

**From:** Scott DeVito  
**Sent:** Monday, January 9, 2017 5:01 PM  
**To:** Coastal Law Students <[students@fcsl.edu](mailto:students@fcsl.edu)>  
**Subject:** Announcement relating to gainful employment

Dear Students,

In the next few days you may hear a lot about something called “Gainful Employment” (“GE”). In the law school arena, GE is a set of regulations that only apply to for-profit schools like Florida Coastal. GE requires our graduates to have a certain level of debt-to-earnings ratio within three years of graduation. The Department of Education (“DOE”) just released its GE calculations and Florida Coastal has failed the GE debt-to-earnings ratio.

We have already appealed these GE results. For present purposes, the major implication of appeal is that, in the short term, some of our disclosure obligations under GE may be suspended for a time.

But because we think that this issue is so important to our students, I am writing to you now to explain what GE is and the consequences of failing to meet GE’s debt-to-earnings ratio.

### **The GE Story**

GE was put into place after 7-8 years of intense political debate and controversy following a number of scandals relating to for-profit schools that took in people who objectively could not succeed and that produced cohort loan default rates of 30% and more.

As these rules were being developed, many argued that they should not be applied in a blanket fashion to all for-profit schools. For example, we (among others) argued there should be an exemption for schools that had very low cohort default rates like Florida Coastal (which currently has a cohort default rate of 2%—comparable to Ivy league schools). Even though the purported goal of GE is to protect students and taxpayers, this reasonable limitation was rejected.

It was also argued that if the rule serves a valid purpose and provides students with a useful measure to compare schools, then it should apply to all schools: for-profit, non-profit, and public. This argument lost because far too many not-for-profit schools would fail the GE test. For example, 25% of all law schools would fail GE<sup>[1]</sup> (even though only 3% are for-profit—and not all of for-profits fail GE).

Because of the many questions and controversies surrounding GE, implementation has been stalled for more than 7 years. And throughout this period many members of Congress have expressed dissatisfaction with GE. Yet the GE data was just published—during the transition period for a new administration.

GE is not about protecting students and taxpayers. It is part of an anti-for-profit political agenda.

### **GE Uses a Bad Measure**

---

<sup>[1]</sup> See Matt Leichter, *What if the Gainful Employment Rule Were Applied to All Law Schools?*, *The Last Gen X American* (July 17, 2015) available at <https://lawschooltuitionbubble.wordpress.com/2015/06/29/what-if-the-gainful-employment-rule-were-applied-to-all-law-schools/>.

The key measurement in GE is based on the debt-to-earnings and debt-to-discretionary-income rates, which compare graduates' debt with their earnings two to three years after graduation.

Former Speaker of the House Newt Gingrich recently pointed out that “the [GE] rule is hurting students rather than helping them. For instance, students in lower wage states are having their opportunities for career advancement eliminated simply due to differences in the cost of living.”<sup>[2]</sup>

This is precisely the problem with applying GE to law schools like Florida Coastal. While northeast Florida is a beautiful place filled with extraordinary people, it is a relatively low-wage region. In addition, as Profs. Simkovic and McIntyre showed, lawyer's peak earnings occur around age 50—well past the three year GE window.<sup>[3]</sup> This is compounded by the fact that our graduates traditionally enter low starting salary jobs such as public service and small firms—providing precisely the kind of legal service that our communities need.

Over the next few weeks you may see some people out in the media gloating over Florida Coastal's failure to meet the GE requirement. They will say “I told you so” and claim that the school is a bad investment for students. Oddly, they rarely perform any analysis comparing Florida Coastal to other law schools. For example, pay attention to whether discussions of our failing GE ratio test take into account that 25% of all law schools likely would fail GE as well. Similarly, when they talk about bar pass rates, which I have continue to say are too low, they will not mention that, for example, in 2015, Florida Coastal's bar pass rates were higher than at least **26** other ABA accredited law schools.

### **The Impact at Coastal**

Before I discuss how we will respond to GE, let me summarize what I take to be the key consequences for Florida Coastal failing to satisfy GE. First, we will have a number of reporting requirements where we will have to provide specific notices to students. Second, if we fail GE two out of three years (this is the first year), Florida Coastal will not be able to disburse Title IV student loans.<sup>[4]</sup>

### **Staying on Course**

The good news is that we have been aware of GE for a long time and have a plan in place. At this point in time, the right course of action is to stay on course.

