THE CHRONICLE OF HIGHER EDUCATION
Government

May 27, 2014

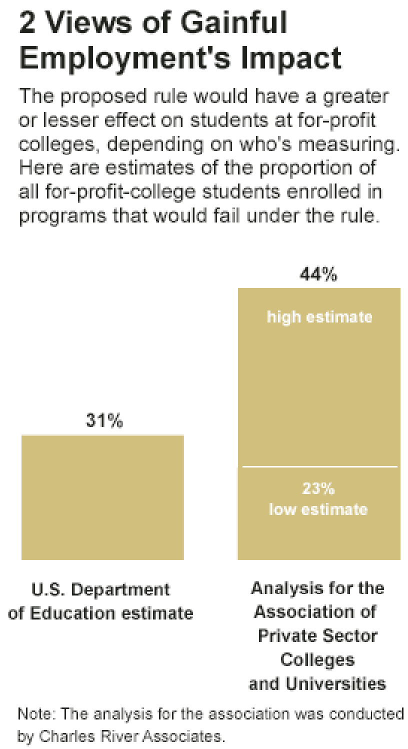
For-Profit Colleges Decry Gainful-Employment Rule as 'Arbitrary and Biased'

By Goldie Blumenstyk
Washington

The for-profit-college industry's trade association, backed by a 100-page report by economists, is coming out swinging against the U.S. Department of Education's draft "gainful employment" regulation.

The proposal is "flawed, arbitrary, and biased," and will deny educational access to as many as 7.5 million students over the next decade, contends the Association of Private Sector Colleges and Universities, or Apscu, in documents it is filing on Tuesday.

In a preview of what will be its likely legal challenge should the rule be adopted in its current form, Apscu attacks the department for relying on "discredited sources" in developing the regulation and says the rule would affect far more for-profit-college students than the department has projected.



Tuesday is the deadline for public comments on the rule, and among the many other groups also expected to weigh in is the American Council on Education, which has been circulating a draft of a letter that praises the idea of "smart regulations" but concludes that this proposal "falls short." The council, and other organizations expected to sign its letter, will ask the department to provide more exemptions for programs where few students borrow and default and where the amounts they borrow are low. The letter also questions the "mind-numbing" number of reporting requirements the rule would impose on all institutions.

The gainful-employment rule, which would apply to all for-profit-college programs as well as career-focused programs at public and private nonprofit colleges, would deny federal student aid to programs where too many students default on their loans or where their debt, relative to their earnings or discretionary income, is too high.

A number of student, veteran, and consumer-advocacy groups, as well as several Democratic U.S. senators and representatives, have been urging the department to strengthen the rule. On Tuesday a coalition of more than 50 such groups repeated that call in a letter to the education secretary, Arne Duncan. The letter says that the regulation—with some changes, such as limits on enrollments in poorly performing programs and provisions for financial relief to students in programs that fail—is "urgently needed."

Meanwhile, three dozen members of the House of Representatives, both Democrats and Republicans, have asked their colleagues to bar the department from proceeding with the rule.

‘Cannot Be Measuring the Same Thing’

Apscu’s comments draw heavily on a new report by economists at Charles River Associates, a consulting firm, who contend that the rule is fundamentally flawed on economic principles. The report says the rule is wrongheaded because it bases one of its tests on the level of students’ earnings, not whether they’ve seen a gain in earnings as a result of their education, and because the rule doesn’t allow for any adjustments based on broader economic conditions that have nothing to do with the quality of an academic program but could affect students’ earnings and loan defaults.

If there were another big recession, "a lot of programs" would "fail and become ineligible," said Jonathan Guryan, a co-author of the Charles River report and an associate professor of human development and social policy, and of economics, at Northwestern University. The eligibility of programs should not be "subject to the whims of the nation’s economy," he said in an interview.

The Charles River analysis of the rule’s effect also found little correlation between the programs that would fail under the default-rate test and those that would fail under the debt tests, which suggests that the "two metrics cannot be measuring the same thing" and that the overall rule "is clearly not measuring" what the department intended.

The analysis also challenges the department’s use of a threshold of 8 percent as a benchmark for passing the debt-to-earning test. It contends that the department has taken that 8-percent figure out of context from another study—one that had actually recommended against using it as a guideline for measuring student borrowing.

The 8-percent figure "is not a number that is implied by any standard economic model, or supported by research as the department suggests," the Charles River report says, using language that hints at what might be a partial basis for a legal challenge based on assertions that the department acted arbitrarily in devising the rule.

Apscu challenged a previous gainful-employment rule on such grounds, and a court agreed, throwing out the rule.

In its comments, the association also contends that the proposed rule unfairly singles out students at for-profit colleges and says the department's use of "misleading" statistics in formulating the rule, including a claim that 72 percent of for-profit colleges' graduates earn less than high-school dropouts, casts doubt on the agency's impartiality.

