



LoanNotes

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Compliance Spotlight: Gainful Employment- Debt Measures Final Rules (Part 2)

On June 13, 2011, the U.S. Department of Education (ED) published final rules entitled Gainful Employment-Debt Measures in the Federal Register (Vol. 76, No. 113). These final rules will become effective July 1, 2012. This is part two in a series of three articles discussing the Debt Measures regulations.

Debt Measures refers collectively to the calculations, the debt-to-earnings ratios and loan repayment rate, developed by ED as a means to assess whether a program provides training that leads to gainful employment in a recognized occupation.

DEBT-TO-EARNINGS RATIOS

On an annual basis, ED will calculate the debt-to-earnings ratios for each eligible gainful employment program using the earnings rate and discretionary income rate calculations.

Earnings Rate

The earnings rate includes only students who graduated from a program and excludes students who dropped out. The calculation includes all loan debt incurred by the student, including all federal student loans, private education loans, and institutional payment plans.

The earnings rate is determined using the following formula:

$$\text{Earnings rate} = \text{Annual loan payment} / \text{Mean or Median Annual Earnings}$$

An educational program with an earnings rate that is less than or equal to 12% is considered to satisfy the requirements of a program that leads to gainful employment in a recognized occupation.

Annual Loan Payment

The annual loan payment is determined by:

- 1 Calculating the median loan debt of a program by determining the lesser of:
 - a. the loan debt incurred by each student, or
 - b. the total amount of tuition and fees charged to the student for enrollment in all programs at the school for each student who completed the program during the 2YP, the 2YP-R, the 4YP, or the 4YP-R, then

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- 2 Using the median loan debt amount and the current annual interest rate on Federal Direct Unsubsidized Stafford loans (currently 6.8%) to calculate the annual loan payment.

The loan repayment term is based on degree programs as follows:

- A 10-year repayment schedule for a program that leads to a certificate (undergraduate or post-baccalaureate) or an associate's degree;
- A 15-year repayment schedule for a program that leads to a bachelor's degree or master's degree; or
- A 20-year repayment schedule for a program that leads to a doctoral or first professional degree.

Mean and Median Annual Earnings

ED will obtain from the Social Security Administration (SSA), or another federal agency, the most currently available mean and median annual earnings of the students who completed the program during the two-or four year period, applicable (2YP, 2YP-R, 4-YP, or 4-YR-R). Earnings data may also be based on state data or survey data.

ED will use the higher of the mean or median annual earnings. (If SSA does not have data available for a number of borrowers, ED will exclude the same number of highest earning borrower figures before calculating the median debt.)

Discretionary Income Rate

The discretionary income rate is similar to the earnings rate; however, the denominator in this calculation uses only discretionary income and not overall annual earnings to determine the student's ability to successfully repay loan debt incurred as a result of the educational program.

Discretionary income is the difference between the mean or median annual earnings and 150% of the current Poverty Guideline for a single person in the continental U.S. The poverty guidelines are published annually on the U.S. Department of Health and Human Services Web site.

Discretionary Income Rate = Annual Loan Payment/(Mean or Median Annual Earnings - (1.5 × Poverty Guideline))

An educational program with a discretionary income rate of 30% or less is considered to have met the minimum requirements to provide training that leads to gainful employment in a recognized occupation.

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U.S. District Court Vacates 34 CFR 600.9(c) of State Authorization

On July 12, 2011, U.S. District Judge Rosemary M. Collyer issued a ruling in the APSCU lawsuit against the U.S. Department of Education's program integrity regulations regarding state authorization, incentive compensation, and substantial misrepresentation. The court ruled against the state authorization rules on the basis that the U.S. Department of Education violated the Administrative Procedure Act by failing to provide adequate notice and opportunity for the public to comment on the state authorization rule. The court did, however, affirm the incentive compensation and substantial misrepresentation rules.



The court's ruling against state authorization vacates only 34 CFR 600.9(c), which reads:

If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.



Loan Repayment Rate (LRR)

The loan repayment rate determines the rate at which students in a particular program are repaying their student loans. The LRR takes into account federal student loans for both students who graduated and those that dropped out of school without completing the program.

