

# Gainful employment whiplash: 2014 regulations rescinded

July 3, 2019

Although in the past few weeks the U.S. Department of Education (ED) had encouraged institutions to prepare for additional compliance requirements related to gainful employment (GE) that were scheduled to take effect on Monday, July 1, 2019, on Friday, June 28, 2019, ED [announced](#) that it would rescind its 2014 GE regulations. On July 1, 2019, the [final rule](#) regarding the rescission was published in the Federal Register. As explained below, institutions may take action now with respect to the rescission.

## Early implementation of the rescission

The rescission is scheduled to take effect July 1, 2020, but in the [June 28 Electronic Announcement](#), ED explained that the Secretary of Education would exercise her authority under the Higher Education Act of 1965, as amended, to designate the rescission for early implementation by institutions that decide to do so.

Institutions with GE programs should consider whether to implement the rescission early. An institution that does not decide to implement the rescission early is expected to comply with the 2014 GE regulations until the rescission becomes effective on July 1, 2020. As a result of ED's decision to permit early implementation, institutions that decide to implement the rescission early will not be required to do the following, for example:

- Report GE data for the 2018-2019 award year to the National Student Loan Data System for Students (NSLDS), which under the GE regulations would be due October 1, 2019.
- Comply with the requirements in 34 C.F.R. § 668.412 (d) and (e) that require institutions to include the GE Disclosure Template, or a link thereto, in their GE program promotional materials and directly distribute the disclosure template to prospective students, which [as we previously reported](#) was required beginning on July 1, 2019.
- Post the GE Disclosure Template to their web pages – institutions that implement the rescission early may remove the template and any other GE disclosures that are required under 34 C.F.R. § 668.412 from their websites.
- Comply with the certification requirements for GE programs under 34 C.F.R. § 668.414.

An institution that decides to implement the rescission early must document its decision internally. The institution is not required to publish its decision, but it must make internal documentation of the decision available to ED upon request.

### **ED's justification for the rescission and plans to enhance transparency through College Scorecard**

As justification for the rescission, ED said that it has determined that the GE regulations "rely on a debt-to-earnings (D/E) rates formula that is fundamentally flawed and inconsistent with the requirements of currently available student loan repayment programs, fails to properly account for factors other than institutional or program quality that directly influence student earnings and other outcomes, fails to provide transparency regarding program-level debt and earnings outcomes for all academic programs, and wrongfully targets some academic programs and institutions while ignoring other programs that may result in lesser outcomes and higher student debt."

In the final rule, ED emphasized "the need for an accountability and transparency framework that applies to all Title IV programs and institutions." To that end, ED said that it plans to expand the [College Scorecard](#) to include certain program-level and institution-level data that is designed to help "all students . . . make informed enrollment and borrowing decisions." Although ED said its plans are "preliminary" at this time, those data may include program-level data about median loan debt and associated monthly payments, student loan default and repayment rates, and program size, as well as institution-level data about admissions selectivity, student demographics, and socioeconomic status.

We are available to respond to questions.

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