

Frequently Asked Questions
Program Integrity: Gainful Employment Notice of Proposed Rulemaking (NPRM)

Key Questions

Q1. Why is the Department of Education proposing a definition for the term “gainful employment”?

A1. Congress authorized the Department to provide Federal student aid to students attending programs that prepare them for “gainful employment in a recognized occupation.” Many of these programs are offered by for-profit schools and financed almost entirely by Federal student aid funds. Enrollment nearly tripled to 1.8 million between 2000 and 2008. The Department is proposing minimum standards to help ensure that these programs prepare students for employment and have earnings sufficient to repay their student loan debt. These proposed regulations are designed to protect students from attending programs that leave them with high debt but without the means to pay it back. The regulations will limit subsidies that taxpayers provide to students to attend programs that are not performing. Finally, these standards and reporting requirements will motivate institutions to improve the performance and value of these occupational programs.

Q2. Why does this rule apply to only some postsecondary programs and not all of them?

A2. The Higher Education Act makes Federal student aid funds available to institutions providing programs that prepare students for “gainful employment in a recognized occupation,” regardless of whether the institution is a for-profit, non-profit or public institution. This includes most programs at for-profit institutions and many programs at public and non-profit institutions, as well as some programs offered by community colleges and public postsecondary vocational institutions.” Congress reaffirmed the application of the “gainful employment” standard to vocational programs, rather than all postsecondary programs, as recently as 2008.

Although the proposed rule does not apply solely to for-profit institutions, we estimate that it would affect for-profit institutions the most. Many students who have high levels of student loan debt attended programs at for-profit institutions that were supposed to lead to gainful employment. Our data indicate that there were 18 loan defaults for every 100 graduates of for-profit institutions in 2007-08, compared to 5 defaults for every 100 graduates of public institutions. Because these institutions are funded primarily with Federal financial aid, the Department has the responsibility to ensure that the programs they offer benefit students and employers.

Design of the Proposal

Q3. What is the Department's proposed definition of "gainful employment"?

A3. The proposed definition of gainful employment is primarily based on two measures: (1) the repayment rate, or the percentage of the outstanding principal balance of the Federal loans of the program's former students that entered repayment in the previous four years that has been repaid or is being repaid, and; (2) the relationship between median student loan debt and average annual earnings after the completion of their program.

- A program would be "**fully eligible**" if (1) the repayment rate Federal is at least 45% or (2) students who completed the program have a debt-to-earnings ratio of less than 20% of discretionary income or less than 8% of total income. Institutions would be required to provide warnings to students for any eligible program that did not pass both of the debt measures.
- A program would be "**ineligible**" if (1) the repayment rate is less than 35% and (2) students who completed the program have a debt-to-earnings ratio above 30% of discretionary income and 12% of total income. An "ineligible" program may not offer Federal student aid to new students. However, currently enrolled students will be allowed to receive Federal student aid for the current award year and one additional award year.
- A program would be *on* "**restricted status**" if it is not "fully eligible" or "ineligible." A restricted status program fails some, but not all, of the gainful employment measures. Restricted status programs are subject to limits on enrollment growth and institutions must demonstrate independent employer support for the program by obtaining affirmations that the curriculum offered by the institution is what is required by employers who have prospective job vacancies. Institutions with programs that are on restricted status must warn current and prospective students about the high debt-to-earnings measures for the former completers of that program.

		Debt Burden		
		Above 12% of Total Income and Above 30% of Discretionary Income	Between	Below 8% of Total Income or Below 20% of Discretionary Income
Repayment Rate	Rate Above 45%	Fully Eligible	Fully Eligible	Fully Eligible
	Between 35% and 45%	Restricted	Restricted	Fully Eligible
	Rate Below 35%	Ineligible	Restricted	Fully Eligible

Q4. What is the role of each of the measures? Why are they used in combination?

A4. The use of two measures is a balanced approach that reflects that not all programs prepare students for gainful employment in the same way. By focusing on completers, the debt-to-income ratio is a separate measure from repayment rates that may be low because a program has a large number of dropouts. The repayment rate measures the extent to which program enrollees actually repay their loans, whether they completed or not. It also shows when a program that may have a high debt-to-income ratio for completers is still enrolling responsible students who understand and meet their repayment obligations.

Q5. When would the new proposed rules take effect?

