

# Summary and Analysis of Gainful Employment NPRM

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## EXECUTIVE SUMMARY

The US Department of Education published a Notice of Proposed Rulemaking (NPRM) on *Program Integrity: Gainful Employment* in the Federal Register on July 26, 2010.<sup>1</sup> The NPRM will have a 45-day public comment period ending on September 9, 2010. It defines gainful employment in terms of affordable debt restrictions based on a triad of three metrics, a loan repayment rate, a debt-service-to-income ratio and a debt-service-to-discretionary-income ratio. This “three strikes” rule provides for-profit colleges and vocational certificate programs with three opportunities to maintain eligibility for federal student aid.

The proposed definition of gainful employment appears to represent a reasonable compromise that separates the wheat from the chaff without discarding too much wheat. However, the proposed rule will negatively impact colleges that serve greater numbers of low income and minority students. More than half of Pell Grant recipients at for-profit colleges are enrolled in colleges where the loan repayment rate is under the 35% threshold and an additional third are enrolled in colleges that are between the 35% and 45% thresholds. It is unclear how the proposed rule will affect for-profit medical schools, many of which have very low loan repayment rates due to most graduates relying on deferments and forbearances during their residencies and internships. The loan repayment rates for the publicly-traded for-profit colleges do not seem to be consistent with common intuitions and analyst statements concerning institutional quality.

Default management programs are likely to start emphasizing the use of income-based repayment instead of deferments and forbearances. Deferments and forbearances have no impact on the loan repayment rate, while widespread use of income-based repayment may be sufficient to shift a program from the restricted zone into the fully eligible zone. Colleges are also likely to become more selective in their admissions policies and to adopt aggressive counseling and services for the students who are most likely to drop out and default on their loans.

## METHODOLOGY

This analysis of the Gainful Employment Notice of Proposed Rulemaking (NPRM) is based on several documents:

- The version of the Gainful Employment NPRM that was released on July 23, 2010
- The version of the Gainful Employment NPRM that was published in the Federal Register on July 26, 2010

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<sup>1</sup> Federal Register 75(142):43616-43708, July 26, 2010.

- The press release that was provided to news media at 6 pm on July 22, 2010<sup>2</sup> (as well as the additional details that were disclosed during the conference call with reporters)
- The release of data and technical documentation for the Gainful Employment NPRM on August 13, 2010<sup>3</sup>

This student aid policy analysis paper represents an updated and expanded version of the July 26, 2010 preview paper, *Gainful Employment NPRM Proposes “Three Strikes” Rule*.

## RECOMMENDATIONS

The gainful employment definition will apply only to for-profit colleges (and certain vocational training programs at non-profit colleges) because of the statutory language. However, Congress should consider applying these affordable debt restrictions to all colleges. Just because a college lacks an overt profit motive does not mean that it should be permitted to routinely graduate students with excessive debt.

In addition to requiring colleges to disclose the three metrics in all communications with prospective students, whether online, in print or in person, the US Department of Education should itself disclose the loan repayment rates and debt to income ratios to students. When the US Department of Education began disclosing graduation rates as part of FAFSA on the Web, it caused high school seniors to rank graduation rates higher among their college selection criteria, as demonstrated by the Fastweb and Maguire Associates College Decision Impact Survey. The US Department of Education should consider disclosing the loan repayment rates and debt to income ratios on the FAFSA and on the College Navigator web site to enable students to compare colleges based on the affordability of the student debt. They should disclose the metrics for all colleges, including for-profit, non-profit and public colleges. Perhaps the disclosure can use a green (eligible zone), yellow (restricted zone) and red (ineligible zone) color coding scheme to help families interpret the metrics. The US Department of Education does not need any statutory or regulatory authority in order to disclose this data.

The US Department of Education should consider allowing loan repayment rates to be based on a prior set of four fiscal years, similar to the manner in which the debt to income ratios may be based on a prior three-year period. Programs that use this option would be required to demonstrate loan repayment rates greater than the 45% threshold. This accommodation is necessary for medical schools which tend to have lower loan repayment rates because of the routine use of deferments and forbearances by medical school graduates during their residencies and internships.

The US Department of Education should consider publishing deferment and forbearance rates for all colleges. This will better inform analysis of the differences between loan repayment rates and cohort default rates.

The definition of the loan repayment rate should be based on reductions in the principal and accrued but unpaid interest balance of a loan, as opposed to just reductions in the principal balance of the loan. Reliance on just reductions to principal causes significant delays in the recognition of borrowers who have resumed making full voluntary monthly payments on their loans.

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<sup>2</sup> A copy of the press release may be found at [www.finaid.org/educators/20100722gainfulemploymentrelease.pdf](http://www.finaid.org/educators/20100722gainfulemploymentrelease.pdf).

<sup>3</sup> [ifap.ed.gov/eannouncements/081310ReleaseGainfulDataTechDocNPRM.html](http://ifap.ed.gov/eannouncements/081310ReleaseGainfulDataTechDocNPRM.html) and [www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html)

The US Department of Education should consider modifying the proposed rules to calculate debt to income ratios at the institution level when the institution's individual programs lack sufficient completers to yield statistically significant results.

Statutory changes are beyond the scope of the rulemaking process. However, there are two consequences of the proposed regulatory changes that may require Congressional action:

- The main tool for compliance with the affordable debt restrictions of the gainful employment NPRM will involve tuition reductions. However, the main tool for institutional compliance with the 90/10 rule is to increase tuition rates. These statutory and regulatory requirements are in conflict with each other. Since encouraging tuition reductions is a better public policy objective, Congress should consider modifying or repealing the 90/10 rule to remove this conflict.
- Section 479A(c) of the Higher Education Act of 1965 provides colleges with the authority to “certify a loan amount or make a loan that is less than the student’s determination of need (as determined under this part), if the reason for the action is documented and provided in written form to the student” on a case-by-case basis, so long as this action does not discriminate on the basis of race, national origin, religion, sex, marital status, age, or disability status. However, the US Department of Education has issued subregulatory guidance that limits the ability of colleges to use this authority. Specifically, on page 3-94 of the 2009-2010 Federal Student Aid Handbook, the US Department of Education writes “Also note that your school cannot engage in a practice of certifying Stafford loans only in the amount needed to cover the school charges, or to limit unsubsidized Stafford borrowing by independent students.” Between this guidance and the case-by-case restriction, colleges are precluded from adopting lower loan limits for students according to field of study or degree program. This is particularly problematic for colleges that offer Associate’s degree programs because the Stafford loan program has a single set of aggregate loan limits for all undergraduate degree programs. While these aggregate loan limits may be appropriate for Bachelor’s degree programs, the limits are too high for Associate’s degree and certificate programs. The 150% timeframe SAP restriction does not preclude students who transfer from one college to another or switch degree programs from accumulating an excessive amount of debt for an Associate’s degree. Congress should consider adopting separate lower aggregate loan limits for Associate’s degree and certificate programs and providing colleges with the authority to set lower loan limits based on the field of study and/or degree program.

## **PROPOSED DEFINITION OF GAINFUL EMPLOYMENT**

The proposed definition of gainful employment establishes affordable debt restrictions on educational programs at for-profit colleges. The affordable debt restrictions are implemented through three metrics, each of which has two thresholds. If a program satisfies none of the three metrics, it loses eligibility for federal student aid. This is effectively a “three strikes and you’re out” rule.

The metrics with the most forgiving looser thresholds are as follows:

1. A loan repayment rate of at least 35%.
2. A debt-service-to-income ratio of at most 12%.
3. A debt-service-to-discretionary-income ratio of at most 30%.

All three metrics are applied to all borrowers entering repayment, not just those completing the program. The loan repayment rate is applied to just federal student loans. The debt-service-to-income ratio and the debt-service-to-discretionary-income ratio are applied to both federal and private student loan debt.

A program that fails to satisfy at least one of these metrics may not offer federal student aid to new students. It may offer federal student aid to current students for the remainder of the current award year and one additional year, provided that it warns them about the program's low repayment rates and high debt-to-earnings ratios.

The debt to income ratios indicate whether a borrower is capable of repaying the debt while the loan repayment rate indicates whether a borrower is actually repaying the debt. Almost all of the programs with a loan repayment rate over 45% satisfy at least one of the preferred debt to income ratios. It is only at loan repayment rates under 45% that the debt to income ratios provide additional differentiation among programs.

