

Division of Government & Public Affairs

## **U.S. Department of Education Regulations Related to Programs That Must Lead To Gainful Employment Under Title IV of the Higher Education Act**

The U.S. Department of Education (“ED”) has issued new rules pertinent to programs that are required to lead to gainful employment in a recognized occupation for purposes of federal student financial aid programs (“GE programs”). On Oct. 29, 2010, ED issued final rules, effective July 1, 2011, that impose new reporting, disclosure, and notice and approval requirements with respect to GE programs. In addition, on June 13, 2011, ED published final rules establishing new debt measures for determining whether a program leads to gainful employment in a recognized occupation and is therefore eligible for federal student financial aid. We summarize here, in question and answer form, certain aspects of the gainful employment requirements, with a focus on describing the types of programs that are GE programs. The attachment provides a decision tree for determining whether a program offered by a non-profit or public institution is a GE program.

### **1. Do the gainful employment requirements apply to public and independent non-profit institutions?**

Yes, the gainful employment requirements apply to all institutions that participate in the federal student financial aid programs under Title IV of the Higher Education Act (“Title IV”), regardless of whether the institution is non-profit, public, or proprietary. However, the requirements apply only with respect to certain programs at non-profit and public institutions, whereas they apply to all programs at proprietary institutions with some limited exceptions.

### **2. Do the new disclosure and reporting requirements in 34 C.F.R. § 668.6, the new program notice and approval requirements in 34 C.F.R. §§ 600.10 and 600.20, and the new debt measures for determining whether a program leads to gainful employment in a recognized occupation in 34 C.F.R. § 668.7 apply to all education programs offered by institutions that participate in the Title IV programs?**

No, the gainful employment requirements apply only to GE programs.

### **3. Are programs that lead to a degree—including associate’s degrees, bachelor’s degrees, graduate degrees, and professional degrees—GE programs?**

Degree programs are not GE programs when offered by non-profit or public institutions, because degree programs that are offered by such institutions are not required to lead to gainful employment in a recognized occupation in order to be Title IV eligible. With limited exceptions, degree programs are GE programs when offered by proprietary institutions because degree programs that are offered by such institutions generally must lead to gainful employment in a recognized occupation in order to be Title IV eligible.

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*This memorandum was prepared by the Washington, DC law firm Hogan Lovells US LLP (June 24, 2011).*

#### **4. Are non-degree programs at public and non-profit institutions GE programs?**

Yes, if the non-degree program is a Title IV-eligible program in accordance with applicable requirements. ED has indicated that non-degree GE programs at non-profit and public institutions include undergraduate certificate programs, postbaccalaureate certificate programs, graduate certificate programs, and postgraduate certificate programs.

At public and non-profit institutions, the following types of non-degree programs are Title IV eligible:

- (1) A program that is at least one-academic-year in length, leads to a certificate or other non-degree recognized credential, and prepares students for gainful employment in a recognized occupation.
- (2) A program that is less than one-academic-year in length and meets ED requirements applicable to vocational programs. Three types of vocational programs are Title IV eligible; all must lead to gainful employment in a recognized occupation. They are:
  - Programs that provide at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction offered during a minimum of 15 weeks of instruction. The program may admit persons who have not completed the equivalent of an associate degree.
  - Programs that provide at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours of instruction offered during a minimum of 10 weeks of instruction. The program must be a graduate or professional program or must admit only persons who have completed the equivalent of an associate degree.
  - Programs that provide at least 300 but less than 600 clock hours of undergraduate instruction offered during a minimum of 10 weeks of instruction. The program must admit some persons who have not completed the equivalent of an associate degree. Additional rules apply to such short-term vocational programs.

#### **5. Are non-degree programs at proprietary institutions GE programs?**

Yes, if the non-degree program is a Title IV-eligible program in accordance with applicable requirements. A non-degree program that is offered by a proprietary institution must meet the requirements above related to vocational programs in order to be Title IV eligible. ED has indicated that non-degree GE programs at proprietary institutions include undergraduate certificate programs, postbaccalaureate certificate programs, graduate certificate programs, and postgraduate certificate programs.

