Cooley

Department Confirms July 1 for New GE Disclosures + Delivery Process

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Despite hopes that the US Department of Education might delay the expanded Gainful Employment disclosure requirements as it has done for the two past years, ED announced recently that covered institutions must meet these new requirements as of July 1. The directive covers all proprietary institutions and every public and non-profit institution that offers diploma or certificate programs.

As part of the Gainful Employment (GE) Rule, institutions are required to publish certain data elements to prospective students and the public using an ED-mandated template. Although the content of the prescribed disclosure template has changed every year since the requirement was published, it has generally included information on program length, cost, median debt, placement rates and state licensure status. The disclosure must be made available through a prominent, direct link on any webpage that contains "academic, cost, financial aid, or admissions information about a GE program," in all promotional materials and through individualized delivery to each prospective student prior to enrollment. The last two elements were set to become effective in July 2017, but upon the change of administration, implementation was deferred until this year.

That delay has now come to an end.

The electronic announcement includes a detailed overview of the required processes. In short, institutions must include either the information required by the GE disclosure template, or a direct link to it, in all promotional materials that "identify a GE program by name, or otherwise promote the program." Promotional materials are broadly defined 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."

The required individual delivery process will require institutions to develop a way to track and deliver information to every affected prospective student. According to the announcement, institutions may provide the disclosure template to prospective students by hand-delivery, as part of a group presentation, or by email. If an institution chooses hand-delivery, it must obtain written confirmation that the prospective student received it and retain a copy of the confirmation in the student file.

If an institution instead chooses to send the disclosure template by email, it must send it to the "primary email address used by the institution for communicating with the prospective student," the template must be the only substantive content of the email and the institution must receive and maintain acknowledgement from the prospective student that the email was received. If the prospective student does not respond, then the institution must send the disclosure template using a different email address or change the method of delivery, and it must maintain a record of its repeated efforts to provide the required information.

The deadline to come into compliance on these provisions is just a month away, so preparing the mechanisms needed to comply is imperative. But the question of how long these systems will need to be in place remains an open question. On April 10, ED submitted the draft final GE rule to the Office of Management and Budget (OMB) for review and approval, the final step before ED can promulgate a final rule. No one outside of the administration knows whether the version submitted to OMB is the same version ED issued for public comment in the summer of 2018, which essentially rescinded the GE rule entirely, or whether the Secretary decided to maintain some elements of the 2015 rule. And if so, when the submitted rule would become effective, which could be anywhere between immediate and July 1, 2020. It is quite possible that, in the near future, there will be a new GE rule, or no GE rule, but until the fate of the rule is clear, institutions need to comply.

What is important to remember is that until the fate of the rule is clear, institutions need to comply with the current requirements, and with the July 1 deadline.

If you have questions about how to implement the department's directive, or about the applicability of the Gainful Employment Rule to your institution, please contact Kate Lee Carey.

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.