There are also three additional preferred thresholds that are tighter. Programs that satisfy at least one of these tighter thresholds are fully eligible for federal student aid. Programs that do not satisfy at least one of these tighter thresholds are subject to certain restrictions and are referred to as "restricted programs."

The tighter metrics are as follows:

1. A loan repayment rate of at least 45%.
2. A debt-service-to-income ratio of at most 8%.
3. A debt-service-to-discretionary-income ratio of at most 20%.

Programs that do not satisfy **both** the first and either of the second or third of these tighter metrics will be required to disclose their repayment rates and debt-to-earnings ratios to their students. A total of 55% of programs would be required to warn students about their low loan repayment rates and high debt-to-earnings ratios.<sup>4</sup>

In several sections of the NPRM the US Department of Education asks whether it should adopt stricter standards for the three metrics.

- Page 43619: *"While we believe that these restrictions are appropriate considering the poor performance of these programs, we seek comment on whether programs with a loan repayment rate of less than 45 percent but higher than 35 percent should be subject to the loss of title IV, HEA program funds."*
- Page 43620: *"We seek comment on whether a program with a loan repayment rate below a specified threshold should be ineligible for title IV, HEA funds, regardless of the debt-to-income ratio."*

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<sup>4</sup> It is unclear why the US Department of Education is treating the disclosure of loan repayment rates and debt-to-earnings ratios as a sanction, instead of requiring all colleges to disclose this information. Requiring the disclosure of these rates and ratios for all colleges would be beneficial to students, enabling them to compare colleges according to the affordability of the student debt. The US Department of Education should consider disclosing this information on the FAFSA, the Student Aid Report and the College Navigator web site, just as it currently discloses graduation rates.

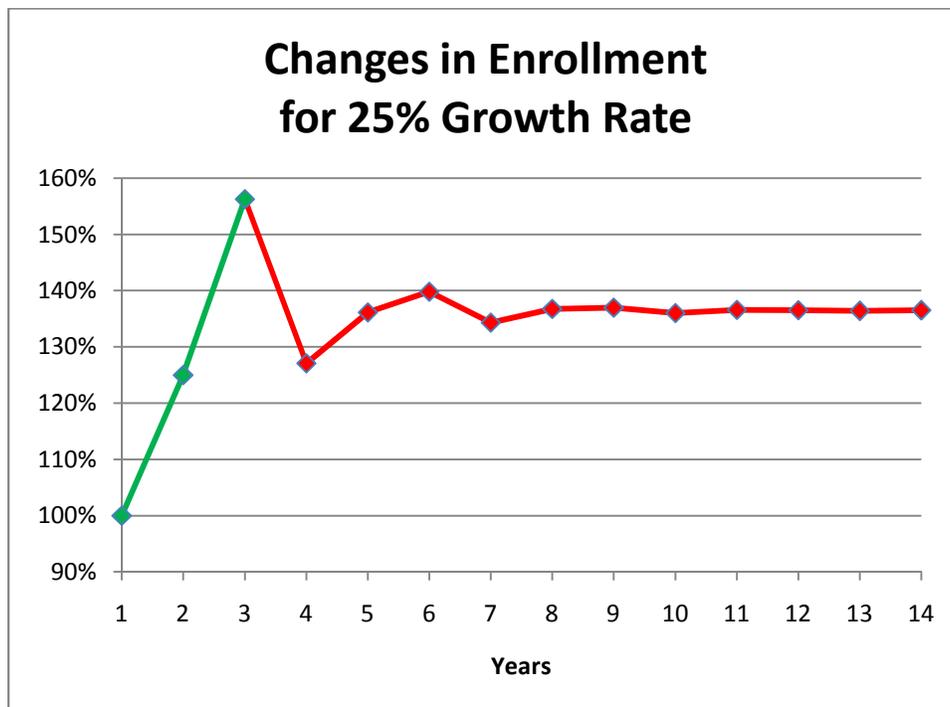
- Page 43623: “We specifically seek comment on whether the 30 percent threshold for the first three years of employment is appropriately rigorous or whether the Department should consider using the 20 percent of discretionary income or 8 percent of average annual earnings to define programs as ineligible.”

While it is not unusual for the US Department of Education to seek specific comments on part of a proposed rule in an NPRM, these three comments would appear to signal that the US Department of Education is unlikely to soften the thresholds in the final rule in response to public comments.

### SANCTIONS ON RESTRICTED PROGRAMS

The restricted programs will be subject to a limit on enrollment equal to the average enrollment during the past three years.<sup>5</sup> Restricted programs will also be required to obtain employer certification that the program satisfies the employer's requirements.

Using a three-year moving average effectively forces a reduction in enrollment the first year a program becomes restricted, since most programs at for-profit colleges have been experiencing double-digit annual enrollment growth and the moving average will be below the most recent year's total enrollment figures. This is illustrated by the following graph, which assumes a 25% enrollment growth rate. The setting of the enrollment based on the moving average begins in the fourth year, in the section of the graph marked in red. The y axis has been truncated to start at 90% instead of 0% in order to enlarge the graph to show detail on the damped oscillation of the enrollment figures. The fluctuations settle down by the fifth year of moving averages, identified as year 8 in the graph.



<sup>5</sup> New programs will be subjected to limits on enrollment growth based on projected enrollments for the next five years (until loan repayment rate data is available for the program), unless the institution already offers a similar eligible program. New programs will also be required to “demonstrate employer support for the program.”

## LOAN REPAYMENT RATE

The loan repayment rate is essentially a performing assets ratio. It calculates the percentage of original federal loan balances at repayment (including interest that was capitalized at repayment) that are generating payments to principal. It is based on all borrowers who left the program, including completers and drop-outs/stop-outs, during the prior 4 federal fiscal years, but excludes borrowers who entered repayment within the last six months of the most recent fiscal year.<sup>6</sup> Borrowers in an in-school or military deferment are excluded from both numerator and denominator. It weights the repayment rate by the original principal balance of the loans, yielding a measure of the financial performance from the federal government's perspective.

The loan repayment rate definition addresses most of the flaws in the cohort default rate as identified by a 2003 audit report by the Office of the Inspector General at the US Department of Education.<sup>7</sup> The loan repayment rate counts only the loans of borrowers who are making payments to principal, including borrowers who have paid off the loans in full.<sup>8</sup> The loans of borrowers who are delinquent, in an economic hardship deferment, in a forbearance or in default will be counted in the denominator but not the numerator of the loan repayment rate. In addition, borrowers in income-contingent repayment or income-based repayment who are not making payments of more than the interest that accrues will be counted in the denominator but not the numerator. This reduces the loan repayment rate by about 7%, since slightly more than half of borrowers in income-contingent and income-based repayment are paying less than the interest that accrues and about 15% of active borrowers are in these repayment plans. However, borrowers in income-contingent repayment or income-based repayment who are participating in public service loan forgiveness will be treated as though they are making payments to principal, reducing that offset slightly. (The press release restricts this offset for public service loan forgiveness to borrowers who completed the program.)

The press release reports that the average loan repayment rate for students at for-profit colleges is 55%: "In addition, while 88 percent of recent borrowers from nonprofit institutions and 80 percent of borrowers from private institutions were able to pay down the balance of their student loans in recent years, only 55 percent of borrowers attending for-profit institutions were able to pay off more than accrued interest." A similar statement occurs in Appendix A on page 110 of the pre-publication version of the gainful employment NPRM: "On average, 80 percent of recent borrowers from public institutions and 88 percent from nonprofit institutions paid at least a penny more than interest on their loans since FY 2006 in FY 2009, compared to 55 percent at for-profit institutions."

These figures are not consistent with the average loan repayment rates reported below in the "Loan Repayment Rates by Sector" section and in the following table (LRR  $\geq$  0.0%), namely 53.7% at public colleges, 56.0% at non-profit colleges and 36.4% at for-profit colleges. The figures are also not consistent

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<sup>6</sup> The federal fiscal year runs from October 1 to September 30. The last six months of the federal fiscal year start on March 31. The fiscal year is also used with cohort default rates.

