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ED to Issue First Set of Gainful Employment Rates

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The US Department of Education just announced its intent to issue the first set of official Debt to Earnings Rates ("D/E Rates") under the Gainful Employment Rule ("GE Rule") in January 2017. That timing would be consistent with prior ED announcements, although many observers have questioned how the Department can meet that target date. If the Department is successful, schools with programs that fail the D/E Rate test for one year would have to begin issuing written warnings to their students early in 2017.

The recent announcement focuses on ED's plan to issue the Draft Student Completer Lists by June 1, 2016, which is approximately six to seven months after ED's initial target date for these lists. The Completer Lists are intended to identify the applicable students who graduated from GE programs in the 2010-2012 award years (or possibly the 2008-2012 award years for programs with small cohorts) and who will be included in the first set of D/E Rates. The issuance of the Completer Lists is the first concrete step in the calculation of the D/E Rates that will be used to measure an institution's compliance with the GE Rule. Once the lists are released, institutions will have 45 days to offer corrections to their previously reported data and challenges the accuracy of the lists. If the Completer Lists are released on June 1, 2016, institutions would be required to submit their challenges by July 15, 2016.

During the 45-day Completer List challenge period, institutions should review the lists to confirm that they do not include any students that should be excluded from the D/E Rate calculations.[1] Institutions will also be able to correct the information they reported to the National Student Loan Data System ("NSLDS") in July and October 2015 regarding the tuition and debt of their applicable students. However, ED is encouraging institutions to make any necessary changes to the NSLDS data by May 13, 2016.

The new announcement also indicates that ED has been unable to prepare the new data appeals system (known as Data Challenges and Appeals Solution or "DCAS") that was intended to handle appeals related to the GE Rule. Instead, ED will be using NSLDS for such challenges, at least for the first cycle. ED will be hosting several webinars in June 2016 to familiarize institutions with the challenge process. The Department did not explain the problems with DCAS, but there are reports that ED could not achieve an acceptable level of accuracy when testing the system.

The new announcement is particularly notable because ED has reaffirmed its plan to issue the first set of official D/E Rates in January 2017.[2] This is an ambitious schedule since there are many steps, which all take time, to get from the Completer Lists to the Final D/E Rates, and the Department's problems with the Completer Lists and DCAS could indicate challenges in organizing all of the data that flows into the D/E Rates. For the Department to reach its January 2017 goal, at a minimum it would need to accomplish each of these basic steps in the next seven months:

- Issue Completer Lists;
- Allow 45 days for schools to file challenges to such lists;
- Review and process the challenges to finalize the Completer Lists;
- Identify the amount of debt (including Title IV federal loans, private loans and institutional debt) for each graduate on the Completer Lists from the 2010-2012 (or 2008-2012) cohorts;
- Identify the amount of earnings for each graduate for the relevant calendar year, as derived from the Social Security Administration;
- Calculate the mean and median amount of debt and earnings for the applicable cohorts;
- Calculate an alternative set of "transitional rates," using the debt for students who graduated in the 2014-15 award year, for any programs with Draft D/E Rates that are failing or fall in a mid-level "zone" of compliance;
- Issue Draft D/E Rates, to include transitional rates for applicable programs;
- Allow 45 days for schools to file challenges to the Draft D/E Rates;[3] and
- Review and process the challenges to issue Final D/E Rates.[4]

This would appear to be a highly ambitious schedule that involves processing massive amounts of data. During the rulemaking that led to the GE Rule, ED stated that it expected the first set of rates to cover approximately six million students enrolled in 9,000 programs at 2,500 schools. Despite the sheer size of this undertaking and the many unknowns as ED goes through the process for the first time, the Department has made clear that it is trying to achieve this schedule so that institutions should be prepared to deal with the consequences in January 2017.

Please let us know if you need more information on the timelines and procedures for Completer List challenges or other upcoming steps in the system to calculate D/E Rates.[5]

Notes

1. Students are excluded from the first D/E Rate calculations if their Title IV federal loans were in military deferment in 2014, if their Title IV federal loans are discharged due to disability, if they were enrolled in another educational program in 2014, if they completed a higher credentialed program at their institution, or if they died (as well as other reasons such as being counted as a graduate in the wrong year).
2. Perhaps it goes without saying that this will be the final month of the Obama Administration, and ED may be feeling pressure to get this done before a new president takes office.
3. Recall that at this stage schools can only challenge the debt information.
4. Recall that there is one more appeal opportunity after the Final D/E Rates are published, when schools have a limited right to challenge the earnings information.
5. See our prior client advisories on the GE Rule and other regulatory issues.

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