

August 13, 2018

U.S. Department of Education Proposes to Rescind Gainful Employment Regulations

On August 10, 2018, the U.S. Department of Education (the “Department”) released a Notice of Proposed Rulemaking (the “Proposed Rule”) which would rescind its Gainful Employment (“GE”) regulations and related requirements. The Proposed Rule is available in pre-publication form [here](#) and is scheduled to be published in the Federal Register on August 14, 2018. Public comments to the Proposed Rule are due within 30 days of the Federal Register publication date.

Under Title IV of the Higher Education Act of 1965, as amended (“Title IV”), all postsecondary educational programs at for-profit institutions, and all non-degree programs at public and private nonprofit institutions must “prepare students for gainful employment in a recognized occupation” in order to participate in the federal student financial aid programs. In 2014, the Department promulgated regulations requiring that GE programs satisfy specific debt-to-earnings metrics in order to retain their Title IV eligibility. The Department’s GE regulations further include extensive reporting and disclosure requirements concerning GE programs.

Between December 2017 and March 2018, the Department conducted a negotiated rulemaking process to revise the GE regulations promulgated in 2014. At its final meeting, the negotiated rulemaking committee failed to reach consensus on the Department’s proposed regulatory changes; thus, the Department is permitted to develop and issue its own proposed regulations for public comment. As noted above, the Proposed Rule released on August 10, 2018 would rescind the Department’s current GE regulations. The Department specifically cites the following as among the reasons underlying its proposed rescission:

- Subsequent research findings that debt-to-earnings metrics are inappropriate for determining an institution’s continuing eligibility for Title IV participation;
- Inconsistencies in the way that job placement rates are determined and reported by institutions under the GE program disclosure requirements;

- The use of a standardized GE program disclosure template and the physical distribution of disclosures to students being more burdensome than the Department originally predicted; and
- Data revealing disparate impacts of the current GE regulation on some academic programs.

The specific effects of the Proposed Rule would be to remove from the Department’s regulations the debt-to-earnings metric calculations for GE programs, and sanctions and alternate earnings appeals related to those calculations, as well as the reporting, disclosure, and certification requirements applicable to GE programs.

The Department also seeks comment on whether it should require all institutions participating in the federal student financial aid programs to disclose, on the program pages of their websites and in their college catalogues that, if applicable, the program meets the requirements for licensure in the state in which the institution is located and whether it meets the requirements in any other states for which the institution has determined whether the program enables graduates to become licensed or work in their field. Similarly, the Department seeks comment on whether all such institutions should be required to disclose net price, completion rates, withdrawal rates, program size, and/or any other items currently required under the GE disclosure regulations.

Finally, the Proposed Rule also requests comment on whether all institutions should be required to provide web links from each of their program webpages to the [College Scorecard](#) website or its successor site, or to any other public information tools managed by the Department.

We will continue to monitor these and other regulatory developments of importance to postsecondary educational institutions and others in the broader education industry. In the meantime, please do not hesitate to contact us regarding the Proposed Rule discussed in this alert, or any other matter.

Education Law Team

Primary Contacts



John R. Przepyszny
Partner
Washington, D.C.
(202) 842-8858
john.przepyszny@dbr.com



Jonathan D. Tarnow
Partner
Washington, D.C.
(202) 354-1357
jonathan.tarnow@dbr.com