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DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AD51, 1840-AD57, 1840-AD64, 1840-AD65, and 1840-AD80

[Docket ID ED-2023-OPE-0089]

Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary is proposing new regulations to promote transparency, competence, stability, and effective outcomes for students in the provision of postsecondary education. Using the terminology of past regulatory proposals, these regulations seek to make improvements in the areas of gainful employment (GE); financial value transparency; financial responsibility; administrative capability; certification procedures; and Ability to Benefit (ATB).

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at regulations.gov. Information on using Regulations.gov, including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact one of the program contact persons listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department’s policy is to generally make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at http://www.regulations.gov. Therefore, commenters should be careful to include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would facilitate readers identifying that individual. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would facilitate readers identifying other individuals, or includes threats of harm to another person.

FOR FURTHER INFORMATION CONTACT: For financial value transparency and GE: Joe Massman. Telephone: (202) 453-7771. Email: Joe.Massman@ed.gov. For financial responsibility: Kevin Campbell. Telephone: (214) 661-9488. Email: Kevin.Campbell@ed.gov. For administrative capability: Andrea Drew. Telephone: (202) 987-1309. Email: Andrea.Drew@ed.gov. For certification procedures: Vanessa Gomez. Telephone: (202) 453-6708. Email: Vanessa.Gomez@ed.gov. For ATB: Aaron Washington. Telephone: (202) 987-0911. Email: Aaron.Washington@ed.gov. The mailing address for the contacts above is U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, 5th floor, Washington, DC 20202.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Directed Questions:

The Department invites you to submit comments on all aspects of the proposed regulations, as well as the Regulatory Impact Analysis. The Department is particularly interested in comments on questions posed throughout the

Preamble, which are collected here for the convenience of commenters, with a reference to the section in which they appear. The Department is also interested in comments on questions posed in the Regulatory Impact Analysis.

Calculating Earnings Premium Measure (§ 668.404)

We recognize that it may be more challenging for some programs serving students in economically disadvantaged locales to demonstrate that graduates surpass the earnings threshold when the earnings threshold reflects the median statewide earnings, including locales with higher earnings. We invite public comments concerning the possible use of an established list, such as list of persistent poverty counties compiled by the Economic Development Administration, to identify such locales, along with comments on what specific adjustments, if any, the Department should make to the earnings threshold to accommodate in a fair and data-informed manner programs serving those populations.

Student Disclosure Acknowledgments (§ 668.407)

The Department is aware that in some cases, students may transfer from one program to another or may not immediately declare a major upon enrolling in an eligible non-GE program. We welcome public comments about how to best address these situations with respect to acknowledgment requirements. The Department also understands that many students seeking to enroll in non-GE programs may place high importance on improving their earnings and would benefit if the regulations provided for acknowledgements when a non-GE program is low-earning. We further welcome public comments on whether the acknowledgement requirements should apply to all programs, or to GE programs and some subset of non-GE programs, that are low-earning.

The Department is also aware that some communities face unequal access to postsecondary and career opportunities, due in part to the lasting impact of historical legal prohibitions on educational enrollment and employment. Moreover, institutions established to serve these communities, as reflected by their designation under law, have often had lower levels of government investment. The Department welcomes comments on how we might consider these factors, in accord with our legal obligations and authority, as we seek to ensure that all student loan borrowers can make informed decisions and afford to repay their loans.

<u>Financial Responsibility--Reporting Requirements (§ 668.171)(f)(i)(iii)</u>

We specifically invite comments as to whether an investigation as described in § 668.171(f)(1)(iii) warrants inclusion in the final regulations as either a mandatory or discretionary financial trigger. We also invite comment as to what actions associated with the investigation would have to occur to initiate the financial trigger.

Provisional Certification (§ 668.13(c))

Proposed § 668.13(c)(2)(ii) requires reassessment of provisionally certified institutions that have significant consumer protection concerns (i.e., those arising from claims under consumer protection laws) by the end of their second year of receiving certification. We invite comment about whether to maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues.

Approved State Process (§ 668.156(f))

As agreed by Committee consensus, we propose a success rate calculation under proposed §668.156(f). To further inform the final regulations, we specifically request comments on the proposed 85 percent threshold, the comparison groups in the calculation, the components of the calculation, and whether the success rate itself is an appropriate outcome indicator for the State process.

Executive Summary

Purpose of this Regulatory Action:

The financial assistance students receive under the title IV, HEA programs for postsecondary education and training represent a significant annual expenditure by the Federal government. When used effectively, Federal aid for postsecondary education and training is a powerful tool for promoting social and economic mobility. However, many programs fail to effectively enhance students' skills or increase their earnings, leaving them no better off than if they had never pursued a postsecondary credential and with debt they cannot afford.

The Department is also aware of a significant number of instances where institutions shut down with no warning and is concerned about the impact of such events for students. For instance, one recent study shows that, of closures that took place over a 16-year period, 70 percent of the students at such institutions (100,000 individuals) received insufficient warning that the closures were coming.[1] These closures often come at a significant cost to taxpayers. Students who were enrolled at or close to the time of closure and did not graduate from the shuttered institution may receive a discharge of their Federal student loans. The cost of such discharges is rarely fully reimbursed because once the institution closes there are often few assets to use for repaying Federal liabilities. For example, the Department recouped less than 2 percent of the $550 million in closed school discharges awarded between January 2, 2014, to June 30, 2021, to students who attended private for-profit colleges.[2] While these closures

[1] https://nscresearchcenter.org/wp-content/uploads/SHEEO-NSCRCCollegeClosuresReport.pdf.
[2] Figure excludes the $1.1 billion in additional closed school discharges for ITT Technical Institute announced in August 2021.

may have occurred without notice for the students, they were often preceded by months if not years of warning signs. Unfortunately, existing regulations do not provide the Department the necessary authority to rely on those indicators of risk to take action and unfortunately, despite observing these signs, the Department has lacked authority under existing regulations to take action based on those indicators of risk in order to secure financial protection before the institution runs out of money and closes.

The Department's inability to act also has implications for students. Students whose colleges close tend to have high default rates and are highly unlikely to continue their educational journeys elsewhere. Those who enrolled well before the point of closure may have been misled into taking on loans through admissions and recruitment efforts based on misrepresentations about the ability of attendees to obtain employment or transfer credit. Acting more swiftly in the future to obtain financial protection would help either deter risky institutional behavior or ensure the Department has more funds in place to offset the cost to taxpayers of closed schools or borrower defense discharges.

There are also institutions that operate title IV, HEA programs without the administrative capability necessary to successfully serve students, for example, where institutions that lack the resources needed to deliver on promises made about career services and externships or where institutions employ principals, affiliates, or other individuals who exercise substantial control over an institution who have a record of misusing title IV, HEA aid funds. A lack of administrative capability can also result in insufficient institutional controls over verifying students' high school diplomas, which are a key criterion for title IV, HEA eligibility.

Furthermore, there have been instances where institutions have exhibited material problems yet remained fully certified to participate in the Federal student aid programs. This full certification status can limit the ability of the Department to remedy problems identified through monitoring until it is potentially too late to improve institutional behavior or prevent a school closure that ends up wasting taxpayer resources in the form of loan discharges, as well as the lost time, resources, and foregone opportunities of students.

To address these concerns, the Department convened a negotiated rulemaking committee, the Institutional and Programmatic Eligibility Committee (Committee), that met between January 18, 2022, and March 18, 2022, to consider proposed regulations for the Federal Student Aid programs authorized under title IV of the HEA (title IV, HEA programs) (see the section under <u>Negotiated Rulemaking</u> for more information on the negotiated rulemaking process). The Committee operated by consensus, defined as no dissent by any member at the time of a consensus check. Consensus checks were taken by issue, and the Committee reached consensus on the topic of ATB.

These proposed regulations address five topics: financial value transparency and GE, financial responsibility, administrative capability, certification procedures, and ATB.

Proposed regulations for financial value transparency would address concerns about the rising cost of postsecondary education and training and increased student borrowing by establishing an accountability and transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes, apprise current and prospective students of those outcomes, and provide better information about program price. Proposed regulations for GE would establish eligibility and certification requirements to address ongoing concerns about educational programs that are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings. These programs often lead to default or provide no earnings benefit beyond that provided by a high school education, thus failing to fulfill their intended goal of preparing students for gainful employment. GE programs include nearly all educational programs at for-profit institutions of higher education, as well as most non-degree programs at public and private non-profit institutions.

The proposed financial responsibility regulations establish additional factors that will be viewed by the Department as indicators of an institution's lack of financial responsibility. When one of the factors occurs, the Department may seek financial protection from the institution, most commonly through a letter of credit. The indicators of a lack of financial responsibility proposed in this NPRM are events that put an institution at a higher risk of financial instability and sudden closure. Particular emphasis will be made regarding events that bring about a major change in an institution's composite score, the metric used to determine an entity's financial strength based on its audited financial statement as described in § 668.172 and Appendices A and B in subpart L of part 668. Other examples of high-risk events that could trigger a finding of a lack of financial responsibility are when an institution is threatened with a loss of State authorization or loses eligibility to participate in a Federal educational assistance program other than those administered by the Department.

The events linked to the proposed financial triggers are often observed in institutions facing possible or probable closure due to financial instability. By allowing the Department to take certain actions in response to specified financial triggers, the proposed regulations provide the Department with tools to minimize the impact of an institution's financial decline or sudden closure. The additional financial protections established in these regulations are critical to offset potential losses sustained by taxpayers when an institution closes and better ensure the Department may take actions in advance of a potential closure to better protect taxpayers against the financial costs resulting from an institutional closure. These protections would also dissuade institutions from engaging in overly risky behavior in the first place. We also propose to simplify the regulations by consolidating the financial responsibility requirements for changes in ownership under proposed part 668, subpart L and removing and reserving current § 668.15.

We propose several additional standards in the administrative capability regulations at § 668.16 to ensure that institutions can appropriately administer the title IV, HEA programs. While current administrative capability regulations include a host of requirements, the Department proposes to address additional concerns which could indicate severe or systemic administrative problems that negatively impact student outcomes and are not currently reflected in those regulations. The Department already requires institutions to provide adequate financial aid counseling to students, for instance. However, many institutions provide financial aid information to students that is confusing and misleading. The information that institutions provide often lacks accurate information about the total cost of attendance, and groups all types of aid together instead of clearly separating grants, loans, and work study aid. The proposed administrative capability regulations would address these issues by specifying required elements to be included in financial aid communications.

We also propose to add an additional requirement for institutions to provide adequate career services to help their students find jobs, particularly where the institution offers career-specific programs and makes commitments about job assistance. Adequate services would be evaluated based on the number of students enrolled in GE programs at the school, the number and distribution of career services staff, the career services the institution promised to its students, and the presence of partnerships between institutions and recruiters who regularly hire graduates. We believe this requirement would help ensure that institutions provide adequate career services to students. The proposed revisions and additions to § 668.16

address these and other concerns that are not reflected in current regulations.

The proposed certification procedures regulations would create a more rigorous process for certifying institutions for initial and ongoing participation in the title IV, HEA programs and better protect students and taxpayers through a program participation agreement (PPA). The proposed revisions to § 668.2, 668.13, and 668.14 aim to protect the integrity of the title IV, HEA programs and to protect students from predatory or abusive behaviors. For example, in § 668.14(e) we propose requiring institutions that are provisionally certified and that we determine to be at risk of closure to submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. This would ensure that the institution has an acceptable plan in place that allows students to continue their education in the event the institution closes.

Finally, the Department proposes revisions to current regulations for ATB. These proposed changes to § 668.156 would clarify the requirements for the approval of a State process. The State process is one of the three ATB alternatives (see the Background section for a detailed explanation) that an individual who is not a high school graduate could fulfill to receive title IV, HEA, Federal student aid for enrollment in an eligible career pathway program. The proposed changes to § 668.157 add documentation requirements for eligible career pathway programs.

Summary of the Major Provisions of this Regulatory Action:

The proposed regulations would make the following changes.

Financial Value Transparency and Gainful Employment (§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401, 668.402, 668.403, 668.404, 668.405, 668.406, 668.407, 668.408, 668.409, 668.601, 668.602, 668.603, 668.604, 668.605, and 668.606)

- Amend § 600.10(c) to require an institution seeking to establish the eligibility of a GE program to add the program to its application.
- Amend § 600.21(a) to require an institution to notify the Secretary within 10 days of any change to information included in the GE program's certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including "annual debt-to-earnings rate," "classification of instructional programs (CIP) code," "cohort period," "credential level," "debt-to-earnings rates (D/E rates)," "discretionary debt-to-earnings rates," "earnings premium," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," "gainful employment program (GE program)," "institutional grants and

scholarships," "length of the program," "poverty guideline," "prospective student," "student," and "Title IV loan."

- Amend § 668.43 to establish a Department website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide the information required to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.

- Amend § 668.91(a) to require that a hearing official must terminate the eligibility of a GE program that fails to meet the required GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.

- Add a new § 668.401 to provide the scope and purpose of newly established financial value transparency regulations under subpart Q.

- Add a new § 668.402 to provide a framework for the Secretary to determine whether a GE program or eligible non-GE program leads to acceptable debt and earnings results, including establishing annual and discretionary D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.

- Add a new § 668.403 to establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt and assessed charges, as well as to provide exclusions and specify when D/E rates will not be calculated.

- Add a new § 668.404 to establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings premium measure will not be calculated.

- Add a new § 668.405 to establish a process by which the Secretary will obtain the administrative and earnings data required to issue D/E rates and the earnings premium measure.

- Add a new § 668.406 to require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

- Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.

- Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.

- Add a new § 668.409 to establish severability protections ensuring that if any financial value transparency provision under subpart Q is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

- Add a new § 668.601 to provide the scope and purpose of newly established GE regulations under subpart S.

- Add a new § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.

- Add a new § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.

- Add a new § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.

- Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of a loss of title IV, HEA eligibility, to specify the content and delivery requirements for such notifications, and to provide that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

- Add a new § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

<u>Financial Responsibility (§§ 668.15, 668.23, and 668, subpart L §§ 171, 174, 175, 176 and 177)</u>

- Remove and reserve § 668.15 thereby consolidating all financial responsibility factors, including those governing changes in ownership, under part 668, subpart L.

- Amend § 668.23(a) to require that audit reports are submitted in a timely manner, which would be the earlier of 30 days after the date of the report or six months after the end of the institution's fiscal year.

- Amend § 668.23(d) to require that financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service. We would further amend § 668.23(d) to require the institution to include a detailed description of related entities with a level of detail that would enable the Department to readily identify the related party. Such information must include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred. Section 668.23(d) would also be amended to require that any domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution must provide documentation of the entity’s status under the law of the jurisdiction under which the entity is organized. Additionally, we would amend § 668.23(d) to require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.
- Amend § 668.171(b) to require institutions to demonstrate that they are able to meet their financial obligations by noting additional cases that constitute a

failure to do so, including failure to make debt payments for more than 90 days, failure to make payroll obligations, or borrowing from employee retirement plans without authorization.

- Amend § 668.171(c) to revise the set of conditions that automatically require posting of financial protection if the event occurs as prescribed in the regulations. These mandatory triggers are designed to measure external events that pose risk to an institution, financial circumstances that may not appear in the institution's regular financial statements, or financial circumstances that may not yet be reflected in the institution's composite score. Some examples of these mandatory triggers include when, under certain circumstances, there is a withdrawal of owner's equity by any means and when an institution loses eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

- Amend § 668.171(d) to revise the set of conditions that may, at the discretion of the Department, require posting of financial protection if the event occurs as prescribed in the regulations. These discretionary triggers are designed to measure external events or financial circumstances that may not appear in the institution's regular financial statements and may not yet be reflected in the institution's composite score. An example of these discretionary triggers is when an institution is cited by a State licensing or authorizing agency for failing to meet State or agency requirements. Another example is when the institution experiences a significant fluctuation between consecutive award years or a period of award years in the amount of Federal Direct Loan or Federal Pell Grant funds that cannot be accounted for by changes in those title IV, HEA programs.

- Amend § 668.171(f) to revise the set of conditions whereby an institution must report to the Department that a triggering event, described in § 668.171(c) and (d), has occurred.
- Amend § 668.171(h) to adjust the language regarding an auditor's opinion of doubt about the institution's ability to continue operations to clarify that the Department may independently assess whether the auditor's concerns have been addressed or whether the opinion of doubt reflects a lack of financial responsibility.
- Amend § 668.174(a) to clarify the language related to compliance audit or program review findings that lead to a liability of greater than 5 percent of title IV, HEA volume at the institution, so that the language more clearly states that the timeframe of the preceding two fiscal years timeframe relates to when the reports containing the findings in question were issued and not when the reviews were actually conducted.

- Add a new proposed § 668.176 to consolidate financial responsibility requirements for institutions undergoing a change in ownership under § 668, subpart L.
- Redesignate the existing § 668.176, establishing severability, as § 668.177 with no change to the regulatory text.

Administrative Capability (§ 668.16)

- Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available to enrolled students that includes clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts.
- Amend § 668.16(k) to require that an institution not have any principal or affiliate whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of that institution's title IV, HEA program funds in the award year in which the liabilities arose or were imposed.
- Add § 668.16(n) to require that the institution has not been subject to a significant negative action or a finding by a State or Federal agency, a court, or an accrediting agency, where in which the basis of the action

or finding is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive; and to further require that the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

- Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.

- Add § 668.16(q) to require that institutions provide adequate career services to eligible students who receive title IV, HEA program assistance.

- Add § 668.16(r) to require that an institution provide students with accessible clinical, or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation, within 45 days of the successful completion of other required coursework.

- Add § 668.16(s) to require that an institution timely disburses funds to students consistent with the students' needs.

- Add § 668.16(t) to require institutions to meet new standards for their GE programs, as outlined in regulation.

- Add § 668.16(u) to require that an institution does not engage in misrepresentations or aggressive and deceptive recruitment.

<u>Certification Procedures (§§ 668.2, 668.13, and 668.14)</u>

- Amend § 668.2 to add a definition of “metropolitan statistical area.”
- Amend § 668.13(b)(3) to eliminate the provision that requires the Department to approve participation for an institution if it has not acted on a certification application within 12 months so the Department can take additional time where it is needed.
- Amend § 668.13(c)(1) to include additional events that lead to provisional certification, such as if an institution triggers one of the new financial responsibility triggers proposed in this rule.
- Amend § 668.13(c)(2) to require provisionally certified schools that have major consumer protection issues to recertify after no more than two years.
- Add a new § 668.13(e) to establish supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of the institution.
- Amend § 668.14(a)(3) to require an authorized representative of any entity with direct or indirect ownership of a private institution to sign a PPA.

- Amend § 668.14(b)(17) to include all Federal agencies and add State attorneys general to the list of entities that have the authority to share with each other and the Department any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.

- Amend § 668.14(b)(26)(ii) to limit the number of hours in a GE program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, or the required minimum number of hours required for training in another State, if the institution provides documentation of that State meeting one of three qualifying requirements to use a State in which the institution is not located that is substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23.

- Amend § 668.14(b)(32) to require all programs that are designed to lead to employment in occupations requiring completion of a program that is programmatically accredited as a condition of State licensure to meet those requirements.

- Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions, such as the submission of a teach-out plan or agreement.

- Amend § 668.14(f) to establish conditions that may apply to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution.

- Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.

<u>Ability to Benefit (§§ 668.2, 668.32, 668.156, and 668.157)</u>

- Amend § 668.2 to add a definition of "eligible career pathway program."

- Amend § 668.32 to differentiate between the title IV, HEA aid eligibility of non-high school graduates that enrolled in an eligible program prior to July 1, 2012, and those that enrolled after July 1, 2012.

- Amend § 668.156(b) to separate the State process into an initial two-year period and a subsequent period for which the State may be approved for up to five years.

- Amend § 668.156(a) to strengthen the Approved State process regulations to require that: (1) The application contain a certification that each eligible career pathway program intended for use through the State process meets the proposed definition of an eligible career pathway program in regulation; (2) The application describe the criteria used to determine student eligibility for participation in the State process; (3) The withdrawal rate for a postsecondary institution listed for the first time on a State's application not exceed 33 percent; (4) That upon initial application the Secretary will verify that a sample of the proposed eligible career pathway programs meet statutory and regulatory requirements; and (5) That upon initial application the State will enroll no more than the greater of 25 students or one percent of enrollment at each participating institution.

- Amend § 668.156(c) to remove the support services requirements from the State process which include: orientation, assessment of a student's existing capabilities, tutoring, assistance in developing educational goals, counseling, and follow up by teachers and counselors.

- Amend the monitoring requirement in § 668.156(c)(4) to provide a participating institution that did not achieve the 85 percent success rate up to three years to achieve compliance.

- Amend § 668.156(c)(6) to prohibit an institution from participating in the State process for title IV, HEA purposes for at least five years if the State terminates its participation.

- Amend § 668.156 to clarify that the State is not subject to the success rate requirement at the time of the initial application but is subject to the requirement for the subsequent period, reduce the required success rate from the current 95 percent to 85 percent, and specify that the success rate be calculated for each participating institution. Also, amend the comparison groups to include the concept of "eligible career pathway programs."
- Amend § 668.156 to require that States report information on race, gender, age, economic circumstances, and educational attainment and permit the Secretary to release a *Federal Register* notice with additional information that the Department may require States to submit.
- Amend § 668.156 to update the Secretary's ability to revise or terminate a State's participation in the State process by (1) providing the Secretary the ability to approve the State process once for a two-year period if the State is not in compliance with a provision of the regulations and (2) allowing the Secretary to lower the success rate to 75 percent if 50 percent of the participating institutions across the State do not meet the 85 percent success rate.
- Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.

Costs and benefits: The Department estimates that the proposed regulations would generate benefits to students, postsecondary institutions, and the Federal government that exceed the costs. The Department also estimates substantial transfers, primarily in the form of reduced net title IV, HEA spending by the Federal government. Net benefits are created primarily by shifting students from low-financial-value to high-financial-value programs or, in some cases, away from low-financial-value postsecondary programs to non-enrollment. This shift would be due to improved and standardized market information about all postsecondary programs that would facilitate better decision making by current and prospective students and their families; the public, taxpayers, and the government; and institutions. Furthermore, the GE component would improve the quality of options available to students by directly eliminating the ability of low-financial-value GE programs to receive title IV, HEA funds. This enrollment shift and improvement in program quality would result in higher earnings for students, which would generate additional tax revenue for Federal, State, and local governments. Students would also benefit from lower accumulated debt and lower risk of default. The proposed regulations would also generate substantial transfers, primarily in the form of title IV, HEA aid shifting between students, postsecondary institutions, and the Federal government, generating a net budget savings for the Federal government. Other components of this proposed regulation related to financial responsibility would provide benefits to the Department and taxpayers by increasing the amount of financial protection available before an institution closes or incurs borrower defense liabilities. This would also help dissuade unwanted behavior and benefit institutions that are in stronger financial shape by dissuading struggling institutions from engaging in questionable behaviors to gain a competitive advantage in increasing enrollment. Similarly, the changes to administrative capability and certification procedures would benefit the Department in increasing its quality of oversight of institutions so that students have more valuable options when they enroll. Finally, the ATB regulations would provide needed clarity to institutions and States on how to serve students who do not have a high school diploma.

The primary costs of the proposed regulations related to the financial value transparency and GE accountability requirements are the additional reporting required by institutions, the time for students to acknowledge having seen disclosures, and additional spending at institutions that accommodate students who would otherwise have decided to attend failing programs. The proposed regulations may also dissuade some students from enrolling that otherwise would have benefited from doing so. For the financial responsibility portion of the proposed regulations, costs would be primarily related to the expense of providing financial protection to the Department as well as transfers that arise from shifting the cost and burden of closed school discharges from the taxpayer to the institution and the entities that own it. Costs related to certification procedures and administrative capability would be related to any necessary steps to comply with the added requirements. Finally, States and institutions would have some added administrative expenses to administer the proposed ability-to-benefit processes.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about these proposed regulations on the Regulations.gov website.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under FOR FURTHER INFORMATION CONTACT.

Background

Financial Value Transparency and Gainful Employment (§§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401, 668.402, 668.403, 668.404, 668.405, 668.406, 668.407, 668.408, 668.409, 668.601, 668.602, 668.603, 668.604, 668.605, and 668.606)

Postsecondary education and training generate important benefits both to the students pursuing new knowledge and skills and to the Nation overall. Higher education increases wages and lowers unemployment risk,[3] and

[3] Barrow, L., & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics*, 7(1), 519-555.
Card, D. (1999). The causal effect of education on earnings. *Handbook of labor economics*, 3, 1801-1863.

leads to myriad non-financial benefits including better health, job satisfaction, and overall happiness.[4] In addition, increasing the number of individuals with postsecondary education creates social benefits, including productivity spillovers from a better educated and more flexible workforce,[5] increased civic participation,[6] improvements in health and well-being for the next generation,[7] and innumerable intangible benefits that elude quantification. The improvements in productivity and earnings lead to increases in tax revenues from higher earnings and lower rates of reliance on social safety net programs. These downstream increases in net revenue to the government can be so large that public investments in higher education more than pay for themselves.[8]

These benefits are not guaranteed, however. Research has demonstrated that the returns, especially the gains in earnings students enjoy as a result of their education, vary dramatically across institutions and among programs

[4] Oreopoulos, P., & Salvanes, K. G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives*, 25(1), 159-184.
[5] Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review*, 94(3), 656-690.
[6] Dee, T. S. (2004). Are There Civic Returns to Education? *Journal of Public Economics*, 88(9-10), 1697-1720.
[7] Currie, J., & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics*, 118(4), 1495-1532.
[8] Hendren, N., & Sprung-Keyser., B. (2020). A Unified Welfare Analysis of Government Policies. *The Quarterly Journal of Economics*, 135(3), 1209-1318.

within those institutions.[9] As we illustrate in the Regulatory Impact Analysis of this proposed rule, even among the same types of programs—that is, among programs with similar academic levels and fields of study—both the costs and the outcomes for students differ widely. Most postsecondary programs provide benefits to students in the form of higher wages that help them repay any loans they may have borrowed to attend the program. But too many programs fail to increase graduates' wages, having little, or even negative, effects on graduates' earnings.[10] At the same time, too many programs charge much higher tuition than similar programs with comparable outcomes, leading students to borrow much more than they could have had they attended a more affordable option.

With college tuition consistently rising faster than inflation, and given the growing necessity of a postsecondary credential to compete in today's economy, it is critical for students, families, and taxpayers alike to have accurate and transparent information about the possible financial consequences of their postsecondary program career options when choosing whether and where to

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[9] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education*, C. M. Hoxby and K. M. Stange (eds). University of Chicago Press: Chicago, 2019.

Lovenheim, M. and J. Smith. 2023. Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6*, E. Hanushek, L. Woessmann, and S. Machin (Eds). New Holland.

[10] Cellini, S. and Turner, N. 2018. Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data. Journal of Human Resources. 54(2).

enroll. Providing information on the typical earnings outcomes, borrowing amounts, cost of attendance, and sources of financial aid--and providing it directly to prospective students in a salient way at a key moment in their decision-making process--would help students make more informed choices and would allow taxpayers and college stakeholders to better monitor whether public and private resources are being well used. For many students these financial considerations would, appropriately, be just one of many factors used in deciding whether and where to enroll.

For programs that consistently produce graduates with very low earnings, or with earnings that are too low to repay the amount the typical graduate borrows to complete a credential, additional measures are needed to protect students from financial harm. Although making information available has been shown to improve consequential financial choices across a variety of settings, it is a limited remedy, especially for more vulnerable populations that may have less support in interpreting and acting upon the relevant information.[11],[12] We believe that providing more detailed information about the debt and earnings outcomes

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[11] Dominique J. Baker, Stephanie Riegg Cellini, Judith Scott-Clayton, and Lesley J. Turner, "Why information alone is not enough to improve higher education outcomes," The Brookings Institution (2021). www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/

[12] Mary Steffel, Dennis A. Kramer II, Walter McHugh, Nick Ducoff, "Information disclosure and college choice," The Brookings Institution (2019). www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf.

of specific educational programs would assist students in making better informed choices about whether and where to enroll.

To address these issues, the Department proposes to amend §§ 600.10, 600.21, 668.2, 668.13, 668.43, and 668.98, and to establish subparts Q and S of part 668. Through this proposed regulatory action, the Department seeks to establish the following requirements:

(1) In subpart Q, a financial value transparency framework that would increase the quality and availability of information provided directly to students about the costs, sources of financial aid, and outcomes of students enrolled in all eligible programs. The framework establishes measures of the earnings premium that typical program graduates experience relative to the earnings of typical high school graduates, as well as the debt service burden for typical graduates. It also establishes performance benchmarks for each measure, denoting a threshold level of performance below which the program may have adverse financial consequences to students. This information would be made available via a website maintained by the Department, and in some cases students and prospective students would be required to acknowledge viewing these disclosures before receiving title IV, HEA funds to attend programs with poor outcomes. Further, the website would provide the public, taxpayers, and the

government with relevant information to better safeguard the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to benchmark their performance to other institutions and improve student outcomes in these programs.

(2) In subpart S, we propose an accountability framework for career training programs (also referred to as gainful employment, or GE, programs) that uses the same earnings premium and debt-burden measures to determine whether a GE program remains eligible for title IV, HEA program funds. The GE eligibility criteria are designed to define what it means to prepare students for gainful employment in a recognized occupation, and they tie program eligibility to whether GE programs provide education and training to their title IV, HEA students that lead to earnings beyond those of high school graduates and sufficient to allow students to repay their student loans. GE programs that fail the same measure in any two out of three consecutive years for which the measure is calculated would lose eligibility for participation in title IV, HEA programs.

Sections 102(b) and (c) of the HEA define, in part, a proprietary institution and a postsecondary vocational institution as one that provides an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 101(b)(1) of the HEA defines an institution of higher education, in part, as any institution that provides not less than a one-year program of training that prepares students for gainful employment in a recognized occupation. The statute does not further specify this requirement, and through multiple reauthorizations of the HEA, Congress has neither further clarified the concept of gainful employment, nor curtailed the Secretary's authority to further define this requirement through regulation, including when Congress exempted some liberal arts programs offered by proprietary institutions from the gainful employment requirement in the Higher Education Opportunity Act of 2008.

The Department previously issued regulations on this topic three times. In 2011, the Department published a regulatory framework to determine the eligibility of a GE program based on three metrics: (1) Annual debt-to-earnings (D/E) rate, (2) Discretionary D/E rate, and (3) Loan repayment rate. We refer to that regulatory action as the 2011 Prior Rule (76 FR 34385). Following a legal challenge, the program eligibility measures in the 2011 Prior Rule were vacated on the basis that the Department had failed to adequately justify the loan repayment rate metric.[13] In 2014, the Department issued new GE regulations, which based eligibility determinations on only

[13] *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133 (D.D.C. 2012).

the annual and discretionary D/E rates as accountability metrics, rather than the loan repayment rate metric that had been the core source of concern to the district court in previous litigation, and included disclosure requirements about program outcomes. We refer to that regulatory action as the 2014 Prior Rule (79 FR 64889). The 2014 Prior Rule was upheld by the courts except for certain appeal procedures used to demonstrate alternate program earnings.[14],[15],[16]

The Department rescinded the 2014 Prior Rule in 2019 based on its judgments and assessments at the time, citing: the inconsistency of the D/E rates with the requirements of other repayment options; that the D/E rates failed to properly account for factors other than program quality that affect student earnings and other outcomes; a lack of evidence for D/E thresholds used to differentiate between "passing," "zone," and "failing" programs; that the disclosures required by the 2014 Prior Rule included some data, such as job placement rates, that were deemed unreliable; that the rule failed to provide transparency regarding debt and earnings outcomes for all programs, leaving students considering enrollment options about both non-profit and proprietary institutions without

[14] *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332 (S.D.N.Y. 2015).

[15] *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176 (D.D.C. 2015), *aff'd*, 640 F. App'x 5 (D.C. Cir. 2016) (per curiam).

[16] *Am. Ass'n of Cosmetology Sch. v. DeVos*, 258 F. Supp. 3d 50 (D.D.C. 2017).

information; and relatedly, that a high percentage of GE programs did not meet the minimum cohort size threshold and were therefore not included in the debt-to-earnings calculations.[17] In light of the Department's reasoning at the time, the 2019 Prior Rule (i.e., the action to rescind the 2014 Prior Rule) eliminated any accountability framework in favor of non-regulatory updates to the College Scorecard on the premise that transparency could encourage market forces to bring accountability to bear.

This proposed rule departs from the 2019 rescission, as well as the 2014 Prior Rule, for reasons that are previewed here and elaborated on throughout this preamble.[18] At the highest level, the Department remains concerned about the same problems documented in the 2011 and 2014 Prior Rules. Too many borrowers struggle to repay their loans, evidenced by the fact that over a million borrowers defaulted on their loans in the year prior to the payment pause that was put in place due to the COVID-19 pandemic. The Regulatory Impact Analysis (RIA) shows these problems are more prevalent among programs where graduates have high debts relative to their income, and where graduates have low earnings. While both existing and proposed changes to income-driven repayment plans ("IDR") for Federal student loans partially shield borrowers from these risks, such

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[17] 84 FR 31392.

[18] We discuss potential reliance interests regarding all parts of the proposed rule below, in the "Reliance Risks" section.

after-the-fact protections do not address underlying program failures to prepare students for gainful employment in the first place, and they exacerbate the impact of such failures on taxpayers as a whole when borrowers are unable to pay. Not all borrowers participate in these repayment plans and, where they do, the risks of nonpayment are shifted to taxpayers when borrowers' payments are not sufficient to fully pay back the loans they borrowed. This is because borrowers with persistently low incomes who enroll in IDR—and thereby make payments based on a share of their income that can be as low as $0-—will see their remaining balances forgiven at taxpayer expense after a specified number of years (e.g., 20 or 25) in repayment.

The Department recognizes that, given the high cost of education and correspondingly high need for student debt, students, families, institutions, and the public have an acute interest in ensuring that higher education investments are justified through positive repayment and earnings outcomes for graduates. The statute acknowledges there are differences across programs and colleges and this means we have different tools available to promote these goals in different contexts. Recognizing this fact, for programs that the statute requires to prepare students for gainful employment in a recognized occupation, we propose reinstating a version of the debt-to-earnings requirement established under the 2014 Prior Rule and adding an earnings premium metric to the GE accountability framework. At the same time, we propose expanding disclosure requirements to all eligible programs and institutions to ensure all students have the benefit of access to accurate information on the financial consequences of their education program choices.

First, the proposed rule incorporates a new accountability metric—an earnings premium (EP)—that captures a distinct aspect of the value provided by a program. The earnings premium measures the extent to which the typical graduate of a program out-earns the typical individual with only a high school diploma or equivalent in the same State the program is located. In order to be considered a program that prepares students for gainful employment in a recognized occupation, we propose that programs must both have graduates whose typical debt levels are affordable, based on a similar debt-to-earnings (D/E) test as used in the 2014 Prior Rule, and also have a positive earnings premium.

Second, we propose to calculate and require disclosures of key information about the financial consequences of enrolling in higher education programs for almost all eligible programs at all institutions. As we elaborate below and in the RIA, we believe this will help students understand differences in the costs, borrowing levels, and labor market outcomes of more of the postsecondary options they might be considering. It is particularly important for students who are considering or attending a program that may carry a risk of adverse financial outcomes to have access to comparable information across all sectors so they can explore other options for enrollment and potentially pursue a program that is a better financial value.

As further explained in the significant proposed regulations section of this Notice and in the RIA, there are several connected reasons for adding the EP metric to the proposed rule.[19] First, the Department believes that, for postsecondary career training programs to be deemed as preparing students for gainful employment, they should enable students to secure employment that provides higher earnings than what they might expect to earn if they did not pursue a college credential. This position is consistent with the ordinary meaning of the phrase "gainful employment" and the purposes of the title IV, HEA programs, which generally require students who receive assistance to have already completed a high school education,[20] and then require GE programs "to prepare" those high school graduates for "gainful employment" in a recognized

[19] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see below at "Authority for this Regulatory Action," and at "668.402 Financial value transparency framework" and "668.602 Gainful employment criteria" under the Significant Proposed Regulations section of this Notice Those discussions also address the D/E metric.
[20] See, for example, 20 U.S.C. 1001(a)(1), 1901.

occupation.[21] Clearly, GE programs are supposed to add to what high school graduates already have achieved in their preparation for gainful employment, not leave them where they started. We propose to measure that gain, in part, with an administrable test that is pegged to earnings beyond a typical high school graduate. This approach is likewise supported by the fact that the vast majority of students cite the opportunity for a good job or higher earnings as a key, if not the most important, reason they chose to pursue a college degree.[22]

Furthermore, the EP metric that we propose would set only reasonable expectations for programs that are supposed to help students move beyond a high school baseline. The median earnings of high school graduates is about $25,000 nationally, which corresponds to the earnings level of a full-time worker at an hourly wage of about $12.50 (lower than the State minimum wage in 15 States).[23] While the 2014 Prior Rule emphasized that borrowers should be able to earn enough to afford to repay their debts, the Department recognizes that borrowers need to be able to afford more than "just" their loan payments, and that postsecondary

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[21] 20 U.S.C. 1002(b)(1)(A), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)()(i), which refers to a recognized profession.

[22] For example, a recent survey of 2,000 16 to 19 year olds and 2,000 22 to 30 year old recent college graduates rated affordable tuition, higher income potential, and lower student debt as the top 3 to 4 most important factors in choosing a college (https://www.nytimes.com/2023/03/27/opinion/problem-college-rankings.html). The RIA includes citation to other survey results with similar findings.

[23] See https://www.dol.gov/agencies/whd/mw-consolidated.

programs should help students reach a minimal level of labor market earnings. Exceeding parity with the earnings of students who never attend college is a modest expectation.

Another benefit of adding the EP metric is that it helps protect students from the adverse borrowing outcomes prevalent among programs with very low earnings. Research conducted since the 2014 Prior Rule as well as new data analyses shown in this RIA illustrate that, for borrowers with low earnings, even small amounts of debt (including levels of debt that would not trigger failure of the D/E rates) can be unmanageable. Default rates tend to be especially high among borrowers with lower debt levels, often because these borrowers left their programs and as a result have very low earnings.[24] Analyses in this RIA show that the default rate among students in programs that pass the D/E thresholds but fail the earnings premium are very high—even higher than programs that fail the D/E measure but pass the earnings premium measure.

Finally, as detailed further below, the EP measure helps protect taxpayers. Borrowers with low earnings are eligible for reduced loan payments and loan forgiveness which increase the costs of the title IV, HEA loan program to taxpayers.

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[24] See https://libertystreeteconomics.newyorkfed.org/2015/02/looking_at_student_loan_defaults_through_a_larger_window/.

While the EP and D/E metrics are related, they measure distinct dimensions of gainful employment, further supporting the proposal to require that programs pass both measures. For example, programs that have median earnings of graduates above the high school threshold might still be so expensive as to require excessive borrowing that students will struggle to repay. And, on the other hand, even if debt levels are low relative to a graduate's earnings, those earnings might still be no higher than those of the typical high school graduate in the same State.

As noted above, the D/E metrics and thresholds in the proposed rule mirror those in the 2014 Prior Rule and are based on both academic research about debt affordability and industry practice. Analyses in the Regulatory Impact Analysis (RIA) of this proposed rule illustrate that borrowers who attended programs that fail the D/E rates are more likely to struggle with their debt. For example, programs that fail the proposed D/E standards (including both GE and non-GE programs) account for just 4.1 percent of title IV enrollments (i.e., Federally aided students), but 11.19 percent of all students who default within 3 years of entering repayment. GE programs represent 15.2 percent of title IV, HEA enrollments overall, but 49.6 percent of title IV, HEA enrollments within the programs that fail the D/E standards and 65.6 percent of the defaulters. These facts, in part, motivate the Department’s proposal to calculate and disclose D/E and EP rates for all programs under proposed subpart Q, while establishing additional accountability for GE programs with persistently low performance in the form of loss of title IV, HEA eligibility under proposed subpart S.

In addition to ensuring that career training programs ensure that graduates attain at least a minimal level of earnings and have borrowing levels that are manageable, the two metrics in the proposed rule also protect taxpayers from the costs of low financial value programs. For example, the RIA presents estimates of loan repayment under the hypothetical assumption that all borrowers pay on either (1) the most generous repayment plan or (2) the most generous plan that would be available under the income-driven repayment rule proposed by the Department in January (88 FR 1894). These analyses show that both D/E rates and the earnings premium metrics are strongly correlated with an estimated subsidy rate on Federal loans, which measures the share of a disbursed loan that will not be repaid, and thus provides a proxy for the cost of loans to taxpayers. In short, the D/E and earnings premium metrics are well targeted to programs that generate a disproportionate share of the costs to taxpayers and negative borrower outcomes that the Department seeks to improve.

We have also reconsidered the concerns raised in the 2019 Prior Rule about the effect of some repayment options on debt-to-earnings rates. We recognize that some repayment plans offered by the Department allow borrowers to repay their loans as a fraction of their income, and that this fraction is lower for some plans than the debt-to-earnings rate used to determine ineligibility under this proposed rule and the 2014 Prior Rule. For example, under the Revised Pay-As-You-Earn (REPAYE) income-driven repayment plan, borrowers' monthly payments are set at 10 percent of their discretionary income, defined as income in excess of 150 percent of the Federal poverty guideline (FPL). Noting that many borrowers continue to struggle to repay, the Department has proposed more generous terms, allowing borrowers to pay 5 percent of their discretionary income (now redefined as income in excess of 225 percent of the FPL) to repay undergraduate loans, and 10 percent of their discretionary income to repay graduate loans.[25]

Income driven repayment plans are aimed at alleviating the burden of high debt for students who experience unanticipated circumstances, beyond an institution's control, that adversely impact their ability to repay their debts. While the Department believes it is critical to reduce the risk of unexpected barriers that borrowers face, and to protect borrowers from delinquency, default and the

[25] 88 FR 1902 (Jan. 11, 2023).

associated adverse credit consequences, it would be negligent to lower our accountability standards across the entire population as a result and to permit institutions to encumber students with even more debt while expecting taxpayers to pay more for poor outcomes related to the educational programs offered by institutions. Instead, we view the D/E rates as an appropriate measure of what students can borrow and feasibly repay. Put another way, the D/E provisions proposed in this rule define a maximum amount of borrowing as a function of students' earnings that would leave the typical program graduate in a position to pay off their debt without having to rely on payment assistance programs like income-driven repayment plans.

The concerns raised by the 2019 Prior Rule about the effect of student demographics on the debt and earnings measures used in the 2014 Prior Rule (which we also propose to use in this NPRM) are addressed at length in this NPRM's RIA. The Department has considered that discrimination based on gender identity or race and ethnicity may influence the aggregate outcomes of programs that disproportionately enroll members of those groups. However, our analyses, and an ever-increasing body of academic research, strongly rebut the claim that differences across programs are solely or primarily a reflection of the demographic or other characteristics of the students enrolled.[26] Moreover, consistent with recurring allegations in student complaints and qui tam lawsuits (a type of lawsuit through which private individuals who initiate litigation on behalf of the government can receive for themselves all or part of the damages or penalties recovered by the government), through our compliance oversight activities including program reviews, the Department has concluded that many institutions aggressively recruit individuals with low income, women, and students of color into programs with substandard quality and poor outcomes and then claim their outcomes are poor because of the "access" they provide to such individuals. An analysis of the effects on access presented in the RIA demonstrates that more than 90 percent of students enrolled in failing programs have at least one non-failing option within the same geographic area, credential level, and broad field. These alternative

[26] Christensen, Cody and Turner, Lesley. (2021) Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings? The Brookings Institution. Washington, DC. https://www.brookings.edu/wp-content/uploads/2021/09/Christensen_Turner_CC-outcomes.pdf. lack, Dan A., and Jeffrey A. Smith. "Estimating the returns to college quality with multiple proxies for quality." *Journal of labor Economics* 24.3 (2006): 701-728.
Cohodes, Sarah R., and Joshua S. Goodman. "Merit aid, college quality, and college completion: Massachusetts' Adams scholarship as an in-kind subsidy." *American Economic Journal: Applied Economics* 6.4 (2014): 251-285.
Andrews, Rodney J., Jing Li, and Michael F. Lovenheim. "Quantile treatment effects of college quality on earnings." *Journal of Human Resources* 51.1 (2016): 200-238.
Dillon, Eleanor Wiske, and Jeffrey Andrew Smith. "The consequences of academic match between students and colleges." *Journal of Human Resources* 55.3 (2020): 767-808.

programs usually entail lower borrowing, higher earnings, or both.

The Department has also reconsidered concerns raised in the 2019 Prior Rule about the basis for proposed thresholds for debt-to-earnings rates. We have re-reviewed the research underpinning those thresholds. This includes considering concerns raised by one researcher about the way the Department interpreted one of her studies in the 2019 Prior Rule.[27] From this, we have proposed using one set of thresholds that are based upon research and industry practice. This departs from prior approaches that distinguished between programs in a “zone” versus “failing.”

The 2019 Prior Rule also raised concerns about the inclusion of potentially unreliable metrics. We agree with this conclusion with respect to job placement and thus do not propose including job placement rates among the proposed disclosures required from institutions.[28] Because inconsistencies in how institutions calculate job placement rates limit their usefulness to students and the public in comparing institutions and programs, until we find a meaningful and comparable measure, the Department does not rely upon job placement rates in this proposed rule.

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[27] www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation.

[28] These rates were not required disclosures under the 2014 Prior Rule, but rather among a list of items that the Secretary may choose to include.

The Department also considered concerns raised in the 2019 Prior Rule that the accountability framework was flawed because many programs did not have enough graduates to produce data. Since many programs produce only a small number of graduates each year, it is unavoidable that the Department will not be able to publish debt and earnings based aggregate statistics for such programs to protect the privacy of the individual students attending them or to ensure that the data from those programs are adequately reliable. As further explained in our discussion of proposed § 668.405, the IRS adds a small amount of statistical noise to earnings data for privacy protection purposes, which would be greater for populations smaller than 30.

While the Department is mindful of the fractions of programs likely covered, we also are concentrating on the numbers of people who may benefit from the metrics: enrolled students, prospective students, their families, and others. Despite the data limitations noted above, under the proposed regulations, we estimate that programs representing 69 and 75 percent of all title IV, HEA enrollment in eligible non-GE programs and GE programs, respectively, would have debt and earnings measures available to produce the metrics. We further estimate the share of enrollment that would additionally be covered under the four-year cohort approach (discussed later in this NPRM) by examining the share of enrollment in programs that have fewer than 30 graduates in our data for a two-year cohort, but at least 30 in a four-year cohort. Under this approach, we estimate that an additional 13 percent of eligible non-GE enrollment and 8 percent of GE enrollment would be covered. All told, the metrics could be produced for programs that enroll approximately 82 percent of all students. These students are enrolled in 34 percent of all eligible non-GE programs and 26 percent of all GE programs.[29]

The metrics that we could calculate, therefore, would show results for postsecondary education programs that are attended by the large majority of enrolled students. Those numbers would be directly relevant to those students. And it seems reasonable to further conclude that the covered programs will be the primary focus of attention for the majority of prospective students, as well. The programs least likely to be covered will be the smallest in terms of the number of completers (and likely enrollment), which is correlated with the breadth of interest among those considering enrolling in those programs. We acknowledge that these programs represent potential options for future and even current enrollees, and that relatively small programs might be different in various ways from programs

[29] These figures use four-year cohorts to compute rates. The comparable share of programs with calculatable metrics using only the two-year cohorts is 19 and 15 percent for non-GE and GE programs, respectively.

with larger enrollments. At the same time, the Department does not view the fraction of programs covered by D/E and EP as the most important metric. The title IV, HEA Federal student aid programs, after all, provide aid to students directly, making the share of students covered a natural focus of concern. The Department believes that the benefits of providing this information to millions of people about programs that account for the majority of students far outweighs the downside of not providing data on the smallest programs. Furthermore, even for students interested in smaller programs, the outcome measures for other programs at the same institution may be of interest.

The Department continues to agree with the stance taken in the 2019 Prior Rule that publishing metrics that help students, families, and taxpayers understand the financial value of all programs is important. Prospective students often consider enrollment options at public, for profit, and non-profit institutions simultaneously and deserve comparable information to assess the financial consequences of their choices. A number of research studies show that such information, when designed well, delivered by a trusted source, and provided at the right time can help improve choices and outcomes.[30] However, as further discussed under "§ 668.401 Financial value transparency scope and purpose," merely posting the

[30] For an overview of research findings see, for example, ticas.org/files/pub_files/consumer_information_in_higher_education.pdf.

information on the College Scorecard website has had a limited impact on enrollment choices. Consequently, our proposed rule, in subpart Q below, outlines a financial value transparency framework that proposes measures of debt-to-earnings and earnings premiums that would be calculated for nearly all programs at all institutions. To help ensure students are aware of these outcomes when financial considerations may be particularly important, the framework includes a requirement that all students receive a link to program disclosures including this information, and that students seeking to enroll in programs that do not meet standards on the relevant measures would need to acknowledge viewing that information prior to the disbursement of title IV, HEA funds.

At the same time, the Department believes that the transparency framework alone is not sufficient to protect students and taxpayers from programs with persistently poor financial value outcomes.[31],[32] The available information continues to suggest that graduates of some GE programs have earnings below what could be reasonably expected for someone pursuing postsecondary education. In the Regulatory Impact Analysis, the Department shows that about

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[31] Dominique J. Baker, Stephanie Riegg Cellini, Judith Scott-Clayton, and Lesley J. Turner, "Why information alone is not enough to improve higher education outcomes," The Brookings Institution (2021). www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/

[32] Mary Steffel, Dennis A. Kramer II, Walter McHugh, Nick Ducoff, "Information disclosure and college choice," The Brookings Institution (2019). www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf.

460,000 students per year, comprising 16 percent of all title IV, HEA recipients enrolled in GE programs annually, attend GE programs where the typical graduate earns less than the typical high school graduate, and an additional 9 percent of those enrolled in GE programs have unmanageable debt.[33] These rates are much higher among GE programs than eligible non-GE programs, where 4 percent of title IV, HEA enrollment is in programs with zero or negative earnings premiums and 2 percent are in programs with unsustainable debt levels.

Researchers have found that while providing information alone can be important and consequential in some settings, barriers to information and a lack of support for interpreting and acting upon information can limit its impact on students' education choices, particularly among more vulnerable populations.[34] We are also concerned about evidence from Federal and State investigations and qui tam lawsuits indicating that a number of institutions offering GE programs engage in aggressive and deceptive marketing and recruiting practices. As a result of these practices, prospective

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[33] A similar conclusion was reached in a recent study that found that about 670,000 students per year, comprising 9 percent of all students that exit postsecondary programs on an annual basis, attended programs that leave them worse off financially. See Jordan D. Matsudaira and Lesley J. Turner. "Towards a framework for accountability for federal financial assistance programs in postsecondary education." The Brookings Institution. (2020) www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf.

[34] See discussion in section "Outcome Differences Across Programs" of the Regulatory Impact Analysis for an overview of these research findings.

students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests.

We therefore propose an additional level of protection for GE programs that disproportionately leave students with unsustainable debt levels or no gain in earnings. We accordingly include an accountability framework in subpart S that links debt and earnings outcomes to GE program eligibility for title IV, HEA student aid programs. Since these programs are intended to prepare students for gainful employment in recognized occupations, tying eligibility to a minimally acceptable level of financial value is natural and supported by the relevant statutes; and as detailed above and in the RIA, these programs account for a disproportionate share of students who complete programs with very low earnings and unmanageable debt. This approach has been supported by a number of researchers who have recently suggested reinstating the 2014 GE rule with an added layer of accountability through a high school earnings metric.[35] We further explain the debt-to-earnings (D/E) and earnings premium (EP) metrics in discussions above and below.

[35] Stephanie R. Cellini and Kathryn J. Blanchard, “Using a High School Earnings Benchmark to Measure College Student Success Implications for Accountability and Equity.” The Postsecondary Equity and Economics Research Project. (2022). www.peerresearchproject.org/peer/research/body/2022.3.3-PEER_HSEarnings-Updated.pdf.

Consistent with our statutory authority, this proposed rule limits the linking of debt and earnings outcomes to program eligibility for programs that are defined as preparing students for gainful employment in a recognized occupation rather than a larger set of programs. The differentiation between GE and non-GE programs in the HEA reflects that eligible non-GE programs serve a broader array of goals beyond career training. Conditioning title IV, HEA eligibility for such programs to debt and earnings outcomes not only would raise questions of legal authority, it could increase the risk of unintended educational consequences. However, for purposes of program transparency, we propose to calculate and disclose debt and earnings outcomes for all programs along with other measures of the true costs of programs for students. Since students consider both GE and non-GE programs when selecting programs, providing comparable information for students would help them find the program that best meets their needs across any sector.

While we propose reinstating the consequential accountability provisions, including sanctions of eligibility loss, proposed in the 2011 and 2014 Prior Rules, we depart from those regulations in several ways in addition to those already mentioned above. First, we decided against using measures of loan repayment, like the one proposed in the 2011 Prior Rule. Even with an acceptable basis for setting such a threshold, we recognize that changes to the repayment options available to borrowers may cause repayment rates to change, and as a result such a measure may be an imperfect, or unstable, proxy for students' outcomes and program quality.

We also propose changes relative to the 2014 Prior Rule, including elimination of the "zone" and changes to appeals processes. Based on the Department's analyses and experience administering the 2014 Rule, these provisions added complexity and burden in administering the rule but did not further their stated goals and instead unnecessarily limited the Department's ability to remove low-value programs from eligibility. We further explain those choices below.[36]

Finally, the Department proposes to measure earnings using only the median of program completers' earnings, rather than the maximum of the mean or median of completers' earnings. This approach reflects an updated assessment that the median is a more appropriate measure, indicating the earnings level exceeded by a majority of the programs' graduates. The mean can be less representative of program quality since it may be elevated or lowered by just a few "outlier" completers with atypically high or low earnings outcomes. Furthermore, in aggregate National or State measures of earnings, mean earnings are always higher

[36] See the discussions below at [TK].

than median earnings due to the right skew of earnings distributions and the presence of a long right tail, when a small number of individuals earn substantially more than the typical person does.[37] As a result, using mean values, rather than medians, would substantially increase the state-level earnings thresholds derived from the earnings of high school graduates. Aggregated up to the State level, the mean earnings of those in the labor force with a high school degree is about 16 percent higher than the median earnings. By State, this difference between mean and median earnings ranges from 9 percent (in Delaware and Vermont) to 28 percent (in Louisiana).

The use of means as a comparison earnings measure within a State would set a much higher bar for programs, driven largely by the presence of high-earning outliers. In contrast, the use of mean earnings, rather than medians, for individual program data typically has a more muted effect. Using 2014 GE data, the typical increase from the use of mean, rather than median earnings, is about 3 percent across programs. Further, some programs have lower earnings when measured using a mean rather than median. Programs at the 25th percentile in earnings difference have a mean that is 3 percent less than the median, and programs at the 75th percentile have a mean than is 12 percent higher

[37] Neal, Derek and Sherwin Rosen. (2000) Chapter 7: Theories of the distribution of earnings. Handbook of Income Distribution. Elsevier. Vol. 1. 379-427. https://doi.org/10.1016/S1574-0056(00)80010-X.

than the median. On balance, we believe that using median earnings for both the measure of program earnings and the earnings threshold measure used to calculate the earnings premium leads to a more representative comparison of earnings outcomes for program graduates.

Financial Responsibility (§§ 668.15, 668.23, 668.171, and 668.174 through 668.177) (Section 498(c) of the HEA)

Section 498(c) of the HEA requires the Secretary to determine whether an institution has the financial responsibility to participate in the title IV, HEA programs on the basis of whether the institution is able to:

- Provide the services described in its official publications and statements;
- Provide the administrative resources necessary to comply with the requirements of the law; and
- Meet all of its financial obligations.

In 1994, the Department made significant changes to the regulations governing the evaluation of an institution's financial responsibility to improve our ability to implement the HEA's requirement. The Department strengthened the factors used to evaluate an institution's financial responsibility to reflect statutory changes made in the 1992 amendments to the HEA.

In 1997, we further enhanced the financial responsibility factors with the creation of part 668, subpart L that established a financial ratio requirement using composite scores and performance-based financial responsibility standards. The implementation of these new and enhanced factors limited the applicability of the previous factors in § 668.15 to only situations where an institution is undergoing a change in ownership.

These proposed regulations would remove the outdated regulations from § 668.15 and reserve that section. Proposed regulations in a new § 668.176, under subpart L, would be specific to institutions undergoing a change in ownership and detail the precise financial requirements for that process. Upon implementation, all financial responsibility factors for institutions, including institutions undergoing a change in ownership, would reside in part 668, subpart L.

In 2013, the Office of Management and Budget's Circular A-133, which governed independent audits of public and nonprofit, private institutions of higher education and postsecondary vocational institutions, was replaced with regulations at 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards. In § 668.23, we would replace all references to Circular A-133 with the current reference, 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

Audit guides developed by and available from the Department's Office of Inspector General contain the requirements for independent audits of for-profit institutions of higher education, foreign schools, and third-party servicers. Traditionally, these audits have had a submission deadline of six months following the end of the entity's fiscal year. These proposed regulations would establish a submission deadline that would be the earlier of two dates:

- Thirty days after the date of the later auditor's report with respect to the compliance audit and audited financial statements; or
- Six months after the last day of the entity's fiscal year.

The Department primarily monitors institutions' financial responsibility through the "composite score" calculation, a formula derived through a final rule published in 1997 that relies on audited financial statements and a series of tests of institutional performance. The composite score is only applied to private nonprofit and for-profit institutions. Public institutions are generally backed by the full faith and credit of the State or equivalent governmental entity and, if so, are not evaluated using the composite score test or required to post financial protection.

The composite score does not effectively account for some of the ways in which institutions' financial difficulties may manifest, however, because institutions submit audited financial statements after the end of an institution's fiscal year. An example of this would be when the person or entity that owns the school makes a short-term cash contribution to the school, thereby increasing the school's composite score in a way that allows what would have been a failing composite score to pass. We have seen examples of this activity occurring when that same owner withdraws the same or similar amount after the end of the fiscal year and after the calculation of a passing composite score based on the contribution. The effect is that the institution passes just long enough for the score to be reviewed and then goes back to failing. This is the type of manipulation that the proposed regulation seeks to address.

As part of the 2016 Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program regulations[38] (referred to collectively as the 2016 Final Borrower Defense Regulations), the Department introduced, as part of the financial responsibility framework, "triggering events" to serve as indicators of an institution's lack of financial responsibility or the presence of financial instability. These triggers were used in conjunction with the composite

[38] 81 FR 75926.

score and already existing standards of financial responsibility and offset the limits inherent in the composite score calculation. Some of the existing standards include that:

- The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5;
- The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds;
- The institution is able to meet all of its financial obligations and otherwise provide the administrative resources required to comply with title IV, HEA program requirements; and
- The institution or persons affiliated with the institution are not subject to a condition of past performance as outlined in 34 CFR 668.174.

The triggering events introduced in the 2016 Final Borrower Defense Regulations were divided into two categories: mandatory and discretionary.

Some required an institution to post a letter of credit or provide other financial protection when that triggering event occurred. This type of mandatory trigger included when an institution failed to demonstrate that at least 10 percent of its revenue derived from sources other than the title IV, HEA program funds (the 90/10 rule). Other mandatory triggers required a recalculation of the institution's composite score, which would result in a request for financial protection only if the newly calculated score was less than 1.0. An example of the latter type of trigger was when an institution's recalculated composite score was less than 1.0 due to its being required to pay any debt or incur any liability arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement.

The 2016 Final Borrower Defense Regulations also introduced discretionary triggers that only required financial protection from the institution if the Department determined it was necessary. An example of such a trigger was if an institution had been cited by a State licensing or authorizing agency for failing that entity's requirements. In that case, the Department could require financial protection if it believed that the failure was reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution.

In 2019, as part of the Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program[39] (2019 Final Borrower Defense Regulations) the Department revised many of these triggers, moving some from being mandatory to

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[39] 84 FR 49788.

being discretionary; eliminating some altogether; and linking some triggers to post-appeal or final events. An example of a mandatory 2016 trigger that was removed entirely in 2019 was when an institution’s recalculated composite score was less than 1.0 due to its being sued by an entity other than a Federal or State authority for financial relief on claims related to the making of Direct Loans for enrollment at the institution or the provision of educational services. In amending the financial responsibility requirements in the 2019 Final Borrower Defense Regulations, the Department reasoned that it was removing triggers that were speculative, such as triggers based on the estimated dollar value of a pending lawsuit, and limiting triggers to events that were known and quantified, such as triggers based on the actual liabilities incurred from a defense to repayment discharge. The rationale for the 2019 Final Borrower Defense Regulations was also based on the idea that some of the 2016 triggers were not indicators of the institution’s actual financial condition or ability to operate. However, after implementing the financial responsibility changes from the 2019 Final Borrower Defense Regulations, the Department has repeatedly encountered institutions that appeared to be at significant risk of closure where we lacked the ability to request financial protection due to the more limited nature of the triggers. To address this fact, these proposed regulations would reinstate or expand mandatory and discretionary triggering events that would require an institution to post financial protection, usually in the form of a letter of credit. Discretionary triggers would provide the Department flexibility on whether to require a letter of credit based on the financial impact the triggering event has on the institution, while the specified mandatory triggering conditions would either automatically require the institution to obtain financial surety or require that the composite score be recalculated to determine if an institution would have to provide surety because it no longer passes. These proposed new triggers would increase the Department's ability to monitor institutions for issues that may negatively impact their financial responsibility and to better protect students and taxpayers in cases of institutional misconduct and closure.

Administrative Capability (§ 668.16)

Under section 487(c)(1)(B) of the HEA, the Secretary is authorized to issue regulations necessary to provide reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV, HEA programs, in matters not governed by specific program provisions, including any matter the Secretary deems necessary to the administration of the financial aid programs. Section 668.16 specifies the standards that institutions must meet in administering title IV, HEA funds to demonstrate that they are administratively capable of providing the education they promise and of properly managing the title IV, HEA programs. In addition to having a well-organized financial aid office staffed by qualified personnel, a school must ensure that its administrative procedures include an adequate system of internal checks and balances. The Secretary's administrative capability regulations protect students and taxpayers by requiring that institutions have proper procedures and adequate administrative resources in place to ensure fair, legal, and appropriate conduct by title IV, HEA participating schools. These procedures are required to ensure that students are treated in a fair and transparent manner, such as receiving accurate and complete information about financial aid and other institutional features and receiving adequate services to support a high-quality education. A finding that an institution is not administratively capable does not necessarily result in immediate loss of access to title IV aid. A finding of a lack of administrative capability generally results in the Department taking additional proactive monitoring steps, such as placing the institution on a provisional PPA or HCM2 as necessary.

Through program reviews, the Department has identified administrative capability issues that are not adequately addressed by the existing regulations. The Department proposes to amend § 668.16 to clarify the characteristics of institutions that are administratively capable. The proposed changes would benefit students in several ways.

First, we propose to improve the information that institutions provide to applicants and students to understand the cost of the education being offered. Specifically, we propose to require institutions to provide students financial aid counseling and information that includes the institution's cost of attendance, the source and type of aid offered, whether it must be earned or repaid, the net price, and deadlines for accepting, declining, or adjusting award amounts. We believe that these proposed changes would make it easier for students to compare costs of the schools that they are considering and understand the costs they are taking on to attend an institution.

Additionally, the Department proposes that institutions must provide students with adequate career services and clinical or externship opportunities, as applicable, to enable students to gain licensure and employment in the occupation for which they are prepared. We propose that institutions must provide adequate career services to create a pathway for students to obtain employment upon successful completion of their program. Institutions must have adequate career service staff and established partnerships with recruiters and employers. With respect to clinical and externship opportunities where required for completion of the program, we propose that accessible opportunities be provided to students within 45 days of completing other required coursework.

We also propose that institutions must disburse funds to students in a timely manner to enable students to cover institutional costs. This proposed change is designed to allow students to remain in school and reduce withdrawal rates caused by delayed disbursements.

The Department proposes that an institution that offers GE programs is not administratively capable if it derives more than half of its total title IV, HEA funds in the most recent fiscal year from GE programs that are failing. Similarly, an institution is not administratively capable if it enrolls more than half of its students who receive title IV, HEA aid in programs that are failing under the proposed GE metrics. Determining that these institutions are not administratively capable would allow the Department to take additional proactive monitoring steps for institutions that could be at risk of seeing significant shares of their enrollment or revenues associated with ineligible programs in the following year. This could include placing the institution on a provisional PPA or HCM2.

The Department also proposes to prohibit institutions from engaging in aggressive and deceptive recruitment and misrepresentations. These practices are defined in Part 668 Subpart F and Subpart R. The former was amended by the borrower defense regulations published on November 1, 2022 (87 FR 65904), while the latter was created in that regulation. Both provisions are scheduled to go into effect on July 1, 2023. The scope and definition of misrepresentations was first discussed during the 2009-2010 negotiated rulemaking session. We are now proposing to include aggressive and deceptive recruitment tactics or conduct as one of the types of activities that constitutes substantial misrepresentation by an eligible institution.

We propose that institutions must confirm that they have not been subject to negative action by a State or Federal agency and have not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. Additionally, we propose that institutions certify when they sign their PPA that no principal or affiliate has been convicted of or pled nolo contender or guilty to a crime related to the acquisition, use, or expenditure of government funds or has been determined to have committed fraud or any other material violation of law involving those funds.

Finally, the Department proposes procedures that we believe would be adequate to verify the validity of a student's high school diploma. This standard was last addressed during negotiated rulemaking in 2010. In these proposed regulations, we identify specific documents that can be used to verify the validity of a high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid. We also propose criteria to help institutions with identifying a high school diploma that is not valid.

Certification Procedures (§§ 668.2, 668.13, and 668.14)

Certification is the process by which a postsecondary institution applies to initially participate or continue participating in the title IV, HEA student aid programs. To receive certification, an institution must meet all applicable statutory and regulatory requirements in HEA section 498. Currently, postsecondary institutions use the Electronic Application for Approval to Participate in Federal Student Financial Aid Programs (E-App) to apply for designation as an eligible institution, initial participation, recertification, reinstatement, or change in ownership, or to update a current approval. Once an institution submits its application, we examine three major factors about the school--institutional eligibility, administrative capability, and financial responsibility.

Once an institution has demonstrated that it meets all institutional title IV eligibility criteria, it must enter into a PPA to award and disburse Federal student financial assistance. The PPA defines the terms and conditions that the institution must meet to begin and continue participation in the title IV programs. Institutions can be fully certified, provisionally certified, or temporarily certified under their PPAs. Full certification constitutes the standard level of oversight applied to an institution under which financial and compliance audits must be completed and institutions are generally subject to the same standard set of conditions.

Provisionally certified institutions are subject to more frequent oversight (i.e., a shorter timeframe for certification), and have one or more conditions applied to their PPA depending on specific concerns about the school. For instance, we may require that an institution seek approval from the Department before adding new locations or programs. Institutions that are temporarily certified are subject to very short-term, month-to-month approvals and a variety of conditions to enable frequent oversight and reduce risk to students and taxpayers.

We notify institutions six months prior to the expiration of their PPA, and institutions must submit a materially complete application before the PPA expires. The Department certifies the eligibility of institutions for a period of time that may not exceed three years for provisional certification or six years for full certification. The Department may place conditions on the continued participation in the title IV, HEA programs for provisionally certified institutions.

As part of the 2020 final rule for Distance Education and Innovation,[40] the Department decided to automatically grant an institution renewal of certification if the Secretary did not grant or deny certification within 12 months of the expiration of its current period of participation. At the time, we believed this regulation would encourage prompt processing of applications, timely feedback to institutions, proper oversight of institutions, and speedier remedies of deficiencies. However, HEA section 498 does not specify a time period in which certification applications need to be approved, and we have since determined that the time constraint established in the final rule for Distance Education and Innovation negatively impacted our ability to protect program integrity. Furthermore, a premature decision to grant or deny an application when unresolved issues remain under review creates substantial negative consequences for students, institutions, taxpayers, and the Department. Accordingly, we propose to eliminate the provision that automatically grants an institution renewal of

[40] 85 FR 54742

certification after 12 months without a decision from the Department. Eliminating this provision would allow us to take additional time to investigate institutions thoroughly prior to deciding whether to grant or deny a certification application and ensure institutions are approved only when we have determined that they are in compliance with Federal rules.

Our proposed changes to the certification process would better address conditions that create significant risk for students and taxpayers, such as institutions that falsely certify students' eligibility to receive a loan and subsequently close. Students expect their programs to be properly certified and for their institutions to continue operating through the completion of their programs and beyond. In fact, the value of an educational degree is heavily determined by the reputation of the issuer, thus when institutions mislead students about their certification status, students may invest their money and time in a program that they will not be able to complete, which ultimately creates financial risk for students and taxpayers.

Our proposed changes would also address institutions undergoing changes in ownership while being at risk of closure. We propose to add new events that would require institutions to be provisionally certified and add several conditions to provisional PPAs to increase oversight to better protect students. For example, we propose that institutions that we determine to be at risk of closure must submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. This would ensure that the institution has an acceptable plan in place that allows students to continue their education in the event the institution closes.

We also propose that, as part of the institution's PPA, the institution must demonstrate that a program that prepares a student for gainful employment in a recognized occupation and requires programmatic accreditation or State licensure, meets the institution's home State or another qualifying State's programmatic and licensure requirements. Another State's requirements could only be used if the institution can document that a majority of students resided in that other State while enrolled in the program during the most recently completed award year or if a majority of students who completed the program in the most recently completed award year were employed in that State. In addition, if the other State is part of the same metropolitan statistical area[41] as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year,

[41] *Metropolitan statistical area* as defined by the U.S. Office of Management and Budget (OMB), www.census.gov/programs-surveys/metro-micro.html.

stated in writing that they intended to work in that other State, then that other State's programmatic and licensure requirements could also be used to demonstrate that the program prepares a student for gainful employment in a recognized occupation. For any programmatic and licensure requirements that come from a State other than the home State, the institution must provide documentation of that State meeting one of three aforementioned qualifying requirements and the documentation provided must be substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23. In addition, we propose to require that institutions inform students about the States where programs do and do not meet programmatic and licensure requirements. The Department is proposing these regulations because we believe students deserve to have relevant information to make an informed decision about programs they are considering. We also believe programs funded in part by taxpayer dollars should meet the requirements for the occupation for which they prepare students as a safeguard of the financial investment in these programs.

Additionally, as discussed in the 2022 final rule on changes in ownership,[42] the Department has seen an increase in the number of institutions applying for changes in

[42] 87 FR 65426

ownership and has determined that it is necessary to reevaluate the relevant policies to accommodate the increased complexity of changes in ownership arrangements and increased risk to students and to taxpayers that arises when institutions do not provide adequate information to the Department. For example, approving a new owner who does not have the financial and other necessary resources to successfully operate the institution jeopardizes the education of students and increases the likelihood of closure. Consequently, we propose a more rigorous process for certifying institutions to help address this issue. Namely, we propose to mitigate the risk of institutions failing to meet Federal requirements and creating risky financial situations for students and taxpayers by applying preemptive conditions for initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status. These preemptive conditions would help us monitor risks associated with some for-profit college conversions, such as the risk of improper benefit to the school owners and affiliated persons and entities. Examples of such benefits include having additional time to submit annual compliance audit and financial statements and avoiding the 90/10 requirements that for-profit colleges must comply with. Under these proposed regulations, we would monitor and review the institution’s IRS correspondence and audited financial statements for improper benefit from the conversion to nonprofit status.

Lastly, we recognize that private entities may exercise control over proprietary and private, nonprofit institutions, and we propose to increase coverage of an institution's liabilities by holding these entities to the same standards and liabilities as the institution. For instance, owners of private, nonprofit universities and teaching hospitals may greatly influence the institution's operations and should be held liable for losses incurred by the institution.

Ability To Benefit (§§ 668.2, 668.32, 668.156, and 668.157)

Prior to 1991, students without a high school diploma or its equivalent were not eligible for title IV, HEA aid. In 1991, section 484(d) of the HEA was amended to allow students without a high school diploma or its recognized equivalent to become eligible for title IV, HEA aid if they could pass an independently administered examination approved by the Secretary (Pub. L. 102-26) (1991 amendments). These examinations were commonly referred to as "ability to benefit tests" or "ATB tests."

In 1992, Pub. L. 102-325 amended section 484(d) to provide students without a high school diploma or its recognized equivalent an additional alternative pathway to title IV, HEA aid eligibility through a State-defined process (1992 amendments). The State could prescribe a process by which a student who did not have a high school diploma or its recognized equivalent could establish eligibility for title IV, HEA aid. The Department required States to apply to the Secretary for approval of such processes. Unless the Secretary disapproved a State's proposed process within six months after the submission to the Secretary for approval, the process was deemed to be approved. In determining whether to approve such a process, the HEA requires the Secretary to consider its effectiveness in enabling students without a high school diploma or its equivalent to benefit from the instruction offered by institutions utilizing the process. The Secretary must also consider the cultural diversity, economic circumstances, and educational preparation of the populations served by such institutions.

In 1995, the Department published final regulations[43] to implement the changes made to section 484(d). Under the final rule, in § 668.156, the Department would approve State processes if (1) the institutions participating in the State process provided services to students, including counseling and tutoring, (2) the State monitored participating institutions, which included requiring corrective action for deficient institutions and termination for refusal to comply, and (3) the success rate of students admitted under the State process was within 95

[43] 60 FR 61830.

percent of the success rates of high school graduates who were enrolled in the same educational programs at the institutions that participated in the State process.

In 2008, Pub. L. 110-315 (2008 amendments) further amended section 484(d) of the HEA to allow students without a high school diploma or its recognized equivalent a third alternative pathway to title IV, HEA aid eligibility: satisfactory completion of six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution of higher education.

In 2011, the Consolidated Appropriations Act of 2012 (Pub. L. 112-74) (2011 amendments) further amended section 484(d) by repealing the ATB alternatives created by the 1991, 1992, and 2008 amendments. Notably, Congress stipulated that the amendment only applied "to students who first enroll in a program of study on or after July 1, 2012."

In 2014, Pub. L. 113-235 amended section 484(d) (2014 amendments) to create three ATB alternatives, effectively restoring significant elements of the alternatives that were in the statute prior to the enactment of the 2011 amendments, using substantially identical text. However, the 2014 amendments made a significant change to the ATB processes in that they required students to be enrolled in eligible career pathway programs, in contrast to the pre-

2011 statutory framework which permitted students to enroll in any eligible program.

In 2015, Pub. L. 114-113 amended the definition of an "eligible career pathway program" in section 484(d) to match the definition in Pub. L. 113-128, the Workforce Innovation and Opportunity Act (2015 amendments). Specifically, the 2015 amendments defined the term "eligible career pathway program" as a program that combines rigorous and high-quality education, training, and other services and that:

- Aligns with the skill needs of industries in the economy of the State or regional economy involved;
- Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.);
- Includes counseling to support an individual in achieving the individual's education and career goals;
- Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
- Organizes education, training, and other services to meet the particular needs of an individual in a manner

that accelerates the educational and career advancement of the individual to the extent practicable;

- Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

- Helps an individual enter or advance within a specific occupation or occupational cluster.

The Department proposes to amend §§ 668.2, 668.32, 668.156, and 668.157. These proposed changes would amend the requirements for approval of a State process and establish a regulatory definition of "eligible career pathway programs."

As discussed, fulfilling one of the three ATB alternatives grants a student without a high school diploma or its recognized equivalent access to title IV, HEA aid for enrollment in an eligible career pathway program. Although the Department released Dear Colleague Letters GEN 15-09 (May 15, 2015)[44] and GEN 16-09 (May 9, 2016)[45] explaining the statutory changes, the current ATB regulations do not reflect the 2014 amendments to the HEA that require a student to enroll in an eligible career pathway program in addition to fulfilling one of the ATB

[44] fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2015-05-22/gen-15-09-subject-title-iv-eligibility-students-without-valid-high-school-diploma-who-are-enrolled-eligible-career-pathway-programs.
[45] fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2016-05-09/gen-16-09-subject-changes-title-iv-eligibility-students-without-valid-high-school-diploma-who-are-enrolled-eligible-career-pathway-programs.

alternatives. We are now proposing to codify those changes in regulation.

Specifically, we propose to: (1) add a definition of "eligible career pathway program"; (2) make technical updates to student eligibility; (3) amend the State process to allow for time to collect outcomes data while establishing new safeguards against inadequate State processes; (4) establish documentation requirements for institutions that wish to begin or maintain title IV, HEA eligible career pathway programs; and (5) establish a verification process for career pathway programs to ensure regulatory compliance.

Reliance Interests

Given that the Department proposes to adopt rules that are significantly different from the current rules, we have considered whether those current rules, including the 2019 Prior Rule, engendered serious reliance interests that must be accounted for in this rulemaking. For a number of reasons, we do not believe that such reliance interests exist or, if they do exist, that they would justify changes to the proposed rules.

First of all, the Department's prior regulatory actions would not have encouraged reasonable reliance on any particular regulatory position. The 2019 Prior Rule was written to rescind the 2014 Prior Rule at a point where no gainful employment program had lost eligibility due to failing outcome measures. Furthermore, as various circumstances have changed, in law and otherwise, and as more information and further analyses have emerged, the Department's position and rules have changed since the 2011 Prior Rule. With respect to the proposed regulations in this NPRM, the Department provided notice of its intent to regulate on December 8, 2021. As the proposed regulations would not be effective before July 1, 2024, we believe institutions will have had sufficient time to take any internal actions necessary to comply with the final regulations.

Even if relevant actors might have relied on some prior regulatory position despite this background, the extent of alleged reliance would have to be supported by some kind of evidence. The Department aims to ensure that any asserted reliance interests are real and demonstrable rather than theoretical and speculative. Furthermore, to affect decisions about the rules, reliance interests must be added to a broader analysis that accords with existing statutes. Legitimate and demonstrable reliance interests, to the extent they exist, should be considered as one factor among a number of counter-balancing considerations, within applicable law and consistent with sound policy. We do not view any plausible reliance interests as nearly strong enough to alter our proposals in this NPRM.

In any event, the Department welcomes public comment on whether there are serious, reasonable, legitimate, and demonstrable reliance interests that the Department should account for in the final rule.

Public Participation

The Department has significantly engaged the public in developing this NPRM, including through review of oral and written comments submitted by the public during five public hearings. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

On May 26, 2021, the Department published a notice in the *Federal Register* (86 FR 28299) announcing our intent to establish multiple negotiated rulemaking committees to prepare proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans.

The Department proposed regulatory provisions for the Institutional and Programmatic Eligibility Committee (Committee) based on advice and recommendations submitted by individuals and organizations in testimony at three virtual public hearings held by the Department on June 21 and June 23-24, 2021.

The Department also accepted written comments on possible regulatory provisions that were submitted to the Department by interested parties and organizations as part of the public hearing process. You may view the written comments submitted in response to the May 26, 2021, and the October 4, 2021, *Federal Register* notices on the Federal eRulemaking Portal at www.regulations.gov, within docket ID ED-2021-OPE-0077. Instructions for finding comments are also available on the site under "FAQ."

You may view transcripts of the public hearings at www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Department, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the *Federal Register*. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of proposed regulations on which the negotiators reached consensus--unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. You can find further information on the negotiated rulemaking process at: www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

On December 8, 2021, the Department published a notice in the *Federal Register* (86 FR 69607) announcing its intention to establish a Committee, the Institutional and Programmatic Eligibility Committee, to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee meetings and requested nominations for individual negotiators to serve on the negotiating Committee and announced the topics that Committee would address.

The Committee included the following members, representing their respective constituencies:

- Accrediting Agencies: Jamienne S. Studley, WASC Senior College and University Commission, and Laura Rasar King (alternate), Council on Education for Public Health.
- Civil Rights Organizations: Amanda Martinez, UnidosUS.
- Consumer Advocacy Organizations: Carolyn Fast, The Century Foundation, and Jaylon Herbin (alternate), Center for Responsible Lending.

- Financial Aid Administrators at Postsecondary Institutions: Samantha Veeder, University of Rochester, and David Peterson (alternate), University of Cincinnati.

- Four-Year Public Institutions of Higher Education: Marvin Smith, University of California, Los Angeles, and Deborah Stanley (alternate), Bowie State University.

- Legal Assistance Organizations that Represent Students and/or Borrowers: Johnson Tyler, Brooklyn Legal Services, and Jessica Ranucci (alternate), New York Legal Assistance Group.

- Minority-Serving Institutions: Beverly Hogan, Tougaloo College (retired), and Ashley Schofield (alternate), Claflin University.

- Private, Nonprofit Institutions of Higher Education: Kelli Perry, Rensselaer Polytechnic Institute, and Emmanual A. Guillory (alternate), National Association of Independent Colleges and Universities (NAICU).

- Proprietary Institutions of Higher Education: Bradley Adams, South College, and Michael Lanouette (alternate), Aviation Institute of Maintenance/Centura College/Tidewater Tech.

- State Attorneys General: Adam Welle, Minnesota Attorney General's Office, and Yael Shavit (alternate), Office of the Massachusetts Attorney General.

- State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators of

Institutions of Higher Education and/or Loan Servicers: Debbie Cochrane, California Bureau of Private Postsecondary Education, and David Socolow (alternate), New Jersey's Higher Education Student Assistance Authority (HESAA).

- Students and Student Loan Borrowers: Ernest Ezeugo, Young Invincibles, and Carney King (alternate), California State Senate.

- Two-Year Public Institutions of Higher Education: Anne Kress, Northern Virginia Community College, and William S. Durden (alternate), Washington State Board for Community and Technical Colleges.

- U.S. Military Service Members, Veterans, or Groups Representing them: Travis Horr, Iraq and Afghanistan Veterans of America, and Barmak Nassirian (alternate), Veterans Education Success.

- Federal Negotiator: Gregory Martin, U.S. Department of Education.

The Department also invited nominations for two advisors. These advisors were not voting members of the Committee; however, they were consulted and served as a resource. The advisors were:

- David McClintock, McClintock & Associates, P.C. for issues with auditing institutions that participate in the title IV, HEA programs.

- Adam Looney, David Eccles School of Business at the University of Utah, for issues related to economics, as well as research, accountability, and/or analysis of higher education data.

The Committee met for three rounds of negotiations, the first of which was held over four days, while the remaining two were five days each. At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any member of the Committee and noted that consensus checks would be taken issue by issue. During its first week of sessions, the legal aid negotiator petitioned the Committee to add a Committee member representing the civil rights constituency to distinguish that constituency from the legal aid constituency. The Committee subsequently reached consensus on adding a member from the constituency group, Civil Rights Organizations.

The Committee reviewed and discussed the Department's drafts of regulatory language, as well as alternative language and suggestions proposed by Committee members. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

At the final meeting on March 18, 2022, the Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations.

For more information on the negotiated rulemaking sessions please visit www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

Summary of Proposed Changes

The proposed regulations would make the following changes to current regulations.

Financial Value Transparency and Gainful Employment (§§ 600.10, 600.21, 668.2, 668.43, 668.91, 668.401 through 668.409, 668.601 through 668.606) (Sections 101 and 102 of the HEA)

- Amend § 600.10(c) to require an institution seeking to establish the eligibility of a GE program to add the program to its application.
- Amend § 600.21(a) to require an institution to notify the Secretary within 10 days of any change to the information included in the GE program's certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including "annual debt-to-earnings rate," "classification of instructional programs (CIP) code," "cohort period," "credential level," "debt-to-earnings

rates (D/E rates)," "discretionary debt-to-earnings rates," "earnings premium," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," "gainful employment program (GE program)," "institutional grants and scholarships," "length of the program," "poverty guideline," "prospective student," "student," and "Title IV loan."

- Amend § 668.43 to establish a Department website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide the information required to access the website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.

- Amend § 668.91(a) to require that a hearing official must terminate the eligibility of a GE program that fails to meet the GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.

- Add a new § 668.401 to provide the scope and purpose of newly established financial value transparency regulations under subpart Q.

- Add a new § 668.402 to provide a framework for the Secretary to determine whether a GE program or eligible non-GE program leads to acceptable debt and earnings results, including establishing annual and discretionary

D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.

- Add a new § 668.403 to establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt, and assessed charges, as well as to provide exclusions and specify when D/E rates will not be calculated.

- Add a new § 668.404 to establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings threshold measure will not be calculated.

- Add a new § 668.405 to establish a process by which the Secretary will obtain the administrative and earnings data required to calculate the D/E rates and the earnings premium measure.

- Add a new § 668.406 to require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

- Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.

- Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the timeframe for institutions to report this information.

- Add a new § 668.409 to establish severability protections ensuring that if any financial value transparency provision under subpart Q is held invalid, the remaining provisions continue to apply.

- Add a new § 668.601 to provide the scope and purpose of newly established GE regulations under subpart S.

- Add a new § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.

- Add a new § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.

- Add a new § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.

- Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery requirements for such notifications, and to provide that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

- Add a new § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions would continue to apply.

<u>Financial Responsibility (§§ 668.15, 668.23, 668.171, and 668.174 through 668.177) (Section 498(c) of the HEA)</u>

- Remove all regulations currently under § 668.15 and reserve that section.

- Amend § 668.23 to establish a new submission deadline for compliance audits and audited financial statements not subject to the Single Audit Act, Chapter 75 of title 31, United States Code, to be the earlier of 30 days after the date of the auditor’s report, with respect to the compliance audit and audited financial statements, or 6 months after the last day of the entity’s fiscal year.

- Replace all references to the “Office of Management and Budget Circular A-133” in § 668.23 with the updated reference, “2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.”

- Amend § 668.23(d)(1) to require that financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service.

- Add new language to § 668.23(d)(2)(ii) that would require a domestic or foreign institution that is owned directly or indirectly by any foreign entity to provide documentation stating its status under the law of the jurisdiction under which it is organized.

- Add new § 668.23(d)(5) that would require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

- Amend § 668.171(b)(3)(i) so that an institution would be deemed unable to meet its financial or administrative obligations if, in addition to the already existing factors, it fails to pay title IV, HEA credit balances, as required.

- Further amend § 668.171(b)(3) to establish that an institution would not be able to meet its financial or administrative obligations if it fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days; or fails to satisfy payroll obligations in accordance with its published schedule; or it borrows funds from retirement plans or restricted funds without authorization.