#### **6. Are there other programs that are GE programs?**

Yes. ED-approved “comprehensive transition programs” for students with intellectual disabilities are also GE programs when offered by non-profit, public, or proprietary institutions. Such programs are degree, certificate, nondegree, or noncertificate programs that are offered by an institution and are designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living education at an institution in order to prepare for gainful employment.

**7. Are non-Title IV eligible programs GE programs?**

No, non-Title IV eligible programs are not GE programs and therefore are not subject to the gainful employment requirements.

**8. Suppose a program is Title IV eligible and would ordinarily qualify as a GE program. If the institution awards no Title IV aid to students who are enrolled in that program, does it still qualify as a GE program?**

ED has indicated that it will consider a Title IV-eligible program that is otherwise required to be treated as a GE program to be a GE program (and thus subject to GE program requirements) even if the institution awards no Title IV aid to students enrolled in the program. However, if the institution notifies ED that it does not want the program to be treated as a Title IV-eligible program and it will award no Title IV aid to students enrolled in the program, ED will no longer consider the program to be a GE program. The program's Title IV-eligibility end date, as reported to ED, affects when the institution no longer must comply with gainful employment requirements with respect to that program. ED's Gainful Employment Frequently Asked Questions ("FAQs") provide guidance on the process to follow to discontinue a program's Title IV eligibility. The FAQs are posted at <http://www.ifap.ed.gov/GainfulEmploymentInfo/2011GEFAQ.html>.

**9. If a program leads to a degree but students also earn certificates as part of the degree program, is any aspect of the program considered to be a GE program?**

ED has indicated that awarding students one or more certificates as part of a degree program does not create GE programs based upon the awarding of the certificates when the degree program is offered by a non-profit or public institution.

**10. Are teacher certification programs GE programs?**

A teacher certification program that results in a certificate awarded by the institution is a GE program, assuming the program is otherwise a Title IV-eligible program. A teacher certification program that does not result in a certificate awarded by the institution itself but which consists of a collection of course work that is necessary for the student to receive a state professional teaching credential or certification is not a GE program. The distinction is based on Title IV eligibility requirements. A teacher certification program that results in a certificate awarded by an institution must meet the applicable criteria identified in Question 4 in order to be a Title IV-eligible program, and thus must lead to gainful employment in a recognized occupation. In contrast, teacher certification programs that do not result in a certificate awarded by the institution but which consist of a collection of course work necessary for the student to receive a state professional teaching credential or certification are not Title IV-eligible programs and, thus, are not GE programs. Students enrolled in such teacher certification programs are nevertheless able to receive federal student financial aid based on Title IV regulations related to student eligibility, which contain no requirement that the program lead to gainful employment in a recognized occupation.

**11. In addition to teacher certification programs that do not lead to an institutionally awarded credential, are there other non-degree programs that are not GE programs when offered by a non-profit or public institution?**

Yes, there are two additional types of non-degree programs that are not GE programs: (1) Programs that are at least two academic years in length and are fully transferable to a bachelor's degree program are not GE

programs, and (2) preparatory courses of study that provide course work that is necessary for enrollment in a Title IV-eligible program are not GE programs. The latter type of program is similar to teacher certification programs that result in no certificate being awarded by the institution (see Question 10), because such programs do not meet Title IV program eligibility criteria but students are nevertheless able to receive Title IV aid for such programs under Title IV student eligibility requirements.

