Student Aid Policy Analysis

U.S. Department of Education Proposes Stricter Gainful Employment Rule

www.edvisors.com/student-aid-policy/stricter-gainful-employment/

Mark Kantrowitz

Senior Vice President and Publisher

The Higher Education Act of 1965 (HEA) requires most programs at private for-profit colleges and certain non-degree certificate programs at public and private non-profit colleges to provide "a program of training to prepare students for gainful employment in a recognized profession."[1] Congress did not, however, define the term "gainful employment" in the HEA.

The U.S. Department of Education released an 841-page Notice of Proposed Rulemaking (NPRM) concerning gainful employment (GE) on March 14, 2014.[2] The NPRM proposes stricter criteria for for-profit colleges to retain eligibility for Title IV federal student aid than the 2011 final rule, which was partially overturned by the U.S. District Court for the District of Columbia in 2012.[3] The proposed definition of gainful employment would require programs to maintain a debt-service-to-earnings ratio of up to 8% or a debt-service-to-discretionary-earnings ratio of up to 20% *and* a programmatic cohort default rate (pCDR) of less than 30% to be eligible for Title IV federal student aid. Programs with a passing pCDR that did not pass the debt measures could retain eligibility for federal student aid for up to 4 years with debt ratios in the "improvement zone" consisting of debt-service-to-earnings ratios of 8% to 12% or debt-service-to-discretionary-earnings ratios of 20% to 30%. The program failure rate at for-profit colleges based on the NPRM's proposed rules is 20%, with an additional 11% in the zone, compared with 5.8% of programs at for-profit colleges failing all three debt measures (triple-fail) in the 2011 final rule.

Programs in the zone will inevitably lose eligibility for federal student aid because of the retroactive nature of the rule, making the zone tantamount to failure. The aggregate failure rate for the new proposed regulations, counting the zone as a failure, is in the same ballpark as the 31.0% double-fail rate in the 2011 final rule. Thus, the NPRM represents a five-fold increase in the number of programs ultimately losing eligibility for federal student aid, as compared with the 2011 final rule.

If the March 14, 2014 NPRM becomes final, 42% of programs at for-profit colleges will be failing or in the zone, when weighted by program enrollment. This includes more than one-third of Certificate programs, three-quarters of Associate degree programs, one-fifth of Bachelor's degree programs and one-third of professional degree programs. More than 1.1 million students are enrolled in programs that will lose eligibility for Title IV federal student aid under the proposed regulations.

The NPRM throws out the baby with the bathwater. The proposed rule will shut down programs of questionable value. But, it will also force accredited programs with good outcomes and with high pass rates on independent licensing exams to choose between losing eligibility for Title IV federal student aid and abandoning a mission of serving low-income and minority students who have been under-served by more elite institutions.

Undoubtedly, the for-profit postsecondary industry will file one or more lawsuits to try to block the new regulations when they become final. But, by proposing a set of rules that are significantly harsher than the previous final rule, as opposed to just fixing the problems in the previous final rule, the U.S. Department of Education has increased the likelihood that this litigation will once again successfully block the final rule.

[1] 20 USC 1002(b)(1)(A)(i), 20 USC 1002(c)(1)(A) and 20 USC 1088(b)(1)(A)(i)
[2] http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/notice-proposed-rulemaking-march-14-2014.pdf
[3] Association of Private Sector Colleges and Universities v. Duncan, 870 F.Supp.2d 133 (D.D.C. 2012) and 930 F.Supp.2d 210 (D.D.C. 2013)

Failures by Program, Degree Level and Institution Level

As shown in this table, which is based on pages 669 and 670 of the NPRM, 16% of all gainful employment programs would fail the proposed metrics and 8% would be in the zone. At for-profit colleges, the failure rate is 20%, with 11% in the zone. When weighted by enrollment, 42% of programs at for-profit colleges would be failing or in the zone.

Program	Failing Programs (% of Programs)	Zone Programs (% of Programs)	Failing Programs (% of Enrollment)	Zone Programs (% of Enrollment)
Public	3.5%	0.066%	6.5%	0.12%
Private Non-Profit	8.4%	1.2%	9.2%	3.5%
Private For-Profit	20.0%	10.9%	31.0%	11.2%
Overall	16.4%	8.4%	29.0%	10.3%

The next table shows detail by degree level for programs at for-profit colleges. Note how there is a very high failure rate by enrollment for Associate's degree programs at for-profit colleges. There appears to be a very high concentration of enrollment in failing Associate's degree programs at 4-year for-profit colleges.

