Welcome & Introduction

• Aaron D. Lacey
  o Partner, Higher Education Practice, Thompson Coburn LLP.

• Higher Education Practice
  o Provide regulatory counsel on federal, state, and accrediting agency laws and standards (e.g., Title IV, Title IX, Clery, consumer information).
  o Assist with postsecondary transactions, contract drafting and negotiation, policy creation, and compliance systems design.
  o Represent institutions in student and employee litigation, government investigations, administrative proceedings, audits, and reviews.
Welcome & Introduction

• Prior Experience
  - Senior Vice President of Regulatory Affairs & Strategic Development for postsecondary institution. Oversaw regulatory, compliance, and government affairs matters for 24 campus locations in Midwest and Southeast United States, as well as for online division.
  - Attorney in DC Higher Education Practice. Provided regulatory and policy guidance, managed agency proceedings, drafted and negotiated wide variety of agreements.
Presentation Outline

• Politics & Prognostications
• GE Timeline
• Standard GE Disclosures
• Student Warnings
• TC Resources
Politics & Prognostications
Who comprises the new higher education leadership?

- Secretary DeVos
- Sen. Lamar Alexander
- Rep. Virginia Foxx
- Rob Goad
- President Trump
The New Department

What about leadership at the Department?

• The “landing squads” arrived before the inauguration to assist with the transition. The landing squads then morphed into the “beachhead team,” individuals hired on for 120-day period.
  o Many with prior Department experience, small number with postsecondary experience.

• Slow progress in nominating political hires and non-confirmable staff.
# Key Positions to Fill at ED

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Home page</th>
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<tbody>
<tr>
<td>Betsy DeVos</td>
<td>Secretary of Education</td>
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<tr>
<td>Vacant</td>
<td>Assistant Secretary, Office of Communications and Outreach</td>
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<td>Assistant Secretary, Office for Civil Rights</td>
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<td>Assistant Secretary, Office of Legislation and Congressional Affairs</td>
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<td>Assistant Secretary, Office of Planning, Evaluation and Policy Development</td>
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<td>Assistant Secretary, Office of Elementary and Secondary Education</td>
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<td>Assistant Deputy Secretary, Office of Innovation and Improvement</td>
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<td>Assistant Secretary, Office of Special Education and Rehabilitative Services</td>
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<td>Vacant</td>
<td>Assistant Deputy Secretary and Director, Office of English Language Acquisition</td>
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<td>Vacant</td>
<td>Director, International Affairs Office</td>
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<td>Vacant</td>
<td>Director, Institute of Education Sciences</td>
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<td>Kathleen S. Tighe</td>
<td>Inspector General, Office of Inspector General</td>
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<td>Vacant</td>
<td>Deputy Secretary</td>
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<td>Jason K. Gray</td>
<td>Chief Information Officer, Office of the Chief Information Officer</td>
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<tr>
<td>Vacant</td>
<td>General Counsel, Office of the General Counsel</td>
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## Key Postsecondary Positions to Fill

<table>
<thead>
<tr>
<th>Vacant</th>
<th>Under Secretary</th>
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<tbody>
<tr>
<td>James W. Runcie</td>
<td>Chief Operating Officer, Federal Student Aid</td>
<td>Home page</td>
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<tr>
<td>Vacant</td>
<td>Assistant Secretary, Office of Career, Technical and Adult Education</td>
<td>Home page</td>
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<tr>
<td>Vacant</td>
<td>Assistant Secretary, Office of Postsecondary Education</td>
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<tr>
<td>Vacant</td>
<td>Executive Director of the White House Initiative on Educational Excellence for African Americans</td>
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<td>Vacant</td>
<td>Executive Director of the White House Initiative on Asian Americans and Pacific Islanders</td>
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<td>Vacant</td>
<td>Executive Director of the White House Initiative on Historically Black Colleges and Universities</td>
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<tr>
<td>Vacant</td>
<td>Executive Director of the White House Initiative on American Indian and Alaska Native Education</td>
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<tr>
<td>Vacant</td>
<td>Director, Center for Faith-Based and Neighborhood Partnerships</td>
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The New Department

- We are seeing turnover at ED, not only at the level of appointees, but also among senior bureaucrats who are aging out (e.g., Jeff Baker).
- Some of those who joined as part of the “yes we can” generation ED may stay.
  - Job market for Dems is tough in DC, and last administration encouraged them to stay to protect the Obama legacy.
Higher Education Policy

How will the new administration affect higher education policy?

