

# Getting Ready for Gainful Employment Reporting and Disclosure

By Ronald Holt and David LeFevre, Dunn & Davison, LLC

Ready or not, here it comes. On July 1, new reporting and disclosure rules of the Department of Education go into effect. These rules were first promulgated in conjunction with the Department's gainful employment metrics scheme. Even though the Department pulled the metrics part, it left these requirements to be finalized, and their effective date will be here before you know it. So, contrary to a lawyer's innate tendency to blivate, here are the requirements in summary fashion.

## GAINFUL EMPLOYMENT DISCLOSURE

**To Whom the Disclosures Are Made.** The disclosures summarized below are to be made to *prospective* students, not *enrolled* students. This means that the disclosures must be made before the student signs an enrollment agreement or makes a similar commitment to begin an academic program at a school. Simply sticking a disclosure sheet in the catalog or handbook won't cut it.

**What to Disclose.** For each private sector college or university program, the school must make disclosures in five main areas. First, schools must

identify the occupations for which the program is preparing students using the program's Classification of Instructional Program (CIP) code and an online database maintained by the Department of Labor called O\*NET (<http://www.onetonline.org/crosswalk/CIP/>).

Second, schools must calculate and publish an on-time completion rate for each program. The rate is (surprisingly)

---

***The disclosures must be made before the student signs an enrollment agreement or makes a similar commitment to begin an academic program at a school.***

---

simple to calculate. Start with the number of students who graduated from the subject program during the award year. This is the denominator. Next, determine what is "on time" or "normal time" for that program, which is just the amount of time that is published in the school's catalog as what is expected of students. So if the catalog says it is a 9-month program, normal time is 9 months. Then, of the folks counted in the denominator,

determine how many started school at the institution, regardless of which program they started, and finished within that period time. This is the numerator. Divide the numerator by the denominator, and that is the program's on-time completion rate.

Third, schools must disclose the total cost of the program for normal time graduates, including tuition, fees, institutional charges, typical books and supplies, and room and board.

Fourth, if the school's accrediting agency or state regulatory agency requires that the institution calculate a placement rate of any kind, the school must disclose that rate. Eventually, all schools will be required to calculate and publish a placement rate, but the required methodology for performing

the calculation is still under development by the National Center for Education Statistics.

Fifth and finally, schools must disclose median debt figures for graduates of the program, breaking out those figures separately for Title IV debt, private loan debt and institutional debt. (The median of a range of numbers is the middle number in a data set with an odd number of values and the average of the two middle numbers in a data set with an even number of values.) In the future, these figures will be provided by the Department, but for the first set of disclosures to be made starting in July, schools are on their own to create the median debt figures.

**What Time Period to Look At.** The time period covered is the award year,



**RONALD HOLT** brings 26 years of experience in a broad range of commercial and general litigation matters in various industries regionally and across the country. He has a national practice representing institutions of higher learning in litigation, regulatory matters and business transactions.

Ron served a two-year clerkship with the late United States District Judge Russell G. Clark before entering private practice. He has served as lead counsel and successfully prosecuted and defended substantial claims in commercial, banking, antitrust, securities, environmental, employment,

insurance and higher education litigation matters, including complex commercial cases.

Active in representing for-profit postsecondary institutions around the nation, Ron is a member of the Association of Private Sector Colleges and Universities headquartered in Washington, D.C., where he serves on its Legislative Advisory Council and chairs its Litigation Committee.

**Contact Information:**

Ronald L. Holt  
Dunn & Davison, LLC  
1100 Walnut Street, Ste. 2900  
Kansas City, MO 64106  
Direct: 816-292-7604  
Main: 816-292-7600  
Fax: 816-292-7601  
Email: rholt@dunndavison.com



**DAVID LEFEVRE's** experience is wide-ranging, but he concentrates in higher education and employee benefits. His higher education practice includes regulatory consultation, advocacy of institutions in matters with higher education regulatory agencies, mergers and acquisitions and other

general corporate matters for institutions and other businesses in the higher education space.

Mr. LeFevre's employee benefits practice includes representation of multi-employer plans and

businesses of varying sizes in all aspects of both health and welfare benefits and retirement benefits.

While maintaining an active role in Dunn & Davison, LLC, Mr. LeFevre has served as general counsel to a higher education services company based in Houston, Texas.

**Contact Information:**

David L. LeFevre  
Dunn & Davison, LLC  
9950 Westpark Dr., Ste. 600  
Houston, TX 77063  
Phone: 713-581-1987  
Fax: 816-292-7601  
Email: dlefevre@dunndavison.com

July 1 to June 30 of the following year. The disclosures become effective immediately after the close of the 2010–2011 award year, so for this first set of disclosures, the information can be based upon the 2009–2010 award year, but schools are expected to update the data as soon as information from the 2010–2011 award year becomes available.

