GAINFUL EMPLOYMENT AND ELIGIBILITY NPRMS: POTENTIAL IMPACT ON COMMUNITY COLLEGES

JUNE 8, 2023

HISTORY OF GAINFUL EMPLOYMENT

- June 2011: Obama administration publishes first gainful employment rule; had not been regulated previously
- July 2012: GE rule struck down by U.S. District Court over "repayment rate" metric
- October 2014: ED publishes new GE regulations, which were upheld in subsequent lawsuits
- October 2017: Trump administration stops enforcing GE rule
- June 2019: ED formally rescinds GE rule
- January 2022: Biden administration begins broad negotiated rulemaking with GE on the table
  - AACC represented by two negotiators

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IMPETUS FOR REGULATIONS

- Biden's ED, like Obama's, has strong regulatory propensity and Congress is not acting in relevant areas
- For-profits still in ED's crosshairs and would be impacted most intensively
- Debt "crisis"/cancellation has created calls for greater accountability across all higher education
- Reg follows revised 3rd party servicer guidelines, Low Value Program RFI

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GE FORMULA -- DEBT TO EARNINGS

- For community colleges, GE program = Title-IV eligible certificate and other non-degree programs
- Annual debt-to-earnings is the ratio of a program's annual loan payment amount to completers' median annual earnings
- Discretionary debt-to-earnings is the percentage of a program's annual loan payments compared to completers' discretionary earnings (Median Earnings – 150% of Federal Poverty Guideline)
- Program fails if annual D/E rate is above 8% and discretionary D/E rate is above 20%
- If it isn't possible to calculate D/E rates for an award year, the program remains in the same status as the previous award year for up to four years

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EARNINGS PREMIUM

- Compares median annual earnings of completers to an earnings threshold
  - Program passes if completers' earnings exceeds threshold
- Threshold is the median annual earnings for an adult ages 25 to 34 with only a high school diploma in the state where the college is located (or nationally if fewer than 50% of students are in that state)
  - Earnings threshold will vary by state but is about $25,000 nationally
- If it isn't possible to calculate the earnings premium for an award year, the program remains in the same status as the previous award year for up to four years

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WHAT HAPPENS IF A PROGRAM FAILS A METRIC?

- Programs that fail either or both metrics in a single year will be required to provide a warning to students that the program could be at risk of losing federal aid eligibility
- If a program fails the same measure for two out of three consecutive years, it loses Title IV eligibility
  - Three years must pass before program can re-seek eligibility
  - Institutions can only appeal a program eligibility termination action on the basis that ED miscalculated the D/E rates or earnings premium

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PREDICTED OUTCOMES

- Most community colleges do not have certificate programs that would fail either the D/E or earnings metrics
  - 93% of two-year public institutions have zero enrollment in programs that would fail GE metrics
- Metrics cannot be calculated for most programs
  - Only 4.8% of public undergraduate certificate programs will have sufficient program completers to produce D/E rates and earnings premiums, but that encompasses 21.4% of enrollees
- ED wants to capture greatest percentage of enrollment, not greatest number of programs
  - The 4,100 GE programs across all sectors that will have metrics calculated constitute 65.3% of all students enrolled in GE programs

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PREDICTED OUTCOMES (CONTINUED)

- ED projects nearly 700,000 students in 1775 failing GE programs
- The NRPM indicates 195 public GE programs (representing 38,000 students), 84 private, non-profit degree programs (representing 35,200 students), and 1,496 proprietary GE programs (representing 626,500 students) would fail at least one of the D/E rate or earnings premium tests
- Of the 1,496 proprietary GE programs that fail one of the two tests, 916 (61%) are undergraduate certificate programs that fail only the earnings premium test
  - The highest rate of failure is in Personal and Culinary Services, where 76 percent of enrolled students are in programs that would have failing metrics

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ESTIMATED COST AND BURDEN

- ED's cost and burden estimates are likely far lower than what the actual cost and burden will be
  - Last GE was tremendously costly, though aggregate sectoral impact could not be determined
- ED's time estimation (for the first year):
  - 95.75 hours per college + 7.75 hours per GE program at the college
  - A total of 1.2 million hours across all public two-year institutions
- ED estimates it will cost all public two-year institutions a total of $57.7 million to implement GE in the first year and $5.5 million annually in subsequent years

FINANCIAL VALUE TRANSPARENCY

- Provides information to students about the "financial value" of programs
- Part of GE regulations but applies to nearly all Title IV higher education programs, GE and non-GE, at the undergraduate and graduate levels
- ED will make the same D/E rate and earnings premium calculations as under GE
  - Programs with failing D/E rates will be labeled "high-debt-burden"
  - Programs with a failing earnings premium will be labeled "low earning"

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FINANCIAL VALUE TRANSPARENCY (CONTINUED)

- ED will create a disclosure website that includes outcomes data about each program at a college
- Colleges will be required to provide current and prospective students with information about how to access the website
- For non-GE programs labeled high-debt-burden:
  - Students will have to acknowledge that they've seen the information about the program through the disclosure website
  - Students cannot receive Title IV funds until they provide the acknowledgement

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REPORTING REQUIREMENTS

- Data will have to be submitted to ED for both GE and non-GE programs
- Institutions will have to report program-level data and student-level data annually
  - Student-level data only includes Title IV recipients except in reports about program data
- Considerable retroactive data reporting will be necessary – as many as seven award years prior by July 31, 2024, though colleges can opt for two-year window.

