

GAINFUL EMPLOYMENT TALKING POINTS

Concerns:

- Although the concept of the Gainful Employment (GE) regulation may sound like a good idea, the actual regulation finalized in 2014, is arbitrary, counterproductive, does not account for many real-life scenarios, has had significant implementation and data problems, and will have negative impacts on both students and institutions.
- The GE Rule was originally intended to further define two words - “Gainful Employment,” but turned into an over 800-page federal regulation, along with over one hundred additional electronic announcements and other documents schools have to comply with. The significant time, staff resources, and costs involved to comply with this over-regulation would be better spent on students in the classroom, improving education offerings, or helping tuition costs.
- GE assumes every student pursues full-time work upon graduation. If a graduate chooses on their own to work part-time, this will negatively impact a school’s GE rate.
- The Regulation does not account properly for tip-based professions – like cosmetology and beauty programs – where the federal government has acknowledged there is an under-reporting of income.
- Commissioned-based career fields and other passion-driven fields that do not always have consistent earnings – like the arts – are not accommodated for in GE’s “one size fits all” metric.
- There are no considerations in GE for benefits of a job that are not direct earnings. For example, hotel and hospitality management programs, where many graduates accept jobs with lower wages in exchange for paid housing and food assistance while living on resorts or cruise ships.
- GE only looks at the first three years of wages and not long-term earnings potentials in a career.
- The regulation does not account for geographic wage disparities, where graduates with the same credentials, education, and career, may make significantly different wages based on geography and economic conditions in different urban/suburban/rural communities and/or regions of the country.
- The process to appeal earnings data in the current regulation is extremely burdensome and difficult to achieve. The student survey response thresholds are too high, there are complicated “bias” metrics used in the surveys that skew results, and the availability of state-level data systems are scarce.
- There have been significant data problems reported by many institutions on both the loan/debt data and also on the earnings data used by the government in calculating GE Rates.
- Nothing in the regulation has anything to do with the academic quality of a program, graduation rates, placement rates, employer needs for the program’s graduates, or student satisfaction levels. These are the outcomes that matter – not a complicated government-created-metric

calculated off of faulty government data that does not account for real-life personal scenarios or certain career-field's earning potentials.

- Schools educating a greater percentage of low-income and/or at-risk populations of students get punished more by the current GE Rule because these populations often need to take out more loan assistance.
- The existing regulation is arbitrarily applied to schools based on their tax status, whereas schools registered as "private for-profit" are regulated more heavily than "publics" and "private non-profits," even though they educate about 90% of the higher education students nationally. Many of these schools have similar programs that would fail the very same metrics if applied to them. Although there are many problems with the existing regulation, if the goal of the GE Rule is to protect students and taxpayer dollars, then why exempt approximately 90% of the students and programs in the country out of these perceived protections?

Potential Recommendations for New Rulemaking:

- Remove the arbitrary application of the regulation on primarily private sector schools and make whatever new rules are developed apply to all Title IV institutions.
- Reduce the length (800 pages), scope, and burdensome size of the regulation.
- Transition the regulation from being a punitive tool against programs and schools, and instead turn it into a transparency tool to help students make informed choices on their own.
- In order to make this a better tool for transparency, there must be better assurances the data used in the metrics is accurate. There should be additional opportunities for schools to preview, review, and confirm their data before it is published.
- There should also be a simpler and easier mechanisms for schools to challenge or appeal data. The existing alternative earnings student surveys should have a minimum response threshold that is realistic and achievable (much lower than the current 50%). Bias metrics and other burdensome requirements in graduate earnings surveys that schools have to navigate should be removed. Also, other alternative options could be provided for appeals, such as data already submitted to accreditors, state data, and/or employer-verified salary data.
- In addition, there is already Bureau of Labor Statistics (BLS) data that exists on many professions. Although this data is not program-specific, it does provide a valuable resource to consider using. By using BLS data as an option, it will also provide a tool that can look beyond individual student cohorts.
- There needs to be some sort of accommodation built into the regulation for tip-based professions and/or other reasons that some careers may have under-reported wages.
- The new GE rulemaking should look at earnings potential through a career, not just the entry-level years of a career in the first three years after graduation.

- It is also critical that if this is going to be a fair and equitable means for transparency, then there needs to be consistency in how the outcomes are measured. For example, the way the new GE Disclosure Template requires schools to calculate completions and the on-time graduation rate is a new standard different from any other way the government calculates these statistics. By nature of the way the new GE Template requires this calculation, the programs subject to GE disclosures, will appear to have worse on-time graduation rates than other programs on the College Navigator, IPDES, accreditors, etc... The new negotiated rulemaking for GE needs to make the outcome measurements reported in the GE Template similar to other federally-recognized measurements of the same outcomes.
- In addition, another inconsistency that should be addressed is the GE Disclosure Template uses placement data from Award Years, whereas existing submissions to accreditors and other agencies typically use the Calendar Year.
- Finally, if one of the goals of the regulation is to not have students graduate with debt loads that may not match salary potential, then the federal government should take more action to curb “over-borrowing” by students. Access for federal student loans are currently issued like a “right” to students and students are eligible to borrow more than what they often need for their education programs. Schools can do little to counsel or limit how much a student chooses to over-borrow. The new negotiated GE Regulation should give the federal government or schools more control or ability to help counsel student against over-borrower.

