The Leadership Conference
Education Fund

Gainful Employment:
A Civil Rights Perspective

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 Department of Education needs to issue a strong "gainful employment" regulation. A strong rule is needed to protect African-American and Latino students in particular from substandard career education programs and to ensure that the Higher Education Act fulfills its promise of educational opportunity for all.
- ➜ African-American and Latino students are over-represented in for-profit colleges. While African-American and Latino students make up 34 percent of all postsecondary enrollments, they represent 51 percent of students at for-profit institutions.
- ➜ Students at for-profit colleges are much less likely to graduate than students at public and private non-profit schools. For example, the graduation rate for African-American students who seek Bachelor's degrees at for-profit colleges is less than one-third the graduation rate of African-American students at public or private non-profit institutions.
- ➜ For-profit colleges cost much more than public colleges – and more than twice as much as public two-year colleges.
- ➜ For-profit graduates incur high student loan debt. Nine out of 10 African Americans and Latinos who graduated from a for-profit undergraduate degree program had to borrow. On average, those students borrowed at least $10,000 more than those who borrowed to attend public colleges.
- ➜ Students who attend for-profit colleges are much more likely than their peers at other schools to default on their student loans. For-profit colleges account for a third of all student loan defaults (33 percent), even though they make up only 9 percent of total postsecondary enrollment.
- ➜ Rather than providing a path toward educational and economic opportunity, for-profit colleges often do the opposite. Those who graduate from a for-profit college do worse in the labor market than they otherwise would with only a high school education, even though the credentials they offer tend to be 30 to 40 percent more expensive than the same credentials from a public institution.

Introduction

For years, studies and investigations have found that for-profit schools implement policies and practices that produce adverse outcomes for African-American and Latino students. Too many for-profit schools use aggressive and deceptive recruiting, and predatory lending practices that lead to higher student loan debt without accompanying value.[1] In response, the U.S. Department of Education, under the Obama administration, developed a regulation to enhance accountability at all career education programs, including those at for-profit colleges,[2] and to ensure compliance with the Higher Education Act of 1965 (HEA). That rule has since been repealed by the Trump administration in the name of reducing the burden for institutions.[3] This repeal removes urgently needed protection for students, particularly African-American and Latino students, and weakens institutional compliance with the law.

Under the HEA, in order for post-secondary career education programs (including all public and private non-profit college programs of less than two years and nearly all for-profit college programs) to be eligible for Title IV financial aid grants and loans, institutions must "prepare students for gainful employment in a recognized occupation."[4]

Note: This document is an update to a policy brief written in 2014 co-authored by: The Leadership Conference on Civil and Human Rights, Center for Responsible Lending, Children's Defense Fund, Lawyers' Committee for Civil Rights Under Law, MALDEF, NAACP Legal Defense and Educational Fund, Inc., and UnidosUS (formerly known as National Council of La Raza). It has been updated to reflect the most recent data and actions of the Department of Education.

1 U.S Senate Health, Education, Labor, and Pension Committee. "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success." July 30, 2012.

2 Gainful Employment, 34 C.F.R § 668.

3 Stratford, Michael. "DeVos Finalizes Repeal of Obama-Era 'Gainful Employment' Rule." Politico. June, 28, 2019.

4 20 U.S.C. 1002 (b)(1)(A)(i).

The gainful employment rule sought to define in practical terms what that meant. The rule conditioned a program's continued eligibility for Federal Student Aid dollars on meeting a minimum debt-to-earnings ratio, in order to avoid funding programs where students are unable to repay their loans. The idea behind the rule is that programs with overly high costs, and whose graduates do not see a corresponding increase in income, should improve or face the loss of federal student aid. Any program where typical graduates' debts exceed both 8 percent of their total income and 20 percent of discretionary income were required to improve or lose access to federal financial aid. Additionally, the rule required that schools provide prospective students and consumers with information about career programs, including what the typical graduate earns, how much debt graduates have, and what share of graduates find employment in their field.[5]

In 2019, following improper delays and repeated failures to follow the law and enforce the rule, the Trump administration formally rescinded the regulation, alleging that it was "too burdensome" for for-profit colleges.[6] The U.S. Department of Education's rescission of the gainful employment rule means that this requirement of the HEA is no longer being enforced. This will allow low-quality, for-profit institutions to avoid accountability from the federal government and enables the exploitation of students, particularly students of color.

