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Education Dept. Will Release Stricter Rules for For-Profits but Delays One on 'Gainful Employment'

By Kelly Field and Jennifer Gonzalez

Washington

After an intense lobbying effort by for-profit colleges, the Education Department announced Tuesday that it will postpone the release of a rule that proprietary institutions said would shutter thousands of their programs.

The rule, which would cut off federal student aid to programs whose graduates carry high student-loan debt relative to their incomes, is one of 14 that the department and college stakeholders have been negotiating over the past eight months. The other regulations, including one that would tighten a ban on incentive compensation for college recruiters, will be made public Friday.

In a call with reporters Tuesday, an Education Department official said the agency still plans to hold for-profits accountable for preparing their graduates for "gainful employment," but needs more time to develop an appropriate measure of that outcome. The official said the proposal will be released later this summer, and will most likely be included in a package of final rules due out in November.

"We have many areas of agreement where we can move forward," Arne Duncan, the U.S. secretary of education, said in a statement. "But some key issues around gainful employment are complicated, and we want to get it right, so we will be coming back with that shortly."

The delay gives for-profit colleges more time to fight the department's proposal to bar aid for programs in which a majority of students' loan payments would exceed 8 percent of the lowest quarter of graduates' expected earnings, based on a 10-year repayment plan. The colleges have already spent hundreds of thousands of dollars [pushing an alternative](#) that

would require programs to provide prospective students with more information about their graduates' debt levels and salaries.

Their lobbying and public-relations blitz has met with mixed success. While the department has not yet abandoned plans to measure graduates' debt-to-income ratios, the rules that will be released Friday would require programs to disclose their graduation and job-placement rates and median debt levels—the approach favored by for-profits.

A Welcome Delay

Trace A. Urdan, an analyst with Signal Hill Capital Group, said the delay in releasing the rest of the rule suggested that "the department has heard the message from industry and Congress, and that there was some overreaching."

"Clearly, trying to gather more data before proceeding is being responsible," he added.

For-profit colleges have complained that the department has refused to release the data it used to justify drafting the rule, and have questioned whether they even exist.

The fight over gainful employment comes amid increased federal scrutiny of the for-profit sector, which educates a growing share of students and is highly dependent on federal student aid. On Thursday, the education committee of the U.S. House of Representatives will hold a hearing to examine whether accrediting agencies are doing enough to ensure that students studying online are getting an adequate amount of instruction for the degrees they earn. The hearing will focus on a recent [report](#) by the Education Department's Office of Inspector General that [questioned](#) the decision of the Higher Learning Commission of the North Central Association of Colleges and Schools, one of the nation's major regional accrediting organizations, to approve accreditation of American InterContinental University, a for-profit college owned by the Career Education Corporation. The Senate education committee follows with a hearing next week focused on the growth of the for-profit sector and the risks that may pose to taxpayers.

In a statement issued Tuesday, the chairman of the Senate committee praised the proposed rules. "The federal government must ensure that the more than \$20-billion in student aid that these schools receive is being well spent and students are being well informed and well served," said Sen. Tom Harkin, Democrat of Iowa. "For-profit colleges must work for students and taxpayers, not just shareholders."

Meanwhile, a top Republican on the panel, Sen. Lamar Alexander, of Tennessee, called the disclosures that would be required by the rules that will be released on Friday "much better than the first approach on gainful employment." Mr. Alexander, a former secretary of education, had threatened to offer an amendment to withhold the funds needed to put the rule into effect if the department followed through with its original proposal.

"Secretary Duncan is focusing on a real problem," he said. "Some students are borrowing too much and not getting enough value for what they are paying."

Tougher Stance on Recruitment

But if the department is showing signs that it may soften its stance on gainful employment, it has dug in its heels on another controversial issue: recruiter compensation. During negotiations over the rules, the department proposed striking a dozen "safe harbors" from a ban on compensating recruiters based on student enrollment. It followed through with that proposal in the rules due out Friday, while promising to provide guidance on what is—and isn't—allowed under the ban.



John Gurzinski for The Chronicle

Vendors at last week's annual meeting of the Career College Association advertise services that help for-profit colleges with marketing and enrollment management—activities that would receive closer scrutiny under new federal rules.

