

Department of Education's Announcement Leaves Unanswered Questions Regarding Coming Gainful Employment Rule Deadline

June 20, 2017

The Department of Education's (ED) announcement that it plans to engage in a [new negotiated rulemaking](#) to revise the Gainful Employment (GE) Rule leaves unanswered critical questions regarding the implementation of certain GE Rule requirements that are scheduled to go into effect on July 1, 2017. While ED issued a companion announcement that delayed any implementation of the new Borrower Defense to Repayment Rules, there was no such delay announced for the GE Rule.

While the ED announcement did not address the implementation of GE requirements, based on discussions with sources within ED and on Capitol Hill, it appears that affected institutions will be required to meet two major GE requirements as of July 1, notwithstanding the plans for a new rulemaking.

The first requirement is implementation of the new GE template form and distribution process. Second, institutions that initiated their GE earnings appeals earlier this year must complete and file those appeals by July 1.

The announcement of a new rulemaking without bringing implementation of the current rule to a halt is consistent with the history of the GE Rule. The Rule became effective in July 2015, the first round of debt-to-earnings rates was issued in January 2017 and the rates for the second year have been expected in Fall 2017 or January 2018. While ED has already collected the data for the second set of rates, it is unclear if ED will actually complete its internal process of refining the data to calculate and publish those rates while the Rule is under review. The effect would be to require disclosure of potentially failing programs but delay, if not eliminate, the loss of program eligibility, which under the current rule must be premised on two consecutive years of data.

However, the challenges of complying with the GE template procedures¹ should not be underestimated. Under this requirement, institutions must gather the data to populate the GE templates with detailed disclosures pertaining to the program cost, length, occupational objectives, earnings, debt-to-income ratios, licensing requirements and other matters. In addition, institutions must ensure individualized delivery of the GE template to each prospective student, and also must obtain a documented acknowledgement from the student before he or she signs an enrollment agreement or makes any financial commitment to the institution. Further, institutions must prominently display the GE program template or a link to the template on "any Web page containing academic, cost, financial aid, or admissions information about a GE program maintained by or on behalf of an institution." This new process will require that institutions evaluate all of their "promotional materials," a term that is very broadly defined in the GE Rules,² to ensure the inclusion of the required language³ linking to the GE templates.

In addition, for the subset of institutions that previously filed their notice of intent to file an alternative earnings appeal to their debt-to-earnings rates as published in January, the deadline for submitting the required documentation for their appeals remains July 1st. If an institution has submitted an appeal, or plans to do so before July 1st, the requirement to issue "student warnings" for programs that had failing scores in the first set of debt to earnings rates will be put on hold until ED has reviewed the appeal and made a determination of the program's final rates. However, while the appeal is pending, institutions must still publish and distribute the GE template, which will indicate that the program is not currently passing the ED standard for debt-to-earnings, with an asterisk stating that the program's rates are under appeal.

The status of the implementation of the GE Rule remains in flux, with the possibility that ED will make new announcements affecting these subjects and deadlines. It is also possible that any implementation of the GE Rule may be stayed if litigation filed by the American Association of Cosmetology Schools succeeds. Cooley is monitoring this situation, so watch this space for updates as new information becomes available.

Notes

1. Codified at 34 CFR 668.12.

2. 34 CFR 668.12 defines promotional materials to include, but not limited to, "an institution's catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media."

3. The link must be introduced with this specific language: "Important Information about the educational debt, earnings,

and completion rates of students who attended this program.”

Jonathon Glass specializes in higher education law, with concentrated emphasis on the institutional eligibility and financial responsibility requirements for institutions to participate in the Title IV federal student aid programs.

Kate Lee Carey focuses on the legal, accreditation, administrative and regulatory aspects of regionally and nationally accredited higher education institutions and companies that provide services to the education industry.

Vince Sampson focuses on helping clients predict, navigate and understand the increasingly complex involvement of federal agencies and Congress.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026