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 on their loans; and more likely to have debt and higher amounts of it. It is therefore imperative that a strong gainful employment rule is issued and enforced. Without robust enforcement of HEA, for-profit schools have little incentive to operate in the best interest of their students and ensure they complete school, become gainfully employed, and are able to repay their loans. For-profit institutions have worse student outcomes compared to public schools have been especially aggressive in recruiting students of color, which is why gainful employment rulemaking is important for civil rights organizations.[7] A robust gainful employment rule offers long overdue federal oversight and provides regulatory protections for students and taxpayers alike.

Background

Upon its signing in 1965, the Higher Education Act (HEA) ushered in unprecedented postsecondary educational opportunities for Americans by providing federal financial assistance to students enrolling in higher education institutions.[8] 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.[9] 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 1972 to 2017, the share of 18-24 year-old African Americans enrolled in postsecondary education increased from 18.3 percent to 36.5 percent.[10]

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5 The Institute for College Access and Success. "What to Know about the Gainful Employment Rule." August 12, 2019.

6 U.S Department of Education. Notice of Proposed Rulemaking: Gainful Employment. March 7, 2017.

7 Kirkham, Chris. "For-Profit Colleges Draw Minorities, Stir Murky Debate on Student Success." Huffington Post. August 3, 2011.

8 20 U.S.C. 1001 et seq, Pub. L. No. 89-329.

9 Pell Institute. "The Early History of the Higher Education Act of 1965." February 2003.

10 National Center for Education Statistics. "Digest of Education Statistics." *U.S Department of Education, Institution of Education Sciences.* 2018.

In that same period, the share of 18-24-year-old Latinos enrolled in postsecondary institutions increased from 13.4 percent to 36.2 percent.[11] In the span of more than three decades and with the assistance of HEA programs, the share of enrollment of African- American students doubled and Latino students tripled, demonstrating 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. Students attending for-profit institutions have comparatively worse outcomes than those at public and private non-profit institutions. 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 more to cover college costs. The performance of these schools in terms of student outcomes and cost is a significant concern for the civil rights community, particularly due to the overrepresentation of African-American and Latino students at these institutions.

African-American and Latino students are over-represented at for-profit colleges.[12] In 2016-17, more than 1 million African-American and Latino students were enrolled at for-profit colleges.[13] African-American and Latino students combined make up 34 percent of all undergraduates, but they represent 51 percent of students at for-profit colleges.[14] These high enrollments are unsurprising in light of evidence that for-profit programs disproportionately target low-income Black and Latino communities. Such for-profit institutions deliberately exploit low-income people of color who are often more vulnerable to fraudulent marketing techniques because they are unemployed, underemployed, or otherwise searching for increased earning power.[15] In addition to targeting particular marginalized communities, for-profit college marketing practices have also been shown to be fraudulent.[16] 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 has consequences throughout a person's life, and that of their family. The average wealth of White families in 2016 was seven times that of Black families ($919,000 and $140,000, respectively), and more than five times that of Latino households ($192,000).[17] This wealth gap arises out of generations of government-sanctioned policies that prevent families of color from accumulating wealth, such as redlining, restrictive covenants, lending discrimination, and encouraging neighborhood segregation.[18]

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11 Ibid.

12 Figures calculated by The Institute for College Access & Success (TICAS) using data from the U.S. Department of Education, Integrated Postsecondary Education Data System (IPEDS), 12-month enrollment, 2016-17 and represent colleges in the 50 states and DC.

13 Figures calculated by TICAS using data from IPEDS, undergraduate and graduate 12-month enrollment in 2016-17 at colleges in the 50 states and DC.

14 Figures calculated by TICAS using data from IPEDS, 12-month enrollment in 2016-17 at colleges in the 50 states and DC.

15 Patrick F. Linehan, ***Dreams Protected: A New Approach to Policing Proprietary Schools' Misrepresentations***, 89 GEO. L.J. 753, 762 (2001).

