



Gainful Employment

Preparing for the Next Six Months

KANSAS BOARD OF
REGENTS

2016 STATE MEETING



higher education practice

WELCOME & INTRODUCTION

- Aaron D. Lacey
 - Partner, Higher Education Practice, Thompson Coburn LLP.
- Higher Education Practice
 - Provide regulatory counsel on federal, state, and accrediting agency laws and standards (*e.g.*, Title IV, Title IX, Clery, consumer information).
 - Assist with postsecondary transactions, contract drafting and negotiation, policy creation, and compliance systems design.
 - Represent institutions in student and employee litigation, government investigations, administrative proceedings, audits, and reviews.

WELCOME & INTRODUCTION

- Prior Experience
 - Senior Vice President of Regulatory Affairs & Strategic Development for postsecondary institution. 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 DC Higher Education Practice. Provided regulatory and policy guidance, managed agency proceedings, drafted and negotiated wide variety of agreements.

PRESENTATION OUTLINE

- Politics & Prognostications
- The Gainful Employment Timeline
- D/E Rate Refresher
- D/E Rate Challenges
 - Loan Debt Challenges
 - Alternative Earnings Appeals
- The New GE Disclosures
- Student Warnings
- GE Resources

Politics & Prognostications



ON THE HILL

Is there a political solution to GE?

- GE rider was considered and rejected in connection with FY 2016 omnibus appropriations bill.
- Possible interest in refining GE but defunding unlikely absent Republican control of both Congress and White House.
- Political landscape is uncertain at best, but presently does not appear that Republicans will control both in 2016.

IN THE COURTROOM

Is there a legal solution to GE?

- Court decisions have favored Department (and strengthened White House resolve).
- APSCU appeal was denied, no further efforts pending.

The Gainful Employment Timeline



GE TIMELINE (2015)

DATE	2015 GAINFUL EMPLOYMENT EVENTS
July 1	<ul style="list-style-type: none">• New gainful employment regulations become effective
July 31	<ul style="list-style-type: none">• Report data for AY 08-09 to AY 13-14
October 1	<ul style="list-style-type: none">• Report data for AY 14-15
December 31	<ul style="list-style-type: none">• Complete GE transitional certification

GE TIMELINE (2016)

DATE	2016 GAINFUL EMPLOYMENT EVENT
June 1	<ul style="list-style-type: none">• Issuance of AY 14-15 Draft Completers Lists
July 28	<ul style="list-style-type: none">• Deadline to submit AY 14-15 Completers List Challenges
Sept. 8	<ul style="list-style-type: none">• Issuance of AY 14-15 Final Completers Lists
Oct. 1	<ul style="list-style-type: none">• Report data for AY 15-16
Nov. - Dec.	<ul style="list-style-type: none">• Issuance of AY 14-15 Draft D/E Rates• Prepare and submit AY 14-15 Loan Debt Challenges• Begin work on AY 14-15 Alternative Earnings Appeals• Consider integration of student warnings into admissions process (for programs likely to fail)• Prepare for new GE disclosure template and distribution requirements

GE TIMELINE (2017)

DATE	2017 GAINFUL EMPLOYMENT EVENT
January 1	<ul style="list-style-type: none">• New GE Disclosures effective
Winter/Spring	<ul style="list-style-type: none">• Issuance AY 14-15 Final D/E Rates• Finalize and submit AY 14-15 Alternative Earnings Appeals• Begin disseminating Student Warning Disclosures for programs with failing AY 14-15 Final D/E Rates

D/E Rate Refresher



D/E RATE REFRESHER

What are the D/E Rates?

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

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

D/E RATE REFRESHER

What are the D/E Rate thresholds?

