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Lessons from Gainful Employment: Improvements to Replicate and a Mistake to Avoid

Key Points

- The gainful employment regulations, in place from 2014 to 2019, identified and sanctioned college programs that left students with excessive student loan debt relative to their earnings after graduating.
- New approaches to higher education accountability can build on our experience with gainful employment by replicating gainful employment's successful approaches and avoiding repeating its fatal mistake.
- One improvement that gainful employment pioneered that should be replicated is the focus on program level rather than institution level accountability.
- The second improvement that should be replicated is holding colleges accountable for students' post-graduation earnings.
- The fatal mistake gainful employment made, and that policymakers should avoid repeating, is selectively applying accountability—excluding most of higher education from accountability.

Executive Summary

Higher education needs more accountability, and a promising approach was a set of federal regulations called gainful employment, which sought to identify and terminate federal financial aid for college programs that left students with excessive student loan debt relative to their earnings after graduating. Introduced in 2011 and 2014, the regulations were rescinded in 2019. The Biden administration is considering reimposing gainful employment. If they do so, they should build upon two improvements gainful employment pioneered (the focus on program level rather than institution level evaluation, and the inclusion of students' post-graduation earnings as an outcome metric), while avoiding the fatal mistake of the regulations (selective rather than universal application of accountability).

Introduction

Many believe that higher education needs enhanced accountability. The most noteworthy recent approach to accountability was a set of regulations introduced by the Obama administration and called gainful employment. These regulations pioneered two promising new approaches to accountability in higher education. First, they focused on programs rather than colleges or institutions. Second, the regulations accounted for students' post-graduation earnings relative to their student debt—an important outcome. Both were improvements in the federal approach to accountability that should be replicated in future accountability systems.

However, gainful employment also suffered from a fatal flaw. It was applied selectively, disproportionately targeting the for-profit college sector. This selective targeting was a mistake, catching only 11% of programs (see **Figure 1**) that leave their students with excessive student loan debt.

Background on the Gainful Employment Regulations of 2011–2019

The Higher Education Act (HEA) was initially passed in 1965 and has been renewed and updated several times since. The HEA includes a requirement that certain college programs "prepare students for gainful employment in a recognized occupation" for students to be eligible for federal financial aid (see 34 CFR 668.8(c); Kantrowitz, 2010).

continued

Until 2011, gainful employment was not defined. But,

> in 2011, the Obama administration made their first attempt at defining gainful employment by releasing their first set of Gainful Employment regulations. These regulations sought to terminate federal financial aid for programs where student debt was too high relative to income or where too few students were repaying their loans. But in 2012, the regulations were thrown out by the courts…
>
> A revised set of regulations were released in 2014, and this time survived legal challenge… the first Gainful Employment data was released in 2017.
>
> The Trump administration did not release any more Gainful Employment data, and formally rescinded Gainful Employment in 2019. (Gillen, forthcoming)

Under the 2014 gainful employment regulations, each program was tested under two different debt-to-earnings measures, with their performance classified as "Pass" for programs where students could afford to repay their student loan debt, "Fail" for programs where students could not afford to repay their student loan debt, and a probationary category in between called "Zone." Programs that failed for two out of three years or that did not pass for four consecutive years lost eligibility to participate in federal financial aid programs. Since there was only one year of data released, and the regulations were rescinded, no program's eligibility was terminated under the regulations.

A total of 8,632 domestic programs were evaluated in the first and only release of gainful employment results (Federal Student Aid, n.d.-a). **Table 1** shows the number of programs in each performance category.

Table 1

Number of College Programs by Gainful Employment Status

Pass	6,726
Zone	1,203
Fail	703
Total	**8,632**

Note. Data from *Gainful Employment Information* (data set), Federal Student Aid, n.d., U.S. Department of Education (https://studentaid.gov/data-center/school/ge) and author's calculations.

While most programs passed, 8% of programs failed gainful employment. However, most of the failures were concentrated among for-profit colleges. **Table 2** shows the number of programs by performance and control.

