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Gainful Employment Update

March 6, 2015

Dear Client,

The second batch of gainful employment regulations is scheduled to become effective on July 1, 2015. These rules are a modified version of the USDE's 2010 attempt at implementing regulations that measure the success of your programs in preparing students for gainful employment in recognized occupations. Similar to the original set of regulations, the GE-2 regulations cover disclosure, reporting, and program performance measurement rules.

Disclosures

With the exception of the disclosure requirements, all other regulations from GE-1 in 2010 were thrown out by the courts as a result of a lawsuit against the USDE. Schools still had to comply with GE disclosure requirements from the 2010 rules and this is still the case. The new rules from GE-2 regarding required program disclosures will not become effective until January 2017 so until then you are required to continue to meet the requirements of the original GE-1 rule from 2010. Schools are required to update their GE disclosures annually by October 1, and are also required to do so using the USDE's gainful employment disclosure template which can be found at http://ope.ed.gov/gainfulemployment/. Using this template is an easy process requiring you to answer a series of questions after which the system will generate a file containing HTML script that can be simply uploaded to your web site.

Reporting

In November 2011 schools complied with the reporting rules from the GE-1 regulations by submitting up to five years of student enrollment information to the USDE. Subsequently, this data was disregarded by the department when the reporting rules of GE-1 were vacated by the courts. Under the new GE-2 rules, reporting of Title IV recipient enrollment information for award years 2008-2009 through 2013-2014 is due by July 31, 2015. Data for 2014-2015 will be due by October 1, 2015. The USDE recently released (in February 2015) its data submittal spreadsheet file and advised that schools who wish to begin reporting information voluntarily may do so now. This is not a requirement that you file early. We may not even have to comply with these new reporting rules from GE-2.

As with GE-1, the USDE has been challenged again in court regarding the implementation of gainful employment regulations. This case is currently being argued in federal district court. Additionally, a heavily sponsored bill has been introduced in the Senate by former Secretary of Education and current Chairman of the Senate Committee on Health, Education, Labor, and Pensions, Senator Lamar Alexander. This bill seeks to prohibit the USDE from enforcing or implementing any regulations regarding gainful employment, state authorization, or credit hour conversion rules until such time that the Congress has reauthorized the Higher Education Act, which is long overdue.

It is because of the above two challenges to the USDE's GE regulations that there is uncertainty about the need to comply with these current GE-2 reporting requirements. Considering the fact that reporting under the new rules is not required until July 31, 2015, it is not unreasonable to delay compliance with the reporting rules at this time pending the outcome of the two challenges to the USDE mentioned earlier. If no action is taken on these challenges by May, it still allows 2-3 months to comply with the July 31st deadline of the GE-2 reporting rules. If you wish to voluntarily report your student information now, contact us for further information.

Performance Measurements
The program performance measurements are still based on an analysis of annual debt burden to annual earnings but are more stringent under GE-2 than they were under GE-1. Under the current GE-2 rules, there are three program performance statuses; Pass – Zone – Fail.

Pass
Your program will pass the gainful employment performance standard if:

- The amount of annual student debt repayments* is no more than 8% of the average annual graduate income**, or

- The amount of annual student debt repayments* is no more than 20% of the average annual graduate discretionary income***.

* = The annual debt repayment amount is based on a 10-year amortization (15 years for bachelor's degree programs) of your median student loan debt for that program using an unsubsidized loan interest rate averaged from the previous three years for that cohort of graduates.

** = The average annual income, obtained from the Social Security Administration, of your Title IV recipient graduates who completed the program in the third and fourth award years prior to the calculation year. For example, the first calculation year will be for the 2014-2015 award year, and it will include Title IV recipients who graduated during 2011-2012 (third award year prior to the calculation year) and 2010-2011 (fourth award year prior to the calculation year).

This method is intended to allow graduates to be in the work force for a couple years, increasing their earnings by experience, before using their annual income in the formula. However, notice that the population is "Title IV recipient graduates" not all "graduates". This was a change that the USDE made with GE-2. Under GE-1, schools reported enrollment information for all graduates, and all graduates were used in the formula but the courts vacated the rules because the USDE had no legal authority to maintain a database of personal information on students who did not receive any federal aid. So in response the USDE simply redefined the students included in the population to be only Title IV recipients because that's all the law allows them to examine.

