The Heritage Foundation

**ISSUE BRIEF**

No. 4974 | JUNE 24, 2019

CENTER FOR EDUCATION POLICY

# Higher Education Act Reauthorization: Easing the Federal Regulatory Burden

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### KEY TAKEAWAYS

American students deserve higher education options that deliver high-quality education at more affordable prices. This will require significant policy reforms.

The Obama Administration's focus on for-profit colleges failed to deliver any real changes. Instead, it let nonprofit colleges and universities off the hook.

Any federal regulations should be applied to all colleges. Better yet, Congress should cut or cap federal student loans—the source of higher education's problems.

The higher education system in America needs significant reform. Twin challenges of high cost and low quality require attention from federal policymakers—who oversee tens of billions in federal aid to colleges and universities annually. In recent years, some policymakers, most notably during the Obama Administration, have singled out for-profit universities for additional federal regulation. However, targeting for-profit colleges, many of which are meeting the needs of students historically underserved by "traditional" universities, is not the way to improve outcomes sector-wide. The vast amount of taxpayer subsidies that Congress pours into the entire higher education sector is the issue that deserves scrutiny, and should be the primary focus of any Higher Education Act (HEA) reauthorization. Additionally, as this *Issue Brief* explains, regulations, when promulgated, should be applied evenly to all universities. The



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entirety of higher education needs improvement, which will not be achieved by singling out for-profit colleges.

## Targeting For-Profit Colleges through Heavy-Handed Regulations: An Unfair Federal Cudgel

Two regulations have made it clear over the past decade that the so-called for-profit sector has been unfairly targeted, and as such, deserves a reprieve. The first is the Obama-era gainful employment rule; the second is the 90/10 rule.

**Gainful Employment (GE).** The Department of Education is working to overhaul the "gainful employment" regulation put in place during the Obama Administration that especially targeted for-profit colleges, requiring their graduates to achieve government-defined debt-to-earnings income ratios. The Trump Administration's Education Department suspended the rule, which had gone into effect in July 2015, and is not applying it while the agency works to rewrite, or eliminate, it.

Under the rule, career colleges (and some certificate programs at non-profit colleges) were to lose access to federal student loans and grants if their graduates had debt-to-earnings ratios above a defined percentage of their income (12 percent of a graduate's total earnings or 30 percent of his discretionary income). Programs that failed the measure twice in a three-year time span were to lose access to federal funds.[1] This was a government-knows-best policy that, had it continued, would have limited choices for students.[2]

The GE rule was clearly designed to affect certain types of schools, as it was not applied evenly across all institutions. Degree programs at traditional four-year colleges, for example, were exempt from it. This suggests that the rule's application to for-profit schools was more about politics than prudent policy.

For example, default rates among students at community colleges are comparable to those at career colleges, despite the fact that students leave community colleges with less debt, on average,[3] meaning they should be expected to have lower default rates. And although it is true that career and vocational colleges are more likely to have lower loan-repayment rates than traditional four-year colleges, as Jason Delisle and Preston Cooper point out, the majority of students who attend a college with a low loan-repayment rate attend a public college.[4] That is the case because only 9 percent of undergraduate students attend a for-profit college, while 74 percent attend public universities.[5]

When private colleges are included in the mix, nearly two-thirds of students who attend schools with very low repayment rates (below 25 percent) attend public and private colleges, not for-profit schools.[6] With regard to certificate programs, there is a 25 percentage point gap in favor of for-profit colleges when it comes to certificate completion. While just 45 percent of students pursuing a certificate at a public college had earned it within three years, that figure rises to 70 percent for students at for-profit colleges.[7]

Degree programs at public and private nonprofit colleges were exempt from the GE rule, meaning that, according to higher education scholar Preston Cooper, five-sixths—or more than 80 percent—of students attended schools that were insulated from the regulation. As he explained, "treating educational programs differently in regulation on the basis of credential type or the college's tax status not only fails to protect a majority of students, but gives exempted programs an unearned leg up at the expense of programs subject to the rule."[8]

Many students seek out for-profit colleges or vocational training as a means of establishing a meaningful, long-term career in a critical field. The government should not penalize them for that choice. The GE rule could hurt entrepreneurs if they have a bad year trying to get a start-up business off the ground; could unfairly penalize schools that serve a higher proportion of women, many of whom may exit the workforce as they start a family; and could disproportionately affect low-income and minority students, many of whom choose career and technical colleges.[9]