<sup>7</sup> Audit to Determine if Cohort Default Rates Provide Sufficient Information on Defaults in the Title IV Loan Programs, Office of the Inspector General, US Department of Education, ED-OIG/A03-C0017, December 2003. [www.ed.gov/about/offices/list/oig/auditreports/a03c0017.pdf](http://www.ed.gov/about/offices/list/oig/auditreports/a03c0017.pdf)

<sup>8</sup> Loans paid in full by consolidation do not count as paid in full until the consolidation loan itself has been paid in full. Until then the consolidation loan is included in the numerator if the borrower has made payments to principal on the loan.

with the average loan repayment rates for institutions with loan repayment rates over the 45% threshold, as demonstrated by the following table.

Institution Type	Average Loan Repayment Rate		
	LRR ≥ 45%	LRR ≥ 35%	LRR ≥ 0%
All Colleges	60.9%	56.0%	51.3%
4-year	61.3%	56.9%	53.3%
2-year	54.5%	46.9%	38.3%
< 2-year	54.8%	47.3%	35.5%
For-Profit	52.7%	43.0%	36.4%
4-year	50.9%	41.9%	37.4%
2-year	53.3%	46.0%	34.3%
< 2-year	54.2%	46.4%	34.7%
Non-Profit	62.8%	59.4%	56.0%
4-year	62.7%	59.4%	56.0%
2-year	64.7%	57.4%	51.9%
< 2-year	63.0%	57.2%	40.2%
Public	60.0%	57.2%	53.7%
4-year	60.3%	58.3%	55.7%
2-year	54.2%	46.7%	40.3%
< 2-year	55.3%	52.2%	51.4%

The figures in the press release are also not consistent with the Institutional-Level Repayment Rates from page 43619 of the Gainful Employment NPRM as published in the Federal Register. The overall loan repayment rate should equal the average of the loan repayment rates for the < 35%, 35% to 45% and ≥ 45% categories, when weighted by the percentages of institutions in each category. If we assume that the average loan repayment rate is the maximum loan repayment rate for the < 35% and 35% to 45% categories, namely 35% and 45%, respectively, that should yield a lower bound on the average loan repayment rate in the ≥ 45% category. Thus we have  $35\% \cdot 40.0\% + 45\% \cdot 23.8\% + x \cdot 36.2\% = 55\%$ , where x is the lower bound on the average loan repayment rate in the ≥ 45% category. Solving for x yields

$$x = (55\% - 35\% \cdot 40.0\% - 45\% \cdot 23.8\%) / 36.2\% = 83.7\%$$

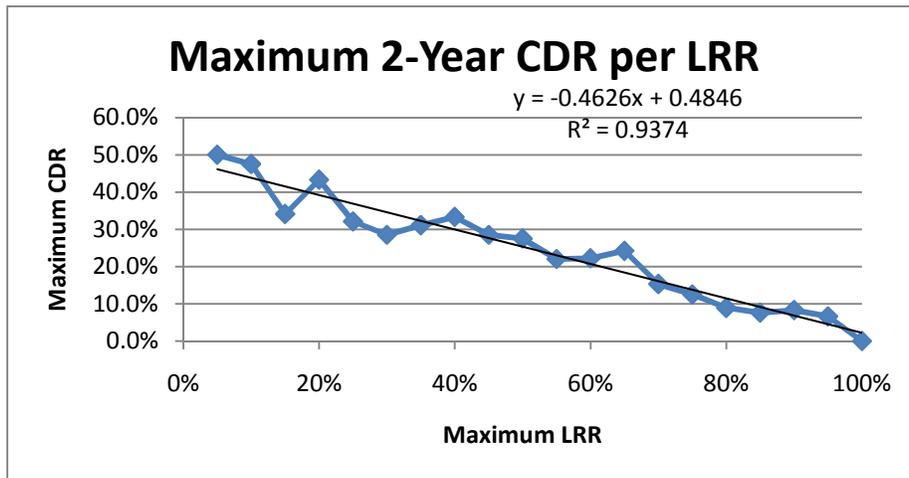
That lower bound on the average loan repayment rate in the ≥ 45% category seems quite high even for an overall average, considering that only the most elite institutions have loan repayment rates that are in this range (e.g., Harvard 75.1%, MIT 87.0%, Princeton 76.9%, Yale 72.3%, California Institute of Technology 92.4%, Carnegie Mellon University 79.1%, and UC Berkeley 72.8%).

The figures in the press release may be reporting the percentage of institutions with loan repayment rates of at least 35%, which are 79.8% at public colleges, 87.9% at non-profit colleges and 59.3% at for-profit colleges. These figures round to 80%, 88% and 59%, respectively. It is possible that 55% was substituted for the figure at for-profit colleges through a typographic error, as the 55% figure appears repeatedly in the NPRM in other contexts (e.g., the percentage of programs subject to the reporting of loan repayment rates and debt to income ratios).

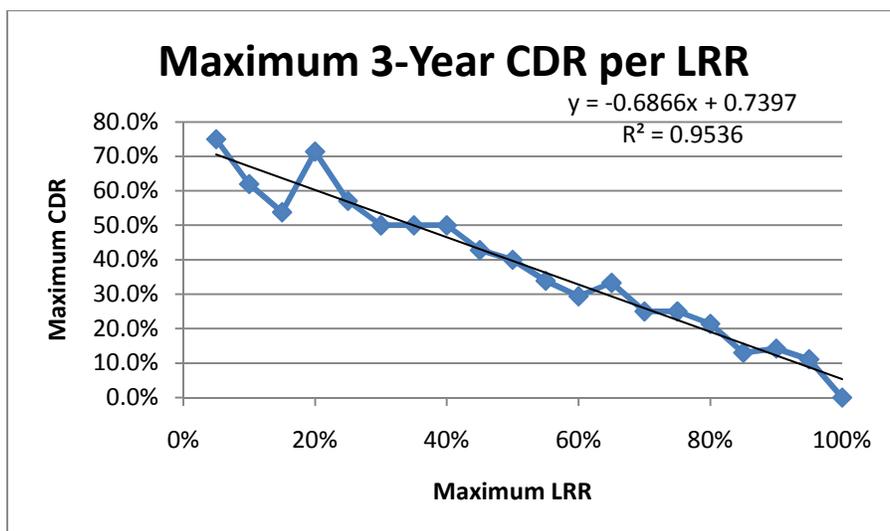
## CORRELATION OF LOAN REPAYMENT RATES WITH DEFAULT RATES

The overall correlation of loan repayment rates and 2-year cohort default rates among all colleges is very weak, with an  $R^2$  of 32.5%. If the set of colleges is limited to just the for-profit colleges, the correlation becomes even weaker, with an  $R^2$  of 25.1%. The correlation of loan repayment rates with 3-year cohort default rates among all colleges is slightly stronger, with an  $R^2$  of 42.7%.

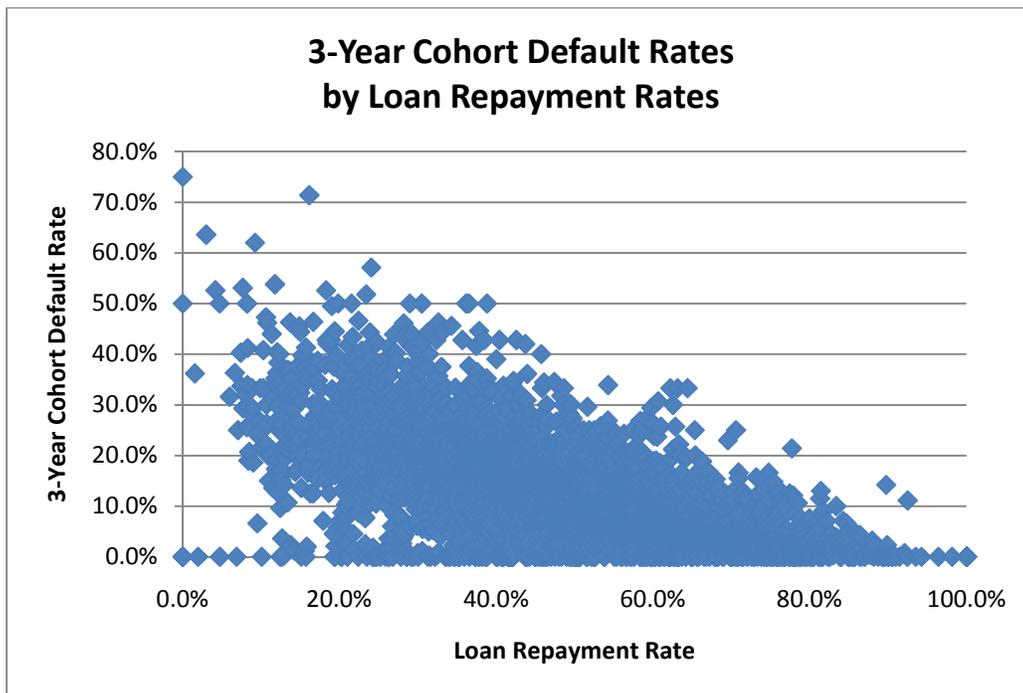
There is, however, a strong almost linear relationship between each loan repayment rate and a maximum 2-year cohort default rate, after omitting a handful of outliers, as illustrated by the following graph. For example, only 2 of 2,702 institutions with loan repayment rates of 45% or more have a 2-year cohort default rate above 25%. Similarly, only 3 of 946 institutions with loan repayment rates of 35% to 45% have a 2-year cohort default rate above 30%.