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% <i>and DIR not passing</i> OR DIR greater than 20% and less than or equal to 30% <i>and AER not passing</i>	AER greater than 12% AND DIR greater than 30%

D/E RATE REFRESHER

What happens if D/E rates are below the required 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.
- **Student warnings** must be issued if program is within a year of losing eligibility

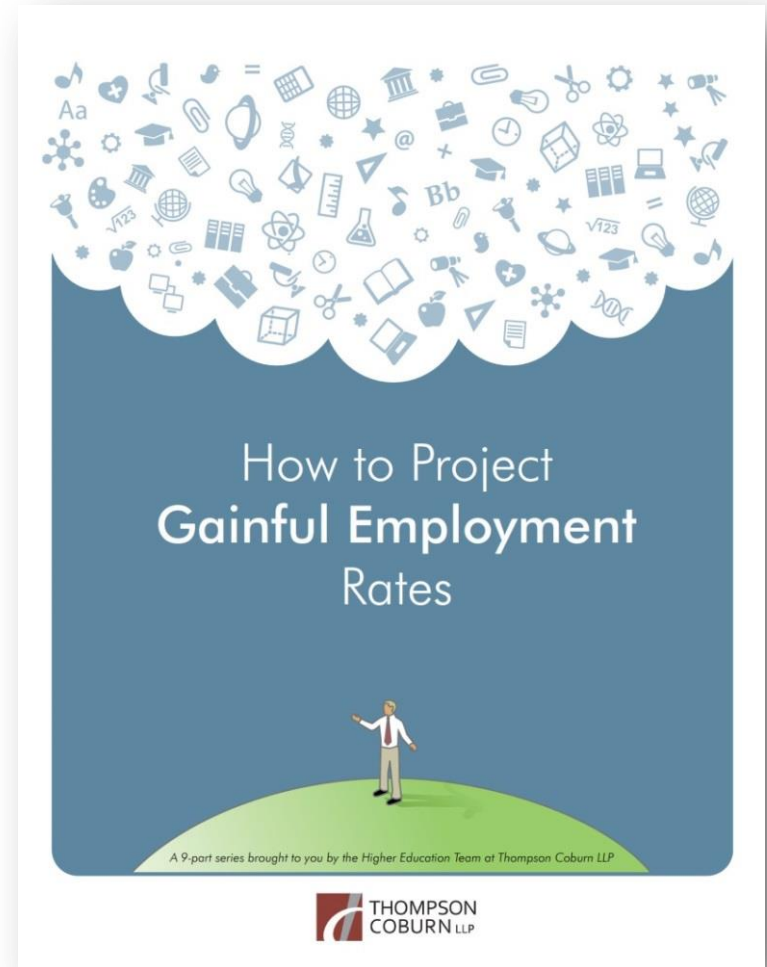
D/E RATE REFRESHER

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

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.