However, the following types of loans are excluded from numerator and denominator of the loan repayment calculation:

- Loans in an in-school deferment status during any part of the fiscal year (FY);
- Loans in a military-related deferment status during any part of the FY;
- Loans discharged due to borrower death; and
- Loans discharged due to Total and Permanent Disability or loans assigned or transferred to ED for TPD discharge consideration

ED will use the following calculation to determine, for each recently completed fiscal year, a program's loan repayment rate:

$$\frac{\text{OOPB of LPF} + \text{OOPB of PML}}{\text{OOPB}}$$

Programs with a repayment rate of at least 35% are considered to successfully provide training that leads to gainful employment in a recognized occupation.

Original Outstanding Principal Balance (OOPB)

The OOPB is the outstanding balance on a FFELP or Direct loan (including loans other than parent PLUS and TEACH/ unsubsidized loans) including capitalized interest, owed by students in the program on the date the loan first entered repayment during the 2YP, 2YP-A, 2YP-R, 4YP, or 4YP-R.

Only the amount included in a Consolidation loan that is attributable to the borrower's attendance in the program will be considered in the calculation.

Loans Paid in Full (LPF)

Loans paid in full (LPF) consists of loans that are paid in full and consolidation loans (both the underlying loans and the consolidation loan) that have never defaulted. Underlying loans paid in full as a result of consolidation are not considered paid in full until the consolidation loan is paid in full.

Payments-Made Loans (PML)

Payments-made loans are loans that have never defaulted, including consolidation loans (and the underlying loans for the consolidation loan), and one of the below applies:

- The borrower has made payments during the fiscal year (FY) to reduce the outstanding principal balance, including any unpaid accrued interest that has not been capitalized, from the beginning of the FY.
- The borrower is enrolled in a masters, doctoral, first professional degree or post-baccalaureate certificate program and is considered to be successfully repaying his consolidation loan if the outstanding balance, including any unpaid accrued interest that has not been capitalized, at the end of the most recently completed FY is less than or equal to the balance of the consolidation loan at the beginning of that FY.
- The borrower is in the process of qualifying for Public Service Loan Forgiveness and he has provided ED with documentation showing he is currently employed in a qualified position and is making qualifying payments on his loans during the most recently completed FY.

Note: Until this data is available, ED will add 3% of the OOPB in the denominator to the numerator. The 3% limit may be adjusted by ED through notice published in the Federal Register.

Expanding the Cohort

All of the debt measure calculations generally rely on data from the third and fourth federal fiscal years prior to the most recently completed fiscal year. However, ED will expand the cohort for programs that have 30 or fewer borrowers to also include data from the fifth and sixth fiscal years. If the cohort still has 30 or less borrowers, ED will treat the program as though it passed the debt measures.

While ED recognizes that this approach excludes a large number of programs which would otherwise be subject to the gainful employment rule, these programs represent a small percentage of total borrowers enrolled in gainful employment programs.

Be sure to check out the September issue of Loan Notes for part three of our Gainful Employment Debt Measures discussion.



GAINFUL EMPLOYMENT ELECTRONIC ANNOUNCEMENT #14- NSLDS GAINFUL EMPLOYMENT SUBMITTAL TEMPLATE

On July 28, 2011, the U.S. Department of Education (ED) released [Gainful Employment Electronic Announcement #14](#) to announce the availability of the Gainful Employment Submittal Template on the National Student Loan Data System (NSLDS) Professional Access Web site on September 26, 2011.

While the capability to upload the template to NSLDS will not be available for several more weeks, in the meantime schools can begin preparing spreadsheets to be uploaded in September using NSLDS Professional Access. The template is designed to be used with the Microsoft Office Excel spreadsheet application.

After the information is added to the template spreadsheet, schools will upload the information to the NSLDS Professional Access site. Schools can use the template to submit up to 50 records/rows of gainful employment data at a time.

The NSLDS Gainful Employment Submittal Template, in Excel 97-2003 Workbook format, cover letter, and download instructions are available on the Federal Student Aid Download Web site, under the [Software and Associated Documents link](#).

Schools can refer to the [NSLDS Gainful Employment User Guide](#) for an overview of NSLDS gainful employment functionality and important reminders about gainful employment reporting requirements.

Contact Information

- Questions about downloading or using the NSLDS Gainful Employment Submittal Template should be directed to nsldsge@ed.gov.
- Questions about the gainful employment regulations should be directed to ge-questions@ed.gov.

GAINFUL EMPLOYMENT ELECTRONIC ANNOUNCEMENT #15- GAINFUL EMPLOYMENT REPORTING DATES

2010-2011 Award Year

On August 2, 2011, the U.S. Department of Education (ED) released [Gainful Employment Electronic Announcement #15](#) to remind schools that November 15, 2011, is the deadline to report gainful employment program information for students enrolled in the 2010-2011 award year.