16 Government Accountability Office. "**For Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practice**." August 4, 2010.

17 Urban Institute. "**Nine Charts about Wealth Inequality in America**." October 24, 2017.

18 See, e.g., Amy Traub et al., ***The Asset Value of Whiteness: Understanding the Racial Wealth Gap***, Demos (2017); Katie Nodjimbadem, ***The Racial Segregation of American Cities Was Anything But Accidental***, Smithsonian (2017).

Excessive student debt continues to contribute to this gap.[19] Of additional concern are the students who 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 or support a family.[20] But even those who successfully graduate from for-profit colleges have low earnings compared to their peers, indicating that the education they received was not worth as much.[21]

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

Educational and financial outcomes for African-American and Latino students remain 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 three times more likely to successfully graduate within six years with a Bachelor's degree from a public or private, non-profit school than from a for-profit college. Latino graduation rates at for-profit colleges are less than half the graduation rates for Latino students at public and private non-profit institutions. Fourteen state attorneys general asserted that even among those students who do manage to graduate from a for-profit college, many face greater challenges securing certification or employment in their field.[22]

Figure 1: Share of Bachelor's-degree-seeking students who completed a Bachelor's degree within six years, 2017

College Type	White	African American	Latino
Public	63%	41%	54%
Private, non-profit	70%	44%	63%
For-profit	24%	13%	26%
ALL	64%	40%	55%

Source: TICAS calculations on data from the federal Integrated Postsecondary Education Data System (IPEDS), Graduation Rates survey.

Note: These figures are for first-time, full-time Bachelor's-degree-seeking undergraduates in 2016-17, measuring the share who completed a Bachelor's degree at the same college by August 2017. These figures cover four-year colleges in the 50 states and DC as listed in IPEDS for 2016-17.

19 Hiltonsmith, Robert. "At What Cost? How Student Debt Reduces Lifetime Wealth." *Demos.* August 2013.

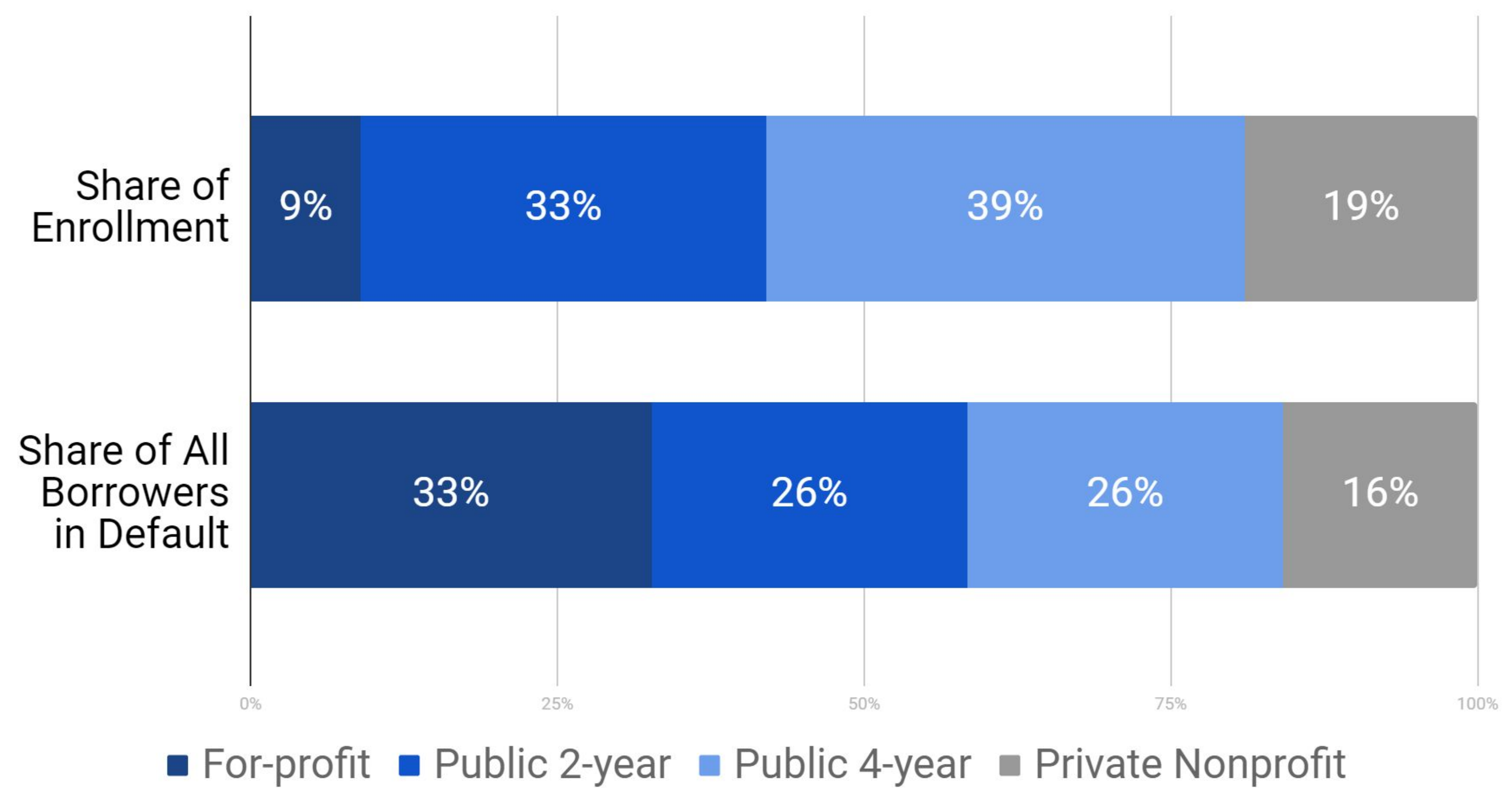
20 Children's Defense Fund. "Ending Child Poverty Now." April 2019 (calling for the need to ensure working families earn enough to support their children and noting that more than two-thirds, or 70.1 percent, of poor children live with an adult who works.)