Table 2

Number of College Programs by Gainful Employment Status and Control

	Pass	Zone	Fail	Total
Public	2,484	9	0	**2,493**
Private nonprofit	385	63	15	**463**
For-profit	3,857	1,131	688	**5,676**
Total	**6,726**	**1,203**	**703**	

Note. Data from *Gainful Employment Information* (data set), Federal Student Aid, n.d., U.S. Department of Education (https://studentaid.gov/data-center/school/ge) and author's calculations.

Of the 703 failing programs, 98% (688) were at for-profit colleges. As we document in more detail shortly, this figure is quite misleading because most public and private nonprofit programs were excluded from the regulations. But this figure has led to the erroneous impression that college programs that leave their students with excessive student loan debt are almost exclusively found at for-profit universities.

Improvements to Replicate and a Mistake to Avoid When Building on Gainful Employment

Gainful employment was rescinded in 2019, but the Biden administration is undertaking negotiated rulemaking to consider bringing the regulations back. We wrote this study to help inform policymakers as they consider the next iteration of gainful employment (or its successor accountability system), and we encourage policymakers to replicate and build on the improvements that gainful employment introduced to the accountability landscape while avoiding repeating gainful employment's fatal mistake.

Improvement to Replicate: Focus on Program Evaluation

One of the best features of the gainful employment regulations was the focus on program level accountability, where a program refers to a college/credential/academic field combination. For example, the bachelor's degree in nursing at Texas A&M would be a program. Prior to gainful employment, accountability metrics had been applied at the level of the entire institution. Program level accountability is far superior to institution level accountability because "institution level metrics allow poorly performing programs at 'good' colleges to escape accountability while punishing high-performing programs at 'bad' colleges. Program level accountability avoids this" (Gillen, forthcoming).

Program level data and accountability enable accountability systems to use a scalpel rather than a sledgehammer. Therefore, policymakers should no longer be talking about targeting higher education sectors or even institutions. Since every failing program can be identified and sanctioned, punishing entire sectors or institutions entails unfair and unnecessary collateral damage to programs that benefit students.

Unfortunately, some policymakers have not adequately updated their views now that program level data like the gainful employment data (Federal Student Aid, n.d.-a) and the College Scorecard data (U.S. Department of Education, n.d.) have rendered traditional policy approaches, with their reliance on institution or college level accountability, obsolete.

To begin, many in Washington are still advocating collective punishment of the entire for-profit sector. For example, some scholars at the Brookings Institution argue that "there is enough evidence of poor performance in the for-profit sector to justify removing the entire sector from federal funds eligibility" (Shiro & Reeves, 2021, para. 11). And discussing recent changes to federal financial aid, House Education and Labor Committee Chair Bobby Scott said it is not possible to distinguish "good for-profits from bad for-profits" (quoted in Gravely, 2021, para. 4).

But with program level data, such as the gainful employment data and the College Scorecard data (U.S. Department of Education, n.d.), such an indiscriminate approach is both inappropriate and unjust. Tests like gainful employment identified each and every for-profit program that left students with unaffordable debt. And yet the policy response among many in Washington was to use the failure of some programs to attempt to shut down even those programs that passed the test, many of which were at different colleges and in entirely different fields.

There were 1,541 for-profit colleges subjected to gainful employment. Of these, 222 had at least one program fail, and 635 had at least one program receive a fail or zone rating. In other words, 906 for-profits had all of their programs pass the gainful employment test. And yet, even though every program at these 906 colleges passed the test, some want to shut them down due to the failures at 222 completely different colleges.

Similarly, there were 25 failing programs in cinematography at for-profits, 20 in photography, 18 in culinary arts, and 1 in Asian bodywork therapy. Why should those failing program be used as a justification for shutting down the 10 biomedical technician programs at for-profits, all of which passed?

As **Table 2** shows, for every for-profit program that failed gainful employment, there were 5.6 programs that passed. Shutting down failing programs[1] is certainly a defensible position to take, and one with which we agree—provided the test is applied universally rather than selectively (more on this below). But to use every failing program as justification for shutting down another 5.6 programs that passed the test is an exercise in guilt by association. Failures among some for-profit programs do not taint all other for-profit programs merely because their respective institutions share a common tax status.

Others make the mistake of using program level results to advocate for shutting down entire institutions. But targeting institutions based on aggregated program level results would be like grading each student's assignment but then failing the whole class because the average grade was too low.

