Gainful Employment:

A Civil Rights Perspective

Center for Responsible Lending

Children's Defense Fund

Lawyers' Committee for Civil Rights Under Law

The Leadership Conference

MALDEF
The Latino Legal Voice for Civil Rights in America.

National Association for the Advancement of Colored People
NAACP
Founded 1909

LDF
Defend Educate Empower

NCLR
National Council of La Raza

> 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:

- **The Obama Administration urgently needs to issue a strong final "gainful employment" regulation.** A strong rule is needed to protect African American and Latino students from substandard career education programs and to ensure that the Higher Education Act fulfills its promise of educational opportunity for all.
- **Students at for-profit colleges are much less likely to graduate than students at public and non-profit schools.** African Americans and Latinos seeking Bachelor's degrees at for-profit colleges are much less likely to graduate than their peers at other schools.
- **Students who attend for-profit colleges are much more likely than their peers at other schools to default.** For-profit colleges account for nearly half of all student loan defaults (44%), even though they make up only 12 percent of total postsecondary enrollment.
- **For-profit colleges cost much more.** For-profit schools cost African American and Latino students much more than public colleges – and *more than twice as much* as public two-year colleges.
- **For-profit college graduates incur high loan debt.** Nine out of ten African Americans and Latinos who graduate from a for-profit college undergraduate degree program had to borrow; on average, students borrowed *at least $10,000 more* than those who borrowed to attend public colleges.
- **African American and Latino students are over-represented in for-profit colleges.** While African American and Latino students make up 21% of all postsecondary enrollments, they represent 41% of students at for-profit institutions.

Introduction

In recent years, a number of studies and investigations found that for-profit schools implement policies and practices that produce adverse outcomes for African American and Latino students. Claims made against these institutions include aggressive and deceptive recruiting, false claims, and effectively predatory lending practices that lead to higher student loan debt. In response, the U.S. Department of Education is developing a new regulation to enhance accountability at all career education programs, including those at for-profit colleges. A strong final rule would provide urgently needed protection to students, including disproportionately African American and Latino students.

In order for post-secondary career education programs to be eligible for Title IV financial grants and loans, including all public and private non-profit college programs of less than two years and nearly all for-profit college programs, federal law requires them to "prepare students for gainful employment in a recognized occupation."[1] Despite previous efforts by the U.S. Department of Education, this statutory requirement is not currently being enforced.[2]

In 2011, the U.S. Department of Education proposed a rule that would provide minimum standards for career education programs receiving Title IV funding.[3] Programs that repeatedly failed to meet minimum requirements would lose eligibility for federal aid. Data from the U.S. Department of Education estimated that 5 percent of career training programs were at risk of losing access to federal dollars under the 2011 final regulation if they did not improve.[4] However, in 2012, a federal district judge vacated most of the gainful employment rule because he concluded that the Department had not offered a sufficient rationale for the regulation's loan repayment rate threshold. The U.S Department of Education is once again taking action to revise the rule in light of the court's ruling and public input, and will soon produce a new final regulation.[5]

As documented in this brief, students at for-profit colleges are: much less likely to graduate than those at public and non-profit schools; more likely than their peers at other schools to default; and more likely to have debt and more of it. It is therefore imperative that strong gainful employment rules are put in place. Without them, for-profit schools have little incentive to reverse their practices to ensure their students complete school, become gainfully employed, and are able to repay their loans. For-profit institutions that overall have lower student outcome rates compared to public schools also have been especially aggressive in recruiting students of color, which is why gainful employment rulemaking has become important for civil rights organizations.[6] The proposed rule, when finalized, will provide long overdue federal oversight, providing regulatory protections for students and taxpayers alike.

Background

The Higher Education Act of 1965 ("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 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 African American and Latino students. From 1975 to 2013 the share of 18-24 year olds enrolled in postsecondary education increased from 18.3 percent for African American students to 36.4 percent.[9] In that same period the share of 18-24 year old Latinos enrolled in postsecondary institutions increased from 13.4 percent to 35.5 percent.[10] In the span of nearly three decades and with the assistance of HEA programs, the share of enrollment of African American and Latino students nearly doubled, leading to increased opportunities for traditionally underrepresented students in higher education. Looking ahead, in addition to making improvements in college completion rates, good public policies are needed to continue to assure access for underrepresented students to quality degrees, without saddling students with excessive and unnecessary debt.