• The senior leadership (Trump, DeVos, Goad) is focused primarily on elementary and secondary education, and specifically, school choice.

• In postsecondary, we’ve seen some activity:
  o Title IX letter re interpretation of “sex” discrimination
  o Executive order re HBCU’s
  o Significant discussion re deregulation, to include downsizing Department, eliminating certain posts.
  o Delay of gainful employment deadlines for GEDT and alternate earnings appeals
Higher Education Policy

What role will Congress play?

• We expect that the Republicans in Congress will drive higher education policy. They are seasoned legislators and aware of significant postsecondary issues.

• Deregulation will be at the top of their priority list. “Our number one priority is blocking and repealing Obama administration rules and regulations.” Rep. Foxx (R-NC).
The Future of GE

What about gainful employment?

• ED could take several steps, alone or in combination:
  o Slow processes and allocation of resources (internal)
  o Delay deadlines (external)
  o Suspend enforcement (external)
  o Initiate rulemaking (external)
The Future of GE

• Congress also has various options:
  • Funding for most federal agencies expires April 28, 2017). Congress could:
    • Add a rider to appropriations bill defunding GE outright
    • Add a rider to appropriations bill delaying any further implementation until HEA
  • Wait and manage through reauthorization of HEA
The Crystal Ball

• The administration is aware of GE, but has other priorities (school choice) and lacks significant postsecondary policy support. We speculate they will:
  o Slow processes and allocation of resources (internal)
  o Delay deadlines as needed (external)
  o Initiate a rulemaking (external)

• Rulemaking seems to be preferred by Congress and, more permanent, and less radical, but takes significant time.
  o July 1, 2018, likely would be the earliest a new rule could become effective.
The Crystal Ball

• Congress is aware of GE, but must contend with filibuster and is wary of spending political capital on lesser priorities. They recently have expressed preference that ED manage through rulemaking. We speculate they will:
  o Attempt to add a rider to appropriations bill delaying any further implementation until HEA reauthorization
  o Manage through HEA reauthorization
What Does this Mean for Schools?

• Schools must hope for the best, and plan for the worst. GE could remain in place for many months to come.
  o Schools should be careful to monitor the precise nature and scope of and suspensions or delays.
  o Schools also must evaluate obligations that may continue to exist, even if ED elects to suspend or delay enforcement (e.g., disclosure obligations).
Gainful Employment
Timeline
## GE Timeline 2017 (so far)

<table>
<thead>
<tr>
<th>DATE</th>
<th>2017 GAINFUL EMPLOYMENT EVENT</th>
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<tbody>
<tr>
<td>January 9</td>
<td>Release of AY 14-15 Final D/E Rates</td>
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<tr>
<td>January 19</td>
<td>Release of 2017 GE Disclosure Template</td>
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<tr>
<td>January 23</td>
<td>Deadline to submit Notice of Intent to Appeal (Alternate Earnings Survey)</td>
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<tr>
<td>February 8</td>
<td>Deadline to begin disseminating D/E Student Warning Disclosures for programs with failing AY 14-15 Final D/E Rates (unless notice of intent to submit alternate earnings appeal was timely filed)</td>
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<tr>
<td>July 1</td>
<td>Deadline to (1) submit Alternate Earnings Appeal and (2) implement 2017 GE Disclosure Template</td>
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<tr>
<td>July/August (tentative)</td>
<td>Deadline to begin disseminating D/E Student Warning Disclosures for programs that did not file a successful Alternate Earnings Appeal</td>
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Standard GE Disclosures
When must institutions begin making the New GE Disclosures?

• The 2017 GE Disclosure Template (GEDT) was released on January 19.
• Institutions have until July 1 to update their disclosures and comply with the new distribution requirements.
What information must be disclosed?