For-Profit Colleges Degree Level	Failing Programs (% of Programs)	Zone Programs (% of Programs)	Failing Programs (% of Enrollment)	Zone Programs (% of Enrollment)
Certificate	16.9%	10.5%	20.0%	15.9%
4-Year	18.4%	13.1%	12.5%	29.1%
2-Year	19.1%	10.4%	22.1%	13.4%
< 2-Year	14.0%	9.6%	19.4%	14.7%
Associate's Degree	26.8%	14.4%	63.3%	12.6%
4-Year	31.6%	13.6%	69.0%	11.4%
2-Year	21.2%	15.3%	31.8%	19.3%
< 2-Year	20.0%	20.0%	27.2%	0.0%
Bachelor's Degree	24.0%	7.7%	13.5%	8.9%
Master's Degree	4.4%	1.3%	1.0%	0.5%
Doctoral Degree	0.0%	3.0%	0.0%	1.8%
Professional Degree	30.0%	30.0%	19.2%	37.7%

The next table shows the distribution of failures at for-profit colleges by institution level. This demonstrates that the majority of the failures are at 4-year for-profit colleges.

For-Profit Colleges Distribution of Failures	< 2-Year	2-Year	4-Year
By Number of Programs	14.8%	38.2%	47.0%
By Enrollment	5.3%	15.5%	79.1%

The next table shows the distribution of failures by degree level. Of the Associate's degree failures by enrollment, 92.4% are at 4-year for-profit colleges, representing 65.2% of all failures by enrollment at for-profit colleges.

For-Profit Colleges Distribution of Failures	Certificate	Associate's Degree	Bachelor's Degree	Master's Degree	Doctoral Degree	Professional Degree
By Number of Programs	44.4%	40.0%	14.5%	0.8%	0.0%	0.2%
By Enrollment	16.8%	70.5%	12.2%	0.3%	0.0%	0.2%

NPRM Proposes New GE Measures

Like the previous 2011 final rule, the NPRM proposes certification requirements[4] and public disclosures in addition to accountability metrics. The NPRM also proposes two gainful employment accountability metrics, but programs must pass both metrics instead of just one:

	2014 Proposal	2011 Final Rule
Just Completers	Debt-service-to-earnings ratio *or* debt-service-to-discretionary earnings ratio	Debt-service-to-earnings ratio *or* debt-service-to-discretionary earnings ratio
All Borrowers	Programmatic Cohort Default Rate	Loan Repayment Rate
Must Pass	Both metrics	Just one metric

Debt-Service-to-Earnings Ratios

The debt-service-to-earnings measure assigns each GE program into one of three categories: Pass, Zone and Fail.

- Pass: A program will pass the debt-service-to-earnings ratios if the monthly loan payments of the program's graduates represent at most 8% of gross monthly earnings or at most 20% of *monthly discretionary earnings*. These thresholds require 50% greater income than the previous final rule for a pass.

- Zone: A program will be in the "zone" if monthly loan payments represent 8% to 12% of monthly earnings or 20% to 30% of monthly discretionary earnings.

- Fail: A program fails if monthly loan payments represent more than 12% of monthly earnings or more than 30% of monthly discretionary earnings, or if earnings are less than or equal to zero.

Under the proposed 2014 NPRM, a GE program will be ineligible for Title IV federal student aid if it fails for 2 out of 3 consecutive years or if the program is in the zone or failing for 4 consecutive years. The zone is not really a limbo state, as the ability of colleges to improve performance is limited given the retroactivity inherent in the rule.

[4] For example, GE programs must satisfy relevant accreditation requirements and state/federal licensing requirements.

The calculation of the monthly loan payments are based on the following factors:

- Median debt of the program's graduates, capped by the sum of tuition and fees and an allowance for books, supplies and equipment.[5]

- The debt-service-to-earnings measures exclude the debt and earnings of borrowers who are in a military deferment, borrowers who have received or are under consideration for a total and permanent disability discharge, borrowers who have died and borrowers who are still enrolled in college.

