

# GAINFUL EMPLOYMENT 101



## INTRODUCTION

Is higher education worth the investment? While some factors—the cost of attendance and time to earn a degree or credential—are clear, the outcomes students can expect after completing higher learning programs are difficult to determine. Gainful employment is one tool that, if implemented properly, would allow potential students access to the information they need to make informed decisions about higher education and what they can expect in return.

Currently, the Higher Education Act (HEA) includes several provisions to hold institutions that receive federal student aid accountable for student outcomes. These measures include institutional cohort default rates—which measure the percentage of students who default on their federal student loans—and requirements that the institution have an accreditation from an accreditor that is recognized by the U.S. Department of Education (ED).

The HEA also requires that all career education programs receiving federal student aid “prepare

students for gainful employment in a recognized occupation.” While the HEA does not define what this means, the Obama Administration in 2014 implemented regulations related to gainful employment, which applied to all programs at for-profit institutions of higher education (IHEs) and certificate programs at public and nonprofit IHEs. Although the Trump administration rescinded these regulations, the Biden administration recently announced its intent to create a revised version of the gainful employment rule.

Both the Biden administration and the Obama administration before it have cited the concept of gainful employment as an important tool to ensure that students attending college receive the education and skills necessary to obtain employment that provides a wage sufficient to allow the student to pay back their loans. This paper will provide background on the gainful employment requirements in the HEA, the history of regulatory efforts on the topic, and what future regulatory efforts we may and should see from the Biden administration on this topic.

## WHAT IS GAINFUL EMPLOYMENT

Sections 101 and 102 of the HEA provide the requirement that all programs at all for-profit IHEs and programs of one year or less (sometimes called certificate programs) at public and nonprofit IHEs lead to “gainful employment in a recognized

occupation.” This phrase had existed in the HEA for many years before the Obama administration, but it had not been specifically defined by Congress or the subject of any substantial interpretation or enforcement action by ED.

# HISTORY OF GAINFUL EMPLOYMENT REGULATORY EFFORTS

The Obama administration undertook two efforts to establish regulations to define and place requirements on programs to which the HEA's gainful employment requirements applied. In May 2009, ED began a negotiated rulemaking process to develop regulations related to several program integrity issues, including gainful employment. The negotiated rulemaking effort did not reach consensus, so ED proceeded to issue a notice of proposed rulemaking (NPRM) in July 2010 and a final regulation in October 2010. The rule required programs to meet two debt-to-income ratios<sup>1</sup> and a loan repayment rate metric. In 2012, a federal district court struck down the regulation citing that ED had failed to adequately justify the threshold required under the rule's loan repayment rate.

In 2013, ED initiated a second negotiated rulemaking process after the 2012 court decision. This negotiated rulemaking process also did not reach consensus. The Department subsequently published an NPRM in March 2014 and a final regulation in October 2014. This rule did not require programs to meet a loan repayment threshold but did require programs to meet one of two debt-to-income metrics. Much like the 2010 rule, the two debt-to-income metrics classified programs as "passing", "in the zone", or "failing." Programs that failed for two out of three years or were in the zone for four years would lose their ability to participate in federal student aid programs. IHEs also had to provide certain disclosures related to programs to which the regulation applied, including a warning if the program would be at risk of being ineligible for federal aid and outcome related measures such as job placement and loan repayments rates, median loan debt to earnings and annual earnings for program completers. The 2014 regulation was also challenged in court, but the rule was upheld, and it went into effect in July 2015.

## DISCRETIONARY EARNINGS RATE (*earnings after discretionary income*)

### Passing

loan payments less than or equal to 20%

### Zone

loan payments greater than 20%, less than 30%

### Failing

loan payments greater than 30%

## ANNUAL EARNINGS RATE (*straight annual earnings*)

### Passing

loan payments less than or equal to 8%

### Zone

Loan payments greater than 8%, less than 12%

### Failing

loan payments greater than 12%

The Obama administration's goal in promulgating these regulations was to ensure that students were not borrowing to obtain degrees and certificates that would not lead to earnings that enabled them to repay their loans. The Obama-era ED cited the low wages earned by graduates of many programs of higher education.

In June 2017, ED, under the Trump administration, initiated a third gainful employment negotiated rulemaking effort. While much of the discussion by negotiators, including those representing ED, was focused on preserving some reporting on the 2014 rule's debt-to-income metrics, ED ultimately rescinded the 2014 regulation in July 2019 with an effective date of July 2020.

<sup>1</sup> A debt-to-income ratio is monthly debt payments divided by gross monthly income. This is commonly used by lenders to measure the ability to manage the monthly loan payments.

# UPCOMING GAINFUL EMPLOYMENT UNDER THE BIDEN ADMINISTRATION

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In May 2021, the Biden Department of Education published a notice in the Federal Register indicating their intent to conduct a gainful employment negotiated rulemaking effort. The COVID-19 pandemic has caused transformational shifts in our nation's economy which will undoubtedly affect the ability to gain jobs in certain fields. Regardless of what path ED takes on debt-to-earnings, employment, value, and other metrics, a strong gainful employment regulation is critical to ensure once again that students do not borrow to attend programs that will not produce sufficient earnings.

As we move beyond the COVID-19 pandemic and as IHEs can operate programs and serve students in a more "normal" fashion, it is important to keep in mind that any metric that relies on loan repayment rates will be impacted by the current moratorium on student loan payments that was extended by the Biden administration through the end of September 2020. Even with these pandemic-related cautions, ED must seek to establish a strong gainful employment rule. Student outcomes are too important to be put on hold indefinitely, and the status quo of high debt and low earnings at certain certificate and degree programs will hold back students and the nation's economic recovery.

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