



# Preparing for and Managing Required “Student Warnings”

Part of the *Navigating Gainful Employment*  
Webinar Series | March 2016





# WELCOME & INTRODUCTION

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- Aaron D. Lacey
  - Partner, Higher Education Practice, Thompson Coburn LLP.
- Higher Education Practice
  - Provide regulatory counsel on federal, state, and accrediting agency laws and standards (e.g., Title IV, Title IX, Clery, consumer information).
  - Assist with postsecondary transactions, contract drafting and negotiation, policy creation, and compliance systems design.
  - Represent institutions in student and employee litigation, government investigations, administrative proceedings, audits, and reviews.



# WELCOME & INTRODUCTION

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- Prior Experience
  - Senior Vice President of Regulatory Affairs & Strategic Development for postsecondary institution. Oversaw regulatory, compliance, and government affairs matters for 24 campus locations in Midwest and Southeast United States, as well as for online division.
  - Attorney in DC Higher Education Practice. Provided regulatory and policy guidance, managed agency proceedings, drafted and negotiated wide variety of agreements.



# GE WEBINAR SERIES SCHEDULE

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- How to Project Reliable Debt-to-Earnings Rates (February 11, 2016)
- Strategies for Improving Debt-to-Earnings Rates (February 18, 2016)
- Completers List Challenges, Debt Challenges, and Alternative Earnings Appeals (February 25, 2016)
- Preparing for and Managing Required “Student Warnings” (March 3, 2016)
- Managing (and Challenging) the New GE Disclosures (March 10, 2016)



# PRESENTATION OUTLINE

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- GE Timeline
- D/E Rates and GE Warnings
- Warnings for Prospective Students
- Warnings for Current Students
- Additional Considerations
- GE Resources

# THE GAINFUL EMPLOYMENT TIMELINE



# GE TIMELINE (2015)

DATE	2015 GAINFUL EMPLOYMENT EVENTS
July 1	<ul style="list-style-type: none"><li>• New gainful employment regulations become effective</li></ul>
July 31	<ul style="list-style-type: none"><li>• Report data for AY 08-09 to AY 13-14</li></ul>
October 1	<ul style="list-style-type: none"><li>• Report data for AY 14-15</li></ul>
November	<ul style="list-style-type: none"><li>• <u><a href="#">Register to receive Completers Lists through SAIG Enrollment Web site</a></u></li><li>• <u><a href="#">Enroll in Data Challenges and Appeals Solution (DCAS) service</a></u></li></ul>
December 31	<ul style="list-style-type: none"><li>• Complete GE transitional certification</li></ul>

# GE TIMELINE (2016)

DATE	2016 GAINFUL EMPLOYMENT EVENT
Spring	<ul style="list-style-type: none"><li>• Issuance of AY 14-15 Completers Lists</li><li>• Prepare and submit AY 14-15 Completers List Challenges</li></ul>
Summer	<ul style="list-style-type: none"><li>• Issuance of AY 14-15 <b>Draft</b> D/E Rates</li><li>• Prepare and submit AY 14-15 Loan Debt Challenges</li></ul>
Fall	<ul style="list-style-type: none"><li>• Report data for AY 15-16 (October 1)</li><li>• Prepare and submit AY 14-15 Alternative Earnings Appeals</li></ul>

# GE TIMELINE (2017)

DATE	2017 GAINFUL EMPLOYMENT EVENT
January	<ul style="list-style-type: none"><li>• New GE Disclosures effective</li></ul>
Winter/Spring	<ul style="list-style-type: none"><li>• Issuance AY 14-15 <b>Final</b> D/E Rates</li><li>• Continue to prepare and submit AY 14-15 Alternative Earnings Appeals</li><li>• <b>Begin disseminating Student GE Warnings for programs with failing AY 14-15 Final D/E Rates</b></li></ul>

# D/E RATES AND GE WARNINGS



# D/E RATES AND GE WARNINGS

$$\frac{\text{Annual Earnings}}{\text{Rate}} = \frac{\text{Annual Loan Payment}}{\text{Annual Earnings}}$$

$$\text{Discretionary Income Rate} = \frac{\text{Annual Loan Payment}}{\text{Discretionary Income}}$$

# D/E RATES AND GE WARNINGS

PASS	ZONE	FAIL
AER less than or equal to 8% <b>OR</b> DIR less than or equal to 20%	AER greater than 8% and less than or equal to 12% <i>and</i> <i>DIR not passing</i> <b>OR</b> DIR greater than 20% and less than or equal to 30% <i>and</i> <i>AER not passing</i>	AER greater than 12% <b>AND</b> DIR greater than 30%



# D/E RATES AND GE WARNINGS

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## When does a program become **ineligible**?

