

Another New Gainful Employment Disclosure Template, With Some Unexpected Changes

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The Department of Education announces changes to the Gainful Employment Disclosure Template.

Disclosure Template Deadline and Updates

In its [Electronic Announcement](#), ED set April 6, 2018 as the new deadline for covered institutions – that is, all for-profit schools and any public and nonprofit schools that offer diploma and certificate programs – to update and publish the 2018 version of the GE Disclosure Template. In addition, ED has reiterated that July 1, 2018 is the date for covered institutions to both include the GE Disclosure Template (or a link thereto) in all of their promotional materials *and* distribute the template *directly* to all prospective students. As [posted previously](#), this deadline has already been extended twice and is now set for July 1, 2018.

But wait, there's more. ED's new guidance has unexpectedly eliminated certain topics from the 2018 GE Disclosure Template and changed how others are determined and presented.

- *Institutions are no longer required to disclose room and board charges.*

Since the disclosure was required regardless of whether a school actually offered student housing, this element has been very confusing for prospective students.

- *The unsubsidized loan interest rate will be prefilled based on the selected credential level.*

This change will alleviate a great deal of confusion for institutions that were tasked with determining the appropriate average interest rate based on the length of repayment and ED loan rates.

- *Institutions will not be required to disclose median earnings data.*

For the 2017 disclosure template, schools were required to use the earnings data that ED had gathered from the Social Security Administration as part of the first round of GE debt-to-earnings rates. Since ED has not issued SSA information for the second year of GE data, schools do not have the information to populate the earnings section of the disclosure and ED has wisely chosen not to require it.

- *Institutions may add more than one accreditor job placement rate.*

Because many institutions calculate placement rates for multiple agencies, often with very different cohorts and formulas, their official rates can vary widely from agency to agency. Institutions that report multiple placement rates will now have an opportunity to provide prospective students with multiple rates and explain the differences.

- *The format for reporting licensure requirements was changed, and "Foreign Country" was added as an option in the list of states.*

This change will provide additional clarity for prospective students seeking enrollment in international campuses that are approved for participation in the Title IV Programs.

No Change to Disclosure of Failed Programs or of the Alternative Earnings Appeal Deadline

Institutions must still disclose whether a program has failed the debt-to-earnings (D/E) rates measure within 30 days of receiving the program's final D/E rates from ED. Once an institution has indicated that a warning is required on the disclosure template input, the output screen will be pre-populated with the student warnings required under the regulations.

The exact time when institutions must issue student warnings will depend in part on whether institutions have taken steps

to appeal their failing or zone rates. The timing for such appeals already has changed several times as ED has extended the deadline for schools to file their “Notice of Intent to Appeal.” For schools that did not file their Notice of Intent prior to the new deadline in October 2017, the 2017 GE template should have included the student warnings as noted above, and the new 2018 template includes the same warning information. For institutions that did file such a Notice of Intent and that are planning to submit an alternate earnings appeal before the *February 1, 2018 deadline*, the warning is not required until 30 days after ED denies the appeal or the institution withdraws it. If an institution submitted its Notice of Intent but decides not to submit the appeal by the February 1 deadline, it appears that the institution would be required to update the template and begin issuing the student warnings within 30 days of the February 1 date.

Also, institutions that timely notified ED that they would file an alternative earnings appeal for one or more GE programs are approaching the deadline of February 1, 2018 to submit their complete alternative earnings appeal. If ED denies the appeal or the institution withdraws the appeal, the institution has 30 days to update its GE Disclosure Template to include the student warning. However, bear in mind that regardless of whether an institution files an alternative earnings appeal, all institutions must update and publish the GE Disclosure Template before April 6, 2018.

As Disclosure Forms Change, Debate Continues Over the Future of GE

The Political Backdrop, Part I: Negotiated Rulemaking Continues

ED remains in the midst of a negotiated rulemaking specific to Gainful Employment. It is unclear how (or if) the outcome of those negotiations and the publication of a proposed new rule will impact the current deadlines.

Part II: the Multistate Attorney General Lawsuit

In addition to the ongoing neg reg process, a group of state’s attorneys general, including AGs from 17 states and the District of Columbia, filed suit against ED challenging its authority to delay implementation of certain elements of the GE rule. The AGs filed a motion for summary judgement in late December, and ED’s response is due January 30. The matter is currently set for hearing in April in the US District Court for the District of Columbia.

Part III: House Republicans Introduce Reauthorization Bill Killing GE; Senate May Not Be so Easy

Finally, as part of the Higher Education Act reauthorization, the House of Representatives’ Committee on Education and the Workforce introduced the “Promoting Real Opportunity, Success, and Prosperity through Education Reform” Act, which would repeal the Gainful Employment regulations, and prohibits the Department of Education from attempting to “promulgate or enforce any regulation or rule with respect to the definition or application of the term ‘gainful employment’ for any purpose under the Higher Education Act.” PROSPER was passed out of committee in December 2017 but has not been scheduled for a vote on the House floor. The Senate Health, Education, Labor and Pensions Committee has begun its process for HEA reauthorization through a series of hearings but has not introduced its proposed comprehensive reauthorization bill yet. Keep in mind that an HEA reauthorization bill needs to garner 60 votes for passage in the Senate. Given probable objections from Senate Democrats, this could make inclusion of PROSPER’s total ban on regulating GE a challenge.

Cooley continues to closely monitor the rulemaking as well as ED’s other actions on this regulation.

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