

HigherEdReg Rundown

The Latest on ED's Financial Value
Transparency and Gainful
Employment Rule

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- **Higher education practice** provides legal counsel, compliance, policy and training services to colleges and universities.
- HigherEdReg Rundown updates the community on a topic of particular importance in a concise format.

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The FVT/GE Rule

- On October 10, 2023, ED [published](#) its final Financial Value Transparency and Gainful Employment (GE) rule.
- The rule took effect on **July 1, 2024**.
- ED continues to publish **significant guidance** (e.g., electronic announcements, dear colleague letters).
- In particular, schools should closely monitor ED's [Financial Value Transparency and Gainful Employment Topics Page](#).

In the Fifth Circuit

- In December 2023, the American Association of Cosmetology Schools filed suit in the U.S. District Court for the Northern District of Texas.
- A second suit was filed by the Ogle School Management and others on March 20, 2024, also in the U.S. District Court for the Northern District of Texas, seeking a preliminary injunction prior to July 1.

No Injunction for GE

- On June 20, 2024, the Court **denied** the Plaintiff's motion for preliminary injunction holding that "Plaintiffs have not met their burden to justify an **extraordinary** remedy of injunctive relief at this stage."
- On July 10, the Court consolidated the AACS and Ogle cases and a new briefing schedule was entered.
- All motions will be fully briefed by January 31, 2025. Because the court did not grant preliminary injunctive relief, the consolidated cases will proceed to a merits-based decision, where the plaintiffs may succeed.

Loper Bright

- On June 28, the Supreme Court in *Loper Bright* generally held that the deference agencies enjoyed under *Chevron* to issue regulations enforcing **ambiguous or silent statutes** no longer exists.
- Now agencies can only issue regulations that are not only “reasonable” but are consistent with the plain language of the statute.
- The overall tenor of *Loper Bright* also suggests that agencies’ stated justifications for their regulations will be more closely scrutinized.

Action Items

- A court decision is not anticipated until spring 2025.
- As such, we anticipate institutions will be required to complete various action items before any decision.
- Specifically, institutions should be monitoring completers list developments, deciding between standard and transitional reporting, and preparing to report.

Draft Completers List

- ED issued draft Completers Lists on **August 8, 2024**. The lists were sent to institutions' Student Aid Internet Gateway (SAIG) Mailbox.
- The draft Completers List identifies relevant students who completed a GE or Eligible Non-GE program during the two-year cohort period (2017–18, 2018–19) or the four-year cohort period (2015–16, 2016–17, 2017–18, 2018–19) for the 2022 earnings year.

[EA \(GE-24-07\)](#) (August 5, 2024, updated August 8, 2024)

Completers List Timing

- Institutions initially were advised that they had until **October 7, 2024**, to add or remove students from the list or exclude students from the FVT/GE calculations.
- ED would then generate a final Completers List, which would be sent to the IRS to obtain the earnings data needed for the D/E Rates and Earnings Premium calculations.

Completers List Timing

- However, on August 30, [ED announced](#) “newly identified issues with the Completers Lists and FVT/GE Reports”
- “We suggest institutions **pause reviews** of the Completers Lists and use of the FVT/GE Reports as we work to resolve these issues. We will notify the community with an update to this announcement once resolved, and we will review the **related reporting deadlines.**”

Reporting Underway

- Since **July 1, 2024**, institutions have been able to report FVT/GE data through ED's system.
- Institutions will have until **October 1, 2024**, to provide all required reporting.
- This means the institutions must submit the information that was previously due by July 31, 2024, by no later than October 1, 2024.

Reporting Resources

- ED has [made available](#) three reports, intended to “help schools identify students and programs that require FVT/GE reporting” based on information already provided to NSLDS via the Enrollment Reporting process.
- ED has [published](#) Volumes 1-3 of its FVT/GE NSLDS User Guide, with an anticipated Volume 4 forthcoming.
- ED has published reporting-specific guidance in the [FVT/GE FAQs](#).

Standard vs. Transitional

- An institution **must determine** whether it will use standard or transitional periods for reporting at the time that it first reports data to ED.
- The choice of standard or transitional reporting must be made for the **entire institution** and cannot be changed once it has been selected.
- Schools that choose transitional reporting will use that reporting method for the first six years that the regulations are in effect.
- Schools that choose standard reporting will be expected to provide data for all the years during the cohort period.

[DCL \(GEN-24-04\)](#) (March 29, 2024).

Standard vs. Transitional

Reporting Year	FVT/GE Information Type	Reporting Type	Award Years to Report
2024: Deadline 10/01/2024	Student Specific: Completed or Withdrawn	Standard – (Programs other than Qualifying Graduate Programs)	2017-2018 2018-2019 2019-2020 2020-2021 2021-2022 2022-2023 2023-2024
		Standard – (Qualifying Graduate Programs)	2016-2017 2017-2018 2018-2019 2019-2020 2020-2021 2021-2022 2022-2023 2023-2024
		Transitional*	2022-2023 2023-2024
	Student Specific: Enrolled	n/a	2023-2024
	Program Specific	n/a	2023-2024

EA (GE-24-04) (April 12, 2024).

Weighing the Options

Standard

- Higher reporting burden.
- Unable to impact cost/debt data for years.
- Programs may have been significantly less expensive in prior years.

