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REGULATORY UPDATE – GAINFUL EMPLOYMENT II

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STATUS OF RECENT AND PENDING NEGOTIATED RULEMAKING PROCEEDINGS

GAINFUL EMPLOYMENT

Meetings Held:

Session 1: September 9-11, 2013

Session 2: November 18-20, 2013

Session 3: December 13, 2013 (Added)

Result:

No consensus reached by negotiators.

Status:

Draft rule sent by ED to Office of Management and Budget on 1/30/14

Next Steps:

After OMB review, ED will issue a Notice of Proposed Rulemaking (1Q 2014). Public comment period will begin, after which Final Rule will be published.

Overview of Draft Gainful Employment Regulation
Negotiated Rulemaking Session 3

<table>
<tr><th>Metrics</th><th>Annual debt-to-earnings
Discretionary debt-to-earnings</th><th>Program cohort default rate</th></tr>
<tr><td>Students</td><td>Completers</td><td>Completers & non-completers</td></tr>
<tr><td>Categories & thresholds</td><td>Pass: aDTE≤8% OR dDTE≤20%

Zone:
• Not passing AND
• 8%<aDTE≤12% OR 20%<dDTE≤30%

Fail: aDTE>12% AND dDTE>30%</td><td>Pass: pCDR<30%

Fail: pCDR≥30%</td></tr>
<tr><td>Ineligibility rules (metrics operate independently of each other)</td><td>A program becomes T4 ineligible for 3yrs if:
• It fails in any 2 out of 3yrs, OR
• Does not pass in any 1 out of 4yrs (time for zone programs to improve before ineligibility)</td><td>A program becomes T4 ineligible for 3yrs if:
• The 3 year default rate of 3 consecutive cohorts of students is greater than or equal to 30%</td></tr>
<tr><td>Restrictions</td><td>• Debt warnings to students if program could become ineligible at the end of the year (applies to zone & failing programs)
• T4 enrollment limited to previous year's level for failing programs (does not apply to zone programs)</td><td>• Debt warnings to students if program could become ineligible at the end of the year
• T4 enrollment limited to previous year's level if program could become ineligible at the end of the year</td></tr>
</table>

Negotiated Rulemaking Session 3, cont.

Student protections	• If program could become ineligible at the end of the year, institution must post letter of credit or agree to set aside portion of T4 funds to provide borrower relief to enrolled students if program eventually becomes ineligible. • During transition period (first four years of rule), if program could become ineligible at the end of the year, institution may provide grants to students to reduce debt instead of letter of credit/excess fund requirement. Programs would not lose eligibility during the transition period if institution chooses this option.
Existing program certification	For existing programs, institution must sign certification that program is included in institution's accreditation or, if required, has received programmatic accreditation and completion of program meets requirements to become employed in the occupation for which the program provides training in State within region that program is offered
New program approval	New programs apply only if the program was deemed ineligible, was a failing or zone program that was voluntarily closed, is in the same "family of CIP" codes as a current or recent failing program. Application requirements: • Occupations that program trains for, CIP code, credential level, length of program, cost of tuition, fees, books, supplies, cost of attendance, start date of program • Projected entry level earnings and earnings three years after entering profession as obtained from likely employers • Letters from at least three likely employers signed by an executive officer of the business affirming that program curriculum will prepare student for employment in the relevant occupation • Documentation that institutional accreditation includes program or, if required, that program is accredited • If required, affirmation that program meets licensure, certification, experiential placement, or employer requirements in States within region that program is offered
Disclosures	• Occupation • Cost of tuition, fees, books, supplies • Program length • Total enrollment • Completion rate (for full and part-time students;) • Withdrawal rate (within normal time of program) • Placement rate (if required by state or accreditor) • Repayment rate (borrower-based) • Median earnings • Median loan debt • Whether licensure requirements are met (if applicable) • Whether program is accredited (if required)

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Breaking it down:

GE Program: Any Title IV eligible program offered by a for-profit institution and identified by a combination of the institution's six-digit OPE ID number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Must have at least 10 completers.

Example: CIP 420101/Psychology, General/03-Bachelors

Completers: The total number of students who have received Title IV aid and who completed the program during the applicable two-year period based on information provided by the institution, not including any excludable student.

2 Year Period: The period covering two consecutive award years that are the third and fourth award years prior to the award year for which DTE rates are calculated (except programs requiring medical or dental internship or residency).

