What's Next for Institutions Under the Gainful Employment Rules

WELCOME & INTRODUCTION

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

Nick S. Janiga
• General Counsel and Chief Legal Officer, Ultimate Medical Academy
  o Oversee all legal functions for Tampa, Florida based non-profit institution with residential and on-line programs.
  o Serve as a peer evaluator for the Accrediting Bureau of Health Education Schools.
  o Member of the National Association of Student Financial Aid Administrators and the National Association of College and University Attorneys.
  o Previously practiced higher education law for seven as member of postsecondary education practice of prominent Washington, D.C. law firm.
PRESENTATION OUTLINE

• The Gainful Employment Timeline
• D/E Rate Refresher
• Preparing for D/E Rate Challenges
• Preparing for January 2017
• GE Resources

THE GAINFUL EMPLOYMENT TIMELINE

GE TIMELINE (2015)

<table>
<thead>
<tr>
<th>DATE</th>
<th>2015 GAINFUL EMPLOYMENT EVENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1</td>
<td>• New gainful employment regulations become effective</td>
</tr>
<tr>
<td>July 31</td>
<td>• Schools reported data for AY 08-09 to AY 13-14</td>
</tr>
<tr>
<td>October 1</td>
<td>• Schools reported data for AY 14-15</td>
</tr>
<tr>
<td>December 31</td>
<td>• Schools completed GE transitional certification</td>
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</tbody>
</table>
GE TIMELINE (2016)

<table>
<thead>
<tr>
<th>DATE</th>
<th>2016 GAINFUL EMPLOYMENT EVENT</th>
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</thead>
<tbody>
<tr>
<td>Spring</td>
<td>• ED issues AY 14-15 Completers Lists</td>
</tr>
<tr>
<td></td>
<td>• Schools prepare and submit AY 14-15 Completers List Challenges</td>
</tr>
<tr>
<td>Summer</td>
<td>• ED issues AY 14-15 Draft D/E Rates</td>
</tr>
<tr>
<td></td>
<td>• Schools prepare and submit AY 14-15 Loan Debt Challenges</td>
</tr>
<tr>
<td>Fall</td>
<td>• Schools report data for AY 15-16 (October 1)</td>
</tr>
<tr>
<td></td>
<td>• Schools prepare and submit AY 14-15 Alternative Earnings Appeals</td>
</tr>
</tbody>
</table>

GE TIMELINE (2017)

<table>
<thead>
<tr>
<th>DATE</th>
<th>2017 GAINFUL EMPLOYMENT EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>• New GE Disclosures effective January 1</td>
</tr>
<tr>
<td>Winter/Spring</td>
<td>• ED issues AY 14-15 Final D/E Rates</td>
</tr>
<tr>
<td></td>
<td>• Schools continue to prepare and submit AY 14-15 Alternative Earnings Appeals</td>
</tr>
<tr>
<td></td>
<td>• Schools with failing AY 14-15 Final D/E Rates begin disseminating Student Warning Disclosures</td>
</tr>
</tbody>
</table>

GE TIMELINE

The School Perspective
D/E RATE REFRESHER

Annual Earnings Rate = Annual Loan Payment / Annual Earnings

Discretionary Income Rate = Annual Loan Payment / Discretionary Income

D/E RATE REFRESHER

PASS  ZONE  FAIL
AER less than or equal to 8%  OR  DIR less than or equal to 20%  AER greater than 8% and less than or equal to 12% and DIR not passing  OR  DIR greater than 20% and less than or equal to 30% and AER not passing
AER greater than 12%  AND  DIR greater than 30%

D/E RATE REFRESHER

• GE program becomes ineligible if the program:
  o Fails two out of any three consecutive award years for which the program’s D/E rates are calculated; or
  o Has a combination of zone and failing rates for four consecutive award years for which the program’s D/E rates are calculated.

• Student warnings must be issued if program is within a year of losing eligibility.

D/E Rate Refresher

• GE Desk Guide
  • Provides step-by-step instructions for projecting reliable D/E rates.
  • Offers detailed insight into how D/E rates are calculated.

PREPARING FOR D/E RATE CHALLENGES
D/E RATE CHALLENGES

What if a school disagrees with ED’s calculations?

• Institutions will have two opportunities to challenge numbers before final D/E rates issued:
  o Completers List Challenge
  o Loan Debt Challenge

• Institutions will have one opportunity to challenge rates after final D/E rates issued:
  o Alternative Earnings Appeal

COMPLETERS LIST CHALLENGE

What is a “Completers List” challenge?

• For each GE program, ED will create a list of students who completed during the applicable cohort period and provide list to institutions for review.

• Institutions can challenge data on list.

• ED presumes Completer List data is accurate; institution must provide evidence to overcome presumption.

COMPLETERS LIST CHALLENGE

What completers data would a school challenge?

• Data Errors

• Exclusion/Inclusion Errors

How long does a school have to file a Completers List challenge?