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REPORTING - COHORT PERIODS

- ED will use either a two-year or four-year cohort period to calculate D/E rates and earnings premium
  - Four-year cohort will be used if <30 completers in two-year cohort
- Two-year cohort will consist of third and fourth award years prior to the year for which the most recent data are available
  - For AY 2024-25, metrics would be calculated in late 2024 or early 2025. The two-year cohort period would be AY 2017-2018 and AY 2018-2019, and earnings data would be used for calendar years 2021 and 2022, respectively.
- Four-year cohort will consist of third, fourth, fifth, and sixth award years prior to the year for which the most recent data are available

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AACC'S PERSPECTIVE

- Agrees with the need for transparency for all higher education programs
- Supports debt-oriented GE metric as reinforcing community college financing structure
- Rejects earnings premium metric because it does not make a fair comparison to the wages of high school graduates and is ultimately arbitrary
- Regulations will be onerous and costly for community colleges and every effort must be made to minimize cost

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CERTIFICATION PROCEDURES

- Supplemental Performance Measures – Secretary Assumes New Authority
  - Secretary may consider certain indicators in determining whether to certify an institution—extent of this is big unknown:
    - Withdrawal rates
    - Debt-to-earnings rates
    - Earnings premium measure
    - Educational and pre-enrollment expenditures
    - Licensure pass rate

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CERTIFICATION PROCEDURES

- GE Program Length
  - If a GE program is required for employment in a certain occupation (i.e., licensure), the program length must be limited to the greater of:
    - The minimum length of the program as required by the State in which the institution is located, federal agency, or accreditor; or
    - The required minimum length of a program as established by another state, if most of the students in the program reside or work in that state

CERTIFICATION PROCEDURES

- Licensure and Programmatic Accreditation
  - The institution must determine – *for every state in which students in the program are located* - whether a program:
    - Is programmatically accredited, if required by a state or federal agency
    - Satisfies the prerequisites for licensure or certification in the state; and
    - Complies with all state consumer protection laws related to closure, recruitment and misrepresentation (generally applicable laws as well as those specific to higher education institutions)

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ADMINISTRATIVE CAPABILITY

- More Elaborate Financial Aid Counseling Requirement
  - Communications must “advise students and families to accept the most beneficial types of financial assistance available to them”
- Bolstered Requirements Around Cohort Default Rates and Determining Validity of High School Diplomas

ADMINISTRATIVE CAPABILITY

- New requirement to provide "adequate career services" –not mentioned in statute
  - Adequacy based on:
    - Share of institution's students enrolled in GE programs
    - Number and distribution of career services staff
    - Career services that were promised to students
    - Institutional partnerships with recruiters and employers
- Geographically accessible clinical or externship opportunities that are required for credential or licensure must be provided within 45 days of completion of coursework

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DISCLOSURE WEBSITE

- Institutions will be required by ED to report data necessary for a new website to disclose certain information to students
- The website *may* include:
  - Primary occupation a program prepares students to enter
  - Completion and withdrawal rates for full and part-time students
  - Program length and enrollment
  - Program D/E and loan repayment rates, and earnings premium measure
  - Cost of tuition, fees, books and equipment
  - Percentage of students who receive a federal or private loan
  - Median loan debt and earnings of program completers or all students
  - Whether program is programmatically accredited
  - Supplementary performance measures added to the certification regulation
  - Link to the College Navigator website

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HELP YOUR COLLEGE -- SUBMIT COMMENTS

- Regs can be found here
- ED is sensitive to community college perspectives
- Comment letters on the NPRM may want to address:
  - Merits of the D/E and earnings premium metrics
  - Potential cost and burden of implementing the rules
  - Experiences with previous GE rules

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KEY DATES

- Comment Period Ends: June 20
- Final day to Finalize Regulations: November 1
- Expected Effective Date: July 1, 2024
- First Year Reporting Due: July 31, 2024
- Subsequent Years Reporting Due: October 1

QUESTIONS?

- No, Can’t Be Questions, It’s all Very Simple

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SAVE THE DATE!

ADVOCATES IN ACTION RETURNS SEPT. 18-19!

ADVOCATES IN ACTION

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