- Amend § 668.171(c) to establish additional mandatory triggering events that would determine if an institution is able to meet its financial or administrative obligations. If any of the mandatory trigger events occur, the institution would be deemed unable to meet its financial or administrative obligations and the Department would obtain financial protection.

- Amend § 668.171(d) to establish additional discretionary triggering events that would assist the Department in determining if an institution is able to meet its financial or administrative obligations. If any of the discretionary triggering events occur, we would determine if the event is likely to have a material adverse effect on the financial condition of the institution, and if so, would obtain financial protection.

- Amend § 668.171(e) to recognize the liability or liabilities as an expense when recalculating an institution’s composite score after a withdrawal of equity.
- Amend § 668.171(f) to require an institution to notify the Department, typically no later than 10 days, after any of the following occurs:
  - The institution incurs a liability as described in proposed § 668.171(c)(2)(i)(A);
  - The institution is served with a complaint linked to a lawsuit as described in § 668.171(c)(2)(i)(B) and an updated notice when such a lawsuit has been pending for at least 120 days;
  - The institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity;
  - As described in proposed § 668.171(c)(2)(x), the institution makes a contribution in the last quarter of its fiscal year and makes a distribution in the first or second quarter of the following fiscal year;
  - As described in proposed § 668.171(c)(2)(vi) or (d)(11), the U.S Securities and Exchange Commission (SEC) or an exchange where the entity’s securities are listed takes certain disciplinary actions against the entity;
  - As described in proposed § 668.171(c)(2)(iv), (c)(2)(v), or (d)(9), the institution’s accrediting agency

or a State, Federal or other oversight agency notifies it of certain actions being initiated or certain requirements being imposed;

- As described in proposed § 668.171(c)(2)(xi), there are actions initiated by a creditor of the institution;
- A proprietary institution, for its most recent fiscal year, does not receive at least 10 percent of its revenue from sources other than Federal educational assistance programs as provided in § 668.28(c)(3) (This notification deadline would be 45 days after the end of the institution's fiscal year);
- As described in proposed § 668.171(c)(2)(ix) or (d)(10), the institution or one of its programs loses eligibility for another Federal educational assistance program;
- As described in proposed § 668.171(d)(7), the institution discontinues an academic program;
- The institution fails to meet any one of the standards in § 668.171(b);
- As described in proposed § 668.171(c)(2)(xii), the institution makes a declaration of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency;
- As described in proposed § 668.171(c)(2)(xiii), the institution or an owner or affiliate

of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, is voluntarily placed, or is required to be placed, into receivership;

  - The institution is cited by another Federal agency for not complying with requirements associated with that agency's educational assistance programs and which could result in the institution's loss of those Federal education assistance funds;

  - The institution closes more than 50 percent of its locations or any number of locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;

  - As described in proposed § 668.171(d)(2), the institution suffers other defaults, delinquencies, or creditor events;

- Amend § 668.171(g) to require public institutions to provide documentation from a government entity that confirms that the institution is a public institution and is backed by the full faith and credit of that government entity to be considered as financially responsible.

- Amend § 668.171(h) to provide that an institution is not financially responsible if the institution's audited financial statements include an opinion expressed by the auditor that was adverse, qualified, disclaimed, or if they include a disclosure about the institution's diminished liquidity, ability to continue operations, or ability to continue as a going concern.

- Amend § 668.174(a) to clarify that an institution would not be financially responsible if it has had an audit finding in either of its two most recent compliance audits that resulted in the institution being required to repay an amount greater than 5 percent of the funds the institution received under the title IV, HEA programs or if we require it to repay an amount greater than 5 percent of its title IV, HEA program funds in a Department-issued Final Audit Determination Letter, Final Program Review Determination, or similar final document in the institution's current fiscal year or either of its preceding two fiscal years.
- Add § 668.174(b)(3) to state that an institution is not financially responsible if an owner who exercises substantial control, or the owner's spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years unless certain conditions are met when the institution first applies to participate in Title IV, HEA programs, or when the institution undergoes a change in ownership.
- Amend § 668.175(c) to clarify that we would consider an institution that did not otherwise satisfy the regulatory standards of financial responsibility, or that

had an audit opinion or disclosure about the institution's liquidity, ability to continue operations, or ability to continue as a going concern, to be financially responsible if it submits an irrevocable letter of credit to the Department in an amount we determine. Furthermore, the proposed regulation would clarify that if the institution's failure is due to any of the factors in § 668.171(b), it must remedy the issues that gave rise to the failure.

- Add § 668.176 to specify the financial responsibility standards for an institution undergoing a change in ownership. The proposed regulations would consolidate financial responsibility requirements in subpart L of part 668 and remove the requirements that currently reside in § 668.15.
- Add a new § 668.177 to contain the severability statement that currently resides in § 668.176.

Administrative Capability (§ 668.16) (Section 498(a) of the HEA)

- Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to enrolled students that advises students and families to accept the most beneficial types of financial assistance available to them and includes clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts.

- Amend § 668.16(k) to require that an institution not have any principal or affiliate that has been subject to specified negative actions, including being convicted of or pleading nolo contendere or guilty to a crime involving governmental funds.
- Add § 668.16(n) to require that the institution has not been subject to a significant negative action or a finding by a State or Federal agency, a court or an accrediting agency, where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive; and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.
- Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.
- Add § 668.16(q) to require that institutions provide adequate career services to eligible students who receive title IV, HEA program assistance.
- Add § 668.16(r) to require that an institution provide students with accessible clinical, or externship opportunities related to and required for completion of the

credential or licensure in a recognized occupation, within 45 days of the successful completion of other required coursework.

- Add § 668.16(s) to require that an institution disburse funds to students in a timely manner consistent with the students' needs.

- Add § 668.16(t) to require institutions that offer GE programs to meet program standards as outlined in regulation.

- Add § 668.16(u) to require that an institution does not engage in misrepresentations or aggressive recruitment.

<u>Certification Procedures (§§ 668.2, 668.13, and 668.14) (Section 498 of the HEA)</u>

- Amend § 668.2 to add a definition of "metropolitan statistical area."

- Amend § 668.13(b)(3) to eliminate the provision that requires the Department to approve participation for an institution if it has not acted on a certification application within 12 months so the Department can take additional time where it is needed.

- Amend § 668.13(c)(1) to include additional events that lead to provisional certification.

- Amend § 668.13(c)(2) to require provisionally certified schools that have major consumer protection issues to recertify after two years.

- Add a new § 668.13(e) to establish supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of the institution.
- Amend § 668.14(a)(3) to require an authorized representative of any entity with direct or indirect ownership of a proprietary or private nonprofit institution to sign a PPA.
- Amend § 668.14(b)(17) to provide that all Federal agencies and State attorneys general have the authority to share with each other and the Department any information pertaining to an institution's eligibility for participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.
- Amend § 668.14(b)(18)(i) and (ii) to add to the list of reasons for which an institution or third-party servicer may not employ, or contract with, individuals or entities whose prior conduct calls into question the ability of the individual or entity to adhere to a fiduciary standard of conduct. We also propose to prohibit owners, officers, and employees of both institutions and third-party servicers from participating in the title IV, HEA programs if they have exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program requirement and is not making

payments in accordance with an agreement to repay that liability.

- Amend § 668.14(b)(18)(i) and (ii) to add to the list of situations in which an institution may not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, ten-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.

- Amend § 668.14(b)(26)(ii)(A) to limit the number of hours in a gainful employment program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution's accrediting agency.

- Amend § 668.14(b)(26)(ii)(B) as an exception to paragraph (A) that limits the number of hours in a gainful employment program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by another State if: the institution provides documentation, substantiated by the certified public accountant that prepares the institution’s compliance audit report as required under § 668.23, that a majority of students resided in that other State while enrolled in the program during the most recently completed award year or that a majority of students who completed the program in the most recently completed award year were employed in that State; or if the other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State.

- Amend § 668.14(b)(32) to require all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements and comply with all State consumer protection laws.
- Amend § 668.14(b)(33) to require institutions to not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution’s administration of the title IV, HEA programs, returns of funds under the Return of Title IV Funds process, or any fraud or misconduct by the institution or its personnel.
- Amend § 668.14(b)(34) to prohibit institutions from maintaining policies and procedures to encourage, or

conditioning institutional aid or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives, except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

- Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions.

- Amend § 668.14(f) to establish conditions that may apply to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution.

- Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.

<u>ATB (§§ 668.2, 668.32, 668.156, and 668.157 (Section 484(d) of the HEA)</u>

- Amend § 668.2 to codify a definition of "eligible career pathway program."

- Amend § 668.32(e) to differentiate between the title IV, HEA aid eligibility of non-high school graduates who enrolled in an eligible program prior to July 1, 2012, and those that enrolled after July 1, 2012.

- Amend § 668.156(b) to separate the State process into an initial two-year period and a subsequent period for which the State may be approved for up to five years.

- Amend § 668.156(a) to strengthen the Approved State process regulations to require that: (1) The application contains a certification that each eligible career pathway program intended for use through the State process meets the proposed definition of an "eligible career pathway program"; (2) The application describes the criteria used to determine student eligibility for participation in the State process; (3) The withdrawal rate for a postsecondary institution listed for the first time on a State's application does not exceed 33 percent; (4) Upon initial application the Secretary will verify that a sample of the proposed eligible career pathway programs are valid; and (5) Upon initial application the State will enroll no more than the greater of 25 students or one percent of enrollment at each participating institution.

- Remove current § 668.156(c) to remove the support services requirements from the State process--orientation, assessment of a student's existing capabilities, tutoring, assistance in developing educational goals, counseling, and follow up by teachers and counselors-—as these support services generally duplicate the requirements in the proposed definition of "eligible career pathway programs."

- Amend the monitoring requirement in current § 668.156(d), now redesignated proposed § 668.156(c) to provide a participating institution that has failed to achieve the 85 percent success rate up to three years to achieve compliance.

- Amend current § 668.156(d), now redesignated proposed § 668.156(c) to require that an institution be prohibited from participating in the State process for title IV, HEA purposes for at least five years if the State terminates its participation.

- Amend current § 668.156(b), now redesignated proposed § 668.156(e) to clarify that the State is not subject to the success rate requirement at the time of the initial application but is subject to the requirement for the subsequent period, reduce the required success rate from the current 95 percent to 85 percent, and specify that the success rate be calculated for each participating institution. Also, amend the comparison groups to include the concept of "eligible career pathway programs."

- Amend current § 668.156(b), now redesignated proposed § 668.156(e) to require that States report information on race, gender, age, economic circumstances, and education attainment and permit the Secretary to publish a notice in the *Federal Register* with additional information that the Department may require States to submit.

- Amend current § 668.156(g), now redesignated proposed § 668.156(j) to update the Secretary's ability to revise or terminate a State's participation in the State process by (1) providing the Secretary the ability to approve the State process once for a two-year period if the State is not in compliance with a provision of the regulations and (2) allowing the Secretary to lower the success rate to 75 percent if 50 percent of the participating institutions across the State do not meet the 85 percent success rate.

- Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Financial Value Transparency and Gainful Employment

Authority for This Regulatory Action: The Department's authority to pursue financial value transparency in GE programs and eligible non-GE programs and accountability in GE programs is derived primarily from three categories of statutory enactments: first, the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV, HEA; second, authorizations and directives within title IV, HEA regarding the collection and dissemination of potentially useful information about higher education programs, as well as provisions regarding institutional eligibility to benefit from title IV; and third, the further provisions within title IV, HEA that address the limits and responsibilities of gainful employment programs.

As for crosscutting rulemaking authority, Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.[46] This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, whether to pursue eligible non-GE programs or GE programs. Moreover, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations that the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.[47]

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[46] 20 U.S.C. 1221e-3.
[47] 20 U.S.C. 3474.

Moreover, Section 431 of GEPA grants the Secretary additional authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform the public about Federally supported education programs.[48] This provision lends additional support for the proposed reporting and disclosure requirements, which will enable the Department to collect data and information for the purpose of developing objective measures of program performance, not only for the Department's use in evaluating programs but also to inform the public—including enrolled students, prospective students, their families, institutions, and others—about relevant information related to those Federally-supported programs.

As for provisions within title IV, HEA, several of them address the effective delivery of information about higher education programs. In addition to older methods of information dissemination, for example, section 131 of the

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[48] 20 U.S.C. 1231a(2)-(3). The term "applicable program" means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. 20 U.S.C. 1221(c)(1).

Higher Education Opportunity Act, as amended, and[49] taken together, several provisions declare that the Department's websites should include information regarding higher education programs, including college planning and student financial aid,[50] the cost of higher education in general, and the cost of attendance with respect to all institutions of higher education participating in title IV, HEA programs.[51] Those authorizations and directives expand on more traditional methods of delivering important information to students, prospective students, and others, including within or alongside application forms or promissory notes for which acknowledgments by signatories are typical and longstanding.[52] Educational institutions have been distributing information to students at the direction of the Department and in accord with the applicable statutes for decades.[53]

The proposed rules also are supported by the Department's statutory responsibilities to observe eligibility limits in the HEA. Section 498 of the HEA requires institutions to establish eligibility to provide

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[49] 20 U.S.C. 1015(a)(3), (b), (c)(5), (e), (h). See also section 111 of the Higher Education Opportunity Act (20 U.S.C. 1015a), which authorizes the College Navigator website and successor websites.
[50] *E.g.*, 20 U.S.C. § 1015(e).
[51] 20 U.S.C. 1015(a)(3), (b), (c)(5), (e), (h). See also section 111 of the Higher Education Opportunity Act (20 U.S.C. 1015a), which authorizes the College Navigator website and successor websites.
[52] *E.g.*, 20 U.S.C. 1082(m), regarding common application forms and promissory notes or master promissory notes.
[53] A compilation of the current and previous editions of the *Federal Student Aid Handbook*, which includes detailed discussion of consumer information and school reporting and notification requirements, is posted at https://fsapartners.ed.gov/knowledge-center/fsa-handbook.

title IV, HEA funds to their students. Eligible institutions must also meet program eligibility requirements for students in those programs to receive title IV, HEA assistance.

One type of program for which certain types of institutions must establish program-level eligibility is "a program of training to prepare students for gainful employment in a recognized occupation."[54],[55] Section 481 of the HEA articulates this same requirement by defining, in part, an "eligible program" as a "program of training to prepare students for gainful employment in a recognized profession."[56] The HEA does not more specifically define "training to prepare," "gainful employment," "recognized occupation," or "recognized profession" for purposes of determining the eligibility of GE programs for participation in title IV, HEA. At the same time, the Secretary and the Department have a legal duty to interpret, implement, and apply those terms in order to observe the statutory eligibility limits in the HEA. In the section-by-section discussion below, we explain further the Department's interpretation of the GE statutory provisions and how those provisions should be implemented and applied.

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[54] 20 U.S.C. 1001(b)(1).
[55] 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A).
[56] 20 U.S.C. 1088(b).

The statutory eligibility limits for GE programs are one part of the foundation of authority for disclosures and/or warnings from institutions to prospective and enrolled GE students. In the GE setting, the Department has not only a statutory basis for pursuing the effective dissemination of information to students about a range of GE program attributes and performance metrics,[57] the Department also has authority to use certain metrics to determine that an institution's program is not eligible to benefit, as a GE program, from title IV, HEA assistance. When an institution's program is at risk of losing eligibility based on a given metric, there should be no real doubt that the Department may require the institution that operates the at-risk program to alert prospective and enrolled students that they may not be able to receive title IV, HEA assistance at the program in question. Without a direct communication from the institution to prospective and enrolled students, the students themselves risk losing the ability to make educational decisions with the benefit of critically relevant information about programs, contrary to the text, purpose, and traditional understandings of the relevant statutes.

[57] Ass'n of Priv. Sector Colleges & Universities v. Duncan, 110 F. Supp. 3d 176, 198–200 (D.D.C. 2015) (recognizing statutory authority to require institutions to disclose certain information about GE programs to prospective and enrolled GE students), *aff'd*, 640 F. App'x 5, 6 (D.C. Cir. 2016) (per curiam) (unpublished) (indicating that the plaintiff's challenge to the GE disclosure provisions was abandoned on appeal).

The above authorities collectively empower the Secretary to promulgate regulations to (1) Require institutions to report information about GE programs and eligible non-GE programs to the Secretary; (2) Require institutions to provide disclosures or warnings to students regarding programs that do not meet financial value measures established by the Department; and (3) Define the gainful employment requirement in the HEA by establishing measures to determine the eligibility of GE programs for participation in title IV, HEA. Where helpful and appropriate, we will elaborate on the relevant statutory authority in our overviews and section-by-section discussions below.

Financial value transparency scope and purpose (§ 668.401)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add subpart Q, which would establish a financial value transparency framework for the Department to calculate measures of the financial value of eligible programs, categorize programs based on those measures as low-earning or high-debt-burden, provide information about the financial value of programs to students, and require, when applicable, acknowledgments from students who are enrolled—and prospective students who are seeking to enroll—in programs with high debt burdens. The proposed regulations would establish rules and procedures for institutions to report information to the Department and for the Department to calculate these measures. The regulations would apply to all educational programs that participate in the title IV, HEA programs except for approved prison education programs and comprehensive transition and postsecondary programs. Proposed § 668.401 would establish the scope and purpose of these financial value transparency regulations in subpart Q.

Reasons: The Department recognizes that with the high cost of attendance for postsecondary education and resulting need for high levels of student borrowing, students, families, institutions, and the public have a strong interest in ensuring that higher education investments are justified through their benefits to students and society.

Choosing whether and where to pursue a postsecondary education is one of the most important and consequential investments individuals make during their lifetimes. The considerations are not purely, or in many cases even primarily, financial in nature: an education requires time away from other pursuits, the possibility of increased family stress, and the hard work required to master new knowledge. Aside from the potential for improved career prospects and higher earnings, a college education has also been shown to improve health, life satisfaction, and civic engagement among other non-financial benefits.[58]

The financial consequences of the choice of whether and where to enroll in higher education, however, are substantial. In the 2020-21 award year, the average cost of attendance for first-time, full-time degree seeking undergraduate student across all 4-year institutions was $27,200, and the top 25 percent of students paid more than $44,800. According to NCES data, median total debt at graduation among students who borrow for degrees was around $23,000 for undergraduates competing in 2017-18[59] and $67,000 for graduate students,[60] with the top 25 percent of students leaving school with more than $33,000[61] and $118,000,[62] respectively. There is significant heterogeneity in debt outcomes and costs across programs, even among credentials at the same level and in the same field.

The typical college graduate enjoys substantial financial benefits in the form of increased earnings from their degree. Research has shown that the typical

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[58] Oreopoulos, P. & Salavanes, K. (2011). Priceless: The Nonpecuniary Benefits of Schooling. Journal of Economic Perspectives. 25(1) 159-84. Marken, S. (2021). Ensuring a More Equitable Future: Exploring the Relationship Between Wellbeing and Postsecondary Value. Post Secondary Value Commission. Ross, C. & Wu, C. (1995). The Links Between Education and Health. American Sociological Review. 60(5) 719-745. Cutler, D. & Lleras-Muney, A. (2008). Education and Health: Evaluating Theories and Evidence. In Making Americans Healthier: Social and Economic Policy as Health Policy. House, J. et al (Eds). Russel Sage Foundation. New York.
[59] nces.ed.gov/datalab/powerstats/table/ugaxgt.
[60] Nces.ed.gov/datalab/powerstats/table/uuaklv..
[61] nces.ed.gov/datalab/powerstats/table/ugaxgt.
[62] Nces.ed.gov/datalab/powerstats/table/uuaklv.

bachelor's degree recipient earns twice what a typical high school graduate earns over the course of their career.[63] But here too, there are enormous earnings differences across different credential levels and fields of study, and across similar programs at different institutions.[64] For example, measures of institutional productivity (assessed using wage and salary earnings, employment in the public or nonprofit sector, and innovation in terms of contributions to research and development) vary substantially within institutions of similar selectivity, especially among less-selective institutions.[65] Typical returns to enrollment vary widely across selected fields, even after accounting for individual student characteristics that may affect selection into a given major or pre-enrollment earnings. These differences are large and consequential over an individual's lifetime. For example, one study found that even after controlling for differences in the characteristics of enrolled students, students at four-year institutions in Texas who majored in high-earning fields earned $5,000 or more per quarter more than students who majored in the lowest earning field of study even 16 to 20

[63] Hershbein, B., and Kearney, M. (2014). Major Decisions: What Graduates Earn Over Their Lifetimes. The Hamilton Project. Brookings Institution. Washington, D.C.
[64] Webber, D. (2016). Are college costs worth it? How ability, major, and debt affect the returns to schooling, Economics of Education Review, 53, 296-310.
[65] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In Productivity in Higher Education, C. M. Hoxby and K. M. Stange(eds). University of Chicago Press: Chicago, 2019.

years after college.[66] Similarly, another study found that those who earned master's degrees in Ohio experienced earnings increases ranging from a 24 percent increase for degrees in high earning fields such as health to essentially no increase, relative to baseline earnings, for some lower-value fields.[67]

Surveys of current and prospective college students indicate that overwhelming majorities of students consider the financial outcomes of college as among the very most important reasons for pursuing a postsecondary credential. A national survey of college freshmen at baccalaureate institutions consistently finds students identifying "to get a good job" as the most common reason why students chose their college.[68] Another survey of a broader set of students found financial concerns dominate in the decision to go to college with the top three reasons identified being "to improve my employment opportunities," "to make more money," and "to get a good job."[69]

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[66] Andrews, R. J., Imberman, S. A., Lovenheim, M. F. & Stange, K. M. (2022), "The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability," NBER Working Paper w30331.

[67] Heterogeneity in Labor Market Returns to Master's Degrees: Evidence from Ohio. (EdWorkingPaper: 22-629). Retrieved from Annenberg Institute at Brown University: doi.org/10.26300/akgd-9911.

[68] Stolzenberg, E. B., Aragon, M. C., Romo, E., Couch, V., McLennan, D., Eagan, M. K., Kang, N. (2020). "The American Freshman: National Norms Fall 2019," Higher Education Research Institute at UCLA, www.heri.ucla.edu/monographs/TheAmericanFreshman2019.pdf.

[69] Rachel Fishman (2015), "2015 College Decisions Survey: Part I Deciding To Go To College," New America, static.newamerica.org/attachments/3248-deciding-to-go-to-college/CollegeDecisions_PartI.148dcab30a0e414ea2a52f0d8fb04e7b.pdf.

Great strides have been made in providing accurate and comparable information to students about their college options in the last decade. The College Scorecard, launched in 2015, provided information on the earnings and borrowing outcomes of students at nearly all institutions participating in the title IV, HEA aid programs. Recognizing the important variation in these outcomes across programs of study, even within the same institution, program-level information was added to the Scorecard in 2019. The dissemination of this information has dramatically improved the information available on the financial value of different programs, and enabled a new national conversation on whether, how, and for whom higher education institutions provide financial benefit.[70]

Still, the Department recognizes that merely posting the information on the College Scorecard website has had a limited impact on student choice. For example, one study[71] found the College Scorecard influenced the college search behavior of some higher income students but had little effect on lower income students. Similarly, a randomized controlled trial inviting high school students to examine program-level data on costs and earnings outcomes had

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[70] For example, the work of the Postsecondary Value Commission (postsecondaryvalue.org/), the Hamilton Project (www.hamiltonproject.org/papers/major_decisions_what_graduates_earn_over_their_lifetimes),and Georgetown University's Center on Education and the Workforce (https://cew.georgetown.edu/).

[71] Hurwitz, Michael, and Jonathan Smith. "Student responsiveness to earnings data in the College Scorecard." Economic Inquiry 56, no. 2 (2018): 1220-1243. Also Huntington-Klein 2017. nickchk.com/Huntington-Klein_2017_The_Search.pdf.

little effect on students' college choices, possibly due to the fact that few students accessed the information outside of school-led sessions.[72]

It is critical to provide students and families access to information that is consistently calculated and presented across programs and institutions, especially for key metrics like program-level net price estimates. When institutions report net price to students, there can be substantial variation in how the prices are calculated,[73] and in how institutions characterize these values, making it difficult for prospective students to compare costs across programs and institutions.[74]

Applicants' use of data at key points during the college decision-making process has been a consistent challenge with other transparency-focused initiatives that the Department administers. Students can often receive information concerning their eligibility for financial aid that is inconsistent or difficult to compare.[75] The College

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[72] Blagg, Kristin, Matthew M. Chingos, Claire Graves, and Anna Nicotera. "Rethinking consumer information in higher education." (2017) Urban Institute, Washington DC. www.urban.org/research/publication/rethinking-consumer-information-higher-education.

[73] Anthony, A., Page, L. and Seldin, A. (2016) In the Right Ballpark? Assessing the Accuracy of Net Price Calculators. Journal of Student Financial Aid. 46(2). 3.

[74] The Institute for College Access & Success (TICAS). (2012). Adding it All Up 2012: Are College Net Price Calculators Easy to Find, Use, and Compare? ticas.org/files/pub_files/Adding_It_All_Up_2012.pdf.

[75] Burd, S. et al. (2018) Decoding the Cost of College: The Case for Transparent Financial Aid Award Letters. New America. Washington, DC. https://www.newamerica.org/education-policy/policy-papers/decoding-cost-college/. Anthony, A., Page, L., & Seldin, A. (2016) In the Right Ballpark? Assessing the Accuracy of Net Price Calculators. Journal of Student Financial Aid. 46(2) 3. https://files.eric.ed.gov/fulltext/EJ1109171.pdf

Navigator also provides critical data on college pricing, completion rates, default rates, and other indicators, but there is little evidence that it affects college search processes or enrollment decisions. Similarly, we also administer lists of institutions with the highest prices and changes in price measured in a few ways, but there is no indication that the presence of such lists alters institutional or borrower behavior.[76]

A broader set of research has, however, illustrated that providing information on the financial value of college options can have meaningful impacts on college choices. The difference in effectiveness of information interventions has been studied extensively and informs our proposed approach to the financial transparency framework.[77] To affect college decision-making, information must be timely, personalized, and easy to understand.

The timing of when applicants receive information about institutions and programs is critical - data should be available at key points during the college search process and applicants should have sufficient time and

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[76] Baker, D. J. (2020). "Name and Shame": An Effective Strategy for College Tuition Accountability? Educational Evaluation and Policy Analysis, 42(3), 393–416. doi.org/10.3102/0162373720937672

[77] Steffel, M., Kramer, D., McHugh, W., & Ducoff, N. (2020). Informational Disclosure and College Choice. Brookings. Washington, D.C. www.brookings.edu/research/information-disclosure-and-college-choice/; Robertson, B. & Stein, B. (2019). Consumer Information in Higher Education. The Institute for College Access & Success (TICAS). ticas.org/files/pub_files/consumer_information_in_higher_education.pdf; Morgan, J. & Dechter, G. (2012). Improving the College Scorecard. Using Student Feedback to Create an Effective Disclosure. Center For American Progress, Washington, D.C.

resources to process new information. Informational interventions work best when they arrive at the right moment and are offered with additional guidance and support.[78] For example, unemployment insurance (UI) recipients who received letters informing them of Pell Grant availability and institutional support were 40 percent more likely to enroll in postsecondary education.[79] Families who received information about the FAFSA, as well as support in completing it while filing their taxes, were more likely to submit their aid applications, and students from these families were more likely to attend and persist in college.[80]

Informational interventions are most likely to sway choice when they are tailored to the applicant's personal context.[81] High school students who learn about their peers' admission experiences through an online college search platform tend to shift their college application and

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[78] Carrel, S. & Sacerdote, B. (2017). Why Do College-Going Interventions Work? American Economic Journal; Applied Economics. 1(3) 124-151.

[79] Barr, A. & Turner, S. (2018). A Letter and Encouragement: Does Information Increase Postsecondary Enrollment of UI Recipients? American Economic Journal: Economic Policy 2018, 10(3): 42–68. doi.org/10.1257/pol.20160570.

[80] Eric P. Bettinger, Bridget Terry Long, Philip Oreopoulos, Lisa Sanbonmatsu, The Role of Application Assistance and Information in College Decisions: Results from the H&R Block Fafsa Experiment, The Quarterly Journal of Economics. 127(3) 1205-1242. doi.org/10.1093/qje/qjs017.

[81] Goldstein, D. G., Johnson, E. J., Herrmann, A., Heitmann, M. (2008). Nudge your customers toward better choices. Harvard Business Review, 86(12). 99-105.
Johnson, E. J., Shu, S. B., Benedict G. C. Dellaert, Fox, C., Goldstein, D. G., Häubl, G., Larrick, R. P., Payne, J. W., Peters, E., Schkade, D., Wansink, B., & Weber, E. U. (2012). Beyond nudges: Tools of a choice architecture. Marketing Letters, 23(2), 487-504.

attendance choices.[82] Students who receive personalized outreach from colleges, particularly when outreach is paired with information about financial aid eligibility, are more likely to apply to and enroll in those institutions.[83]

Interventions are most effective when the content is salient and easy to understand. Students, particularly those who are enrolling for the first time, may need additional context for understanding student debt amounts and the feasibility of repayment.[84] Evidence that students defer attention to their student debt while enrolled[85] suggests that inclusion of typical post-graduate earnings data may be likely to engage students.[86] Finally, it is

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[82] Mulhern, C. (2021). Changing College Choices with Personalized Admissions Information at Scale: Evidence on Naviance. Journal of Labor Economics. 39(1) 219-262.

[83] Dynarski, S., Libassi, C., Michelmore, K. & Owen, S. (2021). Closing the Gap: The Effect of Reducing Complexity and Uncertainty in College Pricing on the Choices of Low-Income Students. American Economic Review, 111 (6): 1721-56. ;
Gurantz, O., Hurwitz, M. and Smith, J. (2017). College Enrollment and Completion Among Nationally Recognized High-Achieving Hispanic Students. J. Pol. Anal. Manage., 36: 126-153. doi.org/10.1002/pam.21962 ;
Howell, J., Hurwitz, M. & Smith, J., The Impact of College Outreach on High Schoolers' College Choices – Results From Over 1,000 Natural Experiments (November 2020). ssrn.com/abstract=3463241.

[84] Boatman, A., Evans, B. J., & Soliz, A. (2017). Understanding Loan Aversion in Education: Evidence from High School Seniors, Community College Students, and Adults. AERA Open, 3(1). doi.org/10.1177/2332858416683649; Evans, B., Boatman, A. & Soliz, A. (2019). "Framing and Labeling Effects in Preferences for Borrowing for College: An Experimental Analysis," Research in Higher Education, Springer; Association for Institutional Research, 60(4), 438-457.

[85] Darolia, R., & Harper, C. (2018). Information Use and Attention Deferment in College Student Loan Decisions: Evidence From a Debt Letter Experiment. Educational Evaluation and Policy Analysis, 40(1), 129–150. doi.org/10.3102/0162373717734368.

[86] Ruder, A. & Van Noy, M. (2017). Knowledge of earnings risk and major choice: Evidence from an information experiment, Economics of Education Review, 57, 80-90, doi.org/10.1016/j.econedurev.2017.02.001.;

important that these data are consistently presented from a trusted source across institutions and programs.[87]

In keeping with the idea of presenting salient and easy-to-understand information, we propose categorization of acceptable levels of performance on two measures of financial value. This approach ensures that students have clear indication of when attending a program presents a significant risk of negative financial consequences. In particular, and reflecting the concerns noted above, we would categorize programs with low performance with the easy-to-understand labels of "high debt-burden" and "low earnings," based on the debt and earnings measures used in the framework.

Research shows that receiving information from a trusted source, in a manner that is easy to compare across different programs and institutions, and in a timely fashion is important for disclosures to be effective. Moreover, we believe that actively distributing information to prospective students before the prospective student signs an enrollment agreement, registers, or makes a

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Baker, R., Bettinger, E., Jacob, B. & Marinescu, I. (2018). The Effect of Labor Market Information on Community College Students' Major Choice, Economics of Education Review, 65, 18-30, doi.org/10.1016/j.econedurev.2018.05.005.

[87] Previous informational interventions around net price, for example, were less consistent in the calculation of values, and in the presentation of net price calculation aids. Anthony, A., Page, L., & Seldin, A. (2016). In the Right Ballpark? Assessing the Accuracy of Net Price Calculators, Journal of Student Financial Aid. 46(2), 3. publications.nasfaa.org/jsfa/vol46/iss2/3;
The Institute For College Access & Success (TICAS). (2012) Adding it all up 2012: Are college net price calculators easy to find, use, and compare? ticas.org/files/pub_files/Adding_It_All_Up_2012.pdf.

financial commitment to the institution increases the likelihood that they will view and act upon the information, compared to information that students would have to seek out on their own. Accordingly, we propose to provide disclosures through a website that the Department would administer and use to deliver information directly to students. Additionally, to ensure that students see this information before receiving federal aid for programs with potentially harmful financial consequences, we propose requiring acknowledgment of receipt for high-debt-burden programs before federal aid is disbursed.

We also seek to improve the information available to students and propose several refinements relative to information available on the College Scorecard, including debt measures that are inclusive of private and institutional loans (including income sharing agreements or loans covered by tuition payment plans), as well as measures of institutional, State, and private grant aid. This information would enable the calculation of both the net price to students as well as total amounts paid from all sources. We believe these improvements would better capture the program's costs to students, families, and taxpayers.

To calculate these measures, we would require new reporting from institutions, discussed below under proposed § 668.408.

As noted above, we propose that this transparency framework apply to (nearly) all programs at all institutions. In particular, disclosures of this information would be available for all programs, subject to privacy limitations. This is a departure from the 2014 Prior Rule, which only required disclosures for GE programs. Since students consider both GE and non-GE programs when selecting programs, providing comparable information for students would help them find the program that best meets their needs across any sector. In the proposed subpart S, we address the need for additional accountability measures for GE programs, including sanctions for programs determined to lead to high-debt-burden or low earnings under the metrics described in subpart Q of part 668.

Financial value transparency framework (§ 668.402)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add new § 668.402 to establish a framework to measure two different aspects of the financial value of programs based on their debt and earnings outcomes, and to classify programs as "low-earning" or "high-debt-burden" for the purpose of providing informative disclosures to students.

D/E rates

We would define a debt-to-earnings (D/E) metric to measure the debt burden faced by the typical graduate of a program by determining the share of their annual or discretionary income that would be required to make their student loan debt payments under fixed-term repayment plans. We categorize programs as “high debt-burden” if the typical graduate has a D/E rate that is above recognized standards for debt affordability.

In particular, a program would be classified as “high debt-burden” if its discretionary debt-to-earnings rate is greater than 20 percent and its annual debt-to-earnings rate is greater than 8 percent. If the denominator (median annual or discretionary earnings) of either rate is zero, then that rate is considered ”high-debt-burden” only if the numerator (median debt payments) is positive.

If it is not possible to calculate or issue D/E rates for a program for an award year, the program would receive no D/E rates for that award year. The program would remain in the same status under the D/E rates measure as the previous award year.

Earnings premium (EP)

In addition, we would establish an earnings premium measure to assess the degree to which program graduates out-earn individuals who did not enroll in postsecondary education. The measure would be calculated as the difference in the typical earnings of a program graduate relative to the typical earnings of individuals in the State where the program is located who have only a high school or equivalent credential.

We would categorize programs as "low-earning" if the median annual earnings of the students who complete the program, measured three years after completion, does not exceed the earnings threshold--that is, if the earnings premium is zero or negative. The earnings threshold for each program would be calculated as the median earnings of individuals with only a high school diploma or the equivalent, between the ages of 25 to 34, who are either employed or report being unemployed (i.e., looking and available for work), located in the State in which the institution is located, or nationally if fewer than 50 percent of students in the program are located in the State where the institution is located while enrolled.

If it is not possible to calculate or publish the earnings premium measure for a program for an award year, the program would receive no result under the earnings premium measure for that award year and would remain in the same status under the earnings premium measure as the previous award year.

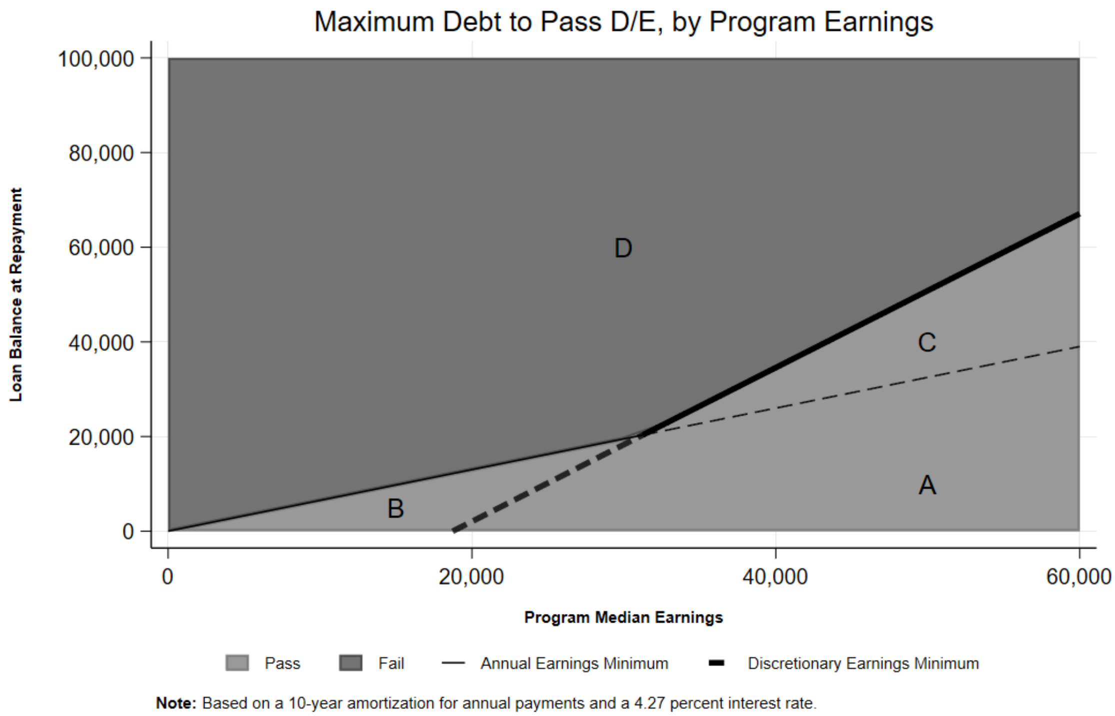
Proposed changes to § 668.43 would require institutions to distribute information to students, prior to enrollment, about how to access a disclosure website maintained by the Secretary. The disclosure website would provide information about the program. These items might include the typical earnings and debt levels of graduates; information to contextualize each measure including D/E and EP measures; information about the net yearly cost of attendance at the program and total costs paid by completing students; information about typical amounts of student aid received; and information about career programs, such as the occupation the program is meant to provide training for and relevant licensure information. Certain information may be highlighted or otherwise emphasized to assist viewers in finding key points of information.

For eligible non-GE programs classified by the Department as "high-debt-burden," proposed § 668.407 would require students to acknowledge viewing these informational disclosures prior to receiving title IV, HEA funds for enrollment in these programs.

Reasons: The proposed regulations include two debt-to-earnings measures that are similar to those under the 2014 Prior Rule. The debt-to-earnings measures would assess the debt burden incurred by students who completed a program in relation to their earnings. Comparing debt to earnings is a commonly accepted practice when making determinations about a person's relative financial strength, such as when a lender assesses suitability for a mortgage or other financial product. To determine the likelihood a borrower will be able to afford repayments, lenders use debt-to-earnings ratios to consider whether the recipient would be able to afford to repay the debt with the earnings available to them. This practice also protects borrowers from incurring debts that they cannot afford to repay and can prevent negative consequences associated with delinquency and default such as damaged credit scores.

Using the two D/E measures together, the Department would assess whether a program leads to reasonable debt levels in relation to completers' earnings outcomes. This categorization based on the program's median earnings and median debt levels is depicted in Figure 1 below. This Figure shows how the two D/E rates are used to define "high debt-burden" programs, using the relevant amortization rate of certificate programs as an illustrative example. The region labelled D, where program completers' median debt levels are high relative to their median earnings, is categorized as "high debt burden."

Figure 1.



Under the proposed regulations, the annual debt-to-earnings rate would estimate the proportion of annual earnings that students who complete the program would need to devote to annual debt payments. The discretionary debt-to-earnings rate would measure the proportion of annual discretionary income--the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States--that students who complete the program would need to devote to annual debt payments. We note that given the variation in what is an affordable payment from borrower to borrower, a variety of definitions could potentially be justified. We do not mean to enshrine a single definition for affordability across every possible purpose, but for this proposed rule we choose to maintain the standard used under the 2014 Prior Rule.

The proposed thresholds for the discretionary D/E rate and the annual D/E rate are based upon expert recommendations and mortgage industry practices. The acceptable threshold for the discretionary income rate would be set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz,[88] which the Department previously considered in connection with the 2011 and 2014 Prior Rules. Specifically, Baum and Schwartz proposed benchmarks for manageable debt levels at 20 percent of discretionary income and concluded that there are virtually no circumstances under which higher debt-service ratios would be reasonable.

In the Figure above, the points along the steeper of the two lines drawn represents the combination of median earnings (on the x-axis) and median debt levels (on the y-axis) where the debt-service payments on a 10-year repayment plan at 4.27 percent interest are exactly equal to 20 percent of discretionary income. Programs with median debt and earnings levels above that line (regions B and D) have discretionary D/E rates above 20 percent, and

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[88] Baum, Sandy, and Schwartz, Saul, 2006. "How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt." eric.ed.gov/?id=ED562688.

programs below that line (regions A and C) have discretionary D/E rates below 20 percent.

The acceptable threshold of 8 percent for the annual D/E rate used in the proposed regulations has been a reasonably common mortgage-underwriting standard, as many lenders typically recommend that all non-mortgage loan installments not exceed 8 percent of the borrower's pretaxed income. Studies of student debt have accepted the 8 percent standard and some State agencies have established guidelines based on this limit. Eight percent represents the difference between the typical ratios used by lenders for the limit of total debt service payments to pretaxed income, 36 percent, and housing payments to pretax income, 28 percent.

In Figure 1, the less steep of the two lines shows the median earnings and debt levels where annual D/E is exactly 8 percent. Programs above the line (regions D and C) have annual D/E greater than 8 percent and programs below the line have annual D/E less than 8 percent (regions B and A). Note that programs are defined as "high debt-burden" only if their discretionary D/E is above 20 percent and their annual D/E is above 8 percent. As a result, the use of both measures means that programs in region B and C are not deemed "high debt-burden" even though they have debt levels that are too high based on one of the two standards. Classifying programs that have D/E rates below the discretionary D/E threshold but above the annual D/E threshold (i.e., region C) as not "high debt-burden" reflects the fact that devoting the same share of earnings to service student debt is less burdensome when earnings are higher. For example, paying $2,000 per year is less manageable when you make $20,000 a year than paying $4,000 per year when you make $40,000 a year, since at lower levels of income most spending must go to necessities.

The D/E rates would help identify programs that burden students who complete the programs with unsustainable debt, which may both generate hardships for borrowers and pass the costs of loan repayment on to taxpayers. But the D/E measures do not capture another important aspect of financial value, which is the extent to which graduates improve their earnings potential relative to what they might have earned if they did not pursue a higher education credential. Some programs lead to very low earnings, but still pass the D/E metrics either because typical borrowing levels are low or because few or no students borrow (and so median debt is zero, regardless of typical levels among borrowers). The Department believes that an additional metric is necessary beyond the D/E measures, to ensure students are aware that these low-earnings programs may not be delivering on their promise or providing what students expected from a postsecondary education in helping them secure more remunerative employment.

We propose, therefore, to calculate an earnings premium metric.[89] This metric would be equal to the median earnings of program graduates measured three years after they complete the program, minus the median earnings of high school graduates (or holders of an equivalent credential) who are between the ages of 25 and 34, and either working or unemployed, excluding individuals not in the labor force, in the State where the institution is located, or nationally if fewer than 50 percent of the students in the program are located in the State where the institution is located while enrolled. When this earnings premium is positive, it indicates that graduates of the program gain financially (i.e., have higher typical earnings than they might have had they not attended college).

Similar earnings premium metrics are used ubiquitously by economists and other analysts to measure the earnings gains associated with college credentials relative to a high school education.[90] Other policy researchers have proposed similar earnings premium measures for accountability purposes that incorporate additional

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[89] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at [TK – preamble general introduction, legal authority], and below at [TK – method for calculating metrics, around p.180], and at [TK - GE eligibility, around p.250]. The discussion here concentrates on transparency issues.
[90] See for example, www.hamiltonproject.org/papers/major_decisions_what_graduates_earn_over_their_lifetimes/, cew.georgetown.edu/cew-reports/the-college-payoff/, www.clevelandfed.org/publications/economic-commentary/2012/ec-201210-the-college-wage-premium, among many other examples.

adjustments to subtract some amortized measure of the total cost of college to estimate a "net earnings premium."[91] At the same time, our proposed measure is conservative in the sense that it would compare the earnings of completers only to the earnings of high school graduates, without incorporating the additional costs students incur to earn the credential or the value of their time spent pursuing the credential. Moreover, as noted above, the corresponding level of earnings that programs must exceed is modest—corresponding approximately to the earnings someone working full-time at an hourly rate of $12.50 might earn.

As discussed elsewhere in this NPRM, student eligibility requirements in Section 484 of the HEA support this concept that postsecondary programs supported by title IV, HEA funds should lead to outcomes that exceed those obtained by individuals who have only a secondary education. To receive title IV, HEA funds, HEA section 484 generally requires that students have a high school diploma or recognized equivalent. Students who do not have such credentials have a more limited path to title IV, HEA aid, involving ascertainment of whether they have the ability to benefit from their postsecondary program. These statutory requirements, in effect, make high-school-level achievement the presumptive starting point for title IV, HEA funds.

[91] Matsudaira and Turner Brookings. PVC "threshold zero" measure.

Postsecondary training that is supported by title IV, HEA funds should help students to progress and achieve beyond that baseline. The earnings premium follows from the principle that if postsecondary training must be for individuals who are moving beyond secondary-level education, knowledge, and skills, it is reasonable to expect graduates of those programs to earn more than someone who never attended postsecondary education in the first place.

The Department would classify programs as "low earning" if the earnings premium is equal to zero or is negative. This is again a conservative approach, using this label only when a majority of program graduates--that is, ignoring the (likely lower) earnings of students who do not complete the program--fail to out-earn the majority of individuals who never attend postsecondary education. As noted above, this metric would also ignore tuition costs and the value of students' time in earning the degree. The "low earning" label suggests that, even ignoring these costs, students are not financially better off than students who did not attend college.

The Department also considered whether this approach would create a risk of programs being labelled "low-earning" based on earnings measures several years after graduation, even though those programs eventually lead to significantly higher levels of earnings over a longer time horizon. Based on the estimates in the RIA, however, most programs that would be identified as "low-earning" are certificate programs, and for these programs in particular, any earnings gains tend to be realized shortly after program completion (i.e., often immediately or within a few quarters), whereas earnings trajectories for typical degree earners tend to continue to grow over time.[92]

The D/E and earnings premium metrics capture related, but distinct and important dimensions of how programs affect students' financial well-being. The D/E metric is a measure of debt-affordability that indicates whether the typical graduate will have earnings enough to manage their debt service payments without incurring undue hardship. For any median earnings level of a program, the D/E metric and thresholds imply a maximum level of total borrowing beyond which students should be concerned that they may not be able to successfully manage their debt. The earnings premium measure, meanwhile, captures the extent to which programs leave graduates better off financially than those who do not enroll in college, a minimal benchmark that students pursuing postsecondary credentials likely expect to achieve. In addition to capturing distinct aspects of programs' effects on students' financial well-being, these metrics complement each other. For example, as the RIA

[92] Minaya, Veronica and Scott-Clayton, Judith (2022). Labor Market Trajectories for Community College Graduates: How Returns to Certificates and Associate's Degrees Evolve Over Time. *Education Finance and Policy, 17*(1): 53-80.

shows, borrowers in programs that pass the D/E metric but fail the EP metric have very high rates of default, so the EP metric helps to identify programs where borrowing may be overly risky even when debt levels are relatively low.

The Department believes this information on financial value is important to students and would enable them to make a more informed decision, which may include weighing whether low-earnings or high-debt-burden programs nonetheless help them achieve other non-financial goals that they might find more important when considering whether to attend.

Helping students make informed decisions may provide other benefits, too. First, as shown in the RIA, low-earnings programs that are not categorized as high debt-burden still have very high rates of student loan default and low repayment rates. For example, borrowers in low-earnings programs that are not high debt-burden have default rates 12.6 percent higher than high-debt-burden programs that have earnings above the level of a high school graduate in their State. The low-earnings classification complements the high debt-burden classification in identifying programs where borrowers are likely to struggle to manage their loans. Second, low-earnings programs where students borrow generate ongoing costs to taxpayers. Student loans from the Department are used to provide tuition revenue to the program. But if low-earning graduates repay using income driven repayment plans, then their payments will often be too low to pay down their principal balances despite spending years or even decades in repayment. As a result, a high share of the loans made to individuals in such programs would be likely to be eventually forgiven at taxpayer expense. If low-earning borrowers don’t use income driven repayment plans, the RIA shows they are at higher risk of defaulting on their loans, which also tends to increase the costs of student loans to taxpayers.

The Department would calculate both the D/E rates and the earnings premium measure using earnings data provided by a Federal agency with earnings data, which we propose to define in § 668.2. The Federal agency with earnings data must have data sufficient to match with title IV, HEA recipients in the program and could include agencies such as the Treasury Department, including the Internal Revenue Service (IRS), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau. If the Federal agency with earnings data does not provide earnings information necessary for the calculation of these metrics, we would not calculate the metrics and the program would not receive rates for the award year. Similarly, if the minimum number of completers required to calculate the D/E rates or earnings threshold metrics to be calculated is not met, the program would not receive rates for the award year. For a year for which the D/E rates or earnings premium metric is not calculated, we believe it is logical for the program to retain the same status as under its most recently calculated results for purposes of determining whether the program leads to acceptable outcomes and whether current and prospective students should be alerted to those outcomes.

Calculating D/E rates (§ 668.403)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add new § 668.403 to specify the methodology the Department would use to calculate D/E rates.

Section 668.403(a) would define the program's annual D/E rate as the completers' annual loan payment divided by their median annual earnings. The program's discretionary D/E rate would equal the completers' annual loan payment divided by their median adjusted annual earnings after subtracting 150 percent of the poverty guideline for the most recent calendar year for which annual earnings are obtained.

Under § 668.403(b), the Department would calculate the annual loan payment for a program by (1) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student, computed as described in §

668.403(d), or the total amount for tuition and fees and books, equipment, and supplies for each student, less the amount of institutional grant or scholarship funds provided to that student; removing the highest loan debts for a number of students equal to those for whom the Federal agency with earnings data does not provide median earnings data; and calculating the median of the remaining amounts; and (2) Amortizing the median loan debt. The length of the amortization period would depend upon the credential level of the program, using a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate; a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or a 20-year repayment period for any other program. The amortization calculation would use an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during a period that varies based on the credential level of the program. For undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs, the average interest rate would reflect the three consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students. As an example, for an undergraduate certificate program, if the two-year cohort period is award years 2024-2025 and 2025-2026, the interest rate would be the average of the interest rates for the years from 2023-2024 through 2025-2026. For graduate certificate programs and master's degree programs, the average interest rate would reflect the three consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to graduate students. For bachelor's degree programs, the average interest rate would reflect the six consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students. For doctoral programs and first professional degree programs, the average interest rate would reflect the six consecutive award years, ending in the final year of the cohort period, using the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

Under new § 668.403(c), the Department would obtain program completers' median annual earnings from a Federal agency with earnings data for use in calculating the D/E rates.

In determining the loan debt for a student under new § 668.403(d), the Department would include (1) The total amount of title IV loans disbursed to the student for enrollment in the program, less any cancellations or adjustments except for those related to false certification or borrower defense discharges and debt relief initiated by the Secretary as a result of a national emergency, and excluding Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants; (2) Any private education loans as defined in § 601.2, including such loans made by the institution, that the student borrowed for enrollment in the program; and (3) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any program that the student is obligated to repay after completing the program, including extensions of credit described in the definition of, and excluded from, the term "private education loan" in § 601.2. The Department would attribute all loan debt incurred by the student for enrollment in any undergraduate program at the institution to the highest credentialed undergraduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. Similarly, we would attribute all loan debt incurred by the student for enrollment in any graduate program at the institution to the highest credentialed graduate program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. The Department would exclude any loan debt incurred by the student for enrollment in programs at other institutions, except that the Secretary could choose to include loan debt incurred for enrollment in programs at other institutions under common ownership or control.

Under new § 668.403(e), the Department would exclude a student from both the numerator and the denominator of the D/E rates calculation if (1) One or more of the student’s title IV loans are under consideration or have been approved by the Department for a discharge on the basis of the student’s total and permanent disability; (2) The student enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Department obtains earnings information; (3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the D/E rates; (4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the D/E rates; (5) The student is enrolled in an approved prison education program; (6) The student is enrolled in a comprehensive transition and postsecondary (CTP) program; or (7) The student died. For purposes of determining whether a student completed a higher credentialed undergraduate program, the department would consider undergraduate certificates or diplomas, associate degrees, baccalaureate degrees, and post-baccalaureate certificates as the ascending order of credentials. For purposes of determining whether a student completed a higher credentialed graduate program, the Department would consider graduate certificates, master's degrees, first professional degrees, and doctoral degrees as the ascending order of credentials.

As further explained under "Reasons" below, to prevent privacy or statistical reliability issues, under § 668.403(f) the Department would not issue D/E rates for a program if fewer than 30 students completed the program during the two-year or four-year cohort period, or the Federal agency with earnings data does not provide the median earnings for the program.

For purposes of calculating both the D/E rates and the earnings threshold measure, the Department proposes to use a two-year or a four-year cohort period similar to the 2014 Prior Rule. The proposed rule would, however, measure the earnings of program completers approximately one year later relative to when they complete their degree than under the 2014 Prior Rule. We would use a two-year cohort period when the number of students in the two-year cohort period is 30 or more. A two-year cohort period would consist of the third and fourth award years prior to the year for which the most recent data are available at the time of calculation. For example, given current data production schedules, the D/E rates and earnings premium measure calculated to assess financial value starting in award year 2024-2025 would be calculated in late 2024 or early in 2025. For most programs, the two-year cohort period for these metrics would be award years 2017-2018 and 2018-2019 using the amount of loans disbursed to students as of program completion in those award years and earnings data measured in calendar years 2021 for award year 2017-2018 completers and 2022 for award year 2018-2019 completers, roughly 3 years after program completion.

We would use a four-year cohort period to calculate the D/E rates and earnings thresholds measure when the number of students completing the program in the two-year cohort period is fewer than 30 but the number of students completing the program in the four-year cohort period is 30 or more. A four-year cohort period would consist of the third, fourth, fifth, and sixth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, for the D/E rates and the earnings threshold measure calculated to assess financial value starting in award year 2024-2025, the four-year cohort period would be award years 2015-2016, 2016-2017, 2017-2018, and 2018-2019; and earnings data would be measured using data from calendar years 2019 through 2022.

Similar to the 2014 Prior Rule, the cohort period would be calculated differently for programs whose students are required to complete a medical or dental internship or residency, and who therefore experience an unusual and unavoidable delay before reaching the earnings typical for the occupation. For this purpose, a required medical or dental internship or residency would be a supervised training program that (1) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science; (2) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and (3) Must be completed before the student may be licensed by a State and board certified for professional practice or service. The two-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth and seventh award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, D/E rates and the earnings threshold measure calculated for award year 2024-2025 would be calculated in late 2024 or early 2025 using earnings data measured in calendar years 2021 and 2022, with a two-year cohort period of award years 2014-2015 and 2015-2016 The four-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, the D/E rates and the earnings threshold measure calculated for award year 2024-2025 would be calculated in late 2024 or early 2025 using earnings data measured in calendar years 2021 and 2022, and the four-year cohort period would be award years 2012-2013, 2013-2014, 2014-2015, and 2015-2016.

The Department recognizes that some other occupations, such as clinical psychology, may require a certain number of post-graduate work hours, which might vary from State to State, before an individual fully matriculates into the profession, and that, during this post-graduate working period, a completer's earnings may be lower than are otherwise typical for individuals working in the same occupation. We would welcome public comments about data-informed ways to reliably identify such programs and occupations and determine the most appropriate time period for measuring earnings for these programs. We are particularly interested in approaches that narrowly identify programs where substantial post-graduate work hours (that may take several years to complete) are required before a license can be obtained, and where earnings measured three years after completion are therefore unusually low relative to subsequent earnings.

Reasons: The methodology we would use to calculate the D/E rates under the proposed regulations is largely similar to that of the 2014 Prior Rule. We discuss our reasoning by subject area.

Minimum number of students completing the program

As under the 2014 Prior Rule, the proposed regulations would establish a minimum threshold number of students who completed a program, or "n-size," for D/E rates to be calculated for that program. Both the 2014 Prior Rule and the proposed regulations require a minimum n-size of 30 students completing the program, after subtracting the number of completers who cannot be matched to earnings data. However, some programs are relatively small in terms of the number of students enrolled and, perhaps more critically, in the number of students who complete the program. In many cases, these may be the very programs whose performance should be measured, as low completion rates may be an indication of poor quality. The 2019 Prior Rule also expressed concern with the 30-student cohort size requirement, stating that it exempted many programs at non-profit institutions while having a disparate impact on proprietary institutions.

We considered and presented, during the negotiations that led to the 2014 Prior Rule, a lower n-size of 10. At that time the non-Federal negotiators raised several issues with the proposal to use a lower n-size of 10. First, some of the negotiators questioned whether the D/E rates calculations using an n-size of 10 would be statistically valid. Further, they were concerned that reducing the minimum n-size to 10 could make it too easy to identify particular individuals, putting student privacy at risk. These negotiators noted that other entities requiring these types of calculations used a minimum n-size of 30 to address these two concerns.

Other non-Federal negotiators supported the Department's past proposal to reduce the minimum n-size from 30 to 10 students completing the program. They argued that the lower number would allow the Department to calculate D/E rates for more programs, which would decrease the risk that programs that serve students poorly are not held accountable. They argued that some programs have very low numbers of students who complete the program, not because these programs enroll small numbers of students, but because they do not provide adequate support or are of low quality and, as a result, relatively few students who enroll actually complete the program. They asserted that these poorly performing programs may never be held accountable under the D/E rates measure because they would not have a sufficient number of completers for the D/E rates to be calculated. For these reasons, these negotiators believed that the Secretary should calculate D/E rates for any program where at least 10 students completed the program during the applicable cohort period.

As in our past analysis, we acknowledge the limitations of using a minimum n-size of 30 students. However, to protect the privacy of individuals who complete programs that enroll relatively few students, and to be consistent with past practice as well as existing regulations at § 668.216, which governs institutional cohort default rates, we propose to retain the minimum n-size of 30 students who complete the program as we did in the 2014 Prior Rule. This is also consistent with IRS data policy. As further explained in our discussion of proposed § 668.405, the IRS adds a small amount of statistical noise to earnings data for privacy protection purposes, which would be greater for n-sizes smaller than 30. We also note that the four-year cohort will allow the Department to determine D/E rates for programs that have at least 30 completers over a four-year cohort period for whom the Department obtains earnings data, which would help to reduce the number of instances in which rates could not be calculated because of the minimum n-size.

As described in detail in the RIA, the Department estimates that 75 percent of GE enrollment and 15 percent of GE programs would have sufficient n-size to have metrics computed with a two-year cohort. An additional 8 percent of GE enrollment and 11 percent of GE programs would be likely to have metrics computed using a four-year completer cohort. The comparable rates for eligible non-GE programs are 69 percent of enrollment and 19 percent of programs with a n-size of 30 covered by two-year cohort metrics, with the use of four-year cohort rates likely increasing these coverage rates of non-GE enrollment and programs by 13 and 15 percent, respectively.

Amortization

As under the 2014 Prior Rule, the proposed regulations would use three different amortization periods, based on the credential level of the program for determining a program's annual loan payment amount. The schedule under the proposed regulations reflects that the regulations are an accountability tool to protect students and taxpayers from programs that leave the majority of their graduates with subpar early career earnings compared to those who have not completed postsecondary education or subpar early career earnings relative to their debts. This schedule would reflect the loan repayment options available under the HEA, which are available to borrowers based on the amount of their loan debt, and would account for the fact that borrowers who enrolled in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have incurred more loan debt than borrowers who enrolled in lower-credentialed programs and, as a result, are more likely to select a repayment plan that would allow for a longer repayment period.

We decided to choose 10 years as the shortest amortization period available to borrowers because that is the length of the standard repayment plan that is by default offered to borrowers. Moreover, FSA data show that the borrowers who have balances most likely to be associated with certificate programs are most likely to be making use of the 10-year standard plan. Even students who borrow to complete a short-term program are provided a minimum of 10 years to repay their student loan balances. Therefore, it would be inappropriate to assign an amortization period shorter than 10 years to students in such programs.

Loan debt

As under the 2014 Prior Rule, in calculating a student's loan debt, the Department would include title IV, HEA program loans and private education loans that the student obtained for enrollment in the program, less any cancellations or adjustments except for those related to false certification or borrower defense discharges and debt relief initiated by the Secretary as a result of a national emergency. We would not reduce debt to reflect these types of cancellation since they are unrelated to the value of

the program under normal circumstances, and because including that debt would be a better reflection of how the program's costs affect students' financial outcomes in the absence of these relief programs. For these purposes the amount of title IV, HEA loan debt would exclude Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants. The amount of a student's loan debt would also include any outstanding debt resulting from credit extended to the student by, or on behalf of, the institution (e.g., institutional financing or payment plans) that the student is obligated to repay after completing the program. Including both private loans and institutional loans, in addition to Federal loan debt, would provide the most complete picture of the financial burden a student has incurred to enroll in a program.
Including private loans also ensures that an institution could not attempt to alter its D/E rates by steering students away from the Federal loan programs to a private option.

The Department previously considered including Direct PLUS Loans made to parents of dependent students in the debt measure for D/E rates, on the basis that a parent PLUS loan is intended to cover costs related to education and associated with the dependent student's enrollment in an eligible program of study. Some non-Federal negotiators questioned the inclusion of parent PLUS loans, arguing that a dependent student does not sign the promissory note for a parent loan and is not responsible for repayment. Other non-Federal negotiators expressed concern that failing to include parent PLUS loans obtained on behalf of dependent students could incentivize institutions to counsel students away from Direct Subsidized and Unsubsidized Loans, and to promote more costly parent loans, in an attempt to evade accountability under the D/E rates metric. While we recognize these competing concerns, we believe that the primary purpose of the D/E rates is to indicate whether graduates of the program can afford to repay their educational debt. Repayment of PLUS loans obtained by a parent on behalf of a dependent student is ultimately the responsibility of the parent borrower, not the student. Moreover, the ability to repay parent PLUS debt depends largely upon the income of the parent borrower, who did not attend the program. We believe that including in a program's D/E rates the parent PLUS debt obtained on behalf of dependent students would cloud the meaning of the D/E rates and would ultimately render them less useful to students and families. We remain concerned, however, about the potential for an institution to steer families away from less costly Direct Subsidized and Unsubsidized Loans towards parent PLUS in an attempt to manipulate its D/E rates, and we have addressed this concern, in part, by proposing changes to the administrative capability regulations at § 668.16(h) that would require institutions to adequately counsel students and families about the most favorable aid options available to them. We welcome public comments on additional measures the Department could take to address this issue.

Loan debt cap

We propose to cap loan debt for the D/E rates calculations at the net direct costs charged to a student, defined as the costs assessed to the student for enrollment in a program that are directly related to the academic program, minus institutional grants and scholarships received by that student. Under this calculation, direct costs include tuition and fees as well as books, equipment, and supplies. Although institutions in most cases cannot directly limit the amount a student borrows, institutions can exercise control over these types of direct costs for which a student borrows. The total of the student's assessed tuition and fees, and the student's allowance for books, supplies, and equipment would be included in the cost of attendance disclosed under proposed §668.43(d). The 2014 Prior Rule capped loan debt for D/E rates at the total direct costs using the same definition. In this rule, we further propose to subtract institutional grants and scholarships from the measure of direct costs to produce a measure of net direct costs. For purposes of the

D/E rates, we propose to define institutional grants and scholarships as financial assistance that does not have to be repaid that the institution--or its affiliate--controls or directs to reduce or offset the original amount of a student's institutional costs. Upon further consideration and in the interest of fairness to institutions that provide substantial assistance to students, we believe it is necessary to account for institutional grants and scholarships to ensure that the amount of debt disclosed under the D/E rates accurately reflects the borrowing necessary for the student to finance the direct costs of the program.

Attribution of loan debt

As under the 2014 Prior Rule, we propose that any loan debt incurred by a student for enrollment in undergraduate programs be attributed to the highest credentialed undergraduate program completed by the student at the institution, and any loan debt incurred for enrollment in graduate programs at an institution be attributed to the highest credentialed graduate program completed by the student. The undergraduate credential levels in ascending order would include undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate. Graduate credential levels in ascending order would include graduate certificate (including a postgraduate certificate), master’s degree, first-professional degree, and doctoral degree.

We do not believe that undergraduate debt should be attributed to the debt of graduate programs in cases where students who borrow as undergraduates continue on to complete a graduate credential at the same institution, because the relationships between the coursework and the credential are different. The academic credits earned in an associate degree program, for example, are often necessary for and would be applied toward the credits required to complete a bachelor's degree program. It is reasonable then to attribute the debt associated with all of the undergraduate academic credit earned by the student to the highest undergraduate credential subsequently completed by the student. This reasoning does not apply to the relationship between undergraduate and graduate programs. Although a bachelor's degree might be a prerequisite to pursue graduate study, the undergraduate academic credits would not be applied toward the academic requirements of the graduate program.

In attributing loan debt, we propose to exclude any loan debt incurred by the student for enrollment in programs at another institution. However, the Secretary could include loan debt incurred by the student for enrollment in programs at other institutions if the institution and the other institutions are under common ownership or control. The 2010 and 2014 Prior Rules included the same provision. As we noted previously, although we generally would not include loan debt from other institutions students previously attended, entities with ownership or control of more than one institution offering similar programs might otherwise be incentivized to shift students between those institutions to shield some portion of the loan debt from the D/E rates calculations. Including the provision that the Secretary may choose to include that loan debt should serve to discourage institutions from making these kinds of changes and would assist the Department in holding such institutions accountable.

Exclusions

Under the proposed regulations, we would exclude from the D/E rates calculations most of the same categories of students that we excluded under the 2014 Prior Rule, including students with one or more loans discharged or under consideration for discharge based on the borrower’s total and permanent disability, students enrolled full-time in another eligible program during the year for which earnings data was obtained, students who completed a higher credentialed undergraduate or graduate program as of the end of the most recently completed award year prior to the D/E rates calculation, and students who have died. We believe the approach we adopted in the 2014 Prior Rule continues to be sound policy.

Under these proposed regulations, we would also exclude students enrolled in approved prison education programs, as defined under section 484(t) of the HEA and 34 CFR 668.236. Employment options for incarcerated persons are limited or nonexistent, and Direct Loans are not available to them, so including these students in D/E rates would disincentivize the enrollment of incarcerated students and unfairly disadvantage institutions that may otherwise offer programs to benefit this population. The proposed regulations would also exempt comprehensive transition and postsecondary programs, as defined at § 668.231. CTP programs are designed to provide integrated educational opportunities for students with intellectual disabilities, for whom certain requirements for title IV, HEA eligibility are waived or modified under subpart O of part 668. Unlike most eligible students, these students are not required to possess a high school diploma or equivalent, or to pass an ability-to-benefit test to establish eligibility for title IV, HEA funds. The earnings premium measure proposed in subpart Q is designed to compare postsecondary completers' earnings outcomes to the earnings of those with a high school diploma or equivalent but no postsecondary education. We believe that to judge a CTP program's earnings outcomes against the outcomes of individuals with a high school diploma or the equivalent would be an inherently flawed comparison, as students enrolled in a CTP program are not required to have a high school credential or equivalent. These students also are not eligible to obtain Federal student loans, which would render debt-to-earnings rates meaningless for these programs.

Under the proposed regulations we would include students whose loans are in a military-related deferment. This is a change from the 2014 Prior Rule. Although completers who subsequently choose to serve in the armed forces are demonstrably employed and may access military-related loan deferments, and we believe that their earnings would likely raise the median income measured for the program, that does not eliminate the harm to them if their earnings do not otherwise support the debt they incurred. We believe that servicemembers should expect and receive equal consumer protections as those who enter other occupations.

We continue to believe that we should not include the earnings or loan debt of students who were enrolled full time in another eligible program at the institution or at another institution during the year for which the Secretary obtains earnings information. These students are unlikely to work full time while in school and consequently their earnings would not be reflective of the program being assessed under the D/E rates. It would therefore be unfair to include these students in the D/E rates calculation.

Calculating earnings premium measure (§ 668.404)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.404 to specify the methodology the Department would use to calculate the earnings premium measure. The Department would assess the earnings premium measure for a program by determining whether the median annual earnings of the title IV, HEA recipients who completed the program exceed the earnings threshold. The Department would obtain from a Federal agency with earnings data the most currently available median annual earnings of the students who completed the program during the cohort period. Using data from the U.S. Census Bureau, the Department would also calculate an earnings threshold, which would be the median earnings for working adults aged 25 to 34, who either worked during the year or indicated that they were unemployed when they were surveyed. The earnings threshold would be calculated based on the median for State in which the institution is located, or the national median if fewer than 50 percent of students in the program are located in the State where the institution is located during enrollment in the program. The Department would publish the state and national earnings thresholds annually in a notice in the *Federal Register*. We would exclude a student from the earnings premium measure calculation under the same conditions for which a student would be excluded from the D/E rates calculation under § 668.403, including if (1) One or more of the student's title IV loans are under consideration, or have been approved, for a discharge on the basis of the student's total and permanent disability under 34 CFR 674.61, 682.402, or 685.212; (2) The student was enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Department obtains earnings information; (3) For undergraduate programs, the student completed a higher credentialed undergraduate program subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the earnings threshold measure; (4) For graduate programs, the student completed a higher credentialed graduate program subsequent to completing the program, as of the end of the most recently completed award year prior to the calculation of the earnings threshold measure; (5) The student is enrolled in an approved prison education program; (6) The student is enrolled in a comprehensive transition and postsecondary program; or (7) The student died. The Department would not issue the earnings premium measure for a program if fewer than 30 students completed the program during the two-year or four-year cohort period. The

Department also would not issue the measure if the Federal agency with earnings data does not provide the median earnings for the program, for example because exclusions or non-matches reduce the number of students available to be matched to earnings data to the point that the agency is no longer permitted to disclose median earnings due to privacy restrictions.

Reasons: As discussed in "§ 668.402 Financial value transparency framework," some programs with very poor labor market outcomes could potentially achieve passing D/E rates with low levels of loan debt, or because fewer than half of completers receive student loans. Such programs may not necessarily encumber students with high levels of debt but may nonetheless fail to leave students financially better off than had they not pursued a postsecondary education credential, especially given the financial and time costs for students. ED believes that a postsecondary program cannot be considered to lead to an acceptable earnings outcome if the median earnings of the program's completers do not, at a minimum, exceed the earnings of those who only completed the equivalent of a secondary school education.[93]

This concept that postsecondary education must entail academic rigor and career outcomes beyond what is delivered

[93] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at "Background" and at "Financial value transparency scope and purpose (§ 668.401)", and below at "Gainful employment (GE) scope and purpose (§ 668.601)". The discussion here concentrates on methodology

by high school is embedded in the student eligibility criteria in the HEA. Thus, 20 U.S.C. 1001 states that an institution of higher education must only admit as regular students those individuals who have completed their secondary education or met specific requirements under 20 USC 1091(d), which includes an assessment that they demonstrate the ability to benefit from the postsecondary program being offered. The definitions for a proprietary institution of higher education or a postsecondary vocational institution in 20 U.S.C. 1002 maintain the same requirement for admitting individuals who have completed secondary education. Similarly, there are only narrow exceptions for students beyond the age of compulsory attendance who are dually or concurrently enrolled in postsecondary and secondary education. The purpose of such limitations is to help ensure that postsecondary programs build skills and knowledge that extend beyond what is taught in high school.

The Department thus believes it is reasonable that, if a program provides students an education that goes beyond the secondary level, students should be alerted in cases where their financial outcomes might not exceed those of the typical secondary school graduate. This does not mean that every individual who attends a program needs to earn more than a high school graduate. Instead, it requires only that at least half of program graduates show that they are earning as much or more than individuals who had never completed postsecondary education. We also note that the earnings premium is a conservative measure in that the program earnings measures only include students who complete the program of study, and do not include students who enrolled but exited without completing the program of study, as these students would in most cases have lower earnings than graduates. To provide consistency and simplicity, the program earnings information used to calculate the earnings premium measure would be the same as the earnings information used to determine D/E rates.

The Department would compare the median earnings of the program's completers to the median earnings of adults aged 25 to 34, who either worked during the year or indicated they were unemployed (i.e., available and looking for work), with only a high school diploma or recognized equivalent in the State in which the institution is located while enrolled. The Department chose this range of ages to calculate the earnings threshold benchmark because it matches well the age students are expected to be three years after the typical student graduates (i.e., the year in which their earnings are measured under the rule) from the programs covered by this regulation. The average age three years after students graduate across all credential levels is 30 years, and the interquartile range (i.e., from the program at the 25th percentile to the 75th percentile of average age) across all programs extends from 27 to 34 years of age. The 25 to 34 year age range encompasses the interquartile range for most credential types, with the lone exceptions being master's degrees, where the interquartile range of average ages when earnings are measured is 30 to 35, and doctoral programs, which range from 32 to 43 years old.[94] Among these credential programs, students tend to be older than the high school graduates to which they are being compared.

Because many programs are offered through distance education or serve students from neighboring States, if fewer than 50 percent of the students in a program are located in the State where the institution is located, the earnings premium calculation would compare the median earnings of the program's completers to the median earnings nationally for a working adult aged 25 to 34, who either worked during the year or indicated they were unemployed when interviewed, with only a high school diploma or the recognized equivalent. Although we recognize that some nontraditional learners attend and complete programs past age 34, either for retraining or to seek advancement within a current profession, we believe that the earnings premium measure would provide the most meaningful information to students and prospective students by illustrating the

[94] Graduate and Post-BA certificates, which make up 140 and 22 programs of the over 26,000 programs with earnings data have interquartile ranges of 30 to 37 and 32 to 39 respectively.

earnings outcomes of a program’s graduates in comparison to others relatively early in their careers. As the Regulatory Impact Analysis explains, according to FAFSA data, the typical age of earnings measurement (three years after completion) for students across all program types is 30. This average varies only slightly across undergraduate programs: undergraduate certificate program graduates are an average of 30.6 years when their earnings are measured, associate degree graduates are 30.4, bachelor’s degree graduates are 29.2, and all graduate credential graduates are older on average. Additionally, the ten highest-enrollment fields of study for undergraduate certificate programs—the credential level where the median earnings of programs are most likely to fall below the earnings threshold—all have a typical age at earnings measurement in the 25- to 34-year-old range.

We are aware that in some cases, earnings data for high school graduates to estimate an earnings threshold may not be as reliable or easily available in U.S. Territories, such as Puerto Rico. We welcome public comments on how to best determine a reasonable earnings threshold for programs offered in U.S. territories.

In addition, we recognize that it may be more challenging for some programs serving students in economically disadvantaged locales to demonstrate that graduates surpass the earnings threshold when the earnings threshold is based on the median statewide earnings, including locales with higher earnings. We invite public comments concerning the possible use of an established list, such as a list of persistent poverty counties compiled by the Economic Development Administration, to identify such locales, along with comments on what specific adjustments, if any, the Department should make to the earnings threshold to accommodate in a fair and data-informed manner programs serving those populations.

The Department chose to compute the earnings premium measure by comparing program graduates to those with only a secondary credential who are working or who reported themselves as unemployed, which means they do not currently have a job but report being available and looking for a position. By doing so, the threshold measure excludes individuals who are not in the labor force in calculating median high school graduate earnings. The Department believes this approach creates an appropriate comparison group for recent postsecondary program graduates, as we would anticipate that most graduates—especially those graduating from career training programs--are likely employed or looking for work.

Process for obtaining data and calculating D/E rates and earnings premium measure (§ 668.405)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.405 to establish the process under which the Department would obtain the data necessary to calculate the financial value transparency metrics.

Under this proposed rule, the Department would use administrative data that institutions report to us to identify which students' information should be included when calculating the metrics established by this rule for each program. Institutions would be required to update or otherwise correct any reported data no later than 60 days after the end of an award year, in accordance with procedures established by the Department. We would use this administrative data to compile and provide to institutions a list of students who completed each program during the cohort period. Institutions would have the opportunity to review and correct completer lists. The finalized completer lists would then be used by the Department to obtain from a Federal agency with earnings data the median annual earnings of the students on each list; and to calculate the D/E rates and the earnings premium measure which we would provide to the institution. For each completer list the Department submits to the Federal agency with earnings data, the agency would return to the Department (1) The median annual earnings of the students on the list whom the Federal agency with earnings data matches to earnings data, in aggregate and not in individual form; and (2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match. If the information returned by the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Department would use the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates and earnings premium measure for each program. If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Department would not include in the calculation of the median loan debt for D/E rates the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Department would order the 100 listed students by the amounts borrowed and exclude from the D/E rates calculation the students with the three largest loan debts to calculate the median program loan debt.

Reasons: For the reasons discussed in § 668.401 "Scope and purpose," we intend to establish metrics that would assess whether a program leads to acceptable debt and earnings outcomes. As further discussed in § 668.402 "Financial value transparency framework," these metrics would include a program’s D/E rates as well as an earnings premium measure. To the extent possible, in calculating these metrics the Department would rely upon data the institution is already required to report to us. As such, it would be necessary that current and reliable information be available to the Department. Institutions would therefore be required to update or otherwise correct any reported data no later than 60 days after the end of an award year, to ensure the accuracy of completers lists while allowing the Department to submit those lists to a Federal agency with earnings data in a timely manner.

We believe that providing institutions the opportunity to review and correct completer lists will promote transparency and provide helpful insight from institutions, while ultimately yielding more reliable eligibility determinations based upon the most current and accurate debt and earnings data possible. We recognize that reviewing completer lists for each program could generate some administrative burden for institutions, but we have attempted to mitigate this burden by ensuring that the completer list review process is optional for institutions. The Department would assume the accuracy of a program’s initial completer list unless the institution provides corrections using a process prescribed by the Secretary within the 60-day timeframe provided in these regulations.

To safeguard the privacy of sensitive earnings data, the Federal agency with earnings data would not provide individual earnings data for each completer on the list to the Department. Instead, the Federal agency with earnings data would provide to the Department only the median annual earnings of the students on the list whom it matches to earnings data, along with the number of students on the list that it could not match, if any. This is in keeping with how the Department has received information on program and institutional earnings from other Federal agencies for years, as we have never obtained earnings information of individuals when using this approach.

For purposes of determining the median loan debt to be used in the D/E rates calculation, the Department would remove the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. In the absence of earnings data for specific borrowers, which would otherwise allow the Department to remove the loan debts specific to the borrowers whose earnings data could not be matched, we propose removing the highest loan debts to represent those borrowers because it is the approach to adjusting debt levels for unmatched individuals that is most favorable to institutions, yielding the lowest estimate of median debt for the subset of program graduates for whom earnings are observed that is consistent with the data.

The proposed rule does not specify a source of data for earnings, but rather allows the Department flexibility to work with another Federal agency to secure data of adequate quality and in a form that adequately protects the privacy of individual graduates. The Department's goal is to evaluate programs, not individual students. The earnings data gathered for purposes of this proposed rule would not be used to evaluate individual graduates in any way. Moreover, the Department would be seeking aggregate statistical information from a Federal agency with earnings data for combined groups of students, and would not receive any individual data that associate identifiable persons with earnings outcomes. The Department will determine the specific source of earnings data in the future, potentially considering such factors as data availability, quality, and privacy safeguards.

At this stage, however, the Department does have a preliminary preference regarding the source of earnings data. While the 2014 Prior Rule relied upon earnings data from the Social Security Administration, at this time we would prefer to use earnings data provided by the Internal Revenue Service (IRS). IRS now seems to be the highest quality data source available, and is the source used for other Department purposes such as calculating an applicant's title IV, HEA eligibility and determining a borrower's eligibility for income-driven student loan repayment plans. Moreover, the Department has successfully negotiated agreements with the IRS to produce statistical information for the College Scorecard. Although the underlying data used by both agencies is based on IRS tax records, as an added privacy safeguard we understand that the IRS would use a privacy-masking algorithm to add statistical noise to its estimates before disclosing median earnings information to the Department.

This statistical noise would take the form of a small adjustment factor designed to prevent disclosure of individual data. This adjustment factor can be positive or negative and tends to become smaller as the underlying number of individuals in the completion cohort in a program becomes larger. For a small number of programs, the adjustment factor could potentially affect whether some programs pass or fail the accountability metrics. The Department recognizes this creates a small risk of inaccurate determinations in both directions, including a very small likelihood that a program that would pass if its unadjusted median earnings data were used in calculating either D/E rates or the earnings premium. Using data on the distribution of noise in the IRS earnings figures used in the College Scorecard, we estimate that the probability that a program would be erroneously declared ineligible (that is, fail in 2 of 3 years using adjusted data when unadjusted data would result in failure for 0 years or 1 year) is less than 1 percent.

Assuming that such statistical noise would be introduced, the Department plans to counteract this already small risk of improper classification in several ways. First, we include a minimum n-size threshold as discussed under proposed § 668.403 to avoid disclosing median earnings information for smaller cohorts, where statistical noise would have a greater impact on the disclosed earnings measure. The n-size threshold effectively caps the influence of the noise on results under our proposed metrics. In addition, before invoking a sanction of loss of eligibility in the accountability framework described in proposed § 668.603, we require that GE programs fail the accountability measures multiple times.

Furthermore, elsewhere in the proposed rule, we establish an earnings calculation methodology that is more generous to title IV, HEA supported programs than what the Department adopted in the 2014 Prior Rule for GE programs. The proposed rule would measure the earnings of program completers approximately one year later (relative to when they complete their credential) than under the 2014 Prior Rule. This leads to substantially higher measured program earnings than under the Department’s previous methodology—on the order of $4,000 (about 20 percent) higher for GE programs with earnings between $20,000 and $30,000, which are the programs most at risk for failing the earnings premium threshold.[95] The increase in earnings from this later measurement of income would provide a buffer more than sufficient to counter possible error introduced by the statistical noise added by the IRS. Additional adjustments would present unwelcome trade-offs, with little gain in protecting adequately performing programs in exchange for introducing another type of error. Adjusting earnings calculations to further reduce the low chance of programs failing the proposed metrics based on statistical noise would increase the risk of other kinds of errors, such as programs that should fail the proposed metrics appearing to pass based on an artificial increase in calculated earnings. On the other hand, and with respect to a related issue of earnings measurements, making special accommodations only for programs where under-reporting of earnings is suspected would differentially reward such programs and potentially create adverse incentives for programs to encourage such behavior. This could have the additional effect of inappropriately increasing public subsidies of such programs, as loan payments for program graduates would also be artificially reduced as a result of their lower reported earnings. We therefore do not believe

[95] This calculation is based on a comparison of (1) the earnings data released for GE programs in 2017 under the 2014 Prior Rule, inflation adjusted to 2019 dollars, to (2) earnings data for the subset of those GE programs still in existence, calculated using the methodology proposed in this NPRM.

it is necessary or appropriate to make other adjustments to the earnings calculations beyond those described above.

The Department also has gained a fresh perspective on earnings appeals in light of our experience, new research, and other considerations. In the 2014 Prior Rule the Department included an alternate earnings appeal to address concerns similar to those raised by some non-Federal negotiators in the 2022 negotiated rulemaking. The concerns were about whether programs preparing students to enter certain occupations, such as cosmetology, may have very low earnings in data obtained from Federal agencies because a substantial portion of a completer's income may derive from tips and gratuities that may be underreported or unreported to the IRS.

Those arguments on unreported income have become less persuasive to the Department based upon further review of Federal requirements for the accurate reporting of income; consideration that IRS income data is used without adjustment for determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans; past data submitted as part of the alternate earnings appeals; and new research on the effects of tipping on possible debt-to-earnings outcomes. As a result of this review, we have concluded that it would not be appropriate to include a similar appeal process in this proposed rule.

First, there is the issue of legal reporting requirements. The law requires taxpayers to report tipped income to the IRS. Failing to report all sources of the income to the IRS can lead to financial penalties and additional tax liability. And changes made in the American Rescue Plan Act lowered to $600 the reporting threshold for when a 1099-K is issued,[96] which will result in more third-party settlement organizations issuing these forms. Because of these recent changes, the proposed use of earnings data provided directly by a Federal agency with earnings data would be more comprehensive and reliable than previously observed in the 2014 Prior Rule. This is not to deny that some fraction of income will be unreported despite legal duties to report, but instead to recognize as well that legal demands and other relevant circumstances have changed.

Moreover, income adjustments to IRS earnings are not used in other parts of the Department's administration of the title IV, HEA programs. IRS income and tax data are used to determine a student's eligibility for Federal benefits, including the title IV, HEA programs, and we believe it would be most appropriate and consistent to rely on IRS data when measuring the outcomes of those programs.

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[96] https://www.govinfo.gov/content/pkg/PLAW-117publ2/html/PLAW-117publ2.htm.

In particular, under the Department's various income-driven repayment plans, student loan borrowers can use their reported earnings to the IRS to establish eligibility for loan payments calculated based on their reported earnings, and so the Department has an independent interest in the level of these earnings since they impact loan repayment. While institutions cannot directly compel graduates to properly report tipped income, they are nonetheless uniquely positioned to educate their students on the importance of meeting their obligation to properly observe Federal tax filing requirements when they enter or reenter the work force. Title IV, HEA support for students and educational programs is in turn supported by taxpayers, and the Department has a responsibility to protect taxpayer interests when implementing the statute.

