

**GRAPPLING WITH GAINFUL**  
 Breaking Down and Understanding the new  
 Gainful Employment Rule

NASASPS  
 Annual  
 Conference  
 April 2015





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**WELCOME & INTRODUCTION**

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

**Experience**

- Senior Vice President of Regulatory Affairs & Strategic Development for Vatterott Educational Centers, Inc. 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 Dow Lohnes Higher Education Practice. Provided regulatory and policy guidance, managed agency proceedings, drafted and negotiated wide variety of agreements.





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**WELCOME & INTRODUCTION**

**Anthony F. Fragomeni**  
 • VP, Government Relations, Empire Education Group

**Experience**

- Active in the Higher Education Sector for the over 25 years. Currently manages the State Licensing and Accrediting activities for a 110 campus, 21 State operation in the for-profit sector.
- Served on trade organization Boards both locally, in his home state of New York, and nationally for AACSB where he currently Co-Chairs the Government Affairs Team.
- Participated in several Negotiated Rulemaking Teams serving as a primary negotiator, alternate, and as part of a technical support team. Also an examiner for NACAC for more than 50 accreditation visits.





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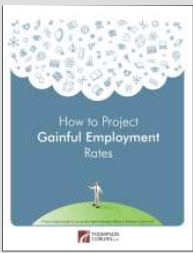
### PRESENTATION OUTLINE

- An Overview of the GE Framework
- D/E Rates
- GE Reporting
- GE Disclosures
- GE Certification



### GE RESOURCES FROM TC

- Webinars available on demand at Thompson Coburn's TCLE website.
  - Getting a Grip on Gainful
  - Projecting Debt-to-Earnings Rates
- GE Desk Guide 
- REGucation higher education law and policy blog.



### AN OVERVIEW OF THE GE FRAMEWORK

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## GE OVERVIEW

### Why do we have gainful employment regulations?

- To address concerns that gainful employment programs:
  - do not train students in the skills they need to obtain and maintain jobs
  - provide training for an occupation for which low wages do not justify program costs
  - have high number of withdrawals, which leads to default



## GE OVERVIEW

### Which programs are "gainful employment programs"?

- Almost all programs offered by for-profit institutions.
- Almost all **non**-degree programs offered by any postsecondary institution.
  - In a 2011 Dear Colleague Letter (DCL Gen-11-10), the Department identified with additional specificity the range of programs that would qualify as GE programs, as well as handful of exceptions to the general rule.



## GE OVERVIEW

### What are the main institutional responsibilities under the new GE rules?

- Satisfying D/E rate thresholds
- Reporting data
- Disclosure of GE program information
- Certification of GE program compliance



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### GE OVERVIEW

**What are the stakes?**


- Warning disclosures
- Loss of program eligibility
- Institutional fine, suspension, termination



### GE OVERVIEW

**When do the new rules get here?**

- July 1, 2015: Effective date of Regulations
- July 31, 2015: Report data for AY 2008-09 to 2013-14
- October 1, 2015: Report data for AY 2014-2015
- Spring 2016: First year D/E rates issued (warning disclosure required for failing programs)
- October 1, 2016: Report data for AY 2015-2016
- Spring 2017: Second year D/E rates issued (ineligibility for programs with two years failing); new GE Disclosures requirements take effect



### GE OVERVIEW

**Reflections from Inside the Industry**



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# D/E RATES

## D/E RATES

### What are the Debt-to-Earnings (D/E) Rates?

Annual Earnings Rate =  $\frac{\text{Annual Loan Payment}}{\text{Annual Earnings}}$


Discretionary Income Rate =  $\frac{\text{Annual Loan Payment}}{\text{Discretionary Income}}$



## D/E RATES

### How are the rates calculated?

- Annual Loan Payment
  - For each GE program, USED takes either a 2- or 4-year cohort of qualifying students, determines the lesser of the median loan debt or median costs assessed for the cohort, then amortizes that median loan debt over the applicable repayment period using the applicable interest rate to calculate an annual payment amount