If targeting all for-profit colleges or even institutions is ignoring the potential of program level data, what about targeting specific fields of study? After all, failing programs are heavily concentrated among certain fields—over half (348 out of 688) of for-profit programs that failed gainful employment were in just five areas of study, including health and medical assistance, health and medical administration, culinary arts, cosmetology, and design arts.[2]

But that does not mean that policymakers should single out those fields for punishment because many programs in those fields passed gainful employment. For example, among for-profits, 53 cosmetology programs failed gainful employment. Yet 461 for-profit cosmetology programs passed. Should those 461 programs lose access to federal financial aid because 53 other programs failed?

The bottom line is that program level data allow for program level accountability, and it would be a mistake to then

1 Programs that failed gainful employment would lose eligibility for federal financial aid but would not be forcibly shut down. However, most institutions, and virtually all for-profits, rely on federal financial aid for the vast majority of their revenue and could not continue operating without it, which means that losing access to federal financial aid is equivalent to shutting the programs down. The only programs that could survive a loss of access to federal financial aid are those with sufficient alternative revenue sources, such as universities with large endowments.

2 These degree categories (CIP codes) were
- Design and Applied Arts (50.04) which includes fields such as graphic design and game design.
- Allied Health and Medical Assisting Services (51.08) which includes fields such as medical/clinical assistant.
- Cosmetology and Related Personal Grooming Services (12.04).
- Health and Medical Administrative Services (51.07) which includes fields such as medical reception/receptionist.
- Culinary Arts and Related Services (12.05).

try to impose sector, institution, or field specific accountability based on aggregated results.

Improvement to Replicate: Include Student Outcomes Such as Post-Graduation Earnings

The other main innovation of gainful employment that should be replicated was holding colleges accountable for students' post-graduation earnings. Earnings are an important outcome after graduating college, and gainful employment was the first attempt to track and utilize this outcome for transparency and accountability purposes.

Gainful employment used two debt-to-earnings tests. The annual earnings rate (AER) was annual debt service divided by annual income, and the discretionary income rate (DIR) was annual debt service divided by annual income minus 150% of the poverty line. While we propose a more straightforward debt-to-earnings test that expresses typical student loan debt as a percent of annual earnings (Gillen, 2021), there is nothing inherently wrong with the debt-to-earnings metrics used by gainful employment.

Another option for policymakers is to consider an earnings floor, with the floor being some multiple of the federal minimum wage or the median wage.

Mistake to Avoid: Don't Selectively and Unfairly Target Particular Colleges

The main problem with the gainful employment regulations was the selective targeting of for-profit colleges, excluding most public and private nonprofit programs from the accountability tests.

The fact that 98% of failing programs cited in the data were at for-profit colleges has led many to incorrectly believe that failing programs are almost entirely found at for-profit colleges. But the main reason that for-profits are overrepresented among failing programs is that the vast majority of programs at public and private nonprofit colleges were excluded from the regulation because they were not considered vocational. **Table 3** shows the number of programs subject to gainful employment at each type of college by credential.

Table 3

Number of Programs Subject to Gainful Employment by Credential and Control

	Public	Private nonprofit	For-profit
Undergraduate certificate	2,428	394	3,260
Associate degree	0	0	1,464
Bachelor's degree	0	0	598
Postbaccalaureate certificate	17	26	5
Graduate certificate	48	43	23
Master's degree	0	0	267
First professional degree	0	0	12
Doctoral degree	0	0	47

Note. Data from *Gainful Employment Information* (data set), Federal Student Aid, n.d., U.S. Department of Education (https://studentaid.gov/data-center/school/ge) and author's calculations.

All degree and certificate programs at for-profit colleges were subject to the gainful employment test. Yet not a single degree program at any public or private nonprofit university was subject to gainful employment. The exclusion of public and private nonprofit degree programs means that simply comparing the share of failing programs at for-profits to those at other types of universities will be severely biased.