Beyond those considerations, it is unlikely that any earnings appeal process would generate a better estimate of graduates' median earnings. To date, the Department has identified no other data source that could be expected to yield data of higher quality and reliability than the data available to the Department from the IRS. Alternative sources such as graduate earnings surveys would be more prone to issues such as low response rates and inaccurate reporting, could more easily be manipulated to mask poor program outcomes, and would impose significant administrative burden on institutions. One analysis of alternative earnings data, provided by cosmetology schools as part of the appeals process for GE debt-to-earnings thresholds under the 2014 Prior Rule, found that the average approved appeal resulted in an 82 percent increase in calculated earnings income relative to the numbers in administrative data.[97] Results like that appear to be implausibly high, given our experience and other considerations that we offer above and below. Without relying too heavily on any one study, we can suggest at this stage that it seems likely that the use of alternative earnings estimates, typically generated from student surveys, could yield a substantial overestimate of income above that of unreported tips.[98]

Furthermore, the plausible scope of the unreported income issue should be kept in perspective. First of all, in many fields of work the question of unreported income is insubstantial. Tip income, for instance, certainly is not typical in every occupation and profession in which people work after graduating having received aid from title IV, HEA. In the GE context, the number of occupations related to GE programs where tipping is common seems far smaller than has been presented in the past. One public comment submitted in 2018 in response to the proposed recission of

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[97] Stephanie Riegg Cellini and Kathryn J. Blanchard, "Hair and taxes: Cosmetology programs, accountability policy, and the problem of underreported income," Geo. Wash. Univ. (Jan. 2022), www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.

[98] For further discussion on the Department's experience with alternate earnings appeals, see below at § 668.603.

the 2014 Prior Rule noted that the only occupations in which there are GE programs where tipping might be occurring are in cosmetology, massage therapy, bartending, acupuncture, animal grooming, and tourism/travel services.[99] While there are other types of occupational categories where tipping does occur, such as restaurant service, these are not areas where the students are being specifically trained to work in programs that might be eligible for title IV, HEA support. For instance, the GE programs related to restaurants are in culinary arts, where chefs are less likely to receive tips.

Even in fields of work that involve title IV, HEA support and where one might suppose that unreported income is substantial, research will not necessarily support that guesswork. For example, recent research indicates that making reasonable adjustments to the earnings of cosmetology programs to account for tips would have minimal effects on whether a program passes the GE metrics. Looking at programs that failed the metrics in the 2014 Prior Rule for GE programs, researchers estimated that underreporting of tipped income likely constituted just 8 percent of earnings and therefore would only lead to small changes in the number and percentage of cosmetology programs that pass or fail the 2014 rule.[100] To reiterate,

[99] www.regulations.gov/comment/ED-2018-OPE-0042-13794.
[100] www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf.

the Department is interested in a reasonable assessment of available information without overreliance on any one piece of evidence. So, although the above study's estimate of only 8 percent underreporting is noteworthy for its small size, we are not convinced that it would be reasonable to convert that particular number into any flat rule related to disclosures, warnings, acknowledgments, or program eligibility.

Instead, we consider such studies alongside a range of other factors to reach decisions in this rulemaking. In particular, we note again the change in timing for measuring earnings from the 2014 Prior Rule that leads to an increase in earnings for all programs that is higher than this estimate of underreporting, as further explained in the discussion of proposed § 668.403. Thus the proposed rule already includes safeguards against asserted underestimates of earnings. We also seek to avoid the perverse incentives that would be created by making the rule's application more lenient for programs in proportion to how commonly their graduates unlawfully underreport their incomes. We do not believe that taxpayer-supported educational programs should, in effect, receive credit when their graduates fail to report income for tax purposes. That position, even if it were fiscally sustainable, would incentivize institutions to discourage accurate reporting of earnings among program graduates--at the ultimate expense of taxpayers. Given the career training focus for these programs, we also believe that the institutions providing that training can emphasize the importance of reporting income accurately, not only as a legal obligation but also to ensure that long-term benefits from Social Security are maximized.

In summary, the Department believes that the consistency and reliability benefits of using IRS earnings data would warrant reliance upon these average program earnings without further adjustments beyond those adopted in this proposed rule. This is the same approach used for the calculation of income--including tipped income that is lawfully reported to the IRS--for other title IV, HEA program administration purposes, such as determining eligibility for funds and the payment amounts under various income-driven repayment plans.

Determination of the Debt to Earnings rates and Earnings Premium Measure (§ 668.406)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.406 to require the Department to notify institutions of their program value transparency metrics and outcomes and, in the case of a GE program, to notify the institution if a failing program would lose title IV, HEA eligibility under proposed § 668.603. For each award year for which the

Department calculates D/E rates and the earnings premium measure for a program, the Department would issue a notice of determination informing the institution of: (1) The D/E rates for each program; (2) The earnings premium measure for each program; (3) The Department's determination of whether each program is passing or failing, and the consequences of that determination; (4) For a non-GE program, whether the student acknowledgement would be required under proposed § 668.407; (5) For a GE program, whether the institution would be required to provide the student warning under proposed § 668.605; and (6) For a GE program, whether the program could become ineligible based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the program.

Reasons: Proposed § 668.406 would establish the Department's administrative process to determine, and notify an institution of, a program's final financial value transparency measures. The notice of determination will inform the institution of its program outcomes so that it can provide prompt information to students, including warnings as required under proposed § 668.605, and take actions necessary to improve programs with unacceptable outcomes.

Student disclosure acknowledgments (§ 668.407)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.407 to require acknowledgments from current and prospective students if an eligible non-GE program leads to high debt outcomes based on its D/E rates, to specify the content and delivery parameters of such acknowledgments, and to require students to provide the acknowledgments prior to the disbursement of title IV, HEA funds. Additional warning and acknowledgment requirements would also apply to GE programs at risk of a loss of title IV, HEA eligibility, as further detailed in proposed § 668.605.

Under proposed changes to § 668.43, an institution would be required to distribute information to students and prospective students, prior to enrollment, about how to access a disclosure website maintained by the Secretary. The disclosure website would provide information about the program, including the D/E rates and earnings premium measure, when available. For eligible non-GE programs, for any year for which the Secretary notifies an institution that the eligible non-GE program is associated with relatively high debt burden for the year in which the D/E rates were most recently calculated by the Department, proposed § 668.407 would require students to acknowledge viewing these informational disclosures prior to receiving title IV, HEA funds. This acknowledgment would be facilitated by the Department's disclosure website and required before the first time a student begins an academic term after the program has had an unacceptable D/E rate.

In addition, an institution could not enroll, register, or enter into a financial commitment with the prospective student sooner than three business days after the institution distributes the information about the disclosure website maintained by the Secretary to the student. An institution could not disburse title IV, HEA funds to a prospective student enrolling in a program requiring an acknowledgment under this section until the student provides the acknowledgment. We would also specify that the acknowledgment would not otherwise mitigate the institution's responsibility to provide accurate information to students, nor would it be considered as evidence against a student's claim if the student applies for a loan discharge under the borrower defense to repayment regulations at 34 CFR part 685, subpart D.

The Department is aware that in some cases, students may transfer from one program to another, or may not immediately declare a major upon enrolling in an eligible non-GE program. We welcome public comments about how to best address these situations with respect to acknowledgment requirements. The Department also understands that many students seeking to enroll in non-GE programs may place high importance on improving their earnings, and would benefit if the regulations provided for acknowledgements when a non-GE program is low-earning. We further welcome public comments on whether the acknowledgement requirements should apply to all programs, or to GE programs and some subset of non-GE programs, that are low-earning.

The Department is also aware that some communities face unequal access to postsecondary and career opportunities, due in part to the lasting impact of historical legal prohibitions on educational enrollment and employment. Moreover, institutions established to serve these communities, as reflected by their designation under law, have often had lower levels of government investment. The Department welcomes comments on how we might consider these factors, in accord with our legal obligations and authority, as we seek to ensure that all student loan borrowers can make informed decisions and afford to repay their loans.

Reasons: Through the proposed regulations the Department intends to establish a framework for financial value transparency for all programs, regardless of whether they are subject to the accountability framework for GE programs. To help achieve these goals, in proposed § 668.407, we set forth acknowledgment requirements for students, which institutions that benefit from title IV, HEA must facilitate by providing links to relevant sources, based on the results of their programs under the metrics described in §668.402. To enhance the clarity of these proposed regulations, we discuss the warning requirements for GE programs separately under proposed § 668.605.

In the 2019 Prior Rule rescinding the GE regulation, the Department stated that it believed that updating the College Scorecard would be sufficient to achieve the goals of providing comparable information on all institutions to students and families as well as the public. While we continue to believe that the College Scorecard is an important resource for students, families, and the public, we do not think it is sufficient for ensuring that students are fully aware of the outcomes of the programs they are considering before they receive title IV, HEA funds to attend them. One consideration is that the number of unique visitors to the College Scorecard is far below that of the number of students who enroll in postsecondary education in a given year. In fiscal year 2022, we recorded just over 2 million visits overall to the College Scorecard. This figure includes anyone who visited, regardless of whether they or a family member were enrolling in postsecondary education. By contrast, more than 16 million students enroll in postsecondary education annually, in addition to the family members and college access professionals who may also be assisting many of these individuals with their college selection process. Second, research has shown that information alone is insufficient to influence students' enrollment decisions. For example, one study found that College Scorecard data on cost and graduation rates did not impact the number of schools to which students sent SAT scores.[101] The authors found that a 10 percent increase in reported earnings increased the number of score sends by 2.4 percent, and the impact was almost entirely among well-resourced high schools and students. Third, the Scorecard is intentionally not targeted to a specific individual because it is meant to provide comprehensive information to anyone searching for a postsecondary education. By contrast, a disclosure would be a more personalized delivery of information to a student because it would be based on the specific programs that they are considering. Requiring an acknowledgement under certain circumstances would also ensure that students see the information, which may or may not otherwise occur with the College Scorecard. Finally, we think the College Scorecard alone is insufficient to encourage improvements to programs solely through the flow of information indicated in the 2019 Final Rule. Posting the information on the Scorecard in no way guarantees that an institution would even be aware of the outcomes of their programs, and institutions have no formal role in acknowledging their outcomes. By contrast, with these proposed regulations institutions would be fully informed

[101] onlinelibrary.wiley.com/doi/abs/10.1111/ecin.12530.

of the outcomes of all their programs and would also know which programs would be associated with acknowledgement requirements and which ones would not. The Department thus anticipates that these disclosures and acknowledgements will better achieve the goals of both delivering information to students and encouraging improvement than the approach outlined in the 2019 Rule did.

Under the proposed regulations, the Department would not publish specific text that institutions would use to convey acknowledgment requirements to students. We believe institutions are well positioned to tailor communications about acknowledgment requirements in a manner that best meets the needs of their students, and institutions would be limited in their ability to circumvent the acknowledgement requirement because the Department's systems would not create disbursement records until the student acknowledges the disclosure through the website maintained by the Secretary. To enhance the clarity of these proposed regulations, we discuss the warning requirements for GE programs separately under proposed § 668.605.

Similar to the 2014 Prior Rule, requiring that at least three days must pass before the institution could enroll a prospective student would provide a "cooling-off period" for the student to consider the information provided through the disclosure website without immediate and direct pressure from the institution, and would also provide the student with time to consider alternatives to the program either at the same institution or at another institution.

For both GE and non-GE programs, we propose to collect data, calculate results, and post results on both D/E and EP. That will make the information about costs, borrowing, and earnings outcomes widely available to the prospective students and the public. As outlined in subpart S, we use these same metrics to establish whether GE programs prepare students for gainful employment and are thus eligible to participate in Title IV, HEA programs, and due to the potential for loss of eligibility we require programs failing either metric to provide warnings and facilitate their students in acknowledging viewing the information before aid can be disbursed. For non-GE programs, we require students to acknowledge viewing the disclosure information when programs fail D/E, but not EP. While many non-GE students surely care about earnings, non-GE programs are more likely to have nonpecuniary goals. Requiring students to acknowledge low-earning information as a condition of receiving aid might risk conveying that economic gain is more important than nonpecuniary considerations. In contrast, students' ability to pursue nonpecuniary goals is jeopardized and taxpayers bear additional costs if students enroll in high-debt burden programs. Requiring acknowledgement of the D/E rates ensures students are alerted to risk on that dimension.

Reporting requirements (§ 668.408)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.408 to establish institutional reporting requirements regarding Title IV-eligible programs offered by the institution and students who enroll in, complete, or withdraw from an eligible such programs, and to define the timeframe for institutions to report this information.

For each eligible program during an award year, an institution would be required to report: (1) Information needed to identify the program and the institution; (2) The name, CIP code, credential level, and length of the program; (3) Whether the program is programmatically accredited and, if so, the name of the accrediting agency; (4) Whether the program meets licensure requirements for all States in the institution's metropolitan statistical area, whether the program or prepares students to sit for a licensure examination in a particular occupation, the number of program graduates from the prior award year that take the licensure examination within one year (if applicable), and the number of program graduates that pass the licensure examination within one year (if applicable); (5) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and (6) Whether the program is a medical or dental program whose students are required to complete an internship or residency.

For each recipient of title IV, HEA funds, the institution would also be required to annually report at a student level: (1) The date each student initially enrolled in the program; (2) Each student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; (3) Each student's enrollment status (e.g., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program; (4) The total annual cost of attendance; (5) The total tuition and fees assessed for the award year; (6) The student's residency tuition status by State or region (such as in-state, in-district, or out-of-state); (7) The total annual allowance for books, supplies, and equipment; (8) The total annual allowance for housing and food; (9) The amount of institutional grants and scholarships disbursed; (10) The amount of other state, Tribal, or private grants disbursed; and (11) The amount of any private education loans disbursed, including private education loans made by the institution. In addition, if the student completed or withdrew from the program and ever received title IV, HEA assistance for the program, the institution would also be required to report: (1) The date the student completed or withdrew from the program; (2) The total amount, of which the institution is or should reasonably be aware, that the student received from private education loans for enrollment in the program; (3) The total amount of institutional debt the student owes any party after completing or withdrawing from the program; (4) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; (5) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA cost of attendance for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and (6) The total amount of institutional grants and scholarships provided for the student’s entire enrollment in the program. Institutions would also be required to report any additional information the Department may specify through a notice published in the *Federal Register*.

For GE programs, institutions would be required to report the above information, as applicable, no later than July 31 following the date these regulations take effect for the second through seventh award years prior to that date or, for medical and dental programs that require an internship or residency, July 31 following the date these regulations take effect for the second through eighth award years prior to that date. For eligible non-GE programs, institutions would have the option either to report as described above, or to initially report only for the two most recently completed award years, in which case the Department would calculate the program's transitional D/E rates and earnings premium measure based on the period reported. After this initial reporting, for each subsequent award year, institutions would be required to report by October 1 following the end of the award year, unless the Department establishes different dates in a notice published in the *Federal Register*. If, for any award year, an institution fails to provide all or some of the information described above, the Department would require the institution to provide an acceptable explanation of why the institution failed to comply with any of the reporting requirements.

Reasons: Certain student-specific information is necessary for the Department to implement the provisions of proposed subpart Q, specifically to calculate the D/E rates and the earnings premium measure for programs under the program value transparency framework. This information is also needed to calculate many of the disclosures under proposed § 668.43(d), including the completion rates, program costs, median loan debt, median earnings, and debt-to-earnings, among other disclosures. As discussed in "§ 668.401 Scope and purpose," the proposed reporting requirements are designed, in part, to facilitate the transparency of program outcomes and costs by: (1) Ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about programs to inform student and prospective student decision-making; (2) Helping the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and (3) Allowing institutions to see which programs produce exceptional results for students so that those programs may be emulated.

The proposed regulations would require institutions to report the name, CIP code, credential level, and length of the program. Although program completion times can sometimes vary due to differences in student enrollment patterns, to provide the most meaningful information possible for prospective students, we refer in the proposed regulations, particularly in the reporting and disclosure requirements in §668.43 and § 668.408, to the "length of the program." The "length of the program" would be defined as the amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

In proposed additions to the general definitions at §668.2, we would establish separate definitions for "CIP code" and "credential level." The proposed definition of "CIP code" largely mirrors the definition in the 2014 Prior Rule. The proposed definition of "credential level" would also be similar to past definitions, and the proposed definition includes a listing of the credential levels for use in the definition of a program.

Reporting whether a program is programmatically accredited along with the name of the relevant accrediting agency would allow the Department to include that information in disclosures. Clear and consistent information about programmatic accreditation would aid current and prospective students in assessing the value of the program and in comparing the program against others, and such information about programmatic accreditation is not readily available to students.

Reporting whether a program meets relevant licensure requirements for the States in the institution's metropolitan statistical area or prepares students to sit for a licensure examination in a particular occupation would allow the Department to provide current and prospective students with invaluable information about the career outcomes for graduates of the program and support informed enrollment decisions. In recent years, some institutions have misrepresented the career and employment outcomes of programs, including the eligibility of program graduates to sit for licensure examinations, resulting in borrower defense claims.[102] We remain concerned about the ongoing potential for such misrepresentations, and believe that reporting and disclosing information about a program's licensure outcomes–such as share of recent program graduates that sit for and pass licensure exams-will help to reduce the number of future borrower defense claims that are approved.

Reporting the total number of students enrolled in a program, including both recipients and non-recipients of title IV, HEA funds, would allow the Department to calculate and disclose the percentage of students who receive Federal student aid and Federal student loans. This information would assist current and prospective students in comparing programs and institutions and would assist in making better informed enrollment decisions.

Reporting whether a program is a medical or dental program that includes an internship or residency is necessary because proposed §668.403 would use a different cohort period in calculating the D/E rates for those programs. See "§668.403 Calculating D/E rates" for a discussion of why these programs would be evaluated differently.

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[102] studentaid.gov/announcements-events/borrower-defense-update.

The dates of a student's attendance in the program and the student's attendance status (i.e., completed, withdrawn, or still enrolled) and enrollment status (i.e., full time, three-quarter time, half time, and less than half time) would be needed by the Department to attribute the correct amount of a student's title IV, HEA program loans that would be used in the calculation of a program's D/E rates. These items would also be needed to identify the program's former students for inclusion on the list submitted to a Federal agency with earnings data to determine the program's median annual earnings for the purpose of the D/E rates and earnings premium calculations, and the borrowers who would be considered in the calculation of the program's completion rate, withdrawal rate, loan repayment rate, median loan debt, and median earnings.

We would require the amount of each student's private education loans and institutional debt, along with the student's title IV, HEA program loan debt, institutional grants and scholarships, and other government or private grants disbursed, to determine the debt portion of the D/E rates. We would also require institutions to report the total cost of attendance, the cost of tuition and fees, and the cost of books, supplies, and equipment to determine the program’s costs. We would need both of these amounts to calculate the D/E rates because, as provided under proposed

§668.403, in determining a program's median loan amount, each student's loan debt would be capped at the lesser of the loan debt or the program costs, less any institutional grants and scholarships. We recognize that some institutions with higher overall tuition costs offer significant institutional financial assistance or discounts that reduce the net cost for students to enroll in their programs. Requiring institutions to report institutional grants and scholarships would allow the Department to take such financial assistance into consideration when measuring debt outcomes, would encourage institutions to provide financial assistance to students, and would ultimately result in a fairer metric and more consistent comparisons of the actual debt burdens associated with different programs.

For GE programs, institutions would be required to initially report for the second through seventh prior award years, and for the second through eighth prior award years for medical and dental programs requiring an internship or residency. This reporting would ensure that the Department could calculate the D/E rates and the earnings premium measure under subpart Q and apply the eligibility outcomes under subpart S in as timely a manner as possible, thus protecting students and taxpayers through prompt oversight of failing GE programs. Much of the necessary information for GE programs would already have been reported to the

Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. For example, the vast majority (88 percent) of public institutions operated at least one GE program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule, and nearly half (47 percent) of private non-profit institutions did as well. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. For example, 2,210 institutions provided very detailed student-level financial aid and other information as part of the 2017–18 National Postsecondary Student Aid Study, Administrative Collection (NPSAS:18-AC) collection, including 74 percent of all public institutions and 37 percent of all private non-profit institutions.[103] Since the latter are selected for

[103] These tabulations compare the number of institutions providing enrollment lists in NPSAS 18-AC to the number of institutions in the 2019 Program Performance Data, described in the Regulatory Impact Analysis. The number of institutions represented in the final survey is lower. see Table B1 in Burns, R., Johnson, R., Lacy, T.A., Cameron, M., Holley, J., Lew, S., Wu, J., Siegel, P., and Wine, J. (2022). 2017–18 National Postsecondary Student Aid Study, Administrative Collection (NPSAS:18-AC): First Look at Student Financial Aid Estimates for 2017–18 (NCES 2021-476rev). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Retrieved 1/30/2023 from nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2021476rev.

inclusion randomly each NPSAS collection period, the number of institutions that have ever provided such data is much higher than this rate implies.

The proposed financial value transparency framework entails added reporting burden for institutions relative to the 2019 Prior Rule and the 2014 Prior Rule for some additional data items and for students in programs that are not covered by the GE accountability framework. The Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past for non-GE programs, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

The debt-to-earnings rates are intended to capture whether program completers' debt levels are reasonable in light of their earnings outcomes. Since earnings are observed with a lag, the most recent year's D/E rates necessarily involve the earnings and debt levels of individuals completing at least five or six years earlier. For GE programs, where the measures affect program eligibility, the Department believes it is important that debt and earnings measures are based on the same group of students. It might be, for example, that more recent cohorts of students have higher borrowing levels due to changes to curriculum that raised the costs of instruction and, as a result, the cost of tuition. These changes would ideally be reflected in improvements in students' earnings as well, but the D/E rates might not reflect that if the earnings data used for D/E were based on the older cohorts while debt measures are based on a more recent cohort.

For non-GE programs the transparency metrics do not affect a program's eligibility for Title IV, HEA programs. While it would be preferable to have more accurate information that is comparable across all programs to better support student choices, for non-GE programs the Department believes alleviating some institutional reporting burden justifies a temporary sacrifice in the quality of the D/E data reported during a transition period. For that reason, the Department proposes to offer institutions the option either to report past cohorts for eligible non-GE programs as otherwise required for GE programs, or to report for only the two most recently completed award years. If institutions opt to report only the most recently completed award years for an eligible non-GE program, we would calculate the program's transitional D/E rates and earnings premium based on the data reported. Transitional D/E rates would differ from those described in proposed § 668.403 by only considering Federal loan debt (no private or institutional loans) and by not capping the total debt based on direct costs minus institutional scholarships. Further, this debt would pertain to recent completers rather than those whose median earnings are available. We believe that the transitional metric, though missing data elements, will provide useful information to institutions that could be used to enhance their program offerings and improve student outcomes until more comprehensive data are available.

For those institutions that opt to or are required to complete the reporting on past cohorts, we recognize that the initial reporting deadline of July 31, 2024, may pose implementation challenges for institutions, who may experience difficulties compiling and reporting data within a month of the date these regulations become effective, particularly for institutions that offer many educational programs and may not have been subject to reporting under the 2014 Prior Rule or similar reporting related to the NPSAS. To assist institutions in preparing for this deadline and to ensure that institutions have sufficient time to submit their data for the first reporting period, the Department anticipates that, as with the 2014 Prior Rule, it would provide training in advance to institutions on the new reporting requirements, provide a format for reporting, and enable the Department's relevant systems to accept optional early reporting from institutions beginning several months prior to the July 31, 2024, deadline.

We propose to include a provision similar to the one from the 2014 Prior Rule requiring an institution to provide the Secretary with an explanation of why it has failed to comply with any of the reporting requirements. Because the Department would use the reported information to calculate the debt and earnings measures and the transparency disclosures, it is essential for the Secretary to have information about why an institution may not be able to report the information.

Some of the negotiators, particularly those representing postsecondary institutions, expressed unease that the proposed reporting may be burdensome. We understand these concerns, but we nonetheless believe that the benefits to students and to taxpayers derived from the reporting requirements under proposed subpart Q, which allow implementation of the proposed transparency and accountability frameworks, outweigh the costs associated with additional institutional burden. Institutions will also benefit from the reporting because the information would allow them to make targeted changes to improve their program offerings, and they would be able to promote their positive outcomes to potential students to assist in their recruiting efforts.

Most importantly, the Department believes these added reporting requirements will benefit students and taxpayers by providing new and more accurate information to make well-informed postsecondary choices. Multiple studies have shown that students and families are often making their postsecondary choices without sufficient information due to confusing and misleading financial aid offers.[104] The new reporting requirements will permit the Department to provide estimates of the net prices and total direct costs (tuition, fees, books, supplies, and equipment) and indirect costs students must pay to complete a program, and to tailor these estimates of yearly costs to students' financial background. Moreover, the data will allow estimates of the total amount students pay to acquire a degree, capturing variation in how long it takes for students to complete their degree. In some areas—including among graduate programs where borrowing levels have increased substantially in the last decade—this information will be the first systematic source of comparable data available for students and the general public to compare the costs and outcomes of different programs. This information should be beneficial to institutions as well, helping them to benchmark their tuition prices against similar programs at other institutions, and to keep their

[104] www.newamerica.org/education-policy/policy-papers/decoding-cost-college/; https://www.gao.gov/products/gao-23-104708.

prices better aligned with the financial value their programs deliver for students.

Severability (§ 668.409)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.409 to establish severability protections ensuring that if any program accountability or transparency provision is held invalid, the remaining program accountability and transparency provisions, as well as other subparts, would continue to apply. Proposed § 668.409 would operate in conjunction with the severability provision in proposed § 668.606, which is discussed below and any other applicable severability provision throughout the Department's regulations.

Reasons: Through the proposed regulations we intend to (1) Establish measures that would distinguish programs that provide quality, affordable education and training to their students from those programs that leave students with unaffordable levels of loan debt in relation to their earnings or provide no earnings benefit from those who did not pursue a postsecondary degree or credential; and (2) Establish reporting and disclosure requirements that would increase the transparency of student outcomes so that accurate and comparable information is provided to students, prospective students, and their families, to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential; the public, taxpayers, and the Government, to help them better safeguard the Federal investment in these programs; and institutions, to provide them meaningful information that they could use to improve student outcomes in these programs.

We believe that each of the proposed provisions serves one or more important, related, but distinct, purposes. Each of the requirements provides value, separate from and in addition to the value provided by the other requirements, to students, prospective students, and their families; to the public; taxpayers; the Government; and to institutions. To best serve these purposes, we would include this administrative provision in the regulations to establish and clarify that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of any one provision should not affect the remainder of the provisions. Furthermore, proposed § 668.409 would operate in conjunction with the severability provision in proposed § 668.606 regarding GE program accountability. For ease of reference, here we offer an illustrative discussion for both of those severability provisions.

For example, under proposed subpart Q of part 668, a program must meet both the D/E rate and the earnings premium metric in order to pass the financial value transparency metrics. Each metric represents a distinctive measure of program quality, as we have explained elsewhere in this NPRM. Thus, if the D/E rate or the earnings premium metric is held invalid, the metric that was not held invalid could alone serve to help people distinguish, in its own distinctive way, programs that tend to provide relatively high quality and/or affordable education and training to their students from those programs that do not. Accordingly, the proposed rule does not provide that a program can pass the metrics by meeting only one of either the D/E metric or the earnings premium metric. The two metrics are aimed at distinct values, and they can operate independently of each other, in the sense that if one of these metrics is held invalid, the other metric could stand alone to help people distinguish programs on grounds that are relevant to many observers, applicable law, and sound policy. Although the Department believes that implementing both metrics is lawful and preferable for financial value transparency and for GE program accountability, implementing one or the other would be administrable and superior to implementing neither.

As another example, proposed § 668.605 would require institutions to provide various warnings to their students when a GE program fails the D/E rates or the earnings premium metric. If any or all of the student warning provisions are held invalid, the remainder of the rule can operate to provide measurements of financial value transparency even if there is no requirement that students must be warned when a GE program fails one of the metrics. The Department would retain other methods of disseminating information about GE and eligible non-GE programs, albeit methods that might not be as effective for and readily available to the relevant decision makers. Similarly, if a particular form of student warning is held invalid, the other warnings would still operate on their own to achieve the benefits of effectively informing as many students as possible about a GE program's failing metrics.

In addition, the Department's ability to evaluate GE programs for title IV eligibility can operate compatibly with a wide range of options for disclosures, warnings, and acknowledgments about programs—and vice versa. Those information dissemination choices involve matters of degree that do not affect the operation of eligibility provisions. GE program eligibility can be determined without depending on one particular kind of information disclosure strategy, as long as the Department itself has the necessary information to make the eligibility determination. Likewise, a wide variety of valuable information can be disseminated in a variety of methods and formats for transparency purposes, regardless of how programs are evaluated for eligibility purposes.

Even if the invalidation of one part of the proposed rule would preclude the best and most effective regulation in the Department's considered view, the Department also believes that a wide range of financial value transparency options and GE program accountability options would be compatible with each other, justified on legal and policy grounds compared to loss of the entire rule, and could be implemented effectively by the Department. The same principle applies to the relationship of the provisions of subparts Q and S of part 668 to other subparts in this rule and throughout title 34 of the CFR, as reflected in the severability provision that will apply to all provisions in part 668 in July, 2023.[105]

Gainful employment (GE) scope and purpose (§ 668.601)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add subpart S, which would apply to educational programs that are required under the HEA to prepare students for gainful employment in a recognized occupation and would establish rules and procedures under which we would determine program eligibility. Proposed § 668.601 would establish this scope and purpose of the GE regulations in subpart S.

Reasons: The HEA requires some programs and institutions--generally all programs at proprietary institutions and most

[105] *See* 34 CFR 668.11 at 87 FR 65426, 65490 (Oct. 28, 2022).

non-degree programs at public or private nonprofit institutions--to prepare students for gainful employment in a recognized occupation in order to access the title IV, HEA Federal financial aid programs. For many years, however, the standards by which institutions could demonstrate compliance with those requirements were largely undefined. In 2010, the Department conducted a rulemaking and issued regulations that established such standards for GE programs, based in part on the debt that graduates incurred in attending the program, relative to the earnings they received after completion. Following a court challenge to the 2011 Prior Rule and further negotiated rulemaking, the Department reevaluated and modified its position and it issued updated regulations in 2014 that, in part, omitted the GE metric that a district court had found inadequately reasoned and included a debt-to-earnings standard for GE programs. When the data were first released in January 2017, over 800 programs, collectively enrolling hundreds of thousands of students, did not pass the revised GE standards.

In 2019, the Department rescinded the 2014 Prior Rule in favor of an alternate approach that relied upon providing more consumer information via the College Scorecard. As further explained in the discussion of proposed § 668.401, we continue to believe that providing students with clear and accurate measures of the financial value of all programs is critical. Based, however, on studies of the College Scorecard's impact on higher education choices, and an extensive body of research on how to make consumer information most impactful, we propose several improvements involving disclosures and warnings to students to ensure they have this information, especially when enrolling in a program might harm them financially.

For programs that are intended to prepare students for gainful employment in a recognized occupation, however, further steps beyond information provisions are necessary and appropriate. The proposed rule therefore defines the conditions under which a program prepares students for gainful employment in a recognized occupation, and accordingly determines eligibility for title IV, HEA program funds, based on the financial value metrics described in § 668.402.

The Department proposes additional scrutiny for these programs for several reasons. First, informational interventions have been shown to be effective in shifting postsecondary choices when designed well, but it is now reasonably clear that those interventions are insufficient to fully protect students from financial harm.[106] The impact of information alone tends to be especially limited among more vulnerable populations, including groups that

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[106] Baker, D., Cellini, S. Scott-Clayton, J, & Turner, L. (2021) Why information alone is not enough to improve higher education outcomes. Brookings Institution. Washington, DC.

disproportionately enroll in gainful employment programs.[107] Analyses in the RIA show that 17.7 percent of all borrowers, accounting for nearly 33,374 borrowers in recent cohorts, who are in low-earning or high-debt-burden GE programs are in default on their student loans three years after repayment entry (compared with 10.1 percent of students nationwide). Removing Federal aid eligibility for such programs is necessary to prevent low-financial-value programs from continuing to harm these students--and from enjoying taxpayer support.

Second, the mission of gainful employment programs is to further students' career success. If such a program inflicts financial harm on its students, it is less likely that the value of the program can be redeemed by its performance in helping students achieve nonfinancial goals. In any event, this career focus is consistent with the different statutory definition of eligibility for such programs and the purposes of the relevant requirements for Federal support in title IV, HEA. As with other title IV, HEA educational programs, GE students are generally required to already possess a high school diploma or its equivalent. But unlike other title IV provisions, the statute's GE provisions also require that participating

[107] Gurantz, O., Howell, J., Hurwitz, M., Larson, C., Pender, M. and White, B. (2021), A National-Level Informational Experiment to Promote Enrollment in Selective Colleges. J. Pol. Anal. Manage., 40: 453-479. doi.org/10.1002/pam.22262; Hurwitz, M. and Smith, J. (2018), Student Responsiveness to Earnings Data in the College Scorecard. Econ Inq, 56: 1220-1243. doi.org/10.1111/ecin.12530.

programs train students to *prepare* them for *gainful* employment in a *recognized occupation*.[108] Otherwise, taxpayer support is not authorized.

The relevant statutes thus indicate that GE programs are not meant to prepare postsecondary students for any job, irrespective of pay, debt burden, or qualifications. Instead, title IV's GE provisions indicate a purpose of Federal support for programs that actually train and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation. Moreover, the recognized occupations for which GE programs must train and "prepare" postsecondary students cannot fairly be considered "gainful" if typical program completers end up with more debt than they can repay absent additional Federal assistance. Likewise, the Department is convinced that programs cannot fairly be said to "prepare" postsecondary students for "gainful" employment in recognized occupations if program completers' earnings fall below those of students who never pursue postsecondary education in the first place. Put simply, the HEA itself calls for special attention to GE programs when it comes to program eligibility. The relevant statutes and policy considerations may differ for transparency purposes, but, for GE program eligibility purposes, the Department must maintain certain limits on

[108] 20 U.S.C. 1002(b)(1)(A), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)(A)(i), which refers to a recognized profession.

taxpayer support. We believe that, at minimum, it is permissible and reasonable for the Department to specify the eligibility standards for GE programs to include D/E rates and an earnings premium.

Third, an expanding body of academic research suggests that additional attention is appropriate for GE programs. Studies have documented persistent problems including poor labor market outcomes, high levels of borrowing, high rates of default, and low loan repayment rates. For example, research has found that some postsecondary certificates have very low or even negative labor market returns for their graduates.[109] This finding is echoed in the Department's Regulatory Impact Analysis, which shows that 23.1 percent of title IV, HEA enrollment in undergraduate certificate programs was in programs where the median earnings among graduates was less than that for high school graduates of a similar age. Studies have reported that students in programs at for-profit institutions, in particular, see much lower employment and earnings gains than students in programs at non-profit institutions, which is also shown in the Department's analysis.[110] Moreover,

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[109] Clive Belfield and Thomas Bailey, "The Labor Market Returns to Sub-Baccalaureate College: A Review," March 2017. Ccrc.tc.columbia.edu/media/k2/attachments/labor-market-returns-sub-baccalaureate-college-review.pdf.

[110] Stephanie Cellini and Nick Turner, "Gainfully Employed?: Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data," Journal of Human Resources (2019, vol. 54, issue 2). Econpapers.repec.org/article/uwpjhriss/v_3a54_3ay_3a2019_3ai_3a2_3ap_3a342-370.htm· Cellini, S.R. and Koedel, C. (2017), The Case for Limiting

multiple studies have concluded that, accounting for differences in student characteristics, borrower outcomes like repayment rates and the likelihood of default are worse in the proprietary sector.[111,112] Finally, research indicates that Federal accountability efforts that deny Title IV, HEA eligibility to low-performing institutions can be effective in driving improved student outcomes, particularly for students who attend (or would have attended) for-profit colleges.[113,114]

We recognize that, since the prior rulemaking efforts in 2010, 2014, and 2019, some institutions have made positive changes to their GE programs, and some with many poor performing programs closed. Nonetheless, the data highlighted in the RIA demonstrate that more improvement in the sector is needed: for example, in the most recent data

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Federal Student Aid to For-Profit Colleges. J. Pol. Anal. Manage., 36: 934-942. https://doi.org/10.1002/pam.22008· Deming, D., Yuchtman, N., Abulafi, A., Goldin, C. & Katz, L. (2016). The Value of Postsecondary Credentials in the Labor Market: An Experimental Study. American Economic Review, 106 (3): 778-806. Armona, L., Chakrabarti, R., Lovenheim, M. (2022). Student Debt and Default: The Role of For-Profit Colleges. Journal of Financial Economics. 144(1) 67-92. Liu, V. Y. T., & Belfield, C. (2020). The Labor Market Returns to For-Profit Higher Education: Evidence for Transfer Students. Community College Review, 48(2), 133–155. doi.org/10.1177/0091552119886659.

[111] David Deming, Claudia Goldin, and Lawrence Katz, "The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?", *Journal of Economic Perspectives* (Volume 26, Number 1, Winter 2012). www.aeaweb.org/articles?id=10.1257/jep.26.1.139.

[112] Judith Scott-Clayton, "What Accounts For Gaps in Student Loan Default, and What Happens After", *Evidence Speaks Reports* (Volume 2, Number 57, June 2018). www.brookings.edu/research/what-accounts-for-gaps-in-student-loan-default-and-what-happens-after/.

[113] Stephanie Cellini, Rajeev Darolia, and Leslie Turner, "Where Do Students Go When For-Profit Colleges Lose Federal Aid?", *American Economic Journal: Economic Policy* (Volume 12, Number 2, May 2020). www.aeaweb.org/articles?id=10.1257/pol.20180265.

[114] Christopher Lau, "Are Federal Student Loan Accountability Regulations Effective?", *Economics of Education Review* (Volume 75, April 2020). www.sciencedirect.com/science/article/pii/S0272775719303796?via%3Dihub.

available (covering graduates in award years 2016 and 2017), nearly one fourth of all federally supported students enrolled in GE programs are in programs that fail either the D/E or EP metrics. Establishing accountability provisions will both prevent students from enrolling in programs where poor financial outcomes are the norm and would deter future bad actors seeking to create new programs that poorly serve students to capture Federal student aid revenue.

Gainful employment criteria (§ 668.602)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to establish a framework to determine whether a GE program is preparing students for gainful employment in a recognized occupation and thus may access title IV, HEA funds based upon its debt-to-earnings and earnings premium outcomes. Within this framework, we would consider a program to provide training that prepares students for gainful employment in a recognized occupation if the program: (1) Does not lead to high debt-burden outcomes under the D/E rates measure; (2) Does not lead to low-earnings outcomes under the earnings premium measure; and (3) Is certified by the institution as included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency in lieu of accreditation.

A GE program would, in part, demonstrate that it prepares students for gainful employment in a recognized occupation through passing D/E rates. The program would be ineligible if it fails the D/E rates measure in two out of any three consecutive award years for which the program’s D/E rates are calculated. If it is not possible to calculate or issue D/E rates for a program for an award year, the program would receive no D/E rates for that award year and would remain in the same status under the D/E rates measure as the previous award year. For example, if a program failed the D/E rates measure in year 1, did not receive rates in year 2, passed the D/E rates measure in year 3, and failed the D/E rates measure in year 4, that program would be ineligible after year 4 because it failed the D/E rates measure in two out of three consecutive years for which D/E rates were calculated. This approach would avoid simply allowing a program to pass the D/E rates or earnings threshold premium measure when an insufficient number of students complete the program. For situations where it is not possible to calculate D/E rates for the program for four or more consecutive award years, the Secretary would disregard the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

A GE program also would, in part, demonstrate that it prepares students for gainful employment in a recognized occupation through passing the earnings premium measure. The program would be ineligible if it fails the earnings premium measure in two out of any three consecutive award years for which the program’s earnings premium is calculated. If it is not possible to calculate or publish the earnings premium measure results for a program for an award year, the program would receive no result under the earnings threshold measure for that award year and would remain in the same status under the earnings threshold measure as the previous award year. For situations where it is not possible to calculate the earnings premium measure for the program for four or more consecutive award years, the Secretary would disregard the program's earnings premium for any award year prior to the four-year period in determining the program's eligibility.

The D/E rates and earnings premium measures capture different dimensions of program performance, and function independently in determining continued eligibility for Title IV student aid programs. For a program to be considered to provide training that prepares students for gainful employment in a recognized occupation, it must neither be deemed a high-debt-burden program in two of three consecutive years in which rates are published, nor be deemed a low-earnings program in two of three consecutive years in which rates are published.

Reasons: The financial value transparency and GE program accountability framework would both rely upon the same metrics that are described in proposed § 668.402. This framework would include two debt-to-earnings measures very similar to those used in the 2014 Prior Rule to assess the debt burden incurred by students who completed a GE program in relation to their earnings. This assessment would in part allow the Department to determine, consistent with the statute, whether a program is preparing students for gainful employment in a recognized occupation.

Under the proposed regulations, the first D/E rate is the *discretionary income rate*, which would measure the proportion of annual discretionary income—that is, the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States—that students who complete the program are devoting to annual debt payments. The second rate is the *annual earnings rate*, which would measure the proportion of annual earnings that students who complete the program are devoting to annual debt payments. A program would pass the D/E rates measure by meeting the standards of either of the two metrics (the discretionary D/E rate or the annual D/E rate) as discussed in more detail under proposed § 668.402. As we have discussed elsewhere in this NPRM, the Department cannot reasonably conclude that a program meets the statutory obligation to prepare students for gainful employment in a recognized occupation if the program leads to unacceptable debt outcomes by failing both of the D/E rates two out of three consecutive years in which the program is measured.

While D/E rates would help identify GE programs that burden students who complete the programs with unsustainable debt, the D/E rates calculation does not, on its own, adequately capture poorly performing GE programs with low costs, or in which few or no students borrow. Such programs may not necessarily encumber completers with large debt loads, but the programs may nonetheless fail to yield sufficient employment outcomes to justify Federal investment in the program. Even small debt loads can be unsustainable for some borrowers, as demonstrated by the estimated default rates among programs that would pass the D/E rates metric but would fail the earnings premium metric. Again and as discussed elsewhere in this NPRM, the Department has concluded that a GE program does not prepare students for gainful employment if the median earnings of the program’s completers (that is, more than half of students completing the program) do not exceed the typical earnings of those who only completed the equivalent of a secondary school education.

The addition of the earnings premium metric to the D/E accountability framework of the 2014 Prior Rule is motivated by several considerations.[115] First, there is increasing concern among the public that some higher education programs are not "worth it" and do not promote economic mobility. While the D/E measure identifies programs where debt is high relative to earnings, students and families use their time and their own money in addition to the amount they borrow to finance their studies. Several recent studies (referenced in the RIA) support adding an earnings premium metric to help ensure that students benefit financially from their career training studies.[116] We also note in the RIA that programs with very low earnings, but low enough debt levels that they pass the D/E metric, nonetheless have very high default rates. In that sense, the earnings premium measure provides some added protection to borrowers with relatively low balances, but earnings so low that even low levels of debt payments

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[115] For further discussion of the earnings premium metric and the Department's reasons for proposing it, see above at [TK – preamble general introduction, legal authority], at [TK - transparency, around p.150], and at [TK – method for calculating metrics, around p.180]. The discussion here concentrates on GE program eligibility.

[116] See for example Jordan D. Matsudaira and Lesley J. Turner. "Towards a framework for accountability for federal financial assistance programs in postsecondary education." The Brookings Institution. (2020) www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf; Stephanie R. Cellini and Kathryn J. Blanchard, "Using a High School Earnings Benchmark to Measure College Student Success Implications for Accountability and Equity." The Postsecondary Equity and Economics Research Project. (2022). www.peerresearchproject.org/peer/research/body/2022.3.3-PEER_HSEarnings-Updated.pdf; and Michael Itzkowitz. "Price to Earnings Premium: A New Way of Measuring Return on Investment in Higher Education." Third Way. (2020). https://www.thirdway.org/report/price-to-earnings-premium-a-new-way-of-measuring-return-on-investment-in-higher-ed.

are unaffordable. While the earnings premium provides additional protection to borrowers, it measures a distinct dimension of program performance—i.e., the extent to which the program helps students attain a minimally acceptable level of earnings—from the D/E metrics.

The earnings premium measure would address this issue by requiring the Department to determine whether the median annual earnings of the completers of a GE program exceeds the median earnings of students with at most a high school diploma or GED. Accordingly, the earnings premium measure would supplement the D/E rates measure by identifying programs that may pass the D/E rates measure because loan balances of completers are low but nonetheless do not provide students or taxpayers a return on the investment in career training.

The Department proposes tying ineligibility to the second failure in any three consecutive award years of either the debt-to-earnings rates or the earnings premium measure because it prevents against one aberrantly low performance year resulting in the loss of title IV, HEA program fund eligibility. Additionally, we chose not to use a longer time horizon to avoid a scenario in which a prior result is no longer reflective of current performance of a program. A longer time horizon would also allow poorly performing programs to continue harming students and the integrity of the title IV, HEA programs.

As under the 2014 Prior Rule, the Department proposes a third component to ensure that GE programs meet the statutory requirement of providing training that prepares students for gainful employment in a recognized occupation: that the program meets applicable accreditation or State authorizing agency standards for the approval of postsecondary vocational education. These accrediting agency and State requirements are often gatekeeping conditions that a student must meet if they want to work in the occupation for which they are being prepared. For instance, many health care professions require completion of an approved program before a student can register to take a licensing examination. The Department cannot reasonably conclude that a program meets the statutory obligation to prepare graduates for gainful employment in a recognized occupation if the program lacks the necessary approvals needed for a student to have a possibility to work in that occupation,

Ineligible gainful employment programs (§ 668.603)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.603 to define the process by which a failing GE program would lose title IV, HEA eligibility. If the Department determines that a GE program leads to unacceptable debt or earnings outcomes, as calculated in proposed § 668.402 for the length of time specified in § 668.602, the GE program would become ineligible for title IV, HEA aid. The ineligible GE program's participation in the title IV, HEA programs would end upon the institution notifying the Department that it has stopped offering the program; issuance of a new Eligibility and Certification Approval Report (ECAR) that does not include that program; the completion of a termination action of program eligibility under subpart G of part 668; or a revocation of program eligibility if the institution is provisionally certified. If the Department initiates a termination action against an ineligible GE program, the institution could appeal that action, with the hearing official limited to determining solely whether the Department erred in the calculation of the program's D/E rates or earnings premium measure. The hearing official could not reconsider the program's ineligibility on any other basis.

Though not discussed in this section, we also propose in § 668.171 to add a new mandatory financial responsibility trigger that would require an institution to provide financial protection if 50 percent of its title IV, HEA funds went to students enrolled in programs that are deemed failing under the metrics described in proposed § 668.602.

Proposed § 668.603 would also establish a minimum period of ineligibility for GE programs that lose eligibility by failing the D/E rates or the earning premium measure in two out of three years, and for GE programs at risk of a loss of eligibility that an institution voluntarily discontinues. As under the 2014 Prior Rule, an institution could not seek to reestablish the eligibility of a GE program that lost eligibility until three years following the date the program lost eligibility under proposed § 668.603. Similarly, an institution could not seek to reestablish eligibility for a failing GE program that the institution voluntarily discontinued, or to establish eligibility for a substantially similar program with the same 4-digit CIP prefix and credential level, until three years following the date the institution discontinued the failing program. Following this period of ineligibility, such a program would remain ineligible until the institution establishes the eligibility of that program through the process described in proposed § 668.604(c).

Reasons: For troubled GE programs that do not improve, the eventual loss of eligibility protects students by preventing them from incurring debt or using up their limited grant eligibility to enroll in programs that have consistently produced poor debt or earnings outcomes. Codifying in the regulations when and how the Department will end an ineligible GE program's participation in the title IV, HEA programs would provide additional clarity and transparency to institutions and the public as to the Department's administrative procedures.

The paths to ineligibility listed in § 668.603(a) represent the main ways that an academic program ceases participating in the title IV, HEA programs. Institutions can and of course do regularly cease offering programs, but do not always formally notify the Department when that occurs. The list of programs on an institution's ECAR serves as the main repository that tracks which eligible programs an institution offers, so removing a program from that document clearly establishes that it is no longer eligible for aid. In cases where an institution is provisionally certified the process for removing programs is more streamlined, as a provisional status indicates the Department has concerns about the institution's administration of the title IV, HEA programs. Finally, if none of these other events occur, the Department would initiate an action under part 668, subpart G, the section of the Department's regulations that governs the process for a limitation, suspension, or termination action. Given that a program becoming ineligible for title IV, HEA aid is a form of limitation, the Department believes that subpart G is the appropriate procedure to follow.

As further described under the Financial Responsibility section of this proposed rule, the Department is also proposing to add a new mandatory trigger in § 668.171 that would require the institution to provide financial protection to the Department if 50 percent of its title IV, HEA volume went to students enrolled in failing GE programs. This would ensure that taxpayers are protected while any ineligibility process continues in the instances in which the majority of an institution's aid dollars become ineligible in the next academic year, which could be substantially destabilizing. In addition, the 50 percent threshold would protect institutions from the requirement to provide financial protection to the Department in instances where only programs with very small title IV, HEA volume are at risk of aid ineligibility through failing the GE metrics.

Proposed § 668.603(b) would also clearly define the process and circumstances under which an institution could appeal a program eligibility termination action taken against an ineligible GE program. Specifically, the proposed regulations would allow appeals only on the basis that the Department erred in its calculation of the program's D/E rates or earnings threshold measure. As further discussed under proposed § 668.405, this is a change from the 2014 Prior Rule, which provided more options for institutions to submit challenges and appeals during the process of establishing final GE program rates. However, these options added significant burden and complexity for institutions, including an alternative earnings appeal process that was partially invalidated in Federal litigation.[117] As a result, the Department attempted to make case-by-case judgments about when reported earnings data should be replaced with data submitted by an institution. The prior appeals process ultimately resulted in delayed accountability for institutions and diminished protections for students and the public. Limiting appeals to errors of calculation would simplify the process and reduce administrative burden on the Department and institutions alike by focusing squarely on the circumstances most likely to support a prevailing appeal.

Several additional considerations inform our decision to not include a process for appealing the earnings data for programs.[118] First, new research is now available. A 2022 study concluded that the alternate earnings appeals submitted to the Department claimed to show earnings that were implausibly high--on average, 73 percent higher than Social Security Administration (SSA) earnings data under the 2014 Prior Rule, and 82 percent higher for cosmetology programs. The study proceeded to report that the underreporting of tipped income for cosmetologists and hairdressers, based on estimates from IRS data, is likely

[117] Am. Ass'n of Cosmetology Schs. v. DeVos, 258 F. Supp. 3d 50, 76-77 (D.D.C. 2017).

[118] For further discussion of unreported income, see above at [TK].

just 8 percent of SSA earnings.[119] Again, the Department's goal is a reasonable assessment of available evidence and not overreliance on any one source. That said, numbers such as those above give us serious pause, combined with other considerations.

Those other considerations include the Department's observations of the information provided in the earlier alternate earnings appeals process, which likewise suggest that the appeals had little value in improving the assessment of whether programs' "true" debt-to-earnings (or earnings) levels met the GE criteria. We agree that the earnings reported in appeals submitted by institutions seem implausibly high. And although there might be more than one possible explanation for those results, such as the sequence in which appeals were processed, the uncertainties that surround such appeals present another reason against reinstituting them now. There was no simple or easily identifiable test for evaluating appeals, and therefore there is no easy way to evaluate the results in hindsight. In addition, institutions had incentives to collect and show data that cast their programs in the best light within the administrative proceedings, whatever the applicable

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[119] The study is Stephanie Riegg Cellini and Kathryn J. Blanchard, "Hair and taxes: Cosmetology programs, accountability policy, and the problem of underreported income," Geo. Wash. Univ. (Jan. 2022), www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf. PEER_HairTaxes-Final.pdf (peerresearchproject.org). Note that tips included on credit card payments to a business are more likely to be reported, and it is reasonable to expect that many workers are complying with the law to include tips in their reported income.

standard for reviewing appeals. Those structural complications seem difficult to resolve.

Moreover, offering those appeals certainly entailed costs for the Department and for others. The 341 appeals that were filed required substantial Department staff time to process. That administrative cost concern alone would not necessarily warrant a negative evaluation of an appeals process that had substantial and demonstrable value. However, given difficulties institutions experienced in obtaining and compiling earnings data, along with frequent issues involving statistical accuracy and student privacy due to small sample sizes, the Department has concluded that any evidentiary value afforded by the earnings appeals were more than outweighed by the administrative burden and costs incurred by both institutions and the Department.

As well, we have reason to question the value of appeals to many potentially interested parties. The difference between the 882 programs for which institutions submitted notices of intent to appeal when compared to the 341 appeals that were actually submitted suggests that institutions may often have concluded that the alternative earnings appeal process did not warrant the necessary investment of time and effort--or perhaps the initially supposed difference in graduates' earnings was not as significant as anticipated. And in rescinding the 2014 GE Prior Rule in 2019, the Department's reasoning focused on a deregulatory policy choice based on circumstances at that time rather than the desirability of appeals. In its brief discussion of unreported income in response to comments, the Department did not ascribe any value to the alternate earnings appeals process in addressing unreported income.[120] In addition to the unreliability of the earnings appeals that were previously submitted, as further discussed in our analysis of proposed § 668.405 above, we note again that IRS earnings are used in multiple ways within the Department's administration of the Federal student aid programs. Those uses include establishing student aid eligibility for grants and loans, and setting loan payment amounts when students enroll in income-driven loan repayment plans. We believe it is reasonable for us to use the same source for average program earnings for the metrics that we propose here.

We do propose a narrower and more objective form of appeal, however. As noted above, under this proposed rule an institution could only appeal a termination action if the Department erred in calculating a GE program's D/E rates or earnings premium. The appeal of the termination action would not include the underlying students included in the measures because institutions would already have an opportunity to correct the completer list they submit to the Department as described under proposed § 668.405(b).

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[120] 84 Fed. Reg. 31392, 31409–10 (2019).

The proposed regulations would also establish a three-year waiting period before an ineligible or voluntarily discontinued program could regain eligibility. This waiting period is intended to protect the interests of students, taxpayers, and the public by ensuring that institutions with failing or ineligible GE programs take meaningful corrective actions to improve program outcomes before seeking Federal support for duplicate or substantially similar programs using the same four-digit CIP prefix and credential level.

The Department selected a three-year period of ineligibility because it most closely aligns with the ineligibility period associated with failing the Cohort Default Rate, which is the Department's longstanding primary outcomes-based accountability metric. Under those requirements, an institution that becomes ineligible for title IV, HEA support due to high default rates cannot reapply for approximately three award years.

<u>Certification requirements for GE programs (§ 668.604)</u>

<u>Statute</u>: See Authority for This Regulatory Action.

<u>Current Regulations</u>: None.

<u>Proposed Regulations</u>: We propose to add a new § 668.604 to require transitional certifications for existing GE programs, as well as certifications when seeking recertification or the approval of a new or modified GE program. An institution would certify that each eligible

GE program it offers is approved, or is otherwise included in the institution’s accreditation, by its recognized accrediting agency. Alternatively, if the institution is a public postsecondary vocational institution, it could certify that the GE program is approved by a recognized State agency for the approval of public postsecondary vocational education, in lieu of accreditation. Either certification would require the signature of an authorized representative of the institution and, for a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution.

For each of its currently eligible GE programs, an institution would need to provide a transitional certification no later than December 31 of the year in which this regulation takes effect, as an addendum to the institution’s PPA with the Department. Failure to complete the transitional certification would result in discontinued participation in the Title IV, HEA programs for the institution’s GE programs. Institutions would also be required to provide this certification when seeking recertification of eligibility for the title IV, HEA programs, and the Department would not recertify the GE program if the institution fails to provide the certification. A transitional GE certification would not be required if an institution makes a GE certification in a new PPA through the recertification process between July 1 and December 31 of the year in which this regulation takes effect. An institution must update its GE certification within 10 days if there are any changes in the approvals for a GE program, or other changes that make an existing certification no longer accurate, or risk discontinuation of title IV, HEA participation for that GE program.

To establish eligibility for a GE program, the institution would be required to update the list of its eligible programs maintained by the Department to add that program. An institution may not update its list of eligible programs to include a GE program that was subject to a three-year loss of eligibility under § 668.603(c) until that three-year period expires. In addition, an institution may not update its list of eligible programs to add a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or that became ineligible because of a failure to satisfy the required D/E rates, earnings premium measure, or both.

Reasons: Through these certification requirements, institutions would be required to assess their programs to determine whether they meet these minimum standards. The Department cannot reasonably consider that a program meets the statutory obligation to prepare graduates for gainful employment in a recognized occupation if the program cannot meet the basic certification and licensure requirements for that occupation. We believe that any student attending a program that does not meet all applicable accreditation and State or Federal licensing requirements would experience difficulty or be unable to secure employment in the occupation for which he or she received training and, consequently, would likely struggle to repay the debt incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes by requiring the institution to proactively assess whether its programs meet those requirements and to affirm to the Department when seeking eligibility that the programs meet those standards. The certification requirements are therefore an appropriate condition that programs must meet to qualify for title IV, HEA program funds, as they address the concerns about employability outcomes underlying the gainful employment eligibility provisions of the HEA.

As we have proposed in changes to § 668.14, these certifications must be signed by an authorized representative of the institution and, for a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution. Because of these signature requirements, an institution would have to carefully assess whether each offered GE program meets the necessary requirements, and we expect that institutions would make this self-assessment in good faith and after appropriate due diligence.

In addition, these certification requirements would help make certain that the Department has an accurate list of all GE programs offered by an institution, and that the list is regularly updated as the institution adds or subtracts programs. This accurate listing of programs will in turn ensure that the institution and the Department can provide required disclosures and warnings to students in a timely and effective manner.

The certification requirements would also ensure that an institution cannot add a program that would be ineligible under the conditions in proposed § 668.603.

Warnings and acknowledgments (§ 668.605)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.605 to require notifications to current and prospective students who are enrolled in, or considering enrolling in, a GE program if that program could lose title IV, HEA eligibility based on its next published D/E rates or earnings premium; to specify the content and delivery requirements of such notifications; and to require students to acknowledge seeing the notifications when applicable before receiving Title IV aid. An institution would be required to provide a warning to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates or earnings premium measure for the next award year for which those metrics are calculated. The warning would be the only substantive content contained in these written communications. The proposed warning for prospective and current students would include a warning, as specified in a notice published in the *Federal Register*, that the program has not passed standards established by the U.S. Department of Education based on the amounts students borrow for enrollment in the program and their reported earnings; the relevant information to access a disclosure website maintained by the Department; and that the program could lose access to title IV, HEA funds in the subsequent award year. The warning would also include a statement that the student must acknowledge having seen the warning through the disclosure website before the institution may disburse any title IV, HEA funds. In addition, warnings provided to students enrolled in GE programs would include (1) A description of the academic and financial options available to continue their education in another program at the institution in the event that the program loses title IV, HEA eligibility, including whether the students could transfer academic credit earned in the program to another program at the institution and which course credit would transfer; (2) An indication of whether, in the event of a loss of eligibility, the institution will continue to provide instruction in the program to allow students to complete the program; (3) An indication of whether, in the event of a loss of eligibility, the institution will refund the tuition, fees, and other required charges paid to the institution for enrollment in the program; and (4) An explanation of whether, in the event that the program loses eligibility, the students could transfer credits earned in the program to another institution through an established articulation agreement or teach-out.

In addition to providing the English-language warnings, the institution would be required to provide accurate translations of the English-language warning into the primary languages of current and prospective students with limited English proficiency.[121] The delivery timeframe and procedure for required warnings would depend upon whether the intended recipient is a current or prospective student. For current students, an institution would be required to provide the warning in writing to each student enrolled in the program no later than 30 days after the date of the Department's notice of determination, and to

[121] Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. It requires that recipients of Federal funding take reasonable steps to provide meaningful access to their programs or activities to individuals with limited English proficiency (LEP), which may include the provision of translated documents to people with LEP.

maintain documentation of its efforts to provide that warning. For prospective students, under proposed § 668.605, an institution must provide the warning to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or third party by one of the following methods: (1) Hand-delivering the warning and the relevant information to access the disclosure website as a separate document to the prospective student or third party individually, or as part of a group presentation; (2) Sending the warning and the relevant information to access the disclosure website to the primary email address used by the institution for communicating with the prospective student or third party about the program, with the stipulation that the warning is the only substantive content in the email and that the warning must be sent by a different method of delivery if the institution receives a response that the email could not be delivered; or (3) Providing the warning and the relevant information to access the disclosure website orally to the student or third party if the contact is by telephone. In addition, an institution could not enroll, register, or enter into a financial commitment with the prospective student sooner than three business days after the institution distributes the warning to the student. An institution could not disburse title IV, HEA funds to a prospective student enrolling in a program requiring a warning under this section until the student provides the acknowledgment described in this section. We also specify that the provision of a student warning or the student's acknowledgment would not otherwise mitigate the institution's responsibility to provide accurate information to students, nor would it be considered as evidence against a student's claim if the student applies for a loan discharge under the borrower defense to repayment regulations at 34 CFR part 685, subpart D.

Reasons: In proposed § 668.605, we set forth warning and acknowledgment requirements that would apply to institutions based on the results of their GE programs under the metrics described in § 668.402. A program that fails the D/E rates or earnings premium measure is at elevated risk of losing access to the title IV, HEA programs. Providing timely and effective warnings to students considering or enrolled in such programs is especially critical in allowing students to make informed choices about whether to enroll or continue in a program for which expected financial assistance may become unavailable.

In the 2019 Prior Rule rescinding the GE regulation, the Department stated that it believed that updating the College Scorecard would be sufficient to achieve the goals of providing comparable information on all institutions to students and families as well as the public. While we continue to believe that the College Scorecard is an important resource for students, families, and the public, we do not think it is sufficient for ensuring that students are fully aware of the outcomes of the programs they are considering before they receive title IV, HEA funds to attend them. One consideration is that the number of unique visitors to the College Scorecard is far below that of the number of students who enroll in postsecondary education in a given year. In fiscal year 2022, we recorded just over 2 million visits overall to the College Scorecard. This figure includes anyone who visited, regardless of whether they or a family member were enrolling in postsecondary education. By contrast, more than 16 million students enroll in postsecondary education annually, in addition to the number of family members and college access professionals who may also be assisting many of these individuals with their college selection process. Second, as noted in the discussion of proposed § 668.401 and in the RIA, research has shown that information alone is insufficient to influence students' enrollment decision. For example, one study found that College Scorecard data on cost and graduation rates did not impact the number of schools to which students sent SAT scores.[122] The authors

[122] Hurwitz, M. and Smith, J. (2018) Student Responsiveness to Earnings Data in the College Scorecard. Economic Inquiry, Vo. 56, Issue 2. https://doi.org/10.1111/ecin.12530.

found that a 10 percent increase in reported earnings increased the number of scores students sent to the school by 2.4 percent, though the impact was almost entirely among well-resourced high schools and students. Third, the Scorecard is intentionally not targeted to a specific individual because it is meant to provide comprehensive information to anyone searching for a postsecondary education. By contrast, a warning or disclosure would be a more personalized delivery of information to a student because it would be based on the programs that they are enrolled in or actively considering enrolling in. Making it a required disclosure would also ensure that students see the information, which may or may not otherwise occur with the College Scorecard. Finally, we think the College Scorecard alone is insufficient to encourage improvements to programs solely through the flow of information, in contrast to the 2019 Prior Rule. Posting the information on the Scorecard in no way guarantees that an institution would even be aware of the outcomes of their programs, and institutions have no formal role in acknowledging their outcomes. By contrast, with these proposed regulations institutions would be fully informed of the outcomes of all their programs and would also know which programs would be associated with warnings and which ones would not. The Department thus anticipates that these warnings would better achieve the goals of both getting information to students and encouraging improvement than did the approach outlined in the 2019 regulations. As further discussed in the Background section of this proposed rule, we believe that the approach taken with the 2019 Prior Rule does not adequately protect students from low-performing GE programs and that additional protections are needed to safeguard the interests of students and the public.

Under the proposed regulations, as under the 2014 Prior Rule the Department would publish the text that institutions would use for the student warning in a notice in the *Federal Register* to standardize the warning and ensure that the necessary information is adequately conveyed to students. The warning would alert both prospective and enrolled students that the program has not met standards established by the Department based on the amounts students borrow for enrollment in the program and their reported earnings and would also disclose that the program may lose eligibility for title IV, HEA program funds and would explain the implications of ineligibility. In addition, the warning would indicate the options that would be available to continue their education at the institution or at another institution, if the program loses its title IV, HEA program eligibility.

Requiring that the warning be provided directly to a student, and that the student acknowledge having seen the warning, is intended to ensure that students receive and have the ability to act based on the information. Moreover, similar to the 2014 Prior Rule, requiring at least three days to have passed before the institution could enroll a prospective student would provide a "cooling-off period" for the student to consider the information contained in the warning without immediate and direct pressure from the institution, and would also provide the student with time to consider alternatives to the program either at the same institution or at another institution. To ensure that current and prospective students can make enrollment decisions based upon timely and accurate information, the Department would require institutions otherwise obligated to provide a warning to provide a new warning if a student seeks to enroll more than 12 months after a previous warning was provided in a program that still remains at risk for a loss of eligibility. This 12-month window is longer than the 30-day window provided in the 2014 Prior Rule to reduce administrative burden for institutions while still providing subsequent warning for students after a sufficient time has elapsed. Providing the warnings on an annual basis also increases the likelihood that the warnings would include updated data and limit the chances of providing the exact same data a second time.

Severability (§ 668.606)

Statute: See Authority for This Regulatory Action.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.606 to establish severability protections ensuring that if any GE provision is held invalid, the remaining GE provisions, as well as other subparts, would continue to apply.

Reasons: Through the proposed regulations we intend to: (1) Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation; and (2) Establish a process that would allow the Department to assess and determine the eligibility of GE programs, based in part on the program accountability provisions in proposed subpart Q.

We believe that each of the proposed provisions serves one or more important, related, but distinct, purposes. Each of the requirements provides value, separate from and in addition to the value provided by the other requirements, to students, prospective students, and their families; to the public; taxpayers; the Government; and to institutions. To best serve these purposes, we would include this administrative provision in the regulations to establish and clarify that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of any one provision should not affect the remainder of the provisions.

Please see the discussion of Severability in § 668.409 of this preamble for additional details about how the proposed provisions operate independently of each other for purposes of severability.

Date, extent, duration, and consequence of eligibility (§ 600.10(c)(1)(v))

Statute: See Authority for This Regulatory Action.

Current Regulations: Current § 600.10(c)(1) requires an institution to provide notice to the Department when expanding its participation in the title IV, HEA programs by adding new educational programs and identifies when an institution must first obtain approval for a new educational program before disbursing title IV, HEA program funds to students enrolled in the program.

Proposed Regulations: We propose to add a new § 600.10(c)(1)(v) to require an institution to provide notice to the Department when establishing or reestablishing the eligibility of a GE program if the institution is subject to any of the restrictions at proposed § 668.603 for failing GE programs. The institution would provide this notice by updating its application to participate in the title IV, HEA programs, as set forth in § 600.21(a)(11).

Reasons: Programs that lose eligibility under proposed subpart S would be subject to the restrictions in proposed § 668.603, namely that an institution may not disburse title IV, HEA program funds to students enrolled in the ineligible program, nor may it seek to reestablish the eligibility of that program until the requisite period of ineligibility has elapsed. Proper enforcement of this provision necessitates conforming changes to § 600.10(c) to require that the Department be informed of when an institution subject to the aforementioned restrictions intends to stand up a GE program either for the first time or following a period of ineligibility.

Updating application information (§ 600.21(a)(11))

Statute: See Authority for This Regulatory Action.

Current Regulations: Current § 600.21(a)(11) requires an institution to report to the Department within 10 days certain changes to the institution's GE programs, including to a program's name or CIP code.

Proposed Regulations: We propose to amend § 600.21(a)(11)(v) to require an institution to report, in addition to the items currently listed, changes to a GE program's credential level. In addition, we propose to add paragraph (a)(11)(vi) to require an institution to report any changes to the GE certification status of a GE program under § 668.604.

Reasons: Current § 600.21 requires institutions to update the Department regarding various changes affecting both institutional and program eligibility. We believe this to be the most effective mechanism for institutions to report information regarding GE programs that is critical for the

Department to conduct proper monitoring and oversight of those programs. Accordingly, we are proposing conforming changes to § 600.21, which would require institutions to report for any GE program, in addition to the items currently listed, any changes to the program's credential level or certification status pursuant to proposed § 668.604. The Department would require institutions to report changes to a GE program's credential level because different credential levels would be considered distinct programs leading to different employment, earnings, and debt outcomes. We would require institutions to report changes in a GE program's certification status because the program becomes ineligible if it ceases to be included in the scope of an institution's accreditation.

<u>General definitions (§ 668.2)</u>

<u>Statute</u>: See Authority for This Regulatory Action.

<u>Current Regulations</u>: The current regulations at § 668.2 define key terminology used throughout the student assistance general provisions in this part.

<u>Proposed Regulations</u>: We propose to add new definitions to explain key terminology used in the financial value transparency provisions in proposed subpart Q and the GE program accountability provisions in proposed subpart S. These definitions would be as follows:

- *Annual debt-to-earnings rate*. The ratio of a program's typical annual loan payment amount to the median annual earnings of the students who recently completed the program. This measurement would be expressed as a percentage, and the Department would calculate it under the provisions of proposed § 668.403.

- *Classification of instructional program (CIP) code*. A taxonomy of instructional program classifications and descriptions developed by the Department's National Center for Education Statistics (NCES). Specific educational programs are classified using a six-digit CIP code.

- *Cohort period*. The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate D/E rates and the earnings threshold measure. The Department proposes to use a two-year cohort period to calculate the D/E rates and earnings threshold measure for a program when the number of students in the two-year cohort period is 30 or more. We would use a four-year cohort period to calculate the D/E rates and earnings thresholds measure when the number of students completing the program in the two-year cohort period is fewer than 30 but the number of students completing the program in the four-year cohort period is 30 or more. A two-year cohort period would consist of the third and fourth award years prior to the year for which the most recent data are available at the time of calculation. For example, given current data production schedules, the D/E rates and earnings premium measure calculated to assess financial value starting in award year 2024-2025 would be calculated in late 2024 or early in 2025. For most programs, the two-year cohort period for these metrics would be award years 2017-2018 and 2018-2019, and earnings data would be measured in calendar years 2021 and 2022. A four-year cohort period would consist of the third, fourth, fifth, and sixth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, for the D/E rates and the earnings threshold measure calculated to assess financial value starting in award year 2024-2025, the four-year cohort period would be award years 2015-2016, 2016-2017, 2017-2018, and 2018-2019; and earnings data would be measured using data from calendar years 2019 through 2022. The cohort period would be calculated differently for programs whose students are required to complete a medical or dental internship or residency. For this purpose, a required medical or dental internship or residency would be a supervised training program that (A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science; (B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and (C) Must be completed before the student may be licensed by a State and board certified for professional practice or service. The two-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth and seventh award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, D/E rates and the earnings threshold measure calculated for award year 2025-2026 would be calculated in 2024; and the two-year cohort period is award years 2014-2015 and 2015-2016. The four-year cohort period for a program whose students are required to complete a medical or dental internship or residency would be the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available at the time of calculation. For example, the D/E rates and the earnings threshold measure calculated for award year 2025-2026 would be calculated in 2024, and the four-year cohort period would be award years 2012-2013, 2013-2014, 2014-2015, and 2015-2016.

- *Credential level*. The level of the academic credential awarded by an institution to students who complete the program. Undergraduate credential levels would include undergraduate certificate or diploma; associate degree; bachelor's degree; and post-baccalaureate certificate. Graduate credential levels would include graduate certificate, including a postgraduate certificate;

master's degree; doctoral degree; and first-professional degree (e.g., MD, DDS, JD).

- *Debt-to-earnings rates (D/E rates)*. The annual debt-to-earnings rate and discretionary debt-to-earnings rate, as calculated under proposed § 668.403.

- *Discretionary debt-to-earnings rate*. The percentage of a program's median annual loan payment compared to the median discretionary earnings (defined as median earnings minus 150 percent of the Federal Poverty Guideline for a single person, or zero if this difference is negative) of the students who completed the program.

- *Earnings premium*. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under proposed §668.604. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of completers is less than the earnings threshold, the earnings premium is negative.

- *Earnings threshold*. The median annual earnings for an adult that either has positive annual earnings or is categorized as unemployed (i.e., is not working but is looking and available for work) at the time they are interviewed, aged 25 through 34, with only a high school diploma or recognized equivalent in the State in which the institution is located, or nationally if fewer than 50 percent of the students in the program are located in the State where the institution is located. The statistic would be determined using data from a Federal statistical agency that the Secretary deems sufficiently representative to accurately calculate the median earnings of high school graduates in each State, such as the American Community Survey administered by the U.S. Census Bureau. This earnings threshold is compared to the median annual earnings of students who recently completed the program to construct the earnings premium.

- *Eligible non-GE program*. For purposes of proposed subpart Q, an educational program other than a GE program offered by an institution and approved by the Secretary to participate in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. For purposes of attributing coursework, costs, and student assistance received, all coursework associated with the program's credential level would be counted toward the program.

- *Federal agency with earnings data*. A Federal agency with which the Department would maintain an agreement to access data necessary to calculate median earnings for the D/E rates and earnings premium measures.

The agency would need to have individual earnings data sufficient to match with title IV, HEA aid recipients who completed any eligible program during the cohort period. Specific Federal agencies with which partnerships may be possible include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

- *GE program*. An educational program offered under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. The Department welcomes public comments about any potential advantages and drawbacks associated with defining a GE program using the institution's eight-digit OPE ID number instead of the six-digit OPE ID number as proposed.

- *Institutional grants and scholarships*. Financial assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typical examples of this type of assistance would include grants, scholarships, fellowships, discounts, and fee waivers.

• *Length of the program*. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

• *Poverty Guideline*. The Poverty Guideline for a single person in the continental United States as published by HHS.

• *Prospective student*. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program, or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

• *Student*. For the purposes of proposed subparts Q and S, an individual who received title IV, HEA funds for enrolling in a GE program or eligible non-GE program.

• *Title IV loan*. A loan authorized under the William D. Ford Direct Loan Program (Direct Loan).

Reasons: Current § 668.2 defines key terminology used in the student assistance regulations but does not yet include definitions for the terminology listed above. Uniform usage of these terms would make it easier for institutions to understand the proposed standards and requirements for academic programs and for students and prospective students to understand the information about academic programs that the proposed regulations would provide. Our reasoning for proposing each definition is discussed in the section in which the defined term is first substantively used.

Institutional and programmatic information (§ 668.43)

Statute: See Authority for This Regulatory Action.

Current Regulations: Under current § 668.43, institutions must make certain institutional information available to current and prospective students, such as the cost of attending the institution, refund and withdrawal policies, the academic programs offered by the institution, and accreditation and State approval or licensure information. An institution must also provide written notification to students if it determines that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which the student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification.

Proposed Regulations: We propose to amend paragraph (a)(5)(v) to clarify the intent of this disclosure. Specifically, we propose to include language that would require a list of all States where the institution is aware that the program does and does not meet such requirements.

Under proposed § 668.43(d), the Department would establish a website for posting and distributing key information and disclosures pertaining to the institution's educational programs. An institution would provide such information as the Department prescribes through a notice published in the *Federal Register* for disclosure to prospective and enrolled students through the website. This information could include, but would not be limited to, (1) The primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site; (2) The program's or institution's completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; (3) The length of the program in calendar time; (4) The total number of individuals enrolled in the program during the most recently completed award year; (5) The program's D/E rates, as calculated by the Department; (6) The program's earnings premium measure, as calculated by the Department; (7) The loan repayment rate as calculated by the Department for students or graduates who entered repayment on title IV loans; (8) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; (9) The percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV loan, a private education loan, or both; (10) The median loan debt of students who completed the program during the most recently completed award year, or the median loan debt for all students who completed or withdrew from the program during that award year, as calculated by the Department; (11) The median earnings, as provided by the Department, of students who completed the program or of all students who completed or withdrew from the program; (12) Whether the program is programmatically accredited and the name of the accrediting agency; (13) The supplementary performance measures in proposed § 668.13(e); and (14) A link to the Department's College Navigator website, or its successor site or other similar Federal resource such as the College Scorecard. The institution would be required to provide a prominent link and any other information needed to access the website on any webpage containing academic, cost, financial aid, or admissions information about the program or institution. The Department would have the authority to require the institution to modify a webpage if the information about how to access the Department's website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct. In addition, the Department would require the institution to provide the relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution. The Department would further require that the institution provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution. As further discussed under proposed § 668.407, a student enrolling in a program that the Department has determined to be high-debt-burden or low-earnings through either the D/E rates or the earnings premium measure would receive a warning and would need to acknowledge seeing the warning before the institution disburses title IV, HEA funds.

Reasons: We believe it is important for all programs that lead to occupations requiring programmatic accreditation or State licensure to meet their State's requirements because programs financed by taxpayer dollars should meet the minimum requirements for the occupation for which they prepare students as a safeguard for the financial investment in these programs, as would be required under our proposal to amend § 668.14(b)(32). We also believe it is crucial to know which States consider these programs to be meeting or not meeting such requirements because students have often enrolled in programs that do not meet the necessary requirements for employment in the State that they reside after completing the program. As further explained in § 668.14(b), when institutions enter a written PPA with the Department they agree to meet the PPA's terms and conditions in order to participate in the title IV programs. Requiring institutions to have the necessary certifications or programmatic accreditation to meet their State's requirements for the programs they offer, and to disclose a list of all States where the institution is aware that the program does and does not meet such requirements as would be required under proposed § 668.43(a)(5), would help students make a more informed decision on where to invest their time and money in pursuit of a postsecondary degree or credential.

As discussed in "§668.401 Scope and purpose," the proposed disclosures are designed to improve the transparency of student outcomes by: ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about educational programs to inform student and prospective student decision-making; helping the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and allowing institutions to see which programs produce exceptional results for students so that those programs may be emulated.

In particular, the proposed disclosures would provide prospective and enrolled students the information they need to make informed decisions about their educational investment, including where to spend their limited title IV, HEA program funds and use their limited title IV, HEA student eligibility. Prospective students trying to make decisions about whether to enroll in an educational program would find it useful to have easy access to information about the jobs that the program is designed to prepare them to enter, the likelihood that they will complete the program, the financial and time commitment they will have to make, their likely debt burden and ability to repay their loans, their likely earnings, and whether completing the program will provide them the requisite coursework, experience, and accreditation to obtain employment in the jobs associated with the program. The proposed disclosures would also provide valuable information to enrolled students considering their ongoing educational investment and post-completion prospects. For example, we believe that disclosure of completion rates for full-time and less-than-full-time students would inform prospective and enrolled students as to how long it may take them to earn the credential offered by the program. Similarly, we believe that requiring institutions to disclose loan repayment rates would help prospective and enrolled students to better understand how well students who have attended the program before them have been able to manage their loan debt, which could influence their decisions about how much money they should borrow to enroll in the program.

We believe providing these disclosures on a website hosted by the Department would provide consistency in how the information is calculated and presented and would aid current and prospective students in comparing different programs and institutions. To ensure that current and prospective students are aware of this information when making enrollment decisions, institutions would be required to provide a prominent link and any other needed information to access the website on any web page containing academic, cost, financial aid, or admissions information about the program or institution.

Initial and final decisions (§ 668.91)

Statute: Section 487 of the HEA provides for administrative hearings in the event of a limitation, suspension, or termination action against an institution. See also Authority for This Regulatory Action.

Current Regulations: Current § 668.91 outlines certain parameters governing the Department's hearing official's initial decision in administrative hearings concerning fine, limitation, suspension, or termination proceedings against an institution or servicer. Section 668.91(a)(2) grants the hearing official latitude to decide whether the imposition of a fine, limitation, suspension, termination, or recovery the Department seeks is warranted. Current § 668.91(a)(3) establishes exceptions to the general authority afforded to the hearing official to weigh the evidence and remedy in an administrative appeal, and sets required outcomes if certain facts are established, including (1) Employing or contracting with excluded parties under § 668.14(b)(18); (2) Failure to provide a required letter of credit or other financial protection unless the institution demonstrates that the amount was not warranted; (3) Failure by an institution or third-party servicer to submit a required annual audit timely; and (4) Failure by an institution to meet the past performance standards of conduct at § 668.15(c).

Proposed Regulations: In new § 668.91(a)(3)(vi), we propose additional circumstances in which the hearing official must rule in a specified manner. Specifically, we propose that a hearing official must terminate the eligibility of a GE program that fails to meet the D/E rates or earnings premium measure, unless the hearing official concludes there was a material error in the calculation of the metric.

Reasons: Proposed § 668.91(a)(3)(vi) is a conforming change to the measures at proposed § 668.603 and would require that a hearing official terminate the eligibility of a GE program that fails to meet the D/E rates or earnings premium measure, unless the hearing official concludes there was a material error in the calculation of the metric. We believe it is important to clearly specify the consequences for failing the GE metrics, both to promote fair and consistent treatment for failing programs as well as to safeguard the interests of students and taxpayers. This limitation reflects the Department's determination about the required outcome in those circumstances, and the hearing official is bound to follow the regulations. The rationale for why we propose limiting this review is further explained in our discussion of proposed § 668.603. The proposed regulations would protect students and taxpayers by foreclosing the possibility that an institution could obtain a less severe outcome such as a monetary fine that allows the GE program to remain eligible while continuing to leave unaddressed the conditions that led to the GE program's failure.

In the interest of fairness and adequate process, proposed § 668.405 would provide institutions with an adequate opportunity to correct the list of completers that would be submitted to the Federal agency with earnings data to ensure that the debt and earnings metrics for each program are calculated based upon the most accurate and current information available. As noted in the discussion of proposed § 668.405, we would not, however, consider challenges to the accuracy of the earnings data received from the Federal agency with earnings data, because such an agency would provide the Department with only the median earnings and the number of non-matches for a program, and would not disclose students' individual earnings data that would enable the Secretary to assess a challenge to reported earnings.

Financial Responsibility (§§ 668.15, 668.23, and 668, subpart L §§ 171, 174, 175, 176 and 177) (§ 498(c) of the HEA)

Authority for This Regulatory Action: Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds to their students. The statute directs the Secretary of Education to, among other things, determine the financial responsibility of an institution that seeks to participate, or is participating in, the title IV, HEA student aid programs. To that end, the Secretary is directed to obtain third-party financial guarantees, where appropriate, to offset potential liabilities due to the Department.

The Department's authority for this regulatory action derives primarily from the above statutory provision, which directs the Secretary to establish, make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.

Factors of Financial Responsibility (§ 668.15)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.15 contains factors of responsibility for institutions participating in the title IV, HEA programs. However, most of these factors have been supplanted with requirements for institutional financial responsibility found at part 668, subpart L--Financial Responsibility. An exception is that the factors at § 668.15 have been applied to institutions undergoing a change in ownership.

Proposed Regulations: The Department proposes to remove and reserve § 668.15.

Reasons: The factors stated in § 668.15 have been supplanted with the later requirements that were added to part 668, subpart L – Financial Responsibility, and became effective in 1998. Removing the factors from § 668.15 would remove unnecessary text and streamline part 668. The factors that are currently applicable to institutions undergoing a change in ownership would be replaced with an updated and expanded list of factors in proposed § 668.176, which would better reflect the Department's consideration of an institution's change in ownership application.

Compliance Audits and Audited Financial Statements (§ 668.23)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: Section 668.23(a)(4) requires institutions not subject to the Single Audit Act, 31 U.S.C. chapter 75, to submit annually to the Department their compliance audit and audited financial statements no later than six months after the end of the institution's fiscal year.

Proposed Regulations: We propose to amend § 668.23(a)(4) to state that an institution not subject to the Single Audit Act must submit its compliance audit and its audited financial statements by the date that is the earlier of 30 days after the date of the auditor's report or 6 months after the last day of the institution's fiscal year.

Reasons: The Department is concerned that the current deadlines for submitting audited financial statements or compliance audits used to annually assess an institution's financial responsibility do not provide timely notice to the Department about significant financial concerns, even when institutions are aware of these concerns for months. The sooner the Department is made aware of situations where an institution's financial stability is in question, the sooner the Department can address the institution's situation and mitigate potential impacts on the institution's students. This is especially the case when an institution's lack of financial stability is a signal of an imminent potential closure. Those negative impacts associated with institutional closure include disruption of the students' education, delay in completing their educational program, and the loss of academic credit upon transfer to another institution. In addition, many students abandon their educational journeys altogether when their institutions close. In a September 2021 report,[123] the U.S. Government Accountability Office (GAO) found that 43 percent of borrowers whose colleges closed from 2010 through 2020 did not enroll in another institution or complete their program. As GAO noted, this showed that "closures are often the end of the road for a student's education." Furthermore, negative consequences of a school's closure not only impact students but have negative effects on taxpayers as a result of the Department's obligation to discharge student loan balances of borrowers impacted by the closure. The Department recently revised

[123] www.gao.gov/assets/gao-21-105373.pdf.

rules governing closed school discharges in final rules published in the *Federal Register* on November 1, 2022[124], increasing the need for financial protection when the Department is aware of potential and imminent closure. Finally, beyond student loan discharges, the Department often finds itself unable to collect any liabilities owed to the Federal government due to the insolvency of the closed institution. Obtaining financial surety prior to a closure would help to offset these types of liabilities.

Receiving compliance audits and financial statements within 30 days of when the report was dated, if it is dated at least 30 days prior to the six-month deadline (which would then be the operative deadline), would allow the Department to conduct effective oversight, obtain financial protection, and ensure students have options for teach-out agreements once we are made aware of financial situations that may indicate a potential closure is imminent. In addition, earlier submission of an institution's audited financial statements could alert the Department more quickly of an institution's failure to meet the 90/10 requirement, enabling prompt action to enforce those rules thereby protecting student and taxpayer interests.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are

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[124] 87 FR 65904.

financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: Section 668.23(a)(5) refers to the audit submitted by institutions subject to the Single Audit Act as an audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133.

Proposed Regulations: The Department proposes to amend § 668.23(a)(5) by replacing the outdated reference to the OMB Circular A-133 with the current reference: 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

Reasons: This change would update the regulation to include the appropriate cite for conducting audits of institutions subject to the Single Audit Act.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: The requirement in current § 668.23(d)(1) states that an institution's audited financial statements must disclose all related parties and a level of detail that would enable the Department to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

Proposed Regulations: The Department proposes to amend § 668.23(d)(1) to change the passage "Such information may include…" to "Such information must include…". The result of the proposal would require that institutions continue to include in their audited financial statements a disclosure of all related parties and a level of detail that would enable the Department to readily identify the related party. The proposed regulation would go on to state that the information must include, but would not be limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

The Department also proposes to amend § 668.23(d)(1) to note that the financial statements submitted to the

Department must be the latest complete fiscal year (or years, if there is a request for more than one year). We also propose that the fiscal year covered by the financial statements submitted must match the dates of the entity's annual return(s) filed with the Internal Revenue Service (IRS).

