In its proposed “gainful employment” rule, the Department of Education creates standards and conditions by which Gainful Employment (GE) Programs can be eligible for title IV, HEA funding. Eligible programs are required by statute to provide training that prepares students for gainful employment in a recognized occupation. However, the Department claims many programs are leaving students unprepared for employment, resulting in a disproportionate number of students unable to repay their Federal loans, and leading to default. While the Department’s proposal incorporates a number of metrics to assess whether the rule accomplishes its goals, the Department can’t earn a passing grade on retrospective review without committing to measuring these metrics after implementation.

The Department’s proposal seeks to address two market failures: asymmetric information and a negative externality. First, many GE programs are not transparent about the outcomes of students who attend these programs, which leads students to make irrational decisions about their educational investment. Second, this lack of available information for students creates a negative externality by imposing an unwanted financial burden on society from students defaulting on their Federal loans.

As a part of its ongoing Retrospective Review Comment Project, in which the Regulatory Studies Center examines significant proposed regulations to assess whether agencies propose retrospective review as a part of their regulations, we submitted comments on the proposal offering suggestions on how the Department of Education could incorporate plans for retrospective review into its final rule. Executive orders and OMB guidance direct that “future regulations should be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and measurement of ‘actual results.’”

The desired outcomes of the proposed rule are (1) Improved and standardized market information about GE programs that will lead to better decision making by students about their educational investment; and (2) An improvement in program quality and student outcomes, or a better return on the educational investment for students attending GE programs. The Department incorporates metrics for measuring these two outcomes in its proposed rule, and makes projections about the expected outcomes of the proposed rule. GE programs will lose their title IV, HEA status if they do not meet to certification and eligibility requirements proposed by the rule.

The Department assumes that with more transparent information about student outcomes in GE programs, as required by the rule’s proposed reporting and disclosure requirements, students will
make better decisions about their educational investment by choosing at the onset or transferring to programs with better outcomes for students. Therefore, the Department assumes enrollment rates and revenues in programs with better student outcomes will increase.

In addition to the certification standards set by the rule for new programs to become title IV, HEA eligible, the Department proposes two metrics to measure an improvement in program quality and student outcomes—D/E rates (debt to earnings rate) and pCDR (program cohort default rate). The D/E rates compare the debt incurred by students completing the program against their earnings; and the pCDR examines the rate at which borrowers who previously enrolled in the program default on their Federal Family Education (FFEL) Loans or Direct Loans; or in other words, whether the program presents a “poor financial risk to the taxpayer”. The Department assumes that if students are able to repay their loan debt after completing GE programs, then the programs have properly trained student for a qualified occupation and there was a positive return on the student’s educational investment.

*Recommendations for Improving Retrospective Review*

In its final rule, the Department should measure whether programs certified under the rule’s requirements pass the D/E rate and pCDR threshold after evaluation to ensure new programs receiving eligibility produce a positive return for students. Although not stated in the initial proposal, in its final rule the Department should also commit to evaluating whether the projected outcomes for enrollment rates, revenues, cost savings for the Federal government were correct. Additionally, the Department should commit to retrospectively evaluating whether the projected paperwork burden and expected costs imposed by the rule were accurate.

By committing to retrospectively review the metrics stated by the Department in its proposal, and by incorporating the suggestions for improving retrospective review in its final rule, the Department of Education will earn a passing grade on their retrospective review plan.