• No later than 45 days after ED provides completer list
**COMPLETERS LIST CHALLENGE**

The School Perspective

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**COMPLETERS LIST CHALLENGE**

**COMPLETERS LIST CHALLENGE – ED RESOURCES**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov. 18, 2015</td>
<td>Interpreting the GE Completers List [webinar]: Discusses how institutions receive, access, and review Completers Lists.</td>
</tr>
<tr>
<td>Nov. 19, 2015</td>
<td>How to Submit a Challenge to the GE Completers List [webinar]: Focuses on using DCAS system for challenges.</td>
</tr>
</tbody>
</table>

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**LOAN DEBT CHALLENGE**

What is a loan debt information challenge?

- When ED issues draft D/E rates, it will provide individual loan debt for each student in each GE program.

What loan debt data would a school challenge?

- Actual cost information
- Institutional or private loan debt
- Title IV debt and net adjustments
- Calculation of median and mean
**LOAN DEBT CHALLENGE**

What is the timing for a loan debt information challenge?

- No later than 45 days after ED provides draft D/E rates, institution must:
  - Provide evidence showing that the loan debt information used by ED to calculate the loan debt is incorrect.
- After 45-day period expires, institution may no longer submit challenge.

**LOAN DEBT CHALLENGE**

The School Perspective

**ALTERNATIVE EARNINGS APPEAL**

What is an alternative earnings appeal?

- When ED issues draft D/E rates, it will provide institutions with the mean and median annual earnings obtained from SSA for each program.
- Institutions can challenge the earnings if:
  - The GE program is failing or in the zone under the D/E rates measure; and
  - The appeal will move the program out of failing or zone status, respectively.
**ALTERNATIVE EARNINGS APPEAL**

Where does a school get alternative earnings?

- Institutions must provide alternative earnings data from:
  - A state-sponsored data system; or
  - An institutional survey using Recent Graduates Employment and Earnings Survey (RGEES) standards and survey form.
- Data must be from the correct calendar year, and must satisfy related ED requirements.

**ALTERNATIVE EARNINGS APPEAL**

What is a state-sponsored data system and where does a school find one?

- In theory, a state system that has alternative earnings information for graduates during the requisite timeframes
  - ED did not identify any states that have a data system that would suffice for this purpose
- Institutions must secure alternative earnings data for more than 50% of students in cohort and provide recalculated D/E rates using official debt numbers.

**ALTERNATIVE EARNINGS APPEAL**

How does a school go about conducting a graduate survey?

- National Center for Education Statistics (NCES) is developing Recent Graduates Employment and Earnings Survey (RGEES) standards and survey form.
- ED also developing online platform to facilitate RGEES survey administration.
- Institutions are not required to use form or platform, but must adhere to standards.
**ALTERNATIVE EARNINGS APPEAL**

**What is the timing for an alternative earnings appeal?**

- May file notice of intent to appeal as early as issuance of draft D/E rates and as late as 14 days following issuance of notice of determination.
- Must file recalculated D/E rates, all certifications, and supporting documentation no later than 60 days after ED issues the notice of determination.

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**ALTERNATIVE EARNINGS APPEAL**

The School Perspective

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**ALTERNATIVE EARNINGS APPEAL**

<table>
<thead>
<tr>
<th>ALTERNATIVE EARNINGS APPEAL – ED RESOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>August 2015</strong></td>
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<tr>
<td><strong>November 2015</strong></td>
</tr>
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</table>
**D/E Rate Challenges Timeline**

<table>
<thead>
<tr>
<th>Spring 2016</th>
<th>Summer/Fall 2016</th>
<th>Early 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance of Draft Completers List</td>
<td>Issuance of Final Completers List</td>
<td>Issuance of Draft D/E Rates</td>
</tr>
<tr>
<td>45 days to file debt challenge</td>
<td>45 days to file debt challenge</td>
<td>45 days to file debt challenge</td>
</tr>
<tr>
<td>ED accepts or rejects challenge</td>
<td>ED accepts or rejects challenge</td>
<td>Institution reviews Final D/E rates, recalculates if debt challenge successful</td>
</tr>
<tr>
<td>Applied date to the notice of earnings appeal</td>
<td>Applied date to the notice of earnings appeal</td>
<td>14 days remain to file notice of earnings appeal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>60 days remain to file actual appeal with data</td>
</tr>
</tbody>
</table>

**Preparing for January 2017**

- **Programs with failing AY 14-15 rates** will be subject to student warning requirements.
  - Schools must consider how to integrate student warnings most effectively into enrollment process.

**Preparing for 2017**

- Programs with failing AY 14-15 rates will be subject to student warning requirements.
  - Schools must consider how to integrate student warnings most effectively into enrollment process.
GE RESOURCES FROM TC

Navigating Gainful Employment
A Webinar Series from the Thompson Coburn Higher Education Team

Webinar series on gainful employment topics. Free, recorded, available on demand at:
www.thompsoncoburn.com/gewebinarseries

GE RESOURCES FROM TC

• REGucation higher education law and policy blog.
GE RESOURCES FROM ED

IFAP - Gainful Employment Information Page
- Federal Register Notices
- Dear Colleague Letters and Electronic Announcements
- Frequently Asked Questions
- Webinars and Presentations
- Resource Manuals
  - NSLDS Gainful Employment User Guide
  - RGEES Best Practices Guide
  - GE Operations Manual

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