



# **GAINFUL EMPLOYMENT**

**Michigan Community College Business Officer's Association**  
**LaKeisha Marsh, Senior Attorney**  
**Miller Canfield Paddock and Stone, P.L.C.**

March 5, 2015

**MILLER  
CANFIELD**  
millercanfield.com

# What is a gainful employment program?

- Under the Higher Education Act of 1965 (HEA), to be eligible to participate in the Title IV student assistance programs, an educational program that does not lead to a degree awarded by a public or non-profit postsecondary institution must lead to gainful employment in a recognized occupation.
- A recognized occupation is:
  - One identified by a Standard Occupational Classification (SOC) code established by OMB; or
  - One identified by an Occupational Network O\*NET-SOC code established by the U.S. Department of Labor; or
  - One determined by the Secretary of Education in consultation with the Secretary of Labor.
- A gainful employment program is a program where a substantial number of the program's students –
  - Are repaying their Title IV loans
    - Repayment Rate
  - Have a reasonable debt burden
    - Debt-to-Earnings Ratio

## Gainful Employment (GE) Programs

- Gainful Employment programs are those that are required “to lead to gainful employment in a recognized occupation” in order to be eligible for Title IV federal financial aid.
- For-Profit (Proprietary) Institutions — All educational programs are GE Programs except for:
  - Preparatory course work necessary for enrollment in an eligible program; and
  - Programs leading to a bachelor’s degree in liberal arts that have been offered by the institution since January 2009 and which have been regionally accredited since 2007.
- Public and Non-Profit Institutions — All educational programs are GE Programs except for:
  - Programs that lead to a degree – associates, bachelors, masters, doctoral, professional;
  - Programs of at least two years in length that are designed to be fully transferable to a bachelor’s degree;
  - Teacher certification course work that does not lead to a certificate awarded by the institution; and
  - Preparatory course work necessary for enrollment in an eligible program.
- Thus, any non-degree program for which an institution awards a certificate or diploma is a GE Program.

## Gainful Employment (GE) Programs, cont.

- A gainful employment program is identified by its:
  - 6 digit OPEID
  - 6 digit CIP Code (Classification of Instructional Program)
  - 2 digit Credential Level
  
- Credential Levels
  - 01 = Undergraduate certificate
  - 02 = Associate's degree
  - 03 = Bachelor's degree
  - 04 = Post Baccalaureate certificate
  - 05 = Master's degree
  - 06 = Doctoral degree
  - 07 = First-professional degree
  
- New Programs = new CIP Code or new 01 credential level

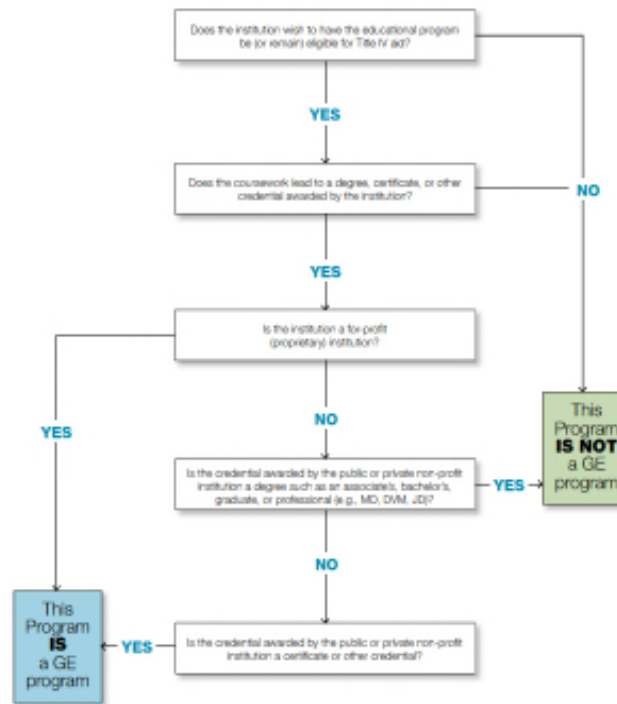
## What is the purpose of the gainful employment regulations?

- The Education Department seeks to ensure that students who incur debt for higher education receive a robust enough education that they can obtain the level of employment needed to make repayment of that debt affordable.
  - Regulations also look to provide transparency to prospective students regarding gainful employment programs.
- The regulations apply to non-degree programs at community colleges and nearly all programs and degree types at for profit institutions.
- Gainful Employment regulations go into effect on July 1, 2015 and set a minimum standard that career education programs need to meet to remain eligible for federal student aid (Title IV).

