



The Education Trust

Closing the gaps in opportunity and achievement, pre-K through college

September 13, 2018

Ashley Higgins
U.S. Department of Education
400 Maryland Ave., SW, Mail Stop 294-20
Washington, DC 20202

RE: Docket ID ED-2018-OPE-0042

Dear Ms. Higgins:

On behalf of The Education Trust, an organization dedicated to closing long-standing gaps in opportunity and achievement separating low-income students and students of color from their peers, thank you for the opportunity to comment on the U.S. Department of Education's (ED) Notice of Proposed Rulemaking (NPRM) to rescind the gainful employment (GE) regulations.

The Education Trust strongly opposes the rescission of the GE regulations. Students and taxpayers have already waited far too long for these critical protections from unmanageable student debt and suspect programs of postsecondary education. Since the start of the current administration, ED has repeatedly postponed the full implementation of these regulations by delaying reporting requirements, allowing additional rounds of earnings appeals, and failing to produce the second year of debt-to-earnings rates. This has allowed predatory institutions offering programs that would have been subject to penalties under the existing regulations to continue to sell the false promise of a valuable education while heaping increasing amounts of crippling debt on students. Taxpayers and students cannot afford for these regulations, and the transparency and protections they provide, to be rescinded.

We believe it is critical that the federal government hold all institutions of higher education (IHEs) — public, nonprofit, and for-profit alike — accountable for how well they serve the students they enroll, especially students of color and low-income students who are disproportionately harmed by student debt, predatory actors, and low-quality programs. The federal government provides resources that are crucial to ensuring all Americans have access to college, while also protecting students and ensuring transparency and accountability for taxpayer dollars. The actions taken by ED in this NPRM give predatory schools that offer little if any value license to operate without adequate oversight and allow them to flourish on the backs of taxpayers and students. In pursuing this approach, ED abdicates its most fundamental responsibilities and prioritizes interests of unscrupulous institutions above all else. Below are a few of the most egregious aspects of the proposed rule, which must be reversed in order to fulfill ED's foundational mission of expanding access to high quality education and protecting students and taxpayers:

The proposed rule will allow the disproportionate harm of vulnerable students.

The elimination of the GE rule will do tremendous harm to low-income students and students of color. The current rule ensures that programs that graduate students with unmanageable levels of debt are no longer able to access taxpayer dollars. These programs predominantly exist at for-profit IHEs, which, as a sector, have a track record of preying on low-income students and students of color. Completers of programs at these institutions often incur thousands of dollars in loan debt, only to find that they are not prepared for any jobs that would allow them to repay their loans, or worse, that employers will not accept their degree or credential at all. These schools take advantage of the availability of federal aid and fail to provide the education and training that students need to succeed. The rescission of this rule will once again open the floodgates to these problems.

The NPRM reinforces the “bigotry of low expectations.”

ED asserts that GE is unfair because schools shouldn't be held accountable when they enroll large shares of students of color and student from low-income families. But research and experience – thoroughly documented in the 2014 NPRM – demonstrate the fallacy of this assertion. Over the years, Ed Trust has highlighted the variance in outcomes and equity gaps among institutions serving similar populations¹, demonstrating that what institutions do matters. Thus, it is both appropriate and critical that institutions be held accountable for the outcomes of the students they serve. It is shockingly egregious for ED to claim to be protecting low-income students and students of color while actually giving license for them to be preyed upon by unscrupulous institutions.

The NPRM substitutes real accountability with inadequate promises of transparency.

In place of vital provisions in the 2016 rule that would protect students and advance institutional accountability, ED's NPRM provides a faint promise of additional future transparency on earnings and other employment outcomes. First, the NPRM by itself does not guarantee any additional transparency or establish any process for moving forward on these issues. Without such a guarantee, removing the protections for the most vulnerable students is unconscionable.

Second, while we at Ed Trust strongly support efforts to ensure that students and the public have access to data on the earning potential and job prospects associated with various programs, transparency is no substitute for accountability. Well-presented and accurate information can help students pick between programs and institutions and identify the path that best meets their needs, but transparency alone will not ensure that predatory institutions cannot enroll students with federal student aid. Furthermore, rigorous accountability and consumer protections are all the more critical given the other shortcomings of a transparency-only approach, including the reality that many low-income students live in so-called “education deserts” and that, in many cases, simply providing information does not change student behavior.

¹ [Black Student Success](#), The Education Trust, 2016; [Latino Student Success](#), 2017; The Education Trust; [Pell Partnership](#), The Education Trust, 2015

The NPRM selectively uses and misinterprets data and research.

We are deeply concerned with the NPRM's attack on the underlying data and research used to justify the previous iterations of the GE rule. The 8 percent figure was arrived at after taking into account the forms of debt (home mortgages, car loans, credit card debt, etc.) that student loan borrowers must factor into their monthly budgets. In the NPRM, ED questions the validity of the 8 percent figure and cites a 2006 College Board study² as justification for these questions. If anything, the study suggests the current GE rule is too lenient, and it certainly cannot be reasonably interpreted as providing any justification for the rule's total elimination. ED's selective use of the findings of this study is a serious misrepresentation and undermines the entire case for rescinding this rule.

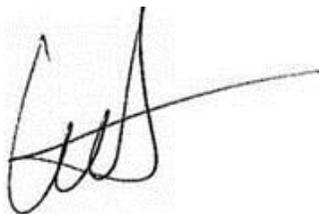
The NPRM disregards years of public input on this issue.

These regulations, which have been a part of the Code of Federal Regulations for more than three years, were developed based on wide, thoughtful and sound input collected over nearly a decade. The current regulations have been the subject of two separate negotiated rulemaking sessions, numerous legal challenges, and tens of thousands of public comments from institutions, students, financial aid experts, and others. In vacating the GE regulations, ED willfully ignores the input of a wide cross-section of experts, students, and other stakeholders, disregards the hard work of negotiators, and abandons the agency's longstanding commitment to ensuring that regulations reflect the public's interest and feedback.

The current GE rule provides a much-needed guardrail to ensure that poorly performing programs can't continue to receive federal student aid if they continuously produce atrocious outcomes. By rescinding these regulations, ED is putting the interests of executives and shareholders of predatory for-profit colleges ahead of students and taxpayers. This action will leave all students, but especially low-income students and students of color, worse off.

For these reasons, we urge you to withdraw this NPRM. Thank you for the opportunity to comment on this important matter.

Sincerely,



Wil Del Pilar
Vice President of Higher Education
The Education Trust

² Baum and Schwartz, "How Much Debt is Too Much," College Board, 2006