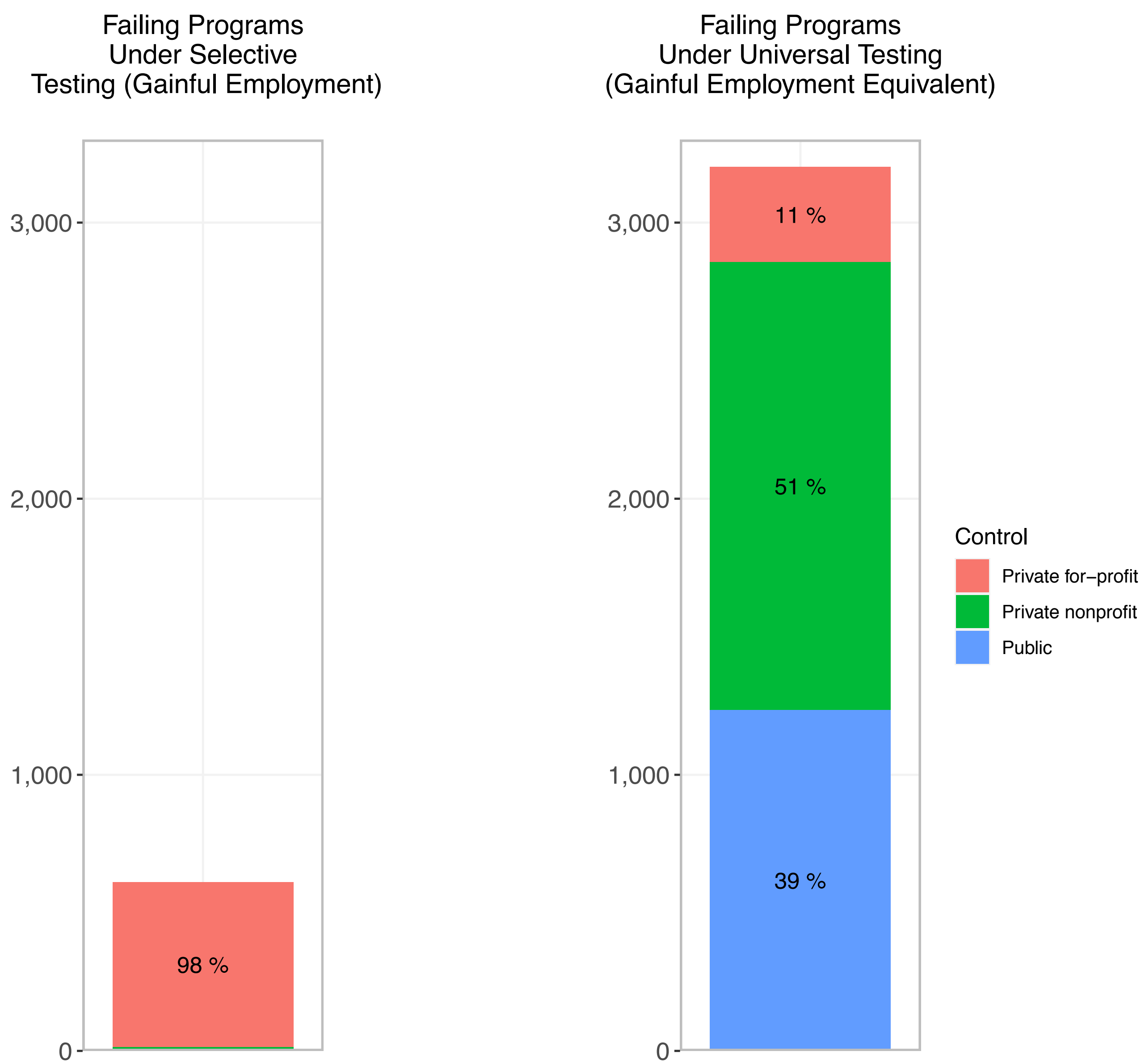
To gauge the extent of this distortion, we at the Texas Public Policy Foundation created a measure called the "gainful employment equivalent." This measure recreates the original gainful employment test as closely as it is possible to do and applies it to all college programs rather than selectively applying it.[3]

To demonstrate how biased gainful employment was against for-profit college programs, **Figure 1** documents the results of gainful employment (selective testing) and gainful employment equivalent (universal testing) side by side.