2006-2007 through 2009-2010 Award Years

While the regulations published in the Federal Register on October 29, 2010 provide a deadline of October 1, 2011 to report gainful employment (GE) program information for students enrolled in the 2006-2007 through 2009-2010 award years, ED stated in the Federal Register published on August 2, 2011, that it would accept information for these award years through November 15, 2011.

GAINFUL EMPLOYMENT ELECTRONIC ANNOUNCEMENT #16- UPDATED PROCEDURES FOR REPORTING NEW EDUCATIONAL PROGRAMS THAT PREPARE STUDENTS FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION

On August 2, 2011, the U.S. Department of Education (ED) released [Gainful Employment Electronic Announcement #16](#) to announce an update to the [Procedures that school use to notify ED of new programs using Federal Student Aid's \(FSA's\) Application for Approval to Participate in the Federal Student Financial Aid Programs \(E-App\)](#). The procedures, originally included in [Gainful Employment Electronic Announcement #5](#), have been revised to include information on the E-App system updated, which is effective July 31, 2011. Schools should use the updated procedures for notifying ED of new GE programs.

Note: [The Notice Format for Intent to Offer an Educational Program](#), also included in [Electronic Announcement #5](#), has not changed.

Schools are encouraged to contact the [School Participation Team](#) in your state with questions about this information.

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Gainful Employment Corner

GAINFUL EMPLOYMENT ELECTRONIC ANNOUNCEMENT # 17- UPDATED NSLDS GAINFUL EMPLOYMENT USER GUIDE (AUGUST 4, 2011)

On August 4, 2011, ED published [Electronic Announcement # 17](#) to announce the availability of the updated [National Student Loan Data System \(NSLDS\) Gainful Employment User Guide](#) available on the Information for Financial Aid Professionals (IFAP) Web site.

Online Reporting of Gainful Employment Information

Chapter 3 of the user guide now includes step by step instructions for system set up, navigating the Web site, and submitting gainful employment information through the NSLDS Professional Access online reporting option. The reporting option will be available September 26, 2011.

Student Aid Internet Gateway (SAIG) Mailbox

The updated user guide also includes information on how to set up a SAIG mailbox to be used for GE batch reporting. Information on the set-up functionality can be found on the NSLDS Professional Access Web site, under the Enroll tab.

NSLDS Gainful Employment Submittal Template

As reported in [Gainful Employment Electronic Announcement # 14](#), information is available in the updated guide on how to upload and submit gainful employment data to the NSLDS using the Gainful Employment Submittal Template.

GAINFUL EMPLOYMENT ELECTRONIC ANNOUNCEMENT #18- SUBMITTING AN EXPLANATION OF MISSING/ INCOMPLETE GAINFUL EMPLOYMENT DATA

On August 9, 2011, ED published [Electronic Announcement #18](#) to provide schools with more information on how to submit an explanation if an unusual situation occurred that prevents a school from submitting the required gainful employment GE information for a student. Schools are required to submit explanations of missing or incomplete GE information to ED no later than October 1, 2011.

The Electronic Announcement provides guidance to schools for instances where they cannot report the required information for a student due to an unusual circumstance, such as a natural disaster. For your convenience, ED has provided in the DCL a list of common questions along with answers for the reporting of missing or incomplete information. Please refer to the Electronic Announcement to review the entire list of questions and corresponding guidance provided by ED.

2011-2012 Federal School Code List of Participating Schools

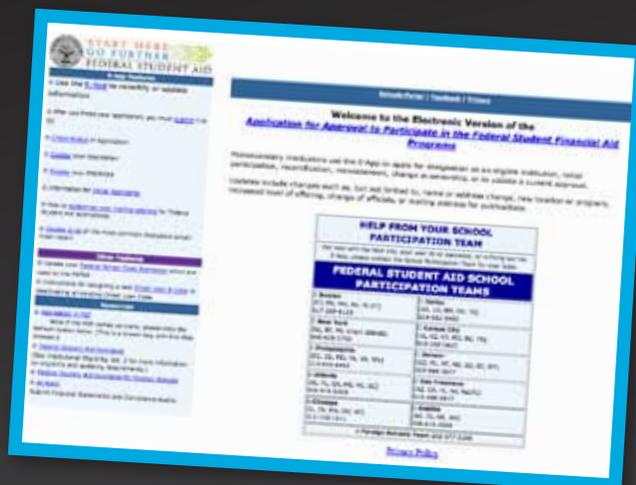
On August 1, 2011, the U.S. Department of Education (ED) announced the availability of the updated 2011-2012 Federal School Code (FSC) List of Participating Schools on the Information for Financial Aid Professionals (IFAP) Web site.