A5. The Department recently published a proposed regulation that would require institutions to gather and publicly disclose the information needed to determine if their programs are preparing students for gainful employment beginning on July 1, 2011. These proposals were included in the regulatory package published on June 18, 2010.

Beginning on July 1, 2012, the lowest-performing programs on the debt-to-income and repayment calculations could lose eligibility. For the first year after the rule takes effect there

would be a cap of five percent on the number of programs that would no longer be able to offer Federal title IV aid to new students (as measured by the number of students completing different categories of programs based upon the degree or credential awarded). This cap would limit educational dislocations within each category while the institutions adapt their programs to a system regulated by the new definition of gainful employment. Poorly performing programs would also be required to issue warnings to current and prospective students.

New programs established on or after July 1, 2011, would include employer affirmations that the new program meets the needs of those employers.

Q6. What programs are expected to lose eligibility for Federal aid under this proposal?

A6. We expect that very few programs in the public and non-profit sectors will become ineligible based on the new gainful employment definition. If there are inadequate changes to their costs or performance, our projection is that ultimately 5 percent of programs subject to this rule would lose eligibility. Among for-profit institutions, we expect that approximately 16 percent of programs would lose eligibility. The NPRM includes a detailed discussion of our analysis, and additional data are available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html>.

The proposal gives institutions time to bring their programs into compliance, and we hope that all will do so by improving their programs so that they prepare students for higher-paying jobs, increasing scholarships, counseling students about debt loads, and reducing dropout rates of borrowers. One promising practice to reduce dropouts is to provide students with a free introductory course before they take on debt.

Q7. How many students are enrolled in gainful employment programs? How many are enrolled in programs that are likely to close as a result of this rule?

A7. There are approximately 3 million students attending programs that would be affected by this regulation. About 8 percent of them are enrolled in programs that would be expected to lose eligibility. Students enrolled in one of these programs may continue to receive Federal aid for one award year after a program receives notice that it is losing its eligibility, and the Department believes that most students would exercise this option. The vast majority of these students are expected to complete their program or reenroll in another program or institution.

Future students will benefit from changes made in response to this proposed rule because the programs will be designed to create lower debt burdens for students and to provide larger returns on students' investment.

Q8. What is a "repayment rate?"

A8. The repayment rate is the percentage of the total original outstanding principal balance of all Federal loans for students who attended the program, whether they completed the program or not, that is paid in full or repaid enough to reduce the outstanding principal balance on the loan during each year. Federal loans held by students eligible to seek Public Service Loan Forgiveness are counted as in repayment. The repayment rate is a measure of how many former students are paying back their loans and therefore a measure of the success of programs to prepare students for gainful employment.

Unlike the cohort default rate, the repayment rate does not treat as a successful outcome for the program instances where borrowers are current on their loans but are not required to pay off interest or principal, such as borrowers with low incomes and high debts in the income-based repayment program or borrowers who receive economic hardship deferrals. Borrowers using in-school and military deferments are excluded from both the numerator and denominator in the repayment rate calculation.

Q9. Why establish a new repayment rate measure instead of using the existing cohort default rate?

A9. The cohort default rate is calculated for all of an institution's programs, and measures the proportion of borrowers who entered repayment in a particular year who are in default within one or two years. The default rate for an institution does not distinguish between borrowers in repayment and those who cannot repay their loans, but enter into deferment or forbearance.

While default rates are related to repayment rates since students who make insufficient repayments may eventually default, default rates do not provide a measure of the share of outstanding loans repaid by a program's students. Default represents the final stage in repeated delays and failures to make loan payments. Avoiding the end result of default to a large degree is dependent on borrowers remaining in communication with lenders. For this reason, default rates may not provide a comprehensive measure of the ability of a program's students to earn sufficient income to repay their loan balances on an aggregate basis. For example, a program's students might avoid default while being overburdened with debt and not repaying a substantial proportion of their loans. Therefore, cohort default rates alone do not tell us whether a program is preparing students for gainful employment.

Q10. What is a "debt-to-earnings ratio?"

A10. It is a measure of a program's typical student loan debt compared to the amount of money its graduates earn. The ratio is loan payments as a proportion of either total income or discretionary income (defined as income above 150% of the poverty level). The loan payments are calculated as the amount, based on a 10-year repayment plan, assuming the unsubsidized

Stafford loan interest rate (6.8%) of all of a student’s loans (Federal, private, and institutional) at that institution.

Q11. Can you provide a specific example of how the debt-to-income ratio test works?

