

# **Strengthening Student Protections: State Implications of Recent Department of Education Regulations**

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# Presenters

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# Federal Regulatory Process

- **Negotiated Rulemaking**
  - Required by statute for regulatory changes concerning Title IV.
  - ED convenes impacted stakeholders to discuss changes with goal of reaching group consensus.
- **Notice of Proposed Rulemaking (NPRM)**
  - ED may revise proposals that did not reach consensus.
  - Public comment period.
- **Final Rule**
  - Final regulations must be published in the Federal Register by November 1 to take effect on July 1 of the following year.

# Recent Federal Issues

- **Gainful Employment**
  - Sets guardrails for career education and for-profit programs using two metrics:
    - Debt-to-earnings
    - High school earnings threshold
- **Financial Value Transparency**
  - Requires increased reporting on program costs and disclosures for high-debt programs.



# Recent Federal Issues

- **Financial Responsibility**
  - Additional triggers for ED to impose financial protection requirements.
- **Certification Procedures**
  - Expands ED's ability to place schools on provisional certification when they engage in misconduct.
- **Program Integrity & Institutional Quality**
  - NPRM published on distance education, return of Title IV funds, and TRIO programs.
  - NPRM forthcoming on accreditation, cash management, and state authorization.

# OVERVIEW OF NEW JERSEY LAW

# HOW THE NJ LAW WORKS: REGULATED INSTITUTIONS

- Secretary of Higher Education to establish “a performance quality standard” for “career-oriented programs of study” at institutions of higher education and at degree-granting proprietary institutions.
  - “Career-oriented program of study:” program that “provides occupation-specific knowledge and technical skill proficiency that culminates in the attainment of a license for a specific occupation or is represented by the institution as preparing students for employment in a specific occupation.”
- Secretary of Labor and Workforce Development to establish “a performance quality standard” for “private career schools.”
  - “Private career schools” regulated by Department of Labor and Workforce Development and Department of Education to operate in New Jersey.
    - Schools that offer postsecondary occupational training and retraining programs
  - “Private career schools” regulated by the Division of Consumer Affairs in the Department of Law & Public Safety.
    - E.g., chiropractic; cosmetology and hairstyling.

# HOW THE NJ LAW WORKS:

## STEP 1: TUITION-TO-EARNINGS RATIO

- Statutory Language for Secretary of Higher Education
  - The ratio of the tuition and fees charged to students in the career-oriented program net of any institutional grant aid to the average earnings of New Jersey workers employed in the specific occupation for which the career-oriented program prepares students.
- Draft Regulatory Formula

$$\text{Tuition-and-fees-to-earnings ratio} = \frac{\text{Annual repayment amount for total of combined tuition and average fees, if paid out over a 10-year period}}{\text{the average earnings for the specific occupation for which the career-orientated program of study prepares students}}$$



# FOR EXAMPLE (FROM OSHE PROPOSED REGULATIONS)

[A] combined tuition and average fee amount for a career-oriented program of study of \$50,000, payable over 10 years, equals a payment of \$5,000 per year. If average earnings for the specific occupation that the career-oriented program of study leads to is \$60,000 annually, then the tuition-and-fees-to-earnings ratio would be \$5,000 divided by \$60,000 ( $5,000/60,000 = 0.083$  or 8.3 percent).

# HOW THE NJ LAW WORKS:

## STEP 2: ACCEPTABLE PERFORMANCE QUALITY STANDARD

- Draft OSHE Regulations
  - An “acceptable performance quality standard” is a tuition-and-fees-to-earnings ratio that is less than, or equal to, 10 percent of the average earnings of New Jersey workers employed in the specific occupation for which the career-oriented program of study prepares students.