The list contains the unique id numbers assigned by ED to schools participating in the Title IV federal student aid programs. The list is only available electronically in a PDF or Microsoft Excel (XLS) file. ED will not distribute the list in hard-copy format.

UPDATES TO FSC INFORMATION

To report a change in your school's FSC information, please go to the [Electronic Application for Approval to Participate in the Federal Student Aid Programs \(E-App\)](#) Web site. Click on the "Update your Federal School Code Addresses which are used by FAFSA" link on the left side of the page, located under the "Other Features" option.

Schools can only have one city and state for each FSC. Changes to the FSC file do not update a school's name or address information with other ED databases. To update your school's official name or address, submit an "Updated" application through the E-App Web site.



July and August Dear Colleague Letters



IMPLEMENTATION OF PROGRAM INTEGRITY REGULATIONS

On July 20, 2011, ED published Dear Colleague Letter: GEN-11-14, "[Implementation of Program Integrity Regulations](#)" to provide additional guidance on the Return of Title IV Funds regulation published in the Federal Register final regulations on program integrity ([75 FR 66832](#)) on October 29, 2010. This DCL does not make any changes to the final regulations, rather it provides additional guidance to assist schools in understanding the changes made to the regulations.

The Return of Title IV Funds provides provisions for the treatment of Title IV, HEA grant and loan funds when a student withdraws from a school. The Return of Title IV Funds regulations (34 CFR §668.22) were amended in the following areas:

- The treatment of Title IV, HEA program funds when a student withdraws from a program offered in modules; and
- The definition of a school that is required to take attendance for Title IV, HEA program purposes.

ED has provided the following additional materials:

[Implementation of Program Integrity Regulations](#) • [Guidance of Return of Title IV Funds Enclosures](#)



>> DEPENDENCY OVERRIDES

On July 26, 2011, ED published Dear Colleague Letter: GEN-11-15, "[Dependency Overrides](#)" to review the conditions and documentation required to support a dependency override.

Section 480(d) of the Higher Education Act (HEA) outlines eight criteria under which an individual may be considered as independent for purposes of receiving Title IV, HEA program funds. A student may be considered independent and will not be required to report financial and demographic information for his or her parents if the student meets one of the eight criteria.

DEPENDENCY OVERRIDES

Under Section 480(d)(1)(I) of the HEA, financial aid administrators may be given the authority in unusual situations to determine that a student is independent. Dependency overrides must be made on a student-by-student basis, the same as the authority to make adjustments to the cost of attendance and the values of the data used to calculate the student or parent contribution, and the basis for the decision must be well documented in the student's file.

Schools are responsible for reaffirming each year that the student's unusual circumstance still exists. A school may rely on a dependency override performed by another school for the same award year.

DOCUMENTATION

The dependency override documentation is a critical component to the dependency override process. The documentation must include the reason for the decision and must support that decision. The documentation should originate from a third party who has knowledge of the student's circumstances. The third party can include: teacher, counselor, clergy, community groups, government agencies, medical personnel, courts or prison administrators.

In rare cases where the financial aid administrator is not able to obtain third party documentation, a signed statement from the student, or the student and his or her relatives or friends, may be accepted. Note: This form of documentation is only to be accepted in extremely rare circumstances.

SITUATIONS THAT WARRANT A DEPENDENCY OVERRIDE

A dependency override may be done in one of the following situations:

- The student has been removed from the parent's home due to an abusive situation that threatens the student's health and/or safety; or
- The student has been abandoned by the parent(s); or
- The student cannot locate his or her parent(s).

Please review the DCL for several examples of situations that might be unusual enough to permit a dependency override.

CONDITIONS THAT DO NOT QUALIFY AS UNUSUAL

Individually or in combination, the following conditions do not meet the criteria to warrant a dependency override:

- The parent(s) refuses to contribute or is unwilling to provide information; or
- The parent(s) does not claim the student as a dependent on their income tax return; or
- The parent(s) lives outside the United States; or
- A student who demonstrates total self-sufficiency.