- If the program fails two out of any three consecutive award years for which the program's D/E rates are calculated; or
- If the program has a combination of zone and failing rates for four consecutive award years for which the program's D/E rates are calculated.



# D/E RATES AND GE WARNINGS

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## When must a school issue a GE Warning?

- When ED notifies the institution that the program could become ineligible based on its final D/E rates for the **next** award year.
  - Purpose of regulation is to ensure students are aware of potential loss of funding at least a year in advance.
  - Disclosure obligation is triggered by “notice” received from ED.

# GE WARNINGS FOR PROSPECTIVE STUDENTS





# DEFINITION OF PROSPECTIVE STUDENT

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**How does the Department define  
“prospective student” for purposes of GE  
Warnings?**

- An individual who has contacted an institution to request information about a GE program or who has been contacted directly by the institution about the GE program.
  - Excludes indirect contact through advertising but **includes** contact made by a third party on an institution’s behalf.



# CONTENT FOR PROSPECTIVE STUDENTS

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## What is the content of the GE Warnings for prospective students?

- GE Warnings for prospective students must:
  - Refer them to, and include a link for, the ED's College Navigator website (or similar federal resource) for information about similar programs; and
  - Include the verbatim disclosure set out on the next slide.



# CONTENT FOR PROSPECTIVE STUDENTS

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“This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.”



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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## When must the GE Warning be delivered to prospective students?

- Timing Rule 1: Must provide written **or** oral GE Warning to prospective student, or to third party acting on behalf of prospective student, **at first contact** about the program.
  - Must be carried out by third-party marketers if they have first contact with prospective students – so consider including as a requirement in marketing agreements.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- Timing Rule 2: Must provide **written** GE Warning to prospective student or third party at least **3 days before** institution enrolls, registers, or enters into a financial commitment with the prospective student for the program.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- Timing Rule 3: If more than **30 days** have passed from **written** GE Warning, institution must provide a second GE Warning. Then must wait **another** 3 days before signing enrollment agreement.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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## How may the GE Warning be delivered to prospective students?

- Provide GE Warning **orally** by telephone.
  - Only satisfies “first contact” rule. Institution may not actually enroll, register, or have the student enter into a financial commitment based solely on an oral warning.
  - Thus, if institution provides warning orally to prospective students, it still must provide a second warning in writing.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- **Hand-deliver GE Warning as a separate document.**
  - Can be delivered individually or as part of a group presentation.
  - Can use GEDT that includes warning language.
    - Must update GEDT with GE Warning 30 days after receiving ED notice re possible eligibility loss.
    - Effective 1/2017, institutions already required to provide GEDT to prospective students via hand-delivery or email.
  - Obtain written confirmation of receipt.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- Send **email** to primary email address used by institution for communicating with prospective student about the program.
- If institution sends warning by email, including by providing a copy of GEDT, it must comply with specific distribution and record requirements (see following slide).



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- Special email distribution requirements:
  - Ensure warning is only substantive content in email.
  - Receive electronic/written acknowledgement that email was received.
  - Send using different address or method of delivery if school gets failed delivery response.
  - Maintain records of efforts to provide warnings.



# DISTRIBUTION TO PROSPECTIVE STUDENTS

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- Law does **not** allow an initial warning attempt to be sent using regular U.S. Postal Service mail or commercial courier service.
- However, if institution receives response indicating that an email warning could not be delivered, may send warning using a different address or method of delivery, which could include U.S. Postal Service mail or commercial courier service.

# DISTRIBUTION OF GE WARNINGS TO CURRENT STUDENTS





# CONTENT FOR CURRENT STUDENTS

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## What is the content of the GE Warnings for current students?