Example: For DTE rates calculated for the award year 2014-15, the applicable two-year period for determining completers is 2010-11 and 2011-12.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

- For each award year and for each GE program, ED calculates three things:
  - Annual Debt to Earnings (DTE) Rate
  - Discretionary Debt to Earnings (DTE) Rate
  - Program Cohort Default Rate

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Eligibility Metrics –

"Passing"

- Discretionary DTE is less than or equal to 20% OR
- Annual DTE is less than or equal to 8%

"Failing"

- Discretionary DTE is greater than 30 percent or the income for the denominator (the GE program's mean or median or discretionary earnings) is negative or zero; AND
- Annual DTE is greater than 12% or denominator is zero.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

"Zone" –

- Not a "passing" program AND

- Discretionary DTE is greater than 20% but less than or equal to 30% OR
- Annual DTE is greater than 8% but less than or equal to 12%

EXAMPLE 1 (CIP 420101:IT/ASSOCIATES) (AS PROVIDED IN ED RAW DATA)

Assumptions: 10 year amortization; 3.37% interest rate

Program Completers: 33

Annual DTE: 1483 (Annual Loan Payment)/48364 (Annual Earnings) = 3.06%

Discretionary DTE: 1483 (Annual Loan Payment)/31129 (Discretionary Earnings) = 4.76%

Result: Program PASSES in the Fiscal Year for which rates are calculated because aDTE is less than 8% and dDTE is less than 20% (program would pass based on either DTE rate)

EXAMPLE 2 (CIP 430103:CRIM JUSTICE/BA) (AS PROVIDED IN ED RAW DATA)

Assumptions: 10 year amortization; 3.37% interest rate

Program Completers: 453

Annual DTE: 6375 (Annual Loan Payment)/27987 (Annual Earnings) = 22.71%

Discretionary DTE: 6375 (Annual Loan Payment)/10752 (Discretionary Earnings) = 59.12%

Result: Program FAILS for the Fiscal Year for which rates are calculated because aDTE is more than 12% AND dDTE is more than 30% (failing both is required for the program to fail in any year)

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Title IV Program Ineligibility –

- Program fails (both DTE rates) in two out of any three consecutive award years for which the rates are calculated; OR
- Does not PASS (either of) the DTE rates in 1 out of any 4 consecutive award years for which the rates are calculated.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Annual loan payment (Numerator in DTE calculations)

The Secretary calculates the annual loan payment for a GE program by--

(1) Determining the median loan debt of the students who completed the program during the two-year period, based on the lesser of--

(i) The loan debt incurred by each student as determined under paragraph (d); and

(ii) The total amount of tuition and fees the institution assessed each student for attendance in the program.

(2) Amortizing the median loan debt over a 10-year repayment period using an annual interest rate that is the lesser of--

(i) The annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students who were in repayment in effect on the day the Secretary calculates the D/E rates for the award year; or

(ii) The lowest annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students who were in repayment during the six years prior to the end of the two-year period.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Loan debt. In determining the loan debt for a student, the Secretary–

(1) Includes the amount of title IV loans that the student borrowed for attendance in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included), any private education loans that the student borrowed for attendance in the GE program and that were required to be reported by the institution, and any credit extended by, or on behalf of, the institution, such as from institutional financing or payment plans, that the student is obligated to repay after the student's completion of the program regardless of who holds the debt;

(2) Attributes all of the loan debt incurred by the student for attendance in any–

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution; or

(ii) Post-baccalaureate GE program at the institution to the highest credentialed graduate degree GE program completed by the student at the institution; and

(3) Excludes any loan debt incurred by the student for attendance in programs at other institutions. However, the Secretary may include loan debt incurred by the student for attending GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Exclusions. The Secretary excludes a student from both the numerator and the denominator of the D/E rate calculations if the Secretary determines that–

(1) One or more of the student's title IV loans were in a military-related deferment status for at least 60 consecutive days during the calendar year for which the Secretary obtains earnings information under paragraph (c);

(2) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, and 685.212;

(3) The student was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (c);

(4) The student completed a higher credentialed GE program at the institution subsequent to completing the program; or

(5) The student died.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Annual earnings. (Used in Denominator of DTE calculation)

(1) The Secretary obtains from the Social Security Administration (SSA), under §668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the two-year period and who are not excluded under paragraph (e); and

(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

D/E rates not calculated.