Reasonable and Unreasonable

Mr. Guryan and his co-author at Charles River, Matthew R. Thompson, also dispute estimates by the department on the likely impact of the rule. For that purpose, they crunched data from actual students enrolled in nearly 29,000 four-year, two-year, and certificate programs at more than 180 for-profit colleges from 2007 to 2012. While not a scientific sample, the pool equaled about 20 percent of the overall enrollment in for-profit colleges and was fairly representative of it, according to Mr. Guryan.

Based on actual students' default-rate data and estimates of their earnings from the U.S. Census Bureau, they estimated that 13 to 22 percent of programs would fail the rule's tests and be disqualified from federal student-aid programs, which they said would affect 23 to 44 percent of for-profit-college students. (Apscu says the sector enrolls nearly four million students over all.) By contrast, the Education Department estimated, based on one year of data, that 31 percent of for-profit-college students would be in programs that failed the tests.

The department also estimated that 85 to 90 percent of students in programs that failed would find alternatives. The Charles River report comes to a different conclusion—one that Apscu uses to project that figure of as many as 7.5 million students "denied access" over the next 10 years.

For programs that they estimated would fail the gainful-employment tests, Mr. Guryan and Mr. Thompson searched the department’s Integrated Postsecondary Education Data System to identify similar programs nearby that could be "reasonable alternatives" for students to enroll. They ran several scenarios and concluded that an estimate of 25 to 50 percent was "more reasonable" than 90 percent. Based on that finding, they estimate that the rule, over the next decade, could deny access to two million to 7.5 million students.

Avoiding Certain Students

The Charles River report does not, however, take into account that students may find alternatives through distance education. Mr. Guryan acknowledged that omission but said in an email message that he was "skeptical about online programs’ absorbing a large portion of the displaced students" because some of the programs aren’t fully available online. What’s more, he said, the Charles River assumptions about alternatives were conservative. Some of the programs considered alternatives might not actually be so, said Mr. Guryan, because they could be more selective in admissions than are the for-profit-college ones.

Also, he said, "the students who would be displaced, and looking for an alternative program, will tend to be students who would put a program at risk of failing the gainful-employment rule (i.e., students who are low-income and who require loans to pay for college)."

Those alternative programs "will have an incentive to avoid precisely these students," he said. "In other words, the existence of an ‘alternative’ program does not mean that program is an alternative for a displaced student if the program doesn’t open its doors to the student," said Mr. Guryan.

Both the Charles River report and Apscu’s comments note that many of the programs that could be denied federal student aid under the gainful-employment rule enroll a high proportion of female, minority, and financially needy students. "The department has clearly forgotten the central purpose of the Higher Education Act—which is to assist in making available the benefits of postsecondary education to all eligible students," said Apscu's president and chief executive, in a news release.

But the coalition seeking an even tougher rule contends that it is necessary precisely because so many low-income and minority students "are heavily recruited" by, and enroll at, for-profit colleges with poor outcomes for students. Apscu's argument misses the broader point, said Rory O'Sullivan, deputy director of Young Invincibles, one of the groups in the coalition.

"We want to open doors for students," he said. "We don't want to open doors that lead them off cliffs."

johnny_meat • 9 hours ago

Although this rule does not effect somebody like me that went to a traditional state university, I feel bad for the people in the lower economic classes as these institutions are their last hope.

Many of those colleges will go shut their doors and many others will pull out of depressed areas in favor of better demographics.

The students left behind will absolutely NOT go to a Community College.

1 • Reply • Share ›

TheJonesest → johnny_meat • 8 hours ago

Why will they "absolutely NOT" go to a CC?

• Reply • Share ›

cao3rd • 9 hours ago

. . . and why do we need the U.S. D.O.E.? Not to get political or anything (because that is not the issue) but I have been following this issue closely and most of what is coming out of the department is totally unclear and weakly linked to controllable factors for most institutions.

The for-profit market is different than that for non-profits and in the end I believe students are responsible for their obligations (as well as for entering into obligations with open eyes) and no amount of over regulation changes that basic obligations with open eyes) and no amount of over-regulation changes that basic foundational principle.

There are terrible non-profit institutions just like there are awful for-profit ones . . . there are also terrible Congressmen, newspaper reporters, government bureaucrats as well as excellent ones . . . but we can't regulate them out of our lives. It would be nice if the for-profits could be focused on quality (because it is in their long-term business interests to do so) and regulations on student borrowing/responsibility could be made more clear.

• Reply • Share ›

TheJonesest → cao3rd • 8 hours ago

So, because we can't regulate everyone, we should regulate no one?

• Reply • Share ›

No name • 8 hours ago

And how many English departments or theater departments could pass this test? Shoot, many law schools can't pass the test now that the field is in collapse. Don't more than 50% of the law school grads make less than they did before going to law school?

This could destroy the liberal arts-- at least at the current level of tuition. We could always go back to 5:5 teaching loads and bigger classes. That could make it reasonable again.

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