Gainful employment equivalent is performed at the 4-digit CIP code level using data released in 2021, while gainful employment is performed at the 6-digit CIP code level using data released in 2017, so for comparison purposes,

3 For more details on gainful employment equivalent, see Gillen (2021). In brief, gainful employment equivalent uses the most recent earnings and debt data available from the College Scorecard (U.S. Department of Education, n.d.) to recreate the gainful employment debt-to-earnings tests. Regression analysis was used to adjust the AER and DIR test thresholds to account for differences in how earnings and debt were measured in the College Scorecard data compared to the gainful employment data. For ease of interpretation, we renamed the "Zone" performance category "Probation" in the gainful employment equivalent results. The main difference between the two tests is that gainful employment tests were conducted at the 6-digit CIP code level, whereas gainful employment equivalent is conducted at the 4-digit CIP code level. For example, all economics specialties are aggregated into the 45.06 CIP code for gainful employment equivalent, whereas the gainful employment data would have separate 6-digit codes for each specialty within economics (e.g., 45.0604 for Development Economics and International Development).

Figure 1
Number of Failing Programs Under Selective Testing (Gainful Employment) and Universal Testing (Gainful Employment Equivalent)



Note. Data from *Gainful Employment Information* (data set), Federal Student Aid, n.d., U.S. Department of Education (https://studentaid.gov/data-center/school/ge); *College Scorecard* (data set), U.S. Department of Education, n.d. (https://collegescorecard.ed.gov/data/); and author's calculations.

By excluding degree programs at public and private nonprofit universities, gainful employment missed the vast majority of programs that leave their students with excessive student loan debt.

we aggregated the gainful employment results by 4-digit CIP code to avoid double counting failures.

Figure 1 makes several important points clear. First, it is not true that 98% of failing programs are at for-profit colleges. The 98% figure depends on subjecting all for-profit college programs to the gainful employment test while excluding most programs at public and private nonprofit colleges. When all college programs are placed on a level playing field and subjected to the same debt-to-earnings test, for-profit colleges account for 11% of failing programs, not 98%.

Second, by excluding degree programs at public and private nonprofit universities, gainful employment missed the vast majority of programs that leave their students with excessive student loan debt. Gainful employment identified only 611 such programs (aggregated at the 4-digit CIP code level, 703 programs if not aggregated), whereas gainful employment equivalent identified 3,201 failing programs. If the goal of gainful employment (or successor accountability systems) is to protect students from programs where they accumulate excessive student loan debt, then focusing on any one type of college will miss too many problematic programs. For example, focusing just on for-profit colleges would miss 89% of failing programs and 73% of students graduating from a failing program.

Some readers may have noticed that the number of failing for-profit programs is higher under gainful employment (688) than under gainful employment equivalent (345). However, we do not need to worry that gainful employment equivalent is more lenient for two reasons. First, gainful employment equivalent evaluations occurred at a more aggregated level (4-digit CIP code) than gainful employment (6-digit CIP code). If the gainful employment programs are aggregated to match the aggregation of gainful employment equivalent, the number of failing programs drops to 597. Second, for-profits closed many failing programs after the gainful employment data was released in 2017 but before the gainful employment equivalent data was released in 2021. For example, Vatterott College had 61 programs evaluated under gainful employment, 38 of which failed. By the time the gainful employment equivalent data was collected, Vatterott had only 4 programs in total. In fact, Vatterott was in the process of closing completely (Tennessee Higher Education Commission, n.d.). As a result, even those 4 programs will disappear from the gainful employment equivalent data in a few years. In fact, all three of the for-profits with the highest number of failing programs under gainful employment—Vatterott College (38 failing programs), Sanford-Brown College (31 failing programs), and The Art Institute of Phoenix (27 failing programs)—have permanently closed.