Likewise there is a strong almost linear relationship between each loan repayment rate and the maximum 3-year cohort default rate, after omitting a handful of outliers, as illustrated by the following graph. For example, no institutions with loan repayment rates of 45% or more have a 3-year cohort default rate above 43%. Similarly, no institutions with loan repayment rates of 35% to 45% have a 3-year cohort default rate above 50%.



This graph is the upper frontier of the following scatter-plot of the relationship between loan repayment rates and 3-year cohort default rates.



While any given loan repayment rate must have a cohort default rate below a particular threshold, the converse is not necessarily true. An institution can have a 2-year cohort default rate under 25% and still have a loan repayment rate under the 45% threshold. This is because colleges use a variety of default rate management techniques, such as deferments, forbearances and consolidation, to artificially reduce their cohort default rates. Deferments and forbearances, for example, can be used to push a borrower who is likely to default outside the 2-year or 3-year default rate window. There might be a strong correlation between the sum of deferment, forbearance and default rates and the loan repayment rate, but data concerning deferment and forbearance rates at all colleges is not publicly available.<sup>9</sup>

Another way to determine whether a college is actively managing its cohort default rate is by comparing the 2-year and 3-year cohort default rates in the Trial 3-Year Cohort Default Rate spreadsheet published by the US Department of Education.<sup>10</sup> Since it takes 360 days of nonpayment for a default to occur, the 2-year cohort default rate effectively provides a 1-year window in which a default can occur and the 3-year cohort default rate effectively provides a 2-year window in which a default can occur. Thus one would expect the 3-year cohort default rate for an individual college to be no more than twice the college's 2-year cohort default rate. Colleges for which the 3-year cohort default rate is triple the 2-year cohort default rate were almost certainly managing the cohort default rate through the end of the 2-year cohort default rate window and abandoning the borrowers during the third year. A total of 459 colleges have 3-year cohort default rates that are at least triple the 2-year cohort default rate, slightly more than 10% of

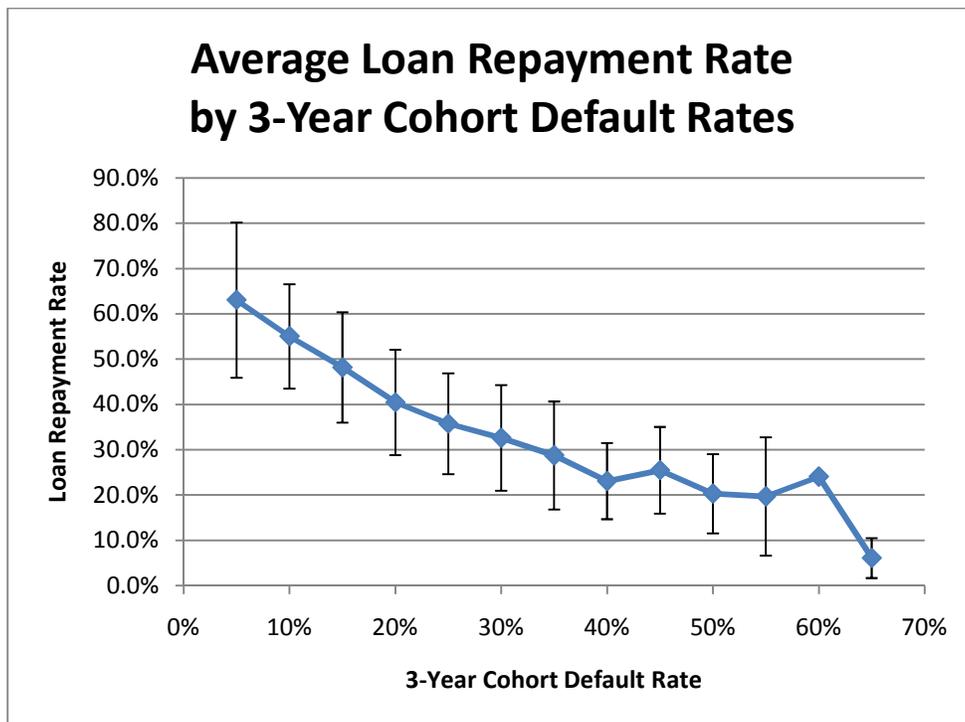
<sup>9</sup> Colleges for which the ratio (deferment rate + forbearance rate)/(default rate) is greater than 2.5 are likely to be actively managing defaults by encouraging borrowers to use deferments and forbearances to push them out of the 2-year or 3-year default rate window.

<sup>10</sup> [federalstudentaid.ed.gov/datacenter/library/TrialYearCDR.xls](https://federalstudentaid.ed.gov/datacenter/library/TrialYearCDR.xls)

the total. These include 263 for-profit colleges (57.3% of the total), 88 non-profit 4-year colleges (19.2%), 25 non-profit 2-year colleges (5.4%), 33 public 4-year colleges (7.2%) and 50 public 2-year colleges (10.9%).

The average loan repayment rate for a 3-year cohort default rate of 30% or higher is 25.9% with a standard deviation of 11.4%. This means that most colleges with a 3-year cohort default rate of 30% or more will not have loan repayment rates above the 35% threshold on eligibility.

The following chart illustrates the average loan repayment rate versus 3-year cohort default rates in 5% increments, with error bars based on one standard deviation.



Current default aversion programs emphasize the use of deferments and forbearances to avoid defaulting on federal student loans. These programs will probably start emphasizing income-based repayment instead. Although only about half of borrowers in income-based repayment will count toward the loan repayment rate, that compares favorably with deferments and forbearances, where none of the borrowers count toward the loan repayment rate. Deferments, forbearances and income-based repayment are all effective in manipulating the cohort default rate, but only income-based repayment can have an impact on the loan repayment rate. Switching default aversion programs from deferments and forbearances to income-based repayment will likely increase the loan repayment rate by up to about 10% to 15%, assuming an average deferment and forbearance rate of about 25%. That is enough of a difference to shift a loan repayment rate from the restricted zone (35% to 45%) into the eligible zone ( $\geq 45\%$ ) and from ineligible (assuming a loan repayment rate of 25% or more) into the restricted zone. While the use of income-based repayment may be motivated by a desire to manipulate the loan repayment rates, income-based repayment provides genuine benefits to both the borrower and the federal government as compared with the use of deferments and forbearances.

Colleges may be able to manipulate the debt to income ratios by adopting tuition or financial aid policies that reduce median debt at graduation for just the students who complete the program. For example, the college could charge a lower tuition rate for students in the second year of a two-year program. Such reductions could be targeted at just the small subset of the students needed to shift the median, namely students whose cumulative debt is just above and under the median. This type of manipulation would be most beneficial to programs with low graduation rates, since the bulk of the tuition revenue for such programs will be from students who do not complete the program. This type of manipulation can be detected by the presence of a large gap in the distribution of borrowers by debt above the median. Average debt is not prone to this type of manipulation.

Colleges will also become more selective (e.g., requiring a test to determine commitment to completing the program), reduce dropouts through “try before you buy” policies, and adopt aggressive counseling and services for students who are most likely to default on their loans (e.g., students who are single parents, students who work full time and enroll part-time). Colleges will also evaluate the extent to which part-time enrollment contributes to lower completion rates and, consequently, a lower loan repayment rate.

