



UPDATE

SIGNIFICANT 2015 REGULATORY DEADLINES

2015 is full of unprecedented regulatory obligations.

Recently, Congress formed a bipartisan task force to examine the impact of federal regulations on institutions of higher education. Why? In the words of Senator Alexander R-TN: ***“Let’s face it: the federal government has become one of the greatest obstacles to innovation in higher education. The stack of federal regulations on colleges and universities today is not the result of evil doers, it is simply the piling up of well-intentioned laws and regulations without anyone spending an equal amount of time weeding the garden first. This task force will help Congress weed the garden.”*** But let’s face it, the weeds will be part of postsecondary life for the foreseeable future. The following are some upcoming critical deadlines with suggested action items.

I. PLUS LOAN CHANGES

DEADLINE: MARCH 29, 2015

SUMMARY

In October of last year, ED issued final regulations made changes to the Direct PLUS Loan program including:

- Changing criteria for determining adverse credit history
- New loan-counseling requirement for applicants who qualify for a PLUS Loan by documenting extenuating circumstances or obtaining an endorser.
- The applicant must complete the counseling on the Department's StudentLoans.gov Web site.
- Modifying procedures so that a credit check for a PLUS Loan applicant will remain valid for 180 days instead of the current 90 days.



ACTION ITEMS

By March 29, 2015 your institution should:

- **Insert changes on website, catalog, and other materials with SFA information to include reference to this credit history eligibility change and to new counseling requirement.**
- **Update boilerplate on SFA letters to students regarding this PLUS change**

II. FY 2012 DRAFT COHORT DEFAULT RATE CHALLENGES

FIRST DEADLINE: APRIL 17, 2015

SUMMARY

On February 23, 2015, the U.S. Department of Education (ED) distributed the FY 2012 Draft Cohort Default Rates (CDR). Your Institution may challenge draft CDRs by submitting an **incorrect data challenge** and/or a **participation rate index challenge**. These challenges must be submitted within 45 days of the “timeframe begin date,” which is the 6th business day after the draft CDRs are released as officially announced by ED. This begin date, as confirmed by ED, is March 3, 2015. Forty-five days from March 3, 2015 is **April 17, 2015**. These challenges are summarized below.

Incorrect Data Challenge

ED releases a Loan Record Detail Report (LRDR) with its draft CDRs. This document lists every borrower that went into repayment in the fiscal year measured and identifies the loan status of each of these students. Sometimes the data in the LRDR is incorrect — a student may not have entered repayment in the measured year; a loan may be deferment but is listed in default, etc. For this reason, *even if your institution is not subject to sanctions*, it is important to submit an incorrect data challenge to correct the information. The first step in such a challenge is to submit an Incorrect Data Challenge to the data manager(s) via eCDR Appeals by **April 17, 2015**. *If an institution fails to submit such a challenge, it cannot contest the accuracy of that data later in an uncorrected data appeal or an erroneous data appeal.*

The data manager(s) must then send its response to the Incorrect Data Challenge within 30 days of receipt of the institution’s Incorrect Data Challenge. Upon receipt of the data manager(s)’ response, if the institution believes that the response is unclear, incorrect, missing, or incomplete, it may submit via

eCDR Appeals a request for clarification *within 15 days of the receipt of the Incorrect Data Challenge response.*

The data manager must then respond within 20 days of receipt of the request for clarification.

If your Institution is not satisfied with the data manager's conclusions, it may not appeal such decision until after the official rates are released in the form of an **Erroneous Data Appeal**.



ACTION ITEMS

By April 17, 2015, if your Institution wishes to to submit an Incorrect Data Challenge, it should:

- **If not already registered, register to use eCDRAppeals (see eCDRAppeal Registration and User Account Guide: <https://ecdrappeals.ed.gov/ecdra/index.html>)**
 - **Review LRDR to identify any errors regarding:**
 - Social Security Number
 - Last day of attendance (LDA)
 - Date entered repayment
 - Default date
 - Etc.
 - **Collect copies of relevant documentation such as:**
 - Copy of letter to data manager with correct LDA or less than half-time date
 - Dated copy of Enrollment Report confirming LDA or less than half-time date
 - Screen print from SSCR function within NSLDS confirming borrower's LDA or less than half-time date
 - Copy of cancelled check (front & back) or other documentation showing that borrower's loan was fully refunded and cancelled within 120 days of disbursement by the lender
 - Etc.
- **Upload CEO Certification Letter from eCDRAppeals**

Participation Rate Index Challenge

A successful participation rate index (PRI) challenge prevents a school from losing Title IV loan eligibility or being placed on provisional certification based solely on its CDR because the school has a PRI that meets one of the 3 thresholds.