The problem with that, and a condition that I believe makes the GE-2 rules just as ambiguous if not more than GE-1, is that the success of your program as a whole, in preparing students for gainful employment is being measured by an income analysis of only a subset of your graduates rather than all of your graduates. Why it's reasonable and appropriate for your program's success to be measured by excluding your private-pay students is a question only the court can determine. And we certainly hope it agrees that the USDE's approach is arbitrary, selective, and unlawful.

*** = The annual graduate discretionary income amount is the amount by which the average annual total income exceeds 150% of the poverty level. If average annual income is $30,000, and 150% of the poverty level is $18,000, the annual discretionary income amount is $12,000.

Zone
Your program will be considered in a "Zone" status if:

- The amount of annual student debt repayments* is greater than 8%, but no more than 12%, of the average annual graduate income**, or

- The amount of annual student debt repayments* is greater than 20%, but no more than 30%, of the average annual graduate discretionary income***.

Fail
Your program will fail the gainful employment performance standard if:

- The amount of annual student debt repayments* is greater than 12% of the average annual graduate income**, or

- The amount of annual student debt repayments* is greater than 30% of the average annual graduate discretionary income***.

The following case studies will illustrate how data is used and what debt ratios would result based on assumed (but accurate) facts.

Case Study 1

- Assume that your median student debt amount is $17,375.00
- Amortized over 10 years at 6.8%, the monthly repayment amount would be $199.95
- The annual amount of debt repayment would then be $2399.40
- Assume that the average annual Title IV recipient graduate income is $30,000.
- Assume that 150% of the poverty level amount is $18,000.

Your GE debt-to-income ratio would be 7.99% ($2399.40 / $30,000). It is no more than the 8% debt-to-income ratio allowed and your program would pass this measurement for that year.

Your GE debt-to-discretionary income ratio would be 19.99% ($2399.40 / $12,000). It is no more than the 20% debt-to-discretionary income ratio allowed and your program would pass this measurement for that year.

Case Study 2

- Assume that your median student debt amount is $20,000.00
- Amortized over 10 years at 6.8%, the monthly repayment amount would be $230.16
- The annual amount of debt repayment would then be $2761.92
- Assume that the average annual Title IV recipient graduate income is $33,000.
- Assume that 150% of the poverty level amount is $18,000.

Your GE debt-to-income ratio would be 8.37% ($2761.92 / $33,000). It is greater than the 8% debt-to-income ratio allowed and your program would **not** pass this measurement for that year (but would be in a temporarily acceptable “zone” status).

Your GE debt-to-discretionary income ratio would be 18.41% ($2761.92 / $15,000). It is no more than the 20% debt-to-discretionary income ratio allowed and your program would pass this measurement for that year.

The above two case studies illustrate how the measurements are determined and whether the program meets the standard or not. In both cases, the program passes the tests because it met either one of the two measurement formulas. Your program does not have to meet both. The 20% debt-to-discretionary income measurement will be most beneficial to schools in higher wage markets as indicated in case study 2.

Loss of Eligibility
Your program will lose its eligibility for federal aid if:

- It fails both performance measurements for two out three consecutive calculation years, or
- It fails or is in the Zone for four consecutive calculation years.

We will certainly keep you informed of any action taken by the courts or Congress regarding GE-2. If no action is taken, we will be required to comply with the reporting rules by July. Some schools may have the easy ability to prepare information from their existing student records management software systems. Other schools may have more work involved. Nonetheless, it will be an administrative burden on everyone. Since the enrollment information required is only on Title IV recipients, GEMCOR will be able to generate spreadsheets containing whatever information we have in our systems. This is likely to be information limited to student demographic data available on ISIRs, and in our packaging records. We will not have any information about the amount of private education loans or post-graduate institutional financing amounts. These values as well as some additional enrollment data will have to be provided by your staff.

We also have not yet received any response from the USDE regarding record keeping issues. Generally, you are only required to maintain Title IV information for three complete award years. Since that dates back to the 2011-2012 award year, we do not know what the USDE expects regarding student information prior to that year if a school no longer has the data. We do not advise that you discard any files prior to 2011-2012 at this point, but since the GE-2 rules require data back to 2008-2009, and some of that data may have properly been destroyed, the department needs to advise us on that scenario.

So there you have it. The above is a brief, nearly 4 page summary of 215 pages of federal regulations the intent of which is to define two words, “gainful employment”. Hopefully, Congress has become as frustrated with the onslaught of regulations implemented by the current administration as all of us have. We look forward to them taking swift and effective action to reauthorize the Higher Education Act and get everyone back on track to a mission and objective that has been smothered over time…educating students and producing employable graduates with better life opportunities.

Sincerely,

Don Grybas
President
GEMCOR, Inc.