FEDERAL REGULATORY AND LEGISLATIVE OVERVIEW

- Gainful Employment Final Regulations
- Election Results and Implications
- Funding
- Veterans In-State Tuition Legislation
Statutory Basis

- In statute since original 1965 HEA—predates for-profit college Title IV participation
- Providing GE is the primary criterion by which for-profit IHEs and postsecondary vocational institutions become Title IV eligible (Sec. 102 of HEA, institutional eligibility)

GE Regulations History

- July, 2011 – Only reporting and disclosure requirements from first GE rule take effect; federal court strikes down repayment and debt-to-earnings metrics
- Fall-Winter 2013 – GE Negotiated rulemaking
- 2014 – March NPRM has programmatic CDR and debt-to-earnings metrics; final regulations have only debt-to-earnings metrics
All non-degree Title IV-eligible programs at public and private nonprofit colleges (i.e., certificates) are covered – community colleges bear brunt in traditional higher education.

All programs at for-profit colleges are covered, except certain liberal arts offerings.

Only Title IV recipients are included in GE metrics and reporting and disclosure requirements (result of court ruling).

Regulations take effect July 1, 2015.
Programs’ Title IV Eligibility Judged Only By:

- **Debt-to-Earnings**
  \[
  \frac{\text{Annual Loan Payment}}{\text{Annual Earnings}} \quad \& \quad \frac{\text{Annual Loan Payment}}{\text{Discretionary Earnings}}
  \]

- **Program Cohort Default Rates (pCDR)**
  \[
  \frac{\text{Borrowers in Default}}{\text{Borrowers in Repayment}}
  \]

- **Debt-to-Earnings - 30 or More Title IV Completers**
  \[
  \frac{\text{Annual Loan Payment}}{\text{Annual Earnings}} > 12\% \quad \& \quad \frac{\text{Annual Loan Payment}}{\text{Discretionary Earnings}} > 30\%
  \]
# GE—TITLE IV ELIGIBILITY

## Accountability

**Certifications:**
Institutions must certify that each of their gainful employment programs meet state and federal licensure, certification, and accreditation requirements.

**Metric:**
To maintain title IV eligibility, gainful employment programs will be required to meet minimum standards for the debt vs. earnings of their graduates.

<table>
<thead>
<tr>
<th>Pass</th>
<th>Programs whose graduates have annual loan payments less than 8% of total earnings OR less than 20% of discretionary earnings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone</td>
<td>Programs whose graduates have annual loan payments between 8% and 12% of total earnings OR between 20% and 30% of discretionary earnings.</td>
</tr>
<tr>
<td>Fail</td>
<td>Programs whose graduates have annual loan payments greater than 12% of total earnings AND greater than 30% of discretionary earnings.</td>
</tr>
<tr>
<td>Ineligible</td>
<td>Programs that fail in 2 out of any 3 consecutive years OR are in the zone for 4 consecutive years.</td>
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</tbody>
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## Transparency

**Disclosures:**
Institutions will be required to make public disclosures regarding the performance and outcomes of their gainful employment programs. The disclosures will include information such as costs, earnings, debt and completion rates.
Regulation Preamble:

“We believe that the accountability framework strikes a reasonable balance between holding institutions accountable for poor student outcomes and providing institutions the opportunity to improve programs that, if approved, may offer substantial benefits to students and the public.”
Commenters contended that the regulations would harm community colleges by creating heavy regulatory and financial burdens and stifle innovation and employment solutions for both students and businesses.

“We have balanced our interest in minimizing burden on institutions with our interest in achieving our dual objectives of accountability and transparency. The reporting and disclosure requirements are integral to achieving those goals.”

“Any burden on institutions to meet the reporting requirements is outweighed by the benefits of the accountability and transparency frameworks of the regulations to students, prospective students, and their families.”
PROS AND CONS

What is there to like about the final GE rule?
- One metric instead of two; programmatic CDR eliminated.
- Virtually no community college programs failing the debt-to-earnings metrics.
- Some new and helpful earnings data may become available.