First, we recognized that Florida Coastal's students would be better served by our becoming part of a non-profit, major university. And, for the last two years, we have been working to do so and are in continuing

---

<sup>[2]</sup> Newt Gingrich, *The other half of Trump's 'jobs, jobs, jobs' promise (hint: it's about skills)*, Fox News Opinion, <http://www.foxnews.com/opinion/2016/12/27/gingrich-other-half-trumps-jobs-jobs-jobs-promise-hint-its-about-skills.html>

<sup>[3]</sup> Michael Simkovic and Frank McIntyre, *The Economic Value of a Law Degree*, available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKewjvvdXs\\_7XRAhVEzFQKHS AoCGYQFggnMAI&url=http%3A%2F%2Fwww.law.northwestern.edu%2Fresearch-faculty%2Fcolloquium%2Flaw-economics%2Fdocuments%2FThe%2520Economic%2520Value%2520of%2520a%2520Law%2520Degree%2520-%2520Simkovic.pdf&usq=AFQjCNE4r-xhCWHw9Wsyexb8\\_T7nwBOjPQ&sig2=wfUNa1TkJyYjDMQPxdvZhg](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKewjvvdXs_7XRAhVEzFQKHS AoCGYQFggnMAI&url=http%3A%2F%2Fwww.law.northwestern.edu%2Fresearch-faculty%2Fcolloquium%2Flaw-economics%2Fdocuments%2FThe%2520Economic%2520Value%2520of%2520a%2520Law%2520Degree%2520-%2520Simkovic.pdf&usq=AFQjCNE4r-xhCWHw9Wsyexb8_T7nwBOjPQ&sig2=wfUNa1TkJyYjDMQPxdvZhg).

<sup>[4]</sup> The GE regulations can be found at 34 CFR 668.401 *et seq.* which can be easily accessed via WestLaw or Lexis. It is also accessible, for free, at <https://www.law.cornell.edu/cfr/text/34/668.401>.

negotiations with potential future partners. A side-effect of such a change would be that GE would, after a potential transition period, no longer apply to Florida Coastal.

Second, we have been working hard to lower student-debt load in order to meet the debt-to-earnings ratio set by GE. For example, we have raised scholarships in the last three years by over 30%. Over the last year, we have adjusted our curricular offerings to redirect student enrollment during summer and intersession (periods where students greatly increase their debt loads). We are also working on a new tuition plan that we believe will help student debt load.

Third, we have raised our admissions criteria, improved our bar preparation curriculum, and career services outcomes. Combined, this should mean more students are ready to successfully enter the workforce shortly after graduation—thereby helping us meet the GE debt-to-earnings ratio. We have been improving our admission criteria, our bar preparation curriculum, and our career services outcomes. Success here would combine to mean more students pass the bar and are ready to earn income sooner.

If you are interested in finding out more, there are plenty of credible resources on the web. To help you get started, I include a list below my signature.

Lastly, I know it is difficult to discuss this fully in an email, so we will have monthly student town halls to update you and answer any questions you may have starting Tuesday, January 17<sup>th</sup>.

