



GE COURT DECISION

At the end of June 2012, Judge Rudolph Contreras, U.S. District Court in DC, struck down key elements of the gainful employment rule while upholding the U.S. Department of Education's authority to regulate in this area. The Association of Private Sector Colleges and Universities sued the U.S. Department of Education in July 2011, arguing the gainful employment, program approval, and reporting and disclosure regulations were unlawful, arbitrary and capricious. APSCU argued the regulations should be vacated and remanded back to the Department.

The court ruled the debt-to-earnings measures were reasonable, but the debt repayment standard was arbitrary. The court vacated all of the GE thresholds, as it found the repayment rate could not be severed from the debt-to-earnings measures. Since the reporting is only for the metrics, the reporting requirement is vacated as well, and the program approval rule is vacated as it was tied inextricably to the GE metrics.

The court upheld the GE disclosures requirement, and ED plans to release a mandatory template for the disclosures in the near future. A copy of the court's ruling is available by double-clicking on the pdf file below.



Court Decision
06.30.12.pdf

On July 6, 2012, ED posted an Electronic Announcement authored by Jeff Baker, discussing the decision by the U.S. District Court for the District of Columbia, in the Association of Private Sector Colleges and Universities (APSCU) v. Duncan. ED's statement in reaction to the court decision was published as follows:



"The court clearly upheld the authority to regulate college career programs, but found that the Department had not provided enough explanation of its debt repayment measure, so it has given the Department an opportunity to address that concern. We are reviewing our legal and policy options to move forward in a way that best protects students and taxpayers while advancing our national goal of helping more Americans get the skills they need to compete in the global economy."

According to the electronic announcement, ED "is reviewing the details of the Court's decision in consultation with the Department of Justice and evaluating appropriate next steps." Although the reporting requirement is vacated, and institutions are not required to submit GE reports for the 2011-2012 award year, ED notes in the announcement that institutions may voluntarily submit corrections to previously reported GE data on NSLDS.

On July 30, 2012, ED asked the court to reinstate the reporting requirements, arguing that institutions were not able to calculate the information necessary for the GE disclosures on their own. ED has not filed a full appeal of the court's decision and has yet to announce how it will proceed in this action.

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FSA CREDIT BALANCES – USING A CONTRACTOR

ED posted DCL GEN-12-08 on April 26, 2012. This DCL provides a Q and A on disbursing or delivering Title IV funds through a contractor. Institutions are required to notify ED of all third-party servicers with whom they contract; the DCL provided a non-exhaustive list of Title IV functions that if performed by a contractor, that contractor is a third-party servicer. Receiving, disbursing or delivering Title IV funds is included on the list; this includes the delivery of Title IV credit balances. The DCL discusses when an institution may share student PII with the contractor, and specifies that the contractor cannot use that PII for non-contracted purposes such as marketing additional financial products.

ED states that it is a FERPA violation to provide student PII to a contractor for preloading debit cards or similar products. The institution must have the student's written consent before opening a bank account for a student. Current regulations require that if a student does not comply with an institution's policy for selecting an option for electronic funds transfer of credit balances, "the school is still obligated to provide a check or cash for the amount of the credit balance to the student within the 14-day time frame provided for under 34 CFR 668.164(e)."



ED has not regulated the number of ATMs that are necessary for a specific student population, but:

At the request of the Department, the institution must show how it determined the number of surcharge-free ATMs that are located on the institution's campus, in institutionally owned or operated facilities, or, consistent with the meaning of the term "Public Property" as defined in 34 CFR 668.46(a), immediately adjacent to and accessible from the campus.

We note that the intent of the regulations is to ensure that students can make unlimited withdrawals from their on-campus ATMs without incurring a fee.