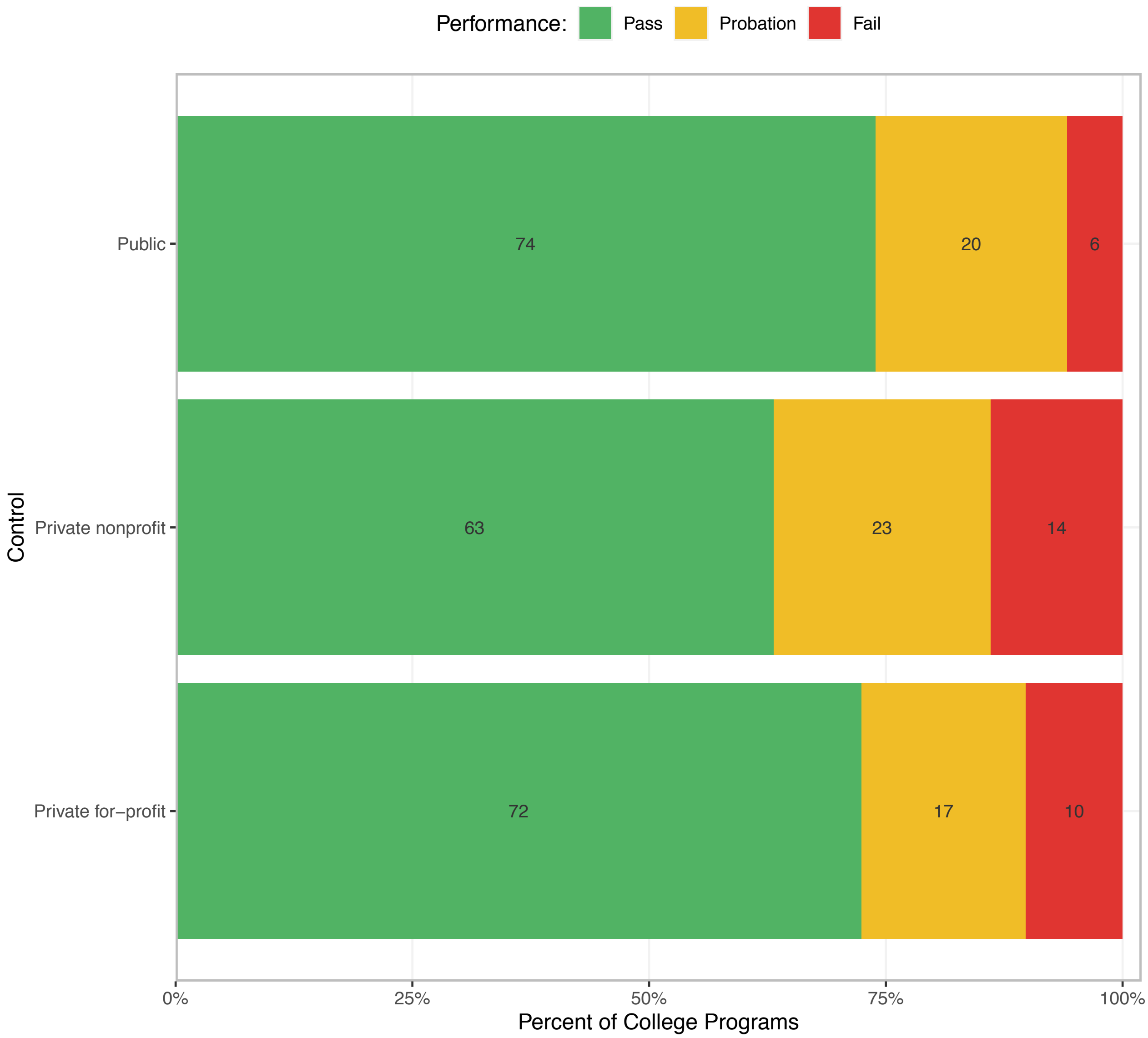
For-Profits Were Not the Worst-Performing Sector

Figure 2, which documents the gainful employment equivalent performance of each type of college, reveals that for-profits are not the worst performing type of college. While 10% of for-profit programs fail gainful employment equivalent, 14% of private nonprofit programs fail. Moreover, the percentage of programs that pass at for-profits was similar to that of public programs (72% versus 74%, respectively). Given this performance, the commonly used moniker of "predatory for-profits" seems undeserved.

