The Leadership Conference Education Fund

Gainful Employment:
A Civil Rights Perspective

The President's signature on this legislation [the Higher Education Act] passed by this Congress will swing open a new door for the young people of America. For them, and for this entire land of ours, it is the most important door that will ever open – the door to education. And this legislation is the key which unlocks it.

President Lyndon B. Johnson
November 8, 1965

Key Findings:

- A strong "gainful employment" rule is critical to protecting Black and Latino students in particular from substandard career education programs and to ensuring that the Higher Education Act fulfills its promise of educational opportunity for all.
- Black students are overrepresented in for-profit colleges. While Black students make up 13 percent of all postsecondary enrollments, they represent 25 percent of students at for-profit institutions.[1]
- Students at for-profit colleges are much less likely to graduate than students at public and private non-profit schools. For example, the graduation rate for Black students who seek Bachelor's degrees at for-profit colleges is less than two-thirds of the graduation rate of Black students at public or private non-profit institutions.[2]
- For-profit colleges cost much more than public colleges — and more than twice as much as public two-year colleges.[3]
- For-profit graduates incur high student loan debt. Nine out of 10 Black and Latino students who graduated from a for-profit undergraduate degree program had to borrow. On average, those students borrowed at least $10,000 more than those who borrowed to attend public colleges.[4]
- Protecting students as the U.S. Department of Education's gainful employment rule does could increase the annual earnings of a typical financial aid recipient by $3,400 by directing them to higher value alternatives. Among students who transfer from a program that fails the rule to a nearby passing program, their annual earnings are expected to increase by 45 percent on average, from $21,600 to $31,500.[5]
- Rather than providing a path toward educational and economic opportunity, for-profit colleges often do the opposite. Nearly three quarters (74 percent) of for-profit, certificate-granting institutions leave the majority of their students earning *less than the typical high school graduate*, even ten years after initial enrollment.[6]

Introduction

Upon its signing in 1965, the Higher Education Act (HEA) ushered in unprecedented postsecondary educational opportunities for Americans by providing federal financial assistance to students enrolling in higher education institutions.[7] In signing the HEA into law, President Lyndon Johnson recognized the importance of enabling more lower- and middle-income Americans to secure higher education credentials as a means to combat poverty and spur economic prosperity and mobility.[8] The HEA has served as a powerful vehicle in leveling the playing field in higher education. The subsequent inclusion of the Pell Grant program in the HEA in 1972 further increased educational opportunity for all Americans, but especially for Black and Latino students.

From 1972 to 2021, the share of 18-24 year-old Black people enrolled in postsecondary education increased from 18.3 percent to 36.7 percent.[9] In that same period, the share of 18-24 year-old Latinos enrolled in postsecondary institutions increased from 13.4 percent to 33.4 percent.[10] In the span of nearly five decades and with the assistance of HEA programs, the share of enrollment of Black students doubled and of Latino students tripled, demonstrating increased opportunities for historically underrepresented students in higher education. Looking ahead, in addition to making improvements in college completion rates, good public policies are needed to continue ensuring that underrepresented students have access to quality degrees, without saddling students with excessive and unnecessary debt.

Targeted for Enrollment in High Cost, Low-Quality Programs

The civil rights community has been concerned about the for-profit educational industry for years.[11] Research suggests that for-profit institutions undermine rather than enhance economic opportunities for Black and Latino students.[12] The toxic combination of aggressive and deceptive recruiting, false claims, low-quality education,[13] and predatory lending practices continue to lead to higher student loan debt without accompanying value for students.[14] Students attending for-profit institutions have comparatively worse performance outcomes than those at public and private non-profit institutions. Data show that students at four-year, for-profit institutions are less likely to graduate and more likely to default on their student loans. For-profit colleges only enroll 10 percent of students but account for half of all student loan defaults.[15] Default rates among for-profit students are higher, in part, because students borrow more than their peers at public and non-profit institutions.