- Federal Parent PLUS loans and TEACH Grants that have been converted to loans are not included in the debt figure. The debt figure includes Federal Perkins loans, Federal Stafford loans, Federal Grad PLUS loans, private student loans[6] and institutional loans. Debt borrowed for enrollment in programs at other institutions is excluded, except if the institutions are under common ownership or control.

- The median debt is based on a 2-year or 4-year cohort period. The 2-year cohort period is years 3-4 prior to the measurement award year (years 6-7 for medical/dental programs). The 4-year cohort period is award years 3-6 prior to the measurement award year (years 6-9 for students who completed a medical/dental program with a residency/internship).

- The student's debt is counted against only the student's highest credentialed program at the college, with a distinction drawn between undergraduate and graduate/professional degree programs.

- The monthly loan payment is amortized over a 10-year repayment term for Certificate and Associate's degree programs, a 15-year term for Bachelor's degree and Master's degree programs and a 20-year term for doctoral degree and first-professional degree programs.

- The interest rate is the average interest rate for the unsubsidized Federal Stafford loan for the degree program (e.g., undergraduate vs. graduate and professional degree programs) over the six-year period ending at the end of the cohort period.

- The annual earnings figure is based on the higher of the mean or median of the most recently available annual earnings for the students who completed the program. If the Social Security Administration (SSA) is unable to provide earnings data for a number of students, the calculation of median debt will exclude the same number of debt figures, starting with the highest debt figures.

- The calculation of the debt-service-to-earnings measures requires debt and earnings figures for a minimum of 30 completers over the cohort period.

[5] The allowance for books, supplies and equipment should be the same allowance that appears in the cost of attendance for the program.
[6] Private student loans are included to the extent that they are known to the school.

Although the cohort period is intended to address significant changes in the earnings of recent graduates a few years after graduation, it introduces a degree of retroactivity into the debt-service-to-earnings measures. The ability of a college to influence the pass/fail rates of a program in subsequent years after an initial failure is limited because the students in the cohort have already graduated. By then, it will be too late to change the program's admissions standards or to improve the college's financial literacy training, debt counseling and job placement services.

There is a 4-year transitional period during which the programs may ask to have the debt measures based on the most recent debt figures, as opposed to the median debt from the cohort period, if this yields lower debt measures. This allows colleges to benefit from any immediate reductions they make in program cost (and, hence, debt). It is unclear whether colleges can forgive debt to bring a program into compliance.

Counterintuitive Consequences of the Debt Measures

Assuming a 3.86% average federal education loan interest rate, an 8% debt-service-to-earnings threshold requires total debt that is at most 66.3% of annual earnings on a 10-year term, at most 91.0% of annual earnings on a 15-year term and at most 111.4% of annual earnings on a 20-year term. Generally, borrowers whose total student loan debt at graduation is less than their annual starting salary are able to repay their student loans in ten years or less.

Increasing the interest rate yields a *lower* maximum allowable total debt as a percentage of annual earnings, since the monthly payment will be higher. For example, increasing the loan interest rate to 6.8% increases the maximum total debt to annual earnings ratio to 57.9% on a 10-year term, 75.1% on a 15-year term and 87.3% on a 20-year term. So, increases in the interest rate will make it more difficult for colleges to comply with the debt-service-to-earnings measures.

To illustrate, consider $10,000 in student loan debt at 6.8% interest with a 10-year repayment term. The monthly payment is $115.08, which yields a total annual payment of $1,380.96. The annual payment is 13.8% of the total debt. If the debt-service-to-earnings ratio is capped at 8%, then we have

