretionary DE.
- The Department has given themselves flexibility by stating that earnings date will come from a "Federal Agency". In the 2014 rule, the data came from the IRS, but in this round it could also come from census data or social security data.

- Institutions do not have the ability to see the data or appeal the final outcome of the calculation. In the 2014 rule, there was an opportunity to review and correct data before the calculations were made and then appeal the decision if the DE earnings were in the zone or failed.

APC's Concerns with the Data

The Department released the Notice of Proposed Rulemaking (NPRM) last May with a draft version of the GE regulation and a database of all program outcomes for comparison and review.

- The data includes over 150,000 programs, of which, more than 124,000 programs (82.7%) do not have enough data to be subject to the D/E and EP metrics.

- Of the 26,057 programs in the PPD data that have enough data to be subject to the rule:
  - 22,668 pass both the D/E and EP metrics
  - 474 fail both metrics – 261 in the for-profit sector and 213 in the non-profit and public sectors
  - 1,047 fail the D/E metric only – 244 from the for-profit sector and 803 from the non-profit and public sectors
  - 1,868 fail the EP metric only – 978 from the for-profit sector and 890 from the non-profit and public sectors

It's important to note that 56% of all failing programs come from the non-profit and public sectors, but students attending these institutions are left unprotected from what the department would deem low-quality programs.

Financial Value Transparency

- The Department of Education will create a public website by July 1, 2026, that will provide students with the Debt-to-Earnings and Earnings Premium outcomes for ALL programs in ALL sectors!
- Certificate and Graduate programs that fail either of these metrics will have to have prospective students sign an acknowledgment that they have seen these failure rates before enrolling.
- In the final rule, Associate and Bachelor programs at non-profit and public institutions were exempted from this disclosure.