Note that the data published by the US Department of Education reports institutional loan repayment rates. It is possible that a college will have an institutional loan repayment rate greater than 45% but still have individual programs with loan repayment rates less than 45%.

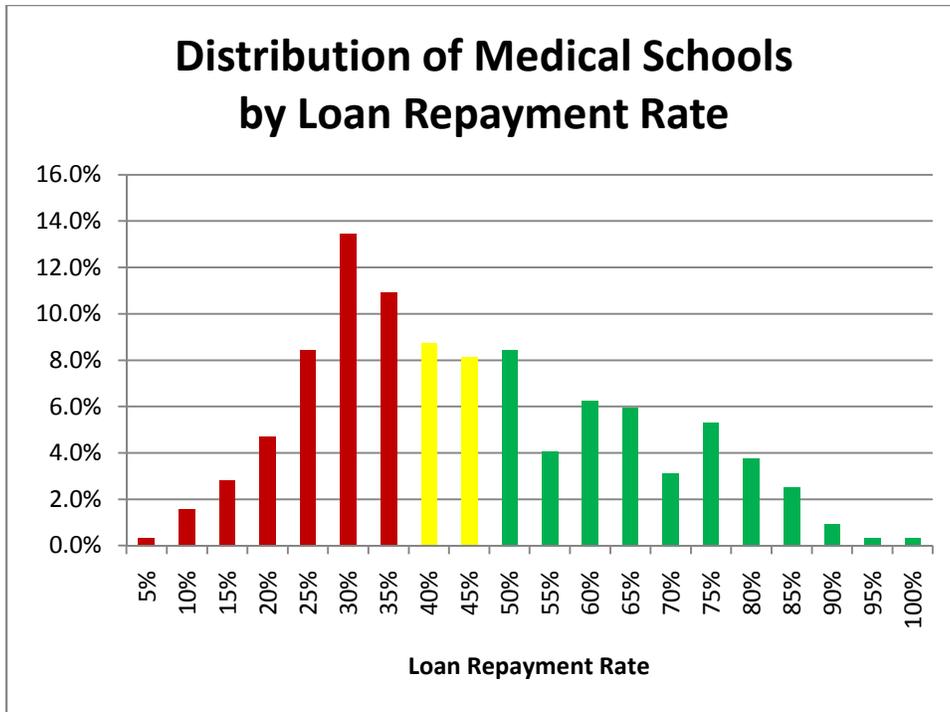
## **LOAN REPAYMENT RATES ARE VERY LOW AT MEDICAL SCHOOLS**

Medical schools have low loan repayment rates because most medical school graduates suspend repayment using a deferment or forbearance during their residencies and internships, which last several years after graduation.<sup>11</sup> Unlike the debt to income ratios, which have the option of using a previous 3-year period, the loan repayment rate is limited to just the 4 prior federal fiscal years.<sup>12</sup> Many medical schools, as a result, will be limited to the debt to income ratios in order to maintain eligibility for federal student aid funds. For example, 320 colleges with “Medical”, “Medicine”, “Health” or “Physician” in the name of the college had 30 or more borrowers in the denominator. The overall loan repayment rate for this group of colleges was 37.5%. Of these colleges, 42.2% had loan repayment rates under the 35% threshold and 16.9% had loan repayment rates between 35% and 45%. For example, Harvard Medical School has a loan repayment rate of 24.4% and Johns Hopkins University School of Medicine has a loan repayment rate of 31.0%. The following chart shows the distribution of medical schools according to loan repayment rate in 5% increments.

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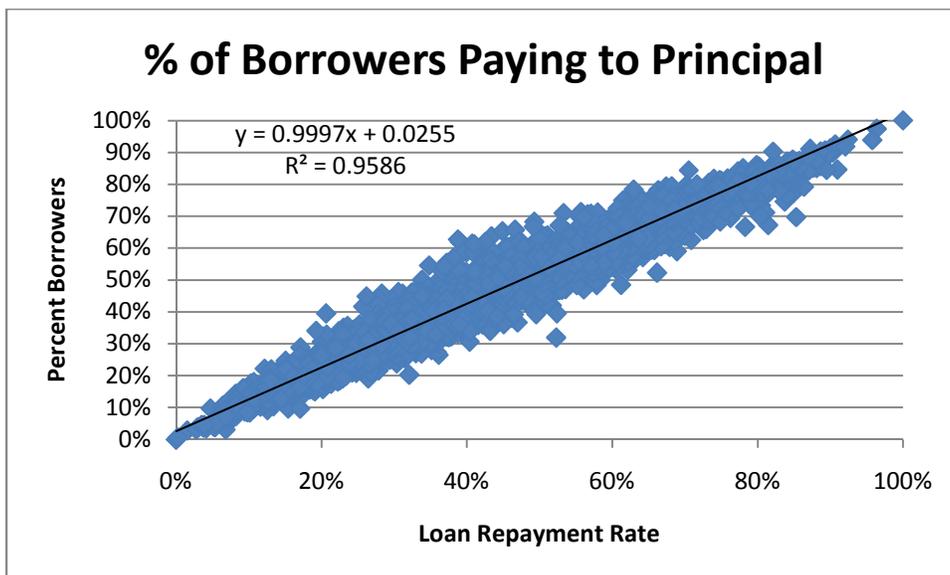
<sup>11</sup> The elimination of the 20/220 rule effective July 1, 2009 means that most medical school graduates will no longer qualify for the economic hardship deferment. Depending on whether these borrowers shift to forbearances or income-based repayment, loan repayment rates at medical schools may be significantly different in the future than during the initial introduction of the gainful employment rules.

<sup>12</sup> Perhaps the US Department of Education should allow the use of an earlier set of fiscal years for medical schools?



### PERCENT OF DOLLARS VERSUS PERCENT OF BORROWERS

The loan repayment rate calculates the percentage of original loan *dollars* that are producing payments to principal. This is in contrast with the cohort default rate, which calculates a percentage of *borrowers* who have defaulted. The use of dollars is necessary to measure the financial impact on the federal government. However, as the following graph demonstrates, there is a very strong correlation between the percentage of borrowers who are making payments to principal and the loan repayment rate. The average variance is only 2.5%, with a standard deviation of only 3.8%.



## **DEBT-TO-INCOME RATIOS**

The debt-service-to-income and debt-service-to-discretionary-income ratios are based on all education debt, including both federal and private student loans. Prior debt at the same or a related institution is included. Income is based on actual earnings data from the Social Security Administration.<sup>13</sup> (The use of Social Security earnings data addresses the problems associated with borrowers who do not file a federal income tax return because of low income, since such borrowers still have FICA taxes withheld and reported to the Social Security Administration.) The calculation of discretionary income will be the same as for income-based repayment, reducing income by 150% of the poverty line, and will assume a family size of one.

Debt will be based on the median student debt<sup>14</sup> for the three most recent award years prior to the earnings year of students who completed the program. This includes students who graduated without debt.<sup>15</sup> Programs have the option of using the prior three-year period (i.e., 4, 5 and 6 years prior to the earnings year), but then would be restricted to the preferred 8% and 20% thresholds. Since the less restrictive thresholds are 50% higher than the preferred thresholds, this will mainly be useful for programs where income jumps by 50% in three years. For example, medical school graduates typically start off with low salaries during their residencies and internships, but then switch to a much higher six figure salary three or four years after graduation. Using the prior three year period might also be useful during a recession when new graduates have difficulty getting a job, especially in industries with massive layoffs like the auto industry.

The use of discretionary income and actual earnings presents an effective solution to differences in degree programs without requiring any kind of a special exception or adjustment for those programs. The same rules will apply to all programs, regardless of educational attainment. For example, the previous proposal to use Bureau of Labor Statistics data had an inherent bias against Bachelor's degrees and more advanced degrees, since an MBA in accounting would map to the same average wage data as for an Associate's degree in accounting. Using actual earnings addresses this problem. Similarly, college graduates with advanced degrees can devote a greater percentage of their income toward repaying debt than graduates who hold just an Associate's degree or certificate, and so are more likely to satisfy a debt-service-to-discretionary-income threshold as opposed to a debt-service-to-income threshold.

## **AVERAGE EARNINGS VERSUS MEDIAN INCOME**

The use of earnings as opposed to income yields an increase in the debt to income ratios because earnings are lower than income. The use of means as opposed to medians yields a decrease in the debt to income

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<sup>13</sup> The colleges will provide the US Department of Education with lists of the students completing each program. These lists will be provided to the Social Security Administration, who will report average earnings figures for each program. Neither the US Department of Education nor the colleges will have access to individual earnings figures for privacy reasons.