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### D/E RATES

- Annual Earnings
  - USED obtains from SSA the most currently available mean and median annual earnings for qualifying students who completed GE program during the applicable cohort period (and who are not excluded), and use the higher of the mean or median annual earnings.
- Discretionary Income
  - Annual Earnings minus 150% of the Poverty Guideline for a single person residing in the United States as published by HHS ( $\$11,670 \times 1.5 = \$17,505$ )



### D/E RATES

#### Who calculates the D/E rates?

- The U.S. Department of Education
- If institutions are projecting rates, they will necessarily be estimating, because they will not have SSA data



### D/E RATES

#### Does USED calculate D/E rates for every GE program?

- No, if cohort has insufficient number of students
  - USED will use a two-year cohort for calculating D/E rates. If there are not 30 qualifying students in the 2-year cohort, an expanded 4-year cohort will be used. If the expanded 4-year cohort does not have 30 qualifying students, USED will not calculate D/E rates for that program for the applicable award year.
- No, if SSA provides earnings data for fewer than 30 students in the cohort




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### D/E RATES

- If USED does not calculate D/E rates for a program, it does not mean that the program passes.
- Instead, the GE program receives a “no result” for that award year and remains in the same status as in the previous award year, when rates were calculated.




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### D/E RATES

D/E Rate Thresholds		
PASS	ZONE	FAIL
AER less than 8% <b>OR</b> DIR less than 20%	AER between 8% and 12% <b>OR</b> DIR between 20% and 30%	AER greater than 12% <b>AND</b> DIR greater than 30%




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### D/E RATES

**What happens if D/E rates are below the thresholds?**

- GE program becomes **ineligible** if the program:
  - Fails two out of any three consecutive award years for which the program's D/E rates are calculated; **OR**
  - Has a combination of zone and failing rates for four consecutive award years for which the program's D/E rates are calculated.
- Institution must issue **student warnings** to current and prospective students if program could become ineligible based on its D/E rates for the next award year.




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## D/E RATES

### What if I disagree with USED's calculations?

- Institutions will have opportunity to review and challenge debt numbers:
  - cohort enrollment lists (within 45 days of list distribution)
  - loan debt information (within 45 days of draft D/E rate distribution)
- Institution bears burden of proof; USED accepts or rejects challenges at its discretion



## D/E RATES

- Institutions also can file alternate earnings appeals (if it will change outcome)
  - Institution requests recalculation of D/E rates using earnings from an institutional survey or from a State-sponsored data system.
  - Must file notice of intent to appeal between issuance of draft D/E rates and 14 days following issuance of final D/E rates.



## D/E RATES

### When can I bring back a program that failed?

- From the date USED informs an institution that a program is ineligible, or the date an institution voluntarily discontinues a program with draft D/E rates that are failing or in the zone, it must wait three years to:
  - reestablish the eligibility of a failing or zone program that it discontinued voluntarily;
  - reestablish the eligibility of a program that is ineligible under the D/E rates measure; or
  - establish the eligibility of a program that is substantially similar to the discontinued or ineligible program.
- A program is substantially similar to another program if the two programs share the same four-digit CIP code




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### D/E RATES

**Wait a minute, are the D/E rates retroactive?**

- Standard 2014-2015 D/E rates will be based on cohorts from AY 2008-09 to 2011-12. Thus, first year standard rates, and related sanctions, would indeed be based on conduct pre-dating regulations.




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### D/E RATES

- For a limited period, for any GE program deemed “failing” or in the “zone” under standard calculations, USED will calculate a “transitional” D/E rate. 34 C.F.R. 668.404(g).
  - Transitional rates calculated using standard methodology, except USED will use median loan debt only of the students who completed program during the most recently completed award year.
  - USED will assess GE program’s compliance using lower of standard or transitional D/E rates.