# HOW NJ LAW COMPLEMENTS FEDERAL GAINFUL EMPLOYMENT RULE, PART 1

## 1. Debt-to-Earnings Rate

- Compares the median annual payments on loan debt borrowed for the program to the median earnings of graduates receiving federal aid. For a program to pass, debt payments for its graduates cannot exceed 8 percent of annual earnings or 20 percent of discretionary earnings, which is defined as annual earnings minus 150 percent of the federal poverty guideline for a single individual (about \$21,870 in 2023).

# HOW NJ LAW COMPLEMENTS FEDERAL GAINFUL EMPLOYMENT RULE, PART 2

## 2. Earnings Premium Test

- Measures whether the typical graduate from a program who received federal aid is earning at least as much as a typical high school graduate in the labor force (i.e., either working or unemployed) in their state between the ages of 25 and 34. This is equal to roughly \$25,000 nationally but varies by state.

# ASSESSMENT UNDER NJ LAW

- **Secretary of Higher Ed**
  - Must annually assess each institution of higher education or degree-granting proprietary institution to identify whether each of its career-oriented programs of study meets the acceptable performance quality standard.
- **Sec'y of Labor & Workforce Development**
  - Must consider the minimum acceptable level of performance for each instructional program offered by a private career school during two different stages of review: initial approval of the school, and renewal of the school's certificate of approval.

# CONSEQUENCES FOR FAILING TO MEET MINIMUM LEVEL OF PERFORMANCE

- **Secretary of Higher Ed**
  - Must suspend or terminate the program and proceed to suspend or revoke the institution's license to award academic degrees.
- **Sec'y of Labor & Workforce Development**
  - A program at a private career school: must revoke, suspend, or make conditional the certificate of approval issued to the school.
  - An educational program required for licensure in a profession or occupation regulated by a board within the Division of Consumer Affairs:  
Must issue a written determination directing applicable board to suspend or revoke private career school's license or accreditation.
    - Board may delay suspension or revocation "for a reasonable time" if doing will "protect the interests of students."

# WHY NJ LEADERS DECIDED TO PURSUE A STATE-LEVEL GE LAW

- Reaction to Trump Administration
  - After “the HEA gainful employment rules had been rescinded and accreditation had been loosened, we all kind of said, ‘Wow, we’re kind of left holding the bag here.’” – Dep’t of Labor & Workforce Development Official.
- Student Debt from Career-Oriented Master’s Programs
  - *Wall Street Journal* article: Graduates from Columbia University’s MFA in filmmaking had a median debt of \$181,000 in federal student loans, and half of the borrowers were making less than \$30,000 annually two years after earning their degree.
  - A student featured in the article was from NJ.

EDUCATION

# 'Financially Hobbled for Life': The Elite Master's Degrees That Don't Pay Off

Columbia and other top universities push master's programs that fail to generate enough income for graduates to keep up with six-figure federal loans

By Melissa Korn and  
Andrea Fuller  
July 8, 2021

[https://www.wsj.com/articles/financially-hobbled-for-life-the-elite-masters-degrees-that-dont-pay-off-11625752773?mod=series\\_graddebt](https://www.wsj.com/articles/financially-hobbled-for-life-the-elite-masters-degrees-that-dont-pay-off-11625752773?mod=series_graddebt)



“There’s always those 2 a.m. panic attacks where you’re thinking, ‘How the hell am I ever going to pay this off?’ ” said 29-year-old Zack Morrison, of **New Jersey**, who earned a Master of Fine Arts in film from Columbia in 2018 and praised the quality of the program. His graduate school loan balance now stands at nearly \$300,000, including accrued interest. He has been earning between \$30,000 and \$50,000 a year from work as a Hollywood assistant and such side gigs as commercial video production and photography.



# WHY NJ LEADERS DECIDED TO PURSUE A STATE-LEVEL GE LAW, CONTINUED

- Natural extension of work already underway
  - The DOLWD, while developing a quality assurance framework for private career schools and other eligible training providers, began working with other state officials, and “we all decided that the only thing we really wanted to do was . . . to go after the student debt crisis. That was really it,” a DOLWD official said. “It was limiting it to the most dire problem.”

# Discussion