A11. The table below shows 11 students who completed a one-year training program at a school during the three previous years. The median amount of student loan debt is \$8,000, which would cost about \$92 per month to repay over ten years at an interest rate of 6.8%. The average annual income of these completers (in the year after completing the program) is \$18,000, or \$1,500 per month. Thus, the debt-to-income ratio is calculated as \$92 per month in loan payments out of the \$1,500 per month in income, or 6.1%. As a result, the program is fully eligible because the debt-to-income ratio is less than 8%. The program would still be subject to ‘warnings’ if the repayment rate is less than 45 percent.

Completer	Student Loan	
	Debt	Income
A	\$0	\$30,000
B	\$500	\$7,000
C	\$4,000	\$11,000
D	\$5,000	\$59,500
E	\$7,500	\$12,000
F	\$8,000	\$5,000
G	\$10,500	\$23,000
H	\$11,250	\$12,000
I	\$12,000	\$10,500
J	\$18,500	\$16,000
K	\$20,000	\$12,000

Q12. Is the Department proposing to use a different standard for degree programs than for certificate programs?

A12. No, but it has designed the proposal to allow larger amounts of debt at programs that prepare students for higher paying careers. Its use of two income ratio measures creates a progressive structure that recognizes that higher-paid workers can afford to devote a larger share of their incomes to repaying their loans. Programs that provide training for higher paying jobs can have their students carry relatively higher debt loads compared to programs that train students for lower-paying jobs.

As the table below shows, if a program demonstrates higher average earnings, the debt standard is higher regardless of the type of credential because it depends on debt as a share of earnings.

These figures do not reflect an individual student’s ability to receive aid based on these figures. The table is illustrative of the average of all completers of a hypothetical program and the measures are applied to the program, not the individual.

Annual Earnings	Maximum Annual Loan Payment		Maximum Loan Payment as a % of Annual Earnings
	30% Discretionary Income Approach	12% Annual Earnings Approach	
\$10,000	\$0	\$1,200	12%
\$15,000	\$0	\$1,800	12%
\$20,000	\$1,127	\$2,400	12%
\$25,000	\$2,627	\$3,000	12%
\$30,000	\$4,127	\$3,600	14%
\$35,000	\$5,627	\$4,200	16%
\$40,000	\$7,127	\$4,800	18%
\$45,000	\$8,627	\$5,400	19%
\$50,000	\$10,127	\$6,000	20%
\$55,000	\$11,627	\$6,600	21%
\$60,000	\$13,127	\$7,200	22%
\$65,000	\$14,627	\$7,800	23%
\$70,000	\$16,127	\$8,400	23%
\$75,000	\$17,627	\$9,000	24%
\$80,000	\$19,127	\$9,600	24%
\$85,000	\$20,627	\$10,200	24%
\$90,000	\$22,127	\$10,800	25%
\$95,000	\$23,627	\$11,400	25%

\$100,000	\$25,127	\$12,000	25%
\$105,000	\$26,627	\$12,600	25%
\$110,000	\$28,127	\$13,200	26%
\$115,000	\$29,627	\$13,800	26%

Table shows how discretionary income approach supports higher debt as earnings increase.

While earnings are measured one to three years after a student finishes, if an institution demonstrates that a program’s graduates typically experience large earnings increases after an initial period of employment, it can elect to be judged by completers in the fourth, fifth, and sixth year after completion. In this case, the standard for eligibility would be debt-to-income ratios of 8 percent of total income and 20 percent of discretionary income. This test allows flexibility for schools that anticipate graduating students whose income may be low immediately after completing, but are likely to rise several years afterward.

Q13. Why does the proposal use *average* income but *median* debt levels?

A13. Using the median debt avoids the circumstance where a small number of students with extremely high debt might distort the average amount of loan debt measured for students in the program. Using average income improves a program ratio, by including the high incomes from students at the top of the earnings range.

Q14. Won’t this proposal prevent graduates from entering lower-paying public service careers? How will students know if they are nearing the limits?

A14. The proposal does not impose any debt limits on students or graduates – it is focused on whether a *program* can continue to receive taxpayer dollars in the form of Federal student aid. Nor does the proposal create disincentives for institutions to prepare students for public service. The Department’s proposal would count students as repaying their loans if they are in lower-paying public service jobs that qualify the borrower for the Federal Public Service Loan Forgiveness program.