Congress outlawed incentive compensation in 1992 following reports that some trade institutions were enrolling unqualified students to receive their federal student-aid dollars. By prohibiting commissions, lawmakers hoped to discourage recruiters from signing up students for courses they couldn't handle. Under the law, colleges may not provide "any commission, bonus, or other incentive payment" to recruiters or admissions officers based on their success in securing enrollments or financial aid.

A decade later, the Education Department convened a committee to clarify the rules, which for-profit colleges had long complained were unclear and ambiguous. When the panel disbanded without reaching consensus, the department took action on its own, issuing regulations that outlined the 12 "safe harbors" from the law.

In the years since the safe harbors were created, some of the largest for-profit institutions have come under scrutiny by state and federal regulators, and a number of former recruiters have filed lawsuits under a whistle-blower law, the False Claims Act, that accuse colleges of improperly compensating recruiters. In one of the most high-profile lawsuits, the University of Phoenix recently [agreed](#) to pay \$67.5-million to settle a False Claims lawsuit filed by two former recruiters.

Pauline Abernathy, vice president for the Institute for College Access & Success, said the changes in the proposed rule "appear to bring the department's policies more in line with federal law banning incentive compensation."

"These loopholes have led to high-pressure and deceptive sales tactics that can leave vulnerable consumers with staggering debt and no way to pay it back," she said.

But Harris N. Miller, president of the Career College Association, said he was disappointed that the department didn't include specific guidance in its rule.

"This is going to harm students and make lawyers very happy," he said.

Most of the other regulations in the package to be released on Friday are aimed at protecting students and safeguarding taxpayers' investment in federal student aid. In many cases, the language mirrors agreements reached during the rule-making sessions.

They include rules that would:

- Require colleges to evaluate the validity of a student's high-school diploma if either the college or the secretary of education believes that a closer examination of the diploma is warranted.
- Strengthen the department's authority to take action against institutions engaging in deceptive advertising, marketing and sales practices.
- Clarify the states' responsibility in approving and monitoring postsecondary programs.
- Define a credit hour and establish procedures for accrediting agencies to determine whether a college's assignment of a credit hour is acceptable. The proposal also allows for a credit hour to be measured through learning outcomes instead of the customary use of "seat time."

The public will have 45 days to comment on the rules, which are expected to be finalized by November 1 and take effect in July 2011.

Comments

1. rockhane - June 16, 2010 at 01:09 am

<Comment removed by moderator>

2. feudi - June 16, 2010 at 07:46 am

It is laudable that the Department of Education is at least trying to address the issue of student debt. I do not understand why it is being limited to for profit schools though. Seems to me the biggest offenders are the high cost schools regardless of their legal status. I also wonder how the feds are going to get useful accurate data on the employment outcomes of its graduates.

3. director19 - June 16, 2010 at 08:41 am

All colleges and universities need to be held to the same standards. Unfortunately, there is no way to provide a level playing field when many colleges & universities are heavily subsidized by public funds or endowments.

4. handley - June 16, 2010 at 08:57 am

Well said, feudi. A dollar of student debt is a dollar of student debt, regardless of the tax status of the institution the student attended. My two kids, both recent grads of non-profit institutions, are struggling with their student debt. Is it somehow noble debt because their schools are non-profit? It doesn't feel any different to them.

Many folks at traditional colleges and universities may be surprised to learn that institutions in the non-profit sector already gather comprehensive data about employment of their graduates. This is one of several areas in which national accreditation is more rigorous than regional accreditation. Nationally accredited schools whose grads don't get jobs are already held accountable by their accrediting bodies. I would recommend to those who are scornful of national accreditation that they take the time to read the Standards of Accreditation of ACCSC or ACICS, the two predominant national accrediting bodies. It might change your mind about transfer of credit. These are real schools.

As an administrator at a regionally accredited for-profit college, it is clear to me that congressional emphasis on accountability has been pushing the regionals toward more data-driven assessment of institutions. I have no problem with any push for accountability as long as it makes provision for the individual missions of the institutions and is applied equitably to all sectors. The gainful employment metric, if applied to all colleges and universities, would be dead in a day.

5. unabashedmale - June 16, 2010 at 09:04 am

Looks like having Bill Clinton as keynote speaker at the big For-Profit conference in upstate New York paid off big time.