# Gainful Employment Program Determination Diagram

GAINFUL EMPLOYMENT OPERATIONS MANUAL

Gainful Employment Program Determination:  
Is the Institution's Program a GE Program?



# Framework of the Gainful Employment Regulations

- The framework of the final Gainful Employment Regulations has two main components: accountability and transparency.

Accountability	
<b>Certifications:</b> Institutions must certify that each of their gainful employment programs meet state and federal licensure, certification, and accreditation requirements.	
<b>Metric:</b> To maintain title IV eligibility, gainful employment programs will be required to meet minimum standards for the debt vs earnings of their graduates.	
<b>Pass</b>	Programs whose graduates have annual loan payments less than 8% of total earnings <u>OR</u> less than 20% of discretionary earnings.
<b>Zone</b>	Programs whose graduates have annual loan payments between 8% and 12% of total earnings <u>OR</u> between 20% and 30% of discretionary earnings.
<b>Fail</b>	Programs whose graduates have annual loan payments greater than 12% of total earnings <u>AND</u> greater than 30% of discretionary earnings.
<b>Ineligible</b>	Programs that fail in 2 out of any 3 consecutive years <u>OR</u> are in the zone for 4 consecutive years.
Transparency	
<b>Disclosures:</b> Institutions will be required to make public disclosures regarding the performance and outcomes of their gainful employment programs. The disclosures will include information such as costs, earnings, debt and completion rates.	

## Certification Requirements

- Institutions are required to certify that each of their GE programs are included in its current institutional accreditation or, if required, has received programmatic accreditation to qualify students who complete the program for employment in the designated occupation, wherever the program is offered.
- As a condition for continued participation in Title IV programs, an institution must certify in its Program Participation Agreement (PPA), and that certification becomes an addendum to the PPA.
- The certification becomes an addendum to the institution's Program Participation Agreement (PPA).



## Accountability Metric Debt-to-Earnings

- Gainful Employment programs are required to meet minimum standards measured by a ratio of the amount of debt graduates from a post-secondary program took on compared to their earnings (debt-to-earnings).
- The debt-to earnings will be calculated two ways:
  - (1) An annual measure that compares debt to the overall earnings; AND
  - (2) a discretionary measure that compares debt to earnings after subtracting 150 percent of the poverty line for a single person.
    - Discretionary Income: earnings above 150 percent of the federal poverty level.

$$\frac{\textit{Student Loan Payments}}{\textit{Annual or Discretionary Earnings}}$$

## Accountability Metric Debt-to-Earnings (cont.)

- A program will be considered to lead to gainful employment and “pass” the metric if annual loan payments of a typical graduate (only program completers) do not exceed 20 percent of his or her yearly discretionary income OR 8 percent of his or her total yearly earnings
- A program will “fail” the metric if the typical graduates annual loan payments were above 30 percent of his or her discretionary earnings AND 12 percent of his or her total earnings.
  - Programs that fail both annual and discretionary debt-to-earnings tests twice in any three year period become ineligible for financial student aid.
- A program is in the “zone” if the typical graduate have annual loan payments between 8 percent and 12 percent of total earnings OR between 20 percent and 30 percent of discretionary earnings.
  - Programs who are in the “zone” for 4 consecutive years becomes ineligible for financial student aid.

# Gainful Employment Performance Ratings

A little visual . . .

GE Program Performance Ratings	Annual Debt-to-Earnings (aD/E) Rate		Discretionary Debt-to-Earnings (dD/E) Rate
Passing	$aD/E < 8\%$	OR	$dD/E < 20\%$
Not passing (Zone)	$8\% < aD/E < 12\%$	OR	$20\% < dD/E < 30\%$
Failing	$aD/E > 12\%$	AND	$dD/E > 30\%$

- Only those programs with 30 or more students who completed the program during a two-year cohort are evaluated.
- Programs that fail or are in the zone, must provide a warning disclosure to both enrolled and prospective students the year before they might lose eligibility.