A 2023 study from Public Agenda found that 60 percent of for-profit attendees reported relying on student loans to pay for college, compared to only 28 percent of community college students.[16] Even among Bachelor's degree recipients, 30 percent of those who started at for-profit colleges defaulted on their federal student loans within 12 years of entering college — seven times the rate of those who started at public colleges (4 percent) and six times the rate of those who started at non-profit colleges (5 percent).[17]

In addition to putting students at higher risk of default, for-profit colleges fail to provide students with economic returns on their investment in postsecondary education. Nearly three quarters (74 percent) of for-profit, certificate-granting institutions leave the majority of their students earning less than the typical high school graduate, even ten years after enrollment.[18]

The performance of these schools in terms of student outcomes and cost is a concern for the civil rights community, particularly because of the overrepresentation of Black students at these institutions. For-profit schools enroll disproportionately high numbers of Black students, who account for 13 percent of all postsecondary enrollments but 25 percent of students at for-profit institutions.[19] These high enrollments reflect evidence that for-profit programs disproportionately target low-income Black communities.[20]

These high enrollments are unsurprising in light of evidence that indicates for-profit programs disproportionately target low-income Black communities for recruitment. Such for-profit institutions deliberately exploit low-income people of color who are frequently targeted for fraudulent marketing techniques because they are unemployed, underemployed, or otherwise searching for increased earning power.[21] In addition to targeting particular marginalized communities, for-profit college marketing practices have also been shown to be fraudulent.[22] A strong gainful employment rule will hold institutions responsible to help ensure student educational and employment outcomes supersede profits for those schools.

The debt incurred from attending a for-profit institution has consequences throughout a person's life, and that of their family. The average wealth of White families in early 2023 ($1,305,000) was more than four times that of Black families ($319,000) and Latino families ($314,000).[23] This wealth gap arises out of generations of government-sanctioned policies that prevent families of color from accumulating wealth, such as redlining, restrictive covenants, lending discrimination, and encouraging neighborhood segregation, as well as contemporary discrimination in housing, employment, financial services, and other areas.[24] Excessive student debt continues to contribute to this gap.[25] Of additional concern are the students who do not complete their programs, incur immense loan debt, and still lack the technical skills and credentials needed to become gainfully employed in an upwardly mobile job that pays sufficient wages for them to pay back their loans or support a family.[26] Even students who graduate from for-profit colleges have low earnings compared to their peers, indicating that the education they received was not worth as much.[27]

Enforcing the Gainful Employment Provision of the Higher Education Act (HEA)

Under the HEA, in order for postsecondary career education programs to be eligible to receive students' federal financial aid (grants and loans under Title IV of the law), the institutions must "prepare students for gainful employment in a recognized occupation."[28] This requirement applies to all public and private non-profit college programs of less than two years and nearly all for-profit college programs. As is usually the case in implementing laws passed by Congress, there is a need to define in practical terms what this requirement means. The guiding principle in both the Obama and Biden administrations' regulatory efforts has been to ensure that students who enroll in career education programs benefit sufficiently to justify the cost – programs with costs so high or that fail to meaningfully increase students' earning power should not be allowed to participate in the Title IV program. Given the high stakes for students of color in the appropriate oversight of higher education, the civil rights community remains heavily invested in the issue of gainful employment.[29]

As documented in this brief, students at for-profit colleges are much less likely to graduate than those at public and non-profit schools; and more likely to have debt and higher amounts of it. Without robust enforcement of HEA, for-profit schools have little incentive to operate in the best interest of their students and ensure they complete school, become gainfully employed, and earn enough to repay their loans. For-profit institutions that overall have lower student outcome rates compared to public schools have been especially aggressive in recruiting students of color, which is why gainful employment rulemaking is important for civil rights organizations.[30] A robust gainful employment rule offers long overdue federal oversight of for-profit colleges and provides regulatory protections for students and taxpayers alike.

In response to studies and investigations of predatory for-profit colleges, and to ensure compliance with the Higher Education Act of 1965 (HEA), in 2010, the U.S. Department of Education, under the Obama administration, finalized a regulation to enhance accountability at all career education programs, including those at for-profit colleges.[31] The rule conditioned a program's continued eligibility for Federal Student Aid dollars on meeting two related tests. Institutions needed to meet a minimum debt-to-earnings ratio test (which compared a student's debt to their earnings after graduation) and a repayment rate test (which tracked the percentage of program graduates who made progress paying back their loans).[32] If a program failed both tests for three out of four years, then it would no longer have been allowed to collect financial aid from students. The premise behind the tests was that programs with overly high costs, and whose graduates did not see an increase in income, would improve or face the loss of federal student aid. In response to a legal challenge brought by the trade association representing for-profit colleges, a court struck the second part of the test (the repayment rate test) before it took effect, but the court underscored that the U.S. Department of Education had the authority to issue the rule and that sufficient evidence existed to justify the debt-to-earnings ratio test.[33] In light of the court's action, the department initiated a new rulemaking process in 2014.