<sup>14</sup> Parent PLUS loans are excluded. Parent-only private education loans, such as the Wells Fargo Student Loan for Parents, appear to be included based on the draft regulation's use of the phrase "private educational loans" as opposed to "private student loans".

<sup>15</sup> Since 93.1% of students at for-profit colleges graduate with federal and private student loans (86.0% at for-profit less-than-2-year institutions, 97.6% at for-profit 2-year institutions and 97.0% at for-profit 4-year institutions), the inclusion of all completers as opposed to just completers with debt will have a minimal impact on the debt to income ratios at for-profit colleges.

ratios because means are greater than medians. The following data comes from table 8 (income) and table 9 (earnings) of the US Census Bureau’s Current Population Survey, 2006 Annual Social and Economic Supplement.<sup>16</sup> The figures are for year-round full-time workers for all races.

Age 25-34	Associate’s Degree	Bachelor’s Degree	Master’s Degree	Professional Degree	Doctoral Degree
Median Earnings	\$35,053	\$41,593	\$50,438	\$70,691	\$57,902
Mean Earnings	\$38,077	\$50,411	\$56,327	\$90,707	\$74,440
Median Income	\$35,535	\$42,092	\$51,391	\$71,308	\$60,213
Mean Income	\$38,980	\$51,774	\$58,001	\$92,546	\$77,198

The use of earnings as opposed to income increases the debt-service-to-income ratios by 0.9% to 3.8%, depending on the degree program. The use of means as opposed to medians decreases the debt-service-to-income ratios by 7.9% to 22.2%, depending on the degree program. The combined effect is a decrease in the debt-service-to-income ratios of 6.7% to 21.4%, depending on the degree program. This is the equivalent of a 0.8% to 2.6% point decrease in a 12% debt-service-to-income ratio. The smallest size decrease is for Associate’s degree programs.

### COMPARING THE METRICS

The three metrics can be confusing because the details differ. The following chart illustrates the key differences among the metrics.

Characteristic	Loan Repayment Rate	Debt to Income Ratios
<b>Year</b>	Fiscal Year (October to September)	Debt: Award Year (July to June) Income: Calendar Year
<b>Number of Years</b>	3.5 (4 fiscal years minus the last six months of the most recent fiscal year)	3 (either the 3 years prior to the earnings year or the 3 years before that)
<b>Type of Students</b>	All students who left the program, including both completers and dropouts	Just students who complete the program
<b>Type of Loans</b>	Just federal student loans, including the Stafford and Grad PLUS loans. The Parent PLUS loan is excluded.	Federal and private student loans incurred by students at the same or related institution.

### PHASE-IN OF THE NPRM

The three metrics will be phased in, with programs not subject to a loss of eligibility or the debt warning disclosures until the 2012-13 award year starting on July 1, 2012. During the first year of implementation, the loss of eligibility will be limited to the lowest-performing programs within each category of program. Performance will be measured by the loan repayment rate. Each category will be defined based on the type of degree or certificate awarded. Within each category the loss of eligibility will be capped at no more than 5% of completers during the prior award year. The remaining ineligible programs would be treated as restricted, in addition to the programs already in the restricted zone.

The US Department of Education estimates that 5% of programs representing 8% of students would lose eligibility and that 8% of programs representing 8% of students would be in the restricted zone. The cap

<sup>16</sup> Note that US Census Bureau data includes only individuals who are employed and as such does not include individuals with zero earnings and zero income.

may or may not reduce the number of programs losing eligibility during the first year, as the cap is based on 5% of completers while the 8% figure is based on the number of students enrolled in the affected programs. However, while programs with lower loan repayment rates tend to have lower graduation rates, they also tend to have lower enrollment rates. Empirical analysis suggests that the 5% completion cap will affect slightly less than 5% of enrollments.

Opportunities for colleges to adapt to the new rules may be limited despite the phase-in because several of the years in the prior three-year period and the prior four fiscal years have already passed.

## IMPACT OF THE NPRM ON PELL GRANT RECIPIENTS

The following table shows the correlation between the percentage of students receiving a Pell Grant and the loan repayment rates across all colleges, not just those subject to the gainful employment requirements. Average loan repayment rates were based on the sum of the corresponding original loan balances for all of the institutions within each range. Except for the institutions with a percentage Pell Grant recipients of 80% or higher, the average loan repayment rates demonstrate a linear relationship.<sup>17</sup>

% Pell Grant Recipients	% of Colleges	Average Overall Loan Repayment Rate
0.0% - 9.9%	5.1%	66.3%
10.0% - 19.9%	18.4%	61.7%
20.0% - 29.9%	24.2%	54.1%
30.0% - 39.9%	15.9%	46.6%
40.0% - 49.9%	10.9%	38.3%
50.0% - 59.9%	8.8%	33.0%
60.0% - 69.9%	7.9%	26.3%
70.0% - 79.9%	4.5%	24.0%
80.0% - 89.9%	2.8%	30.6%
90.0% - 100%	1.5%	31.0%

The loan repayment rates are likely to have a significant impact on Pell Grant recipients, since Pell Grant recipients are disproportionately enrolled at institutions with loan repayment rates under the 35% threshold. Institutions with a higher percentage of Pell Grant recipients have a lower loan repayment rate. Generally, institutions that have 40% or more of Pell Grant recipients are unlikely to satisfy the 45% loan repayment rate threshold. Similarly, institutions that serve 50% or more of Pell Grant recipients are unlikely to satisfy the 35% loan repayment rate percentage. Colleges with loan repayment rates under the 35% threshold represent 26.5% of Pell Grant recipients. Colleges with loan repayment rates between 35% and 45% represent 21.7% of Pell Grant recipients. As the following tables illustrate, for-profit colleges represent 23.6% of Pell Grant recipients, with 12.4% of Pell Grant recipients enrolled at for-profit colleges that are under the 35% threshold (52.2% of Pell Grant recipients at for-profit colleges) and 8.1% enrolled at for-profit colleges that are between the 35% and 45% thresholds (34.1% of Pell Grant recipients at for-profit colleges).

<sup>17</sup> The flattening out of the trend at institutions with a percentage Pell Grant recipients of 80% or more may be due to greater volatility from a smaller sample size, since relatively few institutions have such a high percentage of Pell Grant recipients.

Institution Type	% Pell Grant Recipients	Share of Pell Grant Recipients
All Colleges	26.5%	100.0%
4-year	25.7%	66.0%
2-year	24.6%	26.9%
< 2-year	62.2%	7.0%
For-Profit	52.9%	23.6%
4-year	42.9%	10.0%
2-year	64.0%	7.1%
< 2-year	63.4%	6.6%
Non-Profit	23.7%	19.5%
4-year	23.3%	18.9%
2-year	41.4%	0.4%
< 2-year	61.8%	0.2%
Public	22.7%	56.9%
4-year	24.3%	37.2%
2-year	20.0%	19.4%
< 2-year	39.8%	0.2%

Institution Type	Share of All Pell Grant Recipients by Loan Repayment Rate			Total
	< 35%	35% to 45%	> 45%	
For-Profit	12.4%	8.1%	3.2%	23.6%
Non-Profit	2.6%	3.3%	13.6%	19.5%
Public	11.5%	10.3%	34.9%	56.8%
Total	26.5%	21.7%	51.8%	100.0%

Institution Type	Share of Pell Grant Recipients by Loan Repayment Rate and Control			Total
	< 35%	35% to 45%	> 45%	
For-Profit	52.2%	34.1%	13.6%	100.0%
Non-Profit	13.1%	17.0%	69.9%	100.0%
Public	20.3%	18.2%	61.5%	100.0%
Total	26.5%	21.7%	51.8%	100.0%

Given that such a high percentage of Pell Grant recipients are likely to be affected by the gainful employment rules, the US Department of Education should conduct further analysis of the impact of the NPRM on Pell Grant recipients, especially those who graduate. The extent to which for-profit colleges have low loan repayment rates because they serve a greater proportion of Pell Grant recipients is unclear. Financial metrics like the loan repayment rates and debt to income ratios do not clarify the degree to which for-profit colleges are serving an under-served population or exploiting it.