annual payment / annual earnings < 8%

annual payment = 13.8% of total debt

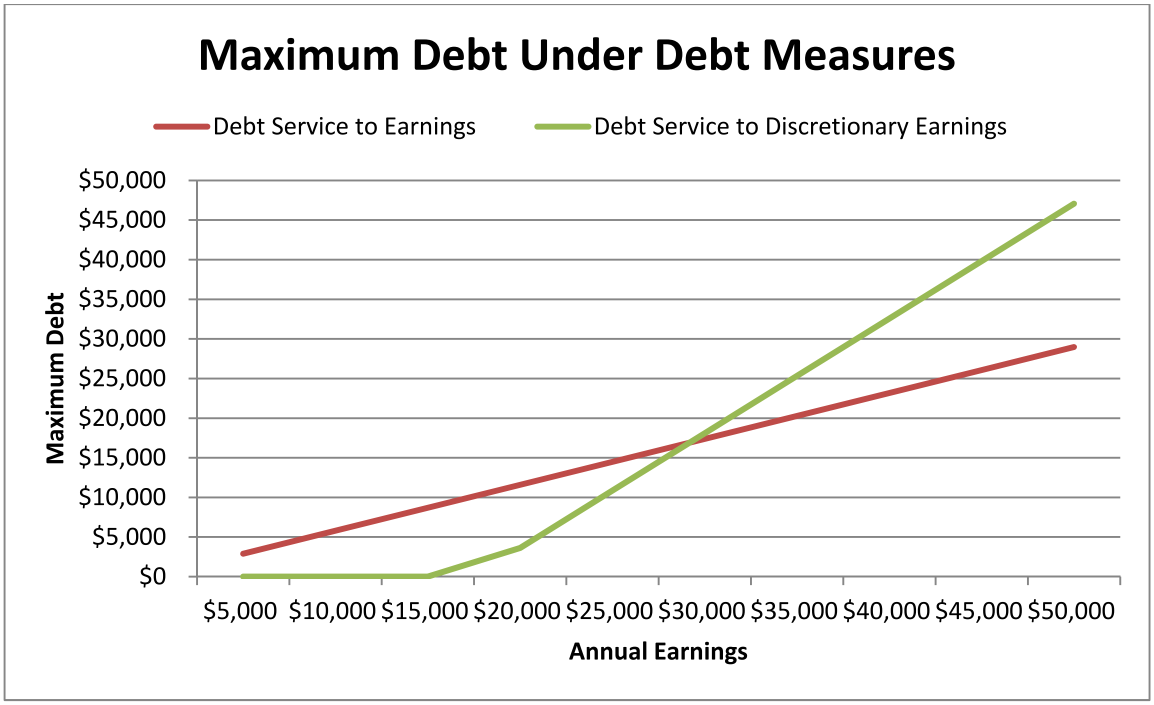
from which

total debt / annual earnings < 8% / 13.8% = 57.9%

and hence

total debt < 57.9% of annual earnings

Similar calculations based on the debt-service-to-discretionary-earnings ratios yield a lower cap on total debt for borrowers with annual earnings up to 250% of the poverty line. The debt measures require the monthly payment to be no more than 8% of the monthly earnings or 20% of the monthly discretionary earnings. As illustrated in this chart, the debt-service-to-earnings ratio yields a higher maximum debt when earnings are below about $30,000 in earnings, and the debt-service-to-discretionary-earnings ratio yields a higher maximum debt when earnings are higher.



The two graphs intersect when

8% x earnings / 12 = 20% x (earnings – 150% poverty line) / 12

Solving this equation for the earnings yields

earnings = 250% poverty line

Since the GE debt measures use the higher of the two debt caps, this means that the total debt cap based on the debt-service-to-earnings ratio will specify the maximum allowable debt as a percentage of annual earnings for low- and moderate-income graduates. The debt-service-to-discretionary-earnings ratio increases the amount of allowable debt only for higher-income graduates.

Program Cohort Default Rates

The program cohort default rates (pCDR) use the same calculation method as the institutional cohort default rates (CDR), but apply at the program level instead of the institution level. It applies to all Federal Stafford loan borrowers (and borrowers of Federal Consolidation loans that repaid a Federal Stafford loan) who enter repayment, not just borrowers who complete the GE program. Private student loans are ignored. If a program has less than 30 borrowers entering repayment, the measure uses the three most recent cohorts.

A program will pass this GE measure if the pCDR is less than 30% for the most recent fiscal year, otherwise, it will fail. If a program fails the pCDR measure for three consecutive years, it will lose eligibility for federal student aid and can't requalify for at least three years.

The pCDR is a stricter measure than the institutional CDR because better performing programs can compensate for weaker programs in the institutional CDR but not in the pCDR.