The Obama Administration finalized a revised gainful employment rule in 2014 that implemented the debt-to-earnings safeguard without an additional repayment rate measure.[34] Under the 2014 rule, any programs where typical graduates' debts exceeded both 8 percent of their total income and 20 percent of discretionary income were required to improve or lose access to federal financial aid. The rule also required programs to provide prospective students and consumers with information on the earnings, debt burdens, and employment outcomes of typical graduates.[35]

The gainful employment rule protected students from enrolling in low financial value programs and brought quality improvements to the for-profit college sector. Despite offering only about one-third of eligible programs, for-profit colleges operated nearly 98 percent of failing programs.[36] According to one analysis, 65 percent of these failing for-profit programs in early 2017 were no longer enrolling students as of August 2018.[37]

In 2019, following improper delays and repeated failures to follow the law and enforce the 2014 rule, and despite objections from the civil rights community and others,[38] the Trump administration formally rescinded the regulation, alleging that it was “too burdensome” for for-profit colleges.[39] The U.S. Department of Education’s rescission of the gainful employment rule under President Trump (at an estimated $6.2 billion cost to taxpayers[40]) meant that that requirement of the HEA would no longer be enforced. Failure to enforce the provision allowed low-quality, for-profit institutions to avoid accountability from the federal government and enables the exploitation of students, particularly students of color.

The 2023 Rule

The Biden administration has taken crucial steps to reinstate the gainful employment rule and restore critical quality protections for students. In 2022, members of a committee appointed by the U.S. Department of Education, which included representatives from the Department, public and private institutions, for-profit and non-profit institutions, Minority-Serving Institutions, state regulators, veterans, state attorneys general, and student and consumer advocates began three months of negotiated rulemaking to update gainful employment. The Department published its proposed final gainful employment rule in May 2023.[41] After reviewing thousands of public comments on its proposal, the Department released the final rule in September 2023; the new rule went into effect on July 1, 2024.[42]

Under the Department’s final gainful employment rule, career education programs — including all programs at for-profit colleges and all career education programs at public and private non-profit colleges — must pass **both** a debt-to-earnings ratio test similar to that of the 2014 rule **and** a new earnings premium measure.[43] Programs enrolling fewer than 30 students are not subject to gainful employment requirements because of data suppression requirements to protect student privacy. To pass the debt-to-earnings threshold, programs must either show that graduates’ average debt payments are no more than 8 percent of annual earnings or 20 percent of discretionary earnings (calculated as earnings minus 150 percent of the federal poverty level, or approximately $22,000).

The earnings premium measure will account for programs that may leave graduates with relatively low debt but with limited income potential and few worthwhile career prospects in their fields. To pass the earnings premium threshold, programs must show their typical graduates earn at least as much three years after graduating as a high school graduate in the labor force between the ages of 25 and 34 in their state — approximately $25,000 a year, with variance by state. Programs that fail either or both gainful employment metrics in a single year will need to warn students that their program is at risk of losing access to students’ federal aid, and programs that fail the same metric twice in a three-year period will lose eligibility to participate in federal student aid programs.



The Department estimates the final rule will protect nearly 700,000 students annually from attending about 1,700 failing career education training programs.[44] According to an analysis by The Institute for College Access & Success (TICAS) of program-level data released with the proposed rule, 498 programs at 248 for-profit institutions would fail the debt-to-earnings metric.[45] The five largest of these institutions enrolled 89,421 students in failing programs in 2022 alone. One for-profit education company had 33,538 of its 143,898 students enrolled in failing programs. Even with fewer overall programs failing to meet the requirements of the debt-to-earnings metric, restoring this element of the rule will have a tremendous impact for students, particularly on the disproportionate number of students of color enrolling in high-cost for-profit programs. The Department will also make information on gainful employment passage rates available to the public through a new disclosure website that aims to provide additional transparency about the financial value of postsecondary programs across all sectors.[46]

The full implementation and robust enforcement of the new gainful employment rule is critical to protect hundreds of thousands of students — disproportionately Black and Latino students — from low-quality postsecondary programs.