Q15. What is “income based repayment” (IBR) and how does it affect this proposed rule?

A15. IBR allows borrowers to repay their loans based on their income. Borrowers with low incomes relative to their debt can make payments as little as zero and remain current on their loans without risk of default. This is an important protection for borrowers, but it means that default rates are not an indicator of whether former students are earning salaries sufficient to repay their loans. While some borrowers in IBR are not required to make payments as large as the interest that is accruing, for the purposes of the current rule they are only considered to be repaying their loans if their payments are large enough to be applied partly to principal.

Q16. Why does this proposal use a debt-to-income threshold of 20 and 30 percent of discretionary income while income-based repayment (IBR) uses a 10 or 15 percent standard?

A16. IBR helps borrowers who are moderately overburdened with debt as well as those who are severely over-burdened. The gainful employment standard focuses on programs that *severely* overburden the typical student.

Q17. How can a program that loses eligibility regain eligibility?

A17. To regain eligibility, an institution would have to work with prior students to raise repayment rates or to increase their average earnings. The institution may also work with the current students to have them graduate with less debt and greater earning potential. The customary approach of simply averting defaults won't work in this model. The graduates will need to have jobs that pay appropriately for the level of debt incurred.

Q18. Is there any model, from ED or another agency, for how the employer affirmations will work? How do you expect these to be implemented, as a practical matter?

A18. Today, postsecondary institutions work with Workforce Investment Act boards under the Department of Labor's programs to ensure that job training funds are well targeted at high demand occupations in the local community. The approach we would use under the proposed regulation would build on this type of structure where the employer provides information to the Department, instead of the local training council, on behalf of the institution on the needs that they have for trained employees in a particular occupation. This would help ensure, though could not guarantee, that jobs will be available to those that successfully complete the program.

Q19. For restricted programs, how do the enrollment limits work?

A19. The process will be similar to the limits the Department of Education places on new companies that acquire an institution but lack an operating history or experience with the Federal student aid programs. For a program in a restricted status, an institution could continue to enroll new students in the program but the institution could not increase the number of Title IV, HEA program students enrolled in a restricted program above the average enrollment for the three prior years as long as that program remains restricted.

Previous Proposals

Q20. For “earnings,” is the Department proposing to use Bureau of Labor Statistics wage data?

A20. No. To provide the most accurate calculation of the average program completer’s debt to earnings ratio, the Department will determine the *actual* average earnings of program completers (provided by the program) by obtaining data from another Federal agency, such as the Social Security Administration (SSA). The average income will be calculated using the most recent earnings available for program completers from the previous three academic years. Institutions can ask the Department to use the option of using earnings of completers four to six years out of the program if they demonstrate that the particular occupations for which they prepare students, experience unusually large increases in earnings after the first three years.

Q21. Why did the Department reject the idea of using graduation and placement rates?

A21. During the negotiated rulemaking sessions, the Department suggested the idea of a combined graduation rate and placement rate. The non-Federal negotiators objected to the graduation rate that was suggested as too high and did not recommend an alternative. Further, they raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. In the other package of regulations we are proposing disclosure of program-level graduation and placement rates as determined by the reporting institutions.

Other Questions

Q22. Aren’t for-profit colleges a better deal for taxpayers because they are funded by investors, not taxpayers, and pay taxes?

A22. No. The vast majority of revenue for programs offered by for-profit institutions comes from Federal student aid and other Federal programs. A recent Senate study of the five largest

institutions found that they receive 77 percent of their revenues from Federal student aid. In calendar year 2009, this amounted to \$26.5 billion.

Moreover, because they often have higher costs than public institutions, students take out more student aid to attend them. In January 2010, the Florida Office of Program Policy and Analysis and Government Accountability concluded, in a report titled “Public Career Education Programs Differ From Private Programs on Their Admissions Requirements, Costs, Financial Aid Availability, and Student Outcomes,” that public institutions are cheaper for taxpayers. This may be because, on the whole, for-profit institutions have significant operating margins, often earning profits twice as high as companies in other industries.

Q23. Won't this proposal limit opportunities for low-income students and students of color?

A23. No. There are thousands of programs that qualify for Federal student aid.. While the proposed rule may eliminate funding for a few of those programs, the students retain their full eligibility for aid and can enroll in other, higher-performing programs. By eliminating taxpayer payments to the worst performing programs, the proposal could help students obtain a higher quality, lower cost education while incurring substantially less debt.