D/E Rate Challenges

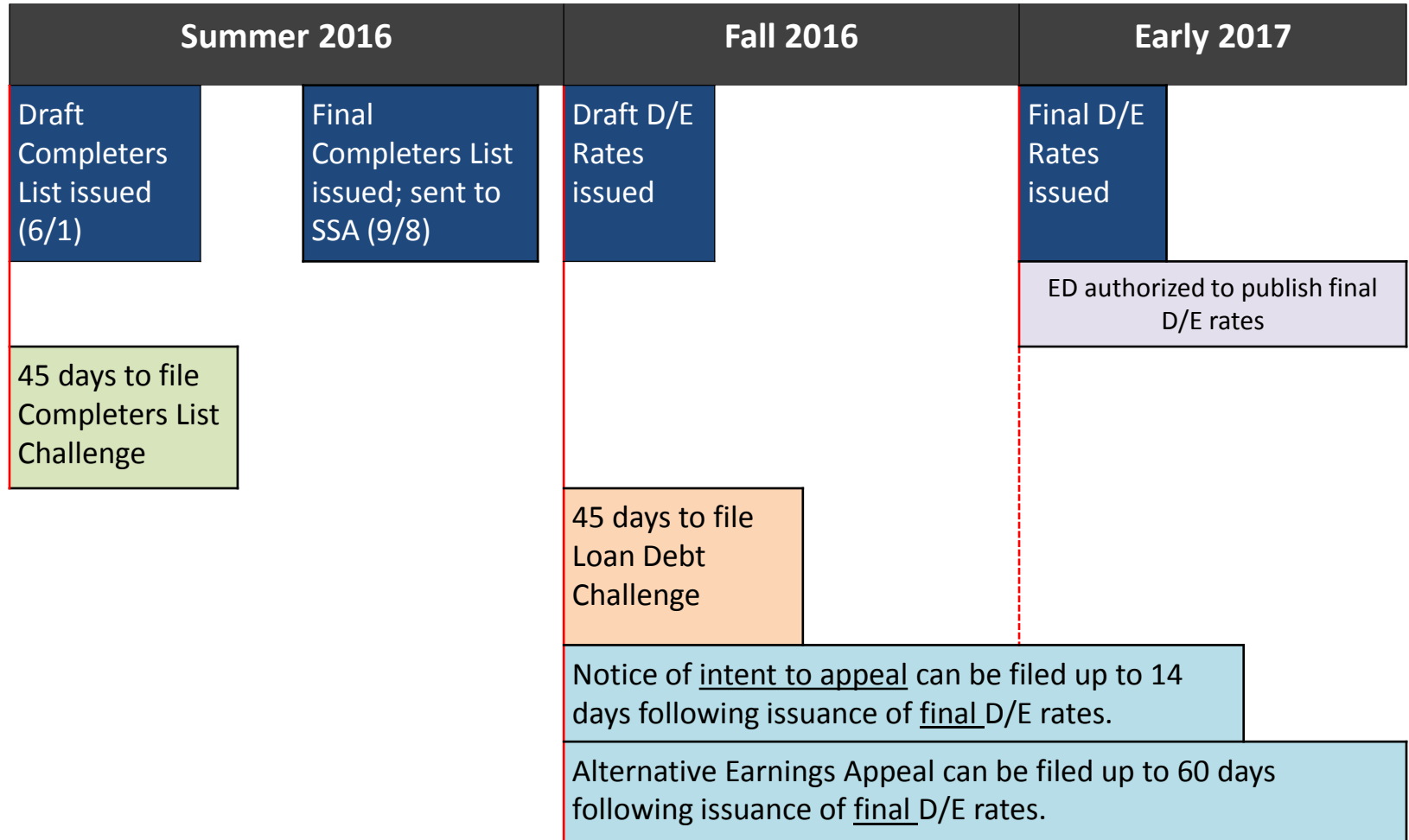


LOAN DEBT CHALLENGE

What if a school disagrees with ED's calculations?

- Institutions will have three opportunities to challenge the data used to calculate D/E rates issued:
 - Completers List Challenge
 - Loan Debt Challenge
 - Alternative Earnings Appeal

D/E RATE CHALLENGES TIMELINE



Loan Debt Challenges



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

Where might issues arise?

- ED has suggested that it won't accept institutional records to substantiate a loan debt challenge; schools may be required to use federal records. Problematic because:
 - COD only goes back to 11-12
 - NSLDS/COD may not provide needed data
 - May be difficult to retrieve records from loan servicers managing old FFEL loans
- Schools may want to focus on challenging data from 08-09 – 10-11.

LOAN DEBT CHALLENGE

How will the draft D/E rates be distributed?

- NSLDS will send draft D/E rates to institutionally designated SAIG mailboxes.

How will we file D/E rates challenges?

- Data challenges will be submitted using the NSLDS Professional Access website.

LOAN DEBT CHALLENGE

What is the timing for a loan debt information challenge?

- Under the law, no later than 45 days after ED provides the draft D/E rates.
- However, it is possible ED could announce an expanded challenge (as was the case with the completers list).

LOAN DEBT CHALLENGE

LOAN DEBT CHALLENGE – ED RESOURCES

October 18
and 25 at
1:30 ET

[Reading Your Draft GE Debt-to-Earnings \(D/E\) Rates Files](#): will focus on the GE Debt Measures Backup Data detail files, sent to institutions by NSLDS, that contain the data used to calculate draft D/E rates for GE Programs.

October 20
and 27 at
1:30 ET

[Submitting Draft GE Debt-to-Earnings \(D/E\) Challenges](#): will discuss the process for institutions to submit a challenge to the data that the Department used to calculate the draft GE D/E rates.