## **CORRELATION OF GRADUATION RATES WITH LOAN REPAYMENT RATES**

The following table shows the correlation of graduation rates with loan repayment rates across all colleges, not just those subject to the gainful employment requirements. Institutions with graduation rates of 40% or higher are likely to satisfy the 45% loan repayment rate threshold.

Graduation Rate	Average Loan Repayment Rate
0.0% - 9.9%	42.1%
10.0% - 19.9%	35.1%
20.0% - 29.9%	38.6%
30.0% - 39.9%	42.0%
40.0% - 49.9%	48.3%
50.0% - 59.9%	56.0%
60.0% - 69.9%	58.4%
70.0% - 79.9%	63.3%
80.0% - 89.9%	66.3%
90.0% - 100%	66.3%

The following table illustrates graduation rates by institution type as well as the distribution of FTE enrollments and share of completers by sector.

Institution Type	Average Graduation Rate	Share of FTE Enrollment	Share of Graduates
All Colleges	45.2%	100.0%	100.0%
4-year	53.4%	67.6%	79.9%
2-year	24.0%	29.4%	15.6%
< 2-year	67.9%	3.0%	4.5%
For-Profit	45.9%	11.6%	11.8%
4-year	30.4%	5.9%	3.9%
2-year	56.8%	3.0%	3.7%
< 2-year	67.1%	2.8%	4.1%
Non-Profit	62.2%	21.3%	29.3%
4-year	62.2%	21.0%	28.9%
2-year	52.1%	0.3%	0.3%
< 2-year	73.6%	0.1%	0.2%
Public	39.7%	67.1%	58.9%
4-year	52.2%	40.8%	47.1%
2-year	20.0%	26.2%	11.6%
< 2-year	78.3%	0.1%	0.2%

## LOAN REPAYMENT RATES BY SECTOR

The following table shows the loan repayment rates by institution type. Community colleges have a 40.3% loan repayment rate despite having only a 20.0% graduation rate, probably because fewer students graduate with debt and the average debt at graduation is much lower. This is in contrast with for-profit 2-year colleges, which have a 34.3% loan repayment rate and 56.8% graduation rate, probably because of the much greater incidence of high debt among the graduates.

Institution Type	Average Loan Repayment Rate
All Colleges	51.3%
4-year	53.3%
2-year	38.3%
< 2-year	35.5%
For-Profit	36.4%
4-year	37.4%
2-year	34.3%
< 2-year	34.7%
Non-Profit	56.0%
4-year	56.0%
2-year	51.9%
< 2-year	40.2%
Public	53.7%
4-year	55.7%
2-year	40.3%
< 2-year	51.4%

The following table is based on the table of Institutional-Level Repayment Rates from page 43619 of the Gainful Employment NPRM as published in the Federal Register. Considering that 11.8% of non-profit colleges and 19.3% of public colleges (including 27.3% of community colleges) have loan repayment rates below 35%, Congress should consider extending the gainful employment rules to apply to traditional colleges in addition to for-profit colleges.

Sector	Number of Institutions	% At Least 45%	% Between 35% and 45%	% Below 35%
For-Profit	1729	36.2%	23.8%	40.0%
4-year	218	25.2%	32.6%	42.2%
2-year	565	32.9%	23.2%	43.9%
< 2-year	946	40.7%	22.1%	37.2%
Non-Profit	1635	77.7%	10.5%	11.8%
4-year	1434	78.3%	10.5%	11.2%
2-year	156	76.3%	9.6%	14.1%
< 2-year	45	64.4%	11.1%	24.4%
Public	1598	57.5%	23.2%	19.3%
4-year	590	74.2%	14.9%	10.9%
2-year	860	43.1%	29.5%	27.3%
< 2-year	148	74.3%	19.6%	6.1%
Grand Total	4962	56.8%	19.2%	24.0%
4-year	2242	72.1%	13.8%	14.1%
2-year	1581	42.8%	25.3%	31.9%
< 2-year	1139	46.0%	21.3%	32.7%

## IMPACT ON PUBLICLY-TRADED FOR-PROFIT COLLEGES

The following table summarizes the loan repayment rates for the largest publicly-traded for-profit colleges.

Institution	Loan Repayment Rate
Universal Technical Institute (UTI)	54.5%
Grand Canyon University (LOPE)	51.7%
Ashford University (BPI)	45.1%
Ross University School of Veterinary Medicine (DV)	44.8%
University of Phoenix (APOL)	44.2%
Culinary Academies (CECO)	42.7%
Brooks College (CECO)	41.5%
Capella University (CPLA)	40.4%
Colorado Technical University (CECO)	40.1%
Art Institute (EDMC)	39.7%
Apollo College (DV)	39.1%
South University (EDMC)	39.1%
Argosy University (EDMC)	38.5%
Wyotech (COCO)	37.9%
Briarcliffe College (CECO)	37.7%
DeVry University (DV)	37.5%
Western Career College (DV)	37.2%
Heald College (COCO)	36.9%
American Intercontinental University (CECO)	36.3%
Lincoln Technical Institute (LINC)	35.9%
Western International University (APOL)	35.7%
Sanford-Brown College (CECO)	31.5%
Southwestern College (LINC)	31.3%
ITT Technical Institute (ITT)	31.2%
Kaplan Career Institute (WPO)	28.3%
Katharine Gibbs College (CECO)	27.4%
Kaplan University (WPO)	26.9%
Strayer University (STRA)	25.0%
International Academy of Design and Technology (CECO)	24.9%
Everest College (COCO)	21.9%
Brown Mackie College (EDMC)	21.4%
Ross University School of Medicine (DV)	16.1%

This ranking of the publicly-traded colleges according to loan repayment rates does not seem consistent with commonly-held intuitions and analyst statements concerning institutional quality. The loan repayment rates also differ significantly from internal analyses by several colleges. (These internal analyses necessarily omit loans that have been consolidated because data concerning consolidation loans is not available to colleges through the NSLDS interface.) It is possible that there is a bug in the COBOL program used by the US Department of Education to calculate loan repayment rates.<sup>18</sup> The most likely

<sup>18</sup> It is also possible that the consolidation loans entirely account for the differences without any bugs in the implementation of the COBOL program. Many colleges use consolidation loans as part of their default management plans. In addition, consolidation loans suffer from adverse selection, where borrowers who are at

source of error is in the treatment of consolidation loans that consolidate loans from more than one institution. If these consolidation loans are not properly split according to source institution, the principal balance at the end of the fiscal year would be higher than the principal balance at the start of the fiscal year for any borrower who consolidated during the fiscal year. Even small amounts of debt from another institution could cause a borrower who is making payments to principal to not be identified as such. This would result in a lower loan repayment rate, especially for colleges that have a high transfer-in rate.

## **OBSERVATIONS CONCERNING THE NPRM**

There are several potential issues in the NPRM's definition of gainful employment:

- Payments on a loan are applied in a preference order, first to collection charges and late fees, second to accrued but unpaid interest, and finally to principal, per 34 CFR 682.209(b) and 34 CFR 685.211(a). The proposed definition of loan repayment rate in 34 CFR 668.7(b)(3) will count loans in the numerator only if the borrower made payments that reduce the principal balance of the loan as compared with the start of the federal fiscal year. But if a borrower has been delinquent, whether in the current or a previous fiscal year, there may be enough accrued but unpaid interest that there are no reductions in the principal balance of the loan even if the borrower has resumed making all of the required monthly payments. On the other hand, if the borrower defaults or consolidates the loans, the interest is capitalized so that subsequent payments are treated as payments to principal. In both cases the borrower is making the same payments, but the form of the underlying loans has changed. Perhaps the US Department of Education should require reductions in the outstanding principal and accrued but unpaid interest balance of the loan as opposed to just reductions in the principal balance. If a borrower has resumed making regular monthly payments, it should not have to wait months or even years for the borrower to catch up with all the accrued but unpaid interest if the borrower does not elect to capitalize the interest by consolidating the loans.
- The gainful employment NPRM does not adequately address situations in which a program has a small number of students and/or completers. With the cohort default rate Congress allows colleges with less than 30 borrowers entering repayment to base the cohort default rate on the three most recent award years.<sup>19</sup> The proposals for the loan repayment rates and debt to income ratios use 3 or more years. However, the use of programs as opposed to institutions sifts the data with a finer mesh, potentially yielding results that are not statistically significant. The US Department of Education noted this problem in its August 13, 2010 data release, warning that "Extreme caution should be exercised in instances where small numbers of borrowers entering repayment are observed." This is more of an issue for the debt to income ratios since the data sets may be smaller due to the limitation to just the students who complete the program. Moreover, while the Social Security Administration will report average earnings data for each program in part to protect the privacy of the college's former students, if a program has only one completer the average earnings will equal that student's actual earnings. The Missouri data suppressed information when the program involved five or fewer completers. One possible solution is to

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higher risk of default consolidate their loans to obtain a lower monthly loan payment or to switch lenders. However, the COBOL program is quite complicated, raising the risk of logic or coding errors.