# Cohort Periods

- Education Department calculates gainful employment metrics using information on the educational debt of a cohort of the GE Program's former students.
- Generally, the cohort are students who left the program during the two Federal fiscal years that are the third and fourth years prior to the most recently completed Federal fiscal year (the "GE Calculation Year").
- Two-Year Cohort Period: The cohort includes Title IV aided completers in the two consecutive award years that are the third and fourth award years prior to the award year for which debt-to-earnings rates are calculated.
  - Example: For debt-to-earnings rates calculated for the 2014-2015 award year, the Two-Year Cohort period is award year 2010-2011 and 2011-2012.
  - Two-Year Cohort period is used in the debt-to-earnings rates when the number of completers in the two year cohort period is 30 or more.
- Four-Year Cohort Period: The cohort includes Title IV aided completers in the four consecutive award years that are the third, fourth, fifth, and sixth award years prior to the award year for which debt-to-earnings rates are calculated.
  - Example: For debt-to-earnings rates calculated for the 2014-2015 award year, the Four-Year Cohort period is award year 2008-2009, 2009-2010, 2010-2011, and 2011-2012 .
  - Four-Year Cohort period is used when the number of completers in the two year cohort period is less than 30 and when the number of students completing the four-year cohort period is 30 or more.

## Key Things You Should Also Know

- The Education Department uses federal data to provide colleges with:
  - Debt Payments
  - Annual/Discretionary Earnings
- Education Department will use the higher of the mean or median earnings for the debt-to-earnings of completers, but will also use the median debt.
- Debt information is obtained from the National Student Loan Data System (NSLDS) and based on standard repayment plans and interest rates.
- Graduates' earnings information will be obtained through Social Security Administration wage records.

# Reporting Requirements

- Reporting – Institutions must report information on each student who was enrolled in a GE program.
  - Individual students (for accountability purposes)
    - Information needed to identify the student and institution
    - Name, CIP Code, credential level, and length of the GE program
    - Date student initially enrolled, attendance dates, and current enrollment status
    - Completed or Withdrawn Students – Date of completion/withdrawal, total loan debt incurred for cost of attendance
- By July 31 following final rules effective date (July 31, 2015)
  - Six prior years
    - EXAMPLE: Effective date is July 1, 2015, report no later than July 31, 2015 information for award years 2008-2009 through 2013-2014.
- For subsequent award years, by October 1 following the end of the award year.

# Disclosure Requirements

- Information must be disclosed to the public on performance and outcomes
- In addition to program information, information that program prepares students to enter:
  - Occupations (by name and SOC code)
  - Completion rates (*ED will calculate and make available to institution*)
  - Withdrawal rates (*ED will calculate and make available to institution*)
  - Program length
  - Number of individuals enrolled in program
  - Loan Repayment rates (*ED will calculate and make available to institution*)
  - Program costs (in normal completion time)
  - Job Placement rates
  - D/E rates
  - Median loan debt (*ED will calculate and make available to institution*)
  - Median earnings (*ED will calculate and make available to institution*)
  - Default rates
  - Annual earnings rates
  - Programmatic Accreditation, if applicable

# Gainful Employment Disclosure Requirement Template

The gainful employment rules call for the Education Department to develop a standardized template for institutions to use when disclosing information regarding their programs.

Direct link to template: <http://ope.ed.gov/GainfulEmployment/>

The screenshot shows a web form titled "Gainful Employment Program Disclosure Template". At the top right, there is a "HELP" button and contact information: "For Help Call 855-339-0697" and "get@innovas.net". The form is divided into sections with expandable headers:

- INSTITUTION OPE ID** (expanded): This input template is to be used to meet the gainful employment disclosure requirements as required by the regulations at 34 CFR 608.6(b)(2)(iv). Enter the information requested for each program at your institution subject to the gainful employment regulations. Generally, gainful employment programs include:
  - **At public and private not-for-profit institutions:** Title IV-eligible non-degree programs (e.g., certificate and diploma programs).
  - **At for-profit institutions:** All Title IV-eligible instructional programs, degree and non-degree.
- PROGRAM INFORMATION
- COST
- DEBT AT PROGRAM COMPLETION
- PROGRAM COMPLETION IN NORMAL TIME
- JOB PLACEMENT
- CONTEXT

Below the instructions, there is a text input field with the label "Enter the institution's 6-digit Department of Education assigned OPE ID:" and a "Next →" button at the bottom.



# Gainful Employment Disclosure Requirement Template

**Baking and Pastry**  
 Program Level - Undergraduate certificate  
 Program Length - 18 months



**COST**

Q. How much will this program cost me?\*

A. Tuition and fees: \$4,260  
 Books and supplies: \$1,425  
 On-campus room & board: *not offered*

---

What other costs are there for this program?

For further program cost information [click here](#).

\* The amounts shown above include costs for the entire program, assuming normal time to completion. Note that this information is subject to change.