- 3 consecutive CDR's (subject to loss of eligibility) over 30% and a PRI for at least one of those fiscal years of 0.0625 or less

- Most recent CDR over 40% (subject to loss of eligibility) and a PRI of 0.0832 or less
- 2 out of 3 most recent CDRs of 30% or greater (subject to provisional certification) and a PRI of 0.0625 or less

Your Institution may submit a PRI challenge for the recent draft CDR or the official CDR(s) that are threatening adverse action against your Institution. For example, if your Institution is subject to loss of eligibility because its most recent draft CDR is over 40%, then that is the CDR for which it may submit a PRI challenge. Keep in mind, however, *that even if your Institution is not subject to sanctions*, it may submit a PRI challenge, but there is no potential advantage unless your Institution is challenging a CDR over 30%.

ACTION ITEMS

By April 17, 2015, if your Institution wishes to to submit a PRI, it should:

- **Identify the 12-month period that ended during the 6 months immediately preceding the start of the cohort fiscal year for which the institution is submitting its PRI challenge.** You may use the 12-month period that provides the best results, so long as it is within these parameters.
- **Carry out the calculation to determine if your institution will meet the applicable PRI threshold, as described above.** The calculation is: *Total Borrowers in 12-month period ÷ Total Regular Students in 12-month period X Institution's CDR=Participation Rate Index.*
- **Submit letter from Institution on its letterhead to U.S. Department of Education together with spreadsheet in format identified in ED's Cohort Default Rate Guide. (April 17, 2015 is hard deadline).**



III. VIOLENCE AGAINST WOMEN ACT REGULATIONS

FIRST DEADLINE: JULY 1, 2015

SUMMARY

The VAWA regulations take effect July 1, 2015. (However, new domestic violence reporting went into effect October 1, 2014). Under these regulations, your Institution will be required to:

- **Comply with new reporting requirements, which include but are not limited to:**
 - Expanding its classification of reportable offenses to include “domestic violence” and hate crimes as defined in the regulations.
 - Expanding its definition of “hate crimes.” has expanded reportable offenses.
 - Withholding the names of certain victims need to be withheld.
- **Comply with new student discipline requirements including, but are not limited to:**
 - Institutional hearing officer are now required to be trained to protect safety of victim and other accountability issues.
 - The regulations impose new requirements on evidence preservation, standard of evidence, institutional obligations on restraining and no--contact orders, etc.
 - Provide training to new students and new employees on sexual violence.

ACTION ITEMS

By July 1, 2015, Institutions should:

The changes that need to be made to comply with VAWA cannot be done the week before they become effective (July 1, 2015). Items that should be accomplished soon include:

- **Prepare sexual violence training program for new students and new employees**
- **Prepare and conduct VAWA training for student disciplinary hearing officers**
- **Prepare and conduct VAWA training for student grievance hearing officers**



- Review and revise student disciplinary hearing procedures to comply with VAWA
- Review and revise student grievance hearing procedures to comply with VAWA
- Review and revise catalog and other disseminated materials to include appropriate disclosures
- Alert campus security officials and other appropriate personnel of need to preserve certain evidence and need to protect identity of certain victims.
- Alert appropriate personnel regarding new campus security disclosures.

IV. GAINFUL EMPLOYMENT REGULATIONS

FIRST DEADLINE: JULY 31, 2015

(Effective Date of Regulation: July 1, 2015)

SUMMARY

It is possible that before July 1, we will be hearing of a victorious outcome by a plaintiff in either the APC or APSCU litigation challenging the gainful employment regulations. In the event that doesn't happen, the following are some upcoming deadlines for which your Institution should be prepared:

- **July 31, 2015:** Deadline to submit information required to be reported under new regulations
- **December 31, 2015:** Deadline to Submit Senior Executive (that's you) Certification re GE Programs
- **February 2016:** ED Receives Earnings Data from SSA
- **Spring 2016:** ED Issues Draft Debt to Earnings Rates (Not public)
- **45 Days Later:** Deadline to Challenge Accuracy of Loan Debt
- **Upon Expiration of 45 Days:** Final Debt to Earnings Rates With Notice of Determination Issued
- **14 Days From Notice of Determination Date:** Deadline to Submit Notice of Intent to Submit Alternate Earnings Appeal
- **60 Days From Notice of Determination Date:** Deadline to Submit Alternate Earnings Appeal



ACTION ITEMS

By July 1, 2015, Institutions should:

•Gather data required to submit information required under new reporting requirements to meet July 31, 2015 deadline.

