

# ConsumersUnion®

THE ADVOCACY DIVISION OF CONSUMER REPORTS

September 13, 2018

Betsy DeVos, Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, DC 20202

## **RE: Program Integrity: Gainful Employment [Docket ID ED-2018-OPE-0042]**

Dear Secretary DeVos,

Consumers Union, the advocacy division of Consumer Reports,<sup>1</sup> appreciates the opportunity to comment regarding the Department's new proposed rule on Program Integrity, Gainful Employment.

We strongly oppose the Department's proposal to rescind the gainful employment rule. The Department has not set forth a rationale to support its decision, and the impacts of rescinding the rule will result in more fraud, waste and abuse at the expense of students and taxpayers. Instead, we urge the Department to implement the existing rule and resume its role in protecting students seeking job training from gainful employment programs.

**The Department has failed to provide a reasonable basis for rescinding the rule and doing so without a replacement.** The Department begins its discussion with the heading, "Origins and Purpose of the Gainful Employment Rule," and then proceeds to make the conclusory statement that the current rule sets a "bright line" standard for schools.<sup>2</sup> However, the rule created debt-to-earnings rates for graduates that categorize GE programs as "passing," "in the zone," or "failing." GE programs must be "failing" or "in the zone" for several years before they risk losing eligibility for Title IV funds.

Furthermore, the rule was based on years of evidence and sound analysis - not, as the Department would suggest today, an "inaccurate and outdated belief that career and vocational education programs are less valuable to students and less valued by society."<sup>3</sup> In fact, the

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<sup>1</sup> Consumers Union, the advocacy division of Consumer Reports, is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of financial services, as well as telecommunications, health care, food and product safety, energy, telecommunications, privacy and data security, and competition and consumer choice, among other issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

<sup>2</sup> 83 Fed. Reg. 40167, 40170 (proposed Aug. 14, 2018).

<sup>3</sup> See 83 Fed. Reg. at 40171 (stating that the existing rule "reinforces" that belief).

Department based its rule on extensive research and evidence that some GE programs were accepting federal financial aid dollars and enrolling students while consistently failing to train and prepare those students for employment.

In 2014, the Department cited concerns that some gainful employment (“GE”) programs were not training students in “the skills they need to obtain jobs in the occupation for which the program purports to provide training.”<sup>4</sup> It noted that some GE programs had high withdrawal or “churn” rates - with most students enrolling but not completing, only to be stuck in debt and at risk of default.<sup>5</sup> The Department also cited evidence that for-profit GE programs, in particular, devoted more resources on average to marketing and recruiting than to instruction - and had lower rates of passage for occupational licensing exams, suggesting a failure to adequately prepare students for employment as well as comparable public sector programs.<sup>6</sup> It noted in its NPRM for the 2014 rule that borrowing rates were also higher at for-profit institutions; 86% of for-profit students took out loans, compared to just 35% of students at community colleges<sup>7</sup> - further evidence of problems specific to the for-profit sector that warranted greater oversight and accountability.

**The Department mischaracterizes or ignores research supporting the debt-to-earnings metrics in the current rule.** Oddly, the Department cites research from Sandy Baum and Saul Schwartz as evidence<sup>8</sup> that the debt-to-earnings metrics are unjustified “bright line” standards. However, their research indicates that, if anything, the metrics provide almost too much flexibility. Sandy Baum recently replied that the Department is mischaracterizing their research, and stated that the Department is “correct that we were skeptical of this standard for determining affordable payments for individual borrowers, but incorrect in using that skepticism to defend repealing the rule. In fact, our examination of a range of evidence about reasonable debt burdens for students *would best be interpreted as supporting a stricter standard.*”<sup>9</sup>

In its 2014 rulemaking, the Department also took into consideration some stakeholders’ concerns that other factors, such as race, gender, and other socioeconomic factors, could be more predictive of student outcomes at GE programs than the debt-to-earnings rate.<sup>10</sup> But when the Department conducted a regression analysis to account for those factors, it found that annual earnings rates did not have a strong association with programs that serve underserved populations.<sup>11</sup>

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<sup>4</sup> 79 Fed. Reg. 64890, 64890 (Oct. 31, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> 79 Fed. Reg. at 64906 (referencing 2011 GAO study).

<sup>7</sup> 78 Fed. Reg. 16424, 16434 (proposed Mar. 25, 2014) (citing data for 2011-2012 academic year from National Postsecondary Student Aid Study).

<sup>8</sup> 83 Fed. Reg. at 40171.

<sup>9</sup> Sandy Baum, *DeVos misrepresents the evidence in seeking gainful employment deregulation*, Urban Institute, Aug. 22, 2018, <https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation> (emphasis added).

<sup>10</sup> 79 Fed. Reg. at 64909.

<sup>11</sup> 79 Fed. Reg. at 64910.

**Disclosures are no substitute for enforceable consumer protections.** At the same time that the Department proposes to eliminate essential accountability measures, is it also proposing to rescind disclosures that would provide students with key information about programmatic accreditation, job placement rates and other data that would be highly relevant to a prospective student deciding whether to enroll in a GE program. The Department cites concerns about the burden to institutions having to report this information, and questions whether information about job placement rates would be objective.<sup>12</sup> If the Department is concerned about the accuracy of disclosures made to prospective students, it is all the more difficult to comprehend why it would consider repealing substantive protections that would cut off aid to failing programs before they can market their programs to prospective students decide where to enroll and use their financial aid dollars.

Instead, the Department claims that allowing schools to post program-level earnings data on the College Scorecard website will be a more “accurate and reliable way” to inform students of the outcomes at GE programs. The Department does not explain how this information would be vetted to ensure it is any more objective or accurate than the information that must be provided under the current rule.<sup>13</sup>

The Department also proposes to rescind the debt-to-earnings metrics even for reporting purposes, arguing that they may be confusing to students and parents because non-GE programs would not be publishing similar information, and therefore they would not be able to make side-by-side comparisons between GE and non-GE programs.<sup>14</sup> However, it is difficult to follow the reasoning that the availability of some relevant information would be insufficient, and thus it would be better simply not to provide *any* GE-specific information to prospective students seeking to identify a good place to enroll in school.

Students deserve relevant, actionable information that helps them make informed decisions about where to enroll - and GE programs should be subject, at minimum, to enforceable disclosure standards. The Department’s proposal to allow self-reported, unverified information on the College Scorecard website could enable further misrepresentation and put students, once again, at increased risk of harm.

## Conclusion

The Department must discharge its obligation under HEA to wisely administer the Title IV program, and clarify - using enforceable metrics and standards - what programs must do to show that they prepare their students for gainful employment in a recognized occupation. Voluntary disclosures of non-standardized information are a very poor substitute for consumer protection. Too many students seeking job training have already suffered due to inconsistent or insufficient school oversight in recent years.

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<sup>12</sup> 83 Fed. Reg. 40167, 40174.

<sup>13</sup> *Id.*

<sup>14</sup> 83 Fed. Reg. at 40174.

We urge the Department to stand on the side of students and taxpayers who have been subsidizing GE programs that do little more than put students into debt. Higher education policy must ensure that students are going receive a net benefit from postsecondary education and job training, for their individual attainment and for the advancement of our economy and society.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Martindale', written in a cursive style.

Suzanne Martindale  
Senior Attorney