BORROWERS DEFENSE TO REPAYMENT

Talking Points:

- There has been an existing process in place for years to provide borrowers an opportunity for loan relief under rare circumstances. Why reinvent the wheel? This new massive regulation is not necessary.
- The existing process used for years worked and was only ever used in a limited number of extreme cases, which is what it was intended for.
- The ability to completely relieve debt is an extraordinary power of government and should be used very cautiously and only in rare cases of extreme harm to the borrower. This power should not be over-used and make borrowers think debt relief is a right.
- The process in place for years before the new regulation was rarely used until recent years when the previous federal Administration took actions that arguably led to government-induced closures of several high-profile national schools. These large government-induced closures are

what led to the high existing number of new claims filed in mass. Thousands of students from these large schools were also then subsequently encouraged by the previous Administration to file claims at a time when there was not the administrative capacity within the government to handle the high volume of claims being filed. Thus, this new government regulation is trying to fix a problem that was created in part by the policies of those who initiated the regulation.

- The costs of this regulation are projected to cost American taxpayers billions of dollars over the first few years. Even worse, the new regulation encourages additional claims to be filed with little due process to challenge these claims, which will enable many more claims in the future and most likely drive the cost even higher if nothing further is changed.
- Students who simply don't want to pay back their loans, could have a path to do so if this regulation went into effect as is. As more students realize this option, the costs of the program will exponentially grow through time.
- The regulation opens up the ability for claims to be made and penalties against schools to be issued for a list of reasons, even if some of the reasons are never proven true.
- The regulation provides very little due process for schools to challenge claims.
- The federal government in this regulation would have the power to simultaneously be the advocate, the prosecutor, the judge, and the bailiff. This regulatory scheme that gives the federal government the power to be all of the above is an unprecedented threat to the historic legal concepts of both separation of powers and of checks and balances.
- The regulation's prohibitions against schools and students from entering into arbitration to settle disputes is not in the best interest of either party. Why take away the students' right to have their concerns mitigated through arbitration? Why force both students and institutions to have to pursue costlier and time-consuming legal options.
- The regulation arbitrarily enforces certain provisions on schools based on no other reason than the school's tax status. If this regulation is truly about protecting students, then why have stricter provisions on different schools based on their tax status.
- Some of the data used in developing this regulation, particularly around Loan Repayment Rates, was acknowledged by the US Department of Education in a January 13th 2017 IFAP to be incorrect data based on "coding errors" (<https://ifap.ed.gov/eannouncements/011317UpdatedDataForCollegeScorecardFinaidShopSheet.html>). Some of the regulation's arbitrary provisions were developed as a direct result of the very same data that has been recognized by the Department as inaccurate.

Potential Recommendations for New Rulemaking:

- The results of the new negotiated rulemaking should apply equally to all higher education institutions, regardless of their tax status. If the final new rule is in the best interest of students, then students at all higher education institutions shall have the same rights.

- Narrow the list of potential reasons for claims to be filed, and for punitive actions to be taken against schools, down to cases where there is a clear and proven fraudulent harm to the student.
- The current regulation provides the Department the ability to require schools under a litany of conditions to be required to post letters of credit. In addition, the regulation provides for these letters of credit to be stackable. These government-mandated stackable letters of credit could bankrupt and close a school, which harms students and contradicts the reason for these letters to begin with. The new negotiated rulemaking should remove the ability of stackable letters of credit to be placed on schools.
- Narrow the Department of Education's powers under the regulation that provide it the unprecedented legal powers of becoming a class action litigator on behalf of students, especially regarding students that did not complain, request to file a claim, or be part of a legal class.
- Reinstate the rights of students to pursue arbitration with schools to mitigate any concerns the student may have.
- The existing system prior to the new regulation was not broken and worked fine for years. Thus, the new negotiated rulemaking should simplify the new regulation and move it closer to the original system prior to the existing rulemaking.
- What was actually broken and did lead to some of the problems that occurred over the last few years was a federal government that took severe punitive actions against several large institutions that were already in fiscal trouble. These punitive actions deepened these institutions' financial problems and led to closure in some notable cases. What is needed to help prevent these situations in the future are not hundreds of pages of new arbitrary and expensive regulation or additional punitive measures that will only expedite closures and harm students, but rather a federal government that is cooperative and providing schools technical assistance and other guidance and resources to help the school get through tough times and continue their ability to successfully educate students.
- Finally, the federal government needs to address "over-borrowing" by students and not provide them more funds than they need for the cost of their education. The higher the level of debt the federal government allows a student to borrow beyond their needs, the more likely the student will consider making a Borrowers Defense to Repayment claim to relieve this debt, and the more expensive it is to US Taxpayers when this debt is erased as a result of Borrowers Defense to Repayment.