Reasons: This change is necessary for the Department to ensure that it has greater understanding of an institution's related parties. The items being required here are basic identifying factors and provide the minimum level of information required for an understanding of the institution's situation.

The proposed clarifications to the fiscal years covered by audited financial statements would serve two purposes. First, the requirement to submit financial statements for the latest completed fiscal year would ensure that we are receiving the most up-to-date information from an institution. This is particularly important for new institution submissions, which are already required to comply with these requirements under current § 668.15, which we propose to remove and reserve in light of the new proposed § 668.176. Second, the proposed requirement that the dates of the fiscal year for the financial statements submitted to the Department match those on the statements submitted to the IRS addresses a concern the Department has seen where institutions have adjusted their fiscal years to avoid submitting the most up-to-date financial information to the Department. This change would ensure the Department receives consistent and up-to-date information, which is necessary for evaluating the financial health of institutions.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under this statute.

Current Regulations: The current regulations do not address any special submission requirements for domestic or foreign institutions that are owned directly or indirectly by any foreign entity with at least a 50 percent voting or equity interest.

Proposed Regulations: The Department proposes to add § 668.23(d)(2)(ii) to require that an institution, domestic or foreign, that is owned by a foreign entity holding at least a 50 percent voting or equity interest provide documentation of its status under the law of the jurisdiction under which it is organized, as well as basic organizational documents.

Reasons: The proposed regulations would better equip the Department to obtain appropriate and necessary documentation from an institution which has a foreign owner or owners with 50 percent or greater voting or equity interest. Currently, the Department cannot always determine who is or was controlling an entity when it gets into financial difficulty or closes. This is exacerbated when the institution is controlled by a foreign entity. This proposed regulation would provide a clearer picture of the institution's legal status to the Department, as well as who exercises direct or indirect ownership over the institution. Knowing the legal owner is important for situations such as when we request financial protection, when we seek to collect an audit or program review liability, or when an institution closes.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible. Sections 487 and 498 of the HEA direct the Secretary to obtain and review a financial audit of an eligible institution regarding the financial condition of the institution in its entirety, and a compliance audit of such institution regarding any funds obtained by it under the statute.

Current Regulations: None.

Proposed Regulations: The Department proposes to add §668.23(d)(5) which would require an institution to disclose in a footnote to its audited financial statement the amounts spent in the previous fiscal year on the following:

- Recruiting activities;
- Advertising; and
- Other pre-enrollment expenditures.

Reasons: The Department has observed that some institutions spend institutional funds on student recruitment, advertising, and other pre-enrollment expenditures in amounts greatly out of proportion to expenditures on instruction and instructionally related activities. We believe this type of spending pattern is a possible indicator of institutional financial instability. For example, an institution with a solid financial foundation will often spend institutional funds to add new instructional programs or improve existing ones. An institution would expect that such improvements or expansions would improve the future outlook for the institution. On the other hand, an institution feeling pressure due to a declining financial situation may spend excessive amounts of its resources on recruitment, advertising, or other pre-enrollment expenditures to generate revenue in the short-term, at the possible detriment to the institution in the long-term. Requiring institutions to disclose amounts spent on these types of activities would provide the Department a more comprehensive view into the financial health and stability of institutions.

Financial Responsibility – General Requirements (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(b)(3)(i) states that an institution is not able to meet its financial or administrative obligations if it fails to make refunds under its refund policy or to return title IV, HEA program funds for which it is responsible.

Proposed Regulations: In § 668.171(b)(3), the Department proposes to add additional indicators. Proposed paragraph (b)(3)(i) states that an institution would not be financially responsible if it fails to pay title IV, HEA credit balances as required under current § 668.164(h)(2). Proposed paragraph (b)(3)(iii) states that an institution would not be financially responsible if it fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days. Proposed paragraph (b)(iv) states that an institution would not be financially responsible if it fails to satisfy payroll obligations in accordance with its published payroll schedule. Lastly, proposed paragraph (b)(3)(v) states that an institution would not be financially responsible if it borrows funds from retirement plans or restricted funds without authorization.

Reasons: An institution participating in the title IV, HEA programs acts as a fiduciary in its handling of title IV, HEA program funds on behalf of students. It thus has an obligation to abide by requirements to both return unused title IV, HEA funds and pay out credit balances to students. An institution's failure to pay a student funds belonging to that student is a strong indicator of the institution's lack of financial responsibility and stability. The Department is concerned that an institution that refuses to pay, or is unable to pay, credit balances owed to students may be holding onto them to address underlying financial concerns.

The Department is generally concerned when an institution is not meeting its financial obligations. The additional indicators the Department proposes to add in § 668.171(b)(3) all involve situations where an institution is not meeting its financial obligations, such as making payroll or payments on required debt agreements. To that end, monies that belong to and are owed to students are no different--they are obligations that must be fulfilled. Thus, the proposed regulation would expand the definition of not financially responsible to include the failure to pay title IV, HEA credit balances as required under current § 668.164(h)(2).

This change is also in keeping with recently finalized regulations relating to the requirement that postsecondary institutions of higher education obtain at least 10 percent of their revenue from non-Federal sources, also known as the 90/10 rule. In § 668.28(a)(2)(ii)(B), proprietary institutions may not delay the disbursement of title IV, HEA funds to the next fiscal year to adjust their 90/10 rate.

Financial Responsibility – Mandatory Triggering Events (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(c) lists several mandatory triggering events impacting an institution's financial responsibility. These triggers were implemented in the 2019 Final Borrower Defense Regulations[125] to reduce the impact of the prior triggers that had been implemented in the 2016 Final Borrower Defense Regulations[126]. The current mandatory triggers are these instances:

- The institution incurs a liability from a settlement, final judgment, or final determination arising

[125] 84 FR 49788.
[126] 81 FR 75926.

from an administrative or judicial action or proceeding initiated by a Federal or State entity;

- For a proprietary institution whose composite score is less than 1.5, there is a withdrawal of an owner's equity from the institution by any means, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; and as a result of that liability or withdrawal, the institution's recalculated composite score is less than 1.0, as determined by the Department;

- For a publicly traded institution--

    - The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Securities and Exchange Act of 1934 (the "Exchange Act") or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or

    - The national securities exchange on which the institution's securities are traded notifies the institution that it is not in compliance with the exchange's listing requirements and, as a result, the institution's securities are delisted, either voluntarily or involuntarily, pursuant to the rules of the relevant national securities exchange;

- The SEC is not in timely receipt of a required report and did not issue an extension to file the report.

If any of the mandatory triggering events occur, the Department would deem the institution to be unable to meet its financial or administrative obligations. Usually, this will result in the Department obtaining financial protection, generally a letter of credit, from the institution.

Proposed Regulations: The Department proposes to amend § 668.171(c) with a more robust set of mandatory triggers. Proposed § 668.171(c) would keep or expand the existing mandatory triggers, change some existing discretionary triggers to become mandatory and add new mandatory triggers. We are also proposing to add new discretionary triggers, which are discussed separately in § 668.171(d). As with the existing § 668.171(c), if any of the mandatory trigger events occur, the Department would deem the institution as unable to meet its financial or administrative obligations and obtain financial protection. The proposed mandatory triggers are situations where:

- Under § 668.171(c)(2)(i)(A), an institution or entity with a composite score of less than 1.5 is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, or a final judgment in a judicial or administrative proceeding, and the debt or liability results in a recalculated composite score of less than 1.0, as determined by the Department;

- Under § 668.171(c)(2)(i)(B), the institution or entity is sued to impose an injunction, establish fines or penalties, or to obtain financial relief such as damages, in an action brought on or after July 1, 2024, by a Federal or State authority, or through a qui tam lawsuit in which the Federal government has intervened and the suit has been pending for at least 120 days;

- Under § 668.171(c)(2)(i)(C), the Department has initiated action to recover from the institution the cost of adjudicated claims in favor of borrowers under the student loan discharge provisions in part 685, and including that potential liability in the composite score results in a recalculated composite score of less than 1.0, as determined by the Department;

- Under § 668.171(c)(2)(i)(D), an institution that has submitted a change in ownership application and is required to pay a debt or incurs liabilities (from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding), at any point through the end of the second full fiscal year after the change in ownership has occurred, would be required to post financial protection in the amount specified by the Department if so directed by the Department;

- Under § 668.171(c)(2)(ii)(A) and (B), for a proprietary institution whose composite score is less than 1.5, or for any proprietary institution through the end of the first full fiscal year following a change in ownership, and there is a withdrawal of owner's equity by any means, including by declaring a dividend, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated or the withdrawal is the equivalent of wages in a sole proprietorship or general partnership or a required dividend or return of capital and as a result the institution's recalculated composite score is less than 1.0, as determined by the Department;

- Under § 668.171(c)(2)(iii), the institution received at least 50 percent of its title IV, HEA funding in its most recently completed fiscal year from gainful employment programs that are failing under proposed subpart S of part 668, as determined by the Department;

- Under § 668.171(c)(2)(iv), the institution is required to submit a teach-out plan or agreement by a State or Federal agency, an accrediting agency, or other oversight body;

- Under § 668.171(c)(2)(v), the institution is cited by a State licensing or authorizing agency for failing to meet that entity's requirements and that entity provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not come into compliance with the requirement. Under current regulations, this is a discretionary trigger;

- Under § 668.171(c)(2)(vi), at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and is subject to one or more actions or events initiated by the U.S. Securities and Exchange Commission (SEC) or by the exchange where the entity's securities are listed. Those actions or events are when:

  - The SEC issues an order suspending or revoking the registration of any of the entity's securities pursuant to section 12(j) of the Securities Exchange Act of 1934 (the "Exchange Act") or suspends trading of the entity's securities pursuant to section 12(k) of the Exchange Act;

  - The SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act;

  - The exchange on which the entity's securities are listed notifies the entity that it is not in compliance with the exchange's listing requirements, or its securities are delisted;

  - The entity failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b-25; or

  - The entity is subject to an event, notification, or condition by a foreign exchange or foreign oversight authority that the Department determines is the equivalent to the items listed above in the first four sub-bullets of this passage.

- Under § 668.171(c)(2)(vii), a proprietary institution, for its most recently completed fiscal year, did not receive at least 10 percent of its revenue from sources other than Federal education assistance as required under § 668.28;

- Under § 668.171(c)(2)(viii), the institution's two most recent official cohort default rates are 30 percent or greater unless the institution has filed a challenge, request for adjustment, or appeal and that action has reduced the rate to below 30 percent, or the action remains pending. Under current regulations, this is a discretionary trigger;

- Under § 668.171(c)(2)(ix), the institution has lost eligibility to participate in another Federal education assistance program due to an administrative action against the institution;

- Under § 668.171(c)(2)(x), the institution's financial statements reflect a contribution in the last quarter of the fiscal year and then the institution made a distribution during the first or second quarter of the next fiscal year and that action results in a recalculated composite score of less than 1.0, as determined by the Department;

- Under § 668.171(c)(2)(xi), the institution or entity is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement due to an action by the Department;

- Under § 668.171(c)(2)(xii), the institution makes a declaration of financial exigency to a Federal, State, Tribal or foreign governmental agency or its accrediting agency; or

- Under § 668.171(c)(2)(xiii), the institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law.

Reasons: In the current process, the Department determines annually whether an institution is financially responsible based on its audited financial statements along with enforcing the limited number of triggering events existing in current § 668.171(c). The triggering events complement the annual financial composite score process by providing a stronger and more timely way to conduct regular and ongoing monitoring. Because composite scores are based upon an institution’s audited financial statements, they are only produced once a year and are typically not calculated until many months after an institution’s fiscal year ends. By contrast, institutions would have to report on triggering events on a much faster timeline, giving the Department more up-to-date information about situations that may appreciably change an institution’s financial situation. The Department is concerned that the existing list of financial triggers, which were reduced in the 2019 Final Borrower Defense Regulations, is insufficient to capture the full range of events that can represent significant and urgent threats to an institution’s ability to remain financially responsible, putting students and taxpayer dollars at risk. The Department has seen where the existing regulatory mandatory triggers, with their inherent limitations, allow institutions with questionable financial stability to continue without activating a mandatory trigger which would have called for possible Departmental action. This includes several situations where the institution ultimately closed without the Department having any financial protection to offset liabilities, such as those related to closed school loan discharges for borrowers. When an institution moves toward a status of financial instability or irresponsibility, the Department increases its oversight and, when necessary, obtains financial protection from the institution. These proposed mandatory triggers would remedy the inherent limitations in the current list of triggers and serve as a tool with which the Department can fulfill its oversight responsibility, thereby ensuring better protection for students and taxpayers.

Under the proposed regulations, the Department would determine at the time a material action or triggering event occurs that the institution is not financially responsible and seek financial protection from that institution. The consequences of these actions and triggering events threaten an institution’s ability to (1) meet its current and future financial obligations, (2) continue as a going concern or continue to participate in the title IV, HEA programs, and (3) continue to deliver educational services. In addition, these actions and events call into question the institution’s ability or commitment to provide the necessary resources to comply with title IV, HEA requirements. The proposed triggers would bring increased scrutiny to institutions that have one or more indicators of impaired financial responsibility. That increased scrutiny would often lead to the Department obtaining financial protection from the institution. This financial protection, usually a letter of credit, funds put in escrow, or an offset of title IV, HEA funds, is important for the Department to protect the interests of students and taxpayers in the event of an institutional closure.

In selecting mandatory triggers, the Department considered a variety of events and conduct that lead to financial risk. In particular, we looked for situations in which these events or conduct have resulted in significant impairment to an institution's financial health, and if the impairment is significant enough, closure of the institution. This has included some closures that were precipitous, harming both students and taxpayers.

One category of mandatory triggers includes events or conduct where we have seen a significant destabilizing effect on an institution's financial health based upon past Department experience. These events are reflected in the mandatory triggers for debts and liabilities, judgments, governmental actions, SEC or regulator action(s) for public institutions, financial exigency, and receivership. Another category of mandatory triggers includes situations where institutional conduct might lead to loss of eligibility for title IV if not promptly remediated, such as high cohort default rates or failing 90/10, as well as situations involving the loss of access to other Federal educational assistance programs.

We also considered situations for which we do not yet have historical experience, but which have the potential to have a similar negative financial effect. For example, the mandatory triggers related to borrower defense recoupment and a significant share of title IV, HEA program funds in a failing GE program or programs have not occurred in high numbers or have yet to occur, respectively, but they both represent situations in which there would be a known and quantifiable potential liability or loss in revenue that would likely result in significant impairment to an institution’s financial health, and if the impairment is significant enough, closure of the institution. Discretionary triggers, by contrast, indicate elements of concern that merit a closer look but may not in all circumstances necessitate obtaining financial protection.

Other mandatory triggers protect the Department’s oversight capabilities. Triggers that fall into this category include, for example, situations where owners attempt to manipulate the institution’s composite score by making contributions and then withdrawing the funds after the end of the fiscal year. Other triggers in this category include situations in which an outside investor or lender tries to discourage or hamper Department oversight by imposing conditions in financing agreements that trigger negative effects for the institution if the Department were to restrict title IV, HEA funding. Such situations are designed to do one of two things that weakens oversight. One is to discourage the Department from acting against an institution since the threat of financial impairment could cause an institution to become unstable and close, even if the Department's proposed action is less severe than that. The second is to make it easier for outside lenders to get paid as soon as an institution starts to face Department scrutiny. For instance, the Department has in the past seen institutions with financing arrangements that would make entire loans come due upon actions by the Department to delay aid disbursement through heightened cash monitoring. That allows lenders to get paid right away even while the Department determines if there are greater concerns that might otherwise merit obtaining financial protection. Making this type of trigger mandatory thus allows us to address both types of concerning reasons for using such restrictions in a financing arrangement.

More detail on the individual mandatory triggers follows below.

The Department proposes to amend § 668.171(c)(2)(i)(A) by establishing a mandatory trigger for institutions with a composite score of less than 1.5 that are required to pay a debt or incur a liability from a settlement, arbitration proceeding, or final judgment in a judicial proceeding and that debt or liability occurs after the end of the fiscal year for which the Secretary has most recently calculated the institution's composite score, and as a result of that debt or liability, the recalculated composite score for the institution or entity is less than 1.0. The proposed trigger is similar to current § 668.171(c)(2)(i)(A) but we propose to make two important changes. The first would expand the scope of the type of legal or administrative action to include arbitration proceedings. The Department is concerned that their current exclusion would miss an otherwise similar event that could represent a financial threat to an institution. The Department also proposes to simplify the way these proceedings are defined to eliminate the explanation for what constitutes a determination.

When an institution is subject to the types of debts, liabilities, or losses covered under proposed § 668.171(c)(2)(i)(A), it negatively impacts the institution's ability to direct resources to providing instruction and services to its students. This proposed trigger would focus on institutions that have already been identified as having a composite score that is less than passing. We would only seek financial protection from the institution when the institutional debt, liability or loss pushes the institution's recalculated composite score to less than 1.0, which is the already established threshold for a composite score to be considered failing. That financial protection would protect students from the results of negative consequences, including closure, that flows out of the institution being subject to these debts, liabilities, or losses.

Proposed § 668.171(c)(2)(i)(B) would establish a mandatory trigger for institutions or entities that are sued by a Federal or State authority, to impose an injunction, establish fines or penalties, or obtain financial relief such as damages or through a qui tam lawsuit. In the event of a qui tam lawsuit, this trigger would occur only once the Federal government has intervened. The trigger would take effect when the action has been pending for 120 days, or a qui tam has been pending for 120 days following intervention, and no motion to dismiss has been filed, or if a motion to dismiss has been filed within 120 days and denied, upon such denial.

Institutions subject to these types of actions are likely to have their financial stability negatively impacted. Institutions with triggering events described here are, in our view, at increased risk of possible closure. Financial protection would be obtained to offset the negative impacts of a possible closure placed upon students and taxpayers.

A version of this trigger had been included in the 2016 final borrower defense regulations but was removed in the 2019 borrower defense final rule on the grounds that the Department wanted to focus on actual liabilities owed rather than theoretical amounts and to wait for lawsuits to be final before seeking to recover liabilities. However, as the Department continues to improve its work overseeing institutions of higher education, we are concerned that waiting until multi-year proceedings are final undermines the purpose of taking proactive actions to protect the Federal fiscal interest. The trigger as structured here is designed to capture lawsuits that indicate significant levels of action and government involvement. These are not particularly common, are not brought lightly, and only involve a non-governmental actor if it is a qui tam lawsuit in which the Federal government has intervened. Moreover, the Department is concerned that waiting until the proceedings finish increases the risk that an institution that fails in an appeal would simply shut down immediately. By contrast, financial protection received can always be returned to the institution if the issues that necessitated it is resolved.

The Department is proposing to add § 668.171(c)(2)(i)(C) related to financial protection when the Department has adjudicated borrower defense claims in favor of borrowers and is seeking to recoup the cost of those discharges through an administrative proceeding. An institution would meet this trigger if a recalculated composite score that included this potential liability results in a composite score below 1.0.

The structure of this trigger acknowledges the circumstances under which an institution could be subject to recoupment actions tied to approved borrower defense applications under the final rule published on November 1, 2022[127]. Specifically, that rule establishes a single framework for reviewing all claims pending on July 1, 2023, or received on or after that date. This is different from prior borrower defense regulations, which apply different standards depending on a student loan's original disbursement date. That regulation states that an institution would not be subject to recoupment if the claim would not have been approved under the standard in effect at the time the loan was disbursed. Therefore, the trigger associated with approved borrower defense claims would not apply to claims that are approved but ineligible for recoupment under the new borrower defense regulation. Obtaining financial protection will help to ensure that there are institutional funds available to pay loan discharges if such discharges arise and are applicable, reducing the need for public funds to meet this obligation.

A similar trigger to this proposal was included in the 2016 Final Borrower Defense Regulations. That trigger was reduced in scope when financial responsibility standards were eliminated or lessened in the 2019 Final Borrower Defense Regulations. The rationale for limiting this trigger in 2019 was to restrict this trigger to what, at that time, was considered "known and quantifiable" amounts. An example of a known and quantifiable trigger

[127] 87 FR 65904.

was an actual liability incurred from a lawsuit. A known and quantifiable trigger was one whose consequences posed such a severe and imminent risk (e.g., SEC or stock exchange actions) to the Federal interest that financial protection was warranted. This revised trigger would result in a known and quantifiable amount because the Department informs the institution of the amount of liability it is seeking when it initiates a recoupment action. The recalculation requirement also ensures that if the institution would still have a passing composite score, then they would not have to provide additional surety. For those that would have a failing score, this trigger simply ensures that if an institution does not prevail in any sort of recoupment action that the Department would have sufficient resources on hand to fulfill the liability. Absent this protection, there is a risk the institution would not have the resources to pay the liability by the time that proceeding is final.

Further, proposed § 668.171(c)(2)(i)(D) would apply to institutions undergoing a change in ownership for a period of time commencing with their approval to participate in the title IV, HEA programs through the end of the institution's second full fiscal year following certification. The Department proposes to add this condition because we are concerned that institutions may be in a vulnerable position in the period after a change in ownership as the new owners acclimate to managing the institution. Greater scrutiny of these situations is thus warranted.

The Department proposes to move the current § 668.171(c)(1)(i)(B) and (ii) into a replacement of § 668.171(c)(2)(ii) to establish a mandatory trigger for institutions where an owner withdraws some amount of his or her equity in the institution when that institution has a composite score of less than 1.5 (the threshold considered passing) and the withdrawal of equity results in a recalculated composite score of less than 1.0 (the threshold considered failing). This relocated trigger clarifies that this requirement would also apply to institutions undergoing a change in ownership for the year following that change. This trigger would apply to institutions that have a calculated composite score that is not passing and have already demonstrated some financial instability. This demonstration of financial instability creates a situation where the Department would obtain financial protection from an institution.

The Department proposes to add § 668.171(c)(2)(iii) to establish a mandatory trigger for institutions that received at least 50 percent of its title IV, HEA program funds in its most recently completed fiscal year from gainful employment (GE) programs that are "failing." The 2016 Final Borrower Defense Regulations included a mandatory trigger linked to the number of students enrolled in failing GE programs. The 2019 Final Borrower Defense Regulations removed that trigger due to the regulations regarding GE programs being rescinded in a final rule published in the *Federal Register* on July 1, 2019.[128] This trigger contained in this proposed rule would be linked to the implementation of regulations in part 668, subpart S, governing gainful employment programs. The Department would be able to obtain financial protection from an institution when its revenue is negatively impacted when the GE programs it offers fail the Department's GE metrics. The Department believes reinstating this trigger is necessary because the potential loss of revenue from failing GE programs would have a negative impact on the institution's overall financial stability when it represents such a significant share of the institution's revenue. The Department proposes the trigger occurring when 50 percent of an institution's title IV, HEA volume is in failing GE programs. The Department uses percentage thresholds to require financial protection when there is more than an insignificant failure in compliance. For example, under 668.173(b), an institution fails to meet the reserve standards under § 668.173(a)(3) if the institution failed to timely return unearned title IV, HEA funds for 5 percent or more students in a sample. In that

[128] 84 FR 31392.

circumstance, the financial protection is 25 percent of the total amount of unearned funds. For the failing GE programs, the Department determined that a 50 percent failure is reasonably related to the required financial protection of 10 percent of the institution's title IV, HEA funding because the institution is at risk of losing a majority of its title IV program revenue due to failure of some or all of its GE programs.

The Department proposes to add § 668.171(c)(2)(iv) to establish a mandatory trigger for institutions required to submit a teach-out plan or agreement. This mandatory trigger was originally implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations. The rationale in 2019 was that teach-outs were primarily the jurisdiction of accrediting agencies. The Department stated in the discussion section of that final rule that accrediting agencies are required to approve teach-out plans at institutions under certain circumstances, which demonstrates how important these plans are to ensuring that students have a chance to complete their instructional program in the event their school closes. At that time, we sought to incentivize teach-outs, and determined that linking a teach-out to a financial trigger was not an incentive. However, the Department has not seen any evidence that the efforts to incentivize teach-out plans or agreements through accreditors has reduced the number of institutions that close without a teach-out plan or agreement in place. Instead, the Department continues to witness disruptive and ill-planned closures where the institution has not made any arrangements for where students might transfer and complete their programs. Even when the school survives after a teach-out, the circumstances that could lead to such a request make it likely that the school's revenues will be significantly reduced and will be indicative of ongoing financial instability. We propose to re-implement this mandatory trigger so that we can obtain financial protection from institutions that are in this status. When an institutional closure is imminent, regardless if it is one location or the entire institution, obtaining financial protection from the institution as soon as possible is necessary to protect the interests of students who will be negatively affected by the closure. Financial protection is also necessary to protect the interests of taxpayers who would have to provide funds for costs and obligations emanating from the closure, e.g., payment of loan discharges. While a closed institution bears responsibility for reimbursing the Department for student loans discharged due to the closure, the actual recoupment of those funds takes place very rarely due to the institution ceasing to exist. This further illustrates the necessity for financial protection from institutions in this status.

The Department proposes to add § 668.171(c)(2)(v) by to establish a mandatory trigger for institutions cited by a State licensing or authorizing agency for failing to meet State or agency requirements when the agency provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement. The 2016 Final Borrower Defense Regulations had a similar mandatory trigger to this proposed trigger. The 2019 Final Borrower Defense Regulations added the language stating that the authorizing agency would terminate the institution’s licensure or authorization if the institution did not comply; however, the 2019 Final Borrower Defense Regulations relegated this trigger to the discretionary category. We propose to keep the language added in the 2019 Final Borrower Defense Regulations but recategorize this trigger as mandatory. State authorization, or similar authorization from a governmental entity, is a fundamental factor of institutional eligibility. If an institution loses that factor, it would lose the ability to participate in the title IV, HEA programs. That loss of eligibility would significantly increase the likelihood that an institution may close. The seriousness of that potential occurrence is so great that the Department does not believe there are circumstances where it would not be appropriate to request financial protection. Accordingly, we think this is more appropriate as a mandatory trigger rather than a discretionary one.

The Department proposes to add § 668.171(c)(2)(vi) to establish a mandatory trigger for institutions that are directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange and that entity is subject to one or more actions or events initiated by the U.S. Securities and Exchange Commission (SEC) or the exchange where the securities are listed. This mandatory trigger is, for the most part, in current regulation in § 668.171(c)(2). Our proposal would clarify that if the SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act, that action would be a triggering event. The Department views either of these as actions we would take only when the SEC has identified and vetted serious issues, signaling increased risk to students attending those affected entities.

We further clarify that "exchanges" includes both domestic and foreign exchanges where the entity's securities may be traded. We recognize that some entities owning schools have stocks that are traded on foreign exchanges, and we believe similar actions initiated in those foreign exchanges or foreign oversight authorities warrant equivalent treatment under these proposed regulations.

The proposed trigger would enable the Department to obtain financial protection in situations where the SEC, a foreign or domestic exchange, or a foreign oversight authority, takes an action that potentially jeopardizes the institution's financial stability. This surety would protect the interests of the institution's students and the interests of taxpayers, both of whom can be negatively impacted by an institution's faltering financial stability.

The Department proposes to add § 668.171(c)(2)(vii) to establish a mandatory trigger for proprietary institutions where, in its most recently completed fiscal year, an institution did not receive at least 10 percent of its revenue from sources other than Federal educational assistance. The financial protection provided under this requirement will remain in place until the institution passes the 90/10 revenue requirement for two consecutive fiscal years. A mandatory trigger linked to the 90/10 revenue requirement was included in the 2016 Final Borrower Defense Regulations and it was reduced to a discretionary trigger in the 2019 Final Borrower Defense Regulations. Both of those triggers were linked to the then applicable rule which prohibited a proprietary institution from obtaining greater than 90 percent of its revenue from the title IV, HEA programs. The American Rescue Plan of 2021[129] amended section 487(a) of the HEA requiring that proprietary institutions derive not less than 10 percent of their revenue from non-Federal sources. Therefore, we propose to expand the 90/10 requirement to include all Federal educational assistance in the calculation as opposed to only including title IV, HEA assistance. An institution that fails the 90/10 requirement is at significant risk of losing its ability to participate in the title IV, HEA programs, which could put it in extreme financial jeopardy. Since the 90/10 requirement now includes all Federal educational assistance, it is possible that some institutions that previously met this threshold under the prior rule no longer would. The possibility for an increased number of institutions falling into this category warrants making this a mandatory trigger. Obtaining financial protection from an institution in this status is essential to protect students and taxpayers from an institution's potential loss of access to title IV, HEA funds and from a possible institutional closure and its negative consequences.

The Department proposes to add § 668.171(c)(2)(viii) to establish a mandatory trigger for institutions whose two most recent official cohort default rates (CDR) are 30 percent or greater, unless the institution files a

[129] www.congress.gov/bill/117th-congress/house-bill/1319/text.

challenge, request for adjustment, or appeal with respect to its rates for one or both of those fiscal years;

and that challenge, request, or appeal remains pending, results in reducing below 30 percent the official CDR for either or both of those years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

This trigger was included as a mandatory trigger in the 2016 Final Borrower Defense Regulations, and it was reduced to a discretionary trigger in the 2019 Final Borrower Defense Regulations. The rationale in 2019 for categorizing this trigger as discretionary was based on the idea that it was more appropriate to allow the Department to review the institution's efforts to improve their CDR before obtaining financial protection. As part of that review, the Department would evaluate whether the institution had acted to remedy or mitigate the causes for its CDR failure or to assess the extent to which there were anomalous or mitigating circumstances precipitating this triggering event, before determining whether we needed to obtain financial protection. Part of that review was to include evaluating the institution's response to the triggering event to determine whether a subsequent failure was likely to occur, based on actions the institution is taking to mitigate its dependence on title IV, HEA funds. This included the extent to which a loss of title IV, HEA funds due to a CDR failure would affect its financial condition or ability to continue as a going concern, or whether the institution had challenged or appealed one or more of its default rates. We now propose to raise this trigger to the mandatory classification because of the serious consequences attached to CDRs at this level. Institutions with high CDRs are failing to meet the standards of administrative capability under § 668.16(m). Further, institutions with high CDRs are subject to the following sanctions:

- An institution with a CDR of greater than 40 percent for any one year loses eligibility to participate in the Federal Direct Loan Program.
- An institution with a CDR of 30 percent or more for any one year must create a default prevention taskforce that will develop and implement a plan to address the institution’s high CDR. That plan must be submitted to the Department for review.
- An institution with a CDR of 30 percent or more for two consecutive years must submit to the Department a revised default prevention plan and may be placed on provisional certification.
- An institution with a CDR of 30 percent or more for three consecutive years loses eligibility to participate in both the Direct Loan Program and in the Federal Pell Grant Program.

Institutions subject to these sanctions will generally find themselves at risk of losing eligibility to participate in some title IV, HEA programs resulting in a decreased revenue flow. This circumstance is often a harbinger of an institution's financial distress and possible closure. Obtaining financial surety from an institution immediately after the institution finds itself in this status is necessary to offset any costs associated with an institutional closure and to alleviate any possible harm to students or taxpayers.

The Department proposes to add § 668.171(c)(2)(ix) to establish a mandatory trigger for institutions that have lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school. This would be a new trigger not previously included in other regulations. The Department is aware of some institutions that have lost their eligibility to participate in Federal educational assistance programs overseen by agencies other than the Department. Institutions in that status have generally demonstrated some weakness or some area of noncompliance resulting in their loss of eligibility. That weakness or noncompliance may also be an indicator of the institution's lack of administrative capability to administer the title IV, HEA programs. Further, the institution will likely suffer some negative impact on its revenue flow linked to its loss of eligibility to participate in the program. In either or both events, we propose that the Department obtain financial protection from institutions in this category to protect students and taxpayers from any negative consequences, including the possible closure of the institution, associated with its loss of eligibility to participate in the educational assistance program.

The Department proposes to add § 668.171(c)(2)(x) to establish a mandatory trigger for institutions whose financial statements required to be submitted under § 668.23 reflect a contribution in the last quarter of the fiscal year, and the institution then made a distribution during the first two quarters of the next fiscal year; and the offset of such distribution against the contribution results in a recalculated composite score of less than 1.0, as determined by the Department. This would be a new mandatory trigger. The Department has seen examples of institutions who seek to manipulate their composite score calculations by having a contribution made late in the fiscal year, raising the composite score for that fiscal year typically by enough so that it passes. However, the same institutions then make a distribution in the same or a similar amount early in the following fiscal year. This removes capital from the school and means that it is operating in a situation that may not demonstrate financial responsibility. With this proposal, we would obtain financial protection from an institution engaging in this pattern of behavior when that pattern results in a recalculated composite score of less than 1.0. Institutions engaging in this pattern of behavior generally do so to boost the apparent financial strength of the annual audited financial statements to avoid a failing composite score. Obtaining financial protection from institutions in this status is necessary to protect students and taxpayers from the negative consequences that can appear at institutions such as these.

The Department proposes to add § 668.171(c)(2)(xi) to establish a mandatory trigger for institutions that, as a result of Departmental action, the institution or any entity included in the financial statements submitted in the current or prior fiscal year is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement. This proposed mandatory trigger is similar to an existing discretionary trigger, but the existing trigger discusses actions of creditors in general and does not separately address creditor events linked to Departmental actions. We propose to make this trigger mandatory due to the negative financial consequences that can follow instances when these actions occur. Actions like these negatively impact the resources an institution has available for normal institutional operations and in the worst cases, events like these can lead to the closure of an institution. It is important for the Department to be aware of institutions subject to creditor events linked to this trigger as soon as possible and to offset the financial instability created by this situation by obtaining financial protection.

The Department proposes to add § 668.171(c)(2)(xii) to establish a mandatory trigger for when an institution declares a state of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency. Institutions experiencing substantial financial challenges sometimes make such declarations in an effort to justify significant changes to the institution, including elimination of academic programs and reductions of administrative or instructional staff. Although such declarations are typically not made unless the institution experiences severe financial hardship, in many cases threatening the institution's survival, the Department's regulations do not currently require an institution to report such status to the Department. The Department may not learn about an institution's financial challenges until an accrediting agency or governmental agency informs us or we learn of it from the media. This proposed trigger is necessary to ensure that the institution quickly informs the Department of any declaration of financial exigency and enables us to obtain financial protection to protect the interests of students and taxpayers.

The Department proposes to add § 668.171(c)(2)(xiii) to establish a mandatory trigger for when an institution is voluntarily placed, or is required to be placed, in receivership. We currently have little ability to act when an institution is in this situation, which indicates severe financial distress. This trigger would allow us greater ability to require financial protection while a receiver manages the funds. In recent years the Department has seen three high profile institutional failures where institutions entered into a receivership and the Department was unable to obtain sufficient financial protection before they closed.

Financial Responsibility – Discretionary Triggering Events (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(d) contains several discretionary triggering events impacting an institution's financial responsibility. The current discretionary triggers are these instances:

- The institution is subject to an accrediting agency action that could result in a loss of institutional accreditation;
- The institution is found to have violated a provision or requirement in a security or loan agreement;
- The institution has a high dropout rate;

The institution's State licensing or authorizing agency notifies the institution that it has violated a State licensing or authorizing agency requirement and that the agency intends to withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement;

- For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than title IV, HEA program funds; or
- The institution's two most recent official CDRs are 30 percent or greater.

Proposed Regulations: The Department proposes to amend § 668.171(d) to establish a stronger and more expansive set of discretionary triggering events that would assist the Department in determining if an institution is able to meet its financial or administrative obligations. This includes amending some existing triggers, moving some discretionary triggers into the list of mandatory triggers in paragraph

(c) of this section, and adding new ones. Unlike the mandatory triggers, if any of the discretionary triggers occurs, the Department would determine if the event is likely to have a material adverse effect on the financial condition of the institution. If we make that determination, we would obtain financial protection from the institution. The proposed discretionary triggers are when:

- Under § 668.171(d)(1), the institution’s accrediting agency or a Federal, State, local or Tribal authority places the institution on probation, issues a show-cause order, or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization, or eligibility;

- Under § 668.171(d)(2)(i) and (ii), except as provided in proposed § 668.171(c)(2)(xi), the institution is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement; and a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

- Under § 668.171(d)(2)(iii), except as provided in proposed § 668.171(c)(2)(xi), any creditor of the institution or any entity included in the financial statements submitted in the current or prior fiscal year under § 600.20(g) or (h), § 668.23, or subpart L of this part takes action to terminate, withdraw, limit, or suspend a loan agreement or other financing arrangement or calls due a balance on a line of credit with an outstanding balance;

- Under § 668.171(d)(2)(iv), except as provided in proposed § 668.171(c)(2)(xi), the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or subpart L of this part enters into a line of credit, loan agreement, security agreement, or other financing arrangement whereby the institution or entity may be subject to a default or other adverse condition as a result of any action taken by the Department; or

- Under § 668.171(d)(2)(v), the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart L has a monetary judgment entered against it that is subject to appeal or under appeal;

- Under § 668.171(d)(3), the institution displays a significant fluctuation in consecutive award years, or a period of award years, in the amount of Direct Loan or Pell

Grant funds received by the institution that cannot be accounted for by changes in those title IV, HEA programs;

- Under § 668.171(d)(4), an institution has high annual dropout rates, as calculated by the Department;

- Under § 668.171(d)(5), an institution that is required to provide additional financial reporting to the Department due to a failure to meet the regulatory financial responsibility standards and has any of these indicators: negative cash flows, failure of other liquidation ratios, cash flows that significantly miss projections, significant increased withdrawal rates, or other indicators of a material change in the institution's financial condition;

- Under § 668.171(d)(6), the institution has pending claims for borrower relief discharges from students or former students and the Department has formed a group process to consider claims and, if approved, those claims could be subject to recoupment. Our goal is to determine if the pending claims for borrower relief, when considered along with any other financial triggers, pose any threat to the institution to the extent that a potential closure could result. If we believe such a threat exists, we would seek financial protection to protect the interests of the institution's students and the taxpayers;

- Under § 668.171(d)(7), the institution discontinues academic programs that enroll more than 25 percent of students at the institution;

Under § 668.171(d)(8), the institution closes more than 50 percent of its locations, or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;

- Under § 668.171(d)(9), the institution is cited by a State licensing or authorizing agency for failing to meet requirements;
- Under § 668.171(d)(10), the institution has one or more programs that has lost eligibility to participate in another Federal educational assistance program due to an administrative action;
- Under § 668.171(d)(11), at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.
- Under § 668.171(d)(12), the institution is cited by another Federal agency and faces loss of education assistance funds if it does not comply with the agency's requirements.

Reasons: The Department is concerned that there are many factors or events that are reasonably likely to, but would not in every case, have an adverse financial impact on an institution. Compared to the mandatory triggers where the impact of an action or event can be reasonably and readily assessed (e.g., where claims, liabilities, and potential losses are reflected in the recalculated composite score), the materiality or impact of the discretionary triggers is not as apparent and obtaining financial protection in every situation may not be appropriate. The Department would have to conduct a case-by-case review and analysis of the factors or events applicable to an institution to determine whether one or more of those factors or events has an adverse financial impact. In so doing, the Department may request additional information or clarification from the institution about the circumstances surrounding the factors or events under review. If we determine that the factors or events have a significant adverse effect on the institution's financial condition or operations, we would notify the institution of the reasons for, and consequences of, that determination. When an institution moves toward a status of financial instability or irresponsibility, it is necessary for the Department to be aware of that at the earliest possible time so that the situation can be addressed. These proposed discretionary triggers would be a tool with which the Department can pursue that charge.

While there are existing discretionary triggers, the Department is concerned that the current regulations are too limiting. They exclude too many situations where institutions with questionable financial stability could continue to operate without a streamlined mechanism for the Department to receive additional financial protection. The current triggers also do not include certain events that may be precursors to later more concerning events, such as an institution first being placed on probation and then later having to show cause with an accreditation agency. Having these discretionary triggers occur earlier in what could end up being a series of events that results in an institution's impaired financial stability increases the likelihood that the Department would be able to obtain financial protection from institutions while they still possess the resources to comply.

Absent stronger triggers, the Department is concerned that it will expose taxpayers to unnecessarily significant risk of uncompensated discharges tied to institutional closures or approved borrower defense claims. These new proposed triggers would also deter overly risky behavior, as institutions would know there is a possibility that they could be required to provide additional financial protection if they engage in behavior that leads to violating financing arrangements, an increase in borrower defense claims, or other actions that indicate broader financial problems with an institution.

The Department proposes to amend § 668.171(d)(1) by establishing a discretionary trigger for situations where the institution's accrediting agency or a Federal, State, local or Tribal authority places the institution on probation or issues a show-cause order or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization, or eligibility. We further propose to expand this requirement to include compliance actions initiated by governmental oversight and authorizing agencies since their actions can be equally impactful on the institution's status. This proposal is similar to two separate triggers that currently exist, and which were implemented in the 2019 Final Borrower Defense Regulations. This proposal expands and strengthens the trigger to include institutions that are placed on probation by their accrediting agency. This proposal uses similar language to a trigger linked to accrediting agency actions that was implemented in the 2016 Final Borrower Defense Regulations. The 2019 Final Borrower Defense Regulations kept accrediting agency actions as a discretionary trigger but eliminated probation as an action that would activate this trigger. We are now concerned that the existing trigger is too limited in considering the types of situations that represent significant concerns from accreditors, especially given the desire to request financial protection before an institution is on the brink of closure. It is not uncommon for institutions to be placed on probation before later ending up on show cause--the status that currently activates a discretionary trigger. Adding probation provides a path for the Department to take a closer look at an institution before it is at the most serious stage of accreditor actions. Institutions that are categorized by their accreditors as being on probation, having to show cause, or having their accreditation status placed at risk may be under stresses that would have a direct impact on their financial stability. The proposed trigger includes compliance actions initiated by governmental oversight or authorizing agencies. The current regulatory trigger, implemented in the 2019 Final Borrower Defense Regulations, is similar to this and is linked to a State licensing or authorizing agency taking action against the institution in which the agency will move to withdraw or terminate the institution's licensure or authorization. The proposal would combine the actions taken by an accrediting agency and those taken by governmental oversight or authorization agencies into one discretionary trigger. Because this is a discretionary trigger, the Department would be able to examine why an institution is placed on probation or other statuses to determine if they do indicate severe enough situations that financial protection is warranted.

The Department proposes to amend § 668.171(d)(2) by establishing a discretionary trigger for situations where the institution is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement; and a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees. This would capture situations that are similar to but not otherwise addressed by the mandatory trigger in proposed § 668.171(c)(2)(xi). This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was retained in the 2019 Final Borrower Defense Regulations. The proposed regulation would clarify that the rule includes not only the institution but also any entity included in the financial statements submitted in the current or prior fiscal year under §§ 600.20(g) or (h), 668.23, or subpart L of part 668.

The Department is concerned that the situations described in this trigger could result in an institution or associated entity suddenly needing to remove significant resources from the institution, such as to put up greater collateral or to address a sudden increase in the costs of servicing its debt. Such situations mean that an institution or associated entity that may have seemed financially responsible is now in a situation where they cannot afford their debt payments or may be at other risk of significantly negative financial outcomes. Moreover, including these items makes it possible for the Department to be aware earlier about the possible need for financial protection from the institution, improving our ability to protect students’ and taxpayers’ interests. However, given that institutions and their associated entities may have a significant number of creditors and contracts, we think it is prudent to treat this as a discretionary trigger so that the Department is able to better analyze the specific facts of the situation and then determine what degree of a threat to an institution’s financial health it represents.

The Department proposes to further amend § 668.171(d)(2) by establishing a discretionary trigger for judgments awarding damages or other monetary relief that are subject to appeal or under appeal. Even if under appeal, such judgments against institutions or their owners should not be taken lightly because they may negatively impact the institution’s financial strength in the future. Additionally, appeals of such judgments can and often do take years to resolve.

In the event the Department determines that the potential liability resulting from the judgment against the institution or entity could have a significant adverse effect on the institution, the Department believes it should be able to take sensible steps to protect the Federal fiscal interest during the pendency of those proceedings.

The Department proposes to amend § 668.171(d)(3) to establish a discretionary trigger for situations where the institution displays a significant fluctuation in consecutive award years, or a period of award years, in the amount of Federal Direct Loan or Federal Pell Grant funds received by the institution that cannot be accounted for by changes in those title IV, HEA programs. This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations. The rationale at that time for removing this trigger was that fluctuation in these program funds did not indicate financial instability at the institution. Additionally, we stated that linking Pell Grant fluctuations to a discretionary trigger would harm low-income students because it would discourage institutions from serving students who rely on Pell Grants. However, we have observed that significant increases or decreases in the volume of Federal funds may signal rapid contraction or expansion of an institution's operations that may either cause, or be driven by, negative turns in the institution's financial condition or its ability to provide educational services. A significant contraction in aid received may indicate that an institution is struggling to attract students and may be at risk of closure. On the other hand, an institution that grows rapidly may present risks that its growth will outpace its capacity to serve students well. In the past, the Department has seen situations, particularly among publicly traded private for-profit institutions, where institutions experienced hypergrowth, resulting in significant concerns about the value delivered, followed a few years later by a significant contraction, and, in some cases, closure. Being aware of this status at an earlier time than provided under current regulations allows us to seek financial protection from the institution when we determine that it is necessary to protect students' and taxpayers' interests. In evaluating this trigger again, we have come to disagree with the way we framed our concerns around the effect of this trigger on low-income students in the 2019 regulation. The institutions with the largest shares of Pell Grant recipients are open access institutions, meaning they accept any qualified applicant without consideration of that student's finances. The institutions with the lowest shares of low-income students, by contrast, tend to be the institutions that reject the most students and have the greatest financial resources. Because these aspects are core to an institution's structure and mission, we do not see a circumstance where this trigger might affect an institution's decision on the type of students to serve. We also believe that it is important to ensure that low-income students have access to educational options at financially stable institutions offering a high-quality education and are not attending schools that may be at risk of sudden closure.

The Department proposes to amend § 668.171(d)(5) to establish a discretionary trigger for when an institution is required to provide additional interim financial reporting to the Department due to a failure to meet the regulatory financial responsibility standards or due to a change in ownership and has any of these indicators: negative cash flows, failure of other liquidation ratios, cash flows that significantly miss projections, significant increased withdrawal rates, or other indicators of a material change in the institution's financial condition. This proposed discretionary trigger is new. It would only apply to those institutions that fail to meet the financial responsibility standards in subpart L of part 668 or experience a change in ownership. Additionally, one or more of the indicators mentioned in the proposed rule - negative cash flows, failure of other liquidation ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or other indicators of a material change in the financial condition of the institution - would have to be present for the trigger to apply. These indicators are of sufficient severity that it is important for the Department to examine the overall financial picture of the institution and determine if financial protection would be required to protect the interests of students and taxpayers.

The Department proposes to amend § 668.171(d)(6) to establish a discretionary trigger for when an institution has pending claims for borrower defense discharges from students or former students and the Department has formed a group process to consider claims. This would only apply in situations where, if approved, the institution might be subject to recoupment for some or all of the costs associated with the approved group claim. This proposed discretionary trigger is similar to a discretionary trigger that was implemented in the 2016 Final Borrower Defense Regulations and was subsequently removed in the 2019 Final Borrower Defense Regulations due to the burden placed on institutions with borrower defense claims, that were otherwise financially stable. At the time the Department argued that the amounts associated with an institution's borrower defense claims were estimates and could create false-positive outcomes resulting in a financially responsible institution having to inappropriately provide financial protection. Further, it was believed that this false-positive situation would impose a significant burden on the Department to monitor and analyze an institution that was financially responsible. However, we have reconsidered our position and adjusted the trigger to address some of our previously stated concerns. First, we have clarified that this trigger applies to group processes, not just decisions on individual claims. To date, groups of borrowers who have received loan discharges based upon borrower defense findings have been very large, representing tens of millions of dollars. The formation of the group process also occurs after the review of evidence and a response from the institution, so there is already some consideration of the relevant evidence before this trigger would potentially be met. Furthermore, this would be a discretionary trigger, so the Department would be required to assess to assess the institution's financial stability and determine if the borrower defense claims pose a threat to the institution's financial responsibility. That would mean that a group process involving a very small number of claims would be less likely to result in a request for financial protection, especially if the institution is large and otherwise financially stable. If it is determined that the group process is a real financial threat, it is only then that financial protection would be obtained from the institution. The Department believes it is important that institutions be held accountable when they take advantage of student loan borrowers. Unfortunately, the Department has often observed that an institution has closed long before a borrower defense process concludes. Asking for financial protection earlier in the process increases the likelihood that the Department would be able to offset losses from a group claim that is later approved.

The Department intentionally limits this trigger to situations where there may be a recoupment action. The borrower defense rule published on November 1, 2022[130], notes that institutions would not be subject to recoupment in situations in which the claims would not have been approved under the standards in place when loans were first disbursed. Since the Department is concerned with whether an approved group claim could result in a significant liability for an institution that could create financial problems it would not be appropriate to have this trigger occur if the Department was not going to seek to recoup on that discharge if it is approved.

The Department proposes to add § 668.171(d)(7) by establishing a discretionary trigger for when an institution discontinues academic programs that affect more

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[130] 87 FR 65904.

than 25 percent of enrolled students. This would be a new discretionary trigger. The Department is concerned that ending programs that affect a significant share of enrollment may be a precursor to an overall closure of the entire institution. While the ending of any program that negatively impacts any students is a matter of concern for the Department, we propose that the cessation of a program or programs that enroll 25 percent of an institution's students is the threshold that we would evaluate the institution's financial stability to ensure the termination of the programs has not negatively impacted the institution's financial status.

The goal of this trigger is to identify a situation in which the share of enrollment affected by a program or location closure is significant enough that it merits further institution-specific analysis to determine if the closure suggests a sufficiently large financial impairment where greater protection would be warranted. The Department chose this 25 percent threshold because we believe that could indicate a serious impairment to an institution's finances that merits a closer and case-by-case review. By way of example, we believe a threshold at this level would allow us to capture the situation where an institution closed all of its programs in a given degree level, only to later shutter the entire institution. As with other triggers, this ability to take a closer look is important because historically the Department has collected very little funds to offset the costs of closed school discharges after an institution goes out of business.

The Department proposes to add § 668.171(d)(8) by establishing a discretionary trigger for when an institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2. This would be a new discretionary trigger. This proposed discretionary trigger is similar to the trigger linked to an institution terminating academic programs in that an institution closing locations in this number may be a harbinger of an imminent closure of the institution. The Department chose the threshold of more than 25 percent of enrolled students for the same reasons that it selected that level for the discontinuation of academic programs.

This trigger considers closures both in terms of the number of campus closures as well as separately considering the amount of enrollment at locations. Both can be concerns. For instance, the Department has seen instances where an institution started closing a number of its additional locations before later shuttering its main campus. We propose the threshold of more than 50 percent of an institution's locations closing as that number of locations, regardless of the percentage of students impacted, may indicate an overall lack of financial stability. A negotiator in the negotiated rulemaking process stated that an institution may be strengthening its financial status by closing locations with zero or very low enrollment or usage. We acknowledge that and believe that our evaluation as a result of this proposed trigger would make that very determination. If an institution is made financially stronger, then financial protection would not be necessary but if the institution is made weaker by the closure of more than half of its locations, then we would obtain financial protection to ensure that students and taxpayers are protected in the event of an overall institutional closure. Similarly, this analysis could consider if the locations being closed are in fact sizable sources of an institution's enrollment versus being small satellite locations.

The Department proposes to add § 668.171(d)(9) by establishing a discretionary trigger for when an institution is cited by a State licensing or authorizing agency for failing to meet requirements. This captures less severe circumstances related to States than are addressed under the mandatory triggers. This proposed trigger was originally implemented in the 2016 Final Borrower Defense Regulations. The 2019 Final Borrower Defense Regulations kept the trigger but narrowed its scope to only be activated if the State licensing or authorizing agency stated that it intended to withdraw or terminate the licensure or authorization if the institution failed to take steps to comply with the requirement. The rationale at that time was that the trigger would be linked to a known and quantifiable event, in this case, the State agency's intent to withdraw or terminate the agency's licensure or authorization. Proposed § 668.171(d)(9) would return to the original concept where the Department would be aware and be able to obtain financial protection if an institution is cited by its State licensing or authorizing agency. We have observed some institutions with this pattern of behavior that have been unable to correct the area of noncompliance and find its normal operations are more difficult to pursue. An institution's eligibility to administer the title IV, HEA programs is dependent on obtaining and maintaining authorization or licensure from the appropriate State agency in its State. When a State agency cites an institution, its continued eligibility may be in jeopardy. This proposed discretionary trigger would allow the Department to evaluate the situation and determine if the State action is of the magnitude that financial protection would be required. In worst case scenarios, findings and citations of this type are precursors to the institution losing its authorization or licensure and the subsequent loss of eligibility to administer the title IV, HEA programs. Such a loss would have a negative impact on the institution’s overall financial stability requiring the Department to make a determination if obtaining financial protection for the institution is warranted to protect students’ and taxpayers’ interests.

The Department proposes to add § 668.171(d)(10) to establish a discretionary trigger for when an institution has one or more programs that has lost eligibility to participate in another Federal educational assistance program due to an administrative action. This would be a new discretionary trigger and complements the mandatory trigger that occurs if the institution loses eligibility for another Federal educational assistance program. Other Federal agencies administer educational assistance programs including the Departments of Veterans Affairs, Defense, and Health and Human Services. Currently, when an institution has lost its ability to participate in an educational program administered by another Federal agency due to an administrative action by that agency, the Department of Education lacks a regulatory mechanism to include this fact in consideration of the institution’s overall financial status, despite the fact that losing eligibility for a Federal educational assistance program can have a very significant impact on a school’s revenue and financial stability. This proposed trigger is necessary to allow the

Department to make a determination if obtaining financial protection for institutions in this situation is warranted to protect students' and taxpayers' interests.

The Department proposes to add § 668.171(d)(11) to establish a discretionary trigger for when at least 50 percent of the institution is owned directly or indirectly by an entity whose securities are listed on a domestic or foreign exchange and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal, or foreign law. This level of ownership is the threshold for blocking control over the institution's actions. This would be a new discretionary trigger. Institutions that find themselves in this category may have their normal operations and financial stability impacted negatively due to the public filing. In some scenarios, legal actions such as this may damage the institution's public reputation, thereby reducing the institution's enrollment, revenue, and profitability, which would result in the institution's financial stability being shaken. In worst case scenarios, these legal actions may result in the institution's closure and the ensuing negative consequences associated with closure. This proposed trigger is necessary to allow the Department to make a determination if obtaining financial protection for institutions facing legal actions such as this is warranted to protect students' and taxpayers' interests.

The Department proposes to add § 668.171(d)(12) to establish a discretionary trigger for when an institution is cited by another Federal agency for noncompliance with requirements associated with a Federal educational assistance program and that could result in the loss of Federal education assistance funds if the institution does not comply with the agency's requirements. An action by another Federal agency, such as the Department of Veterans Affairs placing an institution on probation, is a risk factor that could result in the loss of Federal funds. We propose this as a discretionary trigger since these actions may be fleeting.

Financial Responsibility – Recalculating the Composite Score (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(e) states when the Department will recalculate an institution's composite score. Specifically, we recalculate an institution's most recent composite score by recognizing the actual amount of the institution's liability, or cumulative liabilities as defined in regulation, as an expense, or by accounting for the actual withdrawal, or cumulative withdrawals, of owner's equity as a reduction in equity. The current regulations account for those expenses and withdrawals as follows:

- For liabilities incurred by a proprietary institution:
  - For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount;
  - For the equity ratio, decreasing modified equity by that amount; and
  - For the net income ratio, decreasing income before taxes by that amount;
- For liabilities incurred by a non-profit institution;
  - For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount;
  - For the equity ratio, decreasing modified net assets by that amount; and
  - For the net income ratio, decreasing change in net assets without donor restrictions by that amount; and
- For the amount of owner's equity withdrawn from a proprietary institution--
  - For the primary reserve ratio, decreasing adjusted equity by that amount; and

- For the equity ratio, decreasing modified equity by that amount.

Proposed Regulations: The Department proposes to amend § 668.171(e) to expand when we would recalculate the institution's composite score. The proposed regulations would establish several mandatory triggers in § 668.171(c) that require a recalculation of the institution's composite score to determine if financial protection is required from the institution. The first of these triggers is found in proposed § 668.171(c)(2)(i)(A). It would require recalculation for institutions with a composite score of less than 1.5 (other than a composite score calculated as part of a change in ownership application) that are required to pay a debt or incur a liability from a settlement, arbitration proceeding, or a final judgment in a judicial proceeding. If the recalculated composite score for the institution or entity is less than 1.0 as a result of the debt or liability, the institution would be required to provide financial protection. The second mandatory trigger that would require recalculation is found in proposed § 668.171(c)(2)(i)(C) related to when the Department seeks to recoup the cost of approved borrower defense to repayment discharges. If the recalculated composite score for the institution or entity is less than 1.0 as a result of the liability sought in recoupment, the institution would be required to provide financial protection. The third mandatory trigger that would require recalculation is in proposed § 668.171(c)(2)(ii), which would require recalculation for proprietary institutions with a composite score of less than 1.5 where there is a withdrawal of owner's equity by any means. If the withdrawal results in a recalculated composite score for the institution or entity that is less than 1.0, the institution would be required to provide financial protection. Under § 668.171(e)(3), the composite score would also be recalculated in the case of a proprietary institution that has undergone a change in ownership where there is a withdrawal of owner's equity through the end of the institution's first full fiscal year. If the withdrawal results in a recalculated composite score for the institution or entity that is less than 1.0, the institution would be required to provide financial surety. The final mandatory trigger that would require a recalculation of an institution's composite score is found in proposed § 668.171(c)(2)(x), which would require that any institution's composite score be recalculated when (1) its audited financial statements reflect a contribution in the last quarter of the fiscal year and (2) it makes a distribution during the first two quarters of the next fiscal year. If the offset of the distribution against the contribution results in a recalculated composite score of less than 1.0, the institution would be required to provide financial protection.

Under proposed § 668.171(e), we would adjust liabilities incurred by the entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 668.23, or in the year following a change in ownership, for the entity who submitted financial statements to meet the requirements of § 600.20(g) as follows:

- For the primary reserve ratio, we propose to increase expenses and decrease the adjusted equity by that amount;
- For the equity ratio, we propose to decrease the modified equity by that amount; and
- For the net income ratio, we propose to decrease income before taxes by that amount.

The proposed regulations under § 668.171(e) would also clarify how liabilities would impact a nonprofit institution's composite score. We would adjust liabilities incurred by any nonprofit institution or entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 600.20(g), § 668.23, or subpart L of part 668 and described in §§ 668.171(c)(2)(i)(B) or (C) as follows:

- For the primary reserve ratio, we propose to increase expenses and decrease expendable net assets by that amount;
- For the equity ratio, we propose to decrease modified net assets by that amount; and
- For the net income ratio, we propose to decrease change in net assets without donor restrictions by that amount.

The proposed regulations would also clarify how withdrawal of equity would impact a proprietary institution's composite score. If the withdrawal of equity occurred for an entity who submitted its financial statements in the prior fiscal year to meet the requirements of § 668.23, or in the year following a change in ownership, we would adjust the entity's composite score calculation as follows:

- For the primary reserve ratio, we propose to decrease adjusted equity by that amount; and
- For the equity ratio, we propose to decrease modified equity by that amount.

For a proprietary institution that makes a contribution and distribution under proposed § 668.171(c)(2)(x), we would adjust the composite score as follows:

- For the primary reserve ratio, we propose to decrease adjusted equity by the amount of the contribution; and

- For the equity ratio, we propose to decrease modified equity by the amount of the contribution.

The proposed regulations would not modify the actual formula used to calculate the composite score.

Reasons: Proposed § 668.171(e) states how and when we would recalculate an institution's composite score based on certain mandatory triggers in proposed § 668.171(c). The recalculation is performed to address liabilities incurred under proposed § 668.171(c)(2)(i)(A) and (C); withdrawals of an owner's equity under proposed § 668.171(c)(2)(ii); and the accounting for contributions and distributions under proposed § 668.171(c)(2)(x). The proposed regulations describe the specific adjustments to the primary reserve ratio, the equity ratio, and the net income ratio that would result from the identified triggers. The proposed regulations would clarify that the adjustment would be made in the financial statements of the entity that submitted the audited financial statements for the prior fiscal year, or the entity that submitted the audited financial statements to comply with the regulatory requirements for a materially complete application following a change of ownership.

The multiple triggers identified in proposed § 668.171(e) would all diminish the entity’s cash position, and the Department would perform a recalculation of the composite score to determine to what extent the triggering event actually impacts the institution’s composite score. If we determine that the recalculated composite score is less than 1.0, meaning it has failed, we would require the institution to provide financial protection. In addition, by making an adjustment to the prior year’s financial statements, the institution would be relieved from submitting interim audited financial statements when one of the identified triggering events occurs. The Department believes that the triggers identified in proposed § 668.171(e) that would require recalculation of the composite score (and which are described in § 668.171(c)(2)(i)(A) & (C), (ii), and (x)) pose a serious threat to the institution’s financial stability. The threat is such that we believe that when the triggering event occurs an immediate determination of how the institution’s composite score is impacted by the event must be made. To wait for the annual submission of the institution’s audited financial statements would allow an excessive amount of time to elapse before this determination could be made based on the annual submission. When an institution encounters one of the identified triggering events, the quick recalculation of the composite score will inform us whether the triggering event has had minimal impact on the institution’s financial stability or has had such a detrimental impact that financial protection becomes necessary to protect the interests of students and taxpayers.

Financial Responsibility – Reporting Requirements (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(f)lists the following conditions that must be reported to the Department under the existing financial responsibility reporting requirements:

- When an institution incurs a liability as described in § 668.171(c)(2)(i)(A);
- When there is a withdrawal of an owner’s equity as described in § 668.171(c)(2);
- When an institution is subject to provisions relating to a publicly traded institution described in § 668.171(c)(2)(i)(A);
- When an institution’s accrediting agency has issued an order, that if not satisfied, could result in the loss of accreditation;

- When an institution is subject to the loan agreement provisions in § 668.171(d)(2) and a loan violation occurs, the creditor waives the violation, or the credit imposes sanctions or penalties in exchange or as a result of granting the waiver;

- When an institution is informed that its State authorizing agency is terminating its authorization or licensure;

- When an institution is found to be non-compliant with the requirement that at least 10 percent of its revenues originate from non-title IV, HEA sources. The deadline for this notification is no later than 45 days after the end of the institution's fiscal year.

Proposed Regulations: The Department proposes to amend § 668.171(f) by adding several new events to the existing reporting requirements and expanding others. These events must be generally reported generally no later than 10 days following the event. Institutions would notify the Department of these events by sending an email to: FSAFinancialAnalysisDivision@ed.gov.

Under proposed § 668.171(f), the reportable events are situations where:

- The institution incurs a liability described in proposed § 668.171(c)(2)(i)(A);

- The institution is served with a complaint stating that the institution is being sued. An updated notice would be required after the lawsuit has been pending for 120 days;

- The institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity;

- As described in proposed § 668.171(c)(2)(ii), there is a withdrawal of an owner's equity;

- As described in proposed § 668.171(c)(2)(x), the institution makes a contribution in the last quarter of its fiscal year and makes a distribution in the first or second quarter of the following fiscal year;

- As described in proposed §§ 668.171(c)(2)(vi) and in (d)(11), the institution is subject to the provisions related to a publicly listed entity;

- The institution is subject to any action by an accrediting agency, or a Federal, State, local, or Tribal authority, that is either a mandatory or discretionary trigger;

- As described in proposed § 668.171(c)(2)(xi), the institution is subject to actions initiated by a creditor of the institution;

- As described in proposed § 668.171(d)(2), the institution is subject to provisions related to a default, delinquency, or creditor event;

- As described in proposed § 668.171(c)(2)(vii), the institution fails the non-Federal funds provision. This notification deadline would be 45 days after the end of the institution's fiscal year;

- An institution or entity has submitted an application for a change in ownership under 34 CFR § 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in proposed § 668.171(c)(2)(i)(B) or (C). This reporting requirement is applicable to any action described herein occurring through the end of the second full fiscal year after the change in ownership has occurred.;

- As described in proposed § 668.171(d)(7), the institution discontinues academic programs that enrolled more than 25 percent of students;

- The institution declares a state of financial exigency to a Federal, State, Tribal, or foreign governmental agency or its accrediting agency;

- The institution, or an owner or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law or is subject to an order appointing a receiver, or appointing a person of similar status under foreign law;

- The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students. Locations for this purpose include the institution's main campus and any additional location(s) or branch campus(es) as described in § 600.2;

- The institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.

- The institution fails to meet any of the standards in proposed § 668.171(b).

We also propose to remove current § 668.171(f)(3)(i)(A) which provides that the institution may demonstrate that the reported withdrawal of owner's equity was used exclusively to meet tax liabilities of the institution or liabilities of the institution's owners that result from income derived from the institution.

Reasons: Implementation of the proposed reportable events would make the Department more aware of instances that may impact an institution's financial responsibility or stability. The proposed reportable events are linked to the financial standards in § 668.171(b) and the proposed financial triggers in § 668.171 (c) and (d) where there is no existing mechanism for the Department to know that a failure or a triggering event has occurred. Notification regarding these events would allow the Department to initiate actions to either obtain financial protection, or determine if financial protection is necessary, to protect students from the negative consequences of an institution's financial instability and possible closure. A school closure can have severe negative consequences for students including disruption of their education, delay in completing their educational program, and a loss of academic credit upon transfer. Furthermore, negative consequences of a school's closure not only impact students but have negative effects on taxpayers as a result of the Department's obligation to pay student loan discharges of borrowers impacted by the closure and our inability to collect liabilities owed to the Federal government due to the insolvency of the closed institution.

Current § 668.171(f)(3)(i)(A) provides that the institution may demonstrate that the reported withdrawal of owner's equity was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution. We propose to remove this provision because taxation, whether it is an individual or institutional liability, is not significantly different from other liabilities borne by the individual or institution. Therefore, we do not see the necessity to treat taxation differently when examining a withdrawal of owner's equity for financial responsibility purposes.

Directed Questions

We request that commenters submit feedback through the comment process about the requirement under proposed § 668.171(f)(1)(iii) that an institution must report to the Department when it receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any government entity (local, State, Tribal, Federal, or foreign). As proposed, § 668.171(f)(1)(iii) is a reporting requirement only and is not included as a mandatory triggering event in § 668.171(c) nor as a discretionary triggering event in § 668.171(d). We believe that an institution subject to an action or actions described here must alert the Department so that we can consider these actions in any compliance activity we undertake. We are especially interested in receiving input as to whether an investigation as described in § 668.171(f)(1)(iii) warrants inclusion in final regulations as either a mandatory or discretionary financial trigger. If inclusion would be warranted, we would ask for suggestions regarding what actions associated with the investigation would have to occur to initiate the financial trigger. We also request commenters provide any other information, thoughts, or opinions on this issue.

Financial Responsibility – Public Institutions (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(g) states what a public domestic or foreign institution must do to be considered financially responsible. These requirements include notifying the Department that the institution is designated a public institution by the appropriate foreign or domestic government entity.

Proposed Regulations: The Department proposes to amend § 668.171(g) by adding paragraph (g)(1)(ii), which would also require a public institution to provide to the Department a letter from an official of the government entity or other signed documentation acceptable to the Department. The letter or documentation must state that the institution is backed by the full faith and credit of the government entity. The Department also proposes similar amendments to paragraph (g)(2)(ii) which is applicable to foreign institutions. We propose to add paragraph (g)(2)(iv) which would subject a foreign institution to the mandatory triggers described in paragraph (c) of this section, and the discretionary triggers described in paragraph (d) of this section where the Department has determined that the triggering event would have significant adverse effect on the financial condition of the institution. The Secretary would treat the foreign public institution subject to these triggers in the same way as a domestic public institution, which could include heightened cash monitoring or provisional certification.

Reasons: The Department has long held that public institutions establish financial responsibility because of having full faith and credit backing by their State or appropriate government entity. That backing means that if the institution were to run into financial trouble the State or appropriate government entity is able to step in and provide the necessary financial support. As a result, the Department does not typically collect surety from a public institution. However, the current regulations do not explicitly require a demonstration of full faith and credit backing by public institutions. That creates a risk that an institution could be deemed public but not actually have the inherent financial backing needed to assuage concerns if the institution were to face financial troubles. The proposed change to § 668.171(g) would allow the Department to secure a document guaranteeing that the public institution is backed by the full faith and credit of the relevant government entity. This change would ensure that we can collect any liability from the entity making the guarantee, thereby protecting taxpayers and students.

Financial Responsibility – Audit Opinions and Disclosures (§ 668.171)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.171(h) states that even if an institution meets all of the financial responsibility factors listed in at § 668.171(b), the Department does not consider the institution to be financially responsible if the institution's audited financial statements include an opinion that was adverse, qualified, disclaimed, or the financial statements contain a disclosure in the notes that there is substantial doubt about the institution's ability to continue as a going concern. The Department may determine whether the aforementioned opinions have a significant bearing on the institution's financial condition or whether the going concern issues have been alleviated and may then act on that determination and obtain financial protection from the institution.

Proposed Regulations: The Department proposes to amend § 668.171(h) to clarify that an institution would not be considered financially responsible, even if all financial responsibility factors in § 668.171(b) are met, if the notes to the institution's or entity's audited financial statements include a disclosure about the institution or entity's diminished liquidity, ability to continue operations, or ability to continue as a going concern. If we determine that the auditor's adverse, qualified, or disclaimed opinion does not have significant bearing on the institution's financial condition, we may decide that the institution is financially responsible. Similarly, if we determine that the institution has alleviated the condition(s) in the disclosure (diminished liquidity, ability to continue operations, or ability to continue as a going concern), we may decide the institution is financially responsible. The Department would determine, on its own, whether these issues are alleviated even when the disclosure states that alleviation has been completed.

Reasons: The Department must have the ability to make its own determination regarding any issues that impact an institution's diminished liquidity, ability to continue operations, or ability to continue as a going concern. In these cases, the Department seeks financial statement disclosures whereby auditors agree with the institution's plan to address such issues or note that the institution has successfully addressed them. However, the Department would determine, on its own, if the issues identified by the auditor have been alleviated by the institution.

Financial Responsibility – Past Performance (§ 668.174)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.174 states that an institution is not financially responsible if it has been limited, suspended, terminated, or entered into a settlement agreement to resolve any of those actions initiated by the Department or a guaranty agency. Further, the regulations state that the institution is not financially responsible if the institution has an audit finding in either of its two most recent compliance audits, or a Departmental program review finding for its current fiscal year or the prior two fiscal years, that resulted in the institution being required to repay an amount greater than five percent of the title IV, HEA program funds received during the year covered by that audit or program review. Also, an institution is not financially responsible if it is cited during the preceding five years for not submitting on-time, acceptable compliance audits and financial statements. Finally, an institution is not financially responsible if it has failed to satisfactorily resolve any compliance problems identified in an audit or program review.

Proposed Regulations: The Department proposes to amend § 668.174(a) to clarify that the time period that the Department would evaluate for purposes of determining if the institution had a program review finding resulting in a requirement to repay an amount greater than five percent of title IV, HEA program funds received, is the institution's fiscal year in which the Department issued a report, including a Final Program Review Determination (FPRD) report, and the two prior fiscal years, regardless of the years covered by the report.

Reasons: This clarification would address confusion about whether the period for past performance relates to the period in which the conduct that gives rise to the past performance finding or the date of issuance of the FPRD. Because it can take some time to issue a Program Review Report (PRR) and finalize it into an FPRD, the proposed amendment would clarify that the time period for past performance does not refer to when the finding occurred, but to when we issue the FPRD that establishes the liability for that finding. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate.

Financial Responsibility – Past Performance (§ 668.174)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: None.

Proposed Regulations: The Department proposes to add § 668.174(b)(3) to state that an institution is not financially responsible if an owner who exercises substantial control, or the owner's spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years, unless --

- The defaulted Federal student loan has been fully repaid and five years have elapsed since the repayment in full;
- The defaulted Federal student loan has been approved for, and the borrower is in compliance with, a rehabilitation agreement and has been current for five consecutive years; or
- The defaulted Federal student loan has been discharged, canceled or forgiven by the Department.

Reasons: Defaulting on a Federal student loan is a serious failure of financial responsibility that relates to the title IV, HEA programs. The Department holds school owners to a higher standard than we hold students, and we expect school owners to be more financially responsible than the students who attend their schools. A student or parent borrower may immediately reestablish eligibility to receive an award under the Title IV, HEA program by rehabilitating, consolidating, or repaying defaulted Federal student loans in full, but this is not an appropriate standard to apply to a school's owner. The Department proposes to apply a higher standard to school owners who have defaulted on a Federal student loan to ensure they have established a long-term track record of loan repayment and financial responsibility before the Department would consider the school owner financially responsible under the past performance regulations in § 668.174. This proposed regulation would ensure that school owners cannot buy their way out of a past performance violation related to their own Federal student loan default(s) by merely rehabilitating their defaulted Federal student loans or repaying them in full.

This regulation would apply to Federal student loans, including parent PLUS loans, borrowed by a school owner and by a school owner's spouse. This regulation would recognize that a school owner should be aware that a spouse is in default on a Federal student loan and the regulation holds the school owner responsible for the spouse's Federal student loan default. However, the regulation would also recognize that a school owner is not responsible for managing the family budgets of all of their family members, as that term is defined in § 600.21(f), nor for ensuring that all of their family members repay their Federal student loans.

Financial Responsibility – Alternative Standards and Requirements (§ 668.175)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.175(c) explains how an institution that has failed the financial responsibility requirements under the general standards and provisions at § 668.171 can qualify under an alternate standard. One of the requirements an institution must meet is to not have an audit opinion that is adverse, qualified or disclaimed or that includes a disclosure stating that there is substantial doubt about the institution's ability to continue as a going concern as described under § 668.171(h).

Proposed Regulations: Under proposed § 668.175(c), the Department would clarify that a disclosure, as required under the applicable accounting or auditing standards, about the institution's liquidity, ability to continue operations, or ability to continue as a going concern, places the institution in the status of not being financially responsible. We would then require the institution to pursue an alternate standard of financial responsibility to comply with the associated regulatory requirements under § 668.175. Proposed § 668.175(f) would further clarify that an institution which is not financially responsible could be permitted to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years and providing the Department an irrevocable letter of credit for an amount determined by the Department. This requirement would not apply to public institutions. Institutions would be required to remedy the issue(s) that gave rise to the failure of financial responsibility.

Reasons: This proposed amendment to § 668.175(c) clarifies that an auditor's disclosure may include not only a disclosure expressing doubt about the institution's ability to continue as a going concern but may also include a disclosure about the institution's liquidity or its ability to continue operations. An audit disclosure such as this would demonstrate that the institution is not financially responsible, and we would obtain financial protection. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate. Additionally, the proposed regulation clarifies that an institution that is not financially responsible due to noncompliance with the requirements under § 668.171(b)(2) or (3) must remedy those areas of noncompliance in order to demonstrate compliance with financial responsibility requirements rather than rely upon other alternatives.

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.175(f) permits an institution that is not financially responsible to participate in title IV, HEA programs under a provisional certification, as long as it (1) Provides the Department an irrevocable letter of credit that is acceptable and payable to the Secretary, or other financial protection, for an amount determined by the Department that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution that the Department determines is backed by the full faith and credit of the State; (2) Demonstrates that it was current on its debt payments and has met all of its financial obligations, for its two most recent fiscal years; and (3) Complies with the provisions under the zone alternative.

Proposed Regulations: The Department proposes to add a condition in § 668.175(f)(2)(ii) that would require an institution to remedy the issue(s) that gave rise to its failure under § 668.171(b)(2) and (3).

Reasons: This proposed amendment is consistent with the proposed amendments to § 668.175(c) because it would help to ensure that an institution that is not financially responsible due to failing to meet the requirements under §

668.171(b)(2) or (3) must remedy those areas of noncompliance in order to participate in the title IV, HEA programs under a provisional certification. This proposed language replaces the current language in § 668.175(f)(2)(ii) which states that an institution pursuing this avenue must demonstrate it was current on debt payments and met all financial obligations. The proposed language clarifies that all factors stated in 668.171(b)(2) and (3), which include being current on debt payments and meeting financial obligations, must have been remedied to the Department's satisfaction for the purpose of obtaining provisional certification.

Financial Responsibility – Change in Ownership Requirements (§ 668.176)

Statute: Section 498(c) of the HEA directs the Secretary to determine whether institutions participating in, or seeking to participate in, the title IV, HEA programs are financially responsible.

Current Regulations: Section 668.15 originally established the financial responsibility requirements for all institutions participating, or seeking to participate, in the title IV, HEA programs. In 1997, subpart L was implemented and established revised financial responsibility factors for institutions participating in the title IV HEA programs but did not address the factors that would specifically be applied to institutions undergoing a change in ownership. The Department continued to apply the financial responsibility rules still existing in § 668.15 to change in ownership situations even though those regulations were not specific to such institutions.

Proposed Regulations: The Department proposes to remove § 668.15 and reserve that section. We propose to redesignate current § 668.176 as § 668.177. The proposed new § 668.176 would contain all updated financial responsibility requirements applicable to institutions undergoing a change in ownership.

Under proposed § 668.176(b), an institution undergoing a change in ownership would be required, as a part of their materially complete application, to submit audited financial statements of the institution's new owner's two most recently completed fiscal years prior to the change in ownership. These statements must be prepared and audited at the highest level of unfractured ownership (meaning 100 percent direct or indirect ownership of the institution) or at the level required by the Department. If the institution's new owner does not have two years of acceptable audited financial statements, or in circumstances where no new owner obtains control, but the combined new ownership exceeds the ownership share of the existing ownership, the institution would have to provide financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

Under proposed § 668.176(b)(3), an institution must demonstrate it is a financially responsible. To comply with this requirement a for-profit institution would be required to:

- Demonstrate it has not had operating losses in either or both of its two latest fiscal years that in sum, result in a decrease in tangible net worth exceeding 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period. The Department may calculate an operating loss for an institution by excluding prior period adjustments and the cumulative effect of changes in accounting principle;

- Demonstrate it has, for its two most recent fiscal years, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities;

- Document it has a passing composite score and meets the other financial requirements of part 668, subpart L for its most recently completed fiscal year.

To demonstrate it is financially responsible, a nonprofit institution would be required to:

- Demonstrate it has, at the end of its two most recent fiscal years, positive net assets without donor restrictions. The Department proposes to exclude all related party receivables/other assets from net assets without donor restrictions and all assets classified as intangibles in accordance with the composite score;

- Document it has not had an excess of net assets without donor restriction expenditures over net assets without donor restriction revenues over both of its two latest fiscal years that results in a decrease exceeding 10 percent in either the net assets without donor restrictions from the start to the end of the two-year period or the net assets without donor restriction in either one of the two years;

- Document it has a passing composite score and meets the other financial requirements of part 668, subpart L for its most recently completed fiscal year.

Under proposed § 668.176(b)(4), a for-profit or nonprofit institution that is not financially responsible under proposed § 668.176(b)(3) would be required to provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year's title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

Proposed § 668.176(c) would allow the Department to determine that the institution is not financially responsible following a change in ownership if the amount of debt assumed to complete the change in ownership requires payments (either periodic or balloon) that are inconsistent with available cash to service those payments based on enrollments for the period prior to when the payment is or will be due. An institution in this status would be required to provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year's title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

Under proposed § 668.176(d), to meet the requirements for a temporary provisional PPA following a change in ownership, as described in § 600.20(h)(3)(i), the Department would continue to require a proprietary or nonprofit institution to provide us with a same day balance sheet for a proprietary institution or a statement of financial position for a nonprofit institution. As part of the same day balance sheet or statement of financial position, the institution would be required to include a disclosure that includes all related-party transactions and such details that would enable the Department to identify the related party.

If the institution fails to meet the requirements in proposed § 668.176(d)(1)(i), the institution would be required to provide financial protection in the form of a letter of credit or cash to the Department in the amount of at least 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, or an amount determined by the Department, and would be required to follow the zone requirements of § 668.175(d).

For a public institution, the institution would be required to have its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity, or follow the requirements of this section for a proprietary or nonprofit institution.

Reasons: Current regulations related to the assessment of financial responsibility for institutions undergoing a change in ownership are spread out across § 668.15 and subpart L of part 668, where the composite score rule resides. The result of having requirements in multiple places is that it is not easy to identify which elements from across both sections apply to institutions undergoing a change in ownership. We are proposing to consolidate and revise the section to align with the Department's current practice in processing and applying financial responsibility factors to change in ownership applications. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate. The proposed new regulatory section states with a new level of clarity exactly what institutions would have to do to demonstrate financial responsibility when undergoing a change in ownership.

We additionally propose a change with respect to how the Department would test the financial responsibility of an institution undergoing a change in ownership. Under current regulations, we primarily evaluate the entity acquiring the institution by examining its same day balance sheet or statement of financial position. If the new owner does not have two years of audited financial statements, but has one year of audited financial statements, we require financial protection at an amount that would be a least 10 percent of the institution's title IV, HEA volume. This is the same minimum amount the Department chooses for institutions that seek the provisional certification alternative in § 668.175(f) for an institution that is failing to meet the standards of financial responsibility. Under the proposed regulations, we would test the new owner's financial statements and would require financial protection if those financial statements fail financial responsibility standards as part of the change in ownership application rules in § 600.20(g). To make that determination we would evaluate the composite score or other financial factors on those financial statements.

In addition, the minimum financial protection for the failure to meet the financial responsibility standards for the submission of the same day balance sheet or statement of financial protection for compliance with § 600.20(h) would be increased from the current 10 percent to 25 percent. We chose this amount because it is what we commonly require for a new owner who does not have two years of financial statements and we think the associated risk levels are similar.

The Department's interest in establishing a clear picture of an institution's ownership is crucial to our making determinations on the financial stability of the institution as it emerges from the change in ownership. During this period of change, it is imperative that we are able to obtain a level of financial protection sufficient enough to protect the students who are impacted by the change in ownership, if necessary. It is also important to protect the interests of the taxpayers as we extend the institution's eligibility to participate in the title IV, HEA programs under the new owner's control. When financial protection is required under any provision of subpart L, including this section, each requirement for financial protection is separate.

This proposal would also address challenges we have encountered in evaluating the financial statements of institutions undergoing changes in ownership, including by clarifying that financial statements must be provided at the level of highest unfractured ownership (meaning 100 percent direct or indirect ownership of the institution) or at the level determined by the Department; clarifying how a situation where no individual new owner obtains control, but the combined ownership of the new owners is equal to or exceeds the ownership share of the existing ownership will be handled, and clarifying what institutions undergoing a change in ownership must do to receive a temporary provisional PPA following the change in ownership. This proposed rule would enable us to ensure that entities acquiring an eligible institution demonstrate that they are financially responsible by the mechanisms detailed in this proposed regulation or provide financial protection. The proposed approach provides a more predictable and robust examination of financial responsibility for changes in ownership.

Standards of Administrative Capability (§ 668.16)

Administrative Capability – Financial Aid Counseling (§668.16(h))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: The current regulations under § 668.16(h) require that, for an institution to be administratively capable, the institution must provide adequate financial aid counseling to eligible students who apply for title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Department considers whether its counseling includes information regarding the source and amount of each type of aid offered, and the method by which aid is determined and disbursed, delivered, or applied to a student's account. The institution must also provide counseling that includes the rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

Proposed Regulations: The Department proposes to amend paragraph § 668.16(h) to include the details of what should be included in the financial aid communications given to students. We are also proposing to require clear and accurate information about financial aid, alongside existing requirements around what constitutes adequate financial aid counseling. We propose that financial aid counseling and financial aid communications advise students and families to accept the most beneficial types of financial assistance available to them. We further propose to establish requirements with respect to financial aid counseling and communications as follows:

- We propose to require that institutions provide information regarding the cost of attendance of the institution, including the individual components of those costs and a total of the estimated costs that will be owed directly to the institution, for students, based on their enrollment status and attendance.
- Currently the regulation requires the source and amount of each type of aid offered. We propose to add to this provision that each source of aid, which could include Title IV, HEA assistance, private loans, income-share agreements, and tuition payment plans, be separated by the type of the aid and whether it must be earned or repaid.
- We propose to require that institutions provide information regarding the net price, as determined by subtracting the amount of each type of aid offered from the cost of attendance.
- Currently the regulation requires financial aid counseling to include the method by which aid is determined and disbursed, delivered, or applied to a student's account. We propose to add to this provision that the counseling must also include instructions and applicable deadlines for accepting, declining, or adjusting award amounts.

Reasons: The Department proposes amendments to the requirement to provide adequate financial aid counseling under § 668.16(h) because we want to ensure that students understand the cost of attendance for the program, including costs charged directly by the institution, and the financial aid offered by an institution. The Department already requires institutions to provide adequate financial aid counseling to their students, but we realize that some financial aid offers may be confusing. Providing students with unclear, confusing, or misleading financial aid offers can undo the benefits of financial aid counseling and result in a student being unable to apply the concepts explained through financial aid counseling to their own financial situation. This in turn jeopardizes their ability to make an informed decision whether to enroll in a given program and how much to borrow in student loans.

The requirements added into this section thus establish requirements for what would be considered sufficiently clear communication, including on financial aid offers. These changes emphasize areas where the Department has seen problematic materials in the past, such as aid offers that fail to explain the full cost of attendance or use confusing terminology that makes it difficult to tell whether or not the aid being offered to the student must be repaid. The items included in these proposed regulations are also informed by the Department's experience in crafting a model financial aid offer, known as the College Financing Plan to address one aspect of financial aid communications. The College Financing Plan reflects feedback from consumer testing and an emphasis on clarity and is used by roughly half of institutions. Some of the items included in these proposed rules are already included in the College Financing Plan and, as such, using the College Financing Plan would be one way for institutions to ensure they meet some of the standards we propose here.

Administrative Capability – Debarment or Suspension (§ 668.16(k))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(k) require that for an institution to be administratively capable, it is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485) that is debarred or suspended under Executive Order 12549 or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4. Section 668.16(k) also requires that the institution not engage in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under Executive Order 12549 or the FAR, 48 CFR part 9, subpart 9.4.