The Impact of For-Profit Institutions on Black and Latino Students

I. Educational outcomes for Black and Latino students remain worse at for-profit colleges than at comparable private non-profit/public institutions

Students Enrolled at For-Profit Colleges Are Less Likely to Graduate

Black and Latino students seeking Bachelor's degrees at for-profit colleges are less likely to graduate than their peers at other schools. Black students are about 1.5 times as likely to graduate within six years with a Bachelor's degree from a public or private non-profit school as from a for-profit college. The percent of Black students completing public colleges is 14 percent higher than the completion rate at for-profit colleges. Graduation rates for Latino students at for-profit colleges similarly lag rates at public and private non-profit schools, although to a lesser extent. While White students' are not enrolled in high proportion at for-profit colleges, those who are have the lowest graduation rates compared to their peers at public schools, with a 21 percent discrepancy in six-year Bachelor's completion rates between for-profit and public colleges. Fourteen state attorneys general have asserted that even among those students who manage to graduate from a for-profit college, many face greater challenges securing certification or employment in their field.[47]

Figure 1: Share of Bachelor's-degree-seeking students who completed a Bachelor's degree within six years, 2017

College Type	Black	Latino	White
Public	42%	51%	63%
Private, non-profit	46%	63%	71%
For-profit	28%	50%	42%
ALL	42%	54%	65%

Source: U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Graduation Rates component 2021 provisional data.

Note: These figures are for first-time, full-time Bachelor's-degree-seeking undergraduates in cohort year 2015, measuring the share who completed a Bachelor's degree at the same college by August 2021. These figures cover four-year colleges in the 50 states and Washington D.C. as listed in IPEDS for 2020-21.

Disparities in the graduation rates of Black and Latino students across institutional sectors have narrowed since we last updated this report in 2019. Although the Trump administration repealed the gainful employment rule before any program lost federal funding, research on the 2014 gainful employment rule shows that poorly performing programs that would have failed the rule were more likely to close.[48] Low-quality program closures do not explain improved graduation rates in the for-profit sector on their own, but the updated gainful employment rule should lead to the exclusion of programs providing the worst outcomes for students from the federal student aid system and redirect students to programs with higher graduation rates and post-graduation success.

II. Black and Latino students pay a higher net price and incur more debt to attend for-profit colleges.[49]

For-Profit Colleges Are More Expensive

For-profit colleges cost students more than public institutions. According to data from the National Postsecondary Student Aid Study, the amount Black and Latino students pay to attend for-profit colleges (after grant aid and scholarships are taken into account) is significantly higher than at public colleges. The difference is especially stark for those attending two-year institutions, where for-profit schools cost more than double the price of public colleges for Black and Latino students. And while private, non-profit institutions have a nearly equal price tag to the for-profits, student investment in non-profit institutions yield greater positive outcomes in degree completion and the labor market value of degrees.

Figure 2: Net price for Black and Latino undergraduates, 2019-20

Black Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$19,800	$24,750	$22,350
Two-year	$13,750	n/a	$30,050
Latino Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$17,850	$27,200	$27,750
Two-year	$14,250	n/a	$30,200

Source: TICAS calculations on data from the 2019-20 National Postsecondary Student Aid Study (NPSAS:20)

Note: These data represent the full cost of attendance (including tuition and fees, living expenses, books and supplies, and transportation) minus grant aid for full-time, full-year undergraduates who attended one institution in 2019-20, regardless of whether they received grants or not. Less-than-two-year schools and private non-profit two-year schools were omitted because they enroll so few full-time, full-year students. Figures are rounded to the nearest $50.

For-Profit College Graduates Have More Debt and Take it on at Higher Rates

Black and Latino graduates of undergraduate degree programs at for-profit colleges are far more likely to have borrowed, and at significantly higher amounts, than graduates of public colleges. According to the National Postsecondary Student Aid Study, about 8 out of 10 Black and Latino students who graduated from a for-profit college Associate's (AA) or Bachelor's program had to borrow to attend school. On average, they had to borrow at least $12,000 more than peers who borrowed to attend programs at public colleges. Nearly all Black students (96 percent) and 85 percent of Latino students who earned an Associate's degree at a for-profit college had to borrow, compared to 50 percent of Black and 25 percent of Latino students at public two-year colleges, respectively. The average debt per Latino borrower pursuing an Associate's degree at a for-profit institution is more than double that at a public institution.