Thank you,

Dean DeVito

***Gainful Employment is part of the Obama administration's attack against for-profits.***

- “Obama’s For-Profit Execution – How to kill a company without proving a single allegation”, Wall Street Journal, August 29, 2016. <http://www.wsj.com/articles/obamas-for-profit-execution-1472511905>
- “Obama’s For-Profit Stealth Attack - The Pentagon punishes Phoenix on orders from Senate headquarters”, Wall Street Journal, October 21, 2015. <http://www.wsj.com/articles/obamas-for-profit-stealth-attack-1445468149>
- “Shutting down for-profit schools could hurt more people than it would help”, Washington Post Editorial, September 10, 2016. [https://www.washingtonpost.com/opinions/shutting-down-for-profit-schools-could-hurt-more-people-than-it-would-help/2016/09/10/3f6cb5ba-76b2-11e6-b786-19d0cb1ed06c\\_story.html?utm\\_term=.1d4aab27752a](https://www.washingtonpost.com/opinions/shutting-down-for-profit-schools-could-hurt-more-people-than-it-would-help/2016/09/10/3f6cb5ba-76b2-11e6-b786-19d0cb1ed06c_story.html?utm_term=.1d4aab27752a)
- “Real cost of Obama’s war against for-profit colleges”, The Hill, September 22, 2014. <http://thehill.com/blogs/congress-blog/education/218374-real-cost-of-obamas-war-against-for-profit-colleges>
- “The Obama Administration’s Unprecedented Assault on For-Profit Education”, Patrick Elyas, OpedSpace, June 3, 2015. <http://opedspace.com/2015/06/03/obama-administrations-unprecedented-assault-on-for-profit-education/>
- “Is the federal government trying to take down the for-profit college industry?”, Washington Post, September 8, 2016. <https://www.washingtonpost.com/local/education/is-the-federal-government-trying-to->

[take-down-the-for-profit-college-industry/2016/09/08/effb7ffe-75dd-11e6-b786-19d0cb1ed06c\\_story.html?utm\\_term=.add269a1842c](http://www.nationalaffairs.com/publications/detail/the-real-obama-education-legacy)

- “The real Obama education legacy”, Frederick Hess, National Affairs, Issue 25, Fall 2015. <http://www.nationalaffairs.com/publications/detail/the-real-obama-education-legacy>
- “Obama Admin Witch Hunt Snares For-Profit College Accreditor”, Weekly Standard, December 22, 2016. <http://www.weeklystandard.com/obama-admin-witch-hunt-snares-for-profit-college-accreditor/article/2005995>
- “For-profit Colleges Decry ‘Demonization’ by Obama Administration”, Diverse Education, November 16, 2016. <http://diverseeducation.com/article/89349/>
- “Senators McCain, Flake & Alexander Question DOD’s Probation Decision Regarding the University of Phoenix’s Participation in the Military Tuition Assistance Program”, McCain Senate Website, October 22, 2015. <http://www.mccain.senate.gov/public/index.cfm/2015/10/senators-mccain-flake-alexander-question-dod-s-probation-decision-regarding-the-university-of-phoenix-s-participation-in-the-military-tuition-assistance-program>

***If applied to not-for-profits a large number of them would likely fail the regulation including many / most law schools.***

- “What if the gainful employment rule were applied to all law schools?”, The Last Gen X American, July 7, 2015. <https://lawschooltuitionbubble.wordpress.com/2015/06/29/what-if-the-gainful-employment-rule-were-applied-to-all-law-schools/>

***GE is among the regulations likely to be overturned by the new administration.***

- Credit Suisse Research Bulletin, “Post-Secondary Education: Defense to Repayment, State Authorization Rules Likely to be Repealed with MRRA”, January 4, 2017.
- “Trump’s win leaves Obama’s higher education reforms in doubt”, Washington Post, November 9, 2016. [https://www.washingtonpost.com/news/grade-point/wp/2016/11/09/trump-win-leaves-obamas-higher-education-reforms-in-doubt/?utm\\_term=.0db0aff91493](https://www.washingtonpost.com/news/grade-point/wp/2016/11/09/trump-win-leaves-obamas-higher-education-reforms-in-doubt/?utm_term=.0db0aff91493)
- “For-Profit Colleges Look to Donald Trump for a Pass”, Wall Street Journal, December 2, 2016. <http://www.wsj.com/articles/for-profit-colleges-look-to-donald-trump-for-a-pass-1480680001>
- “How Obama-Trump Transition Could Affect Higher Ed”, Inside Higher Ed, November 10, 2016. <https://www.insidehighered.com/news/2016/11/10/trumps-higher-ed-priorities-undoing-many-president-obamas>

***ED’s GE measures provide a skewed perspective of student ROI.***

- *Professional degrees, including law degrees, increase their earnings faster and over a longer period of time than bachelor degree holders. As a result, starting salaries (or even salaries 2-3 years post graduation) are not good predictors of lifetime earnings.*
  - Michael Simkovic and Frank McIntyre, “The Economic Value of a Law Degree”, *HLS Program on the Legal Profession Research Paper No. 2013-6*. “Professional

degree holders not only typically start out at higher earnings levels than bachelor degree holders, they also usually see their earnings increase at a much faster rate or over a longer period of time—that is, professional degree holders peak higher and later in life than bachelor’s degree holders. Because starting salaries are not very good predictors of lifetime earnings, earnings premia must be estimated at multiple ages or experience intervals.”