Proposed Regulations: We propose to maintain the current requirements and add new requirements under a revised § 668.16(k)(2) that would prohibit an institution from having any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or previously exercised substantial control over the institution as defined in § 668.174(c)(3), who has been:

- Convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, Tribal, or local government funds, or administratively or judicially determined to have committed fraud or any other material violation of law involving those funds.
- Is a current or former principal or affiliate (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or exercised substantial control as defined in § 668.174(c)(3), of another institution whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of that institution's title IV, HEA program funds in the award year in which the liabilities arose or were imposed.

Reasons: The Department proposes amendments to § 668.16(k)(2) to improve institutional oversight of the individuals that are hired to make significant decisions that could have an impact on the institution’s financial stability and its administration of title IV, HEA funds. Institutions participating in the title IV, HEA programs have a fiduciary responsibility to safeguard title IV, HEA funds and ensure those funds are used to benefit students and must meet all applicable statutory and regulatory requirements. An institution’s ability to meet these responsibilities is impaired if a principal, employee, or third-party servicer of the institution committed fraud involving Federal, State, or local funds, or engaged in prior conduct that caused a loss to the Federal Government.

A similar risk occurs if one of the aforementioned individuals has been convicted of, or had pled nolo contendere or guilty to, a crime, involving the acquisition, use, or expenditure of a Federal agency or State, Tribal, or local government. To mitigate this risk, we are adding this component to the administrative capability standards. We expect institutions to thoroughly examine the background of its principals, employees, affiliates, and third-party servicers as part of this compliance. We believe the school must take action or risk being deemed administratively incapable.

<u>Administrative Capability – Negative actions (§ 668.16(n))</u>

<u>Statute</u>: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary

institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(n) provide that an institution is administratively capable if it does not otherwise appear to lack the ability to administer title IV, HEA programs competently.

Proposed Regulations: We propose to add a new § 668.16(n) to require that an institution has not been subject to a significant negative action, or a finding by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. We propose to redesignate current § 668.16(n) as proposed §668.16(v).

Reasons: The Department proposes that an institution is not administratively capable if it has been subject to a significant negative action or a finding by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution. § 668.16(n). Such measures are an indication of potentially serious problems with the institution's administrative functions. Adding this proposed section would provide the Department the ability to consider whether those circumstances warrant compliance actions and better align the oversight work across the regulatory triad of States, the Federal government, and accreditation agencies. Examples include provisionally recertifying the institution with applicable conditions on its eligibility, obtaining protection against potential losses to the government, placing an institution on a different method of payment (such as heightened cash monitoring), or terminating title IV, HEA eligibility due to negative actions of an outside public agency. For example, if the United States Department of Veterans Affairs (VA) took a significant negative action against an institution and that institution lost its ability to participate in the VA education and training benefits programs, the Department could use the VA's determination as a factor in assessing an institution's administrative capability. This would more clearly establish a link between administrative capability and when another Federal agency has revoked an institution's eligibility for one or more of their programs. Other examples are when a State levies sanctions against an institution or an accrediting agency places an institution on probation, or its equivalent, based on an ongoing consumer protection issue.

Administrative Capability - High school diploma (§ 668.16(p))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: Current regulations under § 668.16(p) provide that an institution must develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

Proposed Regulations: We propose to maintain the current requirement that an institution must develop and follow adequate procedures to evaluate the validity of a student's high school completion if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. We propose to update the references to high school completion in the current regulation to high school diploma.

Under proposed § 668.16(p)(1) we would add requirements for adequate procedures to evaluate the validity of a student’s high school diploma when the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education to include the following:

- Obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following: a transcript, written descriptions of course requirements, or written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school;
- If the high school is regulated or overseen by a State agency, Tribal agency, or Bureau of Indian Education, confirming with or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency; and
- If the Secretary has published a list of high schools that issue invalid high school diplomas, confirming that the high school does not appear on that list.

Under proposed § 668.16(p)(2) a high school diploma would not be valid if it:

- Did not meet the applicable requirements established by the appropriate State agency, Tribal agency, or Bureau of Indian Education in the State where the high school is located and, if the student does not attend in-person classes, the State where the student was located at the time the diploma was obtained.

- Has been determined to be invalid by the Department, the appropriate State agency in the State where the high school was located, or through a court proceeding.

- Was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under § 600.2.

- Was obtained from an entity that maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled and that entity is not accredited.

Reasons: Ensuring that students have a valid high school diploma is a critical part of maintaining integrity in the title IV, HEA financial aid programs. Failure to ensure that a student is qualified to train at a postsecondary level often results in students withdrawing from institutions after incurring significant debt and investing time and personal resources. The Department has seen multiple leaders of institutions face significant financial liabilities and even jail time for receiving Federal aid for students who did not have a valid high school diploma. However, the Department believes that the existing requirements for an institution to have procedures in place to evaluate the validity of a high school diploma may not be sufficient. These proposed regulations would provide institutions with additional information if necessary to determine the validity of a high school diploma when the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

With regard to how these proposed requirements would apply to certain private religious secondary schools, as noted in § 668.16(p)(1)(ii), the process of confirming or receiving documentation from the State or Tribal agency or the Bureau of Indian Education only applies to high schools that are regulated or overseen by one of those entities. Moreover, the proposed requirements establishing when a high school diploma is not considered valid in § 668.16(p)(2)(i) note that the school would have to meet applicable requirements established by the State or Tribal agency or the Bureau of Indian Education. If those entities do not have applicable requirements for the type of school in question, then the diplomas awarded by the school would not be considered invalid simply for that reason. The institution would still need to ensure that the diploma meets the other requirements of 668.16(p)(2).

The approach in this NPRM addresses concerns raised during negotiated rulemaking that private secondary schools with a demonstrated ability to prepare students for success in title IV, HEA institutions would be considered to not offer valid diplomas simply because they are not regulated by a State. If private secondary schools are not subject to State agency oversight, then the requirement to receive documentation from a State agency would not apply.

In conducting its oversight activities, the Department has seen an increase in institutions directing students to questionable entities to obtain diplomas and institutions accepting questionable diplomas without conducting a proper review of the issuing entity. These actions not only undermine the integrity of the title IV, HEA programs, but also cause undue harm to students who are not actually prepared to succeed at the postsecondary level. These amendments would protect students, postsecondary institutions, and the taxpayer investment in postsecondary education by ensuring adequate standards are in place for institutions to evaluate high school diplomas.

<u>Administrative Capability--Career Services (§ 668.16(q))</u>

<u>Statute</u>: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

<u>Current Regulations</u>: None.

<u>Proposed Regulations</u>: We propose to add a new § 668.16(q) to determine if an institution is providing adequate career services to eligible students who receive title IV, HEA

program assistance. In making this determination, the Department would consider:

- The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation.
- The number and distribution of career services staff.
- The career services the institution promises to its students.
- The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution.

Reasons: Students regularly indicate on surveys[131] that getting a job is one of their top reasons for pursuing postsecondary education. While there are many non-financial benefits to education beyond high school, being able to find a job is critical for many students who have to repay debt they acquired to attend a program. Many programs explicitly market their offerings with employment in mind, telling students about the services they will help provide for students to find a job, the connections with employers, and the alignment of curricula with employer needs, to identify a few examples. The Department proposes to require adequate career counseling services under new § 668.16(q) because we believe it is critical that

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[131] "Why Higher Ed?" *available at* stradaeducation.org/report/why-higher-ed/.

institutions have sufficient career services to help their students find jobs and make good on any commitments conveyed about this kind of assistance they can provide. We are not proposing any required ratios for the number of career services staff, but rather proposed § 669.16(q) would ensure that institutions have established a connection between the commitments they make to students and the services they actually provide.

Finally, we believe that when appropriate, an institution should establish or develop partnerships with recruiters and employers. Institutions that make commitments about employment and do not provide career services or do not have established partnerships with recruiters and employers may leave students unprepared to enter the job market and obtain employment upon completion. Students expect to have access to career services as promised as they transition from their programs into the workforce. An institutions failure to provide such career services may indicate a lack of administrative capability.

Administrative Capability – Accessible clinical or externship opportunities (§ 668.16(r))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: The Department proposes to add a new § 668.16(r) to require that an institution provide students with geographically accessible clinical, or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation within 45 days of the successful completion of other required coursework.

Reasons: We propose to require institutions to provide accessible clinical or externship opportunities related to relevant credentialing or licensure requirements under proposed § 668.16(r) because we are aware through program reviews and student complaints that some institutions do not make such opportunities broadly accessible to students, even when students are required to complete an externship or clinical to earn a degree or certificate. In these cases, students may be left to identify their own clinicals or externships. We are also aware of numerous instances where students have been offered a clinical or externship that is geographically distant and inaccessible from the student’s location. We are aware of other instances where the work performed at the clinical or externship offered by an institution does not assist the student in meeting the requirements for credentialing or licensure. Therefore, the Department proposes these amendments to require institutions to provide geographically accessible clinical or externship opportunities related to and required for completion of the credential or licensure related to their program. An institution would be considered in compliance with this provision if a student turns down the offer of the externship or clinical opportunity so long as the opportunity offered otherwise meets the requirements of this section.

Administrative Capability – Disbursing Funds (§ 668.16(s))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.16(s) to require that an institution disburse funds to students in a timely manner that would best meet the students' needs. The Secretary would not consider the manner of disbursements to be consistent with students' needs, if, among other conditions:

- The Secretary is aware of multiple verified and relevant student complaints.
- The institution has high rates of withdrawal attributable to delays in disbursements.
- The institution has delayed disbursements until after the withdrawal date requirements in § 668.22(b) and (c).

• The institution has delayed disbursements with the effect of ensuring an institution passes the 90/10 ratio.

Reasons: By law, students have a right to receive their Federal financial aid including amounts in excess of the cost of direct expenses, such as tuition and fees. When a student does not receive their funds in a timely manner, they may struggle to stay enrolled due to an inability to cover costs like food, housing, and transportation. They may also struggle to succeed in a course because of an inability to purchase required textbooks. Students may also accrue expenses which may affect their ability to remain in school, and ultimately graduate. Failing to disburse financial aid in a timely manner thus results in an institution holding on to funds that are not theirs for longer than is appropriate resulting in a detriment to its students. Therefore, the Department proposes that an institution would not be considered administratively capable if the Secretary determines that the institution failed, including for reasons related to the use of a third-party servicer, to disburse funds to students in a timely manner that will best meet the student's needs.

Administrative Capability - Gainful employment (§668.16(t))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: The Department proposes to add a new § 668.16(t). The Department considers an institution to be administratively capable if it offers GE programs subject to part 668 subpart S and at least half of its total title IV, HEA funds in the most recent award year are not from programs that are failing under part 668 subpart S, and at least half of its full-time equivalent title IV, HEA receiving students are not enrolled in programs that are failing under part 668 subpart S.

Reasons: The proposed gainful employment regulations in subpart S of part 668 would operate on a programmatic basis. This would allow the Department to identify situations where specific offerings at an institution may not provide sufficient financial value. However, when a majority of an institution’s title IV, HEA funds and enrollment is in failing GE programs, those results would indicate a more widespread and systemic set of concerns that is not limited to individual programs. This would allow the Department to take additional steps to increase its oversight of these institutions, such as placing them on a provisional PPA.

Accordingly, the Department proposes that an institution that obtains most of its revenue from, or enrolls most of its Title IV-eligible students in, failing GE programs would lack administrative capability.

Administrative Capability – Misrepresentation (§ 668.16(u))

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements postsecondary institutions must follow to prove that they are administratively capable.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 668.16(u) to prohibit an institution from engaging in misrepresentation, as defined in 34 CFR part 668, subpart F, or aggressive and deceptive recruitment tactics or conduct, as defined in 34 CFR part 668, subpart R.

Reasons: The Department proposes administrative capability requirements about an institutions' misrepresentation under § 668.16(u) because of the detrimental effects such activity could have on students and the risks it poses to taxpayers. Current § 668.71 defines "misrepresentation" as any false, erroneous or misleading statement an eligible institution or one of its representatives makes directly or indirectly to a student. The definition of "aggressive and deceptive recruitment tactics or conduct" appears in our final rule published in the *Federal Register* on November 1, 2022.[132] Activities that we consider misrepresentation and aggressive recruitment increase risk to students and taxpayers, specifically with respect to borrower defense claims. The student is often left with a worthless degree,

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[132] 87 FR 65904

certificate, or credential as a result of institutional misrepresentation or aggressive recruitment into a program with questionable earnings and employment outcomes, and student's debt may be discharged under an approved borrower defense claim. The Department proposes to incorporate these as practices prohibited in the standards of administrative capability. Doing so ensures there is greater alignment between our administrative capability requirements and the standards that relate to other oversight and enforcement work.

Certification Procedures (§§ 668.2, 668.13, 668.14)

General Definitions (§ 668.2).

Statute: Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, whether to pursue eligible non-GE programs or GE programs. Moreover, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations that the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

Current Regulations: None.

Proposed Regulations: We propose to adopt OMB's definition of a "metropolitan statistical area" in our regulations. Under the proposed definition, a "metropolitan statistical area" would mean a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.[133]

Reasons: This added definition is necessary given other changes in this section that set requirements for clock hours, credit hours, or the equivalent based upon where the institution is physically located or where the students it serves work. To that end, we would define "metropolitan statistical area" as part of the proposed requirements in § 668.14(b)(26)(ii)(B) to determine the minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation in a State in which the institution is not located. Our proposed changes would reference the institution's metropolitan statistical area in one of three scenarios in which the minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student could be determined by a State in

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[133] www.census.gov/programs-surveys/metro-micro/about.html.

which the institution is not located. We choose to include a State other than the institution's home State when determining a program's licensure and accreditation requirements because we understand that some students may not currently reside in the State in which the institution is located or have plans to reside in a different State from which the institution is located. Institutions may also be located near borders with other States. Thus, we want institutions to have the flexibility to determine the State in which the student would need to meet licensure and accreditation requirements. Specifically, for a program offered within the same metropolitan statistical area as the institution's home State, we would look for a majority of students that upon enrollment in the program during the most recently completed award year stated in writing which State they intended to work in within the metropolitan statistical area. Using the New York metropolitan area as an example, if a student attended school in Connecticut but had plans to work in New York after graduation, we would permit the institution to use New York's minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation to meet our licensure and accreditation requirements.

Period of participation (§ 668.13(b)(3)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(g)(1) outlines timing limitations on the certification renewal process.

Current Regulations: Current § 668.13(b)(3) specifies the period of participation for which a postsecondary institution may participate in the title IV, HEA programs. If the Secretary does not grant or deny certification within 12 months of the expiration of its current period of participation, the institution is automatically granted renewal of certification, which may be provisional.

Proposed Regulations: We propose to eliminate current § 668.13(b)(3) that automatically grants an institution renewal of certification if the Secretary does not grant or deny certification within 12 months of the expiration of its current period of participation.

Reasons: As part of the 2020 final rule for Distance Education and Innovation,[134] the Department believed automatically granting an institution renewal of certification after 12 months would encourage prompt processing of applications, timely feedback to institutions, proper oversight of institutions, and speedier remedies for deficiencies identified. However, since then, the Department has realized that giving

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[134] 85 FR 54742

ourselves a time constraint negatively impacts our most important goal, program integrity. In fact, a premature decision to grant or deny a certification application when unresolved issues remain under review creates substantial negative consequences for students, institutions, taxpayers, and the Department.

Institutions that remain on month-to-month approval for an extended period of time are typically undergoing extensive investigation. Month--to--month participation beyond the current maximum period of one year would allow the Department additional time to investigate issues more fully and would maintain institutions in a month--to--month status while the Department completes its review. If we are forced to issue a decision under a limited timetable, we are likely to put the institution on a provisional certification for one year, which adds burden for both institutions and the Department. For example, if we place the institution on one-year provisional certification, the institution would need to start the recertification process all over again after nine months. The result is more overall work than simply keeping the institution in a month-to-month status while any issues related to the institution are reviewed by the Department.

Eliminating this provision would allow the Department to take the necessary time to investigate institutions thoroughly prior to deciding whether to grant or deny a certification application and ensure institutions are approved only when they comply with Federal rules. Ultimately, the Department, institutions, students, and taxpayers benefit from the Department having the necessary time to thoroughly review each application and make an informed decision that protects students and taxpayers from high-risk institutions.

Provisional certification (§ 668.13(c)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV HEA programs. Section 498(h) of the HEA discusses provisional certification of institutional eligibility to participate in the title IV, HEA programs. This provisional certification can occur for up to one year if the institution is seeking initial certification; and for up to three years if the institution's administrative capability and financial responsibility are being determined for the first time, there is a change of ownership, or the Department determines that an institution seeking to renew its certification is in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities.

Current Regulations: Current § 668.13(c)(1)(i)(C) includes a list of circumstances in which the Department may provisionally certify a participating institution. These include circumstances where the Department is certifying a participating institution that --

- Is applying for a certification and meets the standards for an institution to participate in any title IV, HEA program;
- The Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L or the standards of administrative capability under § 668.16; and
- Has had its participation limited or suspended by the Department under subpart G, or voluntarily enters into provisional certification.

The Department may also provisionally certify an institution under current § 668.13(c)(1)(i)(D) if the institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program. Under current § 668.13(c)(1)(i)(F) an institution may be provisionally certified if the institution is a participating institution that has been provisionally recertified under the automatic recertification requirement in current § 668.13(b)(3). Current § 668.13(c)(1)(ii) provides that a proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16). Current § 668.13(c)(2) specifies the maximum period for which an institution, provisionally certified by the Department, may participate in a title IV, HEA program, except as provided in 668.13(c)(3) and (4). Under this paragraph a provisionally certified institution's period of participation expires:

- Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i)(A) of this section.
- Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(i)(B), (C), and (D) or paragraph (c)(1)(ii) of this section.
- If the Secretary provisionally certified the institution under paragraph (c)(1)(i)(E) of this section, no later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

Proposed Regulations: Under § 668.13(c)(1), the Department proposes to amend existing conditions and add new conditions for when an institution may be provisionally certified. Under § 668.13(c)(2), the Department proposes to add a new time frame for when an institution's provisionally certified status would expire. The Department also proposes to make a few technical corrections and replace outdated cross references with descriptions on what is being referenced in § 668.13(c)(1) and § 668.13(c)(2).

In § 668.13(c)(1)(i)(C), we propose to revise the existing language to specify the Department's provisional certification of an institution that is not only a participating institution, but an institution applying for a renewal certification that fits one of the three circumstances previously included in current § 668.13(c)(1)(i)(C). We also propose to replace current § 668.13(c)(1)(i)(F) with a new condition in which the Secretary may provisionally certify an institution if the Secretary has determined that the institution is at risk of closure. In § 668.13(c)(1)(i)(G), we propose to add another new condition in which the Secretary may provisionally certify an institution if it is permitted to use the provisional certification alternative under subpart L. We propose to revise and redesignate current § 668.13(c)(1)(ii) as proposed § 668.13(c)(1)(iii). In redesignated § 668.13(c)(1)(iii), we propose to amend "Title IV, HEA program funds" as "Federal educational assistance funds" to conform with the 2022 final rule for 90/10.[135] We propose to add a new § 668.13(c)(1)(ii) that provides that an institution's certification would become provisional upon notification from the Secretary, if the institution either triggers one of the financial responsibility events under § 668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection; or any owner or interest holder of the institution with control over that institution, as defined in § 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability.

The Department also proposes to add subpart L as an exception to § 668.13(c)(2). In addition, we propose to replace the cross reference of "paragraph (c)(1)(i)(A)" in § 668.13(c)(2)(i) with "for its initial certification." We also propose to redesignate current § 668.13(c)(2)(ii) as § 668.13(c)(2)(iii). We propose a new § 668.13(c)(2)(ii) to state that a provisionally certified institution's period of participation would expire no later than the end of the second complete award year following the date on which the Secretary provisionally certified an institution for

[135] 87 FR 65426

reasons related to substantial liabilities owed or potentially owed to the Department for borrower defense to repayment or false certification discharges, or for other consumer protection concerns as identified by the Secretary. We consider consumer protection concerns as instances where an institution may create a high-risk situation for students, such as by misleading students about educational programs, institutions falsely certifying students' eligibility to receive a loan, or an institution being at risk of closure. Note that institutions would not automatically lose title IV eligibility if they are found to have consumer protection concerns.

Reasons: In § 668.13(c)(1)(i)(C), the Department proposes to clarify, consistent with its current practice, that the Secretary may provisionally certify an institution that is not meeting the requirements for financial responsibility and administrative capability or is subject to an action under subpart G. The reference to subpart G as currently written does not clearly separate subpart G from the requirements for financial responsibility and administrative capability, and so our proposed changes would clarify that subpart G is not a required element for provisional certification, but rather a separate and independent basis for provisional certification. In addition, we propose to remove the language in existing § 668.13(c)(1)(i)(F) because it is related to the automatic certification requirement in § 668.13(b)(3) the Department is proposing to eliminate. In its place, we propose to add a new condition to § 668.13(c)(1)(i)(F) that would allow the Secretary the option to place an institution on provisional status if the Department has determined the institution is at risk of closure. This proposed condition aligns with additional conditions the Department proposes to add to provisionally certified schools at risk of closure in § 668.14 and would make it easier to apply conditions, such as prohibiting transcript withholding, if the Secretary is concerned about the institution's viability. Institutional closures create significant disruption for students and the Department, which often leave students no choice but to restart their education. In addition, students often lose credits when transferring to another institution because teach-out plans were not in place, resulting in significant liabilities tied to closed school discharges. In fact, a GAO report stated that students who transferred lost an estimated 43 percent of their credits. However, that differed greatly across types of colleges.[136] Students transferring among for-profit colleges lost an average of 83 percent of their credits, compared to a loss of 50 percent and 37 percent for transfers among non-profit and public colleges,

[136] GAO Report, GAO-17-574, "Students Need More Information to Help Reduce Challenges in Transferring College Credits," Aug. 14, 2017. www.gao.gov/products/gao-17-574.

respectively. Thus, it is imperative for the Department to address risks associated with institutions that are at risk of closure before they close, including by encouraging more orderly closures, increasing the possibility of financial protection for both the Department and students, and support students during this difficult transition. As stated during negotiations, the Department would notify the institution when it has determined that the school is at risk for closure and provisionally certify it. In addition, we propose to add a new condition in § 668.13 (c)(1)(i)(G) in which the Secretary may provisionally certify an institution if it is permitted to use the provisionally certified alternative under subpart L. The provisional certification alternative in subpart L is not dependent on an initial application, a change of ownership, reinstatement or a recertification, but permits an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years.

The Department proposes new language in § 668.13(c)(1)(ii) designed to better protect students and taxpayers by placing certain high-risk institutions under provisional status. It also aligns the certification procedures regulations with other changes being made to financial responsibility in other parts of this NPRM.

Institutions are currently placed on provisional status for a variety of reasons, including changes in ownership, late submission of compliance audits, and State or accreditor actions. The Department believes it is appropriate to additionally place an institution under provisional status when an institution lacks financial responsibility or any owner or interest holder of the institution with control over that institution owns or owned another institution with fines or liabilities owed to the Department. Placing an institution under provisional certification for these reasons provides the Department the ability to closely monitor that institution and it allows us to impose conditions in a PPA to address our concerns (e.g., by limiting the growth in an institution if it is subject to an adverse condition by a creditor that indicates the institution may be at risk of closure).

The Department proposes to add subpart L in § 668.13(c)(2) to provide a provisional certification alternative that is not currently reflected in § 668.13(c). Unlike § 668.13(c), the alternative is not dependent on an initial application, change of ownership, reinstatement, or recertification.

Proposed § 668.13(c)(2)(ii), would require institutions exhibiting consumer protection concerns to recertify within two years. The Department believes this proposed language would ensure more frequent oversight of institutions and would allow the Department to reassess any problems regularly. While there are many consumer protection concerns the Department would reassess institutions for, we are particularly interested in reassessing changes of ownership with new owners who have never operated a school, as well as where there has been an approved conversion from proprietary to nonprofit status, for any continued involvement after the change in ownership with prior owners that show signs of possible prohibited insider advantage. As stated in a December 2020 GAO report[137] on for-profit college conversions, it is imperative for the Department to develop and implement procedures to monitor newly converted colleges. Proposed § 668.13(c)(2)(ii) would particularly help with changes in ownership as it would require reassessment of provisionally certified institutions that have significant consumer protection concerns by the end of their second year of receiving certification.

The December 2020 GAO report[138] identified 59 changes of ownership from a for-profit entity to a nonprofit entity, which involved 20 separate tax-exempt organizations, between January 2011 and August 2020. Notably, one chain included 13 separate institutions that closed prior to the Department deciding whether to approve

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[137] GAO Report, GAO-21-89, "Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions", Dec. 31, 2020. www.gao.gov/products/gao-21-89.
[138] Ibid.

the requested conversion to nonprofit status. Three-fourths of the institutions were sold to a formerly for-profit entity (or nonprofit affiliate of a for-profit entity) that had no previous experience operating an institution of higher education, increasing the risk that an institution would not be well-managed, or might be on shaky financial footing that depends upon unrealistic assumptions about enrollment growth or profitability, or that is unable to deliver an educational experience to students that has been promised. This is the type of population of new owners we would reassess more frequently. Without prior experience, we are not confident these owners would know how to properly administer the title IV, HEA programs. For instance, one of the most high-profile college failures in the last several years involved an owner that had no prior experience running a postsecondary institution. On the other hand, one-third of the institutions had what GAO termed "insider involvement" in the purchasing of the nonprofit organization (i.e., someone from the former for-profit owner was involved in the nonprofit purchaser, as well), suggesting greater risk of impermissible benefits to those insiders. We would reassess prior owners that show signs of possible prohibited insider advantage because "insider involvement" is typically done for an owner's own financial benefit and not necessarily as a benefit for students.

Directed Question

We seek feedback from commenters about whether to maintain the proposed two-year limit or extend recertification to no more than three years for provisionally certified schools with major consumer protection issues. Both approaches would operate as maximum lengths, allowing the Department to certify individual institutions for shorter periods of time. We want to further consider whether two years is long enough to evaluate how well the institution has addressed consumer protection issues. If the Department makes a recertification decision before it has enough information, it could mean not taking a fully informed action when the institution reaches its recertification or taking a premature action to deny recertification to an institution that is making a real effort to improve. Since continuing to let an institution operate for longer could result in significant increases in the total amount of potential liabilities, we are especially interested to receive feedback from commenters.

Supplementary performance measures (§ 668.13(e))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department.

Current Regulations: Current § 668.13 stipulates certain procedures governing the Department's determination to certify an institution's eligibility to participate in the title IV, HEA programs or condition the institution's participation.

Proposed Regulations: We propose to add paragraph (e) to establish supplementary performance measures the Department may consider in determining whether to certify or condition the participation of the institution. Under proposed § 668.13(e), when making certification decisions, we could assess and consider (1) the institution's withdrawal rate, defined as the percentage of students in the enrollment cohort who withdrew from the institution within 100 percent or 150 percent of the published length of the program; (2) D/E rates of programs offered by the institution, if applicable; (3) Earnings premium measures of programs offered by the institution, if applicable; (4) the amounts the institution spent on instruction/instructional activities, academic support, and support services, and the amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures, as provided through a disclosure in the institution's required audited financial statements required under § 668.23; and (5) the licensure pass rate of programs offered by the institution that are designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, if the institution is required by an accrediting agency or State to report licensure passage rates.

Reasons: Metrics such as withdrawal rates, D/E rates, earnings premium measures, and spending on instruction, student support, and recruitment, can provide the Department useful information regarding the value of an institution's educational offerings and the outcomes students experience. To safeguard the interests of students and taxpayers, we believe it is important that the Department consider this information when making decisions about whether to certify or condition an institution's title IV, HEA participation. Codifying these supplemental performance measures would also provide additional clarity and transparency to institutions regarding the types of information the Department will likely consider when making certification decisions.

Signing a program participation agreement (§ 668.14(a)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(e) specifies that the Secretary may, to the extent necessary to protect the financial interest of the United States, require financial guarantees from an institution participating or seeking to participate in a title IV, HEA program, or from one or more individuals who exercise substantial control over the institution.

Current Regulations: Current § 668.14(a) states that an institution may participate in any title IV, HEA program, other than the LEAP and NEISP programs, only if the institution enters a written PPA with the Secretary. A PPA conditions the initial and continued participation of an eligible institution in any title IV, HEA program upon compliance with the conditions specified in the PPA.

Proposed Regulations: The Department proposes to add a new paragraph in current § 668.14 that would specify who must sign an institution's PPA. The Department proposes new § 668.14(a)(3), which would state that an institution's PPA must be signed by an authorized representative of the institution. Proprietary or private nonprofit institutions would also be required to have an authorized representative of an entity with direct or indirect ownership sign the PPA if that entity has the power to exercise control over the institution. The Secretary would consider the following as examples of circumstances in which an entity has such power-

- If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, or by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.
- If the entity has the power to block significant actions.
- If the entity is the 100 percent direct or indirect interest holder of the institution.
- If the entity provides or will provide the financial statements to meet any of the requirements of § 600.20(g) or (h), or § 668 subpart L.

Reasons: Electronic Announcement (EA) GENERAL 22-16 updated PPA signature requirements for entities exercising substantial control over non-public institutions of higher education.[139] To protect taxpayers and students, the Department believes that entities that exert control over institutions should assume responsibility for institutional liabilities. Requiring owner entities to sign the PPA and assume such liability provides protection in the event that an institution fails to pay its liabilities, which has been

[139] Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education, fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education.

a recurring problem when institutions close, particularly those that close precipitously. While EA GENERAL 22-16 used a rebuttable presumption, here we propose language in § 668.14(a)(3) that would not only require a representative of the institution to sign a PPA, but also an authorized representative of an entity with direct or indirect ownership or control of non-public institutions. The difference is we would then be able to require these signatures in all situations that meet the regulatory threshold, rather than on a case-by-case basis using the rebuttable presumption.

When an institution closes, the Department often struggles to access funds from the closing institution to pay its liabilities. This is particularly troublesome knowing that some entities that own the institution continue to operate or have the resources to repay the liabilities. In the event of closure, this protection would allow the Department to ensure owner entities with at least a 50 percent interest in the institution are liable for taxpayer losses that may be incurred by the institution. Since owning more than 50 percent is considered a simple majority, we believe this is a suitable percent to use as the threshold. As discussed in our Final Rule for closed school discharges,[140] section 438 of the HEA states that the Secretary must subsequently pursue any

[140] 87 FR 65904

claim available to such borrower (who received a closed school discharge) against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H. Consequently, we would pursue affiliates and principals, along with the institution, to settle the loan obligation associated with a closed school discharge. Specifically, we would consider owner entities with at least a 50 percent interest in the institution to be among those considered to be affiliates or principals.

Entering into a program participation agreement (§ 668.14(b)(5), (17), (18), (26)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(c) outlines the criteria used to determine whether an institution demonstrates financial responsibility.

Current Regulations: Current § 668.14(b)(5) states that by entering into a PPA, an institution agrees that it will comply with the provisions of § 668.15 relating to factors of financial responsibility. Current § 668.14(b)(17) states that the Secretary, guaranty agencies and lenders as defined in § 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State agencies recognized under § 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud and abuse. Current § 668.14(b)(18)(ii) states that an institution will not knowingly contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or an institution or third-party servicer that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. Current § 668.14(b)(18)(iii)(B) states that an institution will not knowingly contract with or employ any individual, agency, or organization that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. Current § 668.14(b)(26)(i) states that if an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. In current § 668.14(b)(26)(i)(A) and (B), the Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed the greater of one hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, or the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student as established in a State adjacent to the State in which the institution is located.

Proposed Regulations: The Department proposes to add three new paragraphs in 668.14(b), amend one paragraph due to other changes made in the financial responsibility regulations, and amend the program length requirements of GE programs. We also propose to add language to extend to all federal agencies the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law.

The Department proposes to amend current 668.14(b)(5) to refer to all factors of financial responsibility in an expanded subpart L, instead of the current mention of § 668.15, the text of which is being deleted with the section reserved. In § 668.14(b)(17), the Department proposes to broaden the reference of "the Secretary of Veterans Affairs" to "Federal agencies" and add State attorneys general to the list of entities authorized to share information with each other. Additionally, we propose to add "or other violations of law are included within the fraud and abuse purposes of this information-sharing provision. In § 668.14(b)(18), the Department proposes to restructure the language to clarify the requirements for contracting and employing an individual, agency, or organization. In § 668.14(b)(18)(ii)(C), the Department proposes for an institution to not knowingly contract with any institution, third-party servicer, individual, agency, or organization that has, or whose owners, officers or employees have, been judicially determined to have committed fraud or had participation in the title IV programs terminated, certification revoked, or application for certification or recertification for participation in the title IV programs denied. This would include any individuals who exercised substantial control by ownership interest or management over the institution, third-party servicer, agency, or organization that has had its participation in title IV programs terminated or revoked, or its certification or recertification denied. We also propose to add to the list of reasons in which an institution or third-party servicer may be terminated from participating in the title IV, HEA programs. Specifically, we propose to add that an institution may not have owners, officers, or employees of the institution or its third-party servicer that have exercised substantial control over an institution, or a direct or indirect parent entity of an institution that owes a liability for a violation of a title IV, HEA program, requirement and is not making payments in accordance with an agreement to repay that liability. The Department also proposes for an institution to not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, ten-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which that institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.

The Department proposes to make several revisions in § 668.14(b)(26) regarding an educational program offered by an institution that is required to prepare a student for gainful employment in a recognized occupation. Namely, in new § 668.14(b)(26)(ii), we propose to limit the number of hours in gainful employment programs to the greater of the required minimum number of clock or credit hours as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution’s accrediting agency.

If certain criteria are met, then a program may instead be limited to another State’s required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student. Another State’s requirements could only be used if the institution can demonstrate that:

- A majority of students resided in that other State while enrolled in the program during the most recently completed award year;
- A majority of students who completed the program in the most recently completed award year were employed in that State; or
- The other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State.

For any programmatic and licensure requirements that come from a State other than the home State, the institution must provide documentation of the State meeting one of the three qualifying requirements listed above and the documentation provided must be substantiated by the certified public accountant who prepares the institution's compliance audit report as required under § 668.23.

Reasons: Current § 668.14(b)(5) refers to a legacy section of the General Provisions (§ 668.15) that would be reserved under these proposed regulations. Accordingly, in signing a PPA, an institution would now agree to comply with the provisions of subpart L of part 668 (instead of § 668.15 as is currently required), where all requirements related to financial responsibility would now be located.

The Department's proposed changes to § 668.14(b)(17) broadening the list of entities authorized to share information related to an institution's eligibility for or participation in the title IV, HEA programs to include all Federal agencies, as well as State attorneys general, would create an improved accountability structure. Many Federal agencies provide student assistance and are in possession of information potentially relevant to the Department's oversight of institutions' participation in the title IV, HEA programs. This is especially the case where such information indicates that an institution is in a tenuous financial position or in danger of closing. Likewise, the addition of State attorneys general to the list of entities included in information-sharing related to title IV, HEA participation would codify in regulation access to one of the best outside sources of knowledge available to the Department about activities that may be detrimental to program integrity or the interests of students. States play an important role in oversight of institutions, and we believe the actions of attorneys general, especially where fraud or abuse are suspected, and where an institution is in imminent danger of closing, are of primary interest to the Department in meeting its responsibilities to oversee the title IV, HEA programs and protect the interests of students. Evidence generated from State attorneys general has enabled the Department to conduct a more thorough and rigorous review of borrower defense claims against institutions such as Corinthian Colleges, Inc., ITT Technical Institute (ITT), the Court Reporting Institute, Minnesota School of Business and Globe University, and Westwood College.[141] In several of these instances, State attorneys general submitted internal company documents, presentations, emails, and memos that assisted in establishing that these institutions engaged in misrepresentations. The financial implications on borrowers of approved borrower defense claims are significant. For example, the approval of 18,000 borrower defense claims for individuals who attended ITT resulted in borrowers receiving 100 percent of their loans discharged,

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[141] U.S. Department of Education press releases: www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students; www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions.

which amounted to approximately $500 million in relief.[142] Thus, State attorneys general have been an invaluable source of evidence for many of the Department's approvals of borrower defense claims and we anticipate they will continue to be an important source of evidence. Not only would adding State attorneys general to the list of entities included in information-sharing related to title IV, HEA participation formalize an existing relationship that has greatly facilitated the Department’s oversight activities and granting of relief to borrowers, it would make possible an exchange of information (applicable to all entities listed in § 668.14(b)(17)) that is mutually beneficial to the oversight activities of all involved. Lastly, the addition in § 668.14(b)(17) of fraud, abuse, and other violations of law in the type of information that may be shared among listed entities recognizes the need for the Department, specifically the Office of the Inspector General, to be informed whenever such activity is suspected and would establish in regulation a protocol for that to occur.

In § 668.14(b)(18), the Department proposes to separate the employee and contractor requirements between two romanettes because although they have similar

[142] U.S. Department of Education press release: www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

requirements, it reads clearer when splitting them into two paragraphs and eliminates the duplication that previously occurred when additional criteria was added. Current regulations found in § 668.14(b)(18)(ii) prohibit institutions from contracting with other institutions or third-party servicers that have been terminated from participation in title IV, HEA programs for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that have been administratively or judicially determined to have committed fraud or any other material violation of the law involving Federal, State, or local government funds. The regulations are silent on the principals of such entities except to the extent that current § 668.14(b)(18)(iii) prohibits an institution from contracting with or employing any individual, agency, or organization that has been, or whose officers or employees have been convicted of or pled *nolo contendere* to a crime involving the use or expenditure of Federal, State, or local government funds or has been administratively determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. In conducting oversight activities, the Department has become aware of individuals involved with the administration of title IV, HEA programs who, though not convicted of a crime or determined to have committed fraud involving public funds, have nevertheless been principally involved in the operation of institutions that have unpaid liabilities assessed against them. These individuals often contract with another institution or third-party servicer who have been terminated from participation in title IV, HEA, or whose owners, officers, or employees had substantial control over an institution that still owes a liability to the Department for a title IV, HEA violation that is not being repaid. In addition, we also propose language that would ensure that institutions may not employ or contract with owners or officers from an institution that incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA volume. In both cases, the Department is concerned that allowing such individuals to continue to work with title IV, HEA funds presents an ongoing risk to the integrity of the programs and could result in additional future liabilities.

The proposed changes in § 668.14(b)(26) address concerns the Department has about institutions offering programs tied to licensure that are longer than required by their State, which results in those students using up more of their lifetime eligibility for Pell Grants or other Federal financial aid, potentially making it harder for them to pursue later training. Longer programs associated with State minimum licensure requirements are more likely to result in higher debt and a longer period of enrollment without requisite career benefits. To that end, we propose changes to § 668.14(b)(26) that would limit the occasions when an institution can offer a GE program that requires students to complete more hours than are required by the institution's State for licensure or certification purposes. Such a change ensures that students will still obtain the necessary hours that the State requires so that they will be able to work in a given profession but protects against accumulation of student debt and usage of a student's lifetime limits for title IV, HEA financial assistance that go beyond that required point. The current regulations, which permit an institution to offer a program that includes the greater of 150 percent of the hours required by the State in which the institution is located, or the minimum hours required by an adjacent State, have led to situations where institutions have offered more hours than were necessary for a student to become licensed in the State where the institution was located, even when the adjacent State that had a requirement for a greater number of hours was many miles away and students were unlikely to seek to become employed there.

Our proposed changes in § 668.14(b)(26)(ii)(A) would generally allow for programs to be at least as long as required by the State in which the institution is located but allow for exceptions under § 668.14(b)(26)(ii)(B). Namely, the institution would be permitted to offer a longer program that fulfills another State's greater minimum requirements if an institution can demonstrate that a majority of students resided in that State while enrolled in the program during the most recently completed award year, were employed in such a State during the most recently completed award year after completing the program, or affirmed in writing upon enrollment that they intended to work in such a State, as long as the State was in the same metropolitan statistical area as the institution. In other words, if one of the exception criteria is met, the institution could increase the minimum number of hours in the program to align with the required number of hours in the State where students reside, were employed, or intend to be employed. We included "credit hours, or the equivalent" to codify our current policy that a program with credit hours must perform a conversion to ensure that the converted hours in the program do not exceed the minimum requirements for the State. Furthermore, to improve the integrity and accuracy of the information supporting an exception, our proposed changes in § 668.14(b)(26)(ii)(B) would add a required auditor attestation of the institution's documentation that a majority of the students in its program have a relationship with another State that meets one of the aforementioned exemption criteria. In the three paragraphs under proposed § 668.14(b)(26)(ii)(B), we also added timeframes that reflect the most current information that an institution could reasonably be expected to have in its possession.

Notably, these changes leave untouched many existing provisions of the current regulatory requirement in § 668.14(b)(26). This includes that the language only applies to programs that are required to prepare a student for gainful employment in a recognized occupation, that the institution establishes the need for the training, and the concept that there be a reasonable relationship between the length of the program and the requirements for working in the occupation for which the student is being prepared.

Entering into a program participation agreement (§ 668.14(b)(32-34)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(c) outlines the criteria used to determine whether an institution demonstrates financial responsibility.

Current Regulations: None.

Proposed Regulations: The Department proposes to add three additional new paragraphs to § 668.14(b). We propose § 668.14(b)(32) to require that in each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with § 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds—

- Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency;

- Satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

- Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions.

The Department also proposes for § 668.14(b)(33) to state that an institution will not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution’s administration of the title IV, HEA programs, any fraud or misconduct by the institution or its personnel, or returns of funds under the Return of Title IV Funds process under § 668.22 unless the balance owed was the result of fraud on the part of the student. We propose for § 668.14(b)(34) to state that an institution will not maintain policies and procedures to encourage, or condition institutional aid, including income-share agreements, tuition payment plans, or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives. The institution may provide a scholarship, however, on the condition that a student forego borrowing if the amount of the scholarship -provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

Reasons: Proposed § 668.14(b)(32) would require that an institution offering a program that leads to an occupation meet all applicable requirements, particularly if a program needs to meet programmatic accreditation or has licensure requirements in order for program graduates to qualify to work in that occupation. We are aware of institutions enrolling students in programs that do not meet such requirements. Students in these programs often find themselves struggling to find employment and owing student loans on credentials that do not qualify them to work in the occupations for which they were trained. Thus, this additional requirement would further protect students so that they do not waste their time and money on programs that will not qualify them for licensure or certification in an occupation in that State. The proposed regulations would also further strengthen protection of the financial investment that taxpayers are making in education so that Federal funds are not expended on programs that will not qualify a student for licensure or certification.

To operate legally in a State, an institution is already required to comply with that State's authorization requirements, including any State consumer protection requirements. For an institution covered by a State authorization reciprocity agreement to be considered legally offering postsecondary distance education in a State, it is subject to any limitations in that agreement and to any State requirements not relating to authorization of distance education.

The additional requirement of § 668.14(b)(32)(iii) specifies that an institution would have to make a determination that each of its programs eligible for title IV, HEA program funds comply with all of a State's consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions. In crafting this language, the Department is balancing the goals of ensuring that institutions have a reasonable path to offer distance education to students who do not reside within their borders while ensuring that States have the ability to protect their students if an institution located in another State tries to take advantage of students or is at risk of closure. We are concerned about past situations in which States have raised concerns about institutions that are physically located outside of its borders and taking advantage of students while the State is limited in its ability to apply its own consumer protection laws in these areas to protect its residents. That can hamper State efforts to try and step in and help students if there is evidence that an out-of-State school is taking advantage of students. It can also minimize the ability of students to access tuition recovery funds to repay any tuition paid out of pocket. Our proposed approach intentionally only applies to laws in three areas: closure, recruitment, and misrepresentation. These are the three areas where the Department has historically incurred the greatest expenses from student loan discharges related to either closed schools or borrower defense. This includes instances where closed institutions left students with no path to complete a credential, cases where students were pressured into enrollment, and cases where institutions misled students about key elements of the education. At the same time, this language would not apply to other types of laws that may represent significant variation across States in ways that would make it harder for an institution to operate through a reciprocity agreement. This includes tuition refund policies, rules on site visits, and State-specific outcomes metrics.

While crafting this proposed requirement we recognize that there is a great diversity in the types of different consumer protection laws and the benefits they can provide students. Therefore, we seek feedback on the best way to construct this requirement so that students are protected, financially and otherwise, without creating unnecessary burden on institutions.

Furthermore, we propose a PPA requirement in § 668.14(b)(33) that prohibits institutions from withholding transcripts as a means of forcing a student to pay a balance on their account if the balance was created because the institution made an administrative error with respect to the student's title IV, HEA funds, if the balance otherwise results from the institution's fraud or misconduct, or if the balance results solely from returns of title IV, HEA funds under the Return of Title IV Funds requirements under § 668.22. We have seen instances where institutions have improperly calculated a student's aid and, after correcting the error and returning title IV, HEA funds back to the Department, the institutions bill the student for those amounts. Additionally, following the conclusion of negotiated rulemaking, the Department performed a comprehensive analysis of the impact of the CARES Act waiver of returns of funds under Return of Title IV Funds requirements on a student's likelihood to immediately re-enroll following the withdrawal. The results of this analysis suggest that students who qualified for the CARES Act waiver of returns of funds under the Return of Title IV process were more likely to re-enroll in the following semester at either their current or a new postsecondary institution. Given this analysis, the stated concerns of negotiators regarding the practice of transcript withholding, and several recent policy reports[143] [144] regarding the negative consequences for students related to transcript withholding, we also believe that transcript withholding and debt collection procedures are inappropriate in cases where account balances or other debts to the institution result solely from the Return of Title IV Funds process. Institutional tuition refund policies often stop providing refunds to students sooner than the point at which institutions no longer have to return title IV, HEA aid from a student who withdrew during a term. The result is that many students who withdraw after tuition refund periods are over are frequently left

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[143] Ithaka S+R. (2021). *Stranded Credits: A Matter of Equity. www.sr.ithaka.org/publications/stranded-credits-a-matter-of-equity/.*
[144] Consumer Financial Protection Bureau (Fall 2022). *Supervisory Highlights Student Loan Servicing Special Edition,* pp. 8-9. www.files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

with significant balances owed to the institution simply because they withdrew from the institution and were subject to the mandated Return of Title IV funds process. An institution taking further negative action against a student in those circumstances could exacerbate a situation that was already difficult for the student. In all these circumstances, holding transcripts or taking other negative actions against the student make it more difficult for the student to re-enroll or transfer credit to another institution. Thus, in these circumstances we believe that withholding transcripts for additional charges is counterproductive and inappropriate. The proposed regulations would benefit students by not allowing institutions to withhold transcripts from them when it was the institution’s own actions (whether unintentional or through fraud or other malfeasance) or the Return of Title IV Funds process that resulted in an unanticipated charge. Furthermore, as mentioned during negotiations, the Department oversees the administration of title IV, HEA funds on students’ behalf; however, separate from title IV, HEA, the student has an agreement with the institution.

Title IV Funds calculations and institutional errors, misconduct, and fraud related to the awarding or disbursement of title IV, HEA funds. Note that if an institution is provisionally certified, we may apply other conditions that are necessary or appropriate to the institution, including, but not limited to releasing holds on student transcripts if the institution is at risk of closure, is teaching out or closing, or is not financially responsible or administratively capable.

We propose a PPA condition in § 668.14(b)(34) that would address a problem where institutions may prevent students from taking out Federal financial aid that students are entitled to through various inducements, incentives, or unnecessarily burdensome barriers. The last category includes setting up hurdles such as requiring the completion of unnecessary or duplicative forms. We believe it is critical that students be able to access all the Federal aid to which they are entitled, especially to afford necessities like food and housing. We would, however, make an exception for cases where the institution offers institutional scholarships of the same or greater amounts as the Direct Loan funds for which the student would otherwise be eligible to borrow. In such situations the student would still have access to, and be able to receive, the full amount of funding for which the school determined was needed. We believe this exception would promote greater affordability and potentially leave students less indebted at graduation, while still ensuring that the students have funds to pay for educational expenses.

Note that this proposed provision that would prevent institutions from establishing obstacles or inducements against borrowing is distinct from and would not impact an institution’s ability to refuse to originate a student’s Direct Loan under § 685.301(a)(8). Under those regulations, an institution may refuse to originate or reduce the amount of a student's Direct Loan if the reason for that action is documented and provided to the borrower in writing, and if the institution makes such determinations on a case-by-case basis, maintains documentation of each decision, and does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income. The proposed restriction is on institutional policies or practices designed to limit borrowing generally, not specific refusals for individual students that are documented and made solely on a case-by-case basis.

Conditions that may apply to provisionally certified institutions (§ 668.14(e)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section

498(c) outlines the criteria used to determine whether an institution has met the standards of financial responsibility. HEA section 498(d) authorizes the Secretary to establish reasonable procedures and requirements to ensure that institutions are administratively capable. HEA section 498(h) discusses provisional certification of institutional eligibility to participate in the title IV, HEA programs. HEA section 498(k) outlines the treatment of teach-outs.

Current Regulations: Current § 668.14(e) states that a PPA becomes effective on the date that the Secretary signs the agreement.

Proposed Regulations: We propose to redesignate current § 668.14(e) as § 668.14(h). The Department also proposes to add a new paragraph (e) that outlines a non-exhaustive list of conditions that we may opt to apply to provisionally certified institutions. We propose for institutions at risk of closure to submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. We also propose that institutions at risk of closure must submit an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented, to the Department. We also propose for an institution at risk of closure that is teaching out, closing, or that is not financially responsible or administratively capable, to release holds on student transcripts. Other conditions for institutions that are provisionally certified would include –

- Restrictions or limitations on the addition of new programs or locations;
- Restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs;
- Restrictions on the institution providing a teach-out on behalf of another institution;
- Restrictions on the acquisition of another participating institution, which may include, in addition to any other required financial protection, the posting of financial protection in an amount determined by the Secretary but not less than 10 percent of the acquired institution's Title IV, HEA volume for the prior fiscal year;
- Additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements;
- Limitations on the institution entering into a written arrangement with another eligible institution or an ineligible institution or organization for that other eligible institution or ineligible institution or

organization to provide between 25 and 50 percent of the institution’s educational program under §668.5(a) or (c);

- For an institution alleged or found to have engaged in misrepresentations to students, engaged in aggressive recruiting practices, or violated incentive compensation rules, requirements to hire a monitor and to submit marketing and other recruiting materials (e.g., call scripts) for the review and approval of the Secretary.

Reasons: We propose new language under § 668.14(e), and to redesignate current § 668.14(e) as § 668.14(h). The Department proposes a non-exhaustive list of conditions in new paragraph (e) to ensure greater monitoring and oversight on provisionally certified institutions where we may already have concerns. This non-exhaustive list of conditions would allow the Department to formalize tools that are currently available but are not typically used. The list of conditions we have included proactively address some of the issues we have seen with some provisionally certified institutions, namely those at risk of closure, those that are teaching out or closing, and those that are not financially responsible or administratively capable. We propose a non-exhaustive list because we do not want to foreclose any current flexibility that we have with respect to monitoring provisionally certified institutions and we will publish updates to the list as needed. The proposed § 668.14(e)(2) respond to concerns regarding transcript withholding we heard during negotiations. Several negotiators stated that students of color are disproportionately unable to access their transcripts due to transcript withholding. In addition, one negotiator stated that if an institution was being considered as a risk for closure, most students would want to transfer institutions, but transcript holds for certain amounts would negatively impact a student's ability to transfer to another institution. Accordingly, we have expanded the provisional conditions related to transcript withholding to increase students' access to their educational records at institutions with risk of closure or institutions that are not financially responsible or administratively capable. Moreover, we believe the other conditions under proposed paragraph (e) for institutions at risk of closure would better protect students from sudden closures that often leave them without opportunities to complete their credentials or to transfer to another institution. As described in a GAO report[145], school closures derail the education of many students, leaving them with loans but no degree. In fact, college closure represented the end of many borrowers' educational pursuits. Forty-three percent of borrowers enrolled at a college that closed did not

[145] GAO Report, GAO-21-105373, "Many Impacted Borrowers Struggled Financially Despite Being Eligible for Loan Discharges", Sept. 30, 2021. www.gao.gov/products/gao-21-105373.

complete their program or continue their education by transferring to another college.

The proposed restrictions and limitations are directed at institutions we already have significant concerns with. These proposed conditions would make it easier to manage the size of a risky institution and ensure that it does not keep growing when it may be in dire straits. Specifically, we propose expressly providing the authority to limit the addition of new programs and locations, including in cases where we have concerns about an institution's ability to adequately administer aid for the programs they currently offer. In addition, we propose expressly authorizing restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs. Such restrictions would help the Department manage an institution's risk of imminent closure and mitigate the resulting harms to students.

We also propose prohibiting provisionally certified institutions to provide a teach-out on behalf of another institution. As GAO found[146], some borrowers who transfer after a school closure end up at a school that later shuts its doors as well. From 2014 through 2020, nearly 11,500 borrowers transferred from a closing college to another college that subsequently closed, accounting for about 5 percent of borrowers affected by closures in that time.

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[146] Ibid.

The government’s interest is to provide students the best possible chance of finishing their education, and this could be substantially more challenging for students if they transfer to institutions that are not providing adequate academic resources, are not financially stable, are subject to State or accrediting agency actions or program review findings, or generally lack administrative capability. We propose to expressly authorize the Department to prevent institutions in these situations from acquiring other institutions or participating in teach-outs of closing institutions to limit risk to students. We also propose allowing for additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements to monitor the institution’s progress. In addition, we propose allowing limitations on written arrangements in which another eligible institution or ineligible organization would provide more than 25 percent of a program because we are concerned about institutions outsourcing their education to unregulated companies or to other institutions. As indicated in DCL (GEN-22-07),[147] the Department is aware of several arrangements between eligible institutions and ineligible entities that have

[147] www.fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-06-16/written-arrangements-between-title-iv-eligible-institutions-and-ineligible-third-party-entities-providing-portion-academic-program.

exceeded the regulatory limitations in § 668.5. For example, the Department has witnessed cases where a program was offered in its entirety by an ineligible entity, but the program was inaccurately represented as being offered by the eligible institution for the primary purpose of obtaining title IV, HEA funds for an otherwise ineligible program.

Furthermore, we are concerned with institutions that engage in misrepresentation and aggressive recruitment because often these programs are not what they advertise, and consequently this increases the likelihood of students filing a borrower defense to repayment or false certification claim. As defined in subpart F of part 668, misrepresentation includes false, erroneous, or misleading statements, by an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services made directly or indirectly to a student, prospective student, or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. An eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, lead generation, recruiting, or admissions services, engages in one or more of the prohibited practices in §668.501. We propose that an institution alleged or found to have misrepresented students, engaged in aggressive recruiting practices, or that has violated incentive compensation rules, may be required to hire a monitor and submit marketing and other recruiting materials (e.g., call scripts) for the Department to review and approve. We included the hiring of a monitor as a possible requirement because we believe a monitor would help us get information that we do not readily get from audits. Conditions for institutions that undergo a change in ownership seeking to convert from a for-profit to a nonprofit institution (§ 668.14(f)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(i) outlines the treatment of changes of ownership.

Current Regulations: Current § 668.14(f) states that except as provided in current paragraphs § 668.14(g) and (h), the Secretary terminates a PPA through the proceedings in subpart G of part 668.

Proposed Regulations: We propose to redesignate current § 668.14(f) as § 668.14(i). The Department proposes to add a new paragraph (f) that outlines conditions that would be applied to institutions that undergo a change in ownership seeking to convert from a for-profit institution to a nonprofit institution. The first condition we propose is for the institution to continue to meet the revenue percentage requirements under § 668.28(a) until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years in which the institution meets the requirements of § 668.14(b)(16) under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later. The second condition we propose is for the institution to continue to meet the GE requirements of subpart S of part 668 until we have accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership, or until we approve the institution's request to convert to a nonprofit institution, whichever is later. The third condition we propose is for the institution to submit regular and timely reports on agreements entered with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution, so long as the institution participates as a nonprofit institution. In our fourth condition, we propose to prohibit an institution from advertising that it operates as a nonprofit institution for the purposes of title IV, HEA until the Department approves the institution's request to convert to a nonprofit institution. We also propose to apply any other conditions the Secretary deems appropriate to serve the interests of students and taxpayers and ensure compliance from institutions.

Reasons: We propose new language under § 668.14(f), thus the current § 668.14(f) would be redesignated as § 668.14(i). Proposed § 668.14(f) expands on recent changes made to § 600.31(d)(7), particularly on the Department's belief that it is reasonable to require institutions seeking to convert from for-profit to nonprofit status to continue to meet all the requirements applicable to for-profit colleges for the later of two complete consecutive years under the new ownership or until the Department approves the institution's request to convert to nonprofit status. The conversion from a for-profit to a nonprofit institution is among the riskier types of transactions we review, and we want to make certain that these transitions are not being made to evade financial consequences or federal oversight for the school, such as failures of the 90/10 rule or the proposed gainful employment requirements in this NPRM. As explained in the recent final rule[148] regarding changes in ownership (CIOs), a 2020 GAO report noted that of 59 CIOs (involving 20 separate transactions) involving a conversion from a for-profit entity to a nonprofit entity, one entire chain that comprised 13 separate institutions was granted temporary continued access to title IV, HEA aid but ceased operations prior to the Department reaching a decision on whether to approve the requested conversion to nonprofit status. Three-fourths of these CIOs involved sales to a nonprofit entity that had not previously operated an institution of higher education, a particular challenge given that many of the institutions involved in these CIOs had a history of lawsuits, settlements, and investigations into the practices of the underlying institutions that suggested students were not being served well. One-third of these CIOs had what GAO termed "insider involvement" in the purchasing of the nonprofit organization (i.e., someone from the former for-profit ownership was also involved with the nonprofit purchaser), suggesting greater risk of impermissible benefits to those insiders. Altogether, the 59 institutions that underwent a change in ownership resulting in a conversion received more than $2 billion in taxpayer-financed Federal student aid in Award Year 2018-19. Given the potential risk in such transactions, we want

[148] 87 FR 65426

to ensure that they occur in a way that protects students, the Department, and taxpayers. The conditions in proposed § 668.14(f) include complying with 90/10 and gainful employment requirements for the later of two years or until the Department approves the institution's request to convert to non-profit status. This ensures there is no change in oversight of 90/10 until a CIO has been thoroughly reviewed and approved. In addition, we believe it is necessary for an institution to submit agreements with the former owner of the institution to assess whether former owners are improperly benefitting from those agreements.[149] These concerns are detailed in final regulations related to change in ownership procedures that were published in the *Federal Register* on October 28, 2022, and include ensuring that the institution is operating as a nonprofit for the purposes of title IV aid and ensuring that the institution's revenues are not impermissibly benefiting the prior owner or other parties.[150] Lastly, we believe that if an institution's website or other public information describes its ownership structure as private, the institution should identify whether it participates in title IV, HEA programs as a nonprofit institution or a proprietary institution for clarity as we would consider an institution to be a for-profit institution until we have

[149] GAO Report, GAO-21-89, "Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions", Dec. 31, 2020. www.gao.gov/products/gao-21-89..
[150] 87 FR 65426.

reviewed and approved the institution’s application for nonprofit college status.

This list of conditions under proposed § 668.14(f) would address the interim period during which the Department is determining whether the institution seeking to convert from a for-profit institution to a nonprofit institution would be considered as a nonprofit institution for title IV, HEA purposes. The Department does not take a position regarding an institution being designated a 501(c)(3) tax-exempt status by the IRS. However, the institution would have to refrain from identifying itself as a nonprofit institution in any advertising publications or other notifications until the Department recognizes and approves the change of status. In other words, if the Department has not approved the institution as a non-profit for purposes of the federal student aid programs, then it cannot mislead prospective students or misrepresent itself as a “nonprofit institution” in the context of title IV, HEA aid. Using the term nonprofit prematurely could potentially confuse students and the public who may interpret nonprofit as the Department having granted the institution nonprofit status under its regulations, which would not be accurate. Thus, as the institution would still be considered a for-profit entity during this interim period, reporting requirements for the for-profit entity would continue to apply.

Conditions for initially certified nonprofit institutions, or institutions that have undergone a change of ownership and seek to convert to nonprofit status (§ 668.14(g)).

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. HEA section 498(i) outlines the treatment of changes of ownership.

Current Regulations: Current § 668.14(g) states conditions when an institution's PPA automatically expires.

Proposed Regulations: We propose to redesignate current § 668.14(g) as § 668.14(j). The Department proposes to add a new paragraph (g) that outlines conditions for initially certified nonprofit institutions, or institutions that have undergone a change of ownership and seek to convert to nonprofit status, which would apply upon initial certification or following the change in ownership. The first condition we propose is for the institution to submit reports on accreditor and State authorization agency actions and any new servicing agreements within 10 business days of receipt of the notice of the action or of entering into the agreement, as applicable. This condition would continue to apply until (1) the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following initial certification, (2) two complete fiscal years after a change in ownership, or (3) until the Department approves the institution's request to convert to nonprofit status, whichever is later. Note that accreditors are already obligated to tell the Department about actions related to the institutions they accredit. Accreditors currently use the Database of Accredited Postsecondary Institutions and Programs (DAPIP) to submit these reports, but in proposed § 668.14(g) the institution, irrespective of what the accreditor does, would report this information to Department staff. The second condition we propose is for the institution to submit a report and copy of the communications from the IRS (Internal Revenue Service) or any State or foreign country related to tax-exempt or nonprofit status within 10 business days of receipt so long as the institution participates as a nonprofit institution. We also propose to apply any other conditions that the Secretary deems appropriate.

Reason: We propose new language under § 668.14(g), thus the current § 668.14(g) would be redesignated as § 668.14(j). In proposed § 668.14(g) the Department would be more hands-on with initially certified nonprofit institutions and institutions that have undergone a change of ownership and seek to convert to nonprofit status by helping them familiarize themselves with the Federal financial aid programs. With respect to proposed § 668.14(g) we believe it is important to obtain reports on accreditor and State authorization agency actions and any new servicing agreements quickly because we need access to the information to better assess the strength of the institution and confirm that it is complying with the requirements of the other members of the triad. The proposed language in § 668.14(g) would require institutions to report more information to the Department from accreditors, States, and the IRS ensures that the Department is made aware of any likely oversight actions by other key entities. This is an improvement over current conditions in which reporting may be irregular and is not required of institutions. Moreover, as part of GAO's report addressing risks associated with some for-profit college conversions, GAO recommended the IRS collect information that would enable the agency to systematically identify tax-exempt colleges with a for-profit history for audit and other compliance activities.[151] In the same GAO report, GAO recommended that the Department develop and implement monitoring procedures for staff to review the audited financial statements of all newly converted nonprofit colleges for the risk of improper benefit. We believe that looking over an institution's correspondence with the IRS

[151] Ibid.

would help us monitor institutions for any improper benefits from their conversions to nonprofit status.

Ability To Benefit

The Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations.

General Definitions (§ 668.2).

Statute: Section 484(d)(2) of the HEA defines "eligible career pathway program."

Current Regulations: None.

Proposed Regulations: We propose to adopt almost the entire statutory definition of an "eligible career pathway program" in our regulations. Under the proposed definition, an "eligible career pathway program" would mean a program that combines rigorous and high-quality education, training, and other services that-

- Align with the skill needs of industries in the economy of the State or regional economy involved;

- Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.);

- Include counseling to support an individual in achieving the individual's education and career goals;

- Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

- Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

- Enable an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

- Help an individual enter or advance within a specific occupation or occupational cluster.

Reasons: This definition is in large part a duplication of the statute, which requires that students accessing title IV, HEA aid through ATB be enrolled in eligible career pathway programs. The Department has proposed to exclude the statutory definition's cross-reference to apprenticeship programs, which reads in the statute as "(referred to individually in this chapter as an 'apprenticeship', except in section 171);"[152] because we do not discuss apprenticeships elsewhere in part 668.

[152] This reference to "section 171", may have been intended as a reference to section 171 of the Workforce Innovation and Opportunity Act, Pub. L. 113-128, which is classified to section 3226 of Title 29,

Student Eligibility--General (§ 668.32)

Statute: Section 484(d) of the HEA establishes the student eligibility requirement for students who are not high school graduates.

Current Regulations: Current § 668.32(e)(2) states that a student is eligible to receive title IV, HEA aid if the student has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of the student assistance general provisions. Subpart J delineates the process for approval of the independently administered tests and the specifications of passing scores, among other criteria.

Current § 668.32(e)(3) states that a student is eligible to receive title IV, HEA aid if he or she is enrolled in an eligible institution that participates in a State "process" that is approved by the Secretary under subpart J of part 34.

Current § 668.32(e)(5) provides that a student is eligible for title IV, HEA aid if the institution determines that the student could benefit from the education offered based on satisfactory completion of 225 clock hours or six semester, trimester, or quarter hours that are applicable toward a degree or certificate offered by the institution.

Labor. Neither the National Apprenticeship Act nor the HEA contains a section 171.

Proposed Regulations: Throughout §§ 668.32(e)(2), (3) and (5), we propose changes that clarify the differences between eligibility for students who enrolled before July 1, 2012, and students who enrolled on or after that date.

We propose to amend § 668.32(e)(2), by allowing for student eligibility for title IV, HEA aid if a student has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part, and either under proposed § 668.32(e)(2)(i) was first enrolled in an eligible program before July 1, 2012; or under proposed § 668.32(e)(2)(ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) on the HEA.

We propose to amend § 668.32(e)(3) by allowing for student eligibility for title IV, HEA aid if a student is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part, and either was first enrolled in an eligible program before July 1, 2012; or (ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) of the HEA.

We propose to amend § 668.32(e)(5), by allowing for student eligibility for title IV, HEA aid if it has been determined by the institution that the student has the ability to benefit from the education or training offered by the institution based on the satisfactory completion of six semester hours, six trimester hours, six quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution, and either: (i) was first enrolled in an eligible program before July 1, 2012; or (ii) is enrolled in an eligible career pathway program as defined in section 484(d)(2) of the HEA.

Reasons: These are technical changes. Section 309(c), Division F, title III of the 2011 amendments to the HEA (Pub. L. 112-74), allows students who were enrolled prior to July 1, 2012, to continue to be eligible for title IV, HEA aid under the previous ability to benefit alternatives. The Department discussed the amendment in Dear Colleague Letter GEN-12-09 (June 28, 2012)[153], where we explained that the new provision in the 2014 amendments did not affect the eligibility of students first enrolled in an eligible program or registered to attend an eligible institution prior to July 1, 2012.

The 2014 amendments to the HEA, enacted on December 16, 2014 (Pub. L. 113-235), amended section 484(d) to allow a student who does not have a high school diploma or its recognized equivalent, or who did not complete a secondary school education in a homeschool setting, to be eligible for title IV, HEA aid through the three ATB alternatives discussed in the Background section of this NPRM, but only

[153] ifap.ed.gov/dear-colleague-letters/06-28-2012-gen-12-09-subjecttitle-iv-eligibility-students-without-valid-high.

if the student is enrolled in an eligible career pathway program. These technical changes to the regulatory text would further clarify how student eligibility applies in each case.

Approved State Process (§ 668.156)

Statute: Section 484(d)(1)(A)(ii) of the HEA states that a non-high school graduate shall be determined as having the ability to benefit from the education or training in accordance with such process as the State prescribes.

Current Regulations: Section 668.156(a) provides that the State process is one of the ATB alternatives. Under this section, if a State wishes the Department to consider its State process, that State must list all of the institutions that will participate in the State process.

Section 668.156(b) requires that if a State wishes the Department to consider its state process, the State submit a success rate for non-high school graduates that is within 95 percent of the success rate of students with high school diplomas. The method for calculating the success rate is described in § 668.156(h) and (i).

Section 668.156(c) requires that the participating institution provide certain services to each student admitted through the State process, which generally include orientation, assessment of the student's existing capabilities, tutoring, counseling, and follow-up by teachers and counselors regarding student performance.

Section 668.156(d) requires that if a State wishes the Department to consider its State process, a State monitor each participating institution on an annual basis, prescribe corrective action for noncompliant institutions, and terminate the participation of an institution that refuses or fails to comply. Section 668.156(e) requires the Secretary to respond to a State's application within six months or the application is automatically approved. Section 668.156(f) stipulates that the State process can be approved for up to five years.

Section 668.156(g) provides the Secretary with the authority to withdraw the State process if the State violates any part of § 668.156. This provision also provides the State with an appeal process.

Proposed Regulations: The Department proposes to restructure the section and add several new provisions to § 668.156.

In § 668.156(a)(1) we propose to update the regulations to include the six-credit hour ATB alternative in section 484(d)(1)(A)(iii). Currently the regulations list only the test alternative and the State process.

Under § 668.156(a)(2) we propose that a State, in its application for the State process:

- List all institutions that would be eligible to participate in the State process.

- Describe the requirements that participating institutions must meet to offer eligible career pathway programs under that process.

- Certify that each proposed eligible career pathway program meets the definition under § 668.2 and documentation requirements under § 668.157 as of the submission date of the application.

- List the criteria used to determine student eligibility in the State process.

- Exclude from participation in the State process any institution that has a withdrawal rate that exceeds 33 percent of the institution's undergraduate regular students. Institutions must count all regular students who were enrolled during the latest completed award year, except those students who withdrew from, dropped out of, or were expelled and received a refund of 100 percent of their tuition and fees.

In § 668.156(a)(3) we propose that the Secretary would verify that a sample of eligible career pathway programs offered by institutions participating in the State process meet the definition of an eligible career pathway program.

We propose to separate the State process application into the initial application process, as described under § 668.156(b), and a subsequent application process, as described under § 668.156(e). All applications, whether initial or subsequent, would comply with requirements under

§ 668.156(a). In both the initial and subsequent applications, we propose to remove the services required under current § 668.156(c), and instead those services would largely appear under the definition of an eligible career pathway program in proposed § 668.157.

In § 668.156(b)(1) we propose that a State's initial application may be approved for two years if the State satisfies requirements under proposed § 668.156(a), discussed above, and proposed §§ 668.156(c) and (d), which are discussed later in this section. Under proposed § 668.156(b)(2), the States would be required to agree not to exceed enrollment under the State process of more than 25 students or one percent of the enrollment, whichever is greater, at each participating institution.

In § 668.156(c)(1) we propose that institutions must adhere to the student eligibility requirements under § 668.32 for access to title IV, HEA aid. We also propose that States must ensure monitoring of the institutions that fall within the State process and take appropriate action in response to that monitoring, including:

- On an annual basis, monitoring each participating institution's compliance with the State process, including the success rate requirement;
- Requiring corrective action if an institution is found to be noncompliant with the State process;

• Providing participating institutions up to three years to come into compliance with the success rate if, in the State's subsequent application for continued participation of the State process, an institution fails to achieve the success rate required under proposed § 668.156(e)(1) and (f); and

• Requiring termination of a participating institution from the State process if there is a refusal or failure to comply.

Proposed § 668.156(d) simply redesignates the current § 668.156(e), with the language otherwise unchanged.

We propose to outline the new subsequent application process under the new § 668.156(e). Each participating institution would be required to calculate a success rate for non-high school graduates that is within 85 percent of the success rate of students with high school diplomas. We would require the State to continue to comply with proposed §§ 668.156(a) and (c)(related to the contents of the application and monitoring requirements for the State). We would require the State to report information about participating students in eligible career pathway programs, including disaggregated by race, gender, age, economic circumstances, and educational attainment, related to their enrollment and success. Current § 668.156(d), which relates to the Secretary's approval of the State process application, would continue to apply.

We propose several changes from current regulations under § 668.156:

- The success rate would be 85 percent. Currently it is 95 percent.

- The success rate would be calculated and reported separately for every institution. Currently the success rate combines all institutional data into one calculation.

- The success rate for participating institutions would compare non-high school graduates to high school graduates in the same programs. Currently the regulation compares non-high school graduates to high school graduates in any program.

Current § 668.156(i), which states that the success rate would be based on the last award year for which data are available during the last two completed award years before the application is submitted, would be redesignated as proposed § 668.156(g)(1). The Department proposes to remove the requirement that the data come from the last two completed award years. The Department also proposes to add a new § 668.156(g)(2), to allow that if no students enroll through the State process during the initial approval, we would extend the approval for one additional year.

The Department also proposes under § 668.156(h) to require States to submit reports on their process in accordance with deadlines and procedures established in a notice published in the *Federal Register*. Proposed §

668.156(i), which states that the maximum length of the State process approval is five years, is simply redesignated from current § 668.156(f), which includes the same maximum length.

Finally, proposed § 668.156(j)(1) clarifies that the Secretary would withdraw approval of the State process for violation of the terms of § 668.156 or for the submission of inaccurate information. Proposed § 668.156(j)(1)(i) would provide that this withdrawal of approval occurs if the State fails to terminate an institution from participation in the State process after its failure to meet the success rate. However, proposed § 668.156(j)(1)(ii) would provide that, under exceptional circumstances determined by the Secretary, the State process can be approved once for a 2-year period. If more than 50 percent of participating institutions across all States do not meet the 85 percent success rate requirement, proposed § 668.156(j)(1)(iii) provides that the Secretary may lower the success rate to no less than 75 percent for two years. Current § 668.156(g)(2) would be redesignated as proposed § 668.156(j)(2) and would state that the Secretary provides the State an opportunity to contest a finding that the State process violated the requirements of the section or that the information submitted was inaccurate. Under proposed § 668.156(j)(3), we propose that if the Secretary's termination of a State process is upheld after the appeal, the State cannot reapply to the Department for approval of a State process for five years.

Reasons: The change made to proposed § 668.156(a)(1) is a technical update to include the six-credit hour or recognized equivalent alternative as defined in section 484(d)(1)(A)(iii) of the HEA so that the list of alternatives in regulation is complete.

Proposed § 668.156(a)(2) describes documentation that would be required in both the initial and subsequent applications. The requirement to provide a list of participating institutions in proposed § 668.156(a)(2)(i) aligns with the current regulation. In § 668.156(a)(2)(ii), we propose to require a list of standards that participating institutions must meet to offer an eligible career pathway program under the State process as an alternative to including the list of particular services that must be required of institutions under current § 668.156(c). We believe that the eligible career pathway program definition we propose to add to the regulations includes substantially similar types of services; and cross-referencing to that list would provide more clarity to the field about how the State process connects to the definition of an eligible career pathway program. We also propose under § 668.156(a)(2)(iii) to require institutions to certify that the eligible career pathway program offered by participating institutions under the State process meets the regulatory definition and documentation requirements. This certification would provide greater assurances to the Department that institutions are compliant with the statutory requirements for ability to benefit, provide greater certainty that students utilizing ability to benefit would receive the support services they need to succeed, and would protect taxpayers from investing Federal financial aid dollars in programs that do not meet the intended requirements. For those reasons, we believe that the Secretary need only approve a sample of eligible career pathway programs. To better understand the State process as it relates to students, and to ensure that States have a process sufficiently rigorous to comply with the law, the Department requires that student eligibility criteria be outlined in all applications, as described under proposed § 668.156(a)(2)(iv). This would also provide deeper insights into the landscape of programming that States and institutions are providing to students who have not earned a high school diploma or equivalent. Proposed §668.156(a)(2)(v) would require that all institutions listed for the first time on an application not have a withdrawal rate of over 33 percent as a consumer protection. This is similar to the current administrative capability regulations in § 668.16(l), which apply to all institutions seeking initial certification to participate in the Federal aid programs. We believe that students who have not yet earned a high school diploma or equivalent require substantial supports to ensure they are able to succeed. As we noted when we added the withdrawal rate measure as an eligibility requirement, the Secretary believes that these rates are appropriate measures of an institution's past administrative performance, and that withdrawal rates are a function of overall institutional performance and the support services that are provided to students. The Department proposes under §668.156(e)(1) to move the success rate calculation (the outcome metric) to the subsequent application, since we recognize that before the State process is in place, it is unlikely the State or its institutions would have calculated a rate and may not even have enrolled students through ability to benefit. The Department is aware that this challenge has kept many States from being able to submit a complete State process application and believes this change would provide States with sufficient time to make the success rate calculation.

Proposed § 668.156(b) describes the initial application process. Currently, the regulations require the success rate to be included as a part of States' first application to the Secretary. No currently approved State has provided the success rate as a part of its application. The current success rate formula outlined in current § 668.156(h) does not take into account eligible career pathway programs, therefore, it has been difficult for the Department to provide a consistent application to States. Further, many States would not be able to complete the success rate calculation unless participating institutions have their own funds to enroll non-high school graduates under a State process for at least a year. The current regulation at § 668.156(b)(1) references students it admits "under that process", meaning that participating institutions must be enrolling non-high school graduates into programs prior to their application to the Department, which is very difficult for institutions without funds to support such students. Therefore, the Department proposes to give States more time in their State process to gather the necessary data to calculate the success rate after students become eligible for Title IV, HEA aid.

In proposed § 668.156(b)(2), the Department initially proposed to the Committee a one percent cap on enrollment through the State process at each participating institution. This cap is intended to serve as a guardrail against the rapid expansion of eligible career pathway programs. We believe these protections are particularly important because the required success metric is no longer included at the initial application of a State process. A committee member believed the cap on enrollment in the initial phase would restrict enrollment at smaller institutions and suggested that the cap be established as the greater of a one percent on enrollment or 25 students at each participating institution. The Committee adopted that committee member's suggestion.

Proposed § 668.156(c) generally incorporates current § 668.156(d), in that it would require the State to ensure annual monitoring, corrective action, and termination of institutions that refuse or fail to comply with the State process. Proposed § 668.156(c)(1) simply conveys that States and participating institutions must comply with title IV, HEA student eligibility requirements. We propose to add § 668.156(c)(4), which would allow an institution that does not meet the success rate requirements up to three years to come back into compliance. This would provide some latitude to States to ensure that the failure to meet the success rate requirement is not due just to a single-year variation and would grant institutions some time to demonstrate improved outcomes, while ensuring that institutions that continue to miss the required rate are not permitted to participate in the State process indefinitely. In § 668.156(c)(6), we propose to prohibit an institution that has been terminated from the State process from participating for at least five years after the action because we believe that is a reasonable amount of time for the institution to rectify issues before returning to the State process. This timeline also mirrors the proposed limitation in § 668.156(j)(1)(v) that limits a

State for which the Secretary has withdrawn approval of the State process from reapplying for a State process for at least five years after the withdrawal.

Proposed § 668.156(e) establishes the requirements for the subsequent application. During the negotiations, the Department originally wanted to maintain the 95 percent success rate requirement established in current regulations. However, the Department ultimately accepted a committee member's recommendation of lowering the success rate from 95 percent to 85 percent in proposed § 668.156(e)(1) because the member believed that 95 percent is too difficult to achieve. The Department views this change as necessary to achieve consensus, and notes all of the other guardrails and consumer protections that would be put in place under the proposed changes to § 668.156, which would ensure adequate student protections are in place even with a lower success rate. The new proposed protections include withdrawal rate considerations, caps on initial enrollment, review of a sample of eligible career pathway programs during the application review to ensure that they meet the requirements in the regulations, enhanced reporting by States, and expanded Departmental authority to terminate a State process and bar participation for five years. The Department also notes that, given an absence of existing data to either support or contradict the 95 percent success rate, there is limited information with which to consider this requirement; to that end, we invite commenters to submit additional information about the success rates of ATB students to further inform this rulemaking. Proposed § 668.156(e)(3) would require that States report on the demographic information of participating students and on their outcomes because the Department seeks to implement section 484(d) of the HEA, which requires the Department to take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions. The Department also believes that ensuring diversity, disaggregating data to assess the outcomes of all students and student subgroups and promoting equitable success for students are critical goals and central to the purpose of the title IV, HEA programs.

The overall structure of the success rate calculation under proposed § 668.156(f) is based in large part on the success rate formula in current § 668.156(h). Due to the implementation of the eligible career pathway programs as a requirement for students that fulfill an ATB alternative, not reflected in the current regulations, we believe that it is necessary to further clarify the comparison groups for the formula. In particular, proposed § 668.156(f) would clarify that the success rate must be calculated for each participating institution, rather than as an overall number for the State. We also believe this would be better for States because if one institution continually fails to produce the required success rate, that specific institution would be removed from the State process without risking the termination of the entire State process and every participating institution that falls under that process. Proposed § 668.156(f)(1) would compare students in the same programs because we believe it would yield more relevant outcomes data about specific programs. Currently students in the State process are compared to all high school graduates in any program, even if they were not programs that students admitted through the State process engaged in. We do not believe the comparison is targeted enough to yield data that States, participating institutions, or the Department could use in making determinations about the State process.

We propose to provide participating institutions two years of initial approval, so they have sufficient time to collect data needed to calculate and report the success rate. Accordingly, we propose to revise § 668.156(g)(1) to reflect that the data used in calculating the success rate must be from the prior award year, rather than from either of the two prior award years. We also recognize that some States may not see significant enrollment, and in fact, may have years in which no ATB student enrolls in an eligible career pathway program. Accordingly, in proposed § 668.156(g)(2), we would provide those States with a one-year extension to the initial approval to allow for more time to enroll students to calculate a success rate.

To have sufficient access to relevant and timely data about the State process, and to provide for adequate oversight of States' efforts and the outcomes at their participating institutions, proposed § 668.156(h) would require States to submit reports in accordance with processes laid out in a *Federal Register* notice. This would also aid us in monitoring areas where policy changes may be needed to better support States, institutions, and ATB students.

Finally, proposed § 668.156(j) would grant the Secretary the authority to rescind a State process approval and would grant the State an appeal process. There was already similar language in current § 668.156(g) but we believe that the proposed language provides a clearer framework. Furthermore, similar enforcement and due process requirements are included throughout other parts of the Department's regulations. Among the changes from current regulations, the Department proposes in § 668.156(j)(1)(iii) to clarify that the Secretary may lower the success rate to not less than 75 percent in the event that more than 50 percent of participating institutions across all States fail the 85 percent success rate requirement. Given that there is little information available about the current success rates of ATB students, we believe that this ability to lower the requirement if most institutions are unable to meet the requirement would provide some ability for the Department to act in the event a change in the standard is needed. This may also account for years in which external circumstances, like those seen during the pandemic, may necessitate a system-wide accommodation. The Department believes that, by setting a floor of not less than 75 percent, proposed § 668.156(j) would still protect ATB students from poor-performing institutions and ensure they have access to quality opportunities.

Directed Questions

The Committee reached consensus on the Department's proposed regulations on ATB. The Department has published the proposed ATB amendatory language without substantive alteration to the agreed-upon proposed regulations. We would like additional feedback on the regulations to further inform the rulemaking process.

We propose a success rate calculation under proposed §668.156(f) and would like to receive public comments specific to this success rate calculation) to further inform this rulemaking. We specifically request comments on the proposed 85 percent threshold, the comparison groups in the calculation, the components of the calculation, and whether the success rate itself is an appropriate outcome indicator for the State process as well as any other information, thoughts, or opinions on the success rate calculation. For more information on §668.156(f), please see the information discussed previously in this section and also the current regulations in §668.156(h). You can also review the proposed regulatory language.

Eligible Career Pathway Program (§ 668.157)

Statute: Section 484(d)(2) of the HEA defines an eligible career pathway program.

Current Regulations: None.

Proposed Regulations: The Department proposes to create new § 668.157 in subpart J. This section would dictate the documentation requirements for eligible career pathway programs for submission to the Department for approval as a title IV, HEA eligible program. In proposed § 668.157(a)(1) an institution would demonstrate to the Secretary that a student is enrolled in an eligible career pathway program by documenting that the student has enrolled in or is receiving all three of the following elements simultaneously--

- An eligible postsecondary program as defined in § 668.8;
- Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in § 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and

- Workforce preparation activities as described in § 463.34.

In proposed § 668.157(a)(2) an institution would demonstrate to the Department that a student is enrolled in an eligible career pathway program by documenting that the program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on research the institution has conducted, including--

- Government reports identifying in-demand occupations in the State or regional labor market;
- Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market; and
- Documentation that demonstrates direct engagement with industry;

In proposed § 668.157(a)(3) through (a)(6), an institution would demonstrate to the Department that a student is enrolled in an eligible career pathway program by documenting the following:

- The skill needs described in proposed § 668.157(a)(2) align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;
- The program provides academic and career counseling services that assist students in pursuing their credential

and obtaining jobs aligned with the skill needs described in proposed § 668.157(a)(2), and identifies the individuals providing the career counseling services;

- The appropriate education is offered, concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster through an agreement, memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the secondary education is aligned with the students' career objectives; and

- The program is designed to lead to a valid high school diploma as defined in § 668.16(p) or its recognized equivalent.

Under § 668.157(b) we propose that, for career pathway programs that do not enroll students through a State process as defined in § 668.156, the Secretary would verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to proposed § 668.157(a). Under proposed § 668.157(b), we would also provide an institution with the opportunity to appeal any adverse eligibility decision.

Reasons: Currently, we do not approve individual career pathway programs and have provided minimal guidance on documentation requirements. The Department is aware of compliance and program integrity concerns with programs that claim to offer an eligible career pathway program but do not offer all the required components. While the Department believes that many institutions have made a good-faith effort to comply with the statutory definition, we believe it is necessary to establish baseline requirements in regulation to curtail bad actors' efforts to provide subpar programming. These baseline requirements would also support good actors by providing further regulatory clarity to support their efforts, weeding out subpar eligible career pathway programs, and steering students towards eligible career pathway programs with better outcomes.

This new section provides a reasonable baseline for documentation requirements and allows the Department to better enforce the eligible career pathway program statutory requirement through approval of all eligible career pathway programs that enroll students through the six-credit and ATB test options. We received a suggestion from a committee member to better align eligible career pathway programs with integrated education and training programs. Proposed § 668.157(a)(1) would do this by referring to adult education and literacy programs, activities, and workforce preparation activities described under the Workforce Innovation and Opportunity Act (WIOA) implementing regulations (§ 463.30 and §463.34).

In proposed § 668.157(a)(2), we clarify that the eligible career pathway program would have to align with the skill and hiring needs of the industry. By proposing that there be direct interaction by the institution with a government source and that the collaboration is supported by other means that demonstrate engagement with industry, we believe that institutions would produce stronger analyses and demonstrate clearer connections with the workforce needs of their communities. Proposed § 668.157(a)(3) supports the language in proposed § 668.157(a)(2) by mandating that the coursework and postsecondary credential would also have to align to these industry needs. We believe this would provide for further connections between students' academic and career needs, and ultimately would help to ensure that students are able to obtain a career in their intended field.