What is there to dislike about the final GE rule?
- All GE programs – regardless of number of students, completers, borrowers, Title IV recipients – being subject to reporting requirements.
- The burden posed by reporting requirements.
- Students being defined as Title IV recipients – only 36% of community college students in GE programs fall in this category.
- Relevance to prospective students of disclosures limited to Title IV recipients and certain size thresholds and other criteria.
GE—DEBT-TO-EARNINGS RATES

- Graduates Only

- Minimum n-size of 30 (combine up to 4 years for small programs)

- Earnings
  - Higher of mean or median

- Debt
  - Median only
  - Include private, federal, and Perkins
  - Capped at tuition, fees, books, and supplies
  - Use average of Unsubsidized Stafford rates over last 3 years for undergraduate, post-baccalaureate and graduate certificate programs, associate and master degree programs (New)
  - Use average of Unsubsidized Stafford rates over last 6 years for bachelor degree and doctoral degree programs
  - Assume 10 year repayment for all certificates and associate degree programs, 15 for bachelor and master degree programs, and 20 for doctorates and first professional programs
ED Calculations:

Available data indicate the vast majority of gainful employment programs captured by the rule – including those at for-profit institutions – will pass the accountability metric, but about 1,400 would not. The Department estimates that about 840,000 students are currently enrolled in programs that would not pass – and of those students, 99 percent of them are in programs at for-profit institutions. These programs are likely leaving students with debt they cannot afford to repay.
1. Primary occupation by name and SOC code
2. As calculated by ED:
   - Program completion rates for full-time and less-than-full-time students
   - Withdrawal rates of full-time and less-than-full-time students
3. Length of program in calendar time
4. Number of clock or credit hours or equivalent
5. Total number of individuals enrolled in program
6. “Loan repayment rate” (calculated by ED) for
   - All students who enrolled in program
   - Students who completed program
   - Students who withdrew from program
7. Total cost of tuition and fees, total cost of books, supplies and equipment
8. Placement rate for program, if required by accrediting agency or State
9. Of individuals enrolled, percent who received title IV loans or private loans
10. As calculated by ED – median loan debt
   ▪ Students who completed program
   ▪ Students who withdrew from program
   ▪ All students

11. As provided by ED – mean or median earnings
   ▪ Students who completed program during cohort period used for D/E rate
   ▪ Students who withdrew at the end of the cohort period used for D/E rate
   ▪ All students described above

12. As calculated by ED – program cohort default rate

13. As calculated by ED – recent annual earnings rate

14. Whether the program does or does not satisfy
   ▪ Applicable educational prerequisites for professional licensure or certification in each State within MSA
   ▪ Applicable educational prerequisites for professional licensure or certification in any other State
   ▪ For any other states not described above

15. Whether program is programmatically accredited and accrediting agency

16. A link to the ED’s College Navigator website or its successor

STUDENT MUST ACKNOWLEDGE RECEIPT IN ADVANCE OF REGISTERING
Focus on Programs with High Indebtedness (9% of GE Program CC Students Borrow)

Reduce the Burden on Smaller Programs (Majority of CC Offerings) by Not Requiring Initial Reporting

- “We do not agree that a program, foreign or domestic, should be exempt from the reporting requirements because it has a low borrowing rate, low institutional cohort default rate, or low number of students who receive Title IV, HEA program funds. The information that institutions must report is necessary to calculate the D/E rates and to calculate or determine many of the disclosure items as provided in sec. 668.413.”
- “Exempting some institutions from the reporting requirements, whether partially or fully, would undermine the effectiveness of both the accountability and transparency frameworks of the regulations because the Department would be unable to assess the outcomes of many programs.”
- “In addition, students would not be able to access relevant information about these programs and compare outcomes across multiple metrics.”
- “Further, a policy that allowed exemptions from reporting, accountability, and transparency, regardless of the basis, in some years but not others would be impossible to implement. Without consistent annual reporting, the Department would, in many cases, be unable to calculate the D/E rates or disclosures in non-exempted years as those calculations require data from prior years when the exemption may have applied.”
Programs with a Median Loan Debt of $0 Should Automatically Pass Debt-to-Earnings & pCDR Metrics (pCDR Removed from Final Rule)

- “We do not agree that a borrowing rate below 50 percent necessarily indicates that a program is low cost or low risk. A program with a borrowing rate below 50 percent, particularly with a large program, could still have a substantial number of students with Title IV loans and, additionally, those students could have a substantial amount of debt or insufficient earnings to pay their debt.”