21 Department of Education. "Education Department Releases New Graduate Earnings Data for Career College Programs." November 17, 2016.; and Lorenzetti, Laura "Why Going to a For-Profit College Doesn't Pay Off." Fortune. May 31, 2016.

22 See, e.g. Letter from fourteen state Attorneys General to Senator Dick Durbin and Representative Elijah Cummings re: S. 2204 - Proprietary Education Oversight Coordination Improvement Act. September 9, 2014.

For-Profit College Students Are More Likely to Default For-profit colleges account for more than a third of all student loan defaults (33 percent), even though they make up only 9 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, mounting interest, 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 their degree.[23]

Share of Student Loan Default Compared to Enrollment



Source: Calculations by TICAS on data from the U.S. Department of Education, IPEDS 12-month unduplicated headcount for all students enrolled in 2016-17 in schools in the 50 states plus DC, and FY 2016 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 than their peers at other types of colleges. Latinos enrolled in for-profit colleges are four times as likely to borrow private loans than those at other types of colleges. Past lawsuits by the Consumer Financial Protection Bureau against now defunct for-profit college companies ITT and Corinthian involved private loan programs with default rates above 60 percent.[24]

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23 Guryan, Jonathan "Report on Gainful Employment." *Charles River Associates.* March 29, 2010.

24 For more information on these institutional private student loan programs and their outcomes, see the CFPB's complaints against Corinthian Colleges and ITT.



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 that of public colleges. And while private, non-profit institutions cost almost as much as the for-profits, student investment in these institutions yield greater positive outcomes in completion and the labor market value of degrees.

Figure 3: Net Price for African American and Latino Undergraduates, 2015-16

African American Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$17,800	$23,300	$28,050
Two-year	$11,650	n/a	$28,400
Latino Students			
College Type	**Public**	**Private, non-profit**	**For-profit**
Four-year	$16,700	$25,900	$30,100
Two-year	$11,700	n/a	$25,750

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 expense, books and supplies, and transportation) minus grant aid for full-time, full-year undergraduates who attended one institution in 2015-16, 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. Figures are rounded to the nearest $50.

For-Profit College Graduates Have More Debt and Take it on at Higher Rates 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 Study, about 9 out of 10 African Americans and Latinos who graduated from a for-profit college Associate's or Bachelor's 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 average debt per borrower pursuing an Associate's degree at a for-profit institution is nearly double than at a public institution.