The Secretary does not calculate D/E rates for a GE program if--

(1) Fewer than 10 students completed the program during the two-year period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c).

HYPO – DTE RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

Example: Calculation of 2014-15 DTE rates:

Rule: DTE calculations will be made using most current available yearly earnings and annual loan payments of students who completed program 3 and 4 years prior to the year for which the calculation is made (the "2YP Cohort").

Example: DTE rates for the 2014-15 award year would be calculated using the 2014 earnings and annual loan repayment of students who completed a particular program in award years 2010-11 and 2011-12.

HYPO – TRANSITIONAL DTE RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

- In the first four years that DTE rates are calculated under the rule (award years 2014-15 to 2017-18), if a program would be failing or in the zone based on the typical approach to calculating DTE rates, the Secretary will calculate transitional DTE rates using the most currently available annual earnings for the 2YP cohort and the median loan debt of students who completed the program in the most recently completed award year (ie, earnings and debt are decoupled). Transitional rates will be used to assess the program if they are lower than what the rates would be under the normal calculation. This will allow programs that promptly lower tuition and fees to realize the benefits of their changes.
- After the four year transition period, the calculation would revert to a normal approach that uses the outcomes of 2YP cohort for both earnings and annual loan repayment.

HYPO – DTE TRANSITIONAL RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

Award year for which DTE calculation is made	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Student cohort whose earnings are measured	2010-11 & 2011-12	2011-12 & 2012-13	2012-13 & 2013-14	2013-14 & 2014-15	2014-15 & 2015-16	2015-16 & 2016-17	2016-17 & 2017-18	2017-18 & 2018-19
Earnings used in Calculation	2014	2015	2016	2017	2018	2019	2020	2012
Student cohort whose annual loan payment is calculated	2014-15	2015-16	2016-17	2017-18	2014-15 & 2015-16	2015-16 & 2016-17	2016-17 & 2017-18	2017-18 & 2018-19

HYPO – PROGRAM DEFAULT RATE* BASED ON 12/11/13 DRAFT OF RULE AS RELEASED BY ED

pCDR cohort year:

For each Fiscal Year, ED will determine the pCDR of a GE program using the same methodology the Secretary uses to calculate the institutional CDR under subpart N of Part 668, 34 CFR. That is, the denominator is the number of students who entered repayment on any FFEL or Direct Loan (or the portion of any consolidated loan used to pay those loans) taken to pay for GE program attendance. The numerator is the number of students in the denominator who defaulted on those loans anytime during the pCDR Monitoring Period.

Example: For FY 2013, pCDR cohort includes borrowers who enter repayment between Oct. 1, 2012 and Sept. 30, 2013.

pCDR Monitoring Period: End of second FY following the pCDR Cohort Year.

Example: Those who defaulted anytime between Oct. 1, 2012 and Sept. 30, 2015.

Sanctions: A program becomes T4 ineligible if it fails the pCDR measure for three consecutive fiscal years for which the pCDR is calculated by having a pCDR of greater than or equal to 30% each of those fiscal years.

PROGRAM CDR TIMELINE* BASED ON DISCUSSION MATERIAL RELEASED BY ED DURING GE NEG REG

pCDR Cohort Year	End of pCDR Monitoring Period	Draft pCDR	Official pCDR	Possible pCDR Failing Program	Possible pCDR Ineligible Program
FY 2013	Sept 2015	Feb 2016	Sept 2016	Yes	No
FY 2014	Sept 2016	Feb 2017	Sept 2017	Yes	No
FY 2015	Sept 2017	Feb 2018	Sept 2018	Yes	Yes

PETER LEYTON

Peter Leyton is co-founder of the Washington, D.C. area law firm of Ritzert & Leyton, P.C. and head of the firm's education practice group. Since 1980, Peter has represented many institutions of higher education, publicly traded companies, private investment groups and others with respect to resolving regulatory/compliance matters as well as with respect to achieving desired transactional results through mergers, acquisitions and reorganizations. This work involves daily interaction with the U.S. Department of Education (DOE), national, regional and programmatic accrediting agencies as well as state licensing agencies and other third parties. Peter completed his second term on the Association of Private Sector Colleges and Universities board of directors in June 2012. Peter received his law degree from Catholic University School of Law in 1980, a master's degree in public administration from American University in 1974, and a bachelor's degree in political science from Antioch College in 1971.

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