- “We have revised the regulations to remove the provisions in sec. 668.406 that would have permitted institutions to submit a mitigating circumstances showing that for a GE program that is not passing the D/E rates measure.”
“Some commenters requested clarification and additional information about how institutions should report and track students’ enrollment in GE programs. They noted that students often switch programs mid-course or enroll in multiple programs at once, particularly at community colleges.”

“We intend to revise the GE Operations Manual and the NSLDS GE User Guide to reflect the regulations. In updating these resources, we will provide additional guidance on tracking student enrollment. Additionally, we will provide ongoing technical support to institutions regarding compliance with the reporting requirements.”
The current sub-regulatory guidance prevents disclosure of certain sensitive information for GE programs with 10 or less completers. This threshold should be promulgated as part of the formal GE regulations.

- “With respect to the privacy concerns raised by the commenters, for the 2011 Final Rules, the Department provided sub-regulatory guidance to institutions instructing them not to disclose median loan debt, the on-time completion rate, or the placement rate (unless the institution’s State or accrediting agency methodology requires otherwise) for a program if fewer than 10 students completed the program in the most recently completed award year. This guidance remains in effect. Further, we are revising §§ 668.412 to reflect this guidance.”

- “We have revised §§ 668.412 to specify that an institution may not include on the disclosure template information about completion or withdrawal rates, the number of individuals enrolled in the program during the most recently completed award year, loan repayment rates, placement rates, the number of individuals enrolled in the program who received title IV loans or private loans for enrollment in the program, median loan debt, mean or median earnings, program cohort default rates, or the program’s most recent D/E rates if that information is based on fewer than 10 students.”
Lawsuit From For-Profit Industry Seems Likely

Possible 114th Congress Scenarios

- Congress prohibits ED from using funds to implement GE (annual appropriations language)

- Congress writes into HEA changes that either eliminate or modify GE language
  - One option is to create parity with non-GE programs (statutory changes could be effected through appropriations language)

- Obama administration will oppose eradicating GE rule but could get boxed into corner if language is included in “must pass” legislation, e.g., appropriations bill
Gains of ~17 Seats Gives G.O.P. its Largest Majority Since Herbert Hoover

John Kline Expected to Remain Chair of House Education and Workforce Committee
- Tom Petri (WI) and Buck McKeon (CA), long-time committee Republicans, are retiring.

Democratic Brain Drain from the Committee
- Miller (CA)(Ranking Member)
- Tierney (MA—primary loss)
- Holt (NJ)
- Bishop (NY—general election loss)
- McCarthy (NY)

Paul Ryan (R-OH) likely incoming Ways and Means chairman
Likely 54-46 Republican Majority
- Net gain of 9 seats for Republicans
- Not quite finalized – VA, AK, LA Runoff
- Near reversal of Democrats’ current 55-45 majority

New Leadership in Key Posts
- Mitch McConnell – Majority Leader
- HELP Committee likely to be chaired by Sen. Lamar Alexander (TN)
  - Ranking Minority Member – Patty Murray (WA)

Majority not filibuster-proof.
Continuing Resolution (CR) Runs through December 11

Unclear Whether “Lame Duck” Congress will Pass a Year-Long “Omnibus” Bill or Longer-Term CR
- Largely a Republican strategic decision
- Republican leaders have reportedly given go-ahead to staff to pursue omnibus bill
- Omnibus bill likely needed for some AACC priorities – ATB restoration, increase in adult education funding, Title III/V modifications

Expect Serious Efforts in 2015 to Reduce Federal Spending in Areas of Interest to Community Colleges
- Deals to avoid impact of sequestration less likely
IN-STATE TUITION FOR VETERANS

- Provision in Larger Veterans Bill Mandates In-State Tuition for Certain Veterans
  - Takes effect July 1, 2015
  - Covers veterans discharged within three years
  - Applies to qualifying veterans’ dependents
  - Veterans and/or dependents must live in the institution’s state
  - Compliance requires legislative action in many states
  - No states currently have laws or policies in place that fully comply with law (mostly because of dependents)
  - Other provisions allow institutions to impose other requirements – unclear as to what
  - VA to issue guidance
Thank You!