Interestingly, the results in **Figure 2** are a good example of Simpson's paradox (Stanford University, 2021), which arises when composition effects alter initial perceptions. When we look across all programs, we see that for-profits compare favorably to private nonprofits, but if we dig deeper, there are many credentials where for-profit programs have similar and sometimes even worse performance than nonprofits. How can this be? The answer is that for-profit colleges have many more programs for credentials with generally better performance, boosting their overall aggregate performance. For instance, among undergraduate certificate programs, 1% of both for-profit and private nonprofit programs fail gainful employment equivalent. Similarly, among first professional degree programs, 54% of both for-profit and private nonprofit programs fail. Yet the relative importance of these credentials differs across types of colleges. Among for-profits, there were 1,773[4] undergraduate certificate programs and 13 first professional degree programs, whereas among private nonprofit colleges, there are 205 undergraduate certificate programs and 233 first professional degree

4 All values in this paragraph refer to the number of programs with sufficient data to conduct the gainful employment equivalent test.

Figure 2
Gainful Employment Equivalent Performance by Control



Note. Data from *College Scorecard* (data set), U.S. Department of Education, n.d. (https://collegescorecard.ed.gov/data/); and author's calculations.

programs. Thus, even though each type of college had the same rate of program failure for each specific credential, when we examine performance across all programs, the for-profit performance will be heavily weighted toward the relatively high performing undergraduate certificate programs, whereas the private nonprofit sector's performance will be more weighted toward the relatively poor performing first professional degree programs.

Conclusion

Gainful employment pioneered two promising improvements to higher education accountability—the switch from institution level to program level evaluation and the inclusion of student earnings post-graduation as an outcome metric. These features should be included in future accountability frameworks.

However, gainful employment suffered from a fatal flaw that should be avoided: the selective application of accountability. Gainful employment disproportionately targeted for-profit colleges, with 98% of failing programs at for-profit colleges. Yet the disproportionate failure of for-profit programs was a product of the disproportionate targeting of for-profit programs. When all college programs are subjected to the same test, for-profits account for 11% of failing programs, not 98%. Nor can the targeting of for-profits be justified by claiming that the sector's relative performance is the worst. That distinction belongs to the private nonprofit sector, where 14% of programs fail (relative to 10% among for-profits).

New approaches to accountability in higher education are sorely needed. We encourage policymakers to include gainful employment's positive contributions (program level evaluation and the inclusion of student earnings post-graduation) while avoiding gainful employment's fatal mistake (selective rather than universal application of accountability). The Biden administration has the opportunity to improve accountability in higher education by protecting more students through an expanded accountability framework that holds all institutions accountable for the outcomes of their students. We offer one such accountability system in a recent paper (Gillen, 2021) which uses a simple metric of student loan debt as a percent of post-graduation earnings to evaluate all college programs.

References

Federal Student Aid. (n.d.). *Gainful employment information* [Data set]. U.S. Department of Education. Retrieved February 3, 2022, from https://studentaid.gov/data-center/school/ge

Gillen, A. (2021). *College student loan debt and earnings: 2021*. Texas Public Policy Foundation. https://www.texaspolicy.com/college-student-loan-debt-and-earnings-2021/

Gillen, A. (forthcoming February 2022). A retrospective on gainful employment. *Academic Questions*.

Gravely, A. (2021, November 22). Using Pell to police for-profits? *Inside Higher Ed*. https://www.insidehighered.com/news/2021/11/22/opposition-profit-exclusion-pell-increase-continues

Kantrowitz, M. (2010). *What is gainful employment? What is affordable debt?* Student Aid Policy Analysis. https://www.researchgate.net/publication/265926821_What_is_Gainful_Employment_What_is_Affordable_Debt

Shiro, A. G., & Reeves, R. V. (2021, January 12). The for-profit college system is broken and the Biden administration needs to fix it. *How We Rise* blog, Brookings Institution. https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it/

Stanford University. (2021). Simpson's paradox. In *Stanford Encyclopedia of Philosophy.* Retrieved February 7, 2022, from https://plato.stanford.edu/entries/paradox-simpson/

Tennessee Higher Education Commission. (n.d.). *Information on the closure of Vatterott Career College and L'Ecole Culinaire Memphis*. Retrieved February 7, 2022, from https://www.tn.gov/thec/bureaus/student-aid-and-compliance/postsecondary-state-authorization/institution-closure-information-2/vatterott-career-college-and-l-ecole-culinaire-memphis.html

U.S. Department of Education. (n.d.) *College Scorecard* [Data set]. Retrieved February 3, 2022, from https://collegescorecard.ed.gov/data/

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