BE SURE TO REGISTER!

Alternative Earnings Appeals



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 do I 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

- Challenges abound with the State-sponsored data system approach, even where they may exist:
 - Data regarding individual graduate earnings may be considered private.
 - Data may not be maintained in a form that can be correlated with graduate population.
 - Members of graduate cohort may work in other states.
- At present, may not be an option for many schools

ALTERNATIVE EARNINGS APPEAL

How do I go about conducting a graduate survey?

- National Center for Education Statistics (NCES) developed the Recent Graduates Employment and Earnings Survey (RGEES) standards and survey form.
- ED has developed online RGEES platform to facilitate survey administration.
- Institutions are not required to use form or platform, but **must strictly adhere to survey standards.**

ALTERNATIVE EARNINGS APPEAL

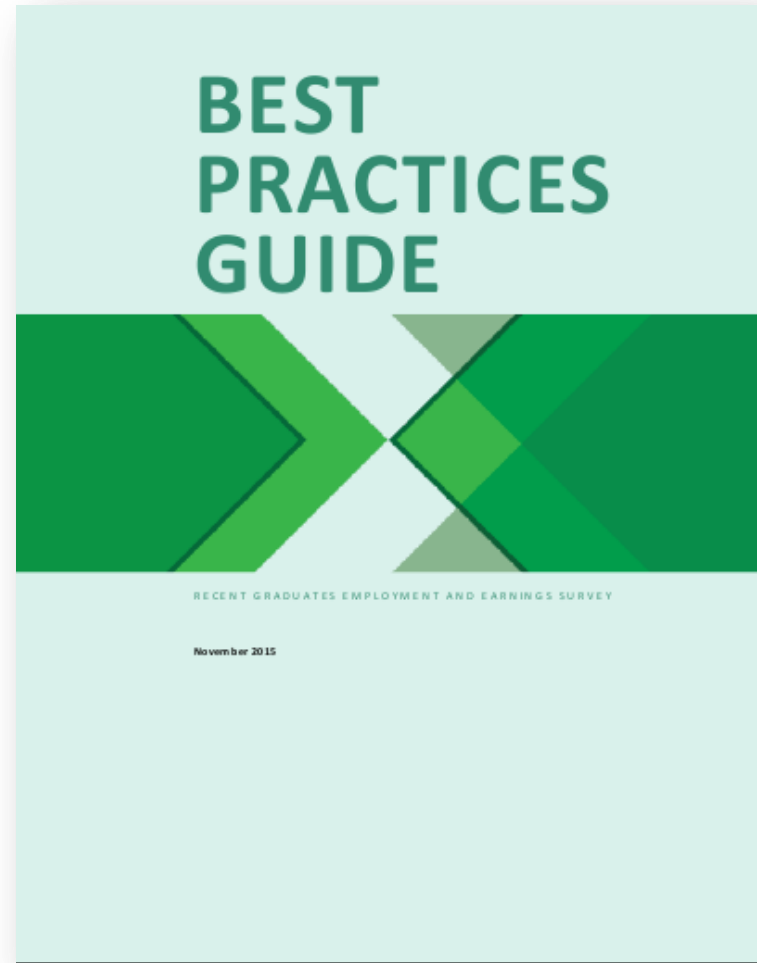
- Survey must be administered to every student on final completers list.
 - Schools can also elect to administer the survey to excluded students.
- At least 50% of graduates surveyed for a GE program must submit a completed survey for data to be used to support an appeal.
 - A “completed” RGEES must include sufficient responses “to calculate graduates’ earnings, including zero earnings.”

ALTERNATIVE EARNINGS APPEAL

- A “nonresponse bias” analysis must be conducted if response rate is between 50% and 80% percent (RGEES platform will do this automatically).
- ED will use Pell grants, zero EFC, and gender as variables to measure bias.
- The maximum allowable level of the absolute value of the relative bias is an average of 10% across the three variables.

ALTERNATIVE EARNINGS APPEAL

- [Alternative Earnings Survey Best Practices Guide](#) includes discussion and best practices for all phases of survey administration.