Appeals

A college can appeal the GE measures in certain circumstances:

- Low borrowing rate. If less than half of completers in a program borrow, the college can appeal for a waiver of the debt measures, but must still pass the pCDR measure. Only students who were enrolled on at least a half-time basis during the cohort period will count toward this low borrowing rate waiver. This effectively excludes students who weren't eligible for federal education loans. This rule will mostly apply to public colleges.

- Participation rate index. The participation rate is a product of the pCDR with the percentage of all regular students who were enrolled on at least a half-time basis and who received a Federal Family Education Loan (FFEL) or Federal Direct loan during the 12-month period that ends 6 months prior to the program cohort's fiscal year. Effectively, this calculates a default rate based on all students, not just those who borrowed, by weighting the pCDR with the percentage of students who borrowed that were eligible to borrow.

- Economically disadvantaged appeal. A program is considered to be economically disadvantaged if the program's low-income rate is two-thirds or more *and* 70% or more of students in Associate's degree, Bachelor's degree, graduate and professional degree programs graduate (44% otherwise). The low-income rate is the percentage of students in a program (1) who have an Expected Family Contribution (EFC) equal to or lower than the largest EFC for a student to receive at least half of the maximum Federal Pell Grant (ignoring enrollment status and cost of attendance) or (2) whose adjusted gross income (AGI) is less than the poverty line for the family size (including the student and parent's AGI, if the student is dependent and the AGI of the student's spouse if the student is independent). This appeal counts only students who were enrolled on at least a half-time basis during the 12-month period that ended during the 6 months immediately preceding the program cohort's fiscal year. Few, if any, college programs at any postsecondary institution, not just gainful employment programs, will qualify for this appeal because it is very restrictive.

- Average rate appeal. Programs may appeal a high pCDR based on the 3-year average (i.e., if there were less than 30 students in the current fiscal year), if the one-year pCDR for the most recent fiscal year would have been under 30%.

- 30 or fewer borrowers. If the program has 30 or fewer borrowers, the program may appeal on the basis of a low borrower count.

Likely Court Challenges

There are several aspects of the proposed regulations that are likely to lead to successful court challenges to the regulations on the grounds that the regulations are arbitrary, capricious and vague.

Severability

The NPRM includes a severability clause to try to protect the full set of regulations from being overturned if any major component of the regulations is invalidated by the courts, the first proposed rule by the U.S. Department of Education to ever include a severability clause. A problem with the justification of the loan repayment rates in the previous final rule caused the regulatory schema to unravel, yielding a post-litigation final rule with no teeth. But, the inclusion of a severability clause weakens the legal justification for the final rule because it implies that the U.S. Department of Education believes that each provision in the NPRM is independently sufficient to achieve an effective set of regulations without any need for the U.S. Department of Education to revisit the regulations.

The New Regulations are Much Stricter than the 2011 Final Rule

The U.S. Department of Education has proposed a set of rules that are much harsher than the previous final rule. The severity of the 2014 NPRM increases the risk that the proposed regulations will be overturned by the courts. Opponents to the gainful employment regulations will be able to use the previous final rule to argue that the new rules are arbitrary, since little has changed since 2011 that would necessitate a much harsher set of regulations. While regulations cannot be formulated to achieve a particular outcome – the ends do not justify the means – significant differences in outcomes are an indication that differences in the regulations are arbitrary in nature.

The NPRM proposes thresholds for the debt measures that require 50% greater income than the 2011 final rule for a program to pass. Proponents of the gainful employment regulations may argue that the zone preserves the debt-service-to-earnings and debt-service-to-discretionary-earnings thresholds present in the 2011 final rule. But, the retroactive nature of the debt measures precludes improvement, so programs in the zone will ultimately be reclassified as failing programs by the proposed rule. This demonstrates that the zone is not a limbo state but a transition to a failing status. So, realistically, instead of a quarter of programs at for-profit colleges failing the gainful employment rules, effectively, as many as one third will ultimately fail the gainful employment rules.

