



Jean-Didier Gaina
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW
Washington, DC 20202-6110

Lorelei Salas
Commissioner

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42 Broadway
8th Floor
New York, NY 10004

RE: Docket ID ED-2018-OPE-0042, Program Integrity: Gainful Employment

Dial 311
(212-NEW-YORK)

The City of New York (“the City”) appreciates the opportunity to comment on the rules that the U.S. Department of Education (“the Department”) has recently proposed to amend Gainful Employment regulations governing career education programs. The City believes these proposed changes would erode needed protections in the higher education marketplace.

nyc.gov/consumers

The City of New York houses to the largest municipal consumer protection agency in the country, the Department of Consumer Affairs (“DCA”). Its mission, to protect and enhance the daily economic lives of New Yorkers to create thriving communities, embodies a commitment to shield consumers from predatory practices. DCA’s Office of Financial Empowerment (“OFE”), in particular, seeks to realize this vision by educating, empowering, and protecting New Yorkers and neighborhoods with low incomes so that they can build assets and make the most of their financial resources. Together, DCA and its OFE promote and advocate for the very kind of consumer transparency that the current Gainful Employment (“GE”) regulations have achieved since their implementation in 2014.

In the last several years, the City has worked to deepen its understanding of the student loan debt crisis in New York City. In December 2017, DCA’s OFE and the Federal Reserve Bank of New York published a first-of-its-kind neighborhood-level examination of student loan repayment outcomes, *Student Loan Borrowing Across NYC Neighborhoods*. This report used credit panel data to map student loan debt, as well as delinquency and default on student loan debt. Of the nearly one million New York City borrowers, about 16 percent of student loan holders have defaulted (defined as being 270 or more days overdue on student loan repayments). The share of residents struggling with student debt rises even further when one narrows the focus to low-income zip codes, as nearly a quarter of residents with a student loan in the lowest-income areas of the city have defaulted.

To complement the knowledge gained from the report, DCA engaged in a series of on-the-ground fact-finding initiatives to hear from New Yorkers about their experiences with student debt. The agency launched special student loan debt counseling sessions in neighborhoods with high rates of delinquency and default. Staff traveled around the boroughs on a listening tour, asking New Yorkers to share their student loan stories. And we hosted a public hearing on student loan debt, at which we heard from panels of experts as well as members of the public.

At these outreach events, we heard stories from New Yorkers who felt misled by schools and pressured into educational options that provided low returns on students' investment. We heard many stories from borrowers who didn't know where to turn for reliable information about school quality and student loan repayment options.

The burden of student debt threatens households' financial health, and the City believes more can be done to protect students from taking on unmanageable student loans and to ensure that taxpayers are not subsidizing schools that employ predatory practices and consistently fail to deliver adequate educational outcomes. With this in mind, we provide the following comments on the Department's proposed rules regarding GE regulations:

1 – The rationale given for rescinding the GE regulations falls short

In the proposed rulemaking, the Department argues that the GE debt-to-earnings metric is inadequate as a sole determiner of Title IV funding eligibility. Reasons cited include metric sensitivity to economic downturns, student characteristics and earning potential, etc. In the proposed rule-making it is also argued that there are good and bad institutions on all sides of the post-secondary education space and that the rules should not be limited to proprietary and career schools. However, instead of proposing a more robust metric for determining GE or calling for Congress to extend the requirements to all schools, the Department used these reasons as the support for rescinding the GE regulations in their totality – a classic case of throwing the baby out with the bath water.

2 – Rescinding GE regulations would impose high costs on students and taxpayers by funneling federal dollars to programs that leave graduates with low earnings and unaffordable loan balances.

Under the current GE regulations, more than 2,000 career education programs, serving over half a million students, would have, due to their poor performance, lost access to Title IV federal student aid in the form of loans and grants. The Department's proposed rule would allow these programs continued access to public funds, at a cost, the Department estimates, of an additional \$5.3 billion over ten years. We find this prospect particularly concerning because many New York residents have attended under-performing schools, at a high cost. A recent report by The Institute for College Access and Success used data from the Department's GE Information to

determine that the state of New York has 14,030 graduates from the worst-performing career education programs. These graduates borrowed a total of \$246,844,268 to attend failing and “zone” (near-failing) programs in our state.¹

The City urges the Department to reconsider its proposed rescission of GE regulations. Rescinding GE regulations and bestowing federal funds on underperforming programs will waste public money and leave affected students with an inadequate education and loans they may not be able to repay due to the poor employment options they will face upon graduating from a sub-standard program. Unaffordable loan payments can in turn lead to default and other forms of financial hardship.

3 – Disclosure is not an adequate substitute for oversight and enforcement.

While the City recognizes the importance of consumer disclosures and supports the Department’s stated commitment to enhancing the data available on the College Scorecard, removing GE regulations now and promising to replace them with enhanced disclosure requirements later imposes an undue burden on students, who are left to navigate an under-regulated and sometimes predatory marketplace. Additionally, even if the Department follows through on enhanced disclosure, federally approved accreditation bodies and the Department’s own disbursement of Title IV funds provide signals that a school is trustworthy and enhanced disclosure is unlikely to overcome these strong signals that point – or ought to point – to school quality. Thus, the Department’s insistence that the promise of improved disclosure of program statistics such as graduate earnings on the College Scorecard provides the same measure of protections as the GE Regulations – either for public funds or for vulnerable borrowers – is disingenuous.

4 – Rescinding GE regulations contradicts the Administration’s stated belief in the importance of tying higher education to labor market outcomes.

In June 2018, the White House released a set of recommendations which included a plan for merging the Education and Labor Departments into a single U.S. Department of Education and the Workforce.² Under the proposal, higher education would fall under a new office, “American Workforce and Higher Education Administration.” The Department further emphasizes the focus on higher education programs that meet workforce needs: “At a time when 6 million jobs remain unfilled due to the lack of qualified workers, the Department is re-evaluating the wisdom of a regulatory regime that creates additional burden for, and restricts, programs designed to increase opportunities for workforce readiness.”³ Given the Department’s interest in aligning higher education offerings with labor market needs, it is imperative that the Department maintain

¹ https://ticas.org/sites/default/files/pub_files/ge_total_debt_fact_sheet.pdf

² <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>

³ <https://www.federalregister.gov/documents/2018/08/14/2018-17531/program-integrity-gainful-employment#>

GE regulations particularly as they pertain to career education schools and programs. Rescinding GE regulations weakens standards for career education programs leaving graduates unprepared for the workforce and with significant debt.

In conclusion, the City believes that students should not have to suffer the harm of graduating from career education programs with high debt-to-earnings ratios. Indeed, the City would like all programs – whether career or degree programs, and whether at public, nonprofit, or for-profit colleges – to be subject to data disclosure requirements akin to those present in the original GE regulations. All programs should be required to make key information such as net price and completion rates available on their websites, and programs whose graduates consistently exceed reasonable debt-to-income thresholds such as those established in the GE regulations should lose access to federal student aid dollars. These common-sense accountability measures provide needed protections for students, taxpayers, and colleges.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lorelei Salas', with a long horizontal flourish extending to the right.

Lorelei Salas
Commissioner, New York City Department of Consumer Affairs