The civil rights community has become increasingly concerned about the rise of the for-profit educational industry. Research suggests that for-profit institutions are undermining rather than enhancing economic opportunities for African American and Latino students. These 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. At the same time, students attending for-profit institutions pay a lot and borrow a lot to cover college costs. The performance of these schools in terms of student outcomes and cost is a concern for the civil rights community particularly due to the overrepresentation of African American and Latino students at these institutions.

While 6 out of 10 African American students and 8 out of 10 Latino students attend public colleges, African American and Latino students are over-represented at for-profit colleges.[11] In 2012-13, 1.36 million African American and Latino students were enrolled at for-profit colleges.[12] African American and Latino students together make up 28 percent of all students enrolled in undergraduate or graduate study, but they represent 41 percent of students at for-profit colleges.[13] These high enrollments may be a result of targeted marketing and in some cases fraudulent marketing practices implemented by many for-profit institutions.[14] A strong gainful employment rule would 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 can have consequences in other areas of a person's life. The average wealth of White households in 2011 was nearly 14 times that of Latino households ($110,500 and $7,683, respectively), and more than 17 times that of Black households ($6,314).[15] Excessive student debt contributes to this gap.[16] Of additional concern are the students that fail to complete their program, 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.

These data show the educational inequities that must be addressed in the forthcoming gainful employment regulations in order to ensure all students have access to a quality education.

The Impact of For-Profit Institutions on African American and Latino Students

1. **Educational outcomes for African American and Latino students are worse at for-profit colleges than at comparable private non-profit/public institutions**

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

African Americans and Latinos seeking Bachelor's degrees at for-profit colleges are less likely to graduate than their peers at other schools. African Americans are about twice as likely to successfully graduate within six years with a Bachelor's degree from a public or private, non-profit school as from a for-profit college. Latino graduation rates at for-profit colleges similarly lag, although to a slightly lesser extent. Fourteen state attorneys general assert that even among those students who do manage to graduate from a for-profit college, they may face greater challenges securing certification or employment in their field.[17]

Figure 1: Share of Bachelor's-degree-seeking students who completed a Bachelor's degree within six years, 2012

College Type	White	African American	Latino
Public	60%	40%	50%
Private, non-profit	68%	45%	62%
For-profit	40%	21%	34%
ALL	63%	40%	52%

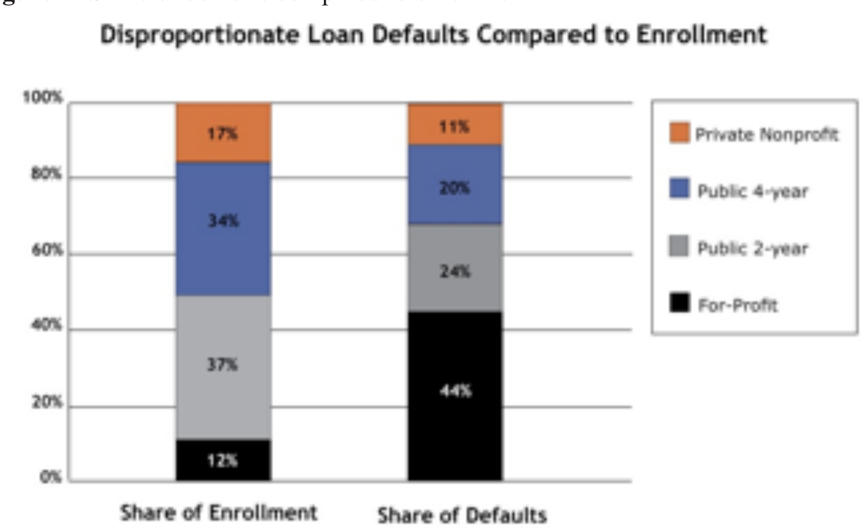
Source: TICAS calculations on data from the federal Integrated Postsecondary Education Data System (IPEDS)

Note: These figures are for first-time, full-time Bachelor's-degree-seeking undergraduates in 2006-07, measuring the share who completed a Bachelor's degree at the same college by August 2012. These figures cover four-year colleges in the 50 states and DC as listed in IPEDS for 2011-12.