- GE warnings for current students must:
  - Include College Navigator referral/link (same as for prospective students).
  - Include verbatim disclosure (same as for prospective students).
  - Indicate whether the institution would continue to provide the program without Title IV so students could complete the program.



# CONTENT FOR CURRENT STUDENTS

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- Indicate whether the institution would refund any tuition, fees, and other required charges already paid if Title IV eligibility lost or program no longer offered.
- Describe academic and financial options available to students to continue their education in **different** programs at the institution, including which credits would transfer into the different programs.
- Explain whether students can transfer credits to different institution.



# DISTRIBUTION TO CURRENT STUDENTS

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## **When should the GE Warning be delivered to current students?**

- Must be provided in writing no later than 30 days after date of ED notice of determination that program is within one year of possible loss of eligibility.



# DISTRIBUTION TO CURRENT STUDENTS

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## How may the GE Warning be delivered to current students?

- Must be delivered in writing.
- Hand-deliver GE Warning as a separate document.
  - Can be delivered individually or as part of a group presentation.
  - Obtain written confirmation of receipt.



# DISTRIBUTION TO CURRENT STUDENTS

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# DISTRIBUTION TO CURRENT STUDENTS

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# ADDITIONAL CONSIDERATIONS REGARDING GE WARNINGS



# ADDITIONAL CONSIDERATIONS

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**If I don't like the prescribed GE Warning language, is there anything I can do to change it?**

- Not at present; but ED says it will seek input from stakeholders regarding possible, future modifications to GE Warning - so there may be opportunity to influence change.



# ADDITIONAL CONSIDERATIONS

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## What if I have students who speak other languages?

- To the extent “practicable,” institutions must provide alternative versions of the GE Warning to prospective and current students for whom English is not their first language.



# ADDITIONAL CONSIDERATIONS

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**Do I still have to make the disclosure to current students if my program is less than a year?**

- Yes; but note that text of student warnings says “students who are **then** enrolled may” lose access to federal financial aid. This was ED’s effort at clarity for student’s in short programs.

# ADDITIONAL CONSIDERATIONS

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## **When can we stop making the GE Warning?**

- At the point at which the trigger (one year out from a loss of eligibility) ceases to be true. Consider:
  - If a program fails in year one and passes in year two, still must make disclosures because still faces loss of eligibility in next award year.
  - If a program fails in year one and gets a “no result” in year two, still must make disclosures because still faces loss of eligibility in next award year.
  - If a program fails in year one and passes two years running, can stop issuing warnings.



# ADDITIONAL CONSIDERATIONS

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## **Doesn't the Department understand that the GE Warning will harm enrollments?**

- “We believe that ensuring that students have this information is necessary, even if it may be more difficult for programs that must issue student warnings to attract and retain students. Institutions may mitigate the impact of the warnings on student enrollment by offering meaningful assurances and alternatives to the students who enroll in, or remain enrolled in, a program subject to the student warning requirements.” 79 FR 64964 (October 31, 2014).



# ADDITIONAL CONSIDERATIONS

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## What can I do to manage these Warnings?

- Take ED's advice to heart; consider whether there are assurances or alternatives you can offer prospective and current students.
  - Can you offer discounts to students who might be enrolled at the time of Title IV loss?
  - Can you discount for prospective students based on their willingness to enroll at a time that Title IV loss is a possibility?



# ADDITIONAL CONSIDERATIONS

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- Take advantage of the opportunity to package and present the GE Warnings in the context of appropriate assurances and explanations.
  - Can you offer seamless transfer to another program or institution if Title IV is lost?
  - Can you appropriately represent that you do not **expect** to lose Title IV based on your own projections?



# ADDITIONAL CONSIDERATIONS

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- Take the time to consider how best to integrate the GE Warning into the admissions process:
  - Make initial GE Warning, then enroll within next 27 days.
  - If students typically enroll in person, distribute GE Warning in advance of on-site appointment.
- Update related internal checklists, workflows, and training and disclosure documents



# ADDITIONAL CONSIDERATIONS

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- Work out smooth methods for tracking and proving distribution of GE Warning:
  - Copy of signed disclosure in student file
  - Pre-enrollment checklist item
  - Signed roster (for group presentations)
  - Preferably, method should include student signature, not just electronic note that distribution occurred.