- Precise combination of disclosures is determined by ED and reflected in the new GEDT each year.
- ED suggests it will conduct “consumer testing” to determine best disclosure mix. Periodic notification through Federal Register.
- Disclosures will be based on data reported by schools, and in some cases, calculated by ED.
Content of New GE Disclosures

ED includes the following content for 2017. The orange boxes represent new information.

- Occupations (names and SOC codes)
- Normal-Time Completion Rate
- Normal-Time Tuition and Fees
- Cost for Books, Supplies, Room, & Board
- Placement Rate
- Median Loan Debt for Completers
- Percentage of Students Receiving Federal or Private Loans
- D/E Rate Failure
- Median Earnings for Program Graduates
- State Licensure Requirement Information
- Estimated Monthly Loan Payment for Completers
Content of New GE Disclosures

ED could require following content in future years:

- Withdrawal Rates
- 150% Normal-Time Completion Rate
- Loan Repayment Rates
- Program Cohort Default Rates
- Median Earnings for Drops
- Median Loan Debt for Drops

Link to the College Navigator Website
Distribution of New GE Disclosures

When and where must the GEDT be disclosed?

• On any school webpage containing academic, cost, financial aid, or admissions information about GE program maintained by or on behalf of institution.
  o The school should disclose the GEDT for that program or a prominent, readily accessible, clear, conspicuous, and direct link to the GEDT.
Distribution of New GE Disclosures

• In all marketing and promotional materials made available by or on behalf of school to prospective students that identify GE Program by name or otherwise promote the GE Program.
  
  o Examples include, but are not limited to, an institution’s catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.
Distribution of New GE Disclosures

• On webpages, or in promotional materials where space/airtime constraints preclude using the entire GEDT, schools may use a “prominent, readily accessible, clear, conspicuous, and direct” link to the GEDT.

• Schools must identify the link as “Important Information about the educational debt, earnings, and completion rates of students who attended this program.”
Distribution of New GE Disclosures

• Schools must disclose GEDT directly to any prospective student (or third party acting on his behalf) before he or she signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.
How may the new GE Disclosures be delivered to a prospective student (or third party)?

• Must be delivered in writing.
• May hand-deliver GEDT as a separate document.
• May deliver via email (must comply with specific distribution and record requirement).
The New GEDT

College
Associate's degree in
Program Length: 40 weeks

Students graduating on time
80% of Title IV students complete the program within 40 weeks

Program Costs*
$10,000 for in-state tuition and fees
$10,000 for out-of-state tuition and fees
$15,000 for books and supplies
$17,000 for off-campus room and board
$18,000 for on-campus room and board
Other Costs: No other costs provided
Visit website for more program cost information: www.school.edu
*The amounts shown above include costs for the entire program, assuming normal time to completion.
Note that this information is subject to change.

Students Borrowing Money
55% of students who attend this program borrow money to pay for it
The typical graduate leaves with
$10,000 in debt
The typical monthly loan payment
$115 per month in student loans with 6.8% interest rate
The typical graduate earns
$35,000 per year after leaving this program
The New GE Disclosure Template

Students Borrowing Money
55% of students who attend this program borrow money to pay for it.

The typical graduate leaves with $10,000 in debt.

The typical monthly loan payment $115 per month in student loans with 6.8% interest rate.

The typical graduate earns $35,000 per year after leaving this program.

Graduates who got jobs
N/A* of program graduates got jobs according to the accreditor job placement rate.

*Program does not have enough completers to calculate a placement rate as required.

Program graduates are employed in the following fields:
Audio and Video Equipment Technicians:
http://onetonline.org/link/summary/27-4011.00

Sound Engineering Technicians:
http://onetonline.org/link/summary/27-4014.00

Licensure Requirements
*Program has no licensure requirements in any state.
## ED Resources

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<tr>
<th>Date</th>
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<tbody>
<tr>
<td>December 16</td>
<td>• Gainful Employment Electronic Announcement #99 - Delay in Releasing the 2017 GE Disclosure Template and Applicable Deadlines</td>
</tr>
<tr>
<td>January 6</td>
<td>• Gainful Employment Electronic Announcement #101 - Additional Information on Alternate Earnings Appeals for Debt-to-Earnings Rates and Warnings for Programs with Failing Rates</td>
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<tr>
<td>January 19</td>
<td>• Gainful Employment Electronic Announcement #103 - Release of the 2017 GE Disclosure Template</td>
</tr>
<tr>
<td>March 6</td>
<td>• Gainful Employment Electronic Announcement #105 - Additional Time for Submission of an Alternate Earnings Appeal and to Comply with Gainful Employment (GE) Disclosure Requirements</td>
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<tr>
<td>Updated Periodically</td>
<td>• Gainful Employment – Frequently Asked Questions Website</td>
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Student Warnings
When must a school begin issuing GE Warnings in 2017?