For-Profit College Students Are More Likely to Default

For-profit colleges account for nearly half of all student loan defaults (44%), even though they make up only 12 percent of total postsecondary enrollment. Defaulted student loan debt can follow borrowers for the rest of their lives, ruining their credit and making it difficult to build wealth. Defaulted borrowers may also face garnished wages, seized income tax refunds, and diminished Social Security checks. A study conducted for the for-profit college trade association concluded that borrowers who attended for-profit colleges are more likely to default, even after controlling for demographics and whether students completed.[18]

Figure 2: Share of defaults compared to enrollment



Source: U.S. Department of Education, IPEDS 12-month enrollment for 2012-13 for schools in the 50 states plus DC, and FY 2011 three-year CDRs.

Importantly, these data on defaults cover only federal student loans, not riskier private loans. African American undergraduates at for-profit colleges are more than twice as likely to borrow private (non-federal) loans as their counterparts at other types of colleges. Latinos enrolled in for-profit colleges are four times as likely to borrow private loans as those at other types of colleges. Recent lawsuits by the Consumer Financial Protection Bureau against for-profit college companies ITT and Corinthian involve private loan programs with default rates above 60 percent.[19]

2. **African American and Latino students pay a higher net price and incur more debt to attend for-profit colleges.**

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 African Americans and Latinos 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 cost of public colleges. And while private, non-profit institutions have a nearly equal price tag to the for-profits, student investment in these institutions yield greater positive outcomes in regard to completion and value of degree.

Figure 3: Net Price for African American and Latino Undergraduates, 2011-12

African American Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$15,050	$23,200	$24,000
Two-year	$10,950	n/a	$26,550

Latino Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$14,950	$25,300	$25,350
Two-year	$10,500	n/a	$25,600

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

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 2011-12, 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 (collectively less than 2.5%). Figures are rounded to the nearest $50. Differences between figures mentioned in the text are statistically significant at a 95% confidence level; differences not mentioned in the text may not be statistically significant.

For-Profit College Graduates Have More Debt

African American 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 Survey, about 9 out of 10 African Americans and Latinos who graduated from a for-profit college AA or BA program had to borrow to attend school. On average, they had to borrow at least $10,000 more than those who borrowed to attend programs at public colleges. The data below show the average debt per borrower pursuing an Associate's degree at a for-profit institution is nearly double that at a public institution.

Figure 4: Cumulative student debt at graduation, 2011-12

Graduates obtaining a Bachelor's Degree

	White		African American		Latino	
College type	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**
Public	63%	$25,600	83%	$29,050	64%	$23,750
Private, non-profit	72%	$31,600	87%	$34,950	87%	$37,000
For-profit	86%	$40,200	91%	$39,350	89%	$39,800
ALL	68%	$29,100	86%	$33,000	74%	$29,500

Graduates obtaining an Associate's Degree

	White		African American		Latino	
College type	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**	**% with debt**	**Average debt per borrower**
Public	43%	$13,850	58%	$15,800	34%	$11,650
For-profit	85%	$25,550	93%	$25,750	93%	$22,100
ALL	49%	$17,100	67%	$19,350	45%	$15,200

Source: TICAS calculations on data from NPSAS

Note: These figures are for students who were citizens/resident aliens and 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 in the 50 states and DC. Private non-profit colleges are excluded from the data for Associate's degree recipients because they account for only 2.4%of all students expected to receive AAs and data are not available for either African American or Latino AA recipients. Figures are rounded to the nearest 1 percent and nearest $50. Differences between figures mentioned in the text are statistically significant at a 95%confidence level; differences not mentioned in the text may not be statistically significant.

Policy Recommendations

Stronger oversight is desperately needed to tackle the problems of poor outcomes and high debt within career education programs. Currently, even when better and lower cost options are available, African American 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 issue and implement a strong final gainful employment regulation in order 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 African American and Latino students, with little accountability to ensure the success of those students.

The for-profit college industry alleges that a strong "gainful employment" rule would disproportionately impact the educational access and attainment of students of color.[20] Such a narrow focus on enrollment of African American and Latino students wholly sidesteps other data that show students at for-profit colleges, including students of color: (1) pay more in tuition, (2) have more debt, (3) are less likely to graduate, and (4) are more likely to default.[21] Such outcomes, in other contexts, would meet the legal definition of "reverse redlining."[22] "Reverse redlining" is the practice of extending inferior products on unfair terms or at higher costs to minorities.[23] The for-profit industry's mere provision of services to "nontraditional" students – such as low-income students and students of color – should not be a basis to evade regulation that seek to protect the very same low-income students and students of color, whether currently enrolled or prospective.