ALTERNATIVE EARNINGS APPEAL

- Topics covered in Guide include:
 - Locating Graduates
 - Contacting Graduates
 - Data Collection
 - Statistical Concepts
 - Preparing an Appeal Package

ALTERNATIVE EARNINGS APPEAL

- Appeal submission must include:
 - CEO certification attesting that survey was conducted in accordance with ED standards and revised median and mean were accurately calculated.
 - An “examination-level attestation engagement report” prepared by independent CPA attesting that survey was conducted in accordance with ED standards.
 - Supporting documentation requested by ED.

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 **final** D/E rates.
- Must file complete, audited appeal package no later than 60 days after ED issues **final** D/E rates.

ALTERNATIVE EARNINGS APPEAL

What results from an alternative earnings appeal?

- If ED denies appeal, provides notice to institution and explains basis for denial.
- If ED affirms appeal, notifies institution and updates published final D/E rates.
- Institutions not subject to any **sanctions** relating to D/E rates while appeal is pending.
 - If final D/E rates published, will include annotation re appeal.

ALTERNATIVE EARNINGS APPEAL

ALTERNATIVE EARNINGS APPEAL – ED RESOURCES

July 2016

- [Alternative Earnings Survey Best Practices Guide](#)
- [Standards for Conducting the Recent Graduates Employment and Earnings Survey](#)
- [Recent Graduates Employment and Earnings Survey](#)
- RGEES Platform (a Web-based survey tool)
- [RGEES Platform Technical Guide](#)
- Nonresponse Bias Analysis (NRBA) Template (Excel spreadsheet)

The New GE Disclosures



CONTENT OF NEW GE DISCLOSURES

What information must be disclosed?

- Precise combination of disclosures is determined by ED and reflected in GE Disclosure Template (GEDT).
 - ED will conduct “consumer testing” to determine best disclosure mix. Periodic notification through Federal Register.
- Disclosures will be based on data reported by schools, and in some cases, calculated by ED.

CONTENT OF NEW GE DISCLOSURES

- On September 13, 2016, ED published a [notice](#) in the Federal Register regarding its proposed combination of disclosures for 2017.
 - Comments are due by November 14, 2016. Only four comments that have been posted thus far.
- Review the materials and file comments at regulations.gov, Docket [ED-2016-ICCD-0100](#).

CONTENT OF NEW GE DISCLOSURES

ED proposes to include the following content for 2017.
The orange boxes represent new information.

Occupations
(names and SOC
codes)

Normal-Time
Completion Rate

Normal-Time
Tuition and Fees

Cost for Books,
Supplies, Room, &
Board

Placement Rate

Median Loan Debt
for Completers

Percentage of
Students Receiving
Federal or Private
Loans

D/E Rate Failure

Median Earnings
for Program
Graduates

State Licensure
Requirement
Information

Estimated Monthly
Loan Payment for
Completers

CONTENT OF NEW GE DISCLOSURES

- **Normal Time completion rate.** Calculated by institutions, for full-time and part-time students. No more 150% time.
- **Median loan debt for completers.** Calculated by institutions, combining all forms of debt. GEDT will then calculate a monthly payment assuming a 120-month amortization period.
- These metrics may be calculated by ED in the future, with challenge process.

CONTENT OF NEW GE DISCLOSURES

- **D/E Rate failure.** Whether the most recent D/E rates were failing. This is accomplished using the student warning.
- **Median earnings for program graduates.** Obtained from SSA using methodology used for standard D/E rates. Will be provided by ED.

CONTENT OF NEW GE DISCLOSURES

- **Licensure and certification.**
 - Whether program satisfies educational prerequisites for professional licensure or certification in (1) each State within the institution's MSA, or (2) 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.

CONTENT OF NEW GE DISCLOSURES

ED proposes **not** to include the following content for 2017, but could require it in future years.

Withdrawal Rates

150% Normal-
Time Completion
Rate

Loan Repayment
Rates

Program Cohort
Default Rates

Median Earnings
for Drops

Median Loan
Debt for Drops

Link to the
College Navigator
Website

DISTRIBUTION OF NEW GE DISCLOSURES

When and where must the GEDT be disclosed?

