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Financial Value Transparency/Gainful Employment Reporting Delay & Guidance

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In the last several days, the U.S. Department of Education (ED) finally published three important updates on ED expectations under its extensive October 2023 Financial Value Transparency and Gainful Employment regulations (Final Rule). These rules are slated to take effect July 1, 2024, for institutions of higher education that participate in Title IV Federal Student Aid programs (mainly colleges and universities).

Via Dear Colleague Letter (DCL) GEN-24-01, ED extended schools' initial Financial Value Transparency and Gainful Employment (FVT/GE) reporting deadline from July 31, 2024 to October 1, 2024. It also provided additional information on the timeline for FVT/GE implementation. Furthermore, ED issued additional guidance documents (another DCL and an FAQ document) answering some questions left open in the Final Rule. Below, we highlight additional notable clarifications from ED.

Key points from the new guidance

Most substantively, the March 29, 2024 Dear Colleague Letter (DCL) GEN-24-04 provides an overview of the regulatory requirements. It confirms the separate sets of requirements for FVT and GE regulations across different types of educational programs, underscores the non-applicability of those requirements to certain programs or institutions, and provides a summary of significant requirements in the FVT/GE regulations.

Notable among this DCL's new clarifications is confirmation that the FVT/GE rules do not apply to:

Postbaccalaureate teacher certification programs where an institution does not award a credential (i.e., it is a teacher prep program that does not lead to a degree or certificate);

Programs at least two academic years in length that are acceptable for full credit toward a bachelor's degree; or

Preparatory coursework of no longer than 12 months that prepares students for Title IV eligible programs (for which students may receive Direct Loans).

Debt-to-Earnings rates and Earning Premium measures

As to Debt-to-Earnings (D/E) rates and Earnings Premium (EP) measures, DCL GEN-24-04 highlights that, though ED will only run the D/E and EP metrics on Title IV recipient students who completed their programs, institutions must report information on all students who received Title IV aid while enrolled in a program, including those who did not complete. Also, ED clarified that it will exclude from the D/E calculation loan debt incurred by a student for enrollment in any program at another institution—unless the institutions are under common control. ED also said it will "roll up" loan debt for a student completing, e.g., a certificate program who subsequently enrolls in a degree program; in such cases, provided both programs are both undergraduate or both graduate programs, ED will attribute the debt from the lower credential program to that of the higher credential program.

ED said that it will always treat undergraduate and graduate programs at the same institution separately, such that a dual-degree program student will have undergraduate debt and graduate debt considered separately for purposes of calculations (though it will consider the same earnings data for each).

Transitional reporting

DCL GEN-24-04 also notes the option to participate in "transitional reporting"—reporting data only on 2022-2023 and 2023-2024, rather than the extended time period that will be required in the future. Curiously, as to how ED will calculate D/E rates for completers from institutions that elect two-year transitional reporting, DCL GEN-24-04 echoes the language of the Final Rule. The DCL says that, for transitional-reporting institutions, "to calculate D/E rates for the institution's programs, ED will use earnings for the students from the appropriate cohort period but will use debt information for different students from the two most recently completed award years." It is unclear whether ED is saying, for example, that it would calculate D/E rates for a traditional undergraduate student completing their program at age 22 in 2024 using the student's debt data from 2022-2023 and 2023-2024, but earnings data from "the appropriate cohort period" of 2015-16, 2016-17, 2017-18, and 2018-2019—dating back to *when the student was 14 years old and likely a freshman in high school*. (The FAQs do clarify at DE-Q2 that, in the first year of calculating the D/E rate, ED will only consider completers during the two most recently completed award years for transitional-reporting schools, and will use additional years up to four thereafter to consider whether a program had 30 or more completers in a program.)

Impact of financial responsibility and administrative capability regulations

Significantly, DCL GEN-24-04 notes the overlap of the FVT/GE Final Rule with new ED Financial Responsibility and Administrative Capability regulations, which are also effective July 1, 2024. Under those regulations, ED will not consider an institution to be financially responsible if at least 50% of its Title IV funds from the most recently completed fiscal or award year stem from GE (but not non-GE, per the DCL) programs that failed either the most recent D/E or EP metrics.

Timelines

In terms of timelines, both DCLs indicate that all institutions affected by the FVT/GE rules must submit their reporting data annually by October 1, following the end of the award year. ED has promised to furnish institutions with draft completer lists in July 2024 and has said it will publish the first FVT/GE metrics and notify institutions of failing GE programs in "early 2025." For institutions with failing metrics, student acknowledgment and warnings—on which the guidance documents provide some new information beyond the Final Rule—will be required from prospective students before signing enrollment agreements with an institution, starting July 1, 2026.

Additional new guidance

The April 5, 2024 FAQ document provides insight on additional issues, including several in-the-weeds operational and reporting maters. They largely echo the DCL and provide more detailed guidance on matters such as the content of any required acknowledgements and warnings. Helpfully, they clarify that institutions may use third parties to assist with reporting requirements; ED notes its position as to where third-party servicer obligations would apply.

ED also announced that it will provide further guidance on reporting requirements and house updated FVT/GE information on a centralized webpage.

For a deeper dive

Additional information on FVT/GE issues appears in our February 7, 2024 article, The Long and Winding Road to the New Financial Value Transparency and Gainful Employment Rules, and a Valentine's Day webinar linked at the close of the article.

To develop your understanding of previously unaddressed issues, please read DCL GEN-24-01, DCL GEN-24-04, and the FVT/GE FAQs.

What this means to you

While the delayed initial reporting deadline provides breathing room amidst the madness of 2024's FAFSA crisis, this new FVT/GE guidance signals that ED is forging ahead on FVT/GE enforcement. We recommend institutions consider building an appropriate multidisciplinary team and provide adequate time and resources for it to implement FVT/GE requirements. Institutions can start by proactively inventorying their programs to determine those which will require reporting in October. It is imperative for institutions to meticulously review guidance documents and understand data elements required for reporting, ensuring nothing less than full compliance.

Contact us

If you have questions about FVT/GE compliance, please reach out to Annie Cartwright, Hayley Hanson, Julie Miceli, Lisa Parker, Abby Felter, Ryan Spraker, or your Husch Blackwell attorney.