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## THOUGHT LEADERSHIP

# Clarifying the Requirements of Gainful Employment Disclosures for Higher Education

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The U.S. Department of Education requires institutions of higher education to update their 2011-2012 Gainful Employment program disclosures by January 31, 2013, though a federal court decision last summer may have caused some confusion. This alert explains what data must be disclosed, along with the location and format.

In a June 30, 2012, ruling in Association of Private Sector Colleges and Universities (APSCU) v. Duncan, the U.S. District Court for the District of Columbia vacated several key provisions of the department's Gainful Employment regulations, including requirements for reporting Gainful Employment data. However, the court left standing requirements for disclosing Gainful Employment data.

**What Is a Gainful Employment Program?**

Only Gainful Employment programs require disclosures. For public and nonprofit schools, the department generally considers the following to fall into the disclosure category:

Nondegree programs,

Certificate programs, and

Approved "comprehensive transition programs" for students with intellectual disabilities.

The following do not fall into the Gainful Employment category:

Degree programs,

Certificates awarded as part of degree programs,

Certain programs that are fully transferable to bachelor's degree programs, or

Preparatory courses of study that provide coursework necessary for enrollment in eligible programs.

For proprietary schools, all programs are considered Gainful Employment programs except for preparatory coursework necessary for enrollment in eligible programs and a few bachelor's degree programs in liberal arts.

## What Gainful Employment Data Must Schools Disclose?

Schools must include the following information in their Gainful Employment disclosures:

Occupations by name and Standard Occupational Classification (SOC) code that the program prepares students to enter;

Normal time to complete the program (e.g., two-year associate's degree);

On-time graduation rate for students, including leaves of absence, etc., in time calculations;

Costs of tuition and fees, books and supplies, and room and board, listed separately;

Placement rate for those completing the program, as determined by states or accrediting agencies; and

Median debt load of those completing the program, separated by type of loan and calculated based on data from students completing the 2011-2012 award year.

(To protect privacy, on-time completion rates and median debt amounts should not be disclosed for programs with fewer than 10 students completing in a given award year.)

## Where Must Schools Disclose Their Gainful Employment Information?

Schools must provide these disclosures in two main areas: promotional materials and on school websites.

First, schools must make the disclosures in promotional materials that refer to Gainful Employment programs and that schools make available to prospective students. This includes invitations, brochures, advertisements, solicitations, course catalogs and other content published in print, email, social media or broadcast outlets. URLs and links to the web page containing the disclosures are acceptable, as long as they provide a clear explanation of the information available on the page.

Second, the disclosures must appear on schools' websites. The home page of each relevant Gainful Employment program must prominently display the disclosures, which must be accessible via a direct and prominent link from other pages referencing the program.

## What Format Should the Gainful Employment Disclosures Take?

Schools must provide their Gainful Employment disclosures in a "simple and meaningful manner." For purposes of the January 31 deadline, schools should make the disclosures in an institutionally determined format that is searchable by common applications and accessible to individuals with disabilities. The Department of Education expects to release a Gainful Employment template at a later date.

Additional details on Gainful Employment disclosure requirements, including "Dear Colleague Letters," electronic announcements, and frequently asked questions can be found on the Information for Financial Aid Professionals (IFAP) Gainful Employment website, http://ifap.ed.gov/GainfulEmploymentInfo.

## What This Means to You

Most institutions of higher education offer at least one Gainful Employment program. To assure compliance, you should:

Determine which, if any, of your programs qualify as Gainful Employment programs;

Gather the required Gainful Employment data; and

Provide required information on promotional materials and web pages.

The Department of Education is seeking reconsideration of the APSCU court ruling and expects to provide further guidance and regulations after a decision. We will continue to monitor the status of this evolving area of law.

## Contact Information

If you have questions about this or other education law topics, please contact your Husch Blackwell attorney, Hayley Hanson at 816.983.8377 or Anne Cartwright at 816.983.8351.

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