Expensive, but certainly worth it.

6. 22063319 - June 16, 2010 at 09:36 am

Consumer information requirements are a sham because our "consumers" are not attuned to such published information and will not pay attention. Further, the worst of schools have the greatest incentive to present the information in a way that meets the technical requirements while having minimal impact.

However, cutting off programs in which average standard 10 year repayment amounts exceeds 8% of lowest quarter average income is unreasonably strict. If such a standard were applied to the other end of the "vocational training" spectrum, such as health professions and law schools, many of them would be shut out. More reasonable would be an 8% - 10% standard based on whatever extended repayment plan would be available at a given debt level.

7. jmalstrom - June 16, 2010 at 10:07 am

I'm sorry, I have no sympathy for the for profit institutions - they underpay their faculty and overcharge their students. Their only accountability is to a corporate board whose primary metric is the bottom line. They attempt to buy out the accreditation of small liberal arts schools so that they can be accredited without having to go through the same process everybody else goes through. Face it the vast majority of student debt is held by those who are going to for-profit institutions.

8. educationfrontlines - June 16, 2010 at 10:43 am

The last proposal that "...also allows for a credit hour to be measured through learning outcomes instead of the customary use of 'seat time'" will undermine the value of bonafide coursework.

Replacement of the Carnegie Unit for K-12 and the credit hour for college is actually an attack on professors' academic jurisdiction, ignores teachers' internal testing as if it doesn't exist, and moves us toward teaching to an external test.

The K-12 Carnegie Unit developed in 1906 is based on 120 hours in one course meeting 4 or 5 times a week for 36-40 weeks. The college credit hour counts the number of class hours a course meets per week for one semester, with appropriate multipliers for labs and practica.

Both units are attacked by outcomes-based educationists as mere "seat time." What an insult to good teachers! No student passes our courses on seat time. Fail our quizzes and tests and you will have to start "seat time" over again. But, the outcomes folks who have managed to de-professionalize K-12 education by discounting the teachers' tests and moving to external high-stakes tests are now taking aim at university academics as well. The call for ending "seat time" credits is a call to move from your internal tests to standardized external tests.

At the K-12 level, this was mainly driven by having too many out-of-field teachers where schools could not trust their grades. (The high-stakes high school graduation exams are in the coastal and southern states where the rate of out-of-field teachers is high.)

At the university level, it is driven by online programs that cannot demonstrate student presence or even that the students "present" online are who they say they are.

It does take time to learn, and good professors calibrate their coursework to build on that time. The outcomes-advocates reduce everything to a test.

The problem is clearly shown in law and medicine. You cannot sit for the bar exam until you have finished law school. And you cannot sit for the medical boards until you have finished medical school. Simply, those exams are mere dipsticks that measure a small portion of knowledge that can be approximated on a sit-down test. But you do not learn to argue a case or conduct surgery

by test prep, but by extensive guided course work in class and lab and that takes "seat time."

The proposal to discard "seat time" is a proposal to reduce all education to this superficial "test prep." In 1099AD, the Confucian philosopher Chu Hsi stated: "A scholar must know the difference between an education and an examination."

Right now, I can drive across my state and hear radio advertisements offering a 3-credit hour general ed course to be completed in several weekends, taught by teachers who lack even a masters in the field. If we are to avoid getting into "gas wars" where "institutions" compete for offering the "cheapest" credits, programs and degrees, keeping the Carnegie Unit (K-12) and credit hour are vital. They are not mere "seat time" because teachers give the relevant and rigorous internal tests that make American education diverse and individualized. External tests treat students as uniform raw material coming in, and expect us to produce uniform products going out. Instead of responsible professionals, we will become intellectual assemblyline workers. Just look at American K-12 education.

John Richard Schrock

9. bry3bob - June 16, 2010 at 11:32 am

Requiring the consumer disclosures on a website is a good start, but it would much more beneficial to students and their families if these disclosure were provided at several other points in the admission and enrollment process. Perhaps these disclosures should be required in all marketing materials, as well as provided prior to students being allowed to enroll (a sign here that you received and understand this information requirement).