The documentation required under proposed § 668.157(a)(4) is similar to section 484(d)(2)(C) of the HEA, which requires academic and career counseling. Proposed § 668.157(a)(5), which also largely mirrors section 484(d)(2)(D) of the HEA, proposes further requirements regarding evidence of coordination to ensure better alignment of adult education with post-secondary education. The language in proposed § 668.157(a)(5) would not require an institution to develop a new adult education curriculum to offer an eligible career pathway program, as it would allow for workforce preparation activities and training to be offered through an agreement, memorandum of understanding, or some other evidence of alignment. The documentation proposed under § 668.157(a)(6) reflects the statutory requirement in section 484 of the HEA that requires the program to lead to a valid high school diploma for ATB students.

Under proposed § 668.157(b), we would review and approve every eligible career pathway program that enrolls students through means other than exclusively the State process. This is to ensure that the programs comply with the regulatory definition and documentation requirements. By requiring this verification, the Department would be able to address existing issues by which some programs may have failed to meet statutory requirements and have still received aid for ATB.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This proposed regulatory action will have an annual effect on the economy of more than $100 million because the proposed Financial Value Transparency and GE provisions of the regulations alone could impact transfers between postsecondary institutions, the Federal Government, and borrowers in excess of this amount. Annualized transfers between borrowers and the Federal Government are estimated to be $1.1 billion at a 7 percent discount rate and $1.2 billion at a 3 percent discount rate in reduced Pell Grants and loan volume. This analysis also estimates additional annualized transfers of $836 million (at a 3 percent discount rate; $823 million at 7 percent discount rate) among institutions as students shift programs and estimated annualized paperwork and compliance burden of $115.1 million (at a 3 percent discount rate; $118 million at a 7 percent discount rate) are also detailed in this analysis Therefore, this proposed action is economically significant and subject to review by OMB under section 3(f)(1) of Executive Order 12866. We therefore have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the

Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, summarize the key provisions, present a detailed analysis of the Financial Value Transparency and GE provisions of the proposed regulation, discuss the potential costs and benefits, estimate the net budget impacts and paperwork burden as required by the Paperwork Reduction Act, discuss distributional consequences, and discuss regulatory alternatives we considered. The Financial Value Transparency and GE provisions are the most economically substantial components of the package, so we include a much more detailed quantitative analysis of these components than the others and focus on the budget impact of these provisions. For the purposes of the analysis contained in this RIA, we combine the Financial Value Transparency and GE parts of the regulation. However, we do present many results separately for eligible non-GE programs (only subject to programmatic reporting and acknowledgment requirements) and GE programs (additionally subject to ineligibility and warnings about eligibility). Economic analysis for the proposed Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit rules are presented separately.

The proposed Financial Value Transparency and GE regulations aim to generate benefits to students, postsecondary institutions, and the Federal government primarily by shifting students from low financial value to higher financial value programs or, in some cases, from low-financial-value postsecondary programs to non-enrollment.[154] This shift would be due to improved and standardized market information about all postsecondary programs, allowing for better decision making by students, prospective students, and their families; the public, taxpayers, and the government; and institutions. Furthermore, the proposed GE regulations aim to improve program quality by directly eliminating the ability of low-financial-value programs to participate in the title IV, HEA programs. Our analysis concludes that this enrollment shift and improvement in program quality would result in higher earnings for students, which would generate additional tax revenue for the Federal, State, and local governments. Students would also likely benefit from lower accumulated debt and lower risk of default. The primary costs of the proposed regulations would be the additional reporting required by institutions, the time necessary for

[154] We use the phrase “low-financial-value” at various points in the RIA to refer to low-earning or high-debt-burden programs that fail debt-to-earnings and earnings premium metrics.

students to acknowledge having seen program information and warnings, and additional spending at institutions that accommodate students that would otherwise attend failing programs. We anticipate that the proposed regulations would also generate substantial transfers, primarily in the form of title IV, HEA aid shifting between students, postsecondary institutions, and the Federal government. Based on our analysis, we conclude that the benefits outweigh the costs.

The proposed regulatory actions related to Financial Responsibility, Administrative Capability, and Certification Procedures would provide benefits to the Department by strengthening our ability to conduct more proactive and real-time oversight of institutions of higher education. Specifically, under the Financial Responsibility regulations, the Department would be able to more easily obtain financial protection that can be used to offset the cost of discharges when an institution closes or engages in behavior that results in approved defense to repayment claims. The proposed changes to the Certification Procedures would allow the Department more flexibility to increase its scrutiny of institutions that exhibit concerning signs, including by placing them on provisional status or adding conditions to their program participation agreement. For Administrative Capability, we propose to expand the requirements to address additional areas of concern that could indicate severe or systemic administrative issues in properly managing the title IV, HEA programs, such as failing to provide adequate financial aid counseling including clear and accurate communications or adequate career services. Enhanced oversight ability would better protect taxpayers and help students by dissuading institutions from engaging in overly risky behavior or encouraging institutions to make improvements. These benefits would come at the expense of some added costs for institutions to acquire additional financial protection or potentially shift their behavior. The Department believes these benefits of improved accountability would outweigh those costs. There could also be limited circumstances in which an institution that was determined to lack financial responsibility and required to provide financial protection could choose to cease participating in the Federal aid programs instead of providing the required financial protection. The Department believes this would be most likely to occur in a situation in which the institution was already facing severe financial instability and on the verge of abrupt closure. In such a situation, there could be transfers from the Department to borrowers that occur in the form of a closed school loan discharge, though it is possible that the amount of such transfers is smaller than what it would otherwise be as the institution would not be operating for as long a period of time as it would have without the request for additional financial protection. However, the added triggers are intended to catch instances of potential financial instability far enough in advance to avoid an abrupt closure.

Finally, the ability-to-benefit regulations would provide much-needed clarity on the process for reviewing and approving State applications to offer a pathway into title IV, HEA aid for individuals who do not have a high school diploma or its recognized equivalent. Although States would incur costs in pursuing the application proposed, for this population of students, the proposed regulations would provide students with more opportunities for success by facilitating States' creation and expansion of options.

1. Need for Regulatory Action

Summary:

The title IV, HEA student financial assistance programs are a significant annual expenditure by the Federal government. When used well, Federal student aid for postsecondary education can help boost economic mobility. But the Department is concerned that there are too many instances in which the financial returns of programs leave students with debt they cannot afford or with earnings that leave students no better off than similarly aged students who never pursued a postsecondary education.

The Department is also concerned about continued instances where institutions shut down without sufficient protections in place and with no prior notice for students, including instances where they do so without identifying alternative options for students to continue their education. For instance, one study found that 70 percent of students--more than 100,000 students--affected by a closure between July 2004 and June 2020 were subjected to a sudden closure where there was minimal notice and no teach out agreement in place.[155] Many of the students affected by such closures may obtain a closed school discharge, but even that financial assistance cannot make up for lost time invested in a program or out of the labor force or any out-of-pocket payments made. Significant shares of such students also no longer continue any sort of postsecondary program. This same study found that less than half of students reenrolled after they experienced a closure and students who went through an abrupt closure had significantly worse reenrollment and completion outcomes. Taxpayers are also often left to bear the costs of student loan discharges because existing regulations lack sufficient mechanisms for the Department to seek financial protection from an institution before it suddenly closes.

[155] https://nscresearchcenter.org/wp-content/uploads/SHEEO-NSCRCCollegeClosuresReport.pdf

Having tools for obtaining stronger upfront protection is particularly important because many of the institutions that close suddenly exhibited a series of warning indicators in the weeks, months, and years leading up to their shuttering. Thus, while the Department would not have been able to anticipate the exact date an institution would cease operating, greater regulatory flexibility would have allowed the Department to act faster to obtain taxpayer protection, more closely monitor or place conditions on the institution, and gain additional protection for students such as a teach-out plan or agreement that would allow them to transfer and continue their education. Going forward this flexibility could have a deterrent effect to dissuade institutions from engaging in some of the risky and questionable behavior that ultimately led to their closure.

We have also found during program reviews that there are institutions receiving title IV, HEA aid that lack the administrative capability necessary to successfully serve students. Some of these indicators of a lack of administrative capability can involve direct negative effects on students, such as having insufficient resources to deliver on promises made about career services and externships, or controls that are insufficient to ensure students’ high school diplomas (or equivalent credentials) are legitimate--a key criterion for title IV, HEA student eligibility that may otherwise result in students taking on aid when they are not set up to succeed academically. In other situations, institutions may employ individuals who in the past exerted control at another institution that was found to have significant problems with the administration of the title IV, HEA student aid programs, which raises the concern that the institution may engage in the same conduct as the institution where the individual was previously involved, including mismanagement, misrepresentations, or other risky behaviors.

The Department is also concerned that, in the past, institutions have shown significant signs of problems yet remained fully certified to participate in the Federal student aid programs. Existing regulations do not fully account for the range of scenarios that might indicate risk to institutions or students. For instance, current regulations do not allow the Department to address how conditions placed on an institution’s financing might affect their ability to have the funds necessary to keep operating or how outside investors might affect the health of an institution if those outside investors start to face their own financial struggles. The current regulations also limit the Department's ability to take swift action to limit the effects of an institution’s closure on taxpayers and students. In the past, a lack of financial protection in place prior to an institutional closure has resulted in large amounts of closed school loan discharges that are not otherwise reimbursed by the institution. Moreover, borrowers whose institutions close while they are enrolled have high rates of student loan default. In addition to expanding the Department's capacity to act in such situations, the proposed changes to the regulation would help students by dissuading the riskier behavior by an institution that could result in a closure and by ensuring that more closures do not occur in an abrupt fashion with no plans for where students can continue their programs.

The proposed regulations would provide stronger protections for current and prospective students of programs where typical students have high debt burdens or low earnings. Under a program-level transparency and accountability framework, the Department would assess a program's debt and earnings outcomes based on debt-to-earnings (D/E) and earnings premium (EP) metrics. The regulations would require institutions to provide current and prospective students with a link to a Department website disclosing the debt and earnings outcomes of all programs, and students enrolling in non-GE programs that have failed debt-to-earnings metrics must acknowledge they have viewed the information prior to disbursing title IV, HEA funds. GE programs that consistently fail to meet the performance metrics would become ineligible for title IV, HEA funds. The proposed regulations would also expand the

Department's authority to require financial protection when an institution starts to exhibit problems instead of waiting until it is too late to protect students and taxpayers. This proactive accountability would be buttressed by proposed changes to the way the Department certifies institutional participation in the title IV, HEA programs to ensure that it can monitor institutions more easily and effectively if they start to show signs of problems. The proposed approach would help the Department better target its oversight to institutions that exhibit a greater risk to students and taxpayers instead of simply allowing them to receive substantial sums of Federal resources with minimal scrutiny every year. By identifying additional indicators that an institution is not administratively capable of participating in the aid programs, the proposed regulations would enable the Department to step in and exert greater oversight and accountability over an institution before it is too late.

The proposed regulations would, therefore, strengthen accountability for postsecondary institutions and programs in several critical ways. All institutions would be required to provide students a link to access information about debt and earnings outcomes. Non-GE programs not meeting the D/E standards would need to have students acknowledge viewing this information before receiving aid, and career training programs failing either the D/E or EP metrics would need to warn students about the possibility that they would lose eligibility for federal aid. Some institutions would have to improve their offerings or lose access to Federal aid. Concerning behavior would be more likely to result in required financial protection or other forms of oversight. As a result, students and taxpayers would have greater assurances that their money is spent at institutions that deliver value and merit Federal support.

The Financial Value Transparency and GE provisions in subparts Q and S of the proposed regulations are intended to address the problem that many programs are not delivering sufficient financial value to students and taxpayers, and students and families often lack the information on the financial consequences of attending different programs needed to make informed decisions about where to attend. These issues are especially prevalent among programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation. Currently, many of these programs leave the typical graduate with unaffordable levels of loan debt in relation to their income, earnings that are no greater than what they would reasonably expect to receive if they had not attended the program, or both.

Through this regulatory action, the Department proposes to establish: (1) A Financial Value Transparency framework that would increase the quality, availability, and salience of information about the outcomes of students enrolled in all title IV, HEA programs and (2) an accountability framework for GE programs that would define what it means to prepare students for gainful employment in a recognized occupation by establishing standards by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds. As noted in the preamble to this NPRM, there are different statutory grounds for the proposed transparency and accountability frameworks.

The transparency framework (subpart Q and § 668.43) would establish reporting and disclosure requirements that would increase the transparency of student outcomes for all programs. This would ensure that the most accurate and comparable information possible is disseminated to students, prospective students, and their families to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Institutions would be required to provide information about program characteristics, outcomes, and costs and the Department would assess a program’s debt and earnings outcomes based on debt-to-earnings and earnings premium metrics, using information reported by institutions and information otherwise obtained by the Department. The proposed rule would seek to ensure information’s salience to students by requiring that institutions provide current and prospective students with a link to view cost, debt, and earnings outcomes of their chosen program on the Department’s website. For non-GE programs failing the debt-to-earnings metrics, the Department would require an acknowledgement that the enrolled or prospective student has viewed the information, prior to disbursing title IV, HEA funds. Further, the website would provide the public, taxpayers, and the Government with relevant information to help understand the outcomes of the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they can use to improve the outcomes for students and guide their decisions about program offerings.

The accountability framework (subpart S) would define what it means to prepare students for gainful employment by establishing standards that assess whether typical students leave programs with reasonable debt burdens and earn more than the typical worker who completed no more education than a high school diploma or equivalent. Programs that repeatedly fail to meet these criteria would lose eligibility to participate in title IV, HEA student aid programs.

Overview of Postsecondary Programs Supported by Title IV, HEA:

Under subpart Q, we propose, among other things, to assess debt and earnings outcomes for students in all programs participating in Title IV, HEA programs, including both GE programs and eligible non-GE programs. Under subpart S, we propose, among other things, to establish title IV, HEA eligibility requirements for GE programs. In assessing the need for these regulatory actions, the Department analyzed program performance. The Department's analysis of program performance is based on data assembled for all title IV, HEA postsecondary programs operating as of March 2022 that also had completions reported in the 2015-16 and 2016-17 award years. This data, referred to as the "2022 Program Performance Data (2022 PPD)," is described in detail in the "Data Used in this RIA" section below, though we draw on it in this section to describe outcome differences across programs.

Table 1.1 reports the number of programs and average title IV, HEA enrollment for all institutions in our data for AY 2016 and 2017. Throughout this RIA, we provide analysis separately for programs that would be affected only by subpart Q (eligible non-GE programs) and those that would additionally be affected by subpart S (GE programs).

Table 1.1 - Combined Number of Title IV Eligible Programs and Title IV Enrollment by Control and Credential Level Combining GE and non-GE

	Number of	
	Programs	Enrollees
Public		
UG Certificates	18,971	869,600
Associate's	27,312	5,496,800
Bachelor's	24,338	5,800,700
Post-BA Certs	872	12,600
Master's	14,582	760,500
Doctoral	5,724	145,200
Professional	568	127,500

Grad Certs	1,939	41,900
Total	94,306	13,254,700
Private, Nonprofit		
UG Certificates	1,387	77,900
Associate's	2,321	266,900
Bachelor's	29,752	2,651,300
Post-BA Certs	629	7,900
Master's	10,362	796,100
Doctoral	2,854	142,900
Professional	493	130,400
Grad Certs	1,397	35,700
Total	49,195	4,109,300
Proprietary		
UG Certificates	3,218	549,900
Associate's	1,720	326,800
Bachelor's	963	675,800
Post-BA Certs	52	800
Master's	478	240,000
Doctoral	122	54,000
Professional	32	12,100
Grad Certs	128	10,800
Total	6,713	1,870,100
Foreign Private		
UG Certificates	28	100
Associate's	18	100
Bachelor's	1,228	5,500
Post-BA Certs	27	<50
Master's	3,075	9,000
Doctoral	793	2,800
Professional	104	1,500
Grad Certs	77	1,500
Total	5,350	20,400
Foreign For-Profit		
UG Certificates	1	<50
Master's	6	200
Doctoral	4	1,900
Professional	7	11,600
Total	18	13,700
Total		
UG Certificates	23,605	1,497,500
Associate's	31,371	6,090,700
Bachelor's	56,281	9,133,200
Post-BA Certs	1,580	21,400
Master's	28,503	1,805,800
Doctoral	9,497	346,800
Professional	1,204	283,100
Grad Certs	3,541	89,900
Total	155,582	19,268,200

Note: Counts are rounded to the nearest 100.

There are 123,524 degree programs at public or private non-profit institutions (hereafter, “eligible non-GE programs” or just “non-GE programs”) in the 2022 PPD that would be subject to the proposed transparency regulations in subpart Q but not the GE regulations in subpart S. These programs served approximately 16.3 million students annually who received title IV, HEA aid, totaling $25 billion in grants and $61 billion in loans. Table 1.2

displays the number of non-GE programs by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Two-digit CIP codes aggregate programs by broad subject area. Table 1.3 displays enrollment of students receiving title IV, HEA program funds in non-GE programs in the same categories.

Table 1.2 - Number of non-GE Programs by CIP2, Credential Level, and Control

	Public					Private, Nonprofit					Foreign					Total
	Assoc	Bach	Mast	Doct	Prof	Assoc	Bach	Mast	Doct	Prof	Assoc	Bach	Mast	Doct	Prof	Total
1: Agriculture & Related Sciences	693	507	267	143	1	20	95	14	5			10	27	6		1,788
3: Natural Resources & Conservation	260	433	219	114	2	10	445	67	8			12	80	9		1,659
4: Architecture & Related Services	91	216	224	43	6	4	102	117	13	4		14	54	12	2	902
5: Area, Ethnic, Cultural, Gender Studies	84	366	128	58	2	3	413	58	25			11	70	20		1,238
9: Communication	460	807	301	75	2	28	1,221	216	20		1	61	102	6		3,300
10: Communications Tech	312	63	9			10	97	16				6	7			520
11: Computer & Information Sciences & Support Services	1,986	857	460	126	1	127	1,051	297	59	2	1	36	59	11		5,073
12: Personal & Culinary Services	539	20				27	21	2					2			611
13: Education	975	1,158	2,204	641	36	94	1,725	2,103	299	25	1	32	111	29	5	9,438
14: Engineering	516	1,556	1,243	719	15	12	833	524	271			70	86	33	1	5,879
15: Engineering Tech	2,375	563	164	13		98	136	89	7	1		6	25	2		3,479
16: Foreign Languages	286	960	332	167	5	4	1,148	102	93	1		39	91	26		3,254
19: Family & Consumer Sciences/Human Sciences	586	368	182	59	2	13	178	48	12	1		6	24	1	1	1,481
22: Legal Professions & Studies	437	98	81	18	97	44	158	107	42	114	1	36	94	17	29	1,373
23: English Language	262	645	451	121	4	10	1,063	208	57			57	130	57	3	3,068
24: Liberal Arts	1,035	438	120	11	5	265	661	114	9	2		52	43	17	1	2,773
25: Library Science	33	7	57	12	2		2	16	2	1		1	14	2		149
26: Biological & Biomedical Sciences	370	1,222	894	793	15	28	1,678	389	349	7		75	171	58		6,049
27: Mathematics & Statistics	243	660	432	192	2	5	856	135	81	1		15	30	11		2,663
28: Military Science		5	1				2	1				1	3			13
9: Military Tech	8	2	3			1	9	9					1			33
30: Multi/Interdisc. Studies	440	716	372	115	6	33	1,023	259	52	4	2	45	139	27	1	3,234
31: Parks & Rec	341	474	253	53	3	18	571	103	6		1	9	21	6		1,859
32: Basic Skills & Developmental/Remedial Education	18	1	2			1										22
33: Citizenship Activities							1						2			3
34: Health-Related Knowledge & Skills	4	2				1	4	1				1	14	2	1	30
35: Interpersonal & Social Skills							1						1			2
36: Leisure & Recreational Activities	12	10	3			1	21	1				7	22	6		83
37: Personal Awareness & Self-Improvement								1								1
38: Philosophy & Religious Studies	76	435	117	72	1	20	980	161	80	8		17	43	26	1	2,037
39: Theology & Religious Vocations	2	1				144	861	567	167	60	3	16	42	26	1	1,890
40: Physical Sciences	440	1,262	604	418	3	10	1,232	176	167		1	33	67	41	1	4,455
41: Science Tech./Technician	171	11	7	1		3	9	1				7	15	5		230
42: Psychology	259	584	477	257	8	36	1,053	424	189	13		61	127	34	3	3,525
43: Homeland Security	1,253	392	195	25		106	476	161	4			2	20	3	1	2,638
44: Public Admin & Social Services	375	474	495	111	8	40	509	254	45	4		6	73	7	2	2,403
45: Social Sciences	734	2,092	826	400	13	27	2,391	276	158	4	1	142	385	122	2	7,573
46: Construction Trades	464	11	1			21	4						3	1		505
47: Mechanic & Repair Techn/Technicians	1,059	19				41	8									1,127
48: Precision Production	433	2	1			13	5	2								456
49: Transportation & Materials Moving	114	57	7	1		10	35	5	2				1	2		234
50: Visual & Performing Arts	1,442	1,746	637	144	8	83	2,585	393	69	1	2	128	225	54	1	7,518
51: Health Professions & Related Programs	4,288	1,929	1,407	575	299	486	1,794	1,306	406	216	3	45	168	41	44	13,007
52: Business	3,669	2,688	1,131	143	18	415	3,556	1,554	109	24	1	129	387	25	3	13,852
53: High School/Secondary Diplomas	1	1					2	1								5
54: History	165	480	271	103	3	9	737	83	48			40	90	46	1	2,076
60: Residency Programs	1		4	1	1			1					6	2		16

Table 1.3 - Title IV Enrollment of non-GE Programs by CIP2, Credential Level, and Control

	Public					Private, Nonprofit					Foreign					Total
	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	
1: Agriculture & Related Sciences	24,100	65,500	5,300	1,300	<50	700	5,200	200	<50			<50	100	<50		102,500
3: Natural Resources & Conservation	10,200	50,800	5,300	1,400	<50	300	15,700	2,200	200			100	100	<50		86,300
4: Architecture & Relate	5,300	24,000	8,400	500	300	100	7,700	4,300	100	100		<50	100	<50	<50	51,000
5: Area, Ethnic, Cultural, Gender, & Group Studies	2,700	21,100	2,100	900	<50	<50	7,700	1,100	600			<50	200	<50		36,500
9: Communication	40,900	228,200	8,400	1,500	<50	500	91,800	9,700	300		<50	200	300	<50		381,800
10: Communications Tech	22,200	7,600	100			300	7,600	500				<50	<50			38,400
11: Computer & Info Science	200,300	210,200	18,000	1,500	200	10,000	89,200	14,400	700	<50	<50	100	100	<50		544,700
12: Personal & Culinary Services	47,900	1,000				9,700	6,900	100					<50			65,600
13: Education	140,600	318,400	195,800	29,700	1,800	4,500	147,400	175,600	27,500	1,900	0	100	200	100	<50	1,043,600
14: Engineering	73,900	352,200	26,400	8,100	100	300	85,200	10,500	3,100			200	100	<50	0	560,300
15: Engineering Tech	120,400	61,800	4,700	200		5,200	8,700	2,400	200	0		<50	<50	0		203,500
16: Foreign Languages	14,600	51,800	3,900	1,800	<50	100	20,900	1,000	700	<50		100	200	<50		95,100
19: Family & Consumer Sciences/Human Sciences	83,500	78,700	5,500	700	<50	1,900	18,900	2,500	100	<50		<50	100	<50	0	191,800
22: Legal Professions	33,700	13,200	2,700	3,900	30,900	2,900	7,200	5,400	9,200	48,200	0	100	200	<50	100	157,900
23: English Language	26,500	110,700	11,200	3,800	<50	100	45,800	8,400	1,000			200	300	100	<50	208,200
24: Liberal Arts	2,048,400	549,800	9,300	300	100	44,600	263,200	4,900	200	<50		900	400	100	<50	2,922,000
25: Library Science	900	300	11,000	100	100		<50	2,000	<50	100		<50	100	<50		14,600
26: Biological & Biomedical Sciences	94,700	419,700	17,400	11,000	100	800	163,100	11,000	5,100	200		200	400	100		724,000
27: Mathematics & Statistics	21,500	62,500	6,300	2,200	<50	<50	24,800	1,400	500	<50		<50	<50	<50		119,200
28: Military Science		<50	<50				<50	<50				<50	<50			100
29: Military Tech	2,700	500	<50			<50	900	700					<50			4,800
30: Multi/Interdisc Studies	147,300	185,400	10,400	1,600	<50	1,500	48,300	7,300	1,100	<50	<50	200	500	100	<50	403,800
31: Parks & Rec	43,100	170,200	12,300	1,000	<50	1,100	64,300	7,500	300		<50	<50	100	<50		300,000
32: Basic Skills & Developmental	400	<50	200			100										600
33: Citizenship Activities							<50						<50			<50
34: Health-Related Knowledge & Skills	700	500				<50	100	<50				<50	<50	<50	<50	1,400
35: Interpersonal & Social Skills							<50						<50			<50
36: Leisure & Recreational Activities	600	700	<50			<50	700	<50				<50	<50	<50		2,100
37: Personal Awareness & Self-Improvement								<50								<50
38: Philosophy & Religious Studies	2,100	18,400	1,100	1,000	<50	2,100	23,600	3,100	1,600	100		<50	100	100	<50	53,200
39: Theology & Religious Vocations	<50	<50				5,700	51,800	38,100	4,500	2,300	<50	100	100	100	<50	102,800
40: Physical Sciences	44,300	114,300	7,000	7,500	<50	100	33,700	1,100	2,500		0	100	100	100	<50	210,700
41: Science Technologies	16,300	1,500	100	<50		100	400	<50				<50	<50	<50		18,500
42: Psychology	81,000	330,000	24,900	9,700	100	3,100	157,300	49,200	16,100	500		300	300	100	<50	672,500
43: Homeland Security	218,200	167,500	13,100	500		12,500	84,800	12,000	100			<50	<50	<50	<50	508,700
44: Public Admin & Social Services	53,800	100,500	66,200	2,200	900	5,500	49,700	45,500	1,000	500		<50	100	<50	<50	326,100
45: Social Sciences	82,800	320,200	15,500	7,400	200	300	125,700	11,900	2,300	<50	0	800	1,700	300	<50	569,200
46: Construction Trades	18,300	1,100	<50			1,000	100						<50	<50		20,500
47: Mechanic & Repair Technologies	71,000	700				7,700	1,200									80,700
48: Precision Production	23,700	<50	<50			600	100	<50								24,400
49: Transportation	6,900	11,900	300	<50		1,300	9,800	1,400	<50				<50	<50		31,700
50: Visual & Perf. Arts	118,600	215,900	14,300	3,400	<50	3,000	137,400	12,800	1,100	<50	<50	600	900	100	<50	508,200
51: Health Professions & Related Programs	902,300	591,600	123,300	37,800	91,500	98,700	328,300	154,900	54,800	75,400	<50	200	600	1,000	1,400	2,461,800
52: Business	641,600	876,800	124,200	2,000	1,000	40,500	490,100	190,400	6,700	1,100	0	600	1,200	<50	<50	2,376,100
53: High School/Secondary Diplomas	<50	1,600					<50	<50								1,600
54: History	9,000	63,800	5,900	2,200	<50	100	25,700	2,400	1,000			100	300	100	0	110,500
60: Residency Programs	0		<50	<50	<50			<50					<50	<50		100

Note: Counts rounded to the nearest 100.

GE programs are non-degree programs, including diploma and certificate programs, at public and private non-profit institutions and nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level.[156] Common GE programs provide training for occupations in fields such as cosmetology, business administration, medical assisting, dental assisting, nursing, and massage therapy. There were 32,058 GE programs in the 2022 PPD.[157] About two-thirds of

[156] "For-profit" and "proprietary" are used interchangeably throughout the text. Foreign schools are schools located outside of the United States at which eligible US students can use federal student aid.

[157] Note that the 2022 PPD will differ from the universe of programs that are subject to the proposed GE regulations for the reasons described in

these programs are at public institutions, 11 percent at private non-profit institutions, and 21 percent at for-profit institutions. These programs annually served approximately 2.9 million students who received title IV, HEA aid in AY 2016 or 2017. The Federal investment in students attending GE programs is significant. In AY 2022, these students received approximately $5 billion in Federal Pell grant funding and approximately $11 billion in Federal student loans. Table 1.4 displays the number of GE programs grouped by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Table 1.5 displays enrollment of students receiving title IV, HEA program funds in GE programs in the same categories.

more detail in the “Data Used in this RIA” section, including that the 2022 PPD includes programs defined by four-digit CIP code while the rule would define programs by six-digit CIP code.

Table 1.4 - Number of GE Programs by CIP2, Credential Level, and Control

	Public			Private, Nonprofit			Proprietary								
	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Assoc.	Bach.	Post-BA Cert	Master's	Doct.	Prof.	Grad Cert	Total
1: Agriculture & Related Sciences	375	4	3	7		2	11	4	1	1					408
3: Natural Resources & Conservation	91	10	21	8	1	2	2		5	1	1			1	143
4: Architecture & Related Services	29	10	10	4	1	8	1		4		3		2		72
5: Area, Ethnic, Cultural, Gender, & Group Studies	61	14	42	14	4	12	1								148
9: Communication	171	12	38	25	7	16	14	14	25		9			1	332
10: Communications Tech	272	2	2	3	3	3	24	23	24	1	3				360
11: Computer & Information Sciences & Support Services	1,479	28	64	51	31	36	140	168	110	1	41	4		8	2,161
12: Personal & Culinary Services	788	2	2	34	1		900	79	11	4	6	3	4	7	1,841
13: Education	461	222	494	62	134	406	35	20	33	8	63	23	1	29	1,991
14: Engineering	98	31	62	10	6	33	4	5	10		5				264
15: Engineering Tech	1,453	5	21	34	4	4	84	71	21	1	4			1	1,703
16: Foreign Languages	205	15	9	37	5	3			2						276
19: Family & Consumer Sciences/Human Sciences	530	7	23	18	5	7	10	8	11	1	2	1		2	625
22: Legal Professions & Studies	285	18	15	35	15	26	36	66	24	4	5	1	8		538
23: English Language	79	18	35	13	5	6	11	5	11		2				185
24: Liberal Arts	329	15	22	22	18	19	1	10	12		2	1			451
25: Library Science	22	7	16		1	5			1						52
26: Biological & Biomedical Sciences	69	22	61	22	14	25	2	1	8		1	2		1	228
27: Mathematics & Statistics	18	12	26	10	2	3			2						73
28: Military Science			1				1	1	1					1	5
29: Military Tech	6		1	1		3	1	2	1		1				16
30: Multi/Interdisciplinary Studies	156	51	105	26	23	36	5	4	14	2	6			5	433
31: Parks & Rec	145	7	15	14	3	9	25	25	8		2	1		1	255
32: Basic Skills & Developmental/Remedial Education	26			4		1	7				1				39
33: Citizenship Activities	1														1
34: Health-Related Knowledge & Skills	4		3	1		2	5								15
35: Interpersonal & Social Skills						1									1
36: Leisure & Recreational Activities	5			2			1				1				9
37: Personal Awareness & Self-Improvement	1	1	1												3
38: Philosophy & Religious Studies	15	1	7	23	6	7			3		1				63
39: Theology & Religious Vocations	1			60	49	50		1	5		7	1	1		175
40: Physical Sciences	41	7	16	15		5	1	1	3						89
41: Science Technologies/Technicians	75	2	3	1	1		1	1							84
42: Psychology	38	23	74	19	20	59		2	14	2	19	15		7	292
43: Homeland Security	747	15	32	42	8	30	31	74	58	1	23	4		6	1,071
44: Public Admin & Social Services	161	28	59	17	6	28	3	5	14	1	19	7		4	352
45: Social Sciences	164	30	79	44	11	29		1	15		5	1			379
46: Construction Trades	840			28		1	62	14							945
47: Mechanic & Repair Technologies/Technicians	1,469	1	1	42			188	65	1						1,767
48: Precision Production	751			18			51	13							833
49: Transportation & Materials Moving	187	2	2	11			32	5			1				240
50: Visual & Performing Arts	540	16	48	75	29	36	65	85	98	1	26		1	1	1,021
51: Health Professions & Related Programs	4,025	124	327	386	132	274	1,261	637	174	8	101	35	11	25	7,520
52: Business	2,733	100	189	140	83	208	198	308	233	15	117	23	4	27	4,378
53: High School/Secondary Diplomas	4						1	1							6
54: History	18	9	7	8			1	1	6		1			1	52
60: Residency Programs	3	1	3	1	1	2	2								13

Note: Foreign institutions omitted because all cells are suppressed or empty.

Table 1.5 - Title IV Enrollment of GE Programs by CIP2, Credential Level, and Control

	Public			Private, Nonprofit			Proprietary								Total
	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Post-BA Cert	Grad Cert	UG Certs	Assoc.	Bach.	Post-BA Cert	Master's	Doct.	Prof.	Grad Cert	
1: Agriculture & Related	5,600	<50	<50	200		<50	300	<50	<50	<50					6,200
3: Natural Resources & Conservation	1,200	<50	200	100	<50	<50	100		4,400	<50	400			<50	6,400
4: Architecture & Related	600	<50	<50	<50	<50	<50	<50		600		200		300		1,700
5: Area, Ethnic, Cultural, Gender, & Group Studies	800	100	300	100	100	100	<50								1,500
9: Communication	3,700	100	400	300	<50	200	3,300	400	6,700		800			<50	15,800
10: Communications Tech	4,700	<50	<50	<50	<50	<50	3,200	2,700	7,300	<50	200				18,200
11: Computer & Info Sciences	34,500	200	1,100	1,200	300	500	8,900	20,500	52,500	<50	6,400	800		300	127,100
12: Personal & Culinary Services	31,000	<50	<50	3,200	<50		176,800	7,600	1,100	<50	200	<50	<50	100	220,100
13: Education	16,100	4,500	16,000	1,700	2,400	14,100	800	6,700	33,500	100	37,000	15,800	1,100	2,100	152,000
14: Engineering	8,600	200	500	300	<50	200	200	500	1,500		100				11,900
15: Engineering Tech	22,500	<50	300	1,100	<50	<50	14,500	6,300	8,000	<50	1,400			<50	54,100
16: Foreign Languages	4,600	<50	<50	400	<50	<50			300						5,400
19: Family & Consumer Sciences/Human Sciences	22,100	<50	200	500	100	100	600	2,100	4,500	<50	1,000	300		100	31,600
22: Legal Professions	7,100	500	400	900	400	800	1,200	6,700	2,200	200	400	<50	1,700		22,600
23: English Language	3,900	100	300	1,600	100	<50	4,300	700	4,300		300				15,700
24: Liberal Arts	139,500	500	3,000	1,400	500	600	<50	2,300	3,800		200	100			151,900
25: Library Science	300	100	400		<50	100			300						1,100
26: Biological & Biomedical Sciences	2,700	100	600	300	100	200	<50	<50	2,700		<50	<50		<50	6,900
27: Mathematics & Statistics	400	200	100	100	<50	<50			400						1,300
28: Military Science			<50				<50	<50	200					0	200
29: Military Tech	100		<50	<50		100	<50	200	100		<50				400
30: Multi/Interdisc. Studies	14,100	700	1,600	500	500	500	100	3,500	25,000	<50	1,200			300	48,100
31: Parks & Rec	4,000	<50	200	500	<50	100	800	1,600	5,700		500	<50		<50	13,400
32: Basic Skills & Developmental	600			<50		<50	500				<50				1,100
33: Citizenship Activities	<50														<50
34: Health-Related Knowledge & Skills	100		<50	0		<50	100								200
35: Interpersonal & Social Skills						0									0
36: Leisure & Recreational Activities	200			<50			<50				<50				300
37: Personal Awareness & Self-Improvement	100	<50	500												600
38: Philosophy & Religious Studies	200	<50	<50	200	<50	200			500		100				1,200
39: Theology & Religious Vocations	<50			2,300	200	1,700		<50	3,200		900	300	300		8,900
40: Physical Sciences	900	<50	100	100		<50	0	<50	<50						1,200
41: Science Technologies	2,200	<50	<50	<50	<50		100	100							2,400
42: Psychology	2,700	300	1,400	400	200	2,200		<50	20,300	<50	17,800	10,100		2,200	57,500
43: Homeland Security	33,400	200	600	1,200	100	300	2,300	21,400	60,100	0	7,000	700		200	127,500
44: Public Admin & Social Services	6,500	700	800	100	100	400	200	4,300	22,500	<50	10,100	4,400		100	50,100
45: Social Sciences	3,200	400	700	500	100	500		<50	6,100		1,400	700			13,600
46: Construction Trades	18,000			1,800		<50	8,300	900							28,900
47: Mechanic & Repair Technologies	48,800	0	<50	4,100			59,200	10,400	<50						122,600
48: Precision Production	34,100			2,500			13,000	1,000							50,700
49: Transportation	4,900	<50	<50	700			9,500	200			<50				15,300
50: Visual & Performing Arts	15,000	100	300	2,100	200	400	2,600	7,700	29,700	0	3,100		<50	<50	61,200
51: Health Professions & Related Programs	275,000	1,800	7,400	43,100	1,900	7,800	229,100	148,200	139,600	<50	74,200	11,700	8,800	2,200	950,700
52: Business	95,500	1,700	4,300	4,100	700	4,500	9,800	70,500	226,500	400	74,200	9,200	100	2,900	504,200
53: High School/Secondary Diplomas	<50						<50	<50							100
54: History	400	<50	<50	100			0	200	2,200		900			100	3,900
60: Residency Programs	<50	<50	100	<50	<50	<50	100								300

Note: Foreign institutions omitted because all cells are suppressed or empty.

Note: Counts rounded to the nearest 100.

Tables 1.6 and 1.7 show the student characteristics of title IV, HEA students in non-GE and GE programs, respectively, by institutional control, predominant degree of the institution, and credential level. In all three types of control, the majority of students served by the programs are female students. At public non-GE programs, 58 percent of students received a Pell Grant, 31 percent are 24 years or older, 36 percent are independent, and 43 percent non-white. At not-for-profit non-GE programs, 43 percent of students received a Pell Grant, 37 percent are 24 years or older, 44 percent are independent, and 43 percent are non-white. The average public GE program has

68 percent of its students ever received Pell, 44 percent are 24 years or older, 50 percent are independent, and 46 percent are non-white. At for-profit GE programs, 67 percent of students received a Pell Grant, 66 percent are 24 years or older, 72 percent are independent, and 59 percent are non-white.

Table 1.6 - Characteristics of non-GE students by control, predominant degree, and credential level (Enrollment-Weighted)

		Percent of Students Who Are...				
	Average EFC	Age 24+	Male	Pell	Non-White	Independent
Public						
Less-Than 2-Year						
Associate's	5,700	36.4	37.2	73.8	41.8	41.7
Bachelor's	10,600	59.4	40.6	54.0	37.4	62.6
Master's	8,700	71.8	34.7	36.1	27.7	81.5
2-Year						
Associate's	5,800	29.6	37.5	74.1	49.3	34.8
Bachelor's	9,300	48.3	41.3	69.4	40.3	55.6
Master's	7,600	79.6	37.4	52.2	63.7	90.9
Professional	5,800	100.0	33.3	33.3	.	100.0
4-Year or Above						
Associate's	7,600	36.5	37.8	67.0	39.7	42.2
Bachelor's	16,600	24.0	43.3	47.3	39.8	27.0
Master's	11,900	60.6	35.9	32.9	40.2	72.7
Doctoral	10,400	69.9	41.4	28.0	44.1	84.1
Professional	7,800	55.7	48.4	10.8	37.1	91.7
Total						
Total	11,300	30.5	40.2	57.8	43.2	35.6
Private, Nonprofit						
Less-Than 2-Year						
Associate's	2,600	64.6	33.8	89.7	65.9	74.8
Bachelor's	9,100	65.8	37.1	67.0	62.6	70.0
Master's	9,200	52.2	30.7	37.7	56.3	61.4
Doctoral	5,500	24.7	14.6	32.1	41.2	58.5
Professional	4,600	52.0	54.6	1.9	39.6	97.1
2-Year						
Associate's	6,300	47.4	34.8	72.4	52.2	53.6
Bachelor's	8,300	60.7	40.7	68.3	51.4	64.8
Master's	9,600	86.5	34.0	28.9	69.9	89.2
Doctoral	9,600	81.3	26.4	14.6	62.5	100.0
4-Year or Above						
Associate's	6,800	54.9	34.6	70.2	49.3	60.5
Bachelor's	17,600	23.2	39.9	48.9	40.2	26.1
Master's	13,100	67.3	35.3	25.0	45.9	78.0
Doctoral	12,200	69.4	41.1	17.7	49.7	87.1
Professional	9,200	57.2	48.8	10.1	43.0	89.1
Total						
Total	15,400	37.3	39.0	43.3	42.6	43.5

Note: Average EFC values rounded to the nearest 100. Credential levels with very few programs and most table elements missing are suppressed.

Table 1.7 - Characteristics of GE students by control, predominant degree, and credential level

		Percent of Students Who Are...				
	Average EFC	Age 24+	Male	Pell	Non-White	Independent
Public						
Less-Than 2-Year						
UG Certificates	4,500	45.5	37.5	76.5	42.4	53.1
Post-BA Certs	6,300	75.9	30.4	57.9	.	78.2
Grad Certs	8,100	57.1	16.7	57.5	32.1	65.2
2-Year						

UG Certificates	6,100	41.9	37.8	70.3	50.9	46.8
Post-BA Certs	10,800	47.2	23.7	58.4	.	59.5
Grad Certs	7,600	89.7	68.1	68.9	50.6	89.7
4-Year or Above						
UG Certificates	23,300	28.5	41.6	36.8	32.3	31.8
Post-BA Certs	11,500	60.5	31.6	35.9	.	71.3
Grad Certs	10,700	69.8	30.1	39.2	36.2	79.0
Total						
Total	7,100	43.7	37.6	68.3	45.7	49.8
Private, Nonprofit						
Less-Than 2-Year						
UG Certificates	4,900	48.3	36.6	80.2	63.7	58.3
Post-BA Certs	15,600	51.0	59.2	3.3	.	65.3
Grad Certs	7,600	28.2	38.7	3.1	47.2	62.1
2-Year						
UG Certificates	3,300	61.0	21.1	83.2	56.3	73.8
Post-BA Certs	10,100	94.8	28.4	53.7	.	94.8
Grad Certs	26,700	89.5	10.5	19.3	100.0	100.0
4-Year or Above						
UG Certificates	10,500	37.4	35.8	66.4	65.8	42.1
Post-BA Certs	14,200	60.1	31.8	36.0	.	68.5
Grad Certs	11,500	70.8	32.8	29.8	44.5	80.3
Total						
Total	8,300	55.1	32.3	60.6	57.3	64.2
Proprietary						
Less-Than 2-Year						
UG Certificates	3,900	45.7	31.5	82.4	63.0	56.5
Associate's	5,900	56.6	32.2	80.6	63.2	63.7
Bachelor's	4,200	54.2	36.9	86.5	83.3	57.3
Post-BA Certs	9,100	70.7	44.7	36.8	.	77.2
Master's	9,200	85.4	26.7	32.2	62.1	90.4
Doctoral	9,800	98.6	19.2	32.0	47.6	99.7
Professional	14,100	84.7	19.5	30.5	54.2	100.0
Grad Certs	6,200	64.6	7.7	63.9	6.6	67.4
2-Year						
UG Certificates	4,800	48.4	39.8	77.8	64.2	57.1
Associate's	5,700	51.8	33.3	77.8	60.6	58.1
Bachelor's	7,900	61.6	42.7	70.5	65.0	67.9
Post-BA Certs	13,400	86.4	25.0	39.4	.	86.4
Master's	7,100	82.3	42.1	31.0	65.1	89.5
Doctoral	0	0.0	0.0	100.0	.	0.0
Professional	5,700	71.6	46.0	14.6	36.7	99.0
Grad Certs	3,700	64.8	32.4	0.0	24.3	67.6
4-Year or Above						
UG Certificates	5,400	77.7	22.1	76.2	55.4	84.3
Associate's	5,400	75.4	31.9	76.1	57.2	82.7
Bachelor's	9,700	75.2	40.7	64.2	54.6	78.8
Post-BA Certs	7,500	84.6	28.5	54.7	.	92.3
Master's	11,300	82.3	30.2	38.8	58.0	85.8
Doctoral	19,800	92.9	30.0	25.2	57.9	95.2
Professional	7,100	89.0	25.7	47.1	34.1	93.2
Grad Certs	11,900	88.6	27.1	38.2	63.2	90.7
Total						
Total	7,700	66.1	34.7	67.3	58.8	72.4
Note: EFC values rounded to the nearest 100.						

Outcome Differences Across Programs:

A large body of research provides strong evidence of the many significant benefits that postsecondary education and training provides, both private and social. Private pecuniary benefits include higher wages and lower risk of unemployment.[158] Increased educational attainment also provides private nonpecuniary benefits, such as better health, job satisfaction, and overall happiness.[159] Social benefits of increases in the number of individuals with a postsecondary education include productivity spillovers from a better educated and more flexible workforce,[160] increased civic participation,[161] and improvements in health and well-being for the next generation.[162] Improved productivity and earnings increase tax revenues from higher earnings and lower rates of reliance on social safety net programs. Even though the costs of postsecondary education have risen, there is evidence that the average financial returns to graduates have also increased.[163]

However, there is also substantial heterogeneity in earnings and other outcomes for students who graduate from different types of institutions and programs. Table 1.8 shows the enrollment-weighted average borrowing and default by control and credential level. Mean borrowing amounts are

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[158] Barrow, L., & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics*, 7(1), 519-555.
Card, D. (1999). The causal effect of education on earnings. *Handbook of labor economics*, 3, 1801-1863.

[159] Oreopoulos, P., & Salvanes, K. G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives*, 25(1), 159-184.

[160] Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review*, 94(3), 656-690.

[161] Dee, T. S. (2004). Are There Civic Returns to Education? *Journal of Public Economics*, 88(9-10), 1697-1720.

[162] Currie, J., & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics*, 118(4), 1495-1532.

[163] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much-Or Not Enough? *Journal of Economic Perspectives*, 26(1), 165-192.

for title IV recipients who completed their program in AY 2016 or 2017, with students who did not borrow counting as having borrowed $0. For borrowing, our measure is the average for each institutional control type and credential level combination of program average debt. For default, our measure is, among borrowers (regardless of completion status) who entered repayment in 2017, the fraction of borrowers who have ever defaulted three years later. The cohort default rate measure follows the methodology for the official institutional cohort default rate measures calculated by the Department, except done at the program level. Though average debt tends to be higher for higher-level credential programs, default rates tend to be lower. At the undergraduate level, average debt is much lower for public programs than private non-profit and for-profit programs and default rates are lower for public and non-profit programs than those at for-profit institutions.

Table 1.8 - Average Debt and Cohort Default Rate, by Control and Credential level (Enrollment-Weighted)

	Average Debt	Cohort Default Rate
Public		
UG Certificates	5,759	16.9
Associate's	5,932	17.4
Bachelor's	17,935	7.6
Post-BA Certs	7,352	2.3
Master's	29,222	2.9
Doctoral	71,102	2.9
Professional	124,481	0.8
Grad Certs	24,883	2.5
Private, Nonprofit		
UG Certificates	9,367	12.0
Associate's	16,445	14.9
Bachelor's	20,267	7.3
Post-BA Certs	9,497	2.8
Master's	40,272	2.9
Doctoral	128,998	2.3
Professional	151,473	1.3
Grad Certs	40,732	2.4
Proprietary		

UG Certificates	8,857	14.2
Associate's	18,766	15.3
Bachelor's	29,038	12.4
Post-BA Certs	15,790	16.9
Master's	39,507	4.1
Doctoral	99,422	4.4
Professional	96,836	0.7
Grad Certs	47,803	3.9
Foreign Private		
UG Certificates	*	0.0
Associate's	*	*
Bachelor's	17,074	7.0
Post-BA Certs	*	*
Master's	40,432	2.0
Doctoral	22,600	3.5
Professional	247,269	3.1
Grad Certs	284,200	0.2
Foreign For-Profit		
Master's	*	0.0
Doctoral	84,200	1.4
Professional	280,667	1.3

* Cell suppressed because it based on a population of fewer than 30

Table 1.9 shows median earnings ($2019) for graduates (whether or not they borrow) along these same dimensions. Similar patterns hold for earnings, with lower earnings in proprietary programs than in public and non-profit programs for almost all types of credential level.

Table 1.9 – Enrollment-weighted Average of Program Median Earnings 3 years after Program Completion, by Control and Credential level

	Median Earnings 3 Years After Completion
Public	
UG Certificates	33,400
Associate's	34,400
Bachelor's	46,100
Post-BA Certs	45,600
Master's	66,600
Doctoral	83,500
Professional	91,300
Grad Certs	71,500
Private, Nonprofit	
UG Certificates	26,200
Associate's	35,700
Bachelor's	48,800
Post-BA Certs	61,600
Master's	68,600
Doctoral	86,200
Professional	88,200
Grad Certs	74,800
Proprietary	

UG Certificates	25,400
Associate's	34,600
Bachelor's	45,600
Post-BA Certs	43,500
Master's	59,300
Doctoral	78,000
Professional	49,200
Grad Certs	52,200
Foreign Private	
UG Certificates	.
Associate's	.
Bachelor's	8,200
Post-BA Certs	.
Master's	38,600
Doctoral	.
Professional	88,400
Grad Certs	15,100
Foreign For-Profit	
Master's	.
Doctoral	65,900
Professional	100,400
Note: Values rounded to the nearest 100.	

A growing body of research, described below, shows that differences in institution and program quality are important contributors to the variation in borrowing and earnings outcomes described above. That is, differences in graduates' outcomes across programs are not fully (or primarily) explained by the characteristics of the students that attend. Differences in program quality — measured by the causal effect of attending the program on its students' outcomes – are important.[164] It is, therefore, important to provide students with this information and to hold programs

[164] Black, Dan A., and Jeffrey A. Smith. "Estimating the returns to college quality with multiple proxies for quality." *Journal of labor Economics* 24.3 (2006): 701-728.
Cohodes, Sarah R., and Joshua S. Goodman. "Merit aid, college quality, and college completion: Massachusetts' Adams scholarship as an in-kind subsidy." *American Economic Journal: Applied Economics* 6.4 (2014): 251-285.
Andrews, Rodney J., Jing Li, and Michael F. Lovenheim. "Quantile treatment effects of college quality on earnings." *Journal of Human Resources* 51.1 (2016): 200-238.
Dillon, Eleanor Wiske, and Jeffrey Andrew Smith. "The consequences of academic match between students and colleges." *Journal of Human Resources* 55.3 (2020): 767-808.

accountable for poor student debt and earnings outcomes. Research reviewed below also shows that GE programs are the programs least likely to reliably provide an adequate return on investment, from the perspective of both the student and society. These findings imply that aggregate student outcomes—including their earnings and likelihood of positive borrowing outcomes—would be improved by limiting students enrollment in low-quality programs.

A recent study computed productivity--value-added per dollar of social investment--for 6,700 undergraduate programs across the United States.[165] Value-added in that study was measured using both private (individual earnings) and social (working in a public service job) notions of value. A main finding was that productivity varied widely even among institutions serving students of similar aptitude, especially at less selective institutions. That is, a dollar spent educating students does much more to increase lifetime earnings potential and public service at some programs than others. The author concludes that "market forces alone may be too weak to discipline productivity among these schools."

The finding of substantial variation in student outcomes across programs serving similar students or at similar types of institutions or in similar fields has been

[165] Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education*, C. M. Hoxby and K. M. Stange(eds). University of Chicago Press: Chicago, 2019.

documented in many other more specific contexts. These include community colleges in California,[166] public two- and four-year programs in Texas,[167] master's degree programs in Ohio,[168] law and medical schools, and programs outside the United States.[169] Variation in institutional and program performance is a dominant feature of postsecondary education in the United States.[170]

The wide range of performance across programs and institutions means that prospective students face a daunting information problem. The questions of where to go and what to study are key life choices with major consequences. But without a way to discern the differences between institutions through comparable, reliably reported measures of quality, students may ultimately have to rely

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166 Carrell, S. E. & M. Kurleander. 2019. Estimating the Productivity of Community Colleges in Paving the Road to Four-Year College Success. In *Productivity in Higher Education*, C. M. Hoxby and K. M. Stange(eds). University of Chicago Press: Chicago, 2019.

167 Andrews, R. J., & Stange, K. M. (2019). Price regulation, price discrimination, and equality of opportunity in higher education: Evidence from Texas. *American Economic Journal: Economic Policy*, 11.4, 31-65.
Andrews, R. J., Imberman, S. A., Lovenheim, M. F. & Stange, K. M. (2022), "The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability," NBER Working Paper w30331.

168 Minaya, V., Scott-Clayton, J. & Zhou, R. Y. (2022). Heterogeneity in Labor Market Returns to Master's Degrees: Evidence from Ohio. (EdWorkingPaper: 22-629). Retrieved from Annenberg Institute at Brown University: doi.org/10.26300/akgd-9911.

169 Hastings, J. S., Neilson, C. A. & Zimmerman, S. D. (2013), "Are some degrees worth more than others? Evidence from college admission cutoffs in Chile," NBER Working Paper w19241.

170 A recent overview can be found in Lovenheim, M. and J. Smith. 2023. Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6*, E. Hanushek, L. Woessmann, and S. Machin (Eds). New Holland.

on crude signals about the caliber of education a school offers.

Recent evidence demonstrates that information about colleges, delivered in a timely and relevant way, can shape students' choices. Students at one large school district were 20 percent more likely to apply to colleges that have information listed on a popular college search tool, compared with colleges whose information is not displayed on the tool. A particularly important finding of the study is that for Black, Hispanic, and low-income students, access to information about local public four-year institutions increases overall attendance at such institutions. This, the author argues, suggests "that students may have been unaware of these nearby and inexpensive options with high admissions rates."[171]

This evidence reveals both the power of information to shape student choices at critical moments in the decision process and how a patchwork of information about colleges maybe result in students missing out on opportunities. Given the variation in quality across programs apparent in the research evidence outlined above, these missed opportunities can be quite costly.

Unfortunately, the general availability of information does not always mean students are able to find and use it.

[171] Mulhern, Christine. "Changing college choices with personalized admissions information at scale: Evidence on Naviance." Journal of Labor Economics 39.1 (2021): 219-262.

Indeed, evidence on the initial impact of the Department's College Scorecard college comparison tool found minimal effects on students' college choices, with any possible effects concentrated among the highest achieving students.[172] But the contrast between these two pieces evidence, one where information affects college choices and one where it doesn't, is instructive: while students generally must seek out the College Scorecard during their college search process, the college search tool from the first study delivers information to students as they are taking other steps through the tool, from requesting transcripts and recommendation letters to submitting applications. And it tailors that information to the student, providing information about where other students from the same high school have gone to college and their outcomes there. Accordingly, there is some basis to believe that personalized information delivered directly to students at key decision points from a credible source can have an impact.

To that end, the transparency component of these regulations attempts not only to improve the quality of information available to students (by newly collecting key facts about colleges), but also its salience, relevance, and timing. Because this information would be delivered

[172] Hurwitz, Michael, and Jonathan Smith. "Student responsiveness to earnings data in the College Scorecard." Economic Inquiry 56.2 (2018): 1220-1243.

directly to students about the college for which they are finalizing their financial aid packages, students would be likely to see it and understand its credibility at a time when they are likely to find it useful for deciding. Better still, the information would not be ambiguous when the message is most critical: if a school is consistently failing to put graduates on better financial footing, students would receive a clear indication of that fact before they make a financial commitment.

Still, the market-disciplining role of accurate information does not always suffice. Such mechanisms may decrease, but not eliminate, the chance that students will make suboptimal choices. The Department has concluded that regulation beyond information provision alone is warranted due to evidence, reviewed below, that such regulations could reduce the risk that students and taxpayers put money toward programs that will leave them worse off. Program performance is particularly varied and problematic among the non-degree certificate programs offered by all types of institutions, as well as at proprietary degree programs. These are the places where concerns about quality are at their height, especially given the narrower career-focused nature of the credentials offered in this part of the system.

Certificate programs are intended to prepare students for specific vocations and have, on average, positive returns relative to not attending college at all. Yet this aggregate performance masks considerable variability: certificate program outcomes vary greatly across programs, States, fields of study, and institutions,[173] and even within the same narrow field and within the same institution.[174] Qualitative research suggests some of this outcome difference stems from factors that providers directly control, such as how they engage with industry and employers in program design and whether to incorporate opportunities for students to gain relevant workforce experience during the program.[175] Unfortunately, many of the most popular certificate programs do not result in returns on investment for students who complete the program. An analysis of programs included in the 2014 GE rule found that 10 of the 15 certificate programs with the most graduates have typical earnings of $18,000 or less, well below what a typical high school graduate would earn.[176]

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[173] Aspen Institute. 2015. *From College to Jobs: Making Sense of Labor Market Returns to Higher Education*. Washington, DC. www.aspeninstitute.org/publications/labormarketreturns/.

[174] Much of the research is summarized in Ositelu, M. O., McCann, C. & Laitinen, A. 2021. The Short-term Credential Landscape. New America: Washington DC. www.newamerica.org/education-policy/repoerts/ the-short-term-credentials-landscape.

[175] Soliz, A. 2016. *Preparing America's Labor Force: Workforce Development Programs in Public Community Colleges*, (Washington, DC: Brookings, December 9, 2016), www.brookings.edu/research/preparing-americas-labor-force-workforce-development-programs-in-public-community-colleges/.

[176] Aspen Institute. 2015. *From College to Jobs: Making Sense of Labor Market Returns to Higher Education*. Washington, DC. www.aspeninstitute.org/publications/labormarketreturns

The proposed GE rule would subject for-profit degree programs to the proposed transparency framework in § 668.43, the transparency framework in subpart Q, and the GE program-specific eligibility requirements in subpart S. This additional scrutiny, based in the requirements of the HEA, is warranted because for-profit programs have demonstrated particularly poor outcomes, as was shown in Tables 1.8 and 1.9 above. A large body of research provides causal evidence on the many ways students at for-profit colleges are at an economic disadvantage upon exiting their institutions. This research base includes studies showing that students who attend for-profit programs are significantly more likely to suffer from poor employment prospects,[177] low earnings,[178] and loan repayment difficulties.[179] Students who transfer into for-profit institutions instead of public or nonprofit institutions face significant wage penalties.[180] In some cases, researchers find similar earnings or employment outcomes between for-profit and not-for-profit associate and

[177] Deming, D. J., Yuchtman, N., Abulafi, A., Goldin, C., & Katz, L. F. (2016). The Value of Postsecondary Credentials in the Labor Market: An Experimental Study. *American Economic Review*, 106(3), 778-806.
[178] Cellini, S. R. & Chaudhary, L. (2014). The Labor Market Returns to a For-Profit College Education. *Economics of Education Review*, 43, 125-140.
[179] Armona, L., Chakrabarti, R., & Lovenheim, M. F. (2022). Student Debt and Default: The Role of For-Profit Colleges. *Journal of Financial Economics*, 144(1), 67-92.
[180] Liu, V. Y. T. & Belfield, C. (2020). The labor market returns to for-profit higher education: Evidence for transfer students. *Community College Review*, 48(2), 133-155.

bachelor degree programs.[181] However, students pay and borrow more to attend for-profit degree programs, on average.[182] That means their overall earnings return on investment is worse. This evidence of lackluster labor market outcomes accords with the growing evidence that many for-profit programs may not be preparing students for careers as well as comparable programs at public institutions. A 2011 GAO report found that, for nine out of 10 licensing exams in the largest fields of study, graduates of for-profit institutions had lower passage rates than graduates of public institutions.[183] This lack of preparation may not be surprising, as many for-profit institutions devote more resources to recruiting and marketing than to instruction or student support services. A 2012 investigation by the U.S. Senate Committee on Health, Education, Labor and Pensions (Senate HELP Committee) found that almost 23 percent of revenues at proprietary institutions were spent on marketing and recruiting but only 17 percent on instruction.[184] The

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[181] Lang, K., & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics*, 24, 230-243.

[182] Cellini, S. R. & Darolia, R. (2015). College costs and financial constraints. In B. Hershbein & K. Hollenbeck (Ed.). *Student Loans and the Dynamics of Debt* (137-174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.
Cellini, S. R., & Darolia, R. (2017). High Costs, Low Resources, and Missing Information: Explaining Student Borrowing in the For-Profit Sector. *The ANNALS of the American Academy of Political and Social Science*, 671(1), 92-112.

[183] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[184] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

report further found that at many institutions, the number of recruiters greatly outnumbered the career services and support services staff.

Particularly strong evidence comes from a recent study that found that the average undergraduate certificate-seeking student that attended a for-profit institution did not experience any earnings gains relative to the typical worker in a matched sample of high school graduates. They also had significantly lower earnings gains than students who attended certificate programs in the same field of study in public institutions.[185] Furthermore, the earnings gain for the average for-profit certificate-seeking student was not sufficient to compensate them for the amount of student debt taken on to attend the program.[186] At the same time, research also shows substantial variation in earnings gains from title IV, HEA -eligible undergraduate certificate programs by field of study,[187] with students graduating from cosmetology and personal services programs in all sectors experiencing especially poor outcomes.[188]

Consequences of Attending Low Financial Value Programs:

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[185] Cellini, S. R., & Turner, N. (2019). Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students using Administrative Data. *Journal of Human Resources*, 54(2), 342-370.
[186] Ibid.
[187] Lang, K., & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics*, 24, 230-243.
[188] Dadgar, M., & Trimble, M. J. (2015). Labor Market Returns to Sub-Baccalaureate Credentials: How Much Does a Community College Degree or Certificate Pay? *Educational Evaluation and Policy Analysis*, 37(4), 399-418.

Attending a postsecondary education or training program where the typical student takes on debt that exceeds their capacity to repay can cause substantial harm to borrowers. For instance, high debt may cause students to delay certain milestones; research shows that high levels of debt decreases students' long-term probability of marriage.[189] Being overburdened by student payments can also reduce the likelihood that borrowers will invest in their future. Research shows that when students borrow more due to high tuition, they are less likely to obtain a graduate degree[190] and less likely to take out a mortgage to purchase a home after leaving college.[191]

Unmanageable debt can also have adverse financial consequences for borrowers, including defaulting on their student loans. For those who do not complete a degree, more student debt may raise the probability of bankruptcy.[192] Borrowers who default on their loans face potentially serious repercussions. Many aspects of borrowers' lives may be affected, including their ability to sign up for utilities, obtain insurance, or rent an

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[189] Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. *Economics of Education Review,* 53, 207-2016.
[190] Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2020). Tuition, Debt, and Human Capital. Federal Reserve Bank of New York Staff Report No. 912.
[191] Mezza, A., Ringo, D., Sherlund, S., & Sommer, K. (2020). "Student Loans and Homeownership," *Journal of Labor Economics,* 38(1): 215-260.
[192] Gicheva, D. & Thompson, J. (2015). The effects of student loans on long-term household financial stability. In B. Hershbein & K. Hollenbeck (Ed.). *Student Loans and the Dynamics of Debt* (137-174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

apartment.[193] The Department reports loans more than 90 days delinquent or in default to the major national credit bureaus, and being in default has been shown to be correlated with a 50-to-90-point drop in borrowers' credit scores.[194] A defaulted loan can remain on borrowers' credit reports for up to seven years and lead to higher costs that make insurance, housing, and other services and financial products less affordable and, in some cases, harm borrowers' ability to get a job.[195] Borrowers who default lose access to some repayment options and flexibilities. At the same time, their balances become due immediately, and their accounts become subject to involuntary collections such as wage garnishment and redirection of income tax refunds toward the outstanding loan.[196]

Research shows that borrowers who attend for-profit colleges have higher student loan default rates than students with similar characteristics who attend public institutions.[197] Furthermore, most of the rise in student loan default rates from 2000 to 2011 can be traced to

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[193] studentaid.gov/manage-loans/default.

[194] Blagg, K. (2018). Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default. Urban Institute Research Report.

[195] Elliott, D. & Granetz Lowitz, R. (2018). What Is the Cost of Poor Credit? Urban Institute Report.
Corbae, D., Glover, A. & Chen, D. (2013). Can Employer Credit Checks Create Poverty Traps? *2013 Meeting Papers*, No. 875, Society for Economic Dynamics.

[196] studentaid.gov/manage-loans/default.

[197] Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164.
Hillman, N. W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.

increases in enrollment in for-profit institutions and, to a lesser extent, two-year public institutions.[198]

Low loan repayment also has consequences for taxpayers. Calculating the precise magnitude of these costs will require decades of realized repayment periods for millions of borrowers. However, Table 1.10 shows estimates of the share of disbursed loans that will not be repaid based on simulated debt and earnings trajectories at each program in the 2022 PPD under the proposed income-driven repayment plan announced in January 2023.[199] These estimates incorporate the subsidy coming from the features of the repayment plan itself (capped payments, forgiveness), not accounting for default or delinquency. Starting with the median earnings and debt at each program, the Department simulated typical repayment trajectories for each program with data available for both measures.

Using U.S. Census Bureau (Census) microdata on earnings and family formation for a nationally representative sample of individuals, the Department projected the likely repayment experience of borrowers at each program assuming all were enrolled in the Proposed Revised Pay as You Earn (REPAYE) repayment plan (which can

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[198] Looney, A., & Yannelis, C. (2015). A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults. *Brookings Papers on Economic Activity*, 2, 1-89.
[199] https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation

be found at 88 FR 1894).[200] Starting from the median earnings level of each program, the projections incorporate the estimated earnings growth over the life course through age sixty for individuals starting from the same earnings level in a given State. The projections also include likely spousal earnings, student debt, and family size of each borrower (also derived from the Census data), which makes it possible to calculate the total amount repaid by borrowers under each plan when paying in full each month (even if that means making a payment of $0). The simulation incorporates different demographic and income groups probabilistically due to important non-linearities in plan structure.

Table 1.10. shows that, among all programs, students that attend those that fall below the proposed debt-to-earnings standard are consistently projected to pay back less on their loans, in present value terms, than they took out.[201] This is true regardless of whether a program is in the public, private nonprofit, or proprietary sector. The projected repayment ratio is even lower for programs that only fail the EP measure because at very low earnings

[200] These estimates of the subsidy rate are not those used in the budget and do not factor in take-up. Rather, they show the predicted subsidy rates under the assumption that all students are enrolled in Proposed REPAYE.
[201] As explained in more detail later, the Department computed D/E and EP metrics only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements.

levels, students are expected to make zero-dollar payments over extended periods of time.

Table 1.10 Predicted Ratio of Dollars Repaid to Dollars Borrowed by Control and Passage Status	
	Predicted Repayment Ratio Under Proposed REPAYE
Public	
No D/E or EP data	0.53
Pass	0.72
Fail D/E (regardless of EP)	0.29
Fail EP only	0.13
Private, Nonprofit	
No D/E or EP data	0.69
Pass	0.96
Fail D/E (regardless of EP)	0.38
Fail EP only	0.19
Proprietary	
No D/E or EP data	0.41
Pass	0.79
Fail D/E (regardless of EP)	0.26
Fail EP only	0.07
Total	
No D/E or EP data	0.57
Pass	0.77
Fail D/E (regardless of EP)	0.30
Fail EP only	0.12

Our analysis, provided in more detail in “Analysis of the Regulations,” shows that for many GE programs, the typical graduate earns less than the typical worker with only a high school diploma or has debt payments that are higher than is considered manageable given typical earnings. As we show below, high rates of student loan default are especially common among GE programs that are projected to fail either the D/E rates or the earnings premium metric. Furthermore, low earnings can cause financial trouble in aspects of a graduate’s financial life beyond those related to loan repayment. In 2019, US individuals between 25 and 34 who had any type of postsecondary credential reported much higher rates of material hardship if their annual income was below the high school earnings threshold, with those below the threshold reporting being food insecure and behind on bills at more than double the rate of those with earnings above the threshold.[202]

In light of the low earnings, high debt, and student loan repayment difficulties for students in some GE programs, the Department has identified a risk that students may be spending their time and money and taking on Federal debt to attend programs that do not provide sufficient value to justify these costs. While even very good programs will have some students who struggle to obtain employment or repay their student loans, the proposed metrics identify programs where the majority of students experience adverse financial outcomes upon completion.

Although enrollment in for-profit and sub-baccalaureate programs has declined following the Great Recession, past patterns suggest that — absent regulatory action — future economic downturns could reverse this trend. For-profit institutions are more responsive than public and nonprofit institutions to changes in economic

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[202] These findings come from ED's analysis of the 2019 Survey of Income and Program Participation. This analysis compares individuals with annual income below the 2019 US national median income for individuals with a high school degree aged 25-34 who had positive earnings or reported looking for work in the previous year, according to the Census Bureau's American Community Survey (ACS).

conditions[203] and during the COVID-19 pandemic, it was the only sector to see increases in student enrollment.[204] Additionally, research shows that reductions in State and local funding for public higher education institutions tend to shift college students into the for-profit sector.[205] During economic downturns, this response is especially relevant since State and local funding is procyclical, falling during recessions even as student demand is increasing.[206]

For-profit institutions that participate in title IV, HEA programs are also more reliant on Federal student aid than public and nonprofit institutions. In recent years, around 70 percent of revenue received by for-profit institutions came from Pell Grants and Federal student loans.[207] For-profit institutions also have substantially higher tuition than public institutions offering similar degrees. In recent years, average for-profit tuition and

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[203] Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164.
Gilpin, G. A., Saunders, J., & Stoddard, C. (2015). Why has for-profit colleges' share of higher education expanded so rapidly? Estimating the responsiveness to labor market changes. *Economics of Education Review*, 45, 53-63.
[204] Cellini, S. R. (2020). The Alarming Rise in For-Profit College Enrollment. Washington, DC: Brookings Institution.
[205] Cellini, S. R. (2009). Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market. *American Economic Journal: Economic Policy*, 1(2), 1-30.
Goodman, S. & Volz, A. H. (2020). Attendance Spillovers between Public and For-Profit Colleges: Evidence from Statewide Variation in Appropriations for Higher Education. *Education Finance and Policy*, 15(3), 428–456.
[206] Ma, J. & Pender, M. (2022). *Trends in College Pricing and Student Aid 2022*. New York: College Board.
[207] Cellini, S. & Koedel, K. (2017). The Case for Limiting Federal Student Aid to For-Profit Colleges. *Journal of Policy Analysis and Management,* 36(4), 934–942.

fees charged by two-year for-profit institutions was over 4 times the average tuition and fees charged by community colleges.[208] Research suggests that Federal student aid supports for-profit expansions and higher prices.[209] Indeed, one study finds that for-profit programs in institutions that participate in title IV, HEA programs charge tuition that is around 80 percent higher than tuition charged by programs in the same field and with similar outcomes in nonparticipating for-profit institutions.[210]

For-profit institutions disproportionately enroll students with barriers to postsecondary access: low-income, non-white, and older students, as well as students who are veterans, single parents, or have a General Equivalency Degree.[211] In the 1990s, sanctions related to high cohort default rates led a large number of for-profit institutions to close, significantly reducing enrollment in this

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[208] NCES. (2022). Digest of Education Statistics (Table 330.10). Available at: nces.ed.gov/programs/digest/d21/tables/dt21_330.10.asp.

[209] Cellini, S. R. (2010). Financial aid and for-profit colleges: Does aid encourage entry? *Journal of Policy Analysis and Management*, 29(3), 526-552.

Lau, C. V. (2014). The incidence of federal subsidies in for-profit higher education. Unpublished manuscript. Evanston, IL: Northwestern University.

[210] Cellini, S. R., & Goldin, C. (2014). Does federal student aid raise tuition? New evidence on for-profit colleges. *American Economic Journal: Economic Policy*, 6(4), 174-206.

[211] Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164.

Cellini, S. R. & Darolia, R. (2015). College costs and financial constraints. In B. Hershbein & K. Hollenbeck (Ed.). *Student Loans and the Dynamics of Debt* (137-174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

sector.[212] Yet, these actions did not reduce access to higher education. Instead, a large share of students who would have attended a sanctioned for-profit institution instead enrolled in local open access public institutions and, as a result, took on less student debt and were less likely to default.[213] Similar conclusions were reached in recent studies of students that experienced program closures.[214] Better evidence is now available on the enrollment outcomes of students that would otherwise attend sanctioned or closed schools than when the 2014 Prior Rule was considered.

2. Summary of Key Provisions

Provision	Regulatory Section	Description of Proposed Provision
Definitions	§ 668.2	Add definitions related to part 668, subparts Q and S, as well as other parts of the proposed regulations.
Financial Value Transparency and Gainful Employment		
Financial value transparency scope and purpose	§ 668.401	Provide the scope and purpose of newly established financial value transparency regulations under subpart Q.
Financial value transparency framework	§ 668.402	Provide a framework under which the Secretary would assess the debt and

[212] Darolia, R. (2013). Integrity versus access? The effect of federal financial aid availability on postsecondary enrollment. *Journal of Public Economics*, 106, 101-114.
[213] Cellini, S. R., Darolia, R., & Turner, L. J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy*, 12(2), 46-83.
[214] See https://www.gao.gov/products/gao-22-104403 and sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.

		earnings outcomes for students at both GE programs and eligible non-GE programs, using a debt-to-earnings metric and an earnings premium metric.
Calculating D/E rates	§ 668.403	Establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payments, annual earnings, loan debt and assessed charges, as well as to provide exclusions and specify when D/E rates would not be calculated.
Calculating earnings premium measure	§ 668.404	Establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings premium measure would not be calculated.
Process for obtaining data and calculating D/E rates and earnings premium measure	§ 668.405	Establish a process by which the Secretary would obtain administrative and earnings data to issue D/E rates and the earnings premium measure.
Determination of the D/E rates and earnings premium measure	§ 668.406	Require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

Student disclosure acknowledgments	§ 668.407	Require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.
Reporting requirements	§ 668.408	Establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.
Severability	§ 668.409	Establish severability protections ensuring that if any provision from part 668 is held invalid, the remaining provisions would continue to apply.
Scope and purpose	§ 668.601	Provide the scope and purpose of the GE regulations under subpart S.
GE criteria	§ 668.602	Establish criteria for the Secretary to determine whether a GE program prepares students for gainful

		employment in a recognized occupation.
Ineligible GE programs	§ 668.603	Define the conditions under which a failing GE program would lose title IV, HEA eligibility, provide the opportunity for an institution to appeal a loss of eligibility only on the basis of a miscalculated D/E rate or earnings premium, and establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.
Certification requirements for GE programs	§ 668.604	Require institutions to provide the Department with transitional certifications, as well as to certify when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution’s recognized accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency.
Warnings and acknowledgments	§ 668.605	Require warnings to current and prospective students if a GE program is at

		risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge to having seen the warning before the institution may disburse any title IV, HEA funds.
Severability	§ 668.606	Establish severability protections ensuring that if any provision under part 668 is held invalid, the remaining provisions would continue to apply.
Date, extent, duration, and consequence of eligibility	§ 600.10(c)(1)(v)	Require an institution seeking to establish the eligibility of a GE program to add the program to its application.
Updating application information	§ 600.21(a)(11)	Require an institution to notify the Secretary within 10 days of any update to information included in the GE program's certification.
License/certification disclosure	§ 668.43(a)(5)	Require all programs that are designed to meet educational requirements for a specific professional license or certification for employment in an occupation list all States where the institution is aware the program does and does not meet such requirements.

Institutional and programmatic information	§ 668.43(d)	Establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs; require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution; and require institutions provide information about how to access that website to a current student before the start date of the first payment period associated with each consecutive award year in which the student enrolls.
Initial and final decisions	§ 668.91(d)(3)(vi)	Require that a hearing official must terminate the eligibility of a GE program that fails to meet the GE metrics, unless the hearing official concludes that the Secretary erred in the calculation.
Financial Responsibility		
Centralizing requirements related to change of ownership	§ 668.15	Remove and reserve section; move all requirements related to financial responsibility and change of ownership to § 668.176.
Timing of audit and financial	§ 668.23(a)(4)	Require audit and financial statement submission within the

statement submission		earlier of 30 days after the date of the report or six months after the end of an institution's fiscal year.
Updating audit reference and clarifying fiscal years of submissions	§ 668.23(d)(1)	Replace the reference to A-133 audits to 2 CFR part 200, subpart F. Require audits cover most up-to-date fiscal year and match periods covered by submissions to the IRS.
Disclosing amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures	§ 668.23(d)(5)	Require institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.
Increased information from foreign entities	§ 668.23(d)(2)	Require institutions with at least 50 percent ownership by a foreign entity to report additional information.
General financial responsibility standards	§ 668.171(b)	Identify the standards generally used to establish that an institution is financially responsible.
Mandatory triggering events		Identify events that would automatically result in the Department either recalculating a financial responsibility composite score or requiring financial protection from an institution.

Discretionary triggering events	§ 668.171(d)	Identify events that the Secretary could consider in determining whether an institution is not able to meet its financial or administrative obligations and therefore must obtain financial protection.
Recalculating an institution's composite score	§ 668.171(e)	Identify how the Department would recalculate an institution's composite score when certain mandatory triggers occur.
Reporting requirements	§ 668.171(f)	Identify the various triggering events that require the institution to notify the Department that the triggering event has occurred.
Financial responsibility factors for public institutions	§ 668.171(g)	Establishes financial responsibility standards for public institutions when backed by the full faith and credit of the appropriate government entity.
Audit opinions and disclosures	§ 668.171(h)	Establishes that the Department does not consider an institution to be financially responsible if the audited financial statements contain and opinion that is adverse, qualified or disclaimed unless the Department determines it does not have significant bearing on the institution's financial condition.
Past performance	§ 668.174	Establishes the actions the Department may take

		based on an individual's or entity's past performance and the related impact on financial responsibility.
Alternative standards and requirements	§ 668.175	Establishes the alternative standards for financial responsibility when the standards in § 668.171(b) are not met or the Department acts based on the triggers in § 668.171(c)&(d).
Financial responsibility for changes in ownership	§ 668.176	Establish the standards and requirements for determining if an institution undergoing a change in ownership is financially responsible.
Administrative Capability		
Require clear dissemination of financial aid information	§ 668.16(h)	Expand existing requirements on sufficient financial aid counseling to include clear and accurate financial aid communications to students.
Additional past performance requirements	§ 668.16(k)	Require that institutions not have a principal, affiliate, or anyone who exercises or previously exercised substantial control, who has been convicted of, or who has pled nolo contendere or guilty to, certain crimes or been found to have committed fraud. This also covers similar individuals at other institutions

		if the institution was found to have engaged in misconduct or faced liabilities in excess of 5 percent of its annual title IV, HEA program funds.
Negative actions	§ 668.16(n)	Provide that an institution is not administratively capable if it has been subject to a significant negative action subject to findings by a State or Federal agency, a court, or accrediting agency, where the basis of the action is repeated or unresolved, and the institution has not lost eligibility to participate in another Federal educational assistance program because of it.
Procedures for determining validity of high school diplomas	§ 668.16(p)	Require institutions to have adequate procedures for determining the validity of a high school diploma.
Career services	§ 668.16(q)	Require the institution to provide adequate career services.
Accessible clinical externship opportunities	§ 668.16(r)	Require the institution to provide students with accessible clinical or externship opportunities within 45 days of successful completion of coursework.
Timely fund disbursements	§ 668.16(s)	Require the institution to disburse funds to

		students in a timely manner.
Significant enrollment in failing GE programs	§ 668.16(t)	Provide that an institution is not administratively capable if half of its title IV, HEA revenue and half of its student enrollment comes from programs that are failing the GE requirements in part 668, subpart S.
Misrepresentations	§ 668.16(u)	Provide that an institution is not administratively capable if it has been found to engage in misrepresentations or aggressive recruitment.
Certification Procedures		
Removing automatic certification approval	§ 668.13(b)(3)	Eliminate provision that requires Department approval to participate in the title IV, HEA programs if the Department has not acted on an application within 12 months.
Provisional certification triggers	§ 668.13(c)(1)	Expand the list of circumstances that may lead to provisional certification.
Recertification timeframe for provisionally certified institutions	§ 668.13(c)(2)	Require provisionally certified institutions with major consumer protection issues to recertify within a maximum timeframe of two years.
Supplementary performance measures	§ 668.13(e)	Establish supplementary performance measures the Secretary may consider in determining whether

		to certify or condition the participation of an institution.
Signature requirements for Program Participation Agreements (PPAs)	§ 668.14(a)(3)	Require direct or indirect owners of proprietary or private nonprofit institutions to sign the PPA.
Increasing information sharing on an institution's eligibility for or participation in title IV, HEA programs	§ 668.14(b)(17)	Expand the list of entities that have the authority to share information pertaining to an institution's eligibility for or participation in title IV, HEA programs or any information on fraud, abuse, or other violations to include Federal agencies and State attorneys general.
Prohibit the contract or employment of any individual, agency, or organization that was at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds	§ 668.14(b)(18)(i) and (ii)	Add to the list of situations in which an institution may not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, 10-percent-or-higher equity owners, directors, officers, principals, executives, or contractors at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the institution's annual title IV, HEA program funds.

Limiting excessive hours of GE programs	§ 668.14(b)(26)(ii)	Limit the number of hours in a GE program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student.
Licensure/ certification requirements and consumer protection	§ 668.14(b)(32)	Require all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements and comply with all applicable State consumer protection laws related to misrepresentation, closure, and recruitment.
Prohibition on transcript withholding for institutional errors or misconduct and returns under the Return of Title IV Funds requirements	§ 668.14(b)(33)	Prevents institutions from withholding transcripts or taking any other negative action against a student related to a balance owed by the student that resulted from an institution's administrative error, fraud, or misconduct, or returns of funds under the Return of Title IV Funds requirements.
Adding conditions that may apply to provisionally certified institutions	§ 668.14(e)	Establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified institutions.

Adding conditions that may apply to for-profit institutions that undergo a change in ownership to convert to a nonprofit institution	§ 668.14(f)	Establish conditions that may apply to institutions that undergo a change in ownership to convert from a for-profit institution to a nonprofit institution.
Adding conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status	§ 668.14(g)	Establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.
Ability to Benefit		
Amend student eligibility requirements	§668.32	Differentiate between the title IV, HEA aid eligibility of non-high school graduates who enrolled in an eligible program prior to July 1, 2012, and those who enrolled after July 1, 2012.
Amend the State process ATB alternative	§668.156	Amend the State process ATB alternative regulations to separate the State process into an initial period and subsequent period. Require institutions to submit an application that includes specified components. Set the success rate needed for approval of the subsequent period at 85 percent and allow

		an institution up to three years to achieve compliance. Prohibit participating institutions terminated by the State from participating in the State process for five years. Require reporting on the demographics of students enrolling through the State process. Allow the Secretary to lower the success rate to 75 percent in specified circumstances.
Add eligible career pathway program documentation requirements	§668.157	Clarify the documentation requirement for eligible career pathway programs.

3. Analysis of the Financial Value Transparency and GE Regulations

This section presents a detailed analysis of the likely consequences of the Financial Value Transparency and GE provisions of the proposed regulations.

Methodology

Data Used in this RIA

This section describes the data referenced in this regulatory impact analysis and the NPRM. To generate information on the performance of different postsecondary programs offered in different higher education sectors, the Department relied on data on the program enrollment, demographic characteristics, borrowing levels, post-completion earnings, and borrower outcomes of students who received title IV, HEA aid for their studies. The Department produced program performance information, using measures based on the typical debt levels and post-enrollment earnings of program completers, from non-public records contained in the administrative systems the Department uses to administer the title IV, HEA programs along with earnings data produced by the U.S. Treasury. This performance information was supplemented with information from publicly available sources including the Integrated Postsecondary Education Data System (IPEDS), Postsecondary Education Participants System (PEPS), and the College Scorecard. The data used for the State earnings thresholds come from the Census Bureau’s 2019 American Community Survey, while statistics about the price level used to adjust for inflation come from the Bureau of Labor Statistics’ Consumer Price Index. This section describes the data used to produce this program performance information and notes several differences from the measures used for this purpose and the proposed D/E rates and earning premium measures set forth in the rule, as well as differences from the data disseminated during Negotiated Rulemaking. The data described below are referred to as the “2022 Program Performance Data (2022 PPD),” where 2022 refers to the year the programs were indicated as active. These data are being released with the NPRM.[215]

The proposed rule relies on non-public measures of the cumulative borrowing and post-completion earnings of federally aided title IV, HEA students, including both grant and loan recipients. The Department has information on all title IV, HEA aid grant and loan recipients at all institutions participating in the title IV, HEA programs, including the identity of the specific programs in which students are enrolled and whether students complete the program. This information is stored in the National Student Loan Data System (NSLDS), maintained by the Department's Office of Federal Student Aid (FSA).

Using this enrollment and completion information, in conjunction with non-public student loan information also stored in NSLDS, and earnings information obtained from Treasury, the Department calculated annual and discretionary debt-to-earnings (D/E) ratios, or rates, for all title IV, HEA programs. The Department also calculated

[215] To protect student privacy, we have applied certain protocols to the publicly released 2022 PPD and thus that dataset differs somewhat from the 2022 PPD analyzed in this RIA. Such protocols include omitting the values of variables derived from fewer than 30 students. For instance, the title IV enrollment in programs with fewer than 30 students is used to determine the number and share of enrollment in GE programs in this RIA, while the exact program-level enrollment of such programs is omitted in the public 2022 PPD. The privacy protocols are described in the data documentation accompanying this NPRM. The Department would not have reached different conclusions on the impact of the regulation or on the proposed rules if we had instead relied on this privacy-protective dataset, though the Department views analysis based on the 2022 PPD and described in this NPRM to provide a more precise representation of such impact. We view the differences in the analyses as substantively minor for purposes of this rulemaking.

the median earnings of high school graduates aged 25 to 34 in the labor force in the State where the program is located using public data, which is referred to as the Earnings Threshold (ET). This ET is compared to a program's graduates' annual earnings to determine the Earnings Premium (EP), the extent to which a programs' graduates earn more than the typical high school graduate in the same State. The methodology that was used to calculate both D/E rates, the ET, and the EP is described in further detail below. In addition to the D/E rates and earnings data, we also calculated informational outcomes measures, including program-level cohort default rates, to evaluate the likely consequences of the proposed rule.