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### D/E RATES

**Transitional Rates: Period Illustration**

Award Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
<b>2-Year Cohort (AY)</b>	2010-2011 - 2011-2012	2011-2012 - 2012-2013	2012-2013 - 2013-2014	2013-2014 - 2014-2015	2014-2015 - 2015-2016	2015-2016 - 2016-2017	2016-2017 - 2017-2018
<b>4-Year Cohort (AY)</b>	2008-2009 - 2011-2012	2009-2010 - 2012-2013	2010-2011 - 2013-2014	2011-2012 - 2014-2015	2012-2013 - 2015-2016	2013-2014 - 2016-2017	2014-2015 - 2017-2018
<b>Transitional Cohort (AY)</b>	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
	Transitional rate period for programs of one year or less.						
	Transitional rate period for programs between one and two years.						
	Transitional rate period for programs of more than two years.						




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## D/E RATES

**When does this all start happening?**

- July 1, 2015: Effective date of Regulations
- July 31, 2015: Data due for AY 2008-09 to 2013-14
- October 1, 2015: Data due for AY 2014-2015
- Spring 2016: First year D/E rates issued (warning disclosure could be required for failing programs)
- October 1, 2016: Data due for AY 2015-2016
- Spring 2017: Second year D/E rates issued (ineligibility for programs with two years failing programs; limitations apply for introducing substantially similar programs)



## D/E RATES

### Reflections from Inside the Industry



## GE REPORTING

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## GE REPORTING

### What data must be reported?

- For every covered student in a GE program during the applicable period - a range of information, to include identifying information, dates of attendance, and enrollment status.
- For any covered student who completed or withdrew from a GE program during the applicable period - additional information, including dates of withdrawal or completion, total debt, and total tuition and fees assessed.
- For every GE program - any available placement rate information that the school is required to calculate by an accreditor or state agency.



## GE REPORTING

### When must the data be reported?

- July 31, 2015: Must report data for award years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14. For medical and dental programs that require an internship or residency, must also provide data for award year 2007-08.
- October 1, 2015: Must report data for award year 2014-15.
- October 1 of subsequent years: Data for most recently completed award year.



## GE REPORTING

### How must data be reported?

- Online through Department's NSLDS Professional Access site) or by batch file through the Department's Student Aid Internet Gateway (SAIG) TG Mailbox.

### What if I don't get the data reported in time?

- If an institution fails to provide all or some of the data, must provide USED an acceptable explanation.




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## GE REPORTING

**Has the Department made any guidance available?**

- [Gainful Employment Electronic Announcement #52](#). Summarizes, and includes links to, the various reporting resources the Department has made available to date, for both online and batch reporting.
- [The NSLDS Gainful Employment User Guide](#). Released February 2015, is dedicated entirely to detailing the upcoming GE reporting requirements.
- [January 2015 webinars](#). Available on demand and cover the submission of files using SAIG or the online upload process, and included a question and answer period.
- [GE Frequently Asked Questions \(FAQ\) page](#). Includes a new section dedicated to reporting-related questions.



## GE REPORTING

### Reflections from Inside the Industry



## GE DISCLOSURES

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### GE DISCLOSURES

#### What information must be disclosed?

- At USED discretion. USED will conduct “consumer testing” to determine best disclosure mix. Periodic notification through Federal Register.
- Practically speaking, disclosure mix will be reflected in revised GE disclosure template (GEDT), and based on data reported by institution in prior year.



### GE DISCLOSURES

- Potential disclosure information provided by institution:
  - Primary occupations (by name and SOC code) that program prepares students to enter, along with links to occupational profiles on O\*N
  - Program length (i.e., weeks, months, years)
  - Program clock or credit hours
  - Total cost of tuition and fees, books, supplies, and equipment (normal time)
  - Placement rate for the program (if required by state or accreditor)



### GE DISCLOSURES

- Total number of individuals enrolled in the program during most recently completed award year
- Percentage of the individuals enrolled in the program during most recently completed award year that received a title IV loan or a private loan
- Whether the program is programmatically accredited
- A link to USED College Navigator Web site




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### GE DISCLOSURES

- Whether program satisfies educational prerequisites for professional licensure or certification in each State within the institution's MSA.
- Whether program satisfies educational prerequisites for professional licensure or certification in any other State for which institution has made a determination regarding such requirements.
- For any other States, a statement that institution has not made a determination with respect to the licensure or certification requirements of those States.