Daniel L. Bennett

10. intered - June 16, 2010 at 11:57 am

There is much on this topic of which Mr. Schrock is apparently ignorant, including:

- He is concerned that proposed changes to focus on outcomes will undermine the validity of instructor assessment. The majority of instructor assessments are based on multiple-choice examinations of which approximately half of the items are invalid by minimal measurement science standards. The validity profile is worse for essay and similar examinations. Coefficients of correlation between instructor grades and independent measures of proficiency are generally in the 0.6 range or lower. Valid, authentic assessment takes place in less than 10% of the nation's college classrooms. This is not an area in which a scientifically knowledgeable person would launch a defense.

- Mr. Schrock would have us embrace the 1906 Carnegie unit in the face of: (a) a society in which one-quarter of higher education credits are now earned online and the rate of increase is still accelerating. (b) higher education is finally, albeit still reluctantly, getting around to examining the efficacy of its work product as outcomes and impact, rather than relying on its inputs as a evidence of quality as Mr. Schrock still does. (c) the last 50 years of measurement and learning sciences have provided methods for substantially and reliably adapting education to learners and reducing time to proficiency: good pedagogy and measurement in 2010 can achieve superior outcomes in half the time it took to get inferior outcomes in 2010 (never mind, Mr. Schrock wants students kept in their seats for the full time, as conceived in 1906 to conform to our farming workforce needs).

- Mr. Schrock thinks competition, even "wars" among competing education providers is a bad thing. I think it is just what we need. Yes, there will be excesses, errors, omissions, and even a few charlatans getting by here and there. How does that compare to the current situation? Well, there is quite a bit of that kind of thing going on right now (dragging a four year degree out to 5.5 years because your faculty refuse to develop calendars to serve students is one handy example). Although it will take time, under intense competition, product variation will eventually exteriorize and the consumers will benefit. They are already benefiting on price and time-to-degree which translates into tens of thousands of dollars per six month advantage.

- The comments about online education might bring no more than a smirk were it not for the fact that this profound lack of understanding is widespread among those who have never created, managed, or taught in robust online environments. I find it shameful that professional educators could be so ignorant of the empirical realities of online education much less the results of a good many scientific studies.

It is easy enough to dismiss the comments of Mr. Schrock as someone who is stuck in the past. The problem is that the lack of knowledge, understanding, and insight reflected in this view is echoed by key individuals in the Department of Education whose notions of higher education have been determined by their personal experiences at elite private colleges. The have little insight into the implications of such facts as: (a) half of the nation's college students are now adults, most of whom work and have family responsibilities, are accustomed to making responsible consumer choices, and seek education for reasons different from those that motivate typical 17 year-olds, (b) most universities and colleges don't want and won't admit the underclass; the community and career colleges serve them well but these students bring special challenges to gainful employment that will, in the best of cases, produce employment statistics different from those of middle-class students, (c) no career-oriented programs would fail gainful employment tests faster than four year education degrees or five year social work degrees at a private faith-based colleges, or ethnic studies or women's issues degrees at practically any college. Should we be concerned about that?

The lacunae in the current thinking about gainful employment would, if applied, lead to substantial inequities. Secretary Duncan demonstrates superior leadership and discipline in wanting to get this right, especially in keeping some of his "let them eat cake" staffers in check. I would only encourage him to cease making any distinctions based on institutional charter. These regulations, if they apply at all, should apply to all institutions of higher education.

- Robert W Tucker

11. recurver - June 16, 2010 at 01:58 pm

"Valid, authentic assessment takes place in less than 10% of the nation's college classrooms"--this is a thing that does not exist in the first place.

The most sure method to assure good educational practices is to select people to be teachers who are most like what we want teachers to be, then train them the best we can, set up a governing board run by teachers, then get out of their way and let them do their thing.

Politicians and mass-assessment gurus have no place in education.

For profit is flawed because the University cannot bow to the metric of today, but adhere to something beyond that, something more than the world around it. This is the only way education can pull society to look beyond the ordinary ideologies of every day politics.

The long and the short of the much of this debt is the urge for change--that is often simply self-serving--and the intransigent appeal to the past.