<sup>19</sup> See section 462(g)(1) of the Higher Education Act of 1965.

aggregate the data at the institutional level when the data concerning individual programs lacks adequate statistical power.

- The draft regulation at 34 CFR 668.7(c)(2) specifies that the debt to income ratios will be based on the median debt of program completers. However, the column in the ge-cumulative-rates.xls spreadsheet released on August 13, 2010 that is labeled as “Median Federal Debt for those Entering Repayment” is actually the average (mean), not the median. Means tend to be a bit higher than medians, due to the potential for rightward skew (the reason why the US Department of Education proposed to use medians instead of means). On the other hand the actual debt to income ratios will be based on the combination of federal and private student loan debt, which should be slightly higher than the federal debt figures. The two may balance each other. However, the column should either have been labeled correctly as a mean or a footnote should have been added to explain that means had been substituted for medians for expediency.
- The draft regulation at 34 CFR 668.7(c)(2) does not specify whether the median is for all completers, including those that graduate with no debt, or just the completers who graduate with some debt. The former seems to be the most natural interpretation, but this should be stated explicitly for clarity. Likewise, the regulations do not discuss whether the average earnings data will include completers who earned zero income. The Social Security Administration does not necessarily have earnings data for completers who earned zero income. This can potentially be inferred from the lack of earnings data for a given completer.
- The draft regulation at 34 CFR 668.7(c)(2) specifies that the debt to income ratios will not include debt from unrelated prior or subsequent institutions: “Loan debt does not include any debt obligations arising from student attendance at prior or subsequent institutions unless the other and current institutions are under common ownership or control, or are otherwise related entities.” However, there is no similar language in the discussion of the loan repayment rates. If the intention is to include all federal debt, including debt at prior and subsequent institutions, it should be stated explicitly in the regulation for clarity. If not, then that should be stated as well.
- The inclusion of debt at the same institution becomes problematic when a student enrolls in the same institution for a second degree, such as a Bachelor’s degree recipient enrolling in a Master’s degree program. The inclusion of such debt effectively adopts a policy of encouraging colleges to require students to seek subsequent degrees from different institutions. On the other hand, cumulative debt affects affordability, and cumulative debt is under the control of the institution when both degrees are obtained from the same institution. Perhaps the US Department of Education should distinguish undergraduate debt from graduate and professional debt when determining what debt at the same institution should be included in the analysis.
- The draft regulation at 34 CFR 668.7(a)(3)(iii) does not define the word “prior”, leading to a potential ambiguity. Earnings year is defined by 34 CFR 668.7(a)(3)(v) as a calendar year while the three-year period (3YP) is defined in terms of award year. The regulations need to clarify whether the word “prior” permits an award year to overlap with a calendar year. For example, is the award year 2008-09 prior to calendar year 2009, even though the award year ends in the middle of the calendar year?

- The draft regulation at 34 CFR 668.7(c)(2) specifies that Parent PLUS loans are excluded. The use of the phrase “private educational loans” as opposed to “private student loans” would appear to include parent-only private education loans, such as the recently created Wells Fargo Student Loan for Parents. Since parent-only private education loans are a relatively recent phenomenon stimulated by the end of the FFEL program, the US Department of Education should confirm that its wording choice was deliberate and that it intended to include parent-only private education loans, perhaps by inserting “student and/or parent” before “private educational loans.”
- The regulatory impact analysis in the third column on page 43634 of the Federal Register version of the NPRM indicates that 60% of the 2,086 proprietary institutions would satisfy the 45% loan repayment rate threshold and that 40% would fall below the 45% threshold. But the table on page 43619 of the Federal Register lists 1,729 for-profit colleges with 36.2% having a loan repayment rate of at least 45% (if one combines the three rows of data) and 60.0% having a loan repayment rate of at least 35%. Likewise the table on page 43630 of the Federal Register indicates that 40% of programs would have a loan repayment rate of at least 45%. Accordingly, it appears that the regulatory impact analysis has swapped the 40% and 60% figures.
- The table on page 4362 of the Federal Register shows 29,669 of 52,980 programs as restricted in the "Programs by Status" section. That's 55%. But the table on page 43630 of the Federal Register shows only 7% of the programs as restricted. Moreover, the "Affected Students by Status" section shows 265,000 of 3,190,476 students in restricted programs. That's 8.3%, consistent with the table on page 43631 of the Federal Register. The 55% figure is similar to the percentage of programs that are subjected to the debt warning/disclosure requirements (i.e., all eligible and restricted except for the 39% that are eligible under both the loan repayment rate and the 8%/20% metrics). Accordingly, it appears that the 29,669 figure was incorrectly labeled or should have been split into two figures.
- The draft regulations at 34 CFR 668.7(b)(3) states that “RPL also includes loans for borrowers whose payments during that FFY qualify for the Public Service Loan Forgiveness program under 34 CFR 685.219(c), even if there is no reduction during the FFY in the outstanding principal balance of those loans.” The regulations should clarify that qualifying for public service loan forgiveness includes borrowers who are in the middle of the required service, not just those who have completed the service requirement. The regulations should also discuss how the US Department of Education plans to identify such borrowers since these borrowers do not currently file any forms stating their intent to obtain public service loan forgiveness or document employment in a public service job. The US Department of Education might be able to infer this from the borrower's employer as reported to the Social Security Administration.
- The gainful employment NPRM does not discuss how a college may regain eligibility after becoming ineligible.
- The discussion of the debt warning disclosure in the third column on page 43623 of the Federal Register states “An institution must provide the warning if the program’s repayment rate is less than 45 percent and, using 3YP and, if applicable, P3YP, the debt-to-income ratio is greater than 8 percent of average annual earnings or 20 percent of discretionary income.” The intention is that a

program that does not satisfy both the 45% loan repayment rate threshold and at least one of the preferred debt to income ratios will be subjected to the warning requirement. But the quoted language does not quite say this.

- The regulations at 34 CFR 668.7(d) regarding the debt warning disclosure state “unless the program has a loan repayment rate of at least 45 percent and an annual loan payment that is **at least** 20 percent of discretionary income or 8 percent of average annual income.” The second “at least,” highlighted in yellow, should instead be “at most.”

The current draft regulations at 34 CFR 668.7(c)(2) base the annual loan payment on the “current annual interest rate on Federal Direct Unsubsidized Loans.” This means that for-profit colleges are likely to lobby Congress for reductions in the unsubsidized Stafford loan interest rate.

Page 131 of the pre-publication version of the gainful employment NPRM notes that several types of programs are most likely to be affected by the loan repayment rate restrictions, including cosmetology, vehicle maintenance, legal support services, culinary arts, ground transportation, audiovisual technology, and medical assistant services programs. Note that the Missouri data does not include cosmetology programs, so it is possible that cosmetology programs may be able to satisfy the debt to income ratios. Footnote 3 on page 43622 of the Federal Register notes that “For graduate and professional programs, separate data are not available on for-profit colleges. For professional degrees, the known debt levels at public and nonprofit institutions could be problematic if earnings are not sufficient.” Since some graduate and professional degree programs – especially medical schools – have inherently low loan repayment rates, the lack of debt and earnings data for these programs makes it difficult to evaluate whether these programs will be able to satisfy the debt to income ratios.

The use of the Missouri data is potentially problematic because minorities are represented at a much lower rate in the Missouri completion data. For example, 27.5% of the students in the Missouri sample were non-White, compared with 41.0% in the national sample. There are especially significant differences in the Hispanic and Latino population in Missouri.

Unemployment benefits are not considered earnings. As such, the debt to income ratios will increase during a recession or other economic downturn.