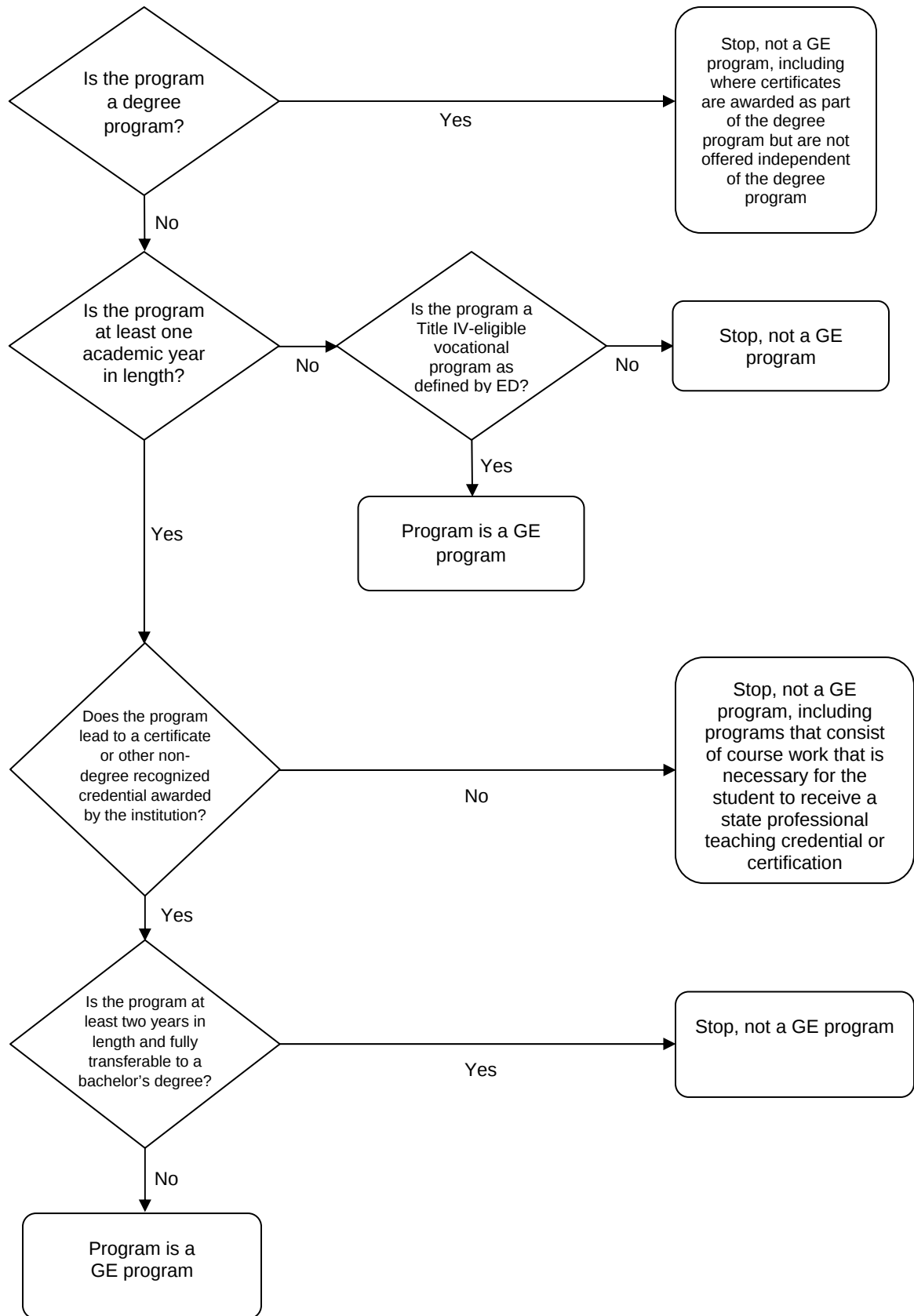
**12. Are there programs that are not GE programs when offered by a for-profit institution?**

In addition to the non-GE programs identified in Questions 10 and 11 (other than programs that are at least two-academic-years in length and are fully transferable to bachelor's degree program), proprietary institution programs that lead to a baccalaureate degree in liberal arts are non-GE programs if the institution has been accredited by a regional accrediting agency since October 2007 and the institution has offered the program since January 2009. Few proprietary institutions have such programs.

**13. Do the gainful employment requirements apply to foreign institutions?**

Yes. With respect to foreign public and non-profit institutions, programs that are GE programs are the same programs that are GE programs when offered by domestic non-profit and public institutions. With respect to for-profit foreign institutions, the only programs that are eligible for Title IV aid are degree programs in medicine, nursing, and veterinary science; those programs are GE programs and are subject to gainful employment requirements.

## GE Programs Decision Tree for Non-Profit and Public Institutions



*This decision tree aims to guide an institution through major considerations related to determining whether a program is a GE program. It does not address all considerations nor does it incorporate all GE and non-GE programs. Please review the Q&A for more detail.*