<http://www.law.northwestern.edu/research-faculty/colloquium/law-economics/documents/The%20Economic%20Value%20of%20a%20Law%20Degree%20-%20Simkovic.pdf>

- *The Three-Year Cohort Default Rate for FCSL graduates is 2% which ranks in the lowest 10% of all institutions. (Arizona Summit has a 1.2% default rate and Charlotte School of Law has a 1.3% default rate which rank in the top 6%). Source:*  
[https://nslds.ed.gov/nslds/nslds\\_SA/defaultmanagement/cohortdetail\\_3yr.cfm?sno=0&ope\\_id=033743](https://nslds.ed.gov/nslds/nslds_SA/defaultmanagement/cohortdetail_3yr.cfm?sno=0&ope_id=033743)
  - ED had considered an “exceptional performance” exception to GE rules if an institution had a <10% 3-year CDR for 2 or more years in a row. While FCSL would likely have qualified for such an exception, it was removed from the final regulation: See  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/013dalton-exceptional-performer112013.pdf>
- *FCSL student debt is primarily driven by a more limited ability of FCSL students to pay out-of-pocket and not higher tuition and fees.*
  - FCSL tuition and fees for full-time students is about average for private ABA-accredited law schools – (\$46,068 per year vs. \$45,377). Source: 2016 ABA Standard 509 data. <http://www.abarequireddisclosures.org/>
  - FCSL students receive grants at the same frequency as students from the average private, ABA-approved law school (70.8% vs. 71.5%). Source: 2016 ABA Standard 509 data. <http://www.abarequireddisclosures.org/>
  - More FCSL students attend at less than half tuition than students at other private, ABA-approved law schools (49.6% of students at FCSL vs. 40% of students at the average law school). Source: 2016 ABA Standard 509 data. <http://www.abarequireddisclosures.org/>
  - Higher debt then is a by-product of our mission – serving a large number of students who are first-generation college students from lower income backgrounds results in students who are less able to pay out-of-pocket
- *Lower graduate salaries is influenced by the salary structure in the Jacksonville legal market which has an average salary ~20% below the national average. This is similar to other professions where Duval Counties and the State of Florida have salaries typically 10-15% below that of the national average.*
  - A report from 2012 showed that Jacksonville lawyers make less than the national average (\$97,740 on average vs. \$130,490) ranking 223 out of 363 markets nationwide  
<http://www.bizjournals.com/jacksonville/news/2012/05/24/jacksonville-lawyers-salary-far-below.html>

- Florida (\$95,970) and Duval County (\$83,720) mean salaries rank well below that of the national average (\$103,460) for all Legal Occupations  
[https://www.bls.gov/oes/current/oes\\_nat.htm#23-0000](https://www.bls.gov/oes/current/oes_nat.htm#23-0000)
- Florida and Duval County mean salaries rank well below that of the national average for other Professions
  - Healthcare Practitioners and Technical Occupations: \$77,800 (nationwide), \$73,240 (Florida – 6% lower), \$68,390 (Duval – 12% lower)
  - Education, Training, and Library Occupations: \$53,000 (nationwide), \$46,750 (Florida – 12% lower), \$47,640 (Duval – 10% lower)
  - Computer and Mathematical Occupations: \$86,170 (nationwide), \$73,270 (Florida – 15% lower), \$76,870 (Duval – 11% lower)
  - [https://www.bls.gov/oes/current/oes\\_nat.htm#23-0000](https://www.bls.gov/oes/current/oes_nat.htm#23-0000)

Scott DeVito  
Dean and Professor of Law  
Florida Coastal School of Law

-----  
View my research on my SSRN Author page:  
<http://ssrn.com/author=862951>