- February 8 was the deadline to begin disseminating D/E Student Warning Disclosures for programs with failing AY 14-15 Final D/E Rates (unless appeal is pending!)
- We have confirmed with ED that this student warning requirement remains in place and is unaffected by Gainful Employment Electronic Announcement #105.
What is the content of the GE Warnings for prospective students?

- GE Warnings for prospective students must:
  - Refer them to, and include a link for, the ED’s College Navigator website (or similar federal resource) for information about similar programs; and
  - Include the verbatim disclosure set out on the next slide.
This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.
Content for Prospective Students

College
Associate's degree in
Program Length: 40 weeks

This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.

Students graduating on time
80% of Title IV students complete the program within 40 weeks

Program Costs*
$10,000 for in-state tuition and fees
$10,000 for out-of-state tuition and fees
When must the GE Warning be delivered to prospective students?

- **Timing Rule 1**: Must provide written or oral GE Warning to prospective student, or to third party acting on behalf of prospective student, **at first contact** about the program.
  - Must be carried out by third-party marketers if they have first contact with prospective students – so consider including as a requirement in marketing agreements.
Distribution to Prospective Students

• **Timing Rule 2**: Must provide written GE Warning to prospective student or third party at least 3 days before institution enrolls, registers, or enters into a financial commitment with the prospective student for the program.
• **Timing Rule 3**: If more than 30 days have passed from *written* GE Warning, institution must provide a second GE Warning. Then must wait another 3 days before signing enrollment agreement.
Distribution to Prospective Students

How may the GE Warning be delivered to prospective students?

• Provide GE Warning **orally** by telephone.
  o Only satisfies “first contact” rule.

• May **hand-deliver** GEDT as a separate document.

• May deliver via **email** (must comply with specific distribution and record requirement).
What is the content of the GE Warnings for current students?

- GE warnings for current students must:
  - Include College Navigator referral/link (same as for prospective students).
  - Include verbatim disclosure (same as for prospective students).
  - Indicate whether the institution would continue to provide the program without Title IV so students could complete the program.
Content for Current Students

- Indicate whether the institution would refund any tuition, fees, and other required charges already paid if Title IV eligibility lost or program no longer offered.
- Describe academic and financial options available to students to continue their education in different programs at the institution, including which credits would transfer into the different programs.
- Explain whether students can transfer credits to different institution.
Distribution to Current Students

How may the GE Warning be delivered to current students?

• Must be delivered in writing.
• May **hand-deliver** GEDT as a separate document.
• May deliver via **email** (must comply with specific distribution and record requirement).
TC Resources

Our higher education law blog, REGucation.

Title IX and due process: ED tells Wesley that accused student not treated fairly

In a rare move, the Department of Education announced on October 12, 2016, its determination that Wesley College in Delaware had violated Title IX by failing to provide appropriate procedural protections to a student accused of sexual misconduct. READ MORE
TC Resources: Webinars

Decoding the Final Borrower Defense Rule
A Webinar Series from the Thompson Coburn Higher Education Team

Listen to free, on-demand webinar series at:
thompsoncoburn.com/finalborrowerdefensewebinars
Borrower Defense Webinar Series

• Webinar series schedule:
  o The New Borrower Defense Framework (November 29, 2016)
  o The Revised Financial Responsibility Standards (December 1, 2016)
  o Changes to Closed School and False Certification Discharge (December 6, 2016)
  o The Elimination of Pre-Dispute Arbitration Clauses and the New Repayment Rates for Proprietary Schools (December 8, 2016)
Contact Information

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