**Where to Disclose It.** These five sets of disclosures must be made in two places: on the Web page or landing page for the program the disclosures cover and on program-specific promotional materials. “Promotional materials” includes everything from brochures to radio and TV advertisements. If it is not

---

***These five sets of disclosures must be made in two places: on the Web page or landing page for the program the disclosures cover and on program-specific promotional materials.***

---

practical to include all the information—that is, because of space or time limitations—the Department is requiring a short reference to a printed or live web link containing the full text of the disclosures.

**How to Disclose It.** Once the government forms bureaucracy runs its course, the Department will have a plug-and-play style Web or software form that produces the disclosures in the required format. Until that process is complete, schools are on their own to create the template. However, to get an idea of what the format is likely to be, there is a draft template available at [http://edicsweb.ed.gov/browse/download.cfm?pkg\\_serial\\_num=4561](http://edicsweb.ed.gov/browse/download.cfm?pkg_serial_num=4561) (click on “Att\_1845-0107 v2 Gainful Employment Disclosure Template Zip File Draft.pdf”).

## **GAINFUL EMPLOYMENT REPORTING**

**What to Report.** For each *enrolled* student for whom the institution has a social security number, schools must supply the Department with a range of information:

- Student name and date of birth
- Program name and CIP code
- Credential level (certificate, associate’s degree, bachelor’s degree, etc.)
- Date student began attending the program
- Indication of whether the student will be required to do a medical or dental internship or residency for the program
- Indication of whether the student received FFEL loans or Direct Loans at any time during the program

For each *graduated* or *withdrawn* student for whom the institution has a social security number, schools must report:

- The date of completion or withdrawal
- The amount of private loans owed as of the date of completion or withdrawal
- The amount of institutional financing owed as of completion or withdrawal
- Indication of whether the student enrolled in another program, if known, and certain information about the other program (CIP code, program name, OPEID, etc.)

**How to Report It.** Schools will use the current National Student Loan Database System (NSLDS) enrollment reporting process. The Department is

in the process of adding additional data fields to the existing report.

**When to Report.** By October 1 of this year, schools are required to populate NSLDS with this information for all students who enrolled in a program since July 1, 2006, separately reporting on each award year. Going forward, schools will update NSLDS with the additional data on an annual basis by September 30. In any case where an institution lacks the required information, the school must provide an explanation. For the 2006–2007 award year, the Department has stated that it will give schools some leniency.

#### **GAINFUL EMPLOYMENT NEW PROGRAM NOTICE**

In addition to making disclosures and reporting information, the Department wants to be notified before schools add new programs. This requirement also goes into effect on July 1.

**How Much Notice.** For any new program that will have its first day of class between July 1, 2011, and September 30, 2011, schools must provide a specific notice to the Department by July 1, 2011. For any new program that will have its first day of class on or after October 1, 2011, schools must give the notice at least 90 days before the first day of class.

**What Is a “New Program.”** A “new program” is, essentially, anything that the institution’s accrediting agency considers a new program, but it also includes any program that has a different CIP code than the institution’s other programs, and any program that has the same CIP code but a different credential.

**What Kind of Notice.** The 90-day notice must include:

- The school’s determination of need for the program
- The curriculum
- A report endorsing the program from the school’s local advisory

board, *Workforce Investment Act* agency or other agency that reviewed the program

- Wage projections based on data from the Bureau of Labor Statistics (BLS)
- Accrediting agency approval of the program

No response from the Department means the school is free to proceed. However, up to 30 days before the first day of class, the Department may ask the school for a full-blown application with additional information on projected student debt loads and post-graduation earnings. In reviewing a school’s notice, the Department will be looking at the sufficiency of the school’s process for determining need for the program, whether the new program is a re-packaging of another program the Department views as not leading to gainful employment, the school’s demonstrated financial responsibility and administrative capability, and information from accrediting agencies, state regulatory authorities and the BLS. It remains to be seen how the new program notice and approval process will play out.

For schools of any size, complying with the gainful employment reporting, disclosure and new program requirements by July 1 will require a tremendous amount of effort to gather the data, synthesize it and publish it in the required form, requiring the collaborative efforts of multiple departments within the institution. Schools are well-advised to be diligently working on it now. In other words, get crackin’!

#### **ADDITIONAL INFORMATION**

Department of Education FAQ on gainful employment reporting and disclosure: <http://www.ifap.ed.gov/GainfulEmploymentInfo/2011GEFAQ.html>.