Q24. Low-income students are more likely to drop out and default on their loans. Aren't you punishing schools for attempting to serve these students by making it more likely that they will fail the gainful employment test?

A24. All programs should be able to meet these standards, which constitute minimum requirements for loan repayment and not burdening students with excessive debt. While it may be true that student body demographics contribute to student loan defaults, that suggests it is even more important to provide programs that lead to good outcomes for such students. Other factors can be significant, since the industry's own report found that only about half of the difference in defaults could be explained by student characteristics. The role of student characteristics may be even smaller if you believe that institutions can influence persistence and completion rates, which the industry's study assumed they could not¹.

Q25. What is the basis for the decision to cap student loan debt at 8 or 12 percent of income and 20 or 30 percent of discretionary income?

¹<http://www.career.org/iMISPublic/AM/CM/ContentDisplay.cfm?ContentFileID=12392&MicrositeID=0&FusePreview=Yes>

A25. These thresholds are based upon findings from academic literature and industry practices regarding manageable debt payments for individuals. Under the proposal, only programs that are poorly performing by a wide margin would become ineligible. Moreover, the Department adopted a definition of debt burden based upon both total income and discretionary income. This dual approach provides two different measures that allow programs to potentially remain eligible even if their completers have low incomes, while also recognizing that higher-income borrowers can afford to devote larger shares of their income to debt repayment.

In a 2005 report published for the College Board, titled “How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt,” economists Sandy Baum and Saul Schwartz recommended 20 percent of discretionary income as the outer boundary of manageable student loan debt. This approach is also recommended by others including Mark Kantrowitz, publisher of Finaid.org, who argues that the 20 percent measure would more fairly treat Bachelor’s degree programs than a more restrictive measure. These measures and approaches reflect the experienced judgment of those writing for the higher education financial aid community.

We also adopted the proposal made during negotiated rulemaking that borrowers should not devote more than 8 percent of total income toward repaying their student loans. A number of studies have also accepted the 8 percent standard and some State agencies have established similar guidelines ranging from 5 percent to 15 percent of gross income. These percentages are derived from other tests of debt burdens in relatively comparable situations. For example, home mortgage underwriting criteria are based on the standard that non-housing-related debt should not exceed 8 to 15 percent of pre-tax income.

For these proposed regulations, we have increased the research-based and industry used debt-to-income measures by 50 percent (from 20 to 30 percent of discretionary income, and from 8 to 12 percent of total income) to establish thresholds above which it is clear that a program’s debt levels are excessive.

Q26. Do institutions with high debt burdens have lower default rates?

A. As discussed above, default rates are calculated for all of an institution's programs, and they may not represent the extent to which student loans are being repaid. When looking at student-level data instead of institutional default rates, the Department’s analysis found that high debt burden is related to higher likelihood of default. Borrowers with debt rates above the 8 percent threshold, for example, have a default rate of 10.2 percent, compared to a rate of 5.4 percent for those below the threshold.

Q. 27. For programs at nonprofit and public institutions, would the impact be similar to the predicted effect on for-profit programs?

A27. No, few non-profit and public institutions currently have loan repayment rates and student debt levels of the type that would violate the gainful employment standard. The rule is not aimed at individuals: any college can have a few students who borrow too much. Instead, the rule is aimed at programs that impose debts on most students in the programs that are out of proportion to the earnings outcomes. To evaluate the programs, the proposed rule looks at repayment rates on Federal loans, and also at the average earnings of all completers and the median debt of all completers.

Q28. Does the Department have the legal authority to define gainful employment?

A28. Yes, the Secretary has broad authority to promulgate regulations to implement programs established by statute. This authority includes the authority to provide contextual meaning for statutory terms. The Secretary also has the responsibility to act to ensure the integrity and sound administration of the student aid programs. Congress made student aid available for certain institutions that offered programs that lead to “gainful employment” in a recognized occupation. The Secretary has the authority to define the term to allow for meaningful and transparent enforcement.

Q29. Won't this rule expose information on individual former students by identifying the earnings of specific individuals?

A29. No. We will obtain the average earnings information for the students that completed a program from another Federal agency that protects individual earnings records and other personally identifiable information (PII). We will work with that agency to obtain accurate average earnings calculations for each program, and will not have access to any earnings information for individual students that the other agency maintains and safeguards. This will protect the PII of all former students.