The reporting requirements are pretty straight forward. They are not significantly different from the reporting requirements struck down by the federal court in D.C. contained in the 2011 regulations. ED has released the GE reporting “record layout” and coding for institutions’ next reporting submission for 2007-108 THRU 2013-14 (**7 YEARS!**). After this initial year reporting, Institutions must submit the required information by October 1 every subsequent year.

The only differences between the final regulations and what had been proposed in the Notice of Proposed Rulemaking (NPRM) is that 1) schools now have to report the higher of the allowance for books, supplies and equipment in the COA or the higher amount actually assessed the student and 2) Institutions now have to report their **programmatic** placement rate if their accrediting agency or state require either institutional or programmatic placement rates be calculated. So even if your accrediting agency or state only requires that you calculate your institutional placement rate, you will now have to use whatever methodology it employs and use it to calculate and report your programmatic placement rate.

By July 31, 2015 Institutions subject to the Gainful Employment regulations must report the following:

- Name of institution
- Name of each enrolled student who received Title IV;
- Name of program;
- CIP code;
- Credential level;
- Length of program;
- Whether program is medical or dental program whose students are required to complete internship or residency;
- Date student initially enrolled;
- Attendance dates and attendance status (enrolled, withdrawn, completed) in program during award year;
- Enrollment status;
- If the student completed or withdrew during AY;
- Date student completed or withdrew;
- Total amount student received from private education loans that institution is, or should reasonably be, aware of for enrollment in the program;
- Institutional debt owed any party upon completion or withdrawal;
- Tuition and fees charged for program;
- Amount of allowance for books, supplies, and equipment included in COA for each AY in which student was enrolled or higher amount institution assessed student;
- If accrediting agency or state require institution to calculate placement rate for institution or program, or both, the placement rate for the program, using methodology required by that agency or state;
- Any other information requested by the Secretary.

V. POSTSECONDARY INSTITUTION RATING SYSTEM (PIRS)

FIRST DEADLINE: AUGUST 2015

SUMMARY

By August of this year, ED is expected to release its postsecondary institution ratings system (PIRS) applicable to all degree-granting institutions (for-profit, public, and not-for-profit). This ratings system will be released without notice and comment, unlike the GE regulations. However, earlier this year, ED sought feedback on its very skeletal proposal.

The most detailed information that ED has published on how it will rate institutions can be found here: <http://www2.ed.gov/documents/college-affordability/framework-invitation-comment.pdf>. Most of the objections to the ratings system have come from the traditional sector, but it will certainly impact all degree-granting for-profits institutions as well. The first phase of the rating system will involve massively expanding disclosures on institutions' performance on the new metrics. These disclosures will appear either on the White House's College Scorecard website, College Navigator, or possibly an entirely new website.

ED's ultimate goal is to use these metrics and integrate them into the Title IV award calculation. For example, ED could assign a certain number of points to each metric depending on performance and then use that number to calculate the interest rate the student at that institution would have to pay for Title IV loans and the amount of Title IV the student could receive. To make this particular change, however, Congress would need to pass legislation.

The administration is not seeking Congressional approval to rate institutions and disclosing those ratings to the public. The new PIRS metrics will run parallel to the Gainful Employment metrics applicable to all programs of for-profit institutions and non-degree granting programs of not-for-profit and public institutions. Institutions subject to the Gainful Employment regulations will be judged more onerously on matters related to earnings and loan repayment under the GE measures than under the PIRS system. *For this reason, with respect to earnings and loan repayment matters, the public will not have an apples-to-apples basis of comparison on these issues for degree programs of not-for-profit and public institutions.*

Moreover, the integrity of the data to be used under PIRS is a critical issue. We know, for example, that there are serious flaws with the manner in which ED calculates and reports student earnings.