Senator Mike Enzi (R–WY), then the ranking Member of the Senate Health, Education, Labor and Pensions Committee, noted in a 2011 statement on the GE rule that "many of these affected schools provide important training for those who choose to become mechanics, plumbers and electricians. This rule uses a heavy hand against these schools and makes it more difficult for Americans to access educational opportunities."[10]

**90/10 Rule.** The 90/10 rule is another regulation that targets the career college sector. It stipulates that no more than 90 percent of an institution's revenue may come from federal funding. The rationale behind the rule, which dates to 1992 and began as an 85/15 rule, has merit: Quality higher education institutions should be able to secure non-federal funding from a variety of sources. Low-quality providers are unlikely to attract private financing or philanthropic funding, and as such, federal taxpayers should not be on the hook for funding programs of questionable value.

Yet, as with gainful employment, the 90/10 rule only applies to the for-profit sector. As Mark Kantrowitz found, if the federal government applied the 90/10 metrics to all schools of higher education, which would be the

fairer application of the rule, 80 percent of public two-year colleges would fail the test, as would 40 percent of public four-year colleges.[11]

Although the percentage of colleges that would fail the 90/10 rule if applied evenly is still a matter of dispute,[12] it is a proportion above zero—prima facie evidence that the rule as currently applied allows some "traditional" schools off the hook, while penalizing similarly situated for-profit schools.

There is also a debate about whether this rule is even an accurate measure of school quality, or instead serves as a proxy for poverty, reflecting the proportion of students who need financial aid to offset the cost of tuition. The rule could have led to other unintended consequences, as broad regulations tend to do. It may have encouraged universities to raise their tuition in order to increase the denominator in the 90/10 calculation and appear less dependent on federal subsidies.

**Impact on the Military.** Currently, the benefits provided to military service members and veterans through programs such as the G.I. Bill are not counted in that 90/10 rule. Some want to count this tuition assistance, which the Defense Department uses as a recruiting tool, in the "90" of 90/10. Eighty-five percent of active-duty service members who receive the earned benefit of tuition assistance take some online courses.[13] Counting these earned benefits in the 90/10 rule could be devastating for higher education access for service members, who could be dropped by schools in order to avoid a bias on the school's 90/10 numerator.

If gainful employment and 90/10 are good policies, they should be applied to all types of universities, regardless of tax status, not just to the for-profit sector. As Education Secretary Betsy DeVos said in a speech in 2017, "Financial aid should not be withheld simply because [students] pursue a non-traditional path. Politicians and bureaucrats should not dictate to students when and how they can learn."[14] Better yet, instead of layering on more and more regulations to contain a taxpayer exposure problem created by Washington in the first place, Congress should cut—or at the very least significantly cap—federal student loans.

## Regulations Aimed at the For-Profit Sector Ignore Broader Challenges Facing Higher Education

Poor student outcomes are found across the higher education sector, and should not be excused for certain schools based on their tax status. Both the gainful employment rule and the 90/10 rule ignore larger issues affecting all of higher education today, not the least of which is the $1.5 trillion in outstanding student loan debt to which taxpayers are exposed.

Indeed, 57 percent of Americans say that higher education is not a good value proposition, and 75 percent say that it is too expensive for average Americans to afford, according to a Pew Research Center study conducted in 2011.[15] One-third of college graduates are "underemployed" in jobs that do not require a bachelor's degree,[16] suggesting, as economist Richard Vedder puts it, that American taxpayers are "mal-invested."[17] Vedder explains it this way: "[I]t takes more resources today to educate a postsecondary student than a generation ago.... Relative to other sectors of the economy, universities are becoming less efficient, less productive, and, consequently, more costly."[18]

Instead of trying to centrally plan higher education through regulations that fail to address deeper systemic problems, Congress should eliminate the PLUS loan program and place aggregate caps on the Direct Loan program, in order to make space for private lending to re-emerge. If regulations are applied, they should be applied evenly to all universities, regardless of a school's tax status. Congress cannot regulate its way to higher education quality. Fostering excellence and driving down costs require structural reforms to the sector, not the least of which is cutting off the open spigot of federal aid to universities.