Figure 4: Cumulative student debt at graduation, 2015-16

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	68%	$27,800	82%	$30,150	61%	$22,100
Private, non-profit	69%	$31,750	87%	$35,900	72%	$26,050
For-profit	82%	$40,600	87%	$40,950	82%	$36,900
ALL	69%	$30,100	85%	$34,000	66%	$25,450

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%	$15,750	55%	$17,900	25%	$11,400
For-profit	88%	$24,900	92%	$29,750	82%	$23,100
ALL	50%	$17,750	67%	$22,300	35%	$15,750

Source: TICAS calculations on data from NPSAS

Note: These figures are for students who 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. Private non-profit colleges are excluded from the data for Associate's degree recipients because they account for so few students expected to receive AAs. Figures are rounded to the nearest 1 percent and nearest $50.

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 more likely to borrow and less likely to succeed, and there are few incentives for schools to improve poorly performing programs.

The U.S. Department of Education must issue a strong 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 thus 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 alleged that a strong "gainful employment" rule would disproportionately impact the educational access and attainment of students of color.[25] Not only does this assertion misstate the reality of exploitation students experience when attending high-cost, low-quality for-profit colleges, but it also fails to recognize the evidence that when low performing schools are no longer propped up with federal funds, students can and do find better educational opportunities.[26] Data 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, (4) are more likely to default, and (5) earn lower wages.[27] Such outcomes, in other contexts, would meet the legal definition of "reverse redlining."[28] "Reverse redlining" is the practice of extending inferior products on unfair terms or at higher costs to minorities.[29] The for-profit industry's provision of inferior services to students from marginalized communities – such as low-income students and students of color – should lead to more, not less, regulation to protect low-income students and students of color, whether currently enrolled or prospective.

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25 Career Education Colleges and Universities. "Anti-Student Gainful Employment Regulation To Displace 7.5 Million Students, Association of Private Sector Colleges and Universities." May 27, 2014.

26 Cellini, S.R.; Darolia, R., & Turner, L.J. April 2018. "Where Do Students Go When For-Profit Colleges Lose Federal Aid?" National Bureau of Economic Research Working Paper No. 22967. Chou, T; Looney, A., & Watson, T. February 2017. "Measuring Loan Outcomes at Postsecondary Institutions: Cohort Repayment Rates as an Indicator of Student Success and Institutional Accountability." ; National Bureau of Economic Research Working Paper No. 23118.

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

28 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).

29 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. February 2012. 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 Reynolds, Matt. "Banks' Reverse Redlining Cost It $1 Billion, Los Angeles Claims." Courthouse News Service. December 9, 2013. 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.

The U.S. Department of Education must issue a strong gainful employment regulation to ensure that career education programs receiving funding under the Higher Education Act fulfill the law's original goals and legal requirements. A new gainful employment rule must:

- ➜ **Remove Title-IV eligibility from programs that consistently fail to meet gainful employment standards.** Taxpayer dollars should not prop up substandard programs to enroll new students where they are least likely to succeed and will incur heavy debt loads.
- ➜ **Provide full financial relief to 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.
- ➜ **Ensure that the debt-to-earnings standards are sufficient to protect students and taxpayers.** For example, standards must not be so modest that programs from which more students default than complete would pass proposed metrics.[30]
- ➜ **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.[31]
- ➜ **Require transparency, in addition to accountability, to ensure current and prospective students have the information they need.** Information about program costs and quality and whether institutions have met federal benchmarks should be comparable across institutions and readily available to the public.

The U.S. Department of Education must act swiftly to issue a gainful employment rule that will hold predatory colleges responsible for adverse financial outcomes to students, which is akin to 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 already waited too long for equal access to a high quality postsecondary education. If the administration fails to act, these institutions will continue to enroll African American and Latino students, only to deliver a broken promise.

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[30] The Institute for College Access and Success. "Where More Default Than Graduate: Career Education Program Parasites." May 15, 2014.

[31] The Institute for College Access and Success. "Protecting Colleges and Students: Community College Strategies to Prevent Default." July 2014.

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