In our analysis, we define a program by a unique combination consisting of the first six digits of its institution's Office of Postsecondary Education Identification ("OPEID") number, also referred to as the six-digit OPEID, the program's 2010 Classification of Instructional Programs (CIP) code, and the program's credential level. The terms OPEID number, CIP code, and credential level are defined below. Throughout, we distinguish "GE Programs" from those that are not subject to the GE provisions of the proposed rule, referred to as "non-GE Programs." The 2022 PPD includes information for 155,582 programs that account for more than 19 million title IV, HEA enrollments annually in award years 2016 and

2017. This includes 2,931,000 enrollments in 32,058 GE Programs (certificate programs at all institution types, and degree programs at proprietary institutions) and 16,337,000 enrollments in 123,524 non-GE Programs (degree programs at public and private not-for-profit institutions).

We calculated the performance measures in the 2022 PPD for all programs based on the debt and earnings of the cohort of students who both received title IV, HEA program funds, including Federal student loans and Pell Grants, and completed programs during an applicable two-year cohort period. Consistent with the proposed rule, students who do not complete their program are not included in the calculation of the metrics. The annual loan payment component of the debt-to-earnings formulas for the 2022 PPD D/E rates was calculated for each program using student loan information from NSLDS for students who completed their program in award years 2016 or 2017 (i.e., between July 1, 2015, and June 30, 2017—we refer to this group as the 16/17 completer cohort). The earnings components of the rates were calculated for each program using information obtained from Treasury for students who completed between July 1, 2014, and June 30, 2016 (the 15/16 completer cohort), whose earnings were measured in calendar years 2018 and 2019.

Programs were excluded from the 2022 PPD if they are operated by an institution that was not currently active in the Department’s PEPS system as of March 25, 2022, if the program did not have a valid credential type, or if the program did not have title IV, HEA completers in both the 15/16 and 16/17 completer cohorts.

Consistent with the proposed regulations, the Department computed D/E and EP metrics in the 2022 PPD only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements. A detailed analysis of the likely coverage rate under the proposed rule and of the number and characteristics of programs that met the minimum size in the 2022 PPD is included in “Analysis of Data Coverage” below.

We determined, under the provisions in the proposed regulations for the D/E rates and EP measures, whether each program would “Pass D/E,” “Fail D/E,” “Pass EP,” and “Fail EP” based on their 2022 PPD results, or “No data” if they did not meet the cohort size requirement.[216] These program-specific outcomes are then aggregated to determine the fraction of programs that pass or fail either metric or

[216] This is a simplification. Under the proposed regulation, a “no data” year is not considered passing when determining eligibility for GE programs based on two out of three years. For non-GE programs, passing with data and without data are treated the same for the purposes of the warnings.

have insufficient data, as well as the enrollment in such programs.

- *Pass D/E:* Programs with an annual D/E earnings rate less than or equal to 8 percent *OR* a discretionary D/E earnings rate less than or equal to 20 percent.

- *Fail D/E:* Programs with an annual D/E earnings rate over 8 percent *AND* a discretionary D/E earnings rate over 20 percent.

- *Pass EP:* Programs with median annual earnings greater than the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.

- *Fail EP:* Programs with median annual earnings less than or equal to the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.

- *No data*: Programs that had fewer than 30 students in the two-year completer cohorts and so earnings and debt levels could not be determined.

Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds if it fails the D/E rates measure for two out of three consecutive years or fails the EP measure for two out of three consecutive years. GE programs would be required to provide warnings in any year in which the program could lose eligibility based on the next D/E rates or earnings premium measure calculated by the Department. Students at such programs would be required to acknowledge having seen the warning and information about debt and earnings before receiving title IV aid. Eligible non-GE programs not meeting the D/E standards would need to have students acknowledge viewing this information before receiving aid.

The Department analyzed the estimated impact of the proposed regulations on GE and non-GE programs using the following data elements defined below:

- *Enrollment*: Number of students receiving title IV, HEA program funds for enrollment in a program. To estimate enrollment, we used the count of students receiving title IV, HEA program funds, averaged over award years 2016 and 2017. Since students may be enrolled in multiple programs during an award year, aggregate enrollment across programs will be greater than the unduplicated number of students.

- *OPEID*: Identification number issued by the Department that identifies each postsecondary educational institution (institution) that participates in the Federal student financial assistance programs authorized under title IV of the HEA.

- *CIP code*: Identification code from the Department's National Center for Education Statistics' (NCES) Classification of Instructional Programs, which is a taxonomy of instructional program classifications and descriptions that identifies instructional program specialties within educational institutions. The proposed rule would define programs using six-digit CIP codes, but due to data limitations, the statistics used in this NPRM and RIA are measured using four-digit codes to identify programs.[217] We used the 2010 CIP code instead of the 2020 codes to align with the completer cohorts used in this analysis.

- *Control*: The control designation for a program's institution—public, private non-profit, private for-profit (proprietary), foreign non-profit, and foreign for-profit—using PEPS control data as of March 25, 2022.

- *Credential level*: A program's credential level—undergraduate certificate, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, first professional degree, or post-graduate certificate.

- *Institution predominant degree*: The type designation for a program's institution which is based on the predominant degree the institution awarded in IPEDS and reported in the College Scorecard: less than 2 years, 2 years, and 4 years or more.

[217] In many cases the loss of information from conducting analysis at a four- rather than six-digit CIP code is minimal. According to the Technical Documentation: College Scorecard Data by Field of Study, 70 percent of credentials conferred were in four-digit CIP categories that had only one six-digit category with completers at an institution. The 2015 official GE rates can be used to examine the extent of variation in program debt and earnings outcomes across 6-digit CIP programs within the same credential level and institution.

- *State*: Programs are assigned to a U.S. State, DC, or territory based on the State associated with the main institution.

The information contained in the 2022 PDD and used in the analysis necessarily differs from that used to evaluate programs under the proposed rule in a few ways due to certain information not being currently collected in the same form as it would under the proposed rule. These include:

- 4-digit CIP code is used to define programs in the 2022 PPD, rather than 6-digit CIP code. Program earnings are not currently collected at the 6-digit CIP code level, but would be under the proposed rule. Furthermore, the 2022 PPD uses 2010 CIP codes to align with the completer cohorts used in the analysis, but programs would be defined using the 2020 CIP codes under the proposed rule;

- Unlike the proposed rule, the total loan debt associated with each student is not capped at an amount equivalent to the program's tuition, fees, books, and supplies in the 2022 PPD, nor does debt include institutional and other private debt. Doing so requires additional institutional reporting of relevant data items not currently available to the Department. In the 2014 Prior Rule, using information reported by institutions, the tuition and fees cap was applied to approximately 15 percent of student records for the 2008-2009 2012 D/E rates cohort, though this does not indicate the share of programs whose median debt would be altered by the cap.

- D/E rates using earnings levels measured in calendar years 2018 and 2019 would ideally use debt levels measured for completers in 2015 and 2016. Since program level enrollment data are more accurate for completers starting in 2016, we use completers in 2016 and 2017 to measure debt. We measure median debt levels and assume completers in the 2015 and 2016 cohorts would have had total borrowing that was the same in real terms (i.e., we use the CPI to adjust their borrowing levels to estimate what the earlier cohort would have borrowed in nominal terms). This use of one cohort to measure earnings outcomes and another to measure debt necessarily reduces the estimated coverage in the 2022 PPD to a lower level than will be experienced in practice, as we describe in more detail below. Finally, the methodology used to assign borrowing to particular programs in instances where a borrower may be enrolled in multiple programs is different in the 2022 PPD than the methodology that would be used in the proposed rule (which is the same as that used in the 2014 Prior Rule);

- Medical and dental professional programs are not evaluated because earnings six years after completion are not available. The earnings and debt levels of these programs are set to missing and not included in the tabulations presented here;

- 150 percent of the Federal Poverty Guideline is used to define the ET for institutions in U.S. Territories (other than Puerto Rico, which uses Puerto Rico-specific ET) and foreign institutions in the 2022 PPD, rather than a national ET;

- The proposed rule would use a national ET if more than half of a program's students are out-of-state, but the 2022 PPD use an ET determined by the State an institution is located;

- Programs at institutions that have merged with other institutions since 2017 are excluded, but these programs' enrollment would naturally be incorporated into the merged institution if the proposed rule goes into effect.

- Under the proposed rule, if the two-year completer cohort has too few students to publish debt and earnings outcomes, but the four-year completer cohort has a sufficient number of students, then debt and earnings outcomes would be calculated for the four-year completer cohort. This was not possible for the 2022 PPD, so some programs with no data in our analysis would have data to evaluate performance under the proposed rule.

The 2022 PPD also differ from those published in the Negotiated Rulemaking data file in several ways. The universe of programs in the previously published Negotiated Rulemaking data file were based, in part, on the College Scorecard universe which included programs as they are reported to IPEDS, but not necessarily to NSLDS. IPEDS is a survey, so institutions may report programs (degrees granted by credential level and CIP code) differently in IPEDS than is reflected in NSLDS. To reflect the impact of the proposed rule more accurately, the universe of the 2022 PPD is based instead on NSLDS records because it captures programs as reflected in the data systems used to administer title IV, HEA aid. Nonetheless, the 2022 PPD accounts for the same loan volume reflected in the Negotiated Rulemaking data file. In addition, the Negotiated Rulemaking data file included programs that were based on a previous version of College Scorecard prior to corrections made to resolve incorrect institution-reported information in underlying data sources.

Methodology for D/E rates calculations

The D/E rates measure is comprised of two debt-to-earnings ratios, or rates. The first, the annual earnings rate, is based on annual earnings, and the second, the discretionary earnings rate, is based on discretionary earnings. These two components together define a relationship between the maximum typical amount of debt program graduates should borrow based on the programs' graduates' typical earnings. Both conceptually and functionally the two metrics operate together, and so should be thought of as one “debt to earnings (D/E)” metric. The formulas for the two D/E rates are:

Annual Earnings Rate = (Annual Loan Payment) / (Annual Earnings)

Discretionary Earnings Rate = (Annual Loan Payment) / (Discretionary Earnings)

A program's annual loan payment, the numerator in both rates, is the median annual loan payment of the 2016-2017 completer cohort. This loan payment is calculated based on the program’s cohort median total loan debt at program completion, including non-borrowers, subject to assumptions on the amortization period and interest rate. Cohorts’ median total loan debt at program completion were computed as follows.

- Each student's total loan debt includes both FFEL and Direct Loans. Loan debt does not include PLUS Loans made to parents, Direct Unsubsidized Loans that were converted from TEACH Grants, private loans, or institutional loans that the student received for enrollment in the program.
- In cases where a student completed multiple programs at the same institution, all loan debt is attributed to the highest credentialed program that the student completed, and the student is not included in the

calculation of D/E rates for the lower credentialed programs that the student completed.

- The calculations exclude students whose loans were in military deferment, or who were enrolled at an institution of higher education for any amount of time in the earnings calendar year, or whose loans were discharged because of disability or death.

The median annual loan payment for each program was derived from the median total loan debt by assuming an amortization period and annual interest rate based on the credential level of the program. The amortization periods used were:

- 10 years for undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs;
- 15 years for bachelor's and master's degree programs;
- 20 years for doctoral and first professional degree programs.

The amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans. These amortization rates mirror those used in the 2014 Prior Rule, which were based on Department analysis of loan balances and the differential use of repayment plan periods by credential level at that time.[218] The interest rates used were:

- 4.27 percent for undergraduate programs;
- 5.82 percent for graduate programs.

For both undergraduate and graduate programs, the rate used is the average interest rate on Federal Direct Unsubsidized loans over the three years prior to the end of the applicable cohort period, in this case, the average rate for loans disbursed between the beginning of July 2013 and the end of June 2016.

The denominators for the D/E rates are two different measures of student earnings. Annual earnings are the median total earnings in the calendar year three years after completion, obtained from the U.S. Treasury. Earnings were measured in calendar years 2018 and 2019 for completers in award years 2015-2016 and 2016-2017, respectively, and were converted to 2019 dollars using the CPI-U. Earnings are defined as the sum of wages and deferred compensation for all W-2 forms plus self-employment earnings from Schedule SE.[219] Graduates who were enrolled in any postsecondary program during calendar year 2018 (2015-2016 completers) or 2019 (2016-2017 completers) are excluded from the calculation of earnings and the count of students. Discretionary earnings are equal to annual

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[218] See pages 64939-40 of 79 Fed. Reg. https://www.federalregister.gov/d/2014-25594

[219] See Technical Documentation: College Scorecard Data by Field of Study.

earnings, calculated as above, minus 150 percent of the Federal Poverty Guidelines for a single person, which for 2019 is earnings in excess of $18,735.

Professional programs in Medicine (MD) and Dentistry (DDS) would have earnings measured over a longer time horizon to accommodate lengthy post-graduate internship training, where earnings are likely much lower three years after graduation than they would be even a few years further removed from completion.[220] Since longer horizon earning data are not currently available, earnings for these programs were set to missing and treated as if they lacked sufficient number of completers to be measured.

Methodology for EP rate calculation

The EP measures the extent to which a program's graduates earn more than the typical high school graduate in the same State. The Department first calculated the ET, which is the median earnings of high school graduates in the labor force in each State where the program is located. The ET is adjusted for differences in high school earnings across States and over time so it naturally accounts for variations across these dimensions to reflect what workers would be expected to earn in the absence of postsecondary participation. The ET is computed as the median annual

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[220] For example, the average medial resident earns between roughly $62,000 and $67,000 in the first three years of residency, according to the AAMC Survey of Resident/Fellow Stipends and Benefits, and the mean composition for physicians is $260,000 for primary care and $368,000 for specialists, according to the Medscape Physician Compensation Report.

earnings among respondents aged 25-34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who are in the labor force when they are interviewed, indicated by working or looking for and being available to work. The ET is lower than that proposed during Negotiated Rulemaking, which would compute median annual earnings among respondents aged 25-34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who reported working (i.e., having positive earnings) in the year prior to being surveyed. Table 3.1 below shows the ET for each State (along with the District of Columbia and Puerto Rico) in 2019. The ET ranges from $31,294 (North Dakota) to $20,859 (Mississippi). The threshold for institutions in U.S. territories (other than Puerto Rico) and outside the United States is $18,735. We provide evidence in support of the chosen threshold below. Estimates of the impact of the proposed regulations using these alternative thresholds are presented in Section 9 "Regulatory Alternatives Considered."

Table 3.1 - Earnings Thresholds by State, 2019

	Earnings Threshold, 2019
State of Institution	
Alabama	22,602
Alaska	27,489
Arizona	25,453
Arkansas	24,000
California	26,073
Colorado	29,000
Connecticut	26,634
Delaware	26,471
District of Columbia	21,582
Florida	24,000

Georgia	24,435
Hawaii	30,000
Idaho	26,073
Illinois	25,030
Indiana	26,073
Iowa	28,507
Kansas	25,899
Kentucky	24,397
Louisiana	24,290
Maine	26,073
Maryland	26,978
Massachusetts	29,830
Michigan	23,438
Minnesota	29,136
Mississippi	20,859
Missouri	25,000
Montana	25,453
Nebraska	27,000
Nevada	27,387
New Hampshire	30,215
New Jersey	26,222
New Mexico	24,503
New York	25,453
North Carolina	23,300
North Dakota	31,294
Ohio	24,000
Oklahoma	25,569
Oregon	25,030
Pennsylvania	25,569
Rhode Island	26,634
South Carolina	23,438
South Dakota	28,000
Tennessee	23,438
Texas	25,899
Utah	28,507
Vermont	26,200
Virginia	25,569
Washington	29,525
West Virginia	23,438
Wisconsin	27,699
Wyoming	30,544
Puerto Rico	9,570
Foreign Institutions & Territories	18,735

The EP is computed as the difference between Annual Earnings and the ET:

Earnings Premium = (Annual Earnings) – (Earnings Threshold)

where the Annual Earnings is computed as above, and the ET is assigned for the State in which the program is located. For foreign institutions and institutions located in U.S.

territories, 150 percent of the Federal Poverty Guideline for the given year is used as the ET because comparable information about high school graduate earnings is not available.

The Department conducted several analyses to support the decision of the particular ET chosen. The discussion here focuses on undergraduate certificate programs, which our analysis below suggests is the sector where program performance results are most sensitive to the choice of ET.

First, based on student age information available from students' Free Application for Federal Student Aid (FAFSA) data, we estimate that the typical undergraduate program graduate three years after completion, when their earnings are measured, would be 30 years old. The average age of students three years after completion for undergraduate certificate programs is 31 years, while for Associate's programs it is 30, Bachelor's 29, Master's 33, Doctoral 38, and Professional programs 32. There are very few Post-BA and Graduate Certificate programs (162 in total) and their average ages at earnings measurement 35 and 34, respectively.[221]

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[221] Age at earnings measurement is not contained in the data, so we estimate it with age at FAFSA filing immediately before program enrollment plus typical program length (1 for certificate, 2 for Associate's programs, 4 for Bachelor's programs) plus 3 years. To the extent that students take longer to complete their programs, the average age will be even older than what is reported here. Using this approach, the mean age when earnings are likely to be measured in programs with at least 30 students is 30.34 across all undergraduate programs; the mean for undergraduate certificate students is 30.42.

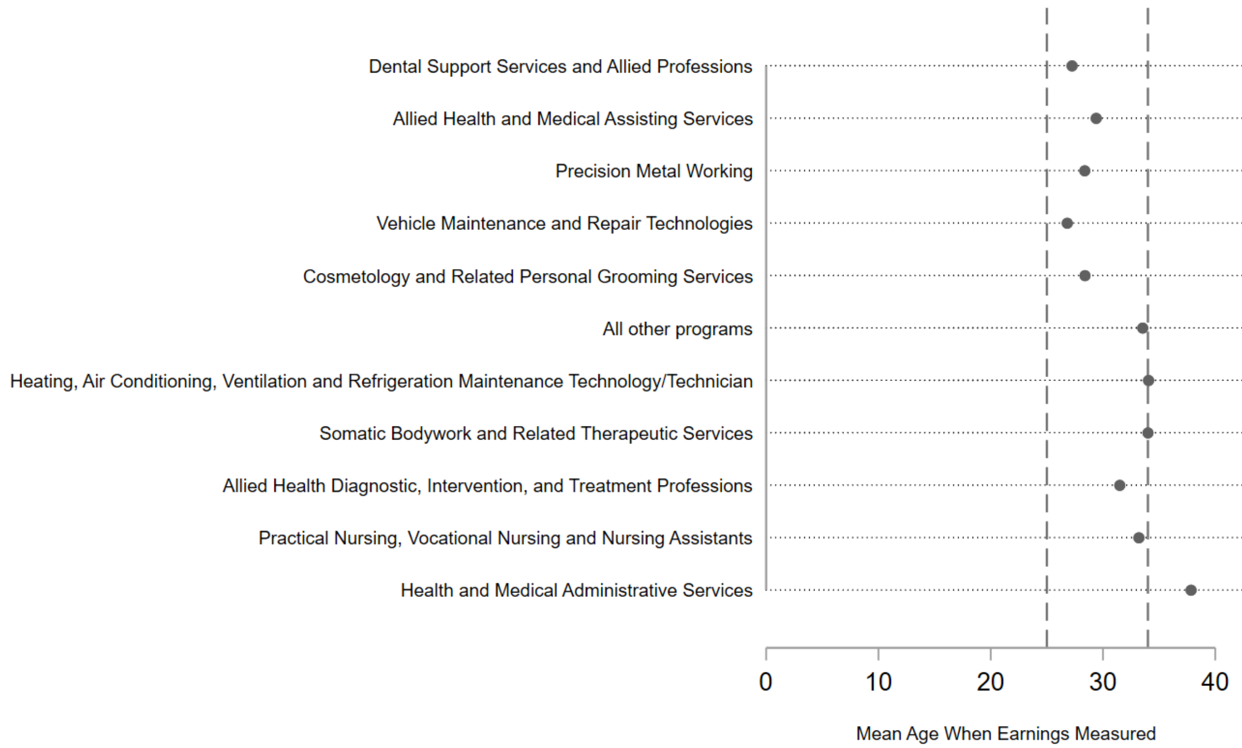

Figure 3.1. Mean Age When Earnings are Measured, UG For-Profit Certificate Programs

Figure 3.1 shows the average estimated age for for-profit certificate holders 3 years after completion, when earnings would be measured, for the 10 most common undergraduate certificate programs (and an aggregate `other' category). All credentials have an average age that falls within or above the range of ages used to construct the earnings threshold. In cases where the average age falls above this range, our earnings threshold is lower than it would be if we adjusted the age band use to match the programs' completers ages.

Second, the ET proposed is typically less than the average pre-program income of program entrants, as measured in their FAFSA. Figure 3.2 shows average pre-program individual income for students at these same types of certificate programs, including any dependent and independent students that had previously been working.[222] The figure also plots the ET and the average post-program median earnings for programs under consideration. The program-average share of students used to compute pre-program income is also reported in parentheses.[223] Pre-program income falls above or quite close to the ET for most types of certificate programs. Furthermore, the types of certificate programs which we show below have very high failure rates – Cosmetology and Somatic Bodywork (massage), for example - are unusual in having very low post-program earnings compared to other programs that have similar pre-program income.

We view this as suggestive evidence that the ET chosen provides a reasonable, but conservative, guide to the

[222] To exclude workers that are minimally attached to the labor force or in non-covered employment, the Census Postsecondary Employment Outcomes data requires workers to have annual earnings greater than or equal to the annual equivalent of full-time work at the prevailing Federal minimum wage and at least three quarters of non-zero earnings. (lehd.ces.census.gov/data/pseo_documentation.html). We impose a similar restriction, including only those students whose pre-program earnings are equivalent to full-time work for three quarters at the Federal minimum wage. We only compute average pre-program income if at least 30 students meet this criteria.

[223] Across undergraduate certificate programs for which the pre-program income measure was calculated, the average share of students meeting the criteria is 41 percent (weighting each program equally) or 38 percent (weighting programs by title IV, HEA enrollment). Given incomplete coverage and the potential for non-random selection into the sample measuring pre-program income, we view this analysis only suggestive.

minimum earnings that program graduates should be expected to obtain.[224]

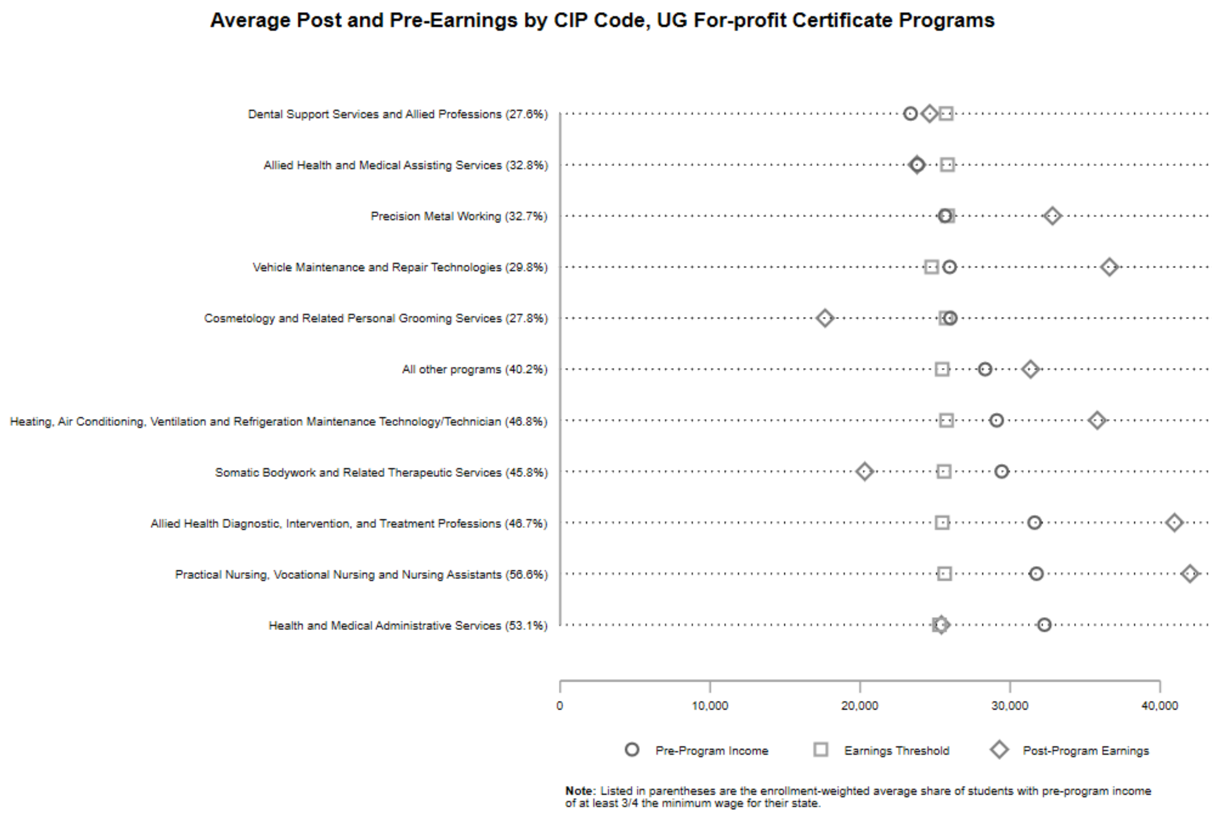

Figure 3.2 Average Income Before Program and Earnings After Program, For-Profit UG Certificate Programs

<u>Analysis of data coverage</u>

This section begins with a presentation of the Department's estimate of the share of enrollment and programs that would meet the n-size requirement and be evaluated under the proposed rule. We assembled data on the number of completers in the two-year cohort period (AYs

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[224] The earnings of 25 to 34 high school graduates used to construct the ET (similar in age to program completers 3 years after graduation) should be expected to exceed pre-program income because the former likely has more labor force experience than the latter. Thus the comparison favors finding that the ET exceeds pre-program income. The fact that pre-program income generally exceeds the ET suggests that the ET is conservative.

2016-2017) and total title IV enrollment for programs defined at the six-digit OPEID, credential level, and six-digit CIP code from NSLDS. This is the level of aggregation that would be used in the proposed rule. Total Title IV enrollment at this same level of disaggregation was also collected. Deceased students and students enrolled during the earnings measurement rule would be excluded from the earnings sample under the proposed rule; however, the Department has not yet applied such information on the number of such completers to the counts described above. We therefore impute the number of completers in the earning sample by multiplying the total completer count in our data by 82 percent, which is the median ratio of non-enrolled earning count to total completer count derived from programs defined at a four-digit CIP code level.

Table 3.2 below reports the share of Title IV, HEA enrollment and programs that would have metrics computed under an n-size of 30 and using six-digit CIP codes to define programs. We estimate that 75 percent of GE enrollment and 15 percent of GE programs would have sufficient n-size to have metrics computed with a two-year cohort. An additional 8 percent of enrollment and 11 percent of programs have an n-size of between 15 and 29 and would thus be likely have metrics computed using a four-year completer cohort. The comparable rates for eligible non-GE programs are 69 percent of enrollment and 19 percent of programs with a n-size of 30 and using two-year cohort metrics, with the use of four-year cohort rates likely increasing these coverage rates of enrollment and programs by 13 and 15 percent, respectively.

The table also reports similar estimates aggregating programs to a four-digit CIP code level. Coverage does not diminish dramatically (3-5 percentage points) when moving from four-digit CIP codes, as presented in the 2022 PPD, to six-digit CIP codes to define programs.

We note that the high coverage of Title IV enrollment relative to Title IV programs reflects the fact that there are many very small programs with only a few students enrolled each year. For example, based on our estimates, more than half of all programs (defined at six-digit CIP code) have fewer than five students completing per year and about twenty percent have fewer than five students enrolled each year. The Department believes that the coverage of students based on enrollment is sufficiently high to generate substantial net benefits and government budget savings from the policy, as described in "Net Budget Impacts" and "Accounting Statement" below. We believe that the extent to which enrollment is covered by the proposed rule is the appropriate measure on which to focus coverage analysis on because the benefits, costs, and transfers associated with the policy almost all scale with the number of students (enrollment or completions) rather than the number of programs.

Table 3.2 - Share of Enrollment and Programs Meeting Sample Size Restrictions, by CIP code level

	Enrollment		Programs	
	CIP4	CIP6	CIP4	CIP6
GE Programs				
n-size = 15	0.86	0.83	0.29	0.26
n-size = 30	0.79	0.75	0.18	0.15
Non-GE Programs				
n-size = 15	0.85	0.82	0.39	0.34
n-size = 30	0.74	0.69	0.23	0.19

Notes: Average school-certified enrollment in AY1617 is used as the measure of enrollment, but the 2022 PPD analyzed in the RIA uses total (certified and non-certified) enrollment, so coverage rates will differ. Non-enrolled earnings count for AY1617 completers is not available at a six-digit CIP level (for any n-size) or at a four-digit CIP level (for n-size = 15). Therefore, non-enrolled earnings counts are imputed based on the median ratio of non-enrolled earnings count to total completer counts at the four-digit CIP level where available. This median ratio is multiplied by the actual completer count for AY1617 at the four- and six-digit CIP level for all programs to determine the estimated n-size.

The rest of this section describes coverage rates for programs as they appear in the 2022 PPD to give context for the numbers presented in the RIA. Again, the analyses above are the better guide to the coverage of metrics we expect to publish under the rule. The coverage in the 2022 PPD is lower than that reported in Table 3.2, due to differences in data used and because the 2022 PPD does not apply the four-year cohort period “look back” provisions and instead only uses two-year cohorts.[225]

[225] Unlike the proposed rule, the 2022 PPD also combines earnings and debt data from two different (but overlapping) two-year cohorts. Alternatively, the calculations in Table 3.2 use information for a single two-year completer cohort for both earnings and debt, as the rule would do, and thus provides a more accurate representation of the expected overall coverage. A second difference between the coverage estimates in Table 3.2 and that in the 2022 PPD has do with different data sources that result in slightly different estimates of enrollment coverage between the two sources.

Tables 3.3a and 3.3b report the share of non-GE and GE enrollment and programs with valid D/E rates and EP rates in the 2022 PPD, by control and credential level. For Non-GE programs, metrics could be calculated for 62.0 percent of enrollment who attended 18.0 percent of programs. Coverage is typically highest for public bachelor's degree programs and professional programs at private non-profit institutions. Doctoral programs in either sector are the least likely to have sufficient size to compute performance metrics. Programs at foreign institutions are very unlikely to have a sufficient number of completers.

Overall, 65.4 percent of title IV, HEA enrollment is in GE programs that have a sufficient number of completers to allow the Department to construct both valid D/E and EP rates in the 2022 PPD. This represents 12.8 percent of GE programs. Note that a small number of programs have an EP metric computed but a D/E metric is not available because there are fewer than 30 completers in the two-year debt cohort. Coverage is typically higher in the proprietary sector--we are able to compute D/E or EP metrics for programs accounting for about 87.0 percent of enrollment in proprietary undergraduate certificate programs. Comparable rates are 61.5 percent and 21.4 percent of enrollment in the non-profit and public undergraduate certificate sectors, respectively.

Table 3.3a - Percent of Programs and Enrollment in Programs with Valid D/E and EP Information by Control and Credential Level (non-GE Programs)

	Data Availability Category

	Has Both D/E and EP		Has EP Only		Does Not Have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public						
Associate's	11.6	55.8	0.3	0.3	88.1	43.9
Bachelor's	39.3	74.3	0.5	0.2	60.2	25.5
Master's	15.5	57.4	0.8	0.9	83.8	41.7
Doctoral	3.0	21.7	0.3	0.7	96.7	77.6
Professional	37.7	55.5	0.7	0.6	61.6	43.9
Private, Nonprofit						
Associate's	12.6	61.9	0.4	0.1	87.0	38.0
Bachelor's	13.4	50.6	0.3	0.4	86.3	49.1
Master's	19.7	67.1	0.9	0.9	79.3	32.0
Doctoral	7.6	50.8	0.3	1.9	92.1	47.4
Professional	43.3	74.8	1.9	0.8	54.8	24.4
Foreign Private						
Associate's					100.0	100.0
Bachelor's	0.1	1.2			99.9	98.8
Master's	0.3	4.6	0.1	0.4	99.6	95.0
Doctoral					100.0	100.0
Professional	3.4	20.7	1.1	3.9	95.5	75.4
Total						
Total	18.0	62.0	0.4	0.4	81.6	37.7

Table 3.3b Percent of Programs and Enrollment in Programs with Valid D/E and EP Information by Control and Credential Level (GE Programs)

	Data Availability Category					
	Has Both D/E and EP		Has EP Only		Does Not Have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public						
UG Certificates	4.8	21.4	0.3	0.4	94.9	78.2
Post-BA Certs	0.9	7.0	0.1	0.2	99.0	92.7
Grad Certs	2.7	21.7	0.2	1.3	97.1	77.0
Private, Nonprofit						
UG Certificates	12.4	61.5	0.5	0.1	87.1	38.4
Post-BA Certs	0.7	3.8	1.0	2.5	98.3	93.8
Grad Certs	3.9	25.6	0.4	1.1	95.8	73.4
Proprietary						
UG Certificates	50.8	87.0	1.4	0.4	47.8	12.7
Associate's	34.9	84.4	2.3	0.7	62.9	15.0
Bachelor's	38.5	91.6	1.3	0.6	60.3	7.8
Post-BA Certs	8.7	62.2			91.3	37.8
Master's	41.4	93.2	2.1	0.7	56.4	6.1
Doctoral	35.0	74.0	1.7	3.9	63.3	22.2
Professional	31.0	65.1	3.4	21.2	65.5	13.7
Grad Certs	16.1	66.8	4.8	1.1	79.0	32.2
Total						
Total	12.8	65.4	0.6	0.7	86.6	34.0

Explanation of terms

While most analysis will be simple cross-tabulations by two or more variables, we use linear regression analysis (also referred to as “ordinary least squares”) to answer some questions about the relationship between variables holding other factors constant. Regression analysis is a statistical method that can be used to measure relationships between variables. For instance, in the demographic analysis, the demographic variables we analyze are referred to as "independent" variables because they represent the potential inputs or determinants of outcomes or may be proxies for other factors that influence those outcomes. The annual debt to earnings (D/E) rate and earnings premium (EP) are referred to as "dependent" variables because they are the variables for which the relationship with the independent variables is examined. The output of a regression analysis contains several relevant points of information. The "coefficient," also known as the point estimate, for each independent variable is the average amount that a dependent variable is estimated to change with a one-unit change in the associated independent variable, holding all other independent variables included in the model constant. The standard error of a coefficient is a measure of the precision of the estimate. The ratio of the coefficient and standard error, called a "t-statistic" is commonly used to determine whether the relationship between the independent and dependent variables is "statistically significant" at conventional levels.[226] If an estimated coefficient is imprecise (i.e., it has a large standard error relative to the coefficient), it may not be a reliable measure of the underlying relationship. Higher values of the t-statistic

[226] We use significance level, or alpha, of 0.05 when assessing the statistical significance in our regression analysis.

indicate a coefficient is more precisely estimated. The "R-squared" is the fraction of the variance of the dependent variable that is statistically explained by the independent variables.

Results of the Financial Value Transparency Measures for Programs not Covered by Gainful Employment

In this subsection we examine the results of the transparency provisions of the proposed regulations for the 123,524 non-GE Programs. The analysis is focused on results for a single set of financial-value measures—approximating rates that would have been released in 2022 (with some differences, described above). Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests and would not have these metrics published, we retain these programs in our analysis and list them in the tables as "No Data" to provide a more complete view of the distribution of enrollment and programs across the D/E and EP metrics.

Table 3.4 and 3.5 reports the results for non-GE programs by control and credential level. Non-GE programs with failing D/E metrics are required to have students acknowledge having seen the program outcome information before aid is disbursed. Students at non-GE programs that do not pass the earnings premium metric are not subject to the student acknowledgement requirement, however, for informational purposes, we report rates of passing this metric for non-GE programs as well. We expect performance on the EP metric contained on the ED-administered program disclosure website to be of interest to students even if it is not part of the acknowledgement requirement. This analysis shows that:

- 870 public and 760 non-profit degree programs (representing 1.2 and 1.6 percent of programs and 4.6 and 7.8 percent of enrollment, respectively) would fail at least one of the D/E or EP metrics.

- At the undergraduate level, failure of the EP metric is most common at public Associate degree programs, whereas failure of the D/E metric is relatively more common among Bachelor's degree programs, particularly at non-profit institutions.

- Failure for graduate programs is almost exclusively due to the failure of the D/E metric and is most prominent for doctoral and professional programs at private, non-profit institutions.

- In total, 127,900 students (1.1 percent) at public institutions and 273,700 students (6.8 percent) at non-profit institutions are in programs with failing D/E metrics and would be required to provide acknowledgment prior to having aid disbursed.

Table 3.4 - Number and Percent of Title IV Enrollment in non-GE by Result, Control, and Credential Level

	Percent of Enrollment					Number of Enrollments				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public										

Associate's	44.1	48.1	0.4	0.2	7.3	2,424,700	2,642,100	19,900	9,800	400,400
Bachelor's	25.7	72.5	1.1	0.2	0.6	1,491,800	4,202,800	63,000	10,300	32,800
Master's	42.6	55.8	1.5	0.0	0.0	324,300	424,600	11,300	300	0
Doctoral	78.3	19.1	2.6	0.0	0.0	113,600	27,800	3,800	0	0
Professional	44.5	48.0	7.5	0.0	0.0	56,700	61,100	9,600	0	0
Total	35.8	59.7	0.9	0.2	3.5	4,411,100	7,358,400	107,600	20,300	433,200
Private, Nonprofit										
Associate's	38.1	37.2	7.7	15.3	1.7	101,800	99,300	20,700	40,700	4,500
Bachelor's	49.4	46.3	1.8	1.1	1.3	1,310,000	1,228,500	47,900	30,100	34,700
Master's	32.8	59.4	7.4	0.3	0.1	261,400	472,900	58,600	2,400	800
Doctoral	49.2	31.0	19.6	0.1	0.0	70,300	44,300	28,000	200	0
Professional	25.2	40.1	34.6	0.0	0.2	32,800	52,300	45,100	0	200
Total	44.5	47.6	5.0	1.8	1.0	1,776,300	1,897,400	200,300	73,400	40,200
Foreign Private										
Associate's	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0
Bachelor's	98.8	0.0	0.0	1.2	0.0	5,400	0	0	100	0
Master's	95.4	2.8	1.8	0.0	0.0	8,600	300	200	0	0
Doctoral	100.0	0.0	0.0	0.0	0.0	2,800	0	0	0	0
Professional	79.3	0.0	20.7	0.0	0.0	1,200	0	300	0	0
Total	95.7	1.3	2.6	0.4	0.0	18,100	300	500	100	0
Total										
Associate's	43.8	47.6	0.7	0.9	7.0	2,526,500	2,741,400	40,500	50,500	404,800
Bachelor's	33.2	64.2	1.3	0.5	0.8	2,807,200	5,431,300	111,000	40,400	67,500
Master's	38.0	57.3	4.5	0.2	0.1	594,300	897,800	70,100	2,700	800
Doctoral	64.2	24.8	10.9	0.1	0.0	186,700	72,100	31,800	200	0
Professional	35.0	43.7	21.2	0.0	0.1	90,700	113,400	55,000	0	200
Total	38.0	56.7	1.9	0.6	2.9	6,205,500	9,256,100	308,400	93,800	473,400

Note: Enrollment counts rounded to the nearest 100.

Table 3.5 - Number and Percent of non-GE Programs by Result, Control, and Credential Level

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N
Public										
Associate's	88.5	24,161	9.9	2,694	0.1	24	0.1	19	1.5	414
Bachelor's	60.8	14,801	37.8	9,202	0.7	164	0.2	48	0.5	123
Master's	84.6	12,337	15.0	2,191	0.3	50	0.0	3	0.0	1
Doctoral	97.0	5,553	2.8	162	0.2	9	0.0	0	0.0	0
Professional	63.4	360	33.5	190	3.2	18	0.0	0	0.0	0
Total	78.9	57,212	19.9	14,439	0.4	265	0.1	70	0.7	538
Private, Nonprofit										
Associate's	87.7	2,036	9.1	212	1.2	28	1.5	34	0.5	11
Bachelor's	86.7	25,784	12.4	3,689	0.4	125	0.3	75	0.3	79
Master's	80.5	8,342	17.1	1,771	2.2	227	0.2	17	0.0	5
Doctoral	92.4	2,638	5.3	150	2.2	64	0.1	2	0.0	0
Professional	57.6	284	25.2	124	16.6	82	0.0	0	0.6	3
Total	85.4	39,084	13.0	5,946	1.1	526	0.3	128	0.2	98
Foreign Private										
Associate's	100.0	18	0.0	0	0.0	0	0.0	0	0.0	0
Bachelor's	99.9	1,227	0.0	0	0.0	0	0.1	1	0.0	0
Master's	99.7	3,067	0.1	4	0.1	3	0.0	0	0.0	1
Doctoral	100.0	793	0.0	0	0.0	0	0.0	0	0.0	0
Professional	97.1	101	0.0	0	2.9	3	0.0	0	0.0	0
Total	99.8	5,206	0.1	4	0.1	6	0.0	1	0.0	1
Total										
Associate's	88.4	26,215	9.8	2,906	0.2	52	0.2	53	1.4	425
Bachelor's	75.6	41,812	23.3	12,891	0.5	289	0.2	124	0.4	202
Master's	84.7	23,746	14.2	3,966	1.0	280	0.1	20	0.0	7
Doctoral	95.9	8,984	3.3	312	0.8	73	0.0	2	0.0	0
Professional	63.9	745	27.0	314	8.8	103	0.0	0	0.3	3
Total	82.2	101,502	16.5	20,389	0.6	797	0.2	199	0.5	637

Tables 3.6 and 3.7 report results by credential level and 2-digit CIP code for non-GE programs. This analysis shows that:

- Rates of not passing at least one of the metrics are particularly high for professional programs in law (CIP 22, 19.6 percent of law programs representing 29.2 percent of enrollment in law programs), theology (CIP 39, 6.6 percent, 25.4 percent) and health (CIP 51, 9.7 percent, 18.6 percent). Recall that for graduate degrees, failure is almost exclusively due to the D/E metric, which would trigger the acknowledgement requirement.

Table 3.6 - Number and Percent of non-GE Title IV Enrollment in Programs Failing Either D/E or EP Metric, by CIP2

	Credential Level					
	Associate's	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.8	1.2	0.0	0.0	0.0	1.0
3: Natural Resources And Conservation	0.0	1.3	1.8	0.0	0.0	1.2
4: Architecture And Related Services	0.0	0.0	2.7	0.0	0.0	0.7
5: Area & Group Studies	0.0	0.6	0.0	0.0	0.0	0.5
9: Communication	3.5	2.1	2.0	0.0	0.0	2.3
10: Communications Tech	8.1	2.9	0.0			5.9
11: Computer Sciences	1.5	0.1	0.0	0.0	0.0	0.6
12: Personal And Culinary Services	9.5	0.0	0.0			8.3
13: Education	16.6	2.7	1.8	4.3	0.0	4.4
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.3	0.0	0.0	0.0		0.2
16: Foreign Languages	1.0	2.1	0.0	0.0	0.0	1.8
19: Family & Consumer Sciences	11.2	8.0	3.8	0.0	0.0	9.2
22: Legal Professions	7.8	9.8	3.6	29.6	29.2	20.4
23: English Language	1.1	5.7	3.9	0.0	0.0	4.8
24: Liberal Arts	14.0	2.8	0.6	0.0	0.0	10.8
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	4.9	2.6	6.3	1.4	0.0	3.1
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science		0.0	0.0			0.0
29: Military Tech	0.0	0.0	0.0			0.0
30: Multi/Interdisciplinary Studies	1.3	1.2	1.6	0.0	0.0	1.3
31: Parks & Rec	4.8	1.8	0.6	0.0	0.0	2.2
32: Basic Skills	0.0	0.0	0.0			0.0
33: Citizenship Activities		0.0	0.0			0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills		0.0	0.0			0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0		0.0

37: Personal Awareness And Self-Improvement			0.0			0.0
38: Philosophy And Religious Studies	40.5	1.3	0.0	0.0	0.0	4.2
39: Theology And Religious Vocations	9.4	21.5	7.7	0.0	25.4	14.8
40: Physical Sciences	0.0	0.3	0.0	0.0	0.0	0.2
41: Science Technologies/Technicians	4.2	0.0	0.0	0.0		3.7
42: Psychology	10.8	6.4	31.5	25.3	13.6	10.5
43: Homeland Security	3.7	2.6	7.6	0.0	0.0	3.4
44: Public Admin & Social Services	23.4	5.1	6.9	0.0	0.0	9.0
45: Social Sciences	4.9	0.9	3.2	0.0	0.0	1.6
46: Construction Trades	0.0	0.0	0.0	0.0		0.0
47: Mechanic & Repair Tech	0.4	0.0				0.4
48: Precision Production	0.0	0.0	0.0			0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0		0.0
50: Visual And Performing Arts	6.4	12.7	21.6	1.9	0.0	11.6
51: Health Professions And Related Programs	6.2	1.7	5.8	20.1	18.6	5.8
52: Business	5.3	0.7	0.8	0.0	0.0	2.0
53: High School/Secondary Diplomas	0.0	0.0	0.0			0.0
54: History	0.0	0.8	12.2	0.0	0.0	1.6
60: Residency Programs			0.0	0.0	0.0	0.0
Total	8.6	2.6	4.7	11.0	21.3	5.4

Table 3.7 - Number and Percent of non-GE Programs Failing Either D/E or EP Metric, by CIP2

	Credential Level					
	Associate's	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.1	0.7	0.0	0.0	0.0	0.3
3: Natural Resources And Conservation	0.0	0.4	0.3	0.0	0.0	0.3
4: Architecture And Related Services	0.0	0.0	0.8	0.0	0.0	0.3
5: Area & Group Studies	0.0	0.3	0.0	0.0	0.0	0.2
9: Communication	0.8	1.3	0.6	0.0	0.0	1.1
10: Communications Tech	2.2	2.4	0.0			2.1
11: Computer Sciences	0.4	0.1	0.0	0.0	0.0	0.2
12: Personal And Culinary Services	3.9	0.0	0.0			3.6
13: Education	3.5	0.8	0.7	0.1	0.0	1.0
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.1	0.0	0.0	0.0	0.0	0.1
16: Foreign Languages	0.3	0.6	0.0	0.0	0.0	0.4
19: Family & Consumer Sciences	3.5	2.9	1.2	0.0	0.0	2.7
22: Legal Professions	1.0	1.4	0.4	14.3	19.6	5.0
23: English Language	0.4	1.9	1.0	0.0	0.0	1.4
24: Liberal Arts	15.3	2.1	0.4	0.0	0.0	8.1
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	0.8	1.4	0.6	0.1	0.0	0.9
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science		0.0	0.0			0.0
29: Military Tech	0.0	0.0	0.0			0.0
30: Multi/Interdisciplinary Studies	1.1	0.7	0.4	0.0	0.0	0.6
31: Parks & Rec	0.8	1.3	0.3	0.0	0.0	1.0
32: Basic Skills	0.0	0.0	0.0			0.0
33: Citizenship Activities		0.0	0.0			0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills		0.0	0.0			0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0		0.0

37: Personal Awareness And Self-Improvement			0.0			0.0
38: Philosophy And Religious Studies	2.1	0.2	0.0	0.0	0.0	0.2
39: Theology And Religious Vocations	2.0	2.5	2.6	0.0	6.6	2.4
40: Physical Sciences	0.0	0.0	0.0	0.0	0.0	0.0
41: Science Technologies/Technicians	0.6	0.0	0.0	0.0		0.4
42: Psychology	3.1	2.9	5.4	3.1	4.2	3.7
43: Homeland Security	0.8	2.2	1.3	0.0	0.0	1.3
44: Public Admin & Social Services	6.3	1.5	2.2	0.0	0.0	2.5
45: Social Sciences	0.5	0.5	0.2	0.0	0.0	0.4
46: Construction Trades	0.0	0.0	0.0	0.0		0.0
47: Mechanic & Repair Tech	0.2	0.0				0.2
48: Precision Production	0.0	0.0	0.0			0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0		0.0
50: Visual And Performing Arts	1.4	4.4	4.9	0.4	0.0	3.7
51: Health Professions And Related Programs	1.5	1.0	2.6	4.5	9.7	2.2
52: Business	1.4	0.3	0.2	0.0	0.0	0.6
53: High School/Secondary Diplomas	0.0	0.0	0.0			0.0
54: History	0.0	0.3	0.5	0.0	0.0	0.3
60: Residency Programs	0.0		0.0	0.0	0.0	0.0
Total	1.8	1.1	1.1	0.8	9.1	1.3

Results of GE Accountability for Programs Subject to the Gainful Employment Rule

This analysis is based on the 2022 PPD described in the “Data Used in this RIA” above. In this subsection, we examine the combined results of the GE accountability components of the proposed regulations for the 32,058 GE Programs. The analysis is primarily focused on GE metric results for a single year, though continued eligibility depends on performance in multiple years. The likelihood of repeated failure is discussed briefly below and is incorporated into the budget impact and cost-benefit analyses. Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests, we retain these programs in our analysis to provide a more complete view of program passage than if they were excluded.

<u>Program-level results</u>

Table 3.8 and 3.9 reports D/E and EP results by control and credential level for GE programs. This analysis shows that:

- 65.3 percent of enrollment is in the 4,100 GE programs for which rates can be calculated.
- 41.3 percent of enrollment is in 2,300 programs (7.1 percent of all GE programs) that meet the size threshold and would pass both the D/E measure and EP metrics.

- 24 percent of enrollment is in 1,800 programs (5.5 percent of all GE programs) that would fail at least one of the two metrics.

- Failure rates are significantly lower for public certificate programs (4.3 percent of enrollment is in failing programs) than for proprietary (50 percent of enrollment is in failing programs) or non-profit (43.6 percent of enrollment is in failing programs) certificate programs, though the latter represents a small share of overall enrollment. Certificate programs that fail typically fail the EP metric, rather than the D/E metric.

- Across all proprietary certificate and degree programs, 33.6 percent of enrollment is in programs that fail one of the two metrics, representing 22.1 percent of programs. Degree programs that fail typically fail the D/E metric, with only associate degree programs having a noticeable number of programs that fail the EP metric.

Table 3.8 Number and Percent of Title IV Enrollment in GE Programs by Result, Control, and Credential Level

	Percent					Number				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public										
UG Certificates	78.5	17.2	0.0	0.3	4.0	682,300	149,300	200	3,000	34,700
Post-BA Certs	93.0	7.0	0.0	0.0	0.0	11,800	900	0	0	0
Grad Certs	78.3	21.3	0.4	0.0	0.0	32,800	8,900	200	0	0
Total	78.7	17.2	0.0	0.3	3.8	726,900	159,200	300	3,000	34,700
Private, Nonprofit										
UG Certificates	38.5	18.0	0.0	4.9	38.7	30,000	14,000	0	3,800	30,100
Post-BA Certs	96.2	3.8	0.0	0.0	0.0	7,600	300	0	0	0
Grad Certs	74.4	22.1	3.5	0.0	0.0	26,600	7,900	1,300	0	0
Total	52.8	18.3	1.0	3.1	24.8	64,200	22,200	1,300	3,800	30,100
Proprietary										
UG Certificates	12.7	37.3	0.2	8.5	41.3	70,000	205,000	1,100	46,500	227,300
Associate's	15.5	46.2	19.3	14.4	4.5	50,600	151,100	63,200	47,200	14,700
Bachelor's	8.4	67.2	22.3	2.0	0.1	56,800	454,000	150,600	13,700	600
Post-BA Certs	37.8	62.2	0.0	0.0	0.0	300	500	0	0	0
Master's	6.8	75.2	17.0	0.9	0.0	16,400	180,500	40,800	2,200	0
Doctoral	26.0	58.8	15.1	0.0	0.0	14,100	31,800	8,200	0	0
Professional	34.9	14.5	50.7	0.0	0.0	4,200	1,800	6,100	0	0
Grad Certs	32.6	28.9	37.9	0.0	0.7	3,500	3,100	4,100	0	100
Total	11.5	55.0	14.7	5.9	13.0	215,900	1,027,800	274,200	109,600	242,700
Foreign Private										
UG Certificates	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0

Post-BA Certs	100.0	0.0	0.0	0.0	0.0	0	0	0	0	0
Grad Certs	15.8	0.0	0.0	84.2	0.0	200	0	0	1,300	0
Total	20.4	0.0	0.0	79.6	0.0	300	0	0	1,300	0
Foreign For-Profit										
Master's	100.0	0.0	0.0	0.0	0.0	200	0	0	0	0
Doctoral	80.5	19.5	0.0	0.0	0.0	1,600	400	0	0	0
Professional	79.7	0.0	20.3	0.0	0.0	9,200	0	2,400	0	0
Total	80.0	2.8	17.2	0.0	0.0	11,000	400	2,400	0	0
Total										
UG Certificates	52.2	24.6	0.1	3.6	19.5	782,400	368,400	1,300	53,300	292,100
Associate's	15.5	46.2	19.3	14.4	4.5	50,600	151,100	63,200	47,200	14,700
Bachelor's	8.4	67.2	22.3	2.0	0.1	56,800	454,000	150,600	13,700	600
Post-BA Certs	92.1	7.9	0.0	0.0	0.0	19,700	1,700	0	0	0
Master's	6.9	75.2	17.0	0.9	0.0	16,600	180,500	40,800	2,200	0
Doctoral	27.9	57.5	14.6	0.0	0.0	15,600	32,200	8,200	0	0
Professional	56.8	7.4	35.8	0.0	0.0	13,400	1,800	8,500	0	0
Grad Certs	70.3	22.2	6.1	1.4	0.1	63,100	19,900	5,500	1,300	100
Total	34.7	41.3	9.5	4.0	10.5	1,018,300	1,209,600	278,100	117,600	307,500

Note: Enrollment counts rounded to the nearest 100.

Table 3.9 Number of GE Programs by Result, Control, and Credential Level

	Number					Percent				
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public										
UG Certificates	18,051	729	1	6	184	95.2	3.8	0.0	0.0	1.0
Post-BA Certs	865	7	0	0	0	99.2	0.8	0.0	0.0	0.0
Grad Certs	1,887	50	2	0	0	97.3	2.6	0.1	0.0	0.0
Total	20,803	786	3	6	184	95.5	3.6	0.0	0.0	0.8
Private, Nonprofit										
UG Certificates	1,218	94	0	8	67	87.8	6.8	0.0	0.6	4.8
Post-BA Certs	625	4	0	0	0	99.4	0.6	0.0	0.0	0.0
Grad Certs	1,344	44	9	0	0	96.2	3.1	0.6	0.0	0.0
Total	3,187	142	9	8	67	93.4	4.2	0.3	0.2	2.0
Proprietary										
UG Certificates	1,596	548	4	154	916	49.6	17.0	0.1	4.8	28.5
Associate's	1,135	339	98	79	69	66.0	19.7	5.7	4.6	4.0
Bachelor's	601	259	80	21	2	62.4	26.9	8.3	2.2	0.2
Post-BA Certs	48	4	0	0	0	92.3	7.7	0.0	0.0	0.0
Master's	282	148	39	9	0	59.0	31.0	8.2	1.9	0.0
Doctoral	80	30	12	0	0	65.6	24.6	9.8	0.0	0.0
Professional	23	5	4	0	0	71.9	15.6	12.5	0.0	0.0
Grad Certs	105	14	6	0	3	82.0	10.9	4.7	0.0	2.3
Total	3,870	1,347	243	263	990	57.6	20.1	3.6	3.9	14.7
Foreign Private										
UG Certificates	28	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Post-BA Certs	27	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Grad Certs	76	0	0	1	0	98.7	0.0	0.0	1.3	0.0
Total	131	0	0	1	0	99.2	0.0	0.0	0.8	0.0
Foreign For-Profit										
UG Certificates	1	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Master's	6	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Doctoral	3	1	0	0	0	75.0	25.0	0.0	0.0	0.0
Professional	5	0	2	0	0	71.4	0.0	28.6	0.0	0.0
Total	15	1	2	0	0	83.3	5.6	11.1	0.0	0.0
Total										
UG Certificates	20,894	1,371	5	168	1,167	88.5	5.8	0.0	0.7	4.9
Associate's	1,135	339	98	79	69	66.0	19.7	5.7	4.6	4.0
Bachelor's	601	259	80	21	2	62.4	26.9	8.3	2.2	0.2
Post-BA Certs	1,565	15	0	0	0	99.1	0.9	0.0	0.0	0.0

Master's	288	148	39	9	0	59.5	30.6	8.1	1.9	0.0
Doctoral	83	31	12	0	0	65.9	24.6	9.5	0.0	0.0
Professional	28	5	6	0	0	71.8	12.8	15.4	0.0	0.0
Grad Certs	3,412	108	17	1	3	96.4	3.0	0.5	0.0	0.1
Total	28,006	2,276	257	278	1,241	87.4	7.1	0.8	0.9	3.9

Tables 3.10 and 3.11 reports the results by credential level and 2-digit CIP code. This analysis shows:

- Highest rate of failure is in Personal and Culinary Services (CIP2 12), where 76 percent of enrollment, representing 38 percent of undergraduate certificate programs in that field, have failing metrics. This is primarily due to failing the EP metric.
- In Health Professions and Related Programs (CIP2 51), where allied health, medical assisting, and medical administration are the primary specific fields, 26.2 percent of enrollment is in an undergraduate certificate program that fails at least one of the two metrics, representing 8.6 percent of programs.

Table 3.10 - Percent of GE Title IV Enrollment in Programs Failing Either D/E or EP Metric, by CIP2 and Credential Level

	UG Certificates	Associate's	Bachelor's	Post-BA Certs	Master's	Doctoral	Professional	Grad Certs	Total
1: Agriculture & Related Sciences	1.6	0.0	0.0	0.0				0.0	1.5
3: Natural Resources And Conservation	0.0		13.1	0.0	0.0			0.0	9.1
4: Architecture And Related Services	0.0		0.0	0.0	0.0		0.0	0.0	0.0
5: Area & Group Studies	0.0			0.0				0.0	0.0
9: Communication	42.4	0.0	22.9	0.0	21.8			0.0	30.1
10: Communications Tech	10.4	39.6	61.9	0.0	88.9			0.0	36.3
11: Computer Sciences	5.6	9.7	3.6	0.0	4.5	0.0		0.0	5.2
12: Personal And Culinary Services	76.1	59.5	31.8	0.0	0.0	0.0	0.0	31.5	75.2
13: Education	7.3	74.5	75.5	0.0	14.1	0.8	0.0	3.4	25.1
14: Engineering	0.0	37.0	14.5	0.0	0.0			0.0	3.4
15: Engineering Tech	2.5	1.8	0.0	0.0	0.0			0.0	1.9
16: Foreign Languages	0.0		94.8	0.0				0.0	4.5
19: Family & Consumer Sciences	2.0	90.2	72.0	0.0	100.0	100.0		0.0	21.9
22: Legal Professions	3.3	55.9	32.3	0.0	0.0	0.0	61.0	24.2	26.9
23: English Language	57.4	96.6	87.4	0.0	98.2			0.0	66.0
24: Liberal Arts	3.8	0.0	0.0	0.0	0.0	0.0		0.0	3.5
25: Library Science	0.0		100.0	0.0				0.0	23.5
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0		9.1	1.1
27: Mathematics And Statistics	0.0		0.0	0.0				0.0	0.0
28: Military Science	0.0	0.0	0.0					0.0	0.0
29: Military Tech	0.0	0.0	0.0		0.0			0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	96.2	92.0	0.0	0.0			8.8	55.3
31: Parks & Rec	4.3	66.0	0.0	0.0	0.0	0.0		0.0	9.3
32: Basic Skills	41.8				0.0			0.0	41.4
33: Citizenship Activities	0.0								0.0
34: Health-Related Knowledge And Skills	0.0							0.0	0.0
36: Leisure And Recreational Activities	0.0				0.0				0.0
37: Personal Awareness	0.0			0.0				0.0	0.0
38: Philosophy And Religious Studies	0.0		0.0	0.0	0.0			0.0	0.0
39: Theology And Religious Vocations	50.6	0.0	94.2	0.0	90.0	0.0	0.0	0.0	56.1
40: Physical Sciences	0.0	0.0	0.0	0.0				0.0	0.0
41: Science Technologies/Technicians	0.0	0.0		0.0				0.0	0.0
42: Psychology	0.0	0.0	50.3	0.0	29.1	62.1		33.3	41.0
43: Homeland Security	3.3	54.3	21.9	0.0	19.2	66.5		0.0	21.8
44: Public Admin & Social Services	0.0	81.9	57.5	0.0	43.3	9.2		2.8	42.4
45: Social Sciences	0.0	0.0	25.4	0.0	64.5	0.0		0.0	18.0
46: Construction Trades	4.9	0.0						0.0	4.7
47: Mechanic & Repair Tech	5.1	9.6	0.0					0.0	5.5
48: Precision Production	4.1	0.0							4.0
49: Transportation And Materials Moving	2.4	0.0		0.0	0.0			0.0	2.3
50: Visual And Performing Arts	11.3	45.5	51.8	0.0	83.5		0.0	0.0	38.7
51: Health Professions And Related	26.2	36.0	25.6	0.0	24.0	3.3	36.7	16.6	27.1
52: Business	6.8	40.5	2.8	0.0	3.8	2.0	0.0	0.6	9.0
53: High School/Secondary Diplomas	0.0	0.0							0.0
54: History	0.0	0.0	36.4	0.0	0.0			0.0	20.3
60: Residency Programs	0.0			0.0				0.0	0.0
Total	23.2	38.3	24.4	0.0	17.9	14.6	35.8	7.6	24.0

Table 3.11 - Percent of GE Programs Failing Either D/E or EP Metric, by CIP2

	UG Certificates	Associate's	Bachelor's	Post-BA Certs	Master's	Doctoral	Professional	Grad Certs	Total
1: Agriculture & Related Sciences	0.3	0.0	0.0	0.0				0.0	0.2
3: Natural Resources And Conservation	0.0		20.0	0.0	0.0			0.0	0.7
4: Architecture And Related Services	0.0		0.0	0.0	0.0		0.0	0.0	0.0
5: Area & Group Studies	0.0			0.0				0.0	0.0
9: Communication	1.9	0.0	12.0	0.0	11.1			0.0	2.4
10: Communications Tech	1.3	13.0	29.2	0.0	33.3			0.0	4.2
11: Computer Sciences	0.9	6.0	1.8	0.0	2.4	0.0		0.0	1.3
12: Personal And Culinary Services	38.3	13.9	18.2	0.0	0.0	0.0	0.0	11.1	36.6
13: Education	1.8	10.0	18.2	0.0	6.3	4.3	0.0	0.4	1.4
14: Engineering	0.0	20.0	10.0	0.0	0.0			0.0	0.7
15: Engineering Tech	0.4	2.8	0.0	0.0	0.0			0.0	0.5
16: Foreign Languages	0.0		50.0	0.0				0.0	0.4
19: Family & Consumer Sciences	0.9	25.0	27.3	0.0	100.0	100.0		0.0	2.1
22: Legal Professions	0.6	19.7	12.5	0.0	0.0	0.0	25.0	3.8	4.0
23: English Language	8.6	20.0	36.4	0.0	50.0			0.0	7.9
24: Liberal Arts	1.1	0.0	0.0	0.0	0.0	0.0		0.0	0.9
25: Library Science	0.0		100.0	0.0				0.0	1.9
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0		1.1	0.4
27: Mathematics And Statistics	0.0		0.0	0.0				0.0	0.0
28: Military Science	0.0	0.0	0.0					0.0	0.0
29: Military Tech	0.0	0.0	0.0		0.0			0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	25.0	28.6	0.0	0.0			0.7	1.4
31: Parks & Rec	1.6	12.0	0.0	0.0	0.0	0.0		0.0	2.3
32: Basic Skills	5.4				0.0			0.0	5.1
33: Citizenship Activities	0.0								0.0
34: Health-Related Knowledge And Skills	0.0							0.0	0.0
35: Interpersonal And Social Skills								0.0	0.0
36: Leisure And Recreational Activities	0.0				0.0				0.0
37: Personal Awareness	0.0			0.0				0.0	0.0
38: Philosophy And Religious Studies	0.0		0.0	0.0	0.0			0.0	0.0
39: Theology And Religious Vocations	4.9	0.0	20.0	0.0	14.3	0.0	0.0	0.0	2.8
40: Physical Sciences	0.0	0.0	0.0	0.0				0.0	0.0
41: Science Technologies/Technicians	0.0	0.0		0.0				0.0	0.0
42: Psychology	0.0	0.0	28.6	0.0	21.1	26.7		1.4	4.7
43: Homeland Security	0.7	21.6	12.1	0.0	13.0	25.0		0.0	3.1
44: Public Admin & Social Services	0.0	40.0	21.4	0.0	15.8	28.6		1.1	3.1
45: Social Sciences	0.0	0.0	13.3	0.0	20.0	0.0		0.0	0.8
46: Construction Trades	1.2	0.0						0.0	1.2
47: Mechanic & Repair Tech	1.9	6.2	0.0	0.0				0.0	2.0
48: Precision Production	1.6	0.0							1.6
49: Transportation And Materials Moving	1.3	0.0		0.0	0.0			0.0	1.3
50: Visual And Performing Arts	1.5	17.6	22.4	0.0	38.5		0.0	0.0	5.5
51: Health Professions And Related	8.6	17.6	6.9	0.0	10.6	5.1	22.2	1.3	8.4
52: Business	1.5	14.6	5.2	0.0	4.3	4.3	0.0	0.2	2.5
53: High School/Secondary Diplomas	0.0	0.0							0.0
54: History	0.0	0.0	16.7	0.0	0.0			0.0	1.8
60: Residency Programs	0.0			0.0				0.0	0.0
Total	5.7	14.1	10.6	0.0	9.9	9.5	15.4	0.6	5.5

Program ineligibility

For GE programs, Title IV ineligibility is triggered by two years of failing the same metric within a three-year period. Years of not meeting the n-size requirement are not counted towards those three years. The top panel of Table 3.12 shows the share of GE enrollment and programs in each result category in a second year as a function of the result in the first year, along with the rate of becoming ineligible. Failure rates are quite persistent, with failure in one year being highly predictive of failure in the next year, and thus ineligibility for title IV, HEA funds. Among programs that fail only the D/E metric in the first year, 58.4 percent of enrollment is in programs that also fail D/E in year 2 and would be ineligible for Title IV aid the following year. The comparable rates for programs that fail EP only or both D/E and EP in the first year are 91.2 and 88.8 percent, respectively. The share of programs (rather than enrollment in such programs) that become ineligible conditional on first year results is similar, as shown in the bottom panel of Table 3.12. These rates understate the share of programs that would ultimately become ineligible when a third year is considered.

Table 3.12. GE Program Performance Transition Between Years One and Two

	Percent of Enrollment by Result in Year Two

		No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
Result in Year 1	No D/E or EP data	77.1	14.9	0.6	6.1	1.3	
	Pass	4.0	90.6	2.0	3.3	0.2	
	Fail D/E only	3.5	24.1	58.3	0.1	14.0	58.4
	Fail both D/E and EP	6.5	4.6	0.8	79.9	8.1	88.8
	Fail EP only	0.3	0.3	8.2	10.3	80.9	91.2

		Percent of Programs by Result in Year Two					
		No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
Result in Year 1	No D/E or EP data	95.5	3.0	0.1	1.2	0.2	
	Pass	10.6	81.4	1.9	5.6	0.5	
	Fail D/E only	13.6	16.3	52.7	0.4	17.1	53.1
	Fail both D/E and EP	13.7	4.1	0.2	74.5	7.5	82.2
	Fail EP only	2.2	1.4	7.2	17.7	71.5	89.2

Institution-level analysis of GE program accountability provisions

Many institutions have few programs that are subject to the accountability provisions of GE, either because they are nonproprietary institutions with relatively few certificate programs or because their programs tend to be too small in size to have published median debt or earnings measures. Characterizing the share of GE programs that have reported debt and earnings metrics that fail in particular postsecondary sectors can therefore give a distorted sense for the effect the rule might have on institutions in that sector. For example, a college (or group of colleges) might offer a single GE program that fails the rule and so appear to have 100 percent of its GE programs fail the rule. But if that program is a very small share of the institution’s overall enrollment (or its title IV, HEA enrollment) then even if every student in that program were to stop enrolling in the institution—an unlikely scenario as discussed below—the effect on the institution(s) would be much less than would be implied by the 100 percent failure rate among its GE programs. To provide better context for evaluating the potential effect of the GE rule on institutions or sets of institutions, we describe the share of all title IV supported enrollment – including enrollment in both GE and non-GE programs – that is in a GE program and that fails a GE metric and, therefore, is at risk of losing title IV, HEA eligibility.[227] Again, this should not be viewed as an estimate of potential enrollment (or revenue) loss to the institution—in many cases the most likely impact of a program failing the GE metrics or losing eligibility is that students enroll in higher performing programs in the same institution.

Table 3.13 reports the distribution of institutions by share of enrollment that is in a failing GE program, by control and institution type. It shows that 93 percent of public institutions and 97 percent of non-profit institutions have no enrollment in GE programs that fail the GE metric. This rate is much lower – 42 percent - for

[227] Note that these statistics still do not fully capture the financial impact of GE on institutions. A complete analysis would account for the share of institutional revenue accounted for by title IV, HEA students, and the extent to which students in programs that fail GE will unenroll from the institutions entirely (vs. transferring to a passing program at the same institution). The measures here are best viewed as a proxy for the share of Federal title IV, HEA revenue at an institution that is potentially at risk due to the GE accountability provisions.

proprietary institutions, where all types of credential programs are covered by GE accountability and failure rates tend to be higher.

Table 3.13 - Distribution of institutions by share of enrollment that fails GE accountability, by control and institution type (all institutions)

	Share of Institutional Enrollment in Failing GE Programs							
	Total	0%	0-5%	5-10%	10-20%	20-40%	40-99%	100%
Public								
Less-Than 2-Year	561	470	23	13	26	23	5	1
2-Year	691	649	35	3	1	2	1	0
4-Year or Above	560	557	2	1	0	0	0	0
Total	1,812	1,676	60	17	27	25	6	1
Private, Nonprofit								
Less-Than 2-Year	113	92	1	0	1	3	11	5
2-Year	110	101	2	0	2	2	2	1
4-Year or Above	1,350	1,332	10	4	1	1	1	1
Total	1,573	1,525	13	4	4	6	14	7
Proprietary								
Less-Than 2-Year	1,274	499	6	8	24	38	208	491
2-Year	119	67	1	6	4	14	24	3
4-Year or Above	101	62	0	3	7	10	16	3
Total	1,494	628	7	17	35	62	248	497
Total								
Less-Than 2-Year	1,948	1,061	30	21	51	64	224	497
2-Year	920	817	38	9	7	18	27	4
4-Year or Above	2,011	1,951	12	8	8	11	17	4
Total	4,879	3,829	80	38	66	93	268	505

Very few public community or technical colleges (CCs) have considerable enrollment in programs that would fail GE. Only 40 (6 percent) of the 690 predominant 2-year public colleges have any of their enrollment in certificate programs that would fail, and only 30 (5 percent) of the 560 predominantly less than 2-year technical colleges have more than 20% of enrollment that does. The share of enrollment in failing GE programs for HBCUs, TCCUs, and other minority-serving institutions is even smaller, as shown in Table 3.14. At HBCUs, only one college out of 100 has more than 5 percent of enrollment in failing programs; across all HBCUs, only 5 programs at 4 schools fail. TCCUs have no failing programs, only 5 (1 percent) of Hispanic-serving institutions have more than 10 percent of enrollment in failing programs.[228] We conducted a similar analysis excluding institutions that do not have any GE programs. The patterns are similar.

Table 3.14 - Distribution of institutions by share of enrollment that fails GE accountability, by Special Mission Type

	Total	Share of Institutional Enrollment in Failing GE Programs					
		0%	0-5%	5-10%	10-20%	20-40%	40-99%
		N of Institutions					
HBCU	100	96	3	1	0	0	0
TCCU	35	35	0	0	0	0	0
HSI	446	417	22	2	1	2	2
All Other Non-FP MSI	158	144	3	3	4	4	0
Total	739	692	28	6	5	6	2

As noted above, these estimates cannot assess the impact of the GE provisions on total enrollment at these institutions. Especially at institutions with diverse program offerings, many students in failing programs can be expected to transfer to other non-failing programs within the institution (as opposed to exiting the institution). Moreover, many institutions are likely to admit additional enrollment into their programs from failing programs at other (especially for-profit) institutions. We quantify the magnitude of this enrollment shift and revisit the implications for overall institution-level enrollment effects in a later section.

Regulation Targets Low-Performing GE Programs

The Department conducted an analysis on which specific GE programs fail the metrics. The analysis concludes that

[228] The number of Hispanic Serving Institutions reported here differs slightly from the current eligibility list, as the 2022 PPD uses designations from 2021. The number of HBCUs and TCCUs is the same in both sources, however.

the metrics target programs where students earn little, borrow more, and default at higher rates on their student loans than similar programs providing the same credential.

Table 3.15 reports the average program-level cohort default rate for GE programs, separately by result, control, and credential level. Programs are weighted by their average title IV, HEA enrollment in AY 2016 and 2017 to better characterize the outcomes experienced by students. The overall 3-year program default rate is 12.9 percent but is higher for certificate programs and for programs offered by proprietary schools. The average default rate is higher for programs that fail the EP threshold than for programs that fail the D/E metric, despite debt being lower for the former. This is because even low levels of debt are difficult to repay when earnings are very low. Programs that pass the metrics, either with data or without, have lower default rates than those that fail.

Table 3.15: Average Program Cohort Default Rate by Result, Overall and by Control, and Credential Level (Enrollment-Weighted)

	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Total
Public						
UG Certificates	16.6	17.5	11.1	20.4	19.9	16.9
Post-BA Certs	2.3	2.4				2.3
Grad Certs	2.6	2.2	0.0			2.5
Total	15.8	16.5	6.2	20.4	19.9	16.1
Private, Nonprofit						
UG Certificates	9.7	9.6		16.4	14.4	12.0
Post-BA Certs	2.9	1.2				2.8
Grad Certs	2.7	1.9	0.3			2.4
Total	6.0	6.7	0.3	16.4	14.4	8.7
Proprietary						
UG Certificates	14.8	14.0	16.9	14.9	14.1	14.2
Associate's	14.4	13.0	17.8	19.8	16.4	15.3
Bachelor's	13.8	11.6	14.4	14.8	0.0	12.4
Post-BA Certs	26.4	13.2				16.9
Master's	3.9	3.9	5.3	4.5		4.1
Doctoral	4.1	4.5	4.6			4.4
Professional	1.0	0.0	0.7			0.7
Grad Certs	1.4	4.2	5.5		.	3.9
Total	12.3	10.6	13.1	16.8	14.2	12.0
Foreign Private						

UG Certificates	0.0					0.0
Post-BA Certs	12.5					12.5
Grad Certs	5.2			0.0		0.2
Total	3.6			0.0		0.2
Foreign For-Profit						
Master's	0.0					0.0
Doctoral	0.5	5.3				1.4
Professional	1.3		1.3			1.3
Total	1.1	5.3	1.3			1.3
Total						
UG Certificates	16.2	15.1	16.1	15.3	14.7	15.5
Associate's	14.4	13.0	17.8	19.8	16.4	15.3
Bachelor's	13.8	11.6	14.4	14.8	0.0	12.4
Post-BA Certs	2.9	5.4				3.2
Master's	3.9	3.9	5.3	4.5		4.1
Doctoral	3.7	4.5	4.6			4.3
Professional	1.2	0.0	0.8			1.0
Grad Certs	2.6	2.4	4.2	0.0	.	2.6
Total	14.1	11.3	12.9	16.7	14.7	12.9

To better understand the specific types of programs that underpin the aggregate patterns described above, Table 3.16 lists the 20 most common types of programs (the combination of field and credential level) by enrollment count in the 2022 PPD. The programs with the highest enrollments are undergraduate certificate programs in cosmetology, allied health, liberal arts, and practical nursing, along with bachelor's programs in business and nursing. These 20 most common types of programs represent more than half of all enrollments in GE programs. Table 3.17 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completing a program), the average annual D/E rate, and the average cohort default rate (weighted by the number of students completing a program). This shows quite a bit of variability in debt, loan service, earnings, and default across different types of programs.

3.16: GE programs with the Most Students, by CIP and credential level

	Number of Programs	Percent of All Programs	Number of Students	Percent of Students at All Programs
Field of Study (Ordered by All-Sector Enrollment)				
1204 - Cosmetology & Personal Grooming - UG Certificates	1,267	4.0	191,600	6.5
5202 - Business Administration - Bachelor's	72	0.2	149,000	5.1
5108 - Allied Health (Medical Assisting) - UG Certificates	895	2.9	147,100	5.0
2401 - Liberal Arts - UG Certificates	345	1.1	140,900	4.8
5139 - Practical Nursing - UG Certificates	1,032	3.3	130,900	4.5
5107 - Health & Medical Administrative Services - UG Certificates	910	2.9	83,500	2.8
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Bachelor's	56	0.2	75,600	2.6
4706 - Vehicle Maintenance & Repair - UG Certificates	722	2.3	75,100	2.6
4301 - Criminal Justice & Corrections - Bachelor's	47	0.2	55,500	1.9
5202 - Business Administration - Master's	46	0.1	55,400	1.9
4805 - Precision Metal Working - UG Certificates	761	2.4	49,000	1.7
5109 - Allied Health (Diagnostic & Treatment) - UG Certificates	725	2.3	47,000	1.6
5108 - Allied Health (Medical Assisting) - Associate's	142	0.5	43,800	1.5
5107 - Health & Medical Administrative Services - Bachelor's	46	0.1	42,100	1.4
5202 - Business Administration - Associate's	89	0.3	39,600	1.4
5107 - Health & Medical Administrative Services - Associate's	128	0.4	38,700	1.3
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Master's	20	0.1	37,800	1.3
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Associate's	92	0.3	36,300	1.2
5202 - Business Administration - UG Certificates	573	1.8	34,300	1.2
5106 - Dental Support - UG Certificates	432	1.4	33,100	1.1
All Other Programs	22,920	73.2	1,424,900	48.6

3.17: Annual loan payment, earnings, D/E rate, cohort default rate by program type (Enrollment-Weighted)

	Annual loan payment	Median 2018-19 earnings (in 2019 $) of 3yrs After Graduation	Average Annual DTE rate	Cohort Default Rate
Field of Study (Ordered by All-Sector Enrollment)				
1204 - Cosmetology & Personal Grooming - UG Certificates	1,004	16,822	6.4	13.7
5202 - Business Administration - Bachelor's	2,711	47,956	5.8	14.1

5108 - Allied Health (Medical Assisting) - UG Certificates	947	24,000	4.2	16.6
2401 - Liberal Arts - UG Certificates	99	29,894	0.3	16.4
5139 - Practical Nursing - UG Certificates	1,075	39,273	3.5	10.2
5107 - Health & Medical Administrative Services - UG Certificates	1,107	23,231	5.5	15.0
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Bachelor's	1,948	72,449	2.8	3.8
4706 - Vehicle Maintenance & Repair - UG Certificates	1,410	36,260	4.1	19.5
4301 - Criminal Justice & Corrections - Bachelor's	2,720	37,537	7.6	17.1
5202 - Business Administration - Master's	3,725	58,204	6.6	4.1
4805 - Precision Metal Working - UG Certificates	642	34,456	2.1	26.6
5109 - Allied Health (Diagnostic & Treatment) - UG Certificates	564	41,511	2.1	11.7
5108 - Allied Health (Medical Assisting) - Associate's	2,275	30,226	7.6	12.2
5107 - Health & Medical Administrative Services - Bachelor's	3,292	37,028	9.2	10.9
5202 - Business Administration - Associate's	2,532	32,427	8.3	21.7
5107 - Health & Medical Administrative Services - Associate's	2,721	26,600	10.4	14.0
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Master's	3,852	96,798	4.0	2.6
5138 - Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing - Associate's	2,535	54,352	4.7	6.9
5202 - Business Administration - UG Certificates	705	35,816	1.6	20.1
5106 - Dental Support - UG Certificates	1,024	24,502	4.4	14.0
All Other Programs	3,105	42,273	8.0	12.1

Table 3.18 lists the most frequent types of failing GE programs (by enrollment in failing programs). Failing programs are disproportionately in a small number of types of programs. Twenty-two percent of enrollment is in UG Certificate Cosmetology programs alone, reflecting both high enrollment and high failure rates. Another 23 percent are in UG Certificate programs in Health/Medical administration and assisting, dental support, and massage, reflecting large enrollment and moderate failure rates. These 20 categories account for 71 percent of all enrollments in programs that fail at least one GE metric. Table 3.19 provides the average program annual loan payment, the average program earnings, and the average default rate (all weighted by title IV, HEA enrollment) for

the most frequent types (by field and credential) of GE programs that fail at least one GE metric (by enrollment count), separately for failing and passing programs. Within each type of program, failing programs have much higher loan payments, lower earnings, and higher default rates than programs that pass the GE metrics. This demonstrates that higher-performing GE programs exist even within the same field and credential level as programs that fail GE.

3.18: Failing GE programs with the most students, by GE result, CIP and credential level

	Number of Failing Programs	Percent of Failing Programs	Number of Students	Percent of Students at Failing Programs
1204 - Cosmetology & Personal Grooming - UG Certificates	639	36.2	154,100	21.9
5108 - Allied Health (Medical Assisting) - UG Certificates	155	8.8	70,300	10.0
5107 - Health & Medical Administrative Services - UG Certificates	102	5.8	32,400	4.6
5107 - Health & Medical Administrative Services - Associate's	37	2.1	28,800	4.1
5107 - Health & Medical Administrative Services - Bachelor's	5	0.3	26,400	3.7
3017 - Behavioral Sciences - Bachelor's	2	0.1	20,100	2.9
5202 - Business Administration - Associate's	23	1.3	19,000	2.7
5108 - Allied Health (Medical Assisting) - Associate's	38	2.2	17,600	2.5
1312 - Teacher Education & Professional Development, Specific Levels & Methods - Bachelor's	2	0.1	17,500	2.5
5115 - Mental & Social Health Services & Allied Professions - Master's	5	0.3	15,400	2.2
5106 - Dental Support - UG Certificates	60	3.4	13,400	1.9
5135 - Somatic Bodywork - UG Certificates	95	5.4	13,400	1.9
4301 - Criminal Justice & Corrections - Bachelor's	7	0.4	13,100	1.9
4400 - Human Services, General - Bachelor's	2	0.1	12,100	1.7
4301 - Criminal Justice & Corrections - Associate's	16	0.9	11,700	1.7
4201 - Psychology - Bachelor's	4	0.2	10,200	1.5
1205 - Culinary Arts - UG Certificates	21	1.2	5,800	0.8
2301 - English Language & Literature, General - UG Certificates	8	0.5	5,600	0.8
5139 - Practical Nursing - UG Certificates	27	1.5	5,500	0.8
5204 - Business Operations - UG Certificates	33	1.9	5,400	0.8
All Other Programs	485	27.5	205,500	29.2
Total	1,766	100.00	703,300	100.0

Note: Student counts rounded to the nearest 100.

3.19: Annual loan payment, earnings, D/E rate, default rate among top types of failing GE programs

	Annual Loan Payment		Earnings		Default Rate (Ever)	
	Passing	Failing	Passing	Failing	Passing	Failing
Field of Study & Level (Ordered by Failing Program Enrollment)						
1204 - Cosmetology & Personal Grooming - UG Certificates	647.7	1,045.4	27,368.7	16,637.0	16.3	13.2
5108 - Allied Health (Medical Assisting) - UG Certificates	823.6	1,025.7	27,340.2	22,434.5	16.7	16.5
5107 - Health & Medical Administrative Services - UG Certificates	976.3	1,229.5	27,652.3	20,229.7	14.6	15.4
5107 - Health & Medical Administrative Services - Associate's	2,250.0	2,857.4	31,410.0	25,596.7	9.5	15.5
5107 - Health & Medical Administrative Services - Bachelor's	2,960.3	3,482.3	43,499.7	34,118.7	10.4	11.2
3017 - Behavioral Sciences - Bachelor's	.	3,499.3	.	29,512.7	0.0	16.5
5202 - Business Administration - Associate's	2,304.5	2,762.1	37,887.8	27,280.5	19.6	23.9
5108 - Allied Health (Medical Assisting) - Associate's	2,170.3	2,425.6	34,991.8	23,935.6	9.6	16.0
1312 - Teacher Education, Specific Levels & Methods - Bachelor's	3,458.0	3,121.2	36,596.3	31,081.2	9.2	11.0
5115 - Mental & Social Health Services & Allied - Master's	5,305.3	7,096.9	49,712.0	42,604.7	4.5	6.1
5106 - Dental Support - UG Certificates	992.3	1,050.4	27,180.3	22,894.8	12.9	15.3
5135 - Somatic Bodywork - UG Certificates	682.2	948.1	26,077.6	19,245.8	13.8	13.2
4301 - Criminal Justice & Corrections - Bachelor's	2,465.7	3,527.6	39,218.8	32,371.9	15.4	22.3
4400 - Human Services, General - Bachelor's	2,493.8	3,903.3	33,323.4	32,788.8	14.3	14.9
4301 - Criminal Justice & Corrections - Associate's	1,516.5	2,626.3	33,479.0	28,409.6	18.7	22.1
4201 - Psychology - Bachelor's	2,068.4	3,333.3	36,641.7	28,865.8	11.1	17.4
1205 - Culinary Arts - UG Certificates	582.1	529.7	27,544.3	11,584.1	24.4	10.0
2301 - English Language & Literature, General - UG Certificates	2,399.3	0.0	.	19,361.7	35.0	6.0
5139 - Practical Nursing - UG Certificates	1,085.8	864.4	40,891.3	17,406.6	10.0	14.2
5204 - Business Operations - UG Certificates	507.5	624.0	28,985.0	17,896.7	13.5	16.0
All Other Programs	2,404.9	4,037.5	52,545.8	29,918.2	12.1	12.7

Student Demographic Analysis

Methodology for student demographic analysis

The Department conducted analyses of the 2022 PPD to assess the role of student demographics as a factor in program performance. Our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone. We examined the demographic composition of program enrollment, comparing the composition of programs that pass, fail, or did not have data. We also conducted regression analysis, which permits us to hold constant several factors at once. This analysis focuses on GE programs since non-GE programs are not at risk of becoming ineligible for title IV, HEA aid.[229]

For the race and ethnicity variables, we used the proportion of individuals in each race and ethnicity category among all completers of each certificate or degree reported in the IPEDS 2016 and 2017 Completions Surveys.[230] Race and ethnicity is not available for only title IV, HEA recipients, so we rely on information for all (including

[229] We conducted the regression analysis discussed below for non-GE programs as well. Our conclusions about the relative contribution of demographic factors in explaining program performance on the D/E and EP metrics is similar for non-GE programs as for GE programs.