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# Endnotes

1. Andrew Kreighbaum, "Agencies at Loggerheads Over Gainful-Employment Data," Inside Higher Ed, December 6, 2018, https://www.insidehighered.com/news/2018/12/06/education-department-says-data-dispute-behind-failure-enforce-gainful-employment (accessed June 19, 2019).
2. The GE rule was only in effect for one and a half years, likely not long enough to have a noticeable impact.
3. Daniel J. Bennett, "Gainful Employment Rules Play Favorites," *The New York Times*, June 5, 2011, https://www.nytimes.com/roomfordebate/2011/06/05/how-to-regulate-for-profit-colleges/gainful-employment-rules-play-favorites (accessed June 19, 2019).
4. Jason D. Delisle and Preston Cooper, "Scrutinize All Colleges, Not Just For-Profits," *National Review Online*, March 20, 2018, http://www.aei.org/publication/scrutinize-all-colleges-not-just-for-profits/ (accessed June 19, 2019).
5. Ibid.
6. Ibid.
7. Preston Cooper, "Public Colleges Aren't Better Than For-Profit Colleges," Manhattan Institute, November 21, 2016, https://www.manhattan-institute.org/html/public-colleges-arent-better-bet-profits-9544.html (accessed June 19, 2019).
8. Preston Cooper, "Nix Gainful Employment and Start Over on Higher Education Accountability," *Forbes*, August 22, 2018, https://www.forbes.com/sites/prestoncooper2/2018/08/22/nix-gainful-employment-and-start-over-on-higher-education-accountability/#5294c52a26af (accessed June 19, 2019).
9. Harry C. Alford, National Black Chamber of Commerce, testimony before the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, Committee on Oversight and Government Reform and the Subcommittee on Higher Education and Workforce Training, Committee on Education and the Workforce, U.S. House of Representatives, July 8, 2011, https://www.govinfo.gov/content/pkg/CHRG-112hhrg71822/pdf/CHRG-112hhrg71822.pdf (accessed June 20, 2019).
10. Mike Enzi, "Enzi Says DOE Rule Is One More Example of Heavy Handed Regulation Harming America's Economy," U.S. Senate Committee on Health, Education, Labor, and Pensions, July 3, 2011, https://www.help.senate.gov/chair/newsroom/press/enzi-says-doe-rule-is-one-more-example-of-heavy-handed-regulation-harming-americas-economy (accessed June 19, 2019).
11. Mark Kantrowitz, "Student Aid Policy Analysis: Consequences of the 90/10 Rule," Edvisors, August 19, 2013, https://www.edvisors.com/media/files/student-aid-policy/20130819-90-10-rule.pdf (accessed June 19, 2019).
12. Vivien Lee and Adam Looney, "Understanding the 90/10 Rule: How Reliant Are Public, Private, and For-Profit Institutions on Federal Aid?" The Brookings Institution, January 2019, https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf (accessed June 19, 2019).
13. Dawn Bilodeau, Chief, DoD Voluntary Education, DoD Voluntary Education Program Update, United States Department of Defense, March 2017, https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5abb8d5e575d1fb78ed47a67/1522240883455/CCME2017_VolEdUpdate_3Mar17_final.pdf.pdf (accessed June 20, 2019).
14. Prepared Remarks from U.S. Secretary of Education Betsy DeVos to Federal Student Aid's Training Conference for Financial Aid Professionals, U.S. Department of Education, November 28, 2017, https://www.ed.gov/news/speeches/prepared-remarks-us-secretary-education-betsy-devos-federal-student-aids-training-conference-financial-aid-professionals (accessed June 19, 2019).
15. Richard K. Vedder, *Restoring the Promise: Higher Education in America* (Oakland, CA: Independent Institute, 2019), p. 29.
16. Jaison R. Abel, Richard Deitz, and Yaquin Su, "Are Recent College Graduates Finding Good Jobs?" Federal Reserve Bank of New York, *Current Issues in Economics and Finance*, Vol. 20, No. 1 (2014), https://www.newyorkfed.org/medialibrary/media/research/ current_issues/ci20-1.pdf (accessed June 19, 2019).
17. Vedder, *Restoring the Promise: Higher Education in America*.
18. Lindsey M. Burke, "No, Tax Reform Will Not 'Decimate' Colleges or 'Hurt' Students," The Daily Signal, November 29, 2017, https://www.heritage.org/taxes/commentary/no-tax-reform-will-not-decimate-colleges-or-hurt-students.