Dept. of Education Issues Final "Gainful Employment" Regulations for Career College Programs

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On June 13, 2011, the U.S. Department of Education (Department) released final regulations requiring career college programs to demonstrate that they are preparing students for "gainful employment." Programs that fail to meet the Department's new requirements risk losing access to federal financial aid.

Title IV of the Higher Education Act of 1965 currently requires certain postsecondary programs, including most for-profit colleges and certificate programs at non-profit and public institutions, to prepare students for gainful employment in a recognized occupation in order to qualify for federal financial aid. The new regulations define what it means to provide training that leads to gainful employment. Under the new regulations, a program is considered to lead to gainful employment if it meets at least one of the following three measures: 1) at least 35 percent of former students are repaying their loans; 2) the estimated annual loan payment of a typical graduate does not exceed 30 percent of his or her discretionary income; or 3) the estimated annual loan payment of a typical graduate does not exceed 12 percent of his or her total earnings.

Programs that fail to meet the above-described debt measure criteria three times in a four-year period lose eligibility to participate in federal student aid programs. The Department will begin calculating the debt-to-earning ratios for FY 2012. Thus, the first year a program could become ineligible would be 2015. Although poor performing programs do not lose eligibility upon their first failure, additional requirements are imposed on such programs as soon as they initially fail to meet the debt measure. The first time a program fails to meet the debt measure it must disclose to students why the program missed the measurement and how it will address the issue. If the program fails to meet the debt measure a second time in three years, it must inform students that their debts may be unaffordable after graduation, that the program is at risk of losing eligibility to participate in federal financial aid programs, and what their existing transfer options are. The "second year failure" obligations include prominently posting the debt warnings on the institution's website and in any promotional materials distributed to prospective students. Upon failing a third time in four years, the program becomes ineligible to participate in federal student aid programs and cannot reapply for eligibility for at least three years.

The regulations include a process for institutions to challenge the accuracy of the Department of Education's results of the debt measures before they become final, and to request that alternative earnings be used to calculate the program's debt-to-earning ratios.

As we reported in an earlier FR Alert, the Department issued additional regulations this past fall requiring proprietary institutions to report certain information to prospective students and to the Department about their programs and students, including program costs, debt levels, graduation rates, and job placement rates after graduation.