- On any **school webpage** containing academic, cost, financial aid, or admissions information about GE program maintained by **or on behalf** of institution.

DISTRIBUTION OF NEW GE DISCLOSURES

- In all **marketing and promotional materials** made available by **or on behalf** of school to prospective students that identify GE Program by name or otherwise promote the GE Program.
 - Examples include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.

DISTRIBUTION OF NEW GE DISCLOSURES

- Directly **to any prospective student** (or third party acting on his behalf) before he signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

DISTRIBUTION OF NEW GE DISCLOSURES

When must institutions begin making the New GE Disclosures?

- Institutions must comply with the new requirements effective **January 1, 2017**.

Student Warnings



D/E RATES AND GE WARNINGS

When must a school issue a GE Warning?

- When ED notifies the institution that the program could become ineligible based on its final D/E rates for the **next** award year.
 - Purpose of regulation is to ensure students are aware of potential loss of funding at least a year in advance.
 - Disclosure obligation is triggered by “notice” received from ED.

CONTENT FOR PROSPECTIVE STUDENTS

What is the content of the GE Warnings for prospective students?

- GE Warnings for prospective students must:
 - Refer them to, and include a link for, the ED's College Navigator website (or similar federal resource) for information about similar programs; and
 - Include the verbatim disclosure set out on the next slide.

CONTENT FOR PROSPECTIVE STUDENTS

This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.

CONTENT FOR PROSPECTIVE STUDENTS

FAILED DEBT TO EARNINGS DETERMINATION, ONLY STATE PLACEMENT RATE

Institution Name

[Credential Level] in [Program Name]

[Program Length] for a full-time student



This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.

Students graduating on time

XXX% of students complete the program within [program length] ⓘ

Program Costs*

\$XX,XXX for tuition and fees

\$XX,XXX for books and supplies

\$XX,XXX for off-campus room and board

\$XX,XXX for on-campus room and board

CONTENT FOR CURRENT STUDENTS

What is the content of the GE Warnings for current students?

- GE warnings for current students must:
 - Include College Navigator referral/link (same as for prospective students).
 - Include verbatim disclosure (same as for prospective students).
 - Indicate whether the institution would continue to provide the program without Title IV so students could complete the program.

CONTENT FOR CURRENT STUDENTS

- Indicate whether the institution would refund any tuition, fees, and other required charges already paid if Title IV eligibility lost or program no longer offered.
- Describe academic and financial options available to students to continue their education in **different** programs at the institution, including which credits would transfer into the different programs.
- Explain whether students can transfer credits to different institution.

DISTRIBUTION TO PROSPECTIVE STUDENTS

What are the GE Warning distribution requirements?

- Specific requirements are complex, but in summary:
 - Must be delivered in writing at least once
 - Must obtain written confirmation of receipt
 - Must observe three-day cooling period between delivery and signing of enrollment agreement.
- Schools should review specific requirements and determine best way to integrate into admission process.

GE RESOURCES



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

- Webinar series schedule:
 - How to Project Reliable Debt-to-Earnings Rates (February 11, 2016)
 - Strategies for Improving Debt-to-Earnings Rates (February 18, 2016)
 - Completer List Challenges, Debt Challenges, and Alternative Earnings Appeals (February 25, 2016)
 - Preparing for and Managing Required “Student Warnings” (March 3, 2016)
 - Managing (and Challenging) the New GE Disclosures (March 10, 2016)

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

GE RESOURCES FROM TC

- [REGucation](#) higher education law and policy blog.