Transitional

- Lower reporting burden.
- Opportunity to impact cost/debt data in near term.
- Programs may be more expensive in more recent years.

Higher Education Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

COMPLIANCE RESOURCES



COMPLIANCE RESOURCE: FINANCIAL RESPONSIBILITY GUIDE

We provide a guide to the reporting obligations under ED's new Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit Rule.



COMPLIANCE RESOURCE: TCPA AND OTHER TELEMARKETING RULES

This guide helps colleges and universities understand TCPA regulations for text messages and calls to students, ensuring permission is obtained for promotional messages.

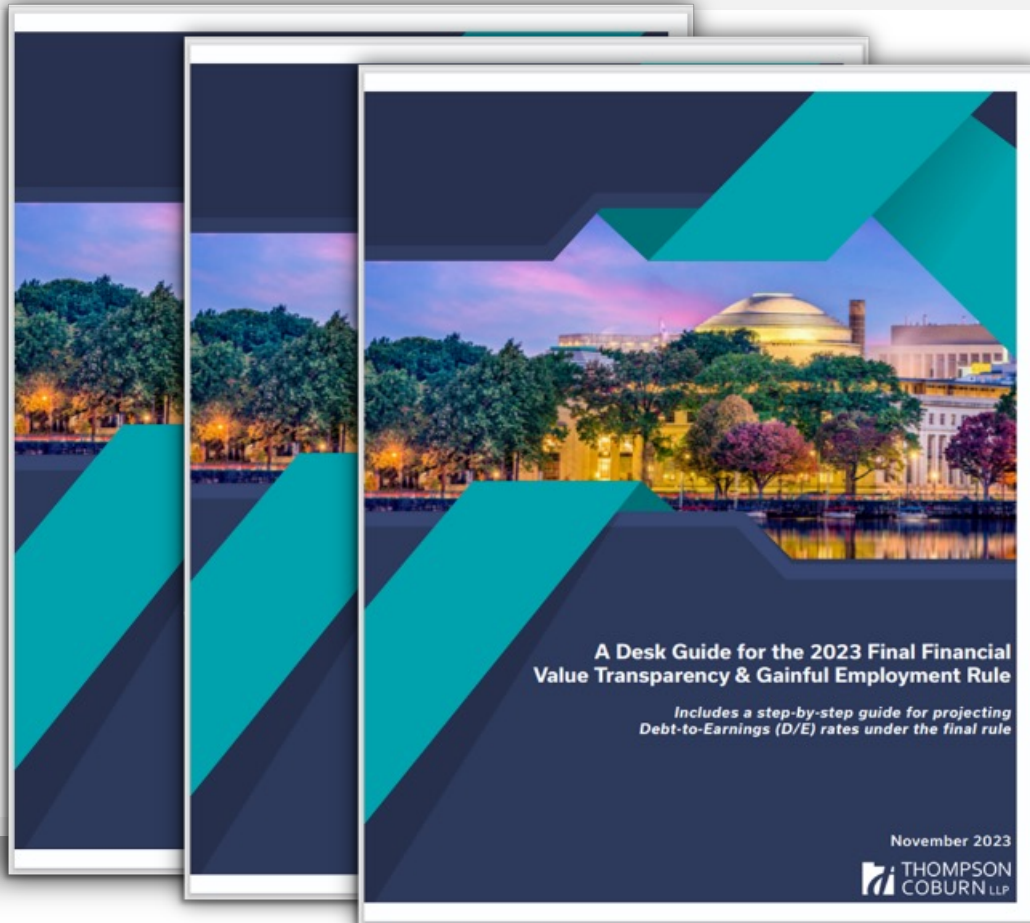


COMPLIANCE RESOURCE: A DESK GUIDE FOR THE 2023 FINAL FINANCIAL VALUE TRANSPARENCY & GAINFUL EMPLOYMENT RULE

We have developed this Desk Guide to assist institutions as they contemplate compliance with the final version of the GE rule.



Free FVT/GE Desk Guide



FVT/GE Webinars

The screenshot shows a YouTube video player interface. At the top left is the YouTube logo. A search bar is located at the top right. Below the search bar is the channel name 'THOMPSON COBURN LLP' with a small profile picture icon. The video title is 'ED's New Financial Value Transparency and Gainful Employment Rule', followed by the subtitle 'Higher Education Webinar Series' and the date 'November 7, 2023'. The video thumbnail shows a pair of glasses on an open book with a smartphone nearby. The video player controls at the bottom show a progress bar at 0:00 / 2:43:11. Below the video player, the channel name 'Thompson Coburn LLP' is displayed with '967 subscribers' and a 'Subscribe' button. Engagement icons for likes (15), comments, share, download, and clip are visible. A description box at the bottom contains the following text: '2.8K views 5 months ago Higher Education On October 10, 2023, the U.S. Department of Education published its new Financial Value, Transparency and Gainful Employment Rule (GE Rule). This latest version of the GE Rule has been expanded to cover all Title IV programs at all Title IV-participating institutions of higher education. Among other things, the rule attempts to compare the typical debt a program's graduates take on with their typical earnings after graduation. If a program's debt-to-earnings rate does not consistently meet thresholds est...more'.



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