Similarly, the pCDR rules are based on the statutory requirements for institutional CDRs, superficially tying the proposed regulations to the statute. But, there is no linkage between the statutory requirements concerning cohort default rates and the statutory requirement that certain postsecondary instructions provide “an eligible program of training to prepare students for gainful employment in a recognized occupation” [20 USC 1002(b)(1)(A)]. After all, public and private non-profit institutions that grant only Bachelor’s degrees are subject to the CDR restrictions but not the gainful employment rules. The pCDR provisions are also stricter than the institutional CDR requirements authorized by statute. With the 3-year institutional cohort default rates enacted by Congress in 2008, a better-performing program can compensate for a weaker-performing program. The pCDR rules would preclude this compensatory effect, leading to implicit eligibility thresholds for institutional CDRs that are more restrictive than those established by Congress. There is also no evidence that Congress intended cohort default rates to be applied at the program level.

Proposals Designed to Achieve a Particular Effect

The NPRM includes several provisions that appear to have been designed to achieve a particular effect (e.g., the failure of particular programs but not others) and, as such, are arbitrary in nature. For example, basing amortization on median debt (which is zero when less than half of students borrow) and establishing a waiver for programs with a low borrowing rate (again, when less than half of students borrow) effectively grant a free pass to most programs at public colleges.

The NPRM appears to have selectively waived requirements for particular types of institutions, to compensate for the harsher nature of the rule. This conflicts with a plain language reading of the statute and the U.S. Department of Education's justification for the regulations. Congress clearly intended the gainful employment requirement to apply to most programs at private for-profit colleges and to non-degree certificate programs at public and private non-profit colleges. The U.S. Department of Education has no authority to waive the gainful employment requirement at public and private non-profit colleges while retaining it for private for-profit colleges. Moreover, some of the certificate programs that fall within the scope of these waivers have lower graduation rates than the for-profit college programs that remain subject to the rule. The inclusion of waivers targeted at particular institutions demonstrates the arbitrary nature of the proposed rule.

While individual public colleges may have a low borrowing rate due to state subsidies, aggregate borrowing at public colleges exceeds aggregate borrowing at private for-profit colleges. There are public colleges with single digit graduation rates, just as there are for-profit colleges with single digit graduation rates. If the gainful employment regulations are to be based on debt measures, the U.S. Department of Education should not ignore some debt merely because it conflicts with preconceived ideological assumptions that certain types of institutions are inherently evil and others are not. Otherwise, the gainful employment regulations may shift the enrollment of students from failing programs to programs with inferior performance.

Misinterpretation of Statutory Language

A plain language reading of the statute demonstrates that the word "gainful" modifies the word "employment," not the word "training."

The U.S. Department of Education appears to be arguing that the training must be gainful, as opposed to the employment being gainful. This interpretation requires the borrowers to have sufficient income to repay the debt incurred while pursuing a program, as opposed to merely having income after graduation that exceeds the poverty line.

Even if one accepts the U.S. Department of Education's interpretation, the debt measures appear to require significantly more income than is necessary to repay the debt in a reasonable period of time. There are also many reasons why a borrower might default on a loan besides a failure to get a job that pays well enough to repay the debt. For example, almost two-thirds of borrowers who default on their federal student loans drop out of college, based on an analysis of data from the 2009 follow-up to the 2003-2004

Beginning Postsecondary Students longitudinal study (BPS:04/09).[7] So, a high pCDR may have more to do with a failure to complete the training than the quality of the training. Additionally, the U.S. Department of Education did not cite any research correlating debt-to-earnings ratios with default rates.

Passing the Buck to Mortgage Lenders

The research justifying an 8% debt-service-to-earnings ratio is weak, basing the threshold on a small subset of credit underwriting standards for home mortgages, not student loans. In effect, the U.S. Department of Education is abrogating its responsibility to set reasoned standards for affordable and reasonable student loan debt. Since when does the U.S. Department of Education base eligibility for federal student aid on standards set by a handful of third-party mortgage lenders? Is there a federal requirement that every college graduate be able to afford to buy a home with a mortgage funded by one of the handful of lenders who have an 8% difference between their standards for mortgage debt and other debt?

The use of an 8% threshold is arbitrary, with no basis in statute or realistic measures of affordable debt. Current Fannie Mae guidelines set a maximum debt-service-to-earnings ratio of 45%, four percentage points higher than Fannie Mae's previous 41% standard that was cited by the U.S. Department of Education's justification for an 8% threshold on student loan debt. The report[8] cited by the U.S. Department of Education also mentions U.S. Department of Housing and Urban Development (HUD) standards that would suggest a 12% threshold. The report also appears to be arguing against the use of an 8% threshold.