The U.S. Department of Education urgently must issue a strong final gainful employment regulation to ensure that career education programs receiving funding under the Higher Education Act fulfill the original goals and legal requirements. In March 2014, the Department issued a proposed regulation to enforce long-standing federal law requiring all career education programs to prepare students for gainful employment in a recognized occupation. The final regulation needs to be strengthened to adequately protect students and taxpayers and to prompt schools to quickly improve or end weak programs.[24] In particular, the final rule needs to:

1. **Limit enrollment in poorly performing programs until they improve.** The administration should prevent substandard institutions from enrolling new cohorts of students where they are least likely to succeed and will incur heavy debt loads.

2. **Provide financial relief to make whole students in programs that lose eligibility.** As the analysis of the data show, students at for-profit institutions pay more and subsequently incur more debt. With the potential for some programs to lose access to Title IV funds, it is important to keep students at the center and make sure students enrolled in substandard programs are made whole.

3. **Raise standards in the regulation to better protect students and taxpayers.** The draft regulation's standards were so modest that programs from which more students default than complete would pass proposed metrics.[25]

4. **Reward rather than burden low-cost programs where most graduates do not borrow.** The extent to which students borrow must also be appropriately considered. Programs that are low-cost and have a small percentage of borrowers should not be unfairly punished by these regulations.[26]

The U.S. Department of Education should act swiftly to issue a final gainful employment rule that will hold predatory colleges responsible for waste, fraud, and abuse. Students who enter programs of study with poor outcomes are left with crippling debt, few prospects for repayment and compromised future opportunities. African American and Latino students, a growing share of the future student population, have waited too long already. If the Administration fails to act, these institutions will continue to enroll African American and Latino students, only to deliver a broken promise.

Endnotes

1. 20 U.S.C. 1002 (b)(1)(A)(i).

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5. Charles Huckabee, Judge Strikes Down Several Provisions of 'Gainful Employment' Rule, Chronicle of Higher Ed., *available at* http://chronicle.com/blogs/ticker/judge-strikes-down-several-provisions-of-gainful-employment-rule/45125.

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12. Figures calculated by TICAS using data from IPEDS, undergraduate and graduate 12-month enrollment in 2012-13 at colleges in the 50 states and DC.

13. Figures calculated by TICAS using data from IPEDS, 12-month enrollment in 2012-13 at colleges in the 50 states and DC.

14. For Profit Colleges: Undercover testing finds colleges encouraged fraud and engaged in deceptive and questionable marketing practices, GAO, *available at* http://www.gao.gov/products/GAO-10-948T.

15. The State of America's Children 2014, Children's Defense Fund, *available at* http://www.childrensdefense.org/child-research-data-publications/data/2014-soac.pdf.

16. At What Cost? How Student Debt Reduces Lifetime Wealth, Robert Hiltonsmith, August 2013, http://www.demos.org/sites/default/files/imce/AtWhatCostFinal.pdf.

17. Letter from fourteen state Attorneys General to Senator Dick Durbin and Representative Elijah Cummings re: S. 2204 – Proprietary Education Oversight Coordination Improvement Act (Sept. 9, 2014) *available at* http://ag.ky.gov/pdf_news/s2204-letter.pdf.

18. Jonathan Guryan, Report on Gainful Employment, Charles River Associates, *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/oira_1840/1840_04232010-h.pdf.

19. For more information on these institutional private student loan programs and their outcomes, see the CFPB's complaints against Corinthian Colleges and ITT *available at* http://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf and http://files.consumerfinance.gov/f/201402_cfpb_complaint_ITT.pdf.

20. Anti-Student Gainful Employment Regulation To Displace 7.5 Million Students, Association of Private Sector Colleges and Universities, *available at* http://www.career.org/news-and-media/press-releases/anti-student-gainful-employment-regulation-displace-7-million.cfm.

21. See supra figures 1, 2, 3, and 4.

22. 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), *available at* http://www.relmanlaw.com/docs/RSHTsecondAmendedComplaint.pdf.

23. 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, *available at* https://www.nclc.org/images/pdf/credit_discrimination/fair-housing-brief.pdf. 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 Matt Reynolds, Banks' Reverse Redlining Cost It $1 Billion, Los Angeles Claims, Courthouse News Service, *available at* http://www.courthousenews.com/2013/12/09/63550.htm. 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-Lending-Comments-on-Proposed-Gainful-Employment-Rule.pdf.

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