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RSC Policy Brief:
Department of Education's "Gainful Employment" Regulation: An Assault on Students

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"It's hard not to conclude that the real driving political force here is hostility to *private* education companies. This is consistent with the Administration's decision to bar private companies from delivering student loans, its near-takeover of the health-care industry, and its denunciations of high business pay and profits. By punishing for-profit colleges, the Administration will push more students into their nonprofit competitors, which satisfies its preference for equality of outcomes and more government control."

- "Scapegoating For-Profit Colleges," *The Wall Street Journal*, August 27, 2010

Summary and Background: Due to be finalized and published in early 2011, the proposed "gainful employment" regulation promulgated by the Department of Education requires institutions to implement the requirements of the proposed regulation by July 1, 2012. Many Democrats and Republicans alike oppose the proposed rule which, among other things, attacks for-profit education, will cause thousands of individuals to lose their jobs, and will prevent millions of students from getting a good, quality education. For a letter to Secretary of Education Arne Duncan, from Ranking Member Kline, along with RSC Chairman Price, and other members of the House Education and Labor Committee, click here.

What is a "for-profit" college? Historically, "for-profit" colleges, or proprietary colleges, were vocational and technical schools that provided a shorter term certificate or degree in a trade or a specific type of occupation. Now, many of the institutions offer bachelors degrees, masters degrees, and even doctoral degrees. DeVry, Capella, and the University of Phoenix are some of the better known examples. Proprietary colleges could also include a local cosmetology or culinary school.

Why are they calling this the "gainful employment" regulation? One of the minimum requirements for these institutions to participate in the federal student aid programs is that they offer programs that lead to gainful employment in a legally recognized occupation. "Gainful employment," which has been a standard for over 40 years, is currently undefined in statute or regulation. Many question the timing of this regulation and why the Administration all of a sudden concludes that a definition needs to be placed on a standard that has been in place and working effectively for so long. Furthermore, some have questioned whether the Department has the authority to make such a broad-sweeping change in policy via regulation. This should be a matter for legislation from Congress. The proposed regulation attempts to define the standard by establishing tests for schools to establish whether a program leads to gainful employment. The tests would determine the following:

- Former students' loan repayment rate (a "successful" repayment only occurs when loan principal is being reduced. Payments that just reduce the interest on a loan will not count, even if the borrower is in a federally-authorized repayment plan); and

- The relationship between median annual student loan payment and average annual earnings after leaving the program (debt-to-income ratio).

Based on the results of the tests, the program will be labeled fully eligible, ineligible, or on restricted status. Programs are ineligible if they have:

- A repayment rate less than 35% from former students; and
- Annual debt payments over 12% of their annual earnings and over 30% of their discretionary income.

Why are these regulations attacking "for-profit" schools? The Administration alleges that "some students attending for-profit institutions have not been well served." However, the number of schools that are not providing quality education is not enough to warrant such a massive overhaul of the student loan system for for-profit schools. This regulation singles out for-profit schools at the expense of millions of students that see these schools as their best option. We see this in enrollment rates which, according to the regulation, tripled between 2000 and 2008 to 1.8 million. And a report by the Center for College and Affordability and Productivity (page 10) shows that enrolled has increased six fold since 1986.

The Administration alleges that this rule was proposed as a response to high default rates at proprietary schools. As the *Wall Street Journal* reported on August 27, 2010, "It's true that students at these so-called career colleges are more likely to take out larger loans than their nonprofit peers, and that this can contribute to higher default rates. But their tuition is also more expensive, in part because these schools don't receive state aid and have to pay taxes." Furthermore, the rule does not account for the fact that proprietary schools frequently serve at-risk populations, or those that receive Pell Grants. In fact, default rates at *all* institutions where 40% or more students receive Pell Grants are *higher* than default rates at 4-year proprietary schools where 40% of more students receive Pell Grant (10.3% vs. 10.2%). Default rates are only minimally lower in all institutions where 40% receive Pell Grants (10.3%) vs. the default rate of 2-year proprietary schools with greater than 40% receiving Pell Grants (12.2%). And a recent study by the Imagine America Foundation found that graduation rates among institutions that serve greater than 60% of low-income students had a higher graduation rate than both 2 and 4-year public and non-profit institutions.***** So all in all, for-profit schools aren't as bad off as the Administration makes them out to be.

*****For charts relating to the above statistics, please click here.

What will be the effect of this regulation?

Low-income, minority students will suffer. Students at for-profit institutions frequently draw low-income and/or minority students that may not have high school degrees. According to the U.S. Chamber of Commerce, "This rule is lethal to programs that enroll significant numbers of low income students…the Chamber is concerned that institutions would be forced to reject low-income students in order to ensure compliance with the arbitrary debt-to-income ratio proposed in this rule."

Jobs and training lost. President Obama wants to have the highest percentage of college graduates in the world in ten years. To do this, the number of college graduates needs to increase by 8 million by 2020. The President has even said that he cannot reach his goal of graduating the highest percentage of college graduates in the world by 2020 "without a healthy and productive higher education for-profit sector." However, many for-profit schools and programs will be forced to shut down due to this proposed regulation, thus decreasing the number of students who graduate and enter the workforce resulting. In fact, the Parthenon Group estimates 100,000 jobs will be lost in faculty, staff, administrators, and suppliers due to this regulation. It is a job killer during the middle of an economic downturn.

The proposed rule is a one-size-fits-all approach and will result in over a million students losing the option to go to a school of their choice and a school that best fits their personal needs. Many of these students might not have the access to public or non-profit institutions and choose these schools because they train them for the workforce. Without access to for-profit schools, these students will be less likely to get the training needed for jobs they want.

Not just the bad actors are punished. All for-profit schools will be affected, even those who provide a good, quality education to its students. Members of Congress requested a study by the Government Accountability Office (GAO) on the prevalence of bad actors in the for-profit school industry. These Members of Congress believe that the Department should not rush to regulate until we know the extent of the program and whether students are well-informed about their potential education expenses.

The proposed gainful employment regulation would harm students and give them less of a choice in achieving their educational goals. When unemployment levels are at 9.6% right now, we must help students get the tools they need to enter the workforce. This proposed regulation does just the opposite and does nothing to get Americans back on their feet. It merely punishes a part of the education industry that receives a profit for the work they do. The Department of Education should leave this matter alone.

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