AACC Summary of Department of Education Final rule on "Financial Value Transparency" and Gainful Employment

The Department of Education has released its final "Financial Value Transparency and Gainful Employment" (GE) rule. The final rule is largely consistent with the Notice of Proposed Rulemaking (NPRM) published on May 21, and on which AACC submitted comments, though some important changes were made. The regulation takes effect on July 1 of next year.

The 775 page rule represents the Biden Administration's most important higher education "accountability" policy measure.

Big Picture Elements of Final Rule

The rule has two primary components – determining Title IV eligibility for GE programs and establishing a new "Financial Value Transparency" website containing information on all institutions' individual Title IV-eligible programs. The latter places a new spotlight on the outcomes of all higher education, especially graduate and professional education. This framework builds on the current College Scorecard and College Navigator but includes new elements.

The rule entails substantial new reporting requirements for all colleges, including community colleges. Many campus officials will be somewhat familiar with the requirements as they are similar to those that were in effect in the last GE rule, promulgated in 2014, but in any case, a formidable amount of work will be necessary to comply with the new regulations.

Congressional Republicans have strongly opposed the rule; for example, Education and Workforce Committee chair Dr. Virginia Foxx (R-North Carolina) said in a statement that it represents "attacking proprietary institutions through flawed and arbitrary regulations while giving a pass to the thousands of low-value programs at institutions serving the vast majority of students." For-profit institutions have also inveighed against the rule.

It should be remembered that the GE regulations constitute an elaborate construct that has no direct or necessary relationship to the authorizing statute. The Higher Education Act (HEA) simply states that certificate programs are to provide "gainful employment in a recognized occupation." It is also important to keep in mind that before President Obama issued regulations in this area, the relevant statutory authority had lain untouched for almost 40 years; no other administration chose to regulate in this area.

Though the rule is final, its ultimate implementation is uncertain due to:

- Likely court challenges, including on the grounds of it being an overly expansive use of regulatory authority; and
- Reversal by a potential future Republican president (as President Trump did in 2019 with the 2014 final rule).

GE Program Eligibility

Under the new rule, a GE program must pass two different metrics to remain eligible: debt-to-earnings (D/E) and an "earnings premium." In all cases, debt is ascribed only up to the amount of the institutions' published tuition and fees; if a student borrows more than that, the debt is excluded from the D/E calculations. Overall, the final GE eligibility metrics will overwhelmingly impact for-profit institutions, all of whose programs are subject to the rule, in contrast to community colleges where only certificate programs are covered.

D/E metrics:

The regulation's "debt-to-earnings" metrics are:

1) The annual median debt payments of program completers must not exceed 20% of their median discretionary earnings (defined as earnings above 1.5 x the Federal Poverty Guideline)
2) The annual median debt repayments of program completers must not exceed 8% of their median total annual earnings

A GE program becomes ineligible if it fails to meet both D/E metrics for two out of three years. Very few community college programs are expected to be negatively impacted by this metric. For starters, low borrowing rates means that for most community college programs, the median annual debt payment will be zero. AACC has supported D/E on the grounds that students should be encouraged to select affordable institutions where borrowing is generally not required.

Earnings premium:

The new earnings premium metric requires median earnings of GE program completers to be greater than the median earnings of high school graduates in the state aged 25 to 34 who are employed or in the labor market (unemployed individuals who are seeking work are included). If a GE program fails to meet this standard for two out of three years, it becomes ineligible for Title IV.

AACC opposed this standard in the negotiated rulemaking process, as well as in its formal regulatory comments. AACC focused on the reality of regional wage differences within states, as well as the fact that some worthwhile and needed occupations simply do not pay high wages. A limited number of community college programs may lose eligibility on this basis.

Department of Education Public Information

In a far-reaching change, ED will develop a "program information website" that will include a variety of information for *all* Title IV-eligible programs, including graduate and professional programs, that draws upon the same information used to calculate the gainful employment metrics. However, this Financial Value Transparency data would be provided for disclosure purposes only, rather than program eligibility as in GE.

Student Information Distribution/Acknowledgements

In another change, all prospective students must receive a dedicated communication from any institution in which they indicate an interest, or which is contacted by a college, directing them to the new disclosure website. Student aid recipients must receive the same communication for each year for which they receive aid in advance of the first payment period.

If a GE program fails to meet one of the D/E or earnings premium metrics, a warning must be sent by the institution to prospective or enrolled students. The warning must state that the program may lose its Title IV eligibility and outline a variety of potential steps that the institution might take if that occurs, including whether the program will be continued, or, alternatively, teach-out, transfer, and other options. Institutions may not enroll or register a student for at least three business days after the warning has been delivered to students.

For all eligible programs except for undergraduate programs (and so exempting most community college non-GE programs), student must acknowledge, through the program information website, that they have viewed the relevant information.

Reporting Requirements

Importantly, for purposes of both the GE eligibility criteria and the Financial Value Transparency, a “student” is defined as someone who receives federal Title IV aid. This limited definition, necessitated by the statutory ban on creating a national student-level postsecondary data system, means that more than 52% of all community college students are entirely excluded from the calculations (NPSAS: 2023). This limitation is of particular concern to AACC because it negatively biases the data for community colleges; lower-income students disproportionately receive Title IV aid. These are students who often face greater challenges and disruptions on their path to a credential and career compared to their more affluent peers.

Each program cohort must have 30 completers to have data generated, over either a two-year period or a four-year period (if the 30 completer number is not met in two years). Programs that do not have 30 completers in this time period will not have their D/E or earnings premium metrics displayed. However, in many cases, institutional officials will not know in advance whether a program meets the cohort threshold and will therefore have to assume that the data will ultimately need to be reported.

For each “student” as defined above, and for each Title IV-eligible program, institutions must provide a variety of information, including start date, completion/withdrawal date, total expenses, programmatic accreditation, licensure, etc. In the past, the non-linear path that many community college students take towards credential attainment has complicated some of these reporting efforts because the program credential that a student receives is often not the one they originally pursued.

Effective Dates/Phase-In

The regulation takes effect on July 1, 2024. At that time, colleges will be required to provide data sufficient to establish the first cohorts for the purposes of GE. In response to the comments of AACC and others about the potential administrative burden of the new requirements, ED will allow institutions to supply just the two most recent years of cohort data to generate the GE metrics for the first two years of implementation. This is a big benefit for community colleges. However, by July 1, 2026, more considerable retroactive data reporting will be necessary and institutions that fail either metric must begin issuing warnings.

Additional information for institutions about implementing the new rules will be provided from ED in forthcoming subregulatory guidance. AACC will keep members apprised of these developments.

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