[230] Specifically, the C2016A and C2017A datasets available from the IPEDS data center. These cover the 2015-16 and 2016-17 academic years (July 1 to June 30).

non-title IV, HEA student) completers instead from IPEDS. We construct four race/ethnicity variables:

- Percent Black
- Percent Hispanic
- Percent Asian
- Percent non-White, which also includes individuals with more than one race. Note that this is not mutually exclusive with the other three race/ethnicity categories.

We aggregated the number of completions in each race/ethnicity category reported for each program in IPEDS to the corresponding GE program definition of six-digit OPEID, CIP code, and credential level. While D/E and EP rates measure only the outcomes of students who completed a program and received title IV, HEA program funds, IPEDS completions data include both title IV, HEA graduates and non-title IV, HEA graduates. Race and ethnicity data is not available separately for title IV, HEA completers. We believe the IPEDS data provides a reasonable approximation of the proportion, by race and ethnicity, of title IV, HEA graduates completing GE programs. We determined percent of each race and ethnicity category for 25,278 of the 32,058 programs. Many smaller programs could not be matched primarily because, as stated above, IPEDS and NSLDS use different program categorization systems, and the two sources at times are not sufficiently consistent to match data at the GE program-level. Nonetheless, we do not believe this will substantially affect our results since programs that do not match are less likely to meet the n-size criteria and thus would be likely excluded from our analysis of program performance.

Percent Pell for this analysis is the percentage of title IV, HEA completers during award years 15, 16, and 17 who received a Pell Grant at any time in their academic career. Because Pell status is being used as a proxy for socioeconomic background, we counted students if they had received a Pell Grant at any time in their academic career, even if they did not receive it for enrollment in the program. For instance, students that received Pell at their initial undergraduate institution but not at another institution they attended later would be considered a Pell Grant recipient at both institutions.

Several other background variables were collected from students' Free Application for Federal Student Aid (FAFSA) form. For all students receiving title IV, HEA aid in award years 15, 16, and 17, the Department matched their enrollment records to their latest FAFSA filed associated with their first award year in the program in which they were enrolled. First-generation status, described below, is taken from students earliest received FAFSA. From these, the Department constructed the following:

- Percent of students that are male.

- Percent of students that are first-generation, defined as those who indicated on the FAFSA not having a parent that had attended college. Children whose parents completed college are more likely to attend and complete college.

- Average family income in 2019 dollars. For dependent students, this includes parental income and the students' own income. For independent students, it includes the student's own income and spousal income.

- Average expected family contribution. We consider EFC as an indicator of socioeconomic status because EFC is calculated based on household income, other resources, and family size.

- Average age at time of FAFSA filing.

- Percent of students aged 24 or older at time of FAFSA filing.

- Share of students that are independent. Independent status is determined by a number of factors, including age, marital status, having dependents, and veteran status.

- Median student income prior to program enrollment among students whose income is greater than or equal to three-quarters of a year of earnings at Federal minimum wage. We only compute this variable for programs where at least 30 students meet this requirement, this variable should be viewed as a rough indicator of students' financial position prior to program entry. The average percentage of enrollees covered by this variable is 57.6 across all programs.

Based on these variables, we determined the composition of over 23,907 of the 32,058 programs in our data, though some demographic variables have more non-missing observations. Unless otherwise stated, our demographic analysis treats programs (rather than students) as the unit of analysis. The analysis, therefore, does not weight programs (and their student characteristics) by enrollment.

Table 3.20 provides program-level descriptive statistics for these demographic variables in the GE program dataset. The typical (median) program has 6 percent completers that are Black, 6 percent Hispanic, 0 percent Asian (program mean is 3 percent), and 38 percent non-White. At the median program, sixty-one percent are independent, half are over the age 24, and 31 percent are male. Half are first-generation college students and 77 percent have ever received a Pell Grant. Average family income at time of first FAFSA filing is $38,000 and the typical student who is attached to the labor force earns $29,900 before enrolling in the program.

3.20: Descriptive statistics of the demographic variables

	Programs	Median	Average	Std. Deviation
Share T4 Completers First Gen	24,199	50	49	34
Share T4 Completers Ever Pell	24,199	77	67	36

Share T4 Completers Out-of-State	24,199	0	16	30
Share of T4 Completers Male	24,199	31	42	41
Share of T4 Completers Age 24+	24,199	50	51	37
Share T4 Completers Independent	24,199	61	58	36
Share All Completions Non-White	25,278	38	43	30
Share All Completions Black	25,278	6	14	20
Share All Completions Hispanic	25,278	6	15	23
Share All Completions Asian	25,278	0	3	9
Age at Time of FAFSA	23,907	26	28	8
FAFSA Family Income	23,907	38,137	47,726	45,433
Median Student Pre-Inc	17,599	29,908	38,585	32,806

Student demographics descriptive analysis

Table 3.21 reports average demographic characteristics of GE programs separately by GE result. Programs that fail at least one GE metric have a higher share of students that are female, higher share of students that are Black or Hispanic, lower student and family income, and higher share of students that have ever received the Pell Grant. Average student age and dependency status is similar for passing and failing programs.

3.21: Demographic shares by result

	All	Passing	Fail (Any)	Fails D/E	Fails EP
Share TIV Completers First Gen	49	48	61	55	62
Share TIV Completers Ever Pell	67	66	81	74	83
Share TIV Completers Out-of-State	16	15	20	39	15
Share of TIV Completers Male	42	44	22	28	20
Share of TIV Completers Age 24+	51	51	49	57	45
Share TIV Completers Independent	58	58	59	66	56
Share All Completions Non-White	43	41	58	58	57
Share All Completions Black	14	13	21	25	20
Share All Completions Hispanic	15	15	25	18	26
Share All Completions Asian	3	3	3	2	4
Age at Time of FAFSA	28	28	27	29	27
FAFSA Family Income	47,700	48,700	35,100	41,000	33,300
Median Student Pre-Inc	38,600	39,600	29,100	34,200	27,200

Note: Income values rounded to the nearest 100.

Student demographics regression analysis

One limitation of the descriptive tabulations presented above is that it is difficult to determine which factors, whether they be demographics or program characteristics, explain the higher failure rate of programs serving certain groups of students. To further examine the relationship between student demographics and program results under the proposed regulations, we analyzed the degree to which specific demographic characteristics might be associated with a program's annual D/E rate and EP, while holding other characteristics constant.

For this analysis, the Department estimated the parameters of linear regression models (OLS) with annual debt-to-earnings or the earnings premium as the dependent (outcome) variables and indicators of student, program, and institutional characteristics as independent variables.[231] The independent demographic variables included in the regression analysis are: share of students in different race and ethnicity categories; share of students ever receiving Pell Grants; share of students that are male; share of students that are first-generation college students; share of students that are independent; and average family income from student's FAFSA. Program and institutional characteristics include credential level and control (public, private non-profit, and proprietary). In some specifications we include institution fixed effects

[231] Though not shown below, we have conducted parallel regression analysis with binary indicators for whether the program fails the D/E metric and whether it fails the EP metric as the outcomes. Results are qualitatively similar to those reported here using continuous outcomes, though the amount of variation in these binary outcomes that demographics explain is even more muted than that reported here.

and omit control. When used with program-level data, institutional fixed effects control for any factors that differ between institutions but are common among programs in the same institution, such as institutional leadership, pricing strategy, and state or local factors.

Table 3.22 reports estimates from the D/E rate regressions described above, with each column representing a different regression model that includes different sets of independent variables. Comparing the R-squared across different columns demonstrates the degree to which different factors explain variation in the outcome. The first three columns quantify the extent to which variation in D/E rates are accounted for by program and institutional characteristics. The institutional control alone (column 1) explains 15 percent of the variation in D/E and adding credential level increases the R-squared to 23 percent (column 2). D/E rates are 3.7 to 3.9 percentage points higher for private non-profit and for-profit institutions than public institutions (the omitted baseline category) after controlling for credential level. This likely reflects the much higher tuition prices charged by private institutions, which results in higher debt service. Graduate credential levels also have much higher debt-to-earnings ratios than undergraduate credentials, reflecting the typically higher tuition costs associated with graduate programs.

Almost all programs are in institutions with multiple GE programs, so column 3 includes institution fixed effects in place of indicators for control.[232] Credential level and institution together account for 69 percent of the variation in D/E rates across programs. To illustrate how much more of the variation in outcomes is accounted for by student characteristics, column 4 adds the demographic characteristics on top of the model with credential level and institution effects. Doing so only slightly increases the model's ability to account for variation in D/E, lifting the R-squared to 71 percent. This specification effectively compares programs with more Pell students to those with fewer Pell students within the same institution and same credential level, while also controlling for the other independent variables listed. Demographic characteristics, therefore, appear to explain little of the variation in D/E rates across programs beyond what can be predicted by institutional characteristics and program credential level. Evidently, institution- and program-level factors, which could include such things as institutional performance and decisions about institutional pricing along with other factors, are much more important.[233] The final two columns report similar models,

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[232] Only 4 percent of GE programs are the only GE program within the institution. The median number of programs within an institution is 18.

[233] The patterns by race are broadly similar to what was found in analysis of the 2014 final rule. The coefficient on % Black in the

but weighting by average title IV, HEA enrollment, and the results are qualitatively similar.

3.22: Regression analysis of the demographic variables, GE Programs, Outcome: D/E

	1	2	3	4	5	6
Private, Nonprofit	4.367	3.939				
	(0.898)	(0.947)				
Proprietary	4.797	3.685				
	(0.109)	(0.102)				
Credential Level						
UG Certificates		-2.162	-2.446	-3.973	-1.096	-5.005
		(0.205)	(0.585)	(0.602)	(0.636)	(0.586)
Associate's		0.065	0.298	-0.617	1.344	-0.926
		(0.250)	(0.433)	(0.413)	(0.629)	(0.418)
Master's		2.850	1.541	1.252	0.991	1.593
		(0.747)	(0.575)	(0.469)	(0.704)	(0.563)
Doctoral		4.883	3.811	5.599	3.803	7.716
		(0.795)	(1.054)	(1.008)	(1.397)	(1.189)
Professional		12.510	5.828	5.616	6.711	8.627
		(3.678)	(0.998)	(1.365)	(0.837)	(1.540)
Grad Certs		0.558	1.408	0.831	4.573	4.517
		(0.697)	(1.702)	(1.639)	(2.536)	(2.376)
% Black				0.015		0.032
				(0.009)		(0.016)
% Hispanic				-0.013		-0.030
				(0.011)		(0.017)
% Asian				-0.056		-0.159
				(0.028)		(0.043)
% Male				-0.015		-0.029
				(0.002)		(0.004)
% Ever Pell				0.002		0.044
				(0.011)		(0.016)
% First Generation				-0.001		-0.021
				(0.010)		(0.016)
% Independent				-0.005		-0.005
				(0.006)		(0.008)
FAFSA Family Income ($1,000)				-0.055		-0.088
				(0.013)		(0.014)
Intercept	1.260	3.290	6.328	10.787	6.223	12.187
	(0.064)	(0.216)	(0.456)	(1.594)	(0.413)	(1.968)
R-squared	0.15	0.23	0.69	0.71	0.61	0.71

Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor’s degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV enrollment in AY16 and AY17.

Table 3.23 reports estimates from identical regression models, but instead using EP as the outcome. Again, each column represents a different regression model that includes different sets of independent variables. Program

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final column suggests that a 10-percentage point increase in the percent of students that are black is associated with a 0.15 higher debt-to-earnings ratio, holding institution, credential level, and the other demographic factors listed constant. Analysis of the prior rule found an increase of 0.19, though the set of controls is not the same.

and institutional characteristics still matter greatly to earnings outcomes. Institutional effects and credential level together explain 77 percent of the variation in program-level earnings outcomes (column 3). Adding demographic variables explains an additional 7 percent of the variation in program-level earnings (column 4). Note that the estimated regression coefficients will likely overstate the effect of the baseline characteristics on outcomes if these characteristics are correlated with differences in program quality not captured by the crude institution and program characteristics included in the regression.

3.23: Regression analysis of the demographic variables, GE Programs, Outcome: EP ($1,000s)

	1	2	3	4	5	6
Private, Nonprofit	7.355	0.215				
	(2.327)	(1.647)				
Proprietary	-4.613	-10.717				
	(0.607)	(0.486)				
Credential Level						
UG Certificates		-18.505	-17.197	-7.579	-20.851	-0.728
		(0.821)	(1.611)	(1.376)	(2.298)	(1.902)
Associate's		-6.844	-8.616	-3.605	-11.086	-0.341
		(0.985)	(1.283)	(1.093)	(1.938)	(1.242)
Master's		11.188	11.085	7.169	11.323	8.738
		(1.613)	(2.031)	(1.764)	(3.453)	(2.830)
Doctoral		32.005	32.988	20.813	28.303	10.521
		(2.892)	(4.440)	(3.932)	(6.102)	(4.338)
Professional		41.519	58.782	44.858	66.297	43.511
		(12.275)	(13.667)	(11.362)	(9.928)	(11.765)
Grad Certs		23.979	13.521	11.646	7.767	8.836
		(3.219)	(4.118)	(3.529)	(6.321)	(6.407)
% Black				-0.114		-0.198
				(0.047)		(0.058)
% Hispanic				-0.084		-0.002
				(0.038)		(0.061)
% Asian				0.492		1.390
				(0.110)		(0.266)
% Male				0.099		0.096
				(0.007)		(0.016)
% Ever Pell				-0.153		-0.084
				(0.045)		(0.064)
% First Generation				-0.053		0.001
				(0.029)		(0.047)
% Independent				0.143		0.193
				(0.017)		(0.031)
FAFSA Family Income ($1,000)				0.170		0.443
				(0.055)		(0.072)
Intercept	11.267	27.732	19.839	9.842	21.911	-20.679
	(0.514)	(0.918)	(1.311)	(7.404)	(1.645)	(9.331)
R-squared	0.03	0.42	0.77	0.84	0.71	0.87

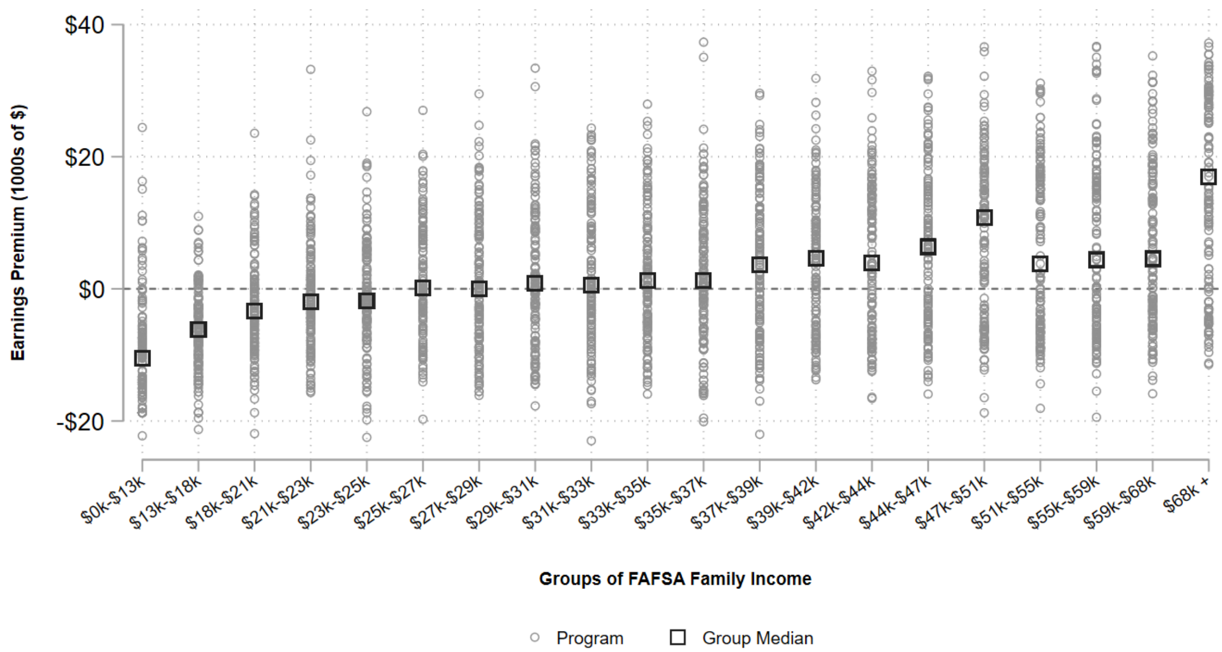
Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor’s degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV enrollment in AY16 and AY17.

Conclusions about the extent to which different factors explain variation in program outcomes can be sensitive to the order in which factors are entered into regressions. However, a variance decomposition analysis (that is insensitive to ordering) demonstrates that program and institutional factors explain the majority of the variance in both the D/E and EP metrics across programs when student characteristics are also included.

Figure 3.3 provides another view, demonstrating that many successful programs exist and enroll similar shares of low-income students. It shows the distribution of raw EPs for undergraduate certificate programs (the y-axis is in $1,000s) grouped by the average FAFSA family income of the program. Programs are placed in 20 equally sized groups from lowest to highest FAFSA family income.[234] Each dot represents an individual program. The EP of the median program in each income group, indicated by the large black square, is clearly increasing, reflecting the greater earnings opportunities for students that come from higher income families. However, there is tremendous variation around this median. Even among programs with students that come from the lowest income families, there are clearly programs whose students go on to have earnings success

[234] Since each of the 20 groups includes the same number of programs, the income range varies across groups.

after program completion. This graph demonstrates that demographics are not destiny when it comes to program performance.



Note: Earnings for high school graduates are calculated using the American Community Survey as the median earnings of a high school graduate aged 25-34 in the state, among graduates with positive earnings. The earnings premium is defined as the amount above or below the median earnings for a high school graduate in the state. Each dot represents a program and programs are divided into groups based on average FAFSA family income. Groups are formed by dividing programs into 5% groups from lowest to highest incomes (vigintiles).

Figure 3.3 Distribution of Earnings Premium by Family Income, Certificate Programs

Gender differences

The analysis above showed that programs failing the EP threshold have a higher share of female students. In Table 3.24, descriptively we show that there are many programs that have similar gender composition but have much higher rates of passage than programs in cosmetology and massage, where failure rates are comparatively higher. Other programs, such as practical nursing and dental support, are similar in terms of their gender and racial balance but have much higher passage rates.

Table 3.24: Gender and Racial Composition of Undergraduate Certificate Programs

	Share of Programs Failing	Share of All Completers Who are…					
		Black Women	Hispanic Women	Asian Women	Other Women	White Women	*Women (Any Race)*
Teacher Education	0.068	0.226	0.165	0.025	0.094	0.439	0.950
Human Development	0.022	0.216	0.284	0.039	0.063	0.366	0.968
Health & Medical Admin	0.388	0.209	0.171	0.029	0.086	0.442	0.938
Medical Assisting	0.478	0.171	0.292	0.030	0.067	0.317	0.876
Laboratory Science	0.178	0.163	0.138	0.030	0.079	0.434	0.843
Practical Nursing	0.042	0.154	0.134	0.033	0.067	0.498	0.886
Cosmetology	0.803	0.150	0.191	0.051	0.059	0.451	0.902
Dental Support	0.405	0.146	0.300	0.025	0.064	0.384	0.920
Business Operations	0.261	0.142	0.166	0.020	0.057	0.395	0.781
Business Administration	0.001	0.128	0.090	0.018	0.058	0.308	0.601
Culinary Arts	0.322	0.123	0.148	0.019	0.060	0.249	0.598
Somatic Bodywork	0.617	0.102	0.127	0.029	0.079	0.418	0.754
Accounting	0.071	0.096	0.141	0.060	0.067	0.361	0.725
Criminal Justice	0.041	0.072	0.079	0.004	0.027	0.151	0.333
Liberal Arts	0.038	0.049	0.205	0.043	0.055	0.262	0.613
Allied Health, Diagnostic	0.026	0.046	0.089	0.016	0.034	0.309	0.494
IT Admin & Mgmt.	0.046	0.044	0.021	0.009	0.029	0.081	0.183
Ground Transportation	0.007	0.041	0.007	0.003	0.007	0.034	0.092
Computer & Info Svcs	0.074	0.030	0.078	0.012	0.017	0.113	0.250
Precision Metal Working	0.041	0.009	0.007	0.001	0.005	0.036	0.058
HVAC	0.026	0.008	0.003	0.000	0.001	0.012	0.025
Fire Protection	0.000	0.007	0.019	0.001	0.005	0.058	0.091
Power Transmission	0.016	0.007	0.006	0.000	0.003	0.019	0.035
Vehicle Maintenance	0.049	0.006	0.011	0.001	0.006	0.027	0.052
Environment Ctrl Tech	0.011	0.006	0.007	0.001	0.005	0.018	0.036

Conclusions of Student Demographic Analysis

On several dimensions, programs that have higher enrollment of underserved students have worse outcomes - lower completion, higher default, and lower post-college earnings levels - due to a myriad of challenges these students face, including fewer financial resources and structural discrimination in the labor market.[235] And yet, there is evidence that some institutions aggressively recruited vulnerable students—-at times with deceptive

[235] Blau, Francine D., and Lawrence M. Kahn. 2017. “The Gender Wage Gap: Extent, Trends, and Explanations.” Journal of Economic Literature 55 (3): 789–865.
Hillman, N. W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.
Pager, D., Western, B. & Bonikowski, B. (2009). Discrimination in a Low-Wage Labor Market: A Field Experiment. *American Sociological Review, 74*, 777-799.

marketing and fraudulent data—into programs without sufficient institutional support and instructional investment, placing students at risk for having high debt burdens and low earnings.[236] Nonetheless, our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone. Furthermore, alternative programs with similar student characteristics but where students have better outcomes exist and serve as good options for students that would otherwise attend low-performing programs. We quantify the extent of these alternative options more directly in the next section. The proposed GE rule aims to protect students from low-value programs and steer them to programs that would be greater engines of upward economic mobility.

Alternative Options Exist for Students to Enroll in High-Value Programs

Measuring students' alternative options

One concern with limiting title IV, HEA eligibility for low-performing GE programs is that such measures could reduce postsecondary opportunities for some students. The Department conducted an analysis to estimate the short-term

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[236] Cottom, T.M. (2017). *Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy*.
Government Accountability Office (2010). *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices.*
United States Senate Committee on Health, Education, Labor and Pensions (2012). *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success.*

alternative options that are available to students that might, in the absence of these regulations, enroll in failing programs.

Students deterred from attending a specific program because of a loss of title IV, HEA aid eligibility at that program have several alternatives. For programs that are part of a multi-program institution, many may choose to still enroll at the institution, but attend a different program in a related subject that did not lose access to title IV, HEA and, therefore, likely offers better outcomes for students in terms of student debt, earnings, or both. Some would stay in their local area but attend a similar program at a different nearby institution. Others would venture to a related subject at a different nearby institution. Still others would attend an institution further away, but perhaps in the same State or online.[237] In order to identify geographical regions where the easiest potential transfer options exist, we used the 3-digit ZIP code (ZIP3) in which each institution is located. Three-digit zip codes designate the processing and distribution center of the United States Postal Service that serves a given geographic area. For each combination of ZIP3, CIP code, and credential level, we determined the number of programs available and the number of programs that would

[237] Two other possibilities, which we include in our simulation of budget impacts, is that students continue to enroll in programs without receiving title IV, HEA aid or decline to enroll altogether.

pass both the D/E and EP rates measures. Since programs that pass due to insufficient n-size to compute D/E and EP rates represent real options for students at failing programs, we include these programs in our calculations. Importantly, we also include all non-GE programs at public and private non-profit institutions.[238] Our characterization of programs by the number of alternative options available is also used in the simulations of enrollment shifts that underly the Budget Impact and Cost, Benefit, and Transfer estimates, which we describe later.

Table 3.25 reports the distribution of the number of transfer options available to the students that would otherwise attend GE programs that fail at least one of the two metrics. We present estimates for four different ways of conceptualizing and measuring these transfer options. We assume students have more flexibility over the specific field and institution attended than credential level, so all four measures assume students remain in the same credential level. While not captured in this analysis, it is possible that some students would pursue a credential at

[238] Since the 2022 PPD are aggregated to each combination of the six-digit OPEID, four-digit CIP code, and credential level, we do not have precise data on geographic location. For example, a program can have multiple branch locations in different cities and States. At some of these locations, the program could be offered as an online program while other locations offer only in-person programs. Each of these locations would present as a single program in our data set without detail regarding precise location or format. We do not possess more detailed geographic information that would allow us to address this issue, so we recognize that our analysis of geographic scope and alternatives may be incomplete and cause us to understate the number of options students have. Nonetheless, the vast majority of alternative options will be captured in our analysis.

a higher level in the same field, thereby further increasing their available options. Half of students in failing GE programs (in 42 percent of failing programs) have at least one alternative non-failing program of the same credential level at the same institution, but in a related field (as indicated by being in the same 2-digit CIP code). Nearly a quarter have more than one additional option. Two-thirds of students (at 61 percent of the failing programs) have a transfer option passing the GE measures within the same geographic area (ZIP3), credential level, and narrow field (4-digit CIP code). More than 90 percent of students have at least one transfer option within the same geographic area and credential level when the field is broadened to include programs in the same 2-digit CIP code. Finally, all students have at least one program in the same State, credential level, and 2-digit CIP code. While this last measure includes options that may not be viable for currently enrolled students--requiring moving across the State or attending virtually--it does suggest that at least some options are available for all students, both current and potential students, that would otherwise attend failing GE programs.

Table 3.25 Share of Programs and Enrollment in Failing GE Programs, by Number of Alternative Options

	Same Institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
A. Programs				

Transfer options				
1 or more	0.42	0.61	0.88	1.00
5 or more	0.04	0.05	0.51	0.96
B. Enrollment				
Transfer options				
1 or more	0.50	0.66	0.91	1.00
5 or more	0.04	0.05	0.53	0.96

Table 3.26 repeats this analysis for non-GE programs with at least one failing GE metric. Students considering non-GE programs with D/E or EP metrics that do not meet Department standards may choose to enroll elsewhere. More than half of students at failing non-GE programs have a non-failing program in the same 4-digit CIP code, credential level, and geographic area that they could choose to enroll in. This share approaches three-quarters if the field is broadened to include programs in the same two-digit CIP code. Therefore, while the set of alternatives is not as numerous for non-GE programs as for GE programs, the number of alternatives is still quite high. Furthermore, since non-GE programs are not at risk of losing eligibility for title IV aid, the slightly lower number of alternatives to failing non-GE programs is less concerning.

Table 3.26 Share of Programs and Enrollment in Failing non-GE Programs, by Number of Alternative Options

	Same Institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
level				
A. Programs				
Transfer options				
1 or more	0.54	0.50	0.81	0.99
5 or more	0.11	0.07	0.41	0.94

B. Enrollment Transfer options				
1 or more	0.38	0.51	0.72	1.00
5 or more	0.08	0.06	0.31	0.93

This analysis likely understates the transfer options available to students for three reasons. First, as stated above, it does not consider programs of a different credential level. For example, students who would have pursued a certificate program might opt for an associate degree program that shows higher earnings. Second, it does not consider the growth of online/distance programs now available in most fields of study, from both traditional schools and primarily on-line institutions.

Third, we do not consider non-title IV, HEA institutions. Undergraduate certificate programs in cosmetology represent the largest group of programs without nearby passing options in the same four-digit CIP code, in large part because many of these programs do not pass the GE metrics. Nonetheless, recent data from California and Texas suggest that many students successfully pass licensure exams after completing non-title IV, HEA programs in cosmetology.[239] Non-title IV, HEA cosmetology schools operate in almost all counties in Texas.[240] In Florida,

[239] In California, 55 percent of individuals passing either the practical or written components of the licensure test are from title IV, HEA schools according to Department analysis using licensing exam data retrieved from www.barbercosmo.ca.gov/schools/schls_rslts.shtml on December 7, 2022.

[240] Cellini, S. R. & Onwukwe, B. (2022). Cosmetology Schools Everywhere. Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Postsecondary Equity & Economics Research Project working paper, August 2022.

non-title IV, HEA cosmetology schools have similar licensure pass rates but much lower tuition.[241]

Potential alternative programs have better outcomes than failing programs

A key motivation for more accountability via this proposed rule is to steer students to higher value programs. As mentioned previously, research has shown that when an institution closed due to failing an accountability measure, students were diverted to schools with better outcomes.[242] The Department conducted an analysis of the possible earnings impact of students shifting from programs that fail one of the GE metrics to similar programs that do not fail. For each failing program, we computed the average program-level median earnings of non-failing programs included in the failing program's transfer options, which we refer to as "Alternative Program Earnings." Earnings were weighted by average title IV, HEA enrollment in award years 2016 and 2017. Alternative options were determined in the same way as described above. In computing Alternative Program Earnings, priority was first given to passing programs in the same institution, credential level, and two-digit CIP code if such programs exist and have valid earnings. This assigned Alternative

[241] Cellini, S. R., & Goldin, C. (2014). Does federal student aid raise tuition? New evidence on for-profit colleges. *American Economic Journal: Economic Policy*, 6(4), 174-206.

[242] Cellini, S.R., Darolia, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy, 12*(2): 46-83.

Program Earnings for 20 percent of failing programs. Next priority was given to programs in the same ZIP3, credential level, and four-digit CIP code, which assigned Alternative Program Earnings for 8 percent of programs. Next was programs in the same ZIP3, credential level, and two-digit CIP code, which assigned Alternative Program Earnings for 14 percent of programs. We did not use the earnings of programs outside the ZIP3 to assign Alternative Program Earnings given the wage differences across regions. It was not possible to compute the earnings of alternative options for the remaining 59 percent of programs primarily because their options have insufficient number of completers to report median earnings (47 percent) or because they did not have alternative options in the same ZIP3 (12 percent). For these programs, we set the Alternative Program Earnings equal to the median earnings of high school graduates in the State (the same value used to determine the ET). The percent increase in earnings associated with moving from a failing program to a passing program was computed as the difference between a program’s Alternative Program Earnings and its own median earnings, divided by its own median earnings. We set this earnings gain measure to 100 percent in the small number of cases where the median program earnings are zero or the ratio is greater than 100 percent.

Table 3.27 reports the estimated percent difference in earnings between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects, the difference in earnings at passing undergraduate certificate programs and failing programs is about 50 percent. This is unsurprising, given that the EP metric explicitly identifies programs with low earnings, which in practice are primarily certificate programs. Encouragingly, many passing programs exist in the same subject, level, and market that result in much higher earnings than programs that fail. Failing associate degree programs also have similar non-failing programs with much higher earnings. Earnings differences are still sizable and positive, though not quite as large for higher credentials. Passing GE bachelor's programs have 31 percent higher earnings than bachelor's programs that fail the GE metrics.

Table 3.28 reports similar estimates for non-GE programs. The earnings difference between failing and passing non-GE programs is more modest than for GE programs, but still significant: 21 percent across all credential levels, ranging from close to zero for Doctoral programs to 30 percent for Bachelor's programs.

We use a similar process to compute the percent change in average program-level median debt between failing GE or non-GE programs and alternative programs.[243] Tables 3.29

[243] The only exception being that we use the debt for alternative programs in the same credential level, same two-digit CIP code, and State to impute alternative program debt if such a program is not

and 3.30 report the percent change in debt between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. Large differences in debt are seen at all degree levels (other than professional), with modest differences for undergraduate certificate programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, relative to failing programs, alternative programs have lower debt levels ranging from 24 percent (Professional programs) to 35 percent (Doctoral programs). Failing associate degree programs have debt that is 12 percent higher than in passing programs.

While these differences don't necessarily provide a completely accurate estimate of the actual earnings gain or debt reduction that students would experience by shifting programs, they suggest alternative options exist that provide better financial outcomes than programs that fail the proposed D/E and EP metrics.

Table 3.27 Percent Earnings Difference between Transfer Options and Failing GE Programs, by CIP and Credential Level

	Credential Level							
	UG Cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad Certs	Total

available or calculable in students' ZIP3. This is because there is no other natural benchmark debt level analogous to the ET used to compute alternative program earnings.

cip2								
1	1.00							1.00
3			-0.18					-0.18
9	0.18		0.24	0.24				0.20
10	0.42	0.26	-0.02	-0.38				0.07
11	0.55	0.24	0.79	-0.62				0.47
12	0.54	0.11	-0.18				1.00	0.53
13	0.48	0.38	0.13	0.46	0.18		-0.04	0.22
14		-0.01	-0.37					-0.20
15	0.16	-0.10						0.13
16			-0.03					-0.03
19	0.69	0.29	0.13	-0.27	-0.55			0.12
22	0.33	-0.03	-0.03			0.22	-0.60	-0.00
23	0.57	0.00	0.38	-0.09				0.45
24	0.06							0.06
25			-0.03					-0.03
26							-0.32	-0.32
30		0.24	-0.03				-0.34	0.01
31	0.51	-0.00						0.09
32	0.32							0.32
39	0.40		-0.03	-0.20				0.04
42			0.06	0.21	-0.39		-0.34	-0.06
43	0.25	0.19	0.24	0.42	-0.56			0.21
44		0.10	0.43	0.15	0.12		-0.50	0.31
45			0.23	-0.24				0.06
46	0.45							0.45
47	0.70	0.14						0.61
48	0.25							0.25
49	0.76							0.76
50	0.46	0.22	0.27	0.46				0.30
51	0.50	0.81	0.76	0.87	-0.07	-0.06	0.00	0.60
52	0.51	0.31	0.61	0.22	0.34		0.20	0.38
54			-0.13					-0.13
Total	0.51	0.48	0.31	0.49	-0.34	-0.03	-0.14	0.43

Table 3.28 Percent Earnings Difference between Transfer Options and Failing non-GE Programs, by CIP and Credential Level

	Credential Level					
	Assoc.	Bach.	Master's	Doctoral	Profess.	Total
cip2						
1	0.31	0.12				0.16
3		0.38	-0.24			0.30
4			-0.31			-0.31
5		0.02				0.02
9	0.12	0.31	-0.02			0.27
10	0.14	-0.01				0.11
11	0.32	1.00				0.37
12	0.25					0.25
13	0.22	0.32	0.20	-0.12		0.23
15	0.83					0.83
16	0.03	0.43				0.40
19	0.18	0.40	-0.42			0.27
22	-0.02	-0.09	-0.26	-0.59	-0.08	-0.14
23	0.38	0.23	-0.18			0.20
24	0.15	0.10	-0.54			0.14
26	0.13	0.39	0.12	-0.70		0.31
30	0.12	0.11	-0.17			0.10
31	0.10	0.22	-0.22			0.18
38	-0.05	-0.10				-0.07
39	0.55	0.49	-0.02		0.20	0.38
40		0.58				0.58
41	0.08					0.08
42	0.31	0.04	-0.10	-0.34	-0.69	-0.01
43	0.20	0.02	-0.12			0.09
44	0.21	-0.04	0.11			0.12
45	0.09	0.47	-0.12			0.23
47	0.38					0.38
50	0.23	0.40	0.31	-0.29		0.37
51	0.65	0.77	0.57	0.26	0.11	0.48
52	0.14	0.53	0.42			0.23
54		0.06	-0.19			-0.09
Total	0.22	0.30	0.15	-0.00	0.03	0.21

Table 3.29 Percent Debt Difference between Transfer Options and Failing GE Programs, by CIP and Credential Level

	Credential Level							
	UG Cert.	Assoc.	Bach.	Master's	Doctoral	Profess.	Grad Certs	Total
cip2								
1	0.00							0.00
3			-0.65					-0.65
9	0.06		-0.26	-0.01				-0.04
10	0.15	0.63	-0.32	.				-0.15
11	0.06	-0.36	-0.23	-0.79				-0.19
12	-0.23	-0.49	0.13				0.00	-0.24
13	-0.27	-0.89	-0.31	-0.36	-0.18		-0.20	-0.39
14		0.01	-0.58					-0.30
15	-0.13	-0.69						-0.19
16			-0.52					-0.52
19	-0.05	-0.26	-0.24	-0.30	.			-0.23
22	1.00	-0.60	-0.26			-0.40	.	-0.47
23	0.00	-0.82	-0.33	0.00				-0.18
24	0.00							0.00
25			.					.
26							-0.25	-0.25
30		-0.91	-0.54				.	-0.58
31	-0.83	-0.75						-0.80
32	0.00							0.00
39	0.59		.	.				0.59
42			-0.49	-0.21	-0.76		-0.77	-0.42
43	-0.57	-0.70	-0.42	-0.10	.			-0.53
44		-0.74	-0.09	-0.28	-0.38		.	-0.23
45			-0.11	.				-0.11
46	0.16							0.16
47	0.10	-0.24						0.05
48	-0.21							-0.21
49	0.32							0.32
50	0.21	-0.60	-0.34	-0.23				-0.31
51	0.02	-0.14	-0.37	-0.48	-0.64	0.60	-0.58	-0.09
52	-0.14	-0.42	-0.33	-0.17	-0.17		-0.27	-0.35
54			-0.22					-0.22
Total	-0.09	-0.37	-0.36	-0.35	-0.60	0.48	-0.43	-0.22

Table 3.30 Percent Debt Difference between Transfer Options and Failing nonGE Programs, by CIP and Credential Level

	Credential Level					
	Assoc.	Bach.	Master's	Doctoral	Profess.	Total
cip2						
1	-0.37	-0.14				-0.19
3		0.02	-0.53			-0.06
4			-0.35			-0.35
5		-0.12				-0.12
9	0.64	-0.17	-0.37			-0.09
10	0.01	-0.11				-0.01
11	-0.29	-0.42				-0.30
12	0.08					0.08
13	0.24	-0.14	-0.32	-0.03		0.04
15	0.22					0.22
16	-0.27	0.19				0.15
19	0.07	0.21	-0.39			0.14
22	-0.55	-0.28	.	-0.16	-0.27	-0.29
23	0.19	-0.04	-0.33			-0.04
24	0.19	-0.10	.			0.16
26	0.78	0.13	-0.29	.		0.18
30	-0.15	-0.10	0.00			-0.12
31	0.80	-0.22	.			0.12
38	.	-0.26				-0.26
39	-0.67	-0.03	-0.29		0.00	-0.10
40		1.00				1.00
41	.					.
42	0.33	-0.11	-0.32	-0.46	.	-0.16
43	-0.22	-0.23	-0.35			-0.24
44	-0.26	-0.30	-0.40			-0.32
45	-0.08	-0.19	-0.53			-0.18
47	0.21					0.21
50	0.25	-0.02	-0.28	.		-0.01
51	0.02	0.02	-0.10	-0.38	-0.22	-0.10
52	-0.15	-0.26	-0.12			-0.17
54		0.39	-0.79			0.10

Total	0.12	-0.07	-0.27	-0.35	-0.24	0.00

Transfer causes net enrollment increase in some sectors

The aggregate change in enrollment overall, by sector, and by institution would likely be less than that implied by the program- and institution-level results presented in the "Results of GE Accountability" section above because those do not consider that many students would likely transfer to passing programs or even remain enrolled at failing programs in response to a program losing title IV eligibility. The Department simulated the likely destinations of students enrolled in failing GE programs. Based on the research literature and described more fully in "Student Response Assumptions" subsection in Section 5 below, we use assumptions about the share of students that transfer to another program, remain enrolled in the original program, or drop out entirely if a program loses title IV, HEA eligibility. These student mobility assumptions differ according to the number of alternative options that exist and are the same assumptions used in the Net Budget Impact section.

Using these assumptions, for every failing GE program, we estimate the title IV, HEA enrollment from that program that would remain, dropout, or transfer to another program. Our notion of "transfers" includes both current students and future students who attend an alternative program instead of one that fails the GE metrics. The number of transfers is then reallocated to specific other non-failing GE and non-GE programs in the same institution (OPEID6), credential level, and 2-digit CIP code. If multiple such programs exist, transfer enrollment is allocated based on the share of initial title IV, HEA enrollment in these programs. If no alternative options exist using this approach, the transfer enrollment is allocated to non-failing GE and non-GE programs in the same geographic area (ZIP3), credential level, and 4-digit CIP code. Again, initial title IV, HEA enrollment shares are used to allocate transfer enrollment if multiple such alternative programs exist. These two approaches reallocate approximately 80 percent of the transfer enrollments we would expect from failing GE programs. Finally, new title IV, HEA enrollment is computed for each program that sums existing enrollment (or retained enrollment, in the case of failing GE programs) and the allocated transfer enrollment.

Table 3.30 summarizes these simulation results, separately by type of institution.[244] Without accounting for transfers or students remaining in failing GE programs, aggregate title IV, HEA enrollment drops by 699,700 (3.6 percent), with at least some enrollment declines in all sectors. This will greatly overstate the actual enrollment decline associated with the proposed regulation because it assumes that students leave postsecondary education in

[244] Programs at foreign institutions are excluded from this table as they do not have an institutional type.

response to their program failing a GE metric. The final column simulates enrollment after accounting for transfers within institution (to similar programs) and to similar programs at other geographically-proximate institutions, along with permitting some modest enrollment retention at failing programs. In this scenario, aggregate enrollment declines by only 228,000 (1.2 percent) due to the proposed rule.[245] Importantly, some sectors experience an enrollment increase as students transfer from failing to passing programs. For instance, public 2-year community colleges are simulated to experience a 27,000-student enrollment increase once transfers are accounted for rather than a 30,000-student decrease when they are not. Historically Black Colleges and Universities (HBCUs) are simulated to gain 1,200 students rather than lose 700.

Table 3.31 Projected Enrollment With and Without Transfers, by Sector

	Number of inst.	Initial enrollment	No transfers or retention	+ within institution-CIP2 transfers	+ within ZIP3-CIP4 transfers
Sector of institution					
Public, 4-year +	700	8,186,900	8,179,700	8,184,900	8,209,000
Non-profit, 4-year +	1,400	4,002,400	3,994,500	3,998,900	4,005,500
For-profit, 4-year +	200	1,298,800	950,900	1,150,600	1,158,900
Public, 2-year	900	5,025,200	4,995,600	5,013,300	5,052,000
Non-profit, 2-year	100	97,200	74,300	88,100	89,100
For-profit, 2-year	300	290,900	205,000	251,800	259,500
Public, < 2-year	200	42,600	41,300	42,100	46,200
Non-profit, < 2-year	<50	11,600	6,200	8,300	8,500
For-profit, < 2-year	1,000	278,400	86,900	149,400	177,500
Total	4,900	19,234,100	18,534,500	18,887,300	19,006,000

Note: Values rounded to the nearest 100.

4. Discussion of Costs, Benefits, and Transfers

Description of Baseline

245 Note that since many failing programs result in earnings lower than those of the typical high school graduate, students leaving postsecondary education still may be better off financially compared to staying in a failing program.

In absence of the proposed regulations, many students enroll in low-financial-value programs where they either end up not being able to secure a job that leads to higher earnings, take on unmanageable debt, or both. Many of these students default on their loans, with negative consequences for their credit and financial security and at substantial costs to the taxpayers. Many students with insufficient earnings to repay their debts would be eligible to have their payments reduced and eventually have their loans forgiven through income-driven repayment (IDR). This shields low-income borrowers from the consequences of unaffordable debts but shifts the financial burden onto taxpayers.

Transparency and Gainful Employment

We have considered the primary costs, benefits, and transfers of both the transparency and accountability proposed regulations for the following groups or entities that would be affected by the final regulations:

- Students
- Institutions
- State and local governments
- The Federal government

We first discuss the anticipated benefits of the proposed regulations, including improved market information. We then assess the expected costs and transfers for students, institutions, the Federal government, and State and local governments. Table 4.1 below summarizes the major benefits, costs, and transfers and whether they are quantified in our analysis or not.

Table 4.1 Summary of Costs, Benefits, and Transfers for Financial Value Transparency and Gainful Employment Proposed Regulations

	Students	Institutions	State and Local Governments	Federal Government
Benefits				
Quantified	Earnings gain from shift to higher value programs		State tax revenue from higher earnings	Federal tax revenue from higher earnings
Not quantified	Lower rates of default, higher rates of family & business formation, higher retirement savings, saving of opportunity cost for non-enrollees	Increased enrollment and revenue associated with new enrollments from improved information about value; improvements in program quality		
Costs				
Quantified	Time for acknowledgment	Disclosure reporting; time for acknowledgment	Additional spending at institutions that absorb students from failing programs	Implementation of data collection and information website
Not quantified	Time, logistics, credit loss associated with program transfer	Investments to improve program quality; decreased enrollment and revenue associated with fewer new enrollments from improved information about value		
Transfers				
Quantified		Aid money from failing programs to govt for non-enrollments; aid money from failing to better-value programs for transfers		Aid money from failing programs to govt for non-enrollments
Not quantified	Increased loan payments associated with less IDR forgiveness	Aid money from failing programs to State govt for non-enrollments	Aid money from failing programs to State govt for non-enrollments	Increased loan payments associated with less IDR forgiveness and fewer defaults

Benefits

We expect the primary benefits of both the accountability and transparency components of the proposed regulation to derive from a shift of students from low-value to high-value programs or, in some cases, a shift away from low-value postsecondary programs to non-enrollment. This shift would be due to improved and standardized market information about GE and non-GE programs. This would increase the transparency of student outcomes for better decision making by current students, prospective students, and their families; the public, taxpayers, and the Government; and institutions. Furthermore, the accountability component would improve program quality by directly eliminating the ability of low-value programs to participate in the title IV, HEA programs. Finally, both the transparency and accountability provisions of the rule should lead to a more competitive postsecondary market that encourages improvement, thereby, improving the outcomes and/or reducing the cost of existing programs that continue to enroll students.

Benefits to Students

Under the proposed regulation, students, prospective students, and their families would have extensive, comparable, and reliable information about the outcomes of students who enroll in GE and non-GE programs such as cost, debt, earnings, completion, and repayment outcomes. This information would assist them in choosing institutions and programs where they believe they are most likely to complete their education and achieve the earnings they desire, while having debt that is manageable. This information would result in more informed decisions based on reliable information about a program's outcomes.

Students would potentially benefit from this information via higher earnings, lower costs and less debt, and better program quality. This can happen through three channels. First, students benefit by transferring to passing programs. Second, efforts to improve programs would lead to better labor market outcomes, such as improved job prospects and higher earnings, by offering better student services, working with employers to ensure graduates have needed skills, improving academic quality, and helping students with career planning. This may happen as institutions improve programs to avoid failing the D/E or EP measures or simply from programs competing more for students based on quality, with the proposed rule providing greater transparency about program quality. As a result of these enrollment shifts, students who graduate with manageable debts and adequate earnings would be more likely to pay back their loans, marry, buy a home, and invest in their futures.[246] Finally, some students that chose not to

[246] Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2020). Tuition, Debt, and Human Capital. Federal Reserve Bank of New York Staff Report No. 912
Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. Economics of Education Review, 53, 207-2016.
Gicheva, D. & Thompson, J. (2015). The effects of student loans on long-term household financial stability. In B. Hershbein & K. Hollenbeck (Ed.). Student Loans and the Dynamics of Debt (137-174). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.
Hillman, N. W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. Review of Higher Education 37(2), 169–195.
Mezza, A., Ringo, D., Sherlund, S., & Sommer, K. (2020). "Student Loans and Homeownership," Journal of Labor Economics, 38(1): 215-260.

enroll in low-value programs will save opportunity costs by not investing their time in programs that do not lead to good outcomes. While these other factors are certainly important to student wellbeing, our analysis focuses on the improvement in earnings associated with a shift from low-value programs to higher value programs.

Benefits to Institutions

Institutions offering high-performing programs to students are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs without excessive spending on marketing and recruitment. Additionally, institutions that work to improve the quality of their programs could see increased revenues from improved retention and completion and therefore, additional tuition revenue.

We believe disclosures would increase enrollment and revenues in well-performing programs. Improved information from disclosures would increase market demand for programs that produce good outcomes. While the increases or decreases in revenues for institutions are benefits or costs from the institutional perspective, they are transfers from a social perspective. However, any additional demand for education due to overall program quality improvement would be considered a social benefit.

The improved information that would be available as a result of the proposed regulations would also benefit institutions' planning and improvement efforts. Information about student outcomes would help institutions determine whether it would be prudent to expand, improve quality, reduce costs, or eliminate various programs. Institutions may also use this information to offer new programs in fields where students are experiencing positive outcomes, including higher earnings and steady employment. Additionally, institutions would be able to identify and learn from programs that produce exceptional results for students.

Benefits to State and Local Governments

State and local governments would benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. They would also benefit from reduced costs because, as institutions improve the quality of their programs, their graduates would likely have improved job prospects and higher earnings, meaning that governments would likely be able to spend less on unemployment benefits and other social safety net programs. State and local governments would also experience improved oversight of their investments in postsecondary education. Additionally, State and local postsecondary education funding could be allocated more efficiently to higher-performing programs. State and local governments would also experience a better return on investment on their dollars spent on financial aid programs as postsecondary program quality improves.

Benefits to Federal Government

The Federal government would benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. Another primary benefit of the proposed regulations would be improved oversight and administration of the title IV, HEA programs, particularly the new data reported by institutions. Additionally, Federal taxpayer funds would be allocated more efficiently to higher-performing programs, where students are more likely to graduate with manageable amounts of debt and gain stable employment in a well-paying field, increasing the positive benefits of Federal investment in title IV, HEA programs.

The taxpayers and the Government would also benefit from improved information about GE programs. As the funders and stewards of the title IV, HEA programs, these parties have an interest in knowing whether title IV, HEA program funds are benefiting students. The information provided in the disclosures would allow for more effective monitoring of the Federal investment in GE programs.

Costs

Costs to Students

Students may incur some costs as a result of the proposed regulations. One cost is that all title IV, HEA students attending eligible non-GE programs that fail the D/E metric would be required to acknowledge having seen information about program outcomes before title IV aid is disbursed. Students attending GE programs with at least one failing metric would additionally be required to acknowledge a warning that the program could lose title IV, HEA eligibility. The acknowledgement is the main student cost we quantify in our analysis. We expect that over the long-term, all students would have increased access to programs that lead to successful outcomes. In the short term, students in failing programs would incur search and logistical costs associated with finding and enrolling in an alternative program, whether that be a GE or non-GE program. Further, at least some students may be temporarily left without transfer options. We expect that many of these students would re-enter postsecondary education later, but we understand that some students may not continue. We do not quantify these costs associated with searching for and transferring to new postsecondary programs.

Costs to Institutions

Under the proposed regulations, institutions would incur costs as they make changes needed to comply, including costs associated with the reporting, disclosure, and acknowledgment requirements. These costs could include: (1) Training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new, or modifications to existing, software or equipment, and (4) procurement of external services.

As described in the Preamble, much of the necessary information required from GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. Furthermore, 88 percent of public and 47 percent of private non-profit institutions operated at least one GE program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, for the first year after the effective date of the proposed rule, the Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

Our initial estimate of the time cost of these reporting requirements for institutions is 5.1 million hours initially and then 1.5 million hours annually after the first year. The Department recognizes that institutions may have different approaches and processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. Many institutions may have systems that can be queried or existing reports that can be adapted to meet these reporting requirements. On the other hand, some institutions may still have data entry processes that are very manual in nature and generating the information for their programs could involve many more hours and resources. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others. The total reporting burden will be distributed across institutions depending on the setup of their systems and processes. We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level.

Table 4.2 presents the Department's estimates of the hours associated with the reporting requirements. The reporting process will involve staff members or contractors with different skills and levels of responsibility. We have estimated this using Bureau of Labor statistics median hourly wage for Education Administrators, Post-Secondary of $46.59.[247]

Table 4.2: Estimated Hours and Wage Rate for Reporting Requirements

Process	**Hours**	**Hours basis**
Review systems and existing reports for adaptability for this reporting	10	Per institution
Develop reporting query/result template		
Program-level reporting	15	Per institution
Student-level reporting	30	Per institution
Run test reports		
Program-level reporting	0.25	Per institution
Student-level reporting	0.5	Per institution
Review/validate test report results		
Program-level reporting	10	Per institution
Student-level reporting	20	Per institution
Run reports		
Program-level reporting	0.25	Per program
Student-level reporting	0.5	Per program
Review/validate report results		
Program-level reporting	2	Per program
Student-level reporting	5	Per program
Certify and submit reporting	10	Per institution

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first

[247] Available at https://www.bls.gov/oes/current/oes119033.htm

reporting cycle includes information from several prior years, means that the expected burden should decrease significantly after the first reporting cycle. We estimate that the hours associated with reviewing systems, developing or updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. After initial reporting is completed, the institution will need to confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation, or other items on an ongoing basis. We expect that process would be less burdensome than initially establishing the reporting.

Table 4.3 presents estimates of reporting burden for the initial year and subsequent years under proposed § 668.408.

Table 4.3.1: Estimated Reporting Burden for the Initial Reporting Cycle

Control and Level	**Institution Count**	**Program Count**	**Hours**	**Amount**
Private 2-year	153	530	31,080	1,448,006
Proprietary 2-year	1353	3775	246,575	11,487,918
Public 2-year	1106	36522	1,238,082	57,682,217
Private 4-year	1449	48797	1,651,449	76,940,997
Proprietary 4-year	204	3054	114,207	5,320,904
Public 4-year	742	57769	1,861,886	86,745,245

Total	**5,007**	**150,447**	**5,143,277**	**239,625,287**

Table 4.3.2: Estimated Reporting Burden for Subsequent Reporting Cycles

Control and Level	**Institution Count**	**Program Count**	**Hours**	**Amount**
Private 2-year	153	530	14,206	661,834
Proprietary 2-year	1353	3775	118,554	5,523,443
Public 2-year	1106	36522	356,042	16,587,973
Private 4-year	1449	48797	473,811	22,074,843
Proprietary 4-year	204	3054	37,133	1,730,003
Public 4-year	742	57769	496,682	23,140,403
Total	**5,007**	**150,447**	**1,496,426**	**69,718,499**

The Department welcomes comments on the assumptions related to the reporting burden of the proposed regulations. As described under Paperwork Reduction Act of 1995, the final estimates of reporting costs will be cleared at a later date through a separate information collection.

As described in the section titled “Paperwork Reduction Act of 1995,” the final estimates of reporting costs will be cleared at a later date through a separate information collection. Institutions’ share of the annual costs associated with disclosures, acknowledgement for non-GE programs, and warnings and acknowledgement for GE programs are estimated to be $12 million, $0.05 million, and $0.76 million, respectively. Note that most of the burden associated acknowledgements will fall on students, not institutions. These costs are discussed in more detail in the section titled “Paperwork Reduction Act of 1995.”

Institutions that make efforts to improve the outcomes of failing programs would face additional costs. For example, institutions that reduce the tuition and fees of programs would see decreased revenue. For students who are currently enrolled in a program, the reduced price would be a transfer to them in the form of a lower cost of attendance. In turn, some of this price reduction would be a transfer to the government if the tuition was being paid for with title IV, HEA funds. An institution could also choose to spend more on curriculum development to, for example, link a program's content to the needs of in-demand and well-paying jobs in the workforce, or allocate more funds toward other functions. These other functions could include hiring better faculty; providing training to existing faculty; offering tutoring or other support services to assist struggling students; providing career counseling to help students find jobs; acquiring more up-to-date equipment; or investing in other areas where increased spending could yield improved performance. However, as mentioned in the benefits section, institutions that improve program quality could see increased tuition revenue with improved retention and completion.

The costs of program changes in response to the proposed regulations are difficult to quantify generally as they would vary significantly by institution and ultimately depend on institutional behavior. For example, institutions with all passing programs could elect to commit only minimal resources toward improving outcomes. On the other hand, they could instead make substantial investments to expand passing programs and meet increased demand from prospective students, which could result in an attendant increase in enrollment costs. Institutions with failing programs could decide to devote significant resources toward improving performance, depending on their capacity, or could instead elect to discontinue one or more of the programs. However, as mentioned previously, some of these costs might be offset by increased revenue from improved program quality. Given these ambiguities, we do not quantify costs (or benefits) associated with program quality improvements.

Finally, some poorly performing programs will experience a reduction in enrollment that is not fully offset by gains to other institutions (which will experience increased enrollment) or the Federal government (which will experiences lower spending on Title IV, HEA aid). These losses should be considered as costs for institutions.

Costs to States and Local Governments

State and local governments may experience increased costs as enrollment in well-performing programs at public institutions increases as a result of some students transferring from programs at failing programs, including those offered by for-profit institutions.

The Department recognizes that a shift in students to public institutions could result in higher State and local government costs, but the extent of this is dependent on student transfer patterns, State and local government choices, and the existing capacity of public programs. If States choose to expand the enrollment capacity of passing programs at public institutions, it is not necessarily the case that they would face marginal costs that are similar to their average cost or that they would only choose to expand through traditional brick-and-mortar institutions. The Department continues to find that many States across the country are experimenting with innovative models that use different methods of instruction and content delivery, including online offerings, that allow students to complete courses faster and at lower cost. Furthermore, enrollment shifts would likely be towards community colleges, where declining enrollment has created excess capacity. An under-subscribed college may see greater efficiency gains from increasing enrollment and avoid other costly situations such as unused classroom space or unsustainably low enrollment. Forecasting the extent to which future growth would occur in traditional settings versus online education or some other model is outside the scope of this analysis. Nonetheless, we do include the additional instructional cost associated with a shift from failing to passing programs in our analysis, some of which will fall on state and local governments.

Costs to Federal government

The main costs to the Federal government involve setting up the infrastructure to handle and process additional information reported by institutions, compute rates and other information annually, and maintain a website to host the disclosure information and acknowledgment process. Most of these activities would be integrated into the Department's existing processes. We estimate that the total implementation cost will be $30 million.

Transfers

Enrollment shifts between programs, and potentially to non-enrollment, would transfer resources between students, institutions, State and local governments, and the Federal government. We model three main transfers. First, if some students drop out of postsecondary education or remain in programs that lose eligibility for title IV, HEA Federal student aid, there would be a transfer of Federal student aid from those students to the Federal government. Second, as students change programs based on program performance, disclosures, and title IV, HEA eligibility, revenues and expenses associated with students would transfer between postsecondary institutions. Finally, the additional earnings associated with movement from low- to high-value programs would result in greater loan repayment by borrowers. This is through both lower default rates and a lower likelihood of loan forgiveness through existing IDR plans. This represents a transfer from students to the Federal government. We do not quantify the transfers between students and State governments associated with changes in State-financed student aid, as such programs differ greatly across States. Transfers between students and States could be net positive for States if fewer students apply for, or need, State aid programs or they could be negative if enrollment shifts to State programs results in greater use of State aid.

Financial Responsibility

The Department has a responsibility to ensure that the institutions participating in the title IV, HEA programs have the financial resources to meet the requirements of the HEA and its regulations. This includes ensuring that their financial situation is unlikely to lead them to a sudden and unexpected closure or to operate in ways that either lead to a significant deterioration in the education and related services delivered or the need to engage in riskier behavior, such as aggressive recruitment, to stay financially afloat.

The Department also has a responsibility to protect taxpayers from the costs incurred by the Federal government due to the sudden closure of an institution. Ensuring the Department has sufficient tools to identify and take steps to more closely oversee institutions that are in a financially precarious position is particularly important because students enrolled at the time an institution closes, or who have left shortly before without completing their program, are entitled to a discharge of their Federal student loan balances. If the Department has failed to secure financial protection from the institution prior to that point it is highly likely under existing regulations that taxpayers will end up bearing the cost of those discharges in the form of a transfer from the Department to those borrowers who have their loans cancelled. Historically when institutions close there are little to no resources left at the school, and to the extent there are, the Department must compete with other creditors to secure some assets. In some cases, other entities that had ownership stakes in the institution still had resources even when the institution itself did not, but the Department lacked the ability to recover funds from these other entities.

These proposed regulations provide greater tools for the Department to demand financial protection when an institution exhibits signs of financial instability and to obtain information that would make it easier to detect those problems sooner than it currently does. It also clarifies the rules about financial protection when institutions change owners, a situation that can be risky for students and taxpayers, particularly if the purchasing entity lacks experience or the necessary financial strength to effectively manage an acquired institution.

The table below provides information on the Department's estimates of how frequently the circumstances associated with the proposed mandatory and discretionary triggers have occurred in the last several years.

Table 4.4. Mandatory triggering events

Trigger	Description	Impact
Debts or liability payments 668.171(c)(2)(i)(A)	An institution with a composite score of less than 1.5 with some exceptions is required to pay a debt or incurs a liability from a settlement, final judgment, or similar proceeding that results in a recalculated composite score of less than 1.0.	For institutional fiscal years that ended between July 1, 2019, and June 30, 2020, there were 225 private nonprofit or proprietary schools with a composite score of less than 1.5. Of these, 7 owe a liability to the Department, though not all of these liabilities are significant enough to result in a recalculated score of 1.0. We do not have data

		on non-Department liabilities that might meet this trigger.
Lawsuits 668.171(c)(2)(i)(B)	Lawsuits against an institution after July 1, 2024, by Federal or State authorities or a qui tam pending for 120 days in which the Federal government has intervened.	The Department is aware of approximately 50 institutions or ownership groups that have been subject to Federal or State investigations, lawsuits, or settlements since 2012. This includes criminal prosecutions of owners.
Borrower defense recoupment 668.171(c)(2)(i)(C)	The Department has initiated a proceeding to recoup the cost of approved borrower defense claims against an institution.	The Department has initiated one proceeding against an institution to recoup the proceeds of approved claims. Separately, the Department has approved borrower defense claims at more than six other institutions or groups of institutions where it has not sought recoupment.
Change in ownership debts and liabilities 668.171(c)(2)(i)(D)	An institution in the process of a change of ownership must pay a debt or liability related to settlement, judgment, or similar matter at any point through the second full fiscal year after	Over the last 5 years there have been 188 institutions that underwent a change in ownership. This number separately counts campuses that may be part of the same chain or ownership group that are

	the change in ownership.	part of a single transaction. The Department does not currently have data on how many of those had a debt or liability that would meet this trigger.
Withdrawal of owner’s equity 668.171(c)(2)(ii)(A)	A proprietary institution with a score less than 1.5 has a withdrawal of owner’s equity that results in a composite score of less than 1.0.	In the most recent available data, 161 proprietary institutions had a composite score that is less than 1.5. The Department has not determined how many of those may have had a withdrawal of owner’s equity that would meet this trigger.
Significant share of Federal aid in failing GE programs 668.171(c)(2)(iii)	An institution has at least 50 percent of its title IV, HEA aid received for programs that fail GE thresholds.	There are approximately 740 institutions that would meet this trigger. These are almost entirely private for-profit institutions that offer only a small number of programs total. These data only include institutions operating in March 2022 that had completions reported in 2015-16 and 2016-2017. Data are based upon 2018 and 2019 calendar year earnings.
Teach-out plans 668.171(c)(2)(iv)	The institution is required to	Not identified because the

	submit a teach-out plan or agreement.	Department is not currently always informed when an institution is required to submit a teach-out plan or agreement.
State actions 668.171(c)(2)(v)	The institution is cited by a State licensing or similar authority for failing to meet State requirements and the institution receives notice that its licensure or authorization will be terminated or withdrawn if it does not come into compliance.	Not identified because the Department is not currently always informed when an institution is subject to these requirements.
Actions related to publicly listed entities 668.171(c)(2)(vi)	These apply to any entity where at least 50 percent of an institution's direct or indirect ownership is listed on a domestic or foreign exchange. Actions include the SEC taking steps to suspend or revoke the entity's registration or taking any other action. It also includes actions from exchanges, including foreign ones, that say the entity is not in compliance with the listing	Department data systems currently identify 38 schools that are owned by 13 publicly traded corporations. One of these may be affected by this trigger.

	requirements or may be delisted. Finally, the entity failed to submit a required annual or quarterly report by the required due date.	
90/10 failure 668.171(c)(2)(vii)	A proprietary institution did not meet the requirement to derive at least 10 percent of its revenue from sources other than Federal educational assistance.	Over the last 5 years an average of 12 schools failed the 90/10 test. Most recently, the Department reported that 21 proprietary institutions had received 90 percent or more of their revenue from title IV, HEA programs based upon financial statements for fiscal years ending between July 1, 2020, and June 30, 2021.
Cohort default rate (CDR) failure 668.171(c)(2)(viii)	An institution's two most recent official CDRs are 30 percent or greater.	Twenty institutions with at least 30 borrowers in their cohorts had a CDR at or above 30 percent for the fiscal year (FY)2017 and FY2016 cohorts (the last rates not impacted by the pause on repayment during the national emergency).
Loss of eligibility from other Federal educational assistance program 668.171(c)(2)(ix)	The institution loses its ability to participate in another Federal educational	The Department is aware of 5 institutions participating in title IV, HEA

	assistance program.	programs that have lost access to the Department of Defense’s Tuition Assistance (TA) program since 2017. Three of those also lost accreditation or access to title IV, HEA funds.
Contributions followed by a distribution 668.171(c)(2)(x)	The institution’s financial statements reflect a contribution in the last quarter of its fiscal year followed by a distribution within first two quarters of the next fiscal year and that results in a recalculated composite score of < 1.0.	Not currently identified because this information is not currently centrally recorded in Department databases.
Creditor events 668.171(c)(2)(xi)	An institution has a condition in its agreements with a creditor that could result in a default or adverse condition due to an action by the Department or a creditor terminates, withdraws, or limits a loan agreement or other financing arrangement.	Not currently identified because institutions do not currently report the information needed to assess this trigger to the Department. Several major private for-profit colleges that failed had creditor arrangements that would have met this trigger.
Financial exigency 668.171(c)(2)(xii)	The institution makes a formal declaration of financial exigency.	Not identified because institutions do not currently always report this information

		to the Department.
Receivership 668.171(c)(2)(xiii)	The institution is either required to or chooses to enter a receivership.	The Department is aware of 3 instances of institutions entering receiverships in the last few years. Each of these institutions ultimately closed.

Table 4.5. Discretionary triggering events

Trigger	Description	Impact
Accreditor actions 668.171(d)(1)	The institution is placed on show cause, probation, or an equivalent status.	Since 2018, we identified just under 190 private institutions that were deemed as being significantly out of compliance and placed on probation or show cause by their accrediting agency, with the bulk of these stemming from one agency that accredits cosmetology schools.
Other creditor events and judgments 668.171(d)(2)	The institution is subject to other creditor actions or conditions that can result in a creditor requesting grated collateral, an increase in interest rates or payments, or other sanctions, penalties, and fees, and such	Not identified because institutions do not currently report this information to the Department.

	event is not captured as a mandatory trigger. This trigger also captures judgments that resulted in the awarding of monetary relief that is subject to appeal or under appeal.	
Fluctuations in title IV, HEA volume 668.171(d)(3)	There is a significant change upward or downward in the title IV, HEA volume at an institution between consecutive award years or over a period of award years.	From the 2016-2017 through the 2021-2022 award years, approximately 155 institutions enrolled 1,000 or more title IV, HEA students and saw their title IV, HEA volume change by more than 25 percent from one year to the next. Of those, 33 saw a change of more than 50 percent. The Department would need to determine which circumstances indicated enough risk to need additional financial protection.
High dropout rates 668.171(d)(4)	An institution has high annual dropout rates, as calculated by the Department.	According to College Scorecard data for the AY2014-15 cohort, there were approximately 66 private institutions that had more than half their students withdraw within two years of initial enrollment. Another 132 had withdrawal rates

		between 40 and 50 percent. The Department would need to determine which circumstances indicated enough risk to need additional financial protection.
Interim reporting 668.171(d)(5)	An institution that is required to provide additional reporting due to a lack of financial responsibility shows negative cash flows, failure of other liquidation ratios, or other indicators in a material change of the financial condition of a school.	Not currently identified because Department staff currently do not look for this practice in their reviews.
Pending borrower defense claims 668.171(d)(6)	The institution has pending borrower defense claims and the Department has formed a group process to consider at least some of them.	To date there are 48 institutional names as recorded in the National Student Loan Data System that have had more than 2,000 borrower defense claims filed against them. This number may include multiple institutions associated with the same ownership group. There is no guarantee that a larger number of claims will result in a group claim, but they indicate a higher likelihood that

		there may be practices that result in a group claim.
Program discontinuation 668.171(d)(7)	The institution discontinues a program or programs that affect more than 25 percent of enrolled students.	Not currently identified due to data limitations.
Location closures 668.171(d)(8)	The institution closes more than 50 percent of its locations or locations that enroll more than 25 percent of its students.	Not currently identified due to data limitations.
State citations 668.171(d)(9)	The institution is cited by a State agency for failing to meet a State requirement or requirements.	Not identified because institutions do not currently report this information consistently to the Department.
Loss of program eligibility 668.171(d)(10)	One or more of the programs at the institution loses eligibility to participate in another Federal education assistance program due to an administrative action.	The Department does not currently have comprehensive data on program eligibility loss for all other Federal assistance programs. So, we looked at VA, which is one of the other largest

		sources of Federal education assistance. Since 2018 the VA reported over 900 instances of an institution of higher education having its access to VA benefits withdrawn. However, this number includes extensive duplication that counts multiple locations of the same school, withdrawals due to issues captured elsewhere like loss of accreditation or closure, and withdrawals that may not have lasted an extended period. The result is that the actual number of affected institutions would likely be significantly lower.
Exchange disclosures 668.171(d)(11)	An institution that is at least 50 percent owned by an entity that is listed on a domestic or foreign stock exchange notes in a filing that it is under investigation for possible violations of State, Federal or foreign law.	Department data systems currently identify 38 schools that are owned by 13 publicly traded corporations. There is one school that could potentially be affected by this trigger.
Actions by another Federal agency	The institution is cited and faces	Not identified because current

668.171(d)(12)	loss of education assistance funds from another Federal agency if it does not comply with that agency's requirements.	reporting by institutions do not always capture these events.

Benefits

The proposed improvements to the Financial Responsibility regulations would provide significant benefits to the Federal government and to borrowers. They also could benefit institutions that are in stronger financial shape by dissuading struggling institutions from engaging in questionable behaviors to gain a competitive advantage in increasing enrollment. Each of these benefits is discussed below in greater detail.

The proposed Financial Responsibility regulations would provide benefits to the Federal government because they would increase the frequency with which the Department secures additional financial protection from institutions of higher education. This would help the government, and in turn taxpayers, in several ways. First, when an institution closes, a borrower who was enrolled at the time of closure or within 180 days of closure and does not complete their program is entitled to a discharge of their Federal student loans. If the proposed regulations result in more instances where the Department has obtained a letter of credit or other form of financial protection from an institution that closes, then taxpayers would bear less of the costs from those discharges, which occur in the form of a transfer from the Department to the borrower whose loans are discharged. This is important because to date it is very uncommon for the Department to have significant financial resources from an institution to offset the costs from closed school discharges. According to FSA data, closures of for-profit colleges that occurred between January 2, 2014, to June 30, 2021, resulted in $550 million in closed school discharges. These are discharges for borrowers who did not complete their program and were enrolled on the date of closure or left the institution in the months prior to the closure. (This excludes the additional $1.1 billion in closed school discharges related to ITT Technical Institute that was announced in August 2021). Of that amount, the Department recouped just over $10.4 million from institutions.[248]

Second, the ability to secure additional financial protection would help offset the costs the government would otherwise face in the form of transfers associated with approved borrower defense to repayment claims. Under the HEA, borrowers may receive a discharge of their loans when their institutions engage in certain acts or omissions. Under the Biden-Harris Administration, the Department has approved $13 billion in discharges for 979,000 borrowers related to borrower defense findings. This includes a

[248] The budgetary cost of these discharges is not the same as the amount forgiven.

combination of borrowers who received a borrower defense discharge after review of an application they submitted and others who received a discharge as part of a group based upon borrower defense findings where the mechanism used to effectuate relief was the Department's settlement and compromise authority. To date there has only been a single instance in which the Department recovered funds to offset the costs of borrower defense discharges from the institution, which was in the Minnesota School of Business and Globe University's bankruptcy proceeding. In that situation, the Department received $7 million from a bankruptcy settlement. While the Department cannot simply cash in a letter of credit or take other financial protection solely upon approval of borrower defense claims, having the funding upfront is still important. That is because, to date, the Department has mostly approved borrower defense claims against institutions that are no longer operating, including several situations where an institution closed years prior. When that occurs, even if the Department sought to recoup the cost of discharges, there are unlikely to be assets to draw upon. Were there financial protection in place, the Department would have greater confidence that a successful recoupment effort would result in funds being available to offset the cost of discharges.

Third, the Federal government would also benefit from the deterrent effect of additional financial responsibility triggers. Articulating more situations that could lead to either mandatory financial protection or the possibility of a financial protection request would dissuade institutions from taking steps that could trigger those conditions. For example, the Department proposes a trigger tied to situations where an institution has conditions in a financing agreement with an external party that would result in an automatic default if the Department takes an action against the institution. The Department is concerned that such situations are used by institutions to try and discourage the Department from exercising its proper oversight authority due to the financial consequences for the school. It could also be used by the school to blame the Department if the action later results in a closure even though its shuttering is a result of poor management. Therefore, this proposed trigger should discourage the inclusion of such provisions going forward. The same is true for the inclusion of various actions taken by States, accrediting agencies, or the SEC. Knowing that such situations could result in additional requests for financial protection would provide an even greater reason for institutions to avoid risky behavior that could run afoul of other actors.

These proposed triggers would also benefit students. For one, the deterrence benefits mentioned above would help protect students from being taken advantage of by predatory institutions. The Department has seen situations in the past where institutions engaged in risky behavior to keep growing at a rapid rate to satisfy investor expectations. This resulted in colleges becoming too big, too fast to be able to deliver educational value. It also meant that institutions risked becoming financially shaky if they experienced declines in enrollment. While these proposed triggers would not fully discourage rapid growth, they would discourage a growth-at-all-costs mindset, particularly if that growth is encouraged through misrepresentations, aggressive recruitment, or other practices that may run afoul of both the Department and other oversight entities. With the proposed triggers in place, institutions that would otherwise engage in such behaviors may instead opt to stay at a more appropriate and sustainable size at which they are able to deliver financial value for students and taxpayers. This outcome would also decrease the risk of closure, which can be very disruptive for students, often delaying if not terminating their pursuit of a postsecondary credential. For example, research by GAO found that 43 percent of borrowers never completed their program or transferred to another school after a closure.[249] While 44 percent transferred to another school, 5 percent of all borrowers transferred to a college that later closed. GAO then looked at the subset of borrowers who transferred long enough ago that they could have been at the new school for six years, the amount of time typically used to calculate graduation rates. GAO found that nearly 49 percent of these students who transferred did not graduate in that time. These findings are similar to those from SHEEO, which found that just 47 percent of students reenrolled after a closure and only 37 percent of students who reenrolled earned a postsecondary credential.[250]

The proposed regulations' deterrence effect would also benefit students by encouraging institutions to improve the quality and value of their educational offerings. For example, the proposed trigger for institutions with high dropout rates would incentivize institutions to improve their graduation rates. Along with the trigger for institutions failing the cohort default rate, this can reduce the number of students who default on their loans, as students who do not complete a degree are more likely to default on their loans.[251] Improved completion rates also have broader societal benefits, such as increased tax

[249] www.gao.gov/products/gao-21-105373.
[250] https://sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/
[251] libertystreeteconomics.newyorkfed.org/2017/11/who-is-more-likely-to-default-on-student-loans/.

revenue because college graduates, on average, have lower unemployment rates, are less likely to rely on public benefit programs, and contribute more in tax revenue through higher earnings.[252]

Finally, the proposed regulations would also provide benefits for institutions that are not affected by a new request for financial protection. Many of the factors that can lead to a letter of credit would be associated with institutions that have engaged in questionable, and sometimes predatory, behavior, often in the hopes of maintaining or growing enrollment. For instance, aggressive conduct during the recruitment process, including misrepresenting key elements of a program to students, can generate lawsuits, State actions, and borrower defense claims. To the extent these proposed triggers discourage such behaviors, that would help institutions that act responsibly by allowing them to better compete for potential students based on factors like quality and value delivered and of the educational program.

Costs

The proposed regulations could create costs for institutions in a few ways. First, institutions could face costs to obtain a letter of credit or other form of financial protection. Financial institutions typically

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[252] www.luminafoundation.org/resource/its-not-just-the-money/; www.thirdway.org/report/ripple-effect-the-cost-of-the-college-dropout-rate.

charge some sort of fee to provide a letter of credit. Or the institution may have to set aside funds so the financial institution is willing to issue the letter of credit. These fees or set aside amounts may be based upon the total amount of the letter of credit and could potentially also reflect the bank's view of the level of risk represented by the school. Institutions do not currently inform the Department of how much they must spend to obtain a letter of credit, so the Department does not have a way of ascertaining any potential added costs resulting from fees or set aside amounts. The fees, however, would be borne by the institution regardless of whether the letter of credit is collected on or not, while funds set aside for the letter of credit would be returned to the institution if it is not collected upon. Other types of financial protection, such as providing funds directly or offsetting title IV, HEA aid received, would not come with such fees.

The second form of cost would be transfers to the Department that occur when it collects on a letter of credit or keeps the funds from a cash escrow account, title IV, HEA offset, or other forms of financial protection. In those situations, the Department would use those funds to offset liabilities owed to it. This would be a benefit to the Department and taxpayers.

The rate at which the Department collects on financial protection it receives would likely change under these proposed regulations. The Department anticipates that one effect of the proposed regulations would be an increase in the instances in which it requests financial protection. That would result in a larger total amount of financial protection available. However, it is possible that the increase in financial protection would result in a lower rate at which those amounts are collected on. This could be a result of the financial protection providing a greater and earlier deterrence against behavior that would have otherwise led to a closure. Additionally, the proposed regulations could result in be more situations where the Department has financial protection but an institution does not ultimately have unpaid liabilities. At the same time, if the Department is more successful in securing financial protection from institutions that do close, it may end up with a greater share of outstanding liabilities covered by funds from an institution.

Administrative Capability

Benefits

The proposed Administrative Capability regulations would provide several benefits for students, the Department, and other institutions of higher education. Each is discussed below in turn.

Students

For students, the proposed changes would particularly help them make more informed choices about where to enroll, how much they might borrow, and ensure that students who are seeking a job get the assistance they need to launch or continue their careers. On the first point, the proposed changes in § 668.16(h) expand an existing requirement related to sufficient financial aid counseling to also include written information, such as what is contained when institutions inform students about their financial aid packages. Having a clear sense of how much an institution will cost is critical for students to properly judge the financial transaction they are entering into when they enroll. For many students and families, a postsecondary education is the second most expensive financial decision they make after buying a home. However, the current process of understanding the costs of a college education is far less consistent than that of a buying a home. For the latter, there are required standard disclosures that present critical information like the total price, interest rate, and the amount of interest that will ultimately be paid. Having such common disclosures helps to compare different mortgage offers.

By contrast, financial aid offers are extremely varied. A 2018 study by New America that examined more than 11,000 financial aid offers from 515 schools found 455 different terms used to describe an unsubsidized loan, including 24 that did not use the word "loan."[253] More than a third of the financial aid offers New America reviewed did not include any cost information. Additionally, many colleges included Parent PLUS loans as "awards" with 67 unique terms, 12 of which did not use the word "loan" in the description. Similarly, a 2022 report by the GAO estimated that, based on their nationally representative sample of colleges, 22 percent of colleges do not provide any information about college costs in their financial aid offers, and of those that include cost information, 41 percent do not include a net price and 50 percent understate the net price.[254] GAO estimated that 21 percent of colleges do not include key details about how Parent PLUS loans differ from student loans. This kind of inconsistency creates significant risk that students and families may be presented with information that is both not directly comparable across institutions but may be outright misleading. That hinders the ability to make an informed financial choice and can result in students and families paying more out-of-pocket or going into greater debt than they had planned.

While the proposed regulatory language would not mandate that all colleges adopt the same offer, they would establish requirements around key information that must be

[253] www.newamerica.org/education-policy/policy-papers/decoding-cost-college/.
[254] www.gao.gov/products/gao-23-104708.

provided to students. Some of these details align with the existing College Financing Plan, which is used by half of the institutions in at least some form. The proposed regulations will thereby increase the likelihood that students receive consistent information, including, in some cases, through the expanded adoption of the College Financing Plan. Clear and reliable information could further help students choose institutions and programs that might have lower net prices, regardless of sticker price, which may result in students enrolling in institutions and programs where they and their families are able to pay less out of pocket or take on lower amounts of debt.

Students would also benefit from the proposed § 668.16(p), related to proper procedures for evaluating high school diplomas. It is critical that students can benefit from the postsecondary training they pursue. If they do not, then they risk wasting time and money, as well as ending up with loan debt they would struggle to repay because they are unable to secure employment in the field they are studying. Students who have not obtained a valid high school diploma may be at a particular risk of ending up in programs where they are unlikely to succeed. The Department has seen in the past that institutions that had significant numbers of students who enrolled from diploma mills or other schools that did not provide a proper secondary education have had high rates of withdrawal, noncompletion, or student loan default. The added requirements in proposed § 668.16(p) would better ensure that students pursuing postsecondary education have received the secondary school education needed to benefit from the programs they are pursuing.

The provision related to adequate career services in proposed § 668.16(q) and the provision of externships in proposed § 668.16(r) would result in significant benefits for students as they are completing their programs. While postsecondary education and training provides a range of important benefits, students repeatedly indicate that getting a job is either the most or among the most important reasons for attending. For example, one survey asked students their reasons for deciding to go to college and 91 percent said to improve their employment opportunities, 90 percent said to make more money, and 89 percent said to get a good job.[255] Another survey of 14- to 23-year-olds showed that two-thirds said they wanted a degree to provide financial security.[256] Similarly, many institutions construct their marketing around their connections to employers, the careers their students pursue, or other job-related outcomes. But students will have a hard time achieving those goals if the institution lacks sufficient career services to assist them in finding

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[255] www.luminafoundation.org/resource/deciding-to-go-to-college/.
[256] www.washingtonpost.com/news/grade-point/wp/2018/09/01/college-students-say-they-want-a-degree-for-a-job-are-they-getting-what-they-want/.

a job. This is even more pronounced for students whose career pathways require an externship or clinical experience, which is commonly a requirement to obtain the necessary license to work in certain fields. Making it an explicit requirement that institutions have sufficient career services and provide necessary clinical or externship experiences would increase the ability of students to find jobs in the fields for which they are being prepared.

The Department anticipates that the proposed provisions in § 668.16(s) would ensure students receive their funds when they most need them. Refunds of financial aid funds remaining after paying for tuition and fees gives students critical resources to cover important costs like food, housing, books, and transportation. Students that are unable to pay for these costs struggle to stay enrolled and may instead need to either leave a program or increase the number of hours they are working, which can hurt their odds of academic success. Ensuring institutions disburse funds in a timely manner would help students get their money when they need it.

Finally, the provisions in §§ 668.16(k)(2) and 668.16(t) through (u) would also benefit students by protecting them from institutions that are engaging in poor behavior, institutions that are at risk of losing access to title IV, HEA aid for a significant share of their students because they do not deliver sufficient value, and institutions that are employing individuals who have a problematic history with the financial aid programs. All three of these elements can be a sign of an elevated risk of closure or an institution's engagement in concerning behaviors that could result in the approval of borrower defense claims or actions under part 668, subpart G, either of which could place the institution in challenging financial situations.

Federal Government

The proposed Administrative Capability regulations would also provide benefits for the Department. False institutional promises about the availability of career services, externships or clinical placements, or the ability to get a job can result in the Department granting a borrower defense discharge. For instance, the Department has approved borrower defense claims at American Career Institute for false statements about career services and at Corinthian Colleges and ITT Technical Institute related to false promises about students' job prospects. But the Department has not been able to recoup the costs of those transfers to borrowers from the Department. Adding these requirements to the Administrative Capability regulations would increase the ability of the Department to identify circumstances earlier that might otherwise lead to borrower defense discharges later. That should reduce the number of future claims as institutions would know ahead of time that failing to offer these services is not acceptable. It also could mean terminating the participation in the title IV, HEA programs sooner for institutions that do not meet these standards, reducing the exposure to future possible liabilities through borrower defense.

The Department would also benefit from improved rules around verifying high school diplomas. Borrowers who received student loans when they did not in fact have a valid high school diploma may be eligible for a false certification discharge. If that occurs, the Department has no guarantee that it would be able to recover the cost of such a discharge, resulting in a transfer from the government to the borrower. Similarly, grant aid that goes to students who lack a valid high school diploma is a transfer of funds that should not otherwise be allowed and is unlikely to be recovered. Finally, if students who lack a valid high school diploma or its equivalent are not correctly identified, then the Department may end up transferring Federal funds to students who are less likely to succeed in their program and could end up in default or without a credential. Such transfers would represent a reduction in the effectiveness of the Federal financial aid programs.

Provisions around hiring individuals with past problems related to the title IV, HEA programs would also benefit the Department. Someone with an existing track record of misconduct, including the possibility that they have pled guilty to or been convicted of a crime, represents a significant risk to taxpayers that those individuals might engage in the same behavior again. Keeping these individuals away from the Federal aid programs would decrease the likelihood that concerning behavior will repeat. The Department is already concerned that today there can be executives who run one institution poorly and then simply jump to another or end up working at a third-party servicer. Without this proposed regulatory change, it can be harder to prevent these individuals from continuing to participate in the aid programs.

The Department would gain similar benefits from the provisions related to institutions with significant enrollment in failing GE programs; institutions subject to a significant negative action subject to findings by a State or Federal agency, court, or accrediting agency; and institutions engaging in misrepresentations. These are situations where a school may be at risk of closure or facing significant borrower defense liabilities. Allowing these institutions to continue to participate in Title IV, HEA programs could result in transfers to borrowers in the form of closed school or borrower defense discharges that are not reimbursed. These proposed provisions would allow for more proactive action to address these concerning situations and behaviors.

Finally, the Department would benefit from students receiving accurate financial aid information. Students whose program costs end up being far different from what the institution initially presented may end up not completing a program because the price tag ends up being unaffordable. That can make them less likely to pay their student loans back and potentially leave them struggling in default. This could also include situations where the cost is presented accurately but the institution fails to properly distinguish grants from loans, resulting in a student taking on more debt than they intended to and being unable to repay their debt as a result.

Costs

The costs of the proposed