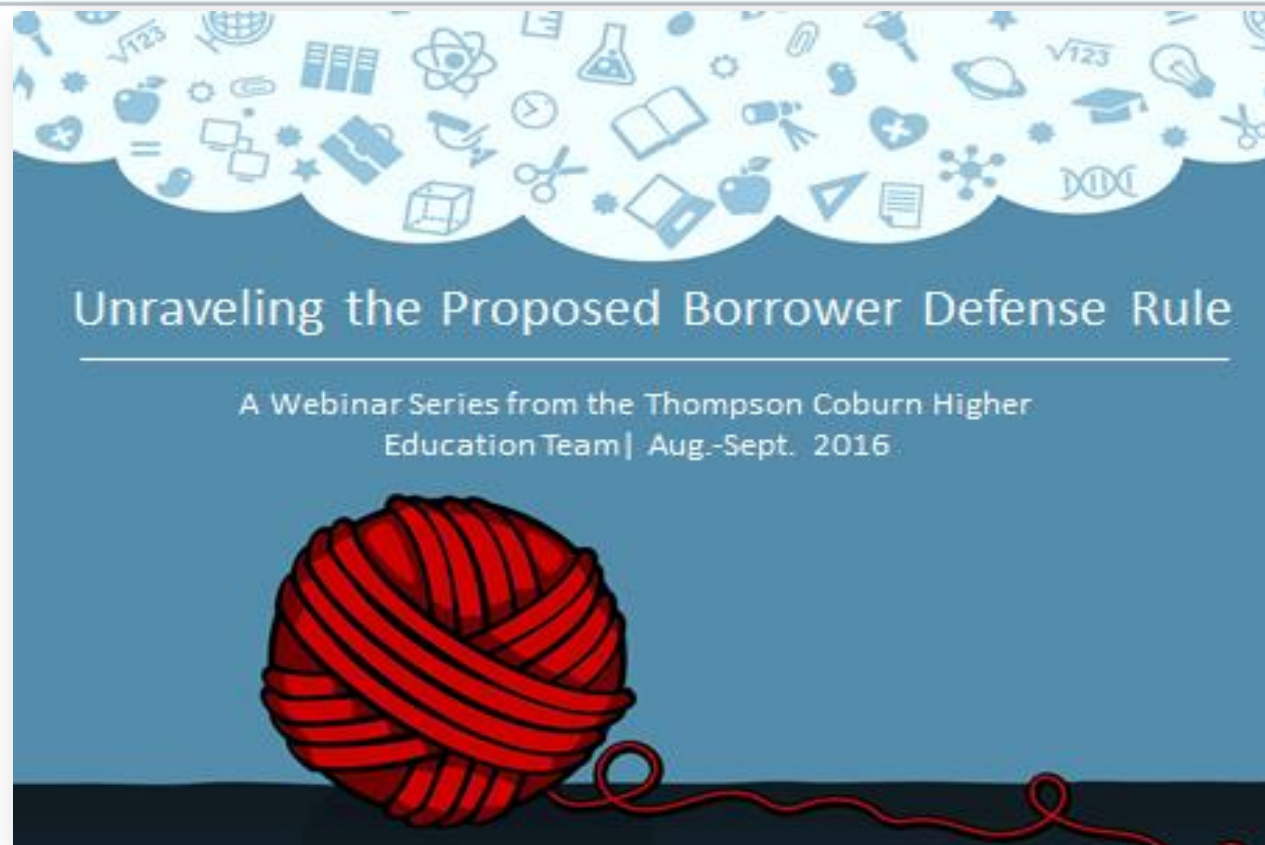


REGucation

Regulatory and Policy Insights
from the Thompson Coburn
Higher Education Team

Higher Education Team
www.thompsoncoburn.com/ge

BORROWER DEFENSE RESOURCES FROM TC



Free webinar series available on demand at:

<http://www.thompsoncoburn.com/insights/tcle/presentation/detail/2016-09-27/borrower-defense-rule-webinar-series>

BORROWER DEFENSE WEBINAR SERIES

- Webinar series schedule:
 - The Proposed Borrower Defense Framework (August 24, 2016)
 - Proposed Changes to the Financial Responsibility Standards (August 31, 2016)
 - Proposed Elimination of Arbitration Clauses (September 7, 2016)
 - The Proposed Repayment Rate for Proprietary Schools (September 14, 2016)

CONTACT INFORMATION

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An electronic version of this presentation with [embedded hyperlinks](#) is available upon request.

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