Figure 3: Cumulative student debt at graduation, 2019-20

Graduates obtaining a Bachelor's degree

	Black		Latino		White	
College type	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**
Public	84%	$31,600	59%	$22,000	58%	$28,800
Private, non-profit	80%	$35,100	59%	$31,950	65%	$33,800
For-profit	83%	$40,900	83%	$39,500	76%	$36,600
Overall	83%	$33,950	61%	$26,400	61%	$30,700

Graduates obtaining an Associate's degree

	Black		Latino		White	
College type	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**
Public	50%	$20,150	25%	$12,300	36%	$16,500
For-profit	96%	$28,000	85%	$26,950	86%	$26,300
Overall	60%	$22,650	32%	$16,550	41%	$18,950

Source: TICAS calculations using data from the 2019-20 National Postsecondary Student Aid Study (NPSAS:20)

Note: These figures are for students who were expected to graduate with a Bachelor's degree from a four-year college/an Associate's degree from a two- or four-year college. Private non-profit colleges are excluded from the data for Associate's degree recipients because they account for so few students expected to receive AAs. Figures are rounded to the nearest 1 percent and nearest $50.

Conclusion

Stronger oversight is desperately needed to tackle the problems of poor outcomes and high debt across for-profit postsecondary career education programs. Currently, even when better and lower cost options are available, Black and Latino students are disproportionately enrolled in schools where they are both likely to borrow and unlikely to succeed, and there are few incentives for schools to improve poorly performing programs.

The U.S. Department of Education must robustly implement and enforce the recent gainful employment regulations to protect and maintain educational opportunity for all students. Minimum standards that protect student and taxpayer dollars are essential to establish whether students are earning enough to pay back their loans and are indeed "gainfully employed." Poorly performing institutions today continue to enroll new cohorts of Black and Latino students with insufficient accountability to ensure the success of those students.

The for-profit college industry alleged that a strong "gainful employment" rule would disproportionately affect the educational access and attainment of students of color.[50] Not only does this assertion ignore the exploitation of students experience when attending high-cost, low-quality for-profit colleges, but it also fails to recognize the evidence that when low performing schools are no longer propped up with federal funds, students can and do find better educational opportunities leading to better economic outcomes.[51]

The 2023 gainful employment rule should increase the annual earnings of a typical financial aid recipient by $3,400 by directing them to higher-value alternatives. Among students who transfer from a program that fails the rule to a nearby passing program, their annual earnings are expected to increase by 45 percent on average, from $21,600 to $31,500.[52] Data show that students at for-profit colleges, especially students of color, pay more in tuition, have more debt, and are less likely to graduate.[53] Such outcomes, in other contexts, would meet the legal definition of "reverse redlining."[54] "Reverse redlining" is the practice of extending inferior products on unfair terms or at higher costs to people of color.[55] The for-profit industry's provision of inferior services to students from marginalized communities — such as students of color — should lead to more, not less, regulation aimed toward protecting low-income students and students of color.

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47. See, e.g. Letter from fourteen state Attorneys General to Senator Dick Durbin and Representative Elijah Cummings re: S. 2204 – Proprietary Education Oversight Coordination Improvement Act. September 9, 2014.
48. Kelchen, Robert and Zhuoyao Liu. "Did Gainful Employment Regulations Result in College and Program Closures?" *Education Finance and Policy* 2022; 17 (3): 454-478.
49. Earlier versions of this brief referenced higher default rates for students who attended for-profit colleges, an additional important indicator that these institutions are not setting their students up for success. However, given the COVID-19 global pandemic, and the necessary related student loan payment pause, recent default data are not useful indicators of program quality or student outcomes and so are not included in these tables.
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54. See, e.g., Second Amended Complaint, Morgan v. Richmond School of Health and Technology, No. 11-1066 (E.D. Va. filed Dec. 7 2011) (class action against for-profit college asserting Equal Credit Opportunity Act discrimination claim).

55. Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7, 20 (D.D.C. 2000) (citing United Lending Cos Corp. v. Sargeant, 20 F.Supp.2d 192, 203 n.5 (D.Mass. 1998)). See also Benjamin Howell, A Parallel Evolution: The Reverse Redlining Theory, 94 Cal. L. Rev. 101, 142 (2006); National Consumer Law Center. Why Responsible Mortgage Lending is a Fair Housing Issue. February 2012. The City of Los Angeles recently sued Bank of America, Wells Fargo, and Citibank for damages to the city under a reverse redlining theory of mortgage discrimination. See Reynolds, Matt. "Banks' Reverse Redlining Cost It $1 Billion, Los Angeles Claims." Courthouse News Service. December 9, 2013. As cited in comments on the draft gainful employment regulation submitted by the Center for Responsible Lending, May 27, 2014, *available at* http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2014/05/Center-for-Responsible-LendingComments-on-Proposed-Gainful-Employment-Rule.pdf.

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