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July and August Colleague Letters



EDEXPRESS ONLINE TRAINING OFFERED

On August 1, 2011, ED published Dear Colleague Letter: ANN-11-16, "[EDExpress Online Training- Release of Direct Loan Tools Online Training Module](#)" to announce the release of online training aimed at providing schools with information about using Direct Loan Tools software for cash management, reconciliation, and software rebuilds.

School interested in participating in the training should visit the Information for [Financial Aid Professionals \(IFAP\)](#) Web site.

INSTRUCTOR-LED TRAINING OFFERED FOR FUNDAMENTALS OF TITLE IV ADMINISTRATION

On August 1, 2011, Ed published Dear Colleague Letter: ANN-11-17, "[Training Workshops- Fundamentals of Title IV Administration](#)" to announce that instructor-led Fundamentals of Title IV Administration training will be available October 2011 through September 2012.

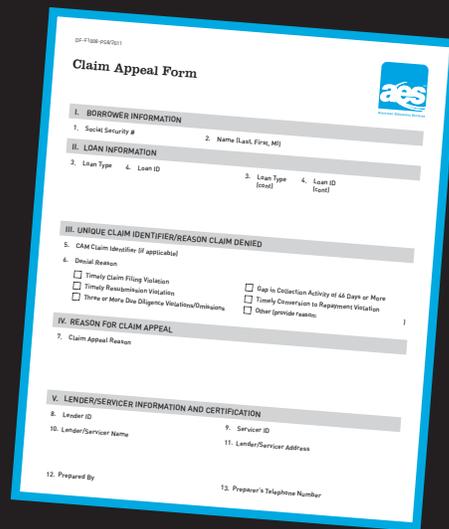
Each workshop is four and one half days in length and will be held at one of ED's regional training facilities. Interested Title IV administrations should read the DCL in its entirety for information on dates and locations, as well as a list of topics that will be addressed in the training.

Spotlight Coming Next Month

Program Integrity:
Gainful Employment -
Debt Measures (Part 3)

Submitting Claim Appeals to AES

Effective for appeals submitted on or after October 1, 2011, lenders and servicers who wish to appeal the denial of a claim payment that resulted in a loss of guarantee on a loan must submit the "Claim Appeal Form". This form must be submitted with the Claim Form and documentation supporting the reason for the appeal. Claim appeals submitted on or after October 1, 2011 that do not include the "Claim Appeal Form" will not be accepted.



The "[Claim Appeal Form](#)" is available on the AES website at aesSuccess.org by selecting "Solutions for Lenders" in the left-hand column of the home page, clicking "Lender Library" in the left-hand column, and then selecting the "Claim Appeal Form". After selecting the form, the user may either enter information directly on the PDF version of the form and print the form for submission or the user may print the form and then complete with the required information for submission.

If there are questions pertaining to this form or the claim appeal process, please contact the Loan Assets Management Department at **800.892.7576**.

Two Factor Authentication Required for All Foreign Schools Beginning October 1, 2011

On August 3, 2011, the U.S. Department of Education published [Foreign School Update ID: FS-2011-04](#) to notify the foreign school population that effective October 1, 2011, all foreign schools will be required to complete a security process known as two factor authentication (TFA) when accessing the Federal Student Aid (FSA) systems via the Internet.

Effective October 1, 2011, the following information must be provided by a foreign school user attempting to access FSA systems:

- The individual's User ID and Password, and
- A token generated one-time password (OTP).

Following the foreign school implementation, FSA will implement the same TFA for authorized users at participating domestic schools.

TOKEN DEVICES

A token is a small, handheld device with a "power" button and a small display screen. Foreign school users wishing to access any FSA site, must power on the TSA token device at each log in to receive a brand new token generated one-time password. The one-time password will display for 30 seconds. FSA will distribute the token devices to each foreign school's Primary Destination Point Administrator (PDPA) or Security Administrator. The PDPA or Security Administrator will distribute the token devices to only authorized individuals at the schools. Authorized individuals must register their token device with each FSA system he or she has access to. ED anticipates that all foreign schools will receive their token devices no later than September 1, 2011.

Please refer to the announcement to read the overview of the TFA implementation for foreign schools and to review the TFA implementation and system rollout schedule.

CONTACT INFORMATION

Schools with questions about TFA, may submit their inquiry to TFA_Communications@ed.gov.

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The Pennsylvania Higher Education Assistance Agency (PHEAA) conducts its student loan servicing activities nationally as AES and FedLoan Servicing.



American Education Services

CONTACT

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& OPERATION/LOAN GUARANTY
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