Nonetheless, every degree-granting institution should expect to be rated on the following criteria this fall (red indicates new disclosures):

- **Percentage of students who receive Pell Grants**
- **EFC Gap:** Average difference between some focal EFC level and each student's individual EFC.
- **Family Income Quintiles**
- **First Generation College Status**
- **Average Net Price:** The cost of attendance after accounting for all federal, state, and institutional grant aid for first-time, full-time degree or certificate-seeking undergraduates who were awarded grant or scholarship aid from the federal government, a state or local government, or an institution.
- **Net Price by Quintile:** Quintiles are \$0--\$30,000, \$30,000--\$48,000, \$48,000--\$75,000, \$75,000--\$110,000, and above \$110,000
- **Completion Rate:** The completion rate is already available to students on College Navigator, but the calculation methodology will be changing to include part-time and transfer-in students. Also, ED is considering creating new sub-group completion rates that would include only Title IV students, such as Pell Grant recipient completion rate.
- **Transfer Rate:** While transfer in and transfer out rates are currently published on College Navigator, ED is now considering giving credit for institutions who have students who transferred out without graduating to another institution where they did graduate and to give credit to the receiving institution as well.
- **Labor Market Success:** This is likely the most controversial item. Here ED provides a much more nuanced contemplation of how to define "labor market success," than it did for defining "gainful employment." ED plans on reporting both short term and long-term earnings of both graduates and non-completers. However, rather than disclosing mean and median earnings, for short-term earnings (as with the GE metrics), ED is considering the percentage of students who earn above 200% of the poverty rate. If ED were to do so, it is important to note that the public would have no way of comparing the short term earnings reported for the for-profits in GE disclosures and the vaguer threshold short-term earnings reported for the public and not for profits. This is significant because the short-term earnings of the public sector universities has been called into question. See, e.g., <http://www.aei.org/publication/are-graduates-from-public-universities-gainfully-employed-analyzing-student-loan-debt-and-gainful-employment/> (19% of programs failing the GE measures were they applied to them).
- **Graduate school attendance of former students within a certain period of time of graduation from institution.**
- **Loan Performance Outcomes: ED is considering disclosing:**
 - Rates of deferment and forbearance
 - Percentage of initial loan balances that are paid at different points in time
 - Percentage of students whose loans are in negative amortization at different points in time
 - Loan Repayment Rate. However, ED is considering not requiring this because such a rate can "conflate outcomes and affordability with student and family

financial resources.” If ED eliminates this metric, only the for-profits (and the more limited not-for-profit and public programs subject to GE) would be required to disclose this information and negative inferences could be drawn about the for-profit schools with no means of comparison for non-GE programs.

ACTION ITEMS

By August 1, 2015, Institutions should:

- Carry out their own internal assessments of their performance on the PIRS metrics as best as they can now, to prepare for the possibility that they will be used future Title IV calculations. Even if the ratings system is not used in this way, note that these metrics will be disclosed by the 2015–16 school year and your Institution should have some sense of how it will fare.

VI. ADDITIONAL REQUIREMENT FOR THIRD PARTY SERVICER CONTRACTS

**NO SET DEADLINE: SHOULD CARRY OUT AS SOON AS
POSSIBLE**

SUMMARY

In 2012, ED issued a Dear Colleague Letter setting out items that needed to be included in all third-party contracts (DCL GEN 12--08). Earlier this year, ED issued another DCL (GEN 15--01) with additional elements not included in the 2012 DCL:

- Legal name of third-party servicer any other name the servicer does business as (d/ b/a).
- Physical address and primary phone number of the servicer’s primary location, as well as the name, title, phone number, and e-- mail address of the president or chief executive officer of the entity.
- Clear description of the specific Title IV functions that the third-- party servicer will perform for the institution.
- If a third--party servicer subcontracts any of its contractual responsibilities, the contract must identify the subcontractor and clearly describe the functions performed on behalf of the servicer and school by the subcontractor.

ACTION ITEMS

As soon as possible, Institutions should:

- Review all of your third-party contracts to ensure they contain the additional information noted above. This shouldn't open up any sort of need to renegotiate the contracts. Your Institution should simply ask their third-party contractors to sign an addendum to their current contract with the items included above.

IF YOU NEED HELP

If you need guidance navigating through these requirements, the Gallegos Legal Group would be glad to help. You may contact us at: info@gallegoslegalgroup.com or at 505-242-8900.