SUB LOAN INTEREST RATE REMAINS 3.4% FOR 2012-2013



On July 6, 2012, President Obama signed Public Law 112-141 that extends for one year the 3.4% interest rate for Direct Subsidized Loans made to undergraduate students disbursed on or after July 1, 2012 and before July 1, 2013. The interest rate for all unsubsidized loans (for graduate and undergraduate students) remains 6.8%. As discussed in DCL GEN-11-16, graduate students are not eligible for subsidized loans for loan periods beginning on or after July 1, 2012.

The law also includes a new limit on eligibility for Direct Subsidized Loans for new borrowers on or after July 1, 2013. A new borrower on or after July 1, 2013 will not be eligible for new Direct Subsidized Loans if the period during which the borrower has received such loans exceeds 150% of the published length of the borrower's educational program. Borrowers reaching the 150% limit are ineligible for the interest subsidy benefits on all Direct Subsidized loans first disbursed to that borrower on or after July 1, 2013. ED intends to provide additional guidance at a later date.

Also, the federal government will not be paying the interest on subsidized Stafford Loans during the grace period for all borrowers as of July 1, 2012.

GUIDANCE ON STATE AUTHORIZATION (PI REGS)



GEN-12-13 was issued on July 27, 2012, in a Q and A format. Schools should note the guidance regarding state complaint policies, even if the institution has only one student enrolled in that state. Consumer information must be provided to all students, including those enrolled solely via distance education.

TITLE IV ELIGIBILITY FOR STUDENTS WITHOUT A HIGH SCHOOL DIPLOMA



DCL GEN-12-09 provides ED's guidance on the elimination of Title IV aid eligibility for students without a high school diploma, GED or recognized alternatives.

Home schooled students are still Title IV-aid eligible. An ATB student who attended an eligible program at any Title IV institution prior to July 1, 2012 will have established his or her aid eligibility at that point, and he or she remains Title IV eligible. "So long as the student previously attended an eligible program at an eligible Title IV institution, it does not matter whether the student received Title IV, HEA student assistance prior to July 1, 2012."

Further, a student who "officially registered" at a Title IV institution prior to July 1, 2012, is aid eligible for 2012-2013 using one of the ATB alternatives. The DCL includes several enrollment scenarios to assist schools in implementing this new regulation.

EO 13607 PRINCIPLES OF EXCELLENCE



Executive Order 13607 Establishing Principles of Excellence was signed by President Obama on April 27, 2012, and requires institutions to modify award letters, refund policies and other practices for students who are also veterans of the armed forces. ED published DCL GEN-12-10 on July 13, 2012 to provide guidance to Title IV institutions on the implementation of the new requirements.

ED has also released a "shopping sheet", in GEN-12-12, for use in the 2013-2014 award year as a model financial aid award letter, developed by ED in conjunction with the Consumer Financial Protection Bureau (CFPB).

Schools will need to use the R2T4 refund process for funds received from the DOD and the VA, and create an educational plan for each veteran student.

DISABILITY ACCOMMODATION GUIDANCE REVISED

The Association on Higher Education and Disability (AHEAD) posted a document on May 14th that provides direction on the provision of accommodations for students with disabilities. AHEAD stated that the revised guidance is necessary due to recent amendments to the Americans with Disabilities Act, and updated regulations and guidance to Titles II and III of the ADA. The document can be found on the AHEAD website, at www.ahead.org/resources.



DID YOU KNOW...?

- In 2011, the IRS conducted just over 1.5 million tax return audits, the majority (over 1.1 million) as correspondence audits. This figure represents 1.11% of the total returns filed, about the same percent of returns audited in 2010, and slightly higher than the rates from 2007 through 2009.
- In the regulatory revisions published in May to implement the elimination of the year-round Pell Grant, ED published a chart of estimated Pell Grant recipients and amounts through AY 2015-16 by sector. Another chart included in the notice shows the effect of eliminating the year-round Pell Grant on small institutions by sector, listing the percentage of Pell Grant recipients and funds received. ED estimated that eliminating the year-round Pell "will remove the eligibility of about 1.9 million students annually and reduce costs in the program by approximately \$42.3 billion over five years."

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