Several facts are clear, both the old system and the new system have serious problems. However, the older model had something at its core that WORKED really well and the new model has some serious flaws: First, the foolish obsession for efficiency (3 year BAs have been possible at most institutions for decades, why all the hubbub now?); imagine if every undergraduate finished with their first choice of major and they didn't adjust mid-course as their personality and the world changed. Would that be a better or worse situation? Second, the move to place the student at the center of the university. This doubly foolish development puts the least qualified individuals, students and their parents, in charge of an incredibly complicated process/event in college educated adults' lives. Students are now ordering their education delivered to their home along with the Italian Sub, Greek salad, pizza, and soda. More and more they are influencing the size and content of their education. This is a terrible development in the higher education system that undermines the very foundation of a college education.

This is just to start.

However, while the old system worked in producing the most dynamic and robust university system the world has ever known, stasis is death.

Change is good.

But these ideology driven changes are decidedly not.

12. anonymous3434 - June 16, 2010 at 03:24 pm

Don't these rules apply to all post-secondary institutions (public, profit, not-for-profit)? In the Education Dept.'s notice to publish in the Federal Register (see: <http://www2.ed.gov/policy/highered/leg/hea08/nprm-6-18.doc>), the charts at the end note various provisions that apply to all types of colleges. For example, all institutions will have to justify credit hours. What will this do to institutions that are still on a 4-credit system, which requires their students to only take 8 classes per academic year to maintain FT enrollment? How will they prove that their students taking 8 classes per year do as much or more work at students elsewhere in the 3 credit system taking 10 classes per year?

Also, even if non-profs and public universities aren't required to publish debt levels and employment rates, won't they be disadvantaged if they don't, especially against for-profits that can advertise high rates of placement?

Whatever happens to for-profits will also happen to non-profits--directly by rulemaking or indirectly through marketing pressures. Overall, these types of consumer protections are a good start.

13. jesor - June 17, 2010 at 12:06 pm

I'm in agreement that the type of educational objective sought by the student should be considered rather than the governance of the instituion in determining accountability based on employability. Programs and schools that advertise themselves on career-based motivations (i.e. "get the training you need for a job in the culinary arts!") should be held to a job placement standard since that's what they're saying they will do (a basic principle of accreditation). Programs that are designed for citizenship, liberal arts, graduate school placement, etc. should all be held to that particular standard. Theoretically the accrediting bodies are the ones that should be doing this since if an institution doesn't follow through on its promises then it should have its accreditation and ability to receive aid revoked. Apparently that system isn't working, and the for-profit sector is paying the price for it, rightly or wrongly, there's no published data saying so. I will say that given the amount of on-the-job training required to enter certain fields and the lack of necessity for a degree (i.e. culinary arts where you start as a line cook or dishwasher regardless of your degree), having students pay for degrees in those areas does seem like a scam.

14. intered - June 17, 2010 at 03:02 pm

@jesor,

Absolutely! The momentum that was intended to slow down the for-profits can be exploited to require this kind of accountability from all institutions wherein there is an implied contract, explicit or tacit, for a defined outcome beyond acculturation, personal development, and the like.

Statistics on relevant gainful employment should be published as part of the marketing material for all professional programs (e.g., education, counseling, architecture, law enforcement, marketing, and even 18th Century literature where the goal is college teaching). Similar statistics should be available for graduate school admissions, etc. Personally, I am against setting enforced target levels. If the statistics are easily seen and understood, especially in the context of meaningful norms and other bases of comparison, prospective students can make informed choices.

15. drmhph - June 17, 2010 at 03:25 pm

The need for regulations ensuring that institutions marketing themselves based on career-focused training and job placement actually place students in in-field occupations is understandable (and already taking place). However, using a metric that is based on debt levels and income is dangerous for higher education, in general. Linking the two as a metric to judge program viability implicitly suggests that educational programs should be valued based on their potential to create income. This would appear to run counter to President Obama's push for students to get involved in careers involving basic scientific research (which may pay lower then careers in finance, management, etc.).

The other issue at hand centers on the nature of the incoming student population. The fact that for-profit career colleges have higher levels of student debt is intricately related to their tendency to have student populations free of parental support (i.e., adult students with families, etc.).

16. rjonas01 - June 17, 2010 at 03:36 pm

Education can be profitable to both student and school. They are not mutually exclusive if operated correctly.
Rjonas

17. rjonas01 - June 17, 2010 at 03:39 pm

To:Daniel L. Bennett

Your comments are valid ones. True disclosure in all for profit and not for profit schools proves to an integral point of enrollment.

Rjonas