# ADDITIONAL CONSIDERATIONS

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- Train admissions reps to handle GE Warning inquiries accurately, completely, and smoothly.
  - Protects institution
  - Improves admissions performance
- Coordinate with marketing agents in advance to ensure proper disclosure.
  - Include first contact disclosure requirement in marketing and agent agreements.

# GE RESOURCES



# GE RESOURCES FROM ED

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## GE WARNINGS – ED RESOURCES

October 2014

[Final GE Regulations \(79 FR 64889\)](#):  
Preamble includes discussion of GE  
Warnings.

June 2015

[DCL GEN-15-12](#): Provides brief discussion  
regarding GE Warnings.



# GE RESOURCES FROM ED

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## IFAP - Gainful Employment Information Page

- Federal Register Notices
- Dear Colleague Letters and Electronic Announcements
- Frequently Asked Questions
- Webinars and Presentations
- Resource Manuals
  - NSLDS Gainful Employment User Guide
  - RGEES Best Practices Guide
  - GE Operations Manual

# GE RESOURCES FROM TC

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- Gainful Employment webinar series.
- [REGucation](#) higher education law and policy blog.



THOMPSON  
COBURN LLP

## REGucation

Regulatory and Policy Insights  
from the Thompson Coburn  
Higher Education Team

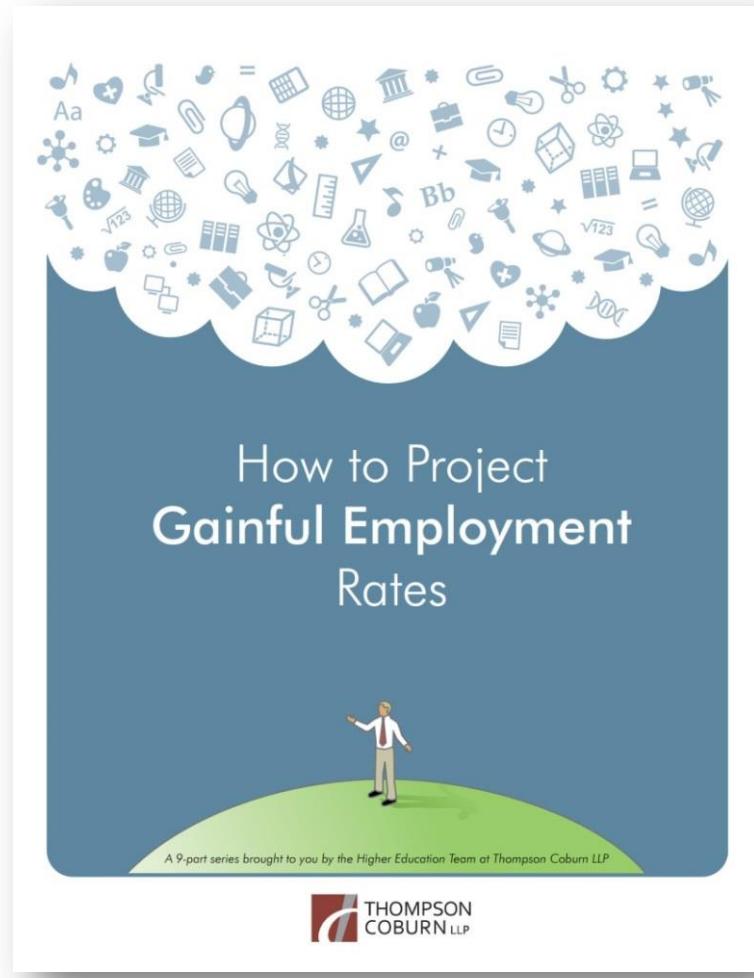
High Education  
Regulation

The background of the slide features a blue gradient with a white collage of various educational and academic icons, including books, a graduation cap, a globe, a microscope, a lightbulb, and mathematical symbols like  $\sqrt{123}$ .

# GE RESOURCES FROM TC

## GE Desk Guide

- Provides step-by-step instructions for projecting reliable D/E rates.
- Offers detailed insight into how D/E rates are calculated.



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# CONTACT INFORMATION

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