### GE DISCLOSURES

- Potential disclosure information generated by USED:
  - Completion rates for full-time and less- than-full-time students
  - Withdrawal rates
  - Loan repayment rate for students who entered repayment during the two-year cohort period, including for all students, for students who completed, or for students who withdrew
  - Median loan debt for students who completed during most recent award year, students who withdrew during most recent award year, or for both



### GE DISCLOSURES

- Mean or median earnings for students who completed during the applicable cohort period, students who withdrew during the applicable cohort period, or for both
- Program cohort default rate
- Annual earnings rate
- USED methodology for generating GE disclosures at 34 C.F.R. 668.413.




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**GE DISCLOSURES**

**Where must disclosures be made?**


- School website
  - Includes any page containing academic, cost, financial aid, or admissions information about program maintained by or on behalf of institution
- Marketing and promotional materials
  - Includes all "promotional materials" made available by or on behalf of institution to prospective students that identify program by name or otherwise promote the program.



**GE DISCLOSURES**

**When must disclosures be made?**


- Website and marketing disclosures are ongoing
- Also must make pre-enrollment disclosure
  - Must provide GEDT before prospective student signs an enrollment agreement, completes registration, or makes a financial commitment.
  - Must obtain written confirmation of receipt



**GE DISCLOSURES**

**When must disclosures be updated?**

- Generally, must update GEDT information at least annually with most recent data available.
- Must update GEDT immediately to include any required student warning (due to program failing or being in the zone).




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### GE DISCLOSURES

**When do these new disclosure requirements take effect?**

- New disclosure requirements do not take effect until January 1, 2017.
- Until then, institutions must continue to comply with current disclosure requirements.



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### GE DISCLOSURES

**What if I think the disclosures are wrong?**

- Institutions will have opportunity to challenge disclosure information generated by USED in advance of finalization.
  - 45 days to challenge list of students informing earnings data.
  - 45 days to challenge draft completion rate, withdrawal rate, repayment rate, and median loan debt, institution may challenge accuracy of data used to calculate draft rates and draft median loan debt.
  - 45 days to challenge data included on loan record detail report used for pCDR.



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### GE DISCLOSURES

**Reflections from Inside the Industry**



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# GE CERTIFICATION

## GE CERTIFICATION

**What must I certify?**

- Must certify for each program on the ECAR that:
  - Program is approved by accreditor
  - Program is programmatically accredited (if such accreditation is required by a federal governmental entity or by a state in which institution is required to have approval)
  - Program satisfies applicable educational prerequisites for professional licensure or certification requirements (for states in which institution is (or should be) licensed)
  - Program is not substantially similar to program that in prior three years became ineligible or was voluntarily discontinued for failing D/E rates




## GE CERTIFICATION

**Who must certify?**

- The institution's most senior executive

**What is the certification deadline?**

- December 31, 2015




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**GE CERTIFICATION**


**Certification Extras**

- Certification is addendum to PPA
- Certification will be incorporated into the PPA on a going-forward basis
- Institution must update “certification” within 10 days if any changes in program or program approval that make existing certification inaccurate

**GE CERTIFICATION**

**Reflections from Inside the Industry**




**CONTACT INFORMATION**

**Aaron D. Lacey**  
 Partner, Higher Education Practice  
 Thompson Coburn LLP  
 alacey@thompsoncoburn.com  
 314-552-6405

**Anthony F. Fragomeni**  
 Vice President, Government Relations  
 Empire Education Group  
 afragomeni@empire.edu  
 570.429.4321 x2700




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## DISCLAIMER

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- The transmission of information from this presentation does not establish an attorney-client relationship with the participant. The participant should not act on the information contained in any of the materials or the presentation without first consulting retained legal counsel.



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