The 8% threshold is also not consistent with the federal government's own previous standards. Prior to the introduction of the 2011 final rule, the U.S. Department of Education used a 10% threshold internally. The U.S. Department of Education's FY1999 strategic plan states: "In general it is believed that educational debt in excess of 10 percent of income will negatively affect a borrower's ability to repay his or her student loan and to obtain other credit."[9] This 10 percent threshold was also cited in an April 2003 report about student loan indebtedness by the U.S. Government Accountability Office (GAO).[10]

One could use a similar methodology to arrive at thresholds that are much greater than the 8% threshold proposed by the U.S. Department of Education. Regulations issued by the Consumer Financial Protection Bureau (CFPB) that became final on January 10, 2014, define a qualified mortgage as having a total debt-service-to-earnings ratio of 43%. The 2008 consumer expenditures survey[11] shows that, on average, Associate's degree recipients pay 27% of income and Bachelor's degree recipients pay 25% of income toward housing costs, including mortgage principal and interest. This would yield 16% and 18% of income available to pay for other debt, respectively, based on the CFPB regulations. Some mortgage

[7] Based on the PROUT6 and LOANST09 variables in BPS:04/09, 16.4% of borrowers who drop out defaulted on their loans, compared with 4.0% of borrowers who graduated or are still enrolled. Of the borrowers who defaulted on their loans, 63% dropped out of college and 37% graduated or are still enrolled.

[8] Sandy Baum and Saul Schwartz, *How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt*, The College Board, 2006

[9] http://www2.ed.gov/pubs/AnnualPlan/obj3-2.html

[10] http://www.gao.gov/products/GAO-03-508

[11] Available at www.bls.gov/ces/

lenders use a 28% to 33% threshold for mortgage debt, which still leaves 10% to 15% of income available for other debt.

Note also that the definition of a qualified mortgage allows loans with a repayment term of up to 30 years, while the NPRM limits borrowers with Associate's degrees and certificates to a 10-year term, borrowers with Bachelor's and Master's degrees to a 15-year term, and borrowers with doctoral and professional degrees to 20 years.

The lack of consistency in the U.S. Department of Education's justification of an 8% threshold suggests that the U.S. Department of Education chose the 8% threshold first and the justification for the threshold second, a clear indication that the 8% threshold is arbitrary and not the product of reasoned decision-making.

Faulty Syllogism

The NPRM is filled with weak justification for the regulations. For example, on page 601 of the NPRM, the U.S. Department of Education blames for-profit colleges for the growth in student loan debt:

> "Over the past three decades, student loan debt has grown rapidly as increases in college costs have outstripped increases in family income, State and local postsecondary education funding has flattened, and relatively expensive for-profit institutions have proliferated."

This is followed by a litany of statistics about the growth of student loan debt, none of which are specifically about debt incurred at for-profit colleges or other programs subject to the gainful employment rule. Analysis of data from the 2011-12 National Postsecondary Student Aid Study (NPSAS) demonstrates that 23.9% of borrowers of Title IV federal education loans were enrolled at private for-profit colleges, incurring 23.5% of new Title IV federal education loan debt.[12] While students at for-profit colleges represented 13.5% of total enrollment, indicating that students at for-profit colleges are more likely to borrow to pay for their education,[13] for-profit colleges are not the primary cause of the massive growth in student loan debt outstanding, since more than two-thirds of new borrowing is at public and private non-profit colleges.

For-profit colleges have their warts, but the NPRM exaggerates the problems at these institutions. These exaggerations could undermine the assumption that there is a reasoned basis for the proposed regulations. The for-profit colleges could demonstrate this by challenging each and every assertion in the document, demonstrating that the assertions are factually inaccurate or the product of circular reasoning that assumes the conclusion. The U.S. Department of Education would have to address such substantive criticism in the final rule, which would lead to a delay in the implementation of the proposed regulations.

[12] Variables included T4LNAMT2 and CONTROL.

[13] 71.3% of students at private for-profit colleges borrowed Title IV federal education loans, compared with 60.3% of students at private non-profit colleges and 31.1% of students at public colleges.