**SUCCESS**

Q. How long will it take me to complete this program?

A. The program is designed to take 18 months to complete. Of those that completed the program in 2013-2014, \*% finished in 18 months.

---

\* Fewer than 10 students completed this program in 2013-14. The number who finished within the normal time has been withheld to preserve the confidentiality of the students.

Q. What are my chances of getting a job when I graduate?

A. The job placement rate for students who completed this program is \*%.

---

\* This institution is not currently required to calculate a job placement rate for program completers.

**FINANCING**

Q. What financing options are available to help me pay for this program?

A. Financing for this program may be available through grants, scholarships, loans (federal and private) and institutional financing plans. The median amount of debt for program graduates is shown below:

Federal loans: \*  
 Private education loans: \*  
 Institutional financing plan: \*

---

\* There were fewer than 10 graduates in this program. Median amounts are withheld to preserve the confidentiality of graduates.



For additional information related to this program and/or the information provided above, [click here](#)

Date Created: 1/26/2015

## Estimated Impact

- According to the Department of Education, Fed. Reg., Vol. 79; No. 211 Part II, 34 CFR §§ 600 and 668 (Program Integrity Gainful Employment Final Rule)
  - NO community college programs “fail” the debt-to-earnings tests and therefore none are at risks for losing financial student aid.
  - One community college program nationwide falls in the “zone.”
  - Nationwide, more than 900 GE programs are designated as “failing” the rule and more than 500 are in the “zone.”
- **BE PREPARED!** Reporting and Disclosure requirements will involve significant staff time.

# Changes/Additions from Earlier Versions of Gainful Employment Regulations

(New Proposed Rule Making, March 2014 vs. Final Rules, October 2014)

- A number of changes or additions were made in hopes that the regulations would be upheld by the court .
  - One Accountability Measure (Changed)
    - Removed Program-Level cohort default rate as an accountability metric
  - Interest Rates for Debt-to-Earnings calculation (New)
    - Adjusts the rate based upon the type of program and whether it is undergraduate or graduate
      - Undergraduate certificates and associate degrees will use a three year average of the unsubsidized stafford rate for undergraduates.
  - Elimination of a Debt-to-Earnings appeal option for low-borrowing programs (New)
  - Lengthens transition period for failing and zone programs (New)
    - Transition periods: period in which a program could replace the debt part of the debt-to-earnings calculation with newer figures for recent grads for up to four years.
  - Applies GE requirements to non-degree distance education programs (assuming state authorization rules are released by the Education Department)

## Changes/Additions from Earlier Versions of Gainful Employment Regulations, cont.

- Additional changes or additions:
  - New provision that addresses what happens if no debt-to-earnings is calculated
    - If a program has a debt-to-earnings rate for one year but not the next, the program will remain in whatever status it was in the prior year.
  - Institutions will have to note whether the program does or does not satisfy the requirements for licensure or certification in any state within their metropolitan area.
    - Must disclose whether it satisfies the same requirements for any other state in which it has made a determination as to whether it does or does not meet the requirements.
    - A statement indicating which state it has not made determinations about satisfying requirements.
  - Heads of Institutions will have to certify by the end of 2015 that all of their gainful employment programs are accredited, have programmatic accreditation, if its required by their home state or federal entity, and if it meets the prerequisites for certification and/or licensure in the home state.
    - Also required in any state where the institution needs state authorization to operate.
  - All programs at the same level and type are treated as one program
    - An institution that offers a nine-month and 18-month certificate in the same field can treat it as one program as oppose to different programs.

## Helpful Resources

- Federal Register – Program Integrity: Gainful Employment  
<https://federalregister.gov/a/2014-25594>
- Gainful Employment Operations Manual  
<https://www.ifap.ed.gov/GainfulEmploymentOperationsManual/attachments/GainfulEmploymentOperationsManualMasterFile.pdf>
- Case Law: (handouts)
  - Association of Private Sector Colleges and Universities v. Duncan, 870 F.Supp.2d 133 (D.D.C. 2012)
  - Association of Private Sector Colleges and Universities v. Duncan, 930 F.Supp.2d 210 (D.D.C.2013)
- H.R. 2637 – Supporting Academic Freedom through Regulatory Relief Act (handout)

# Questions



LaKeisha C. Marsh  
Miller, Canfield, Paddock and Stone, P.L.C.  
225 West Washington Street, Suite 2600  
Chicago, IL 60606  
312-460-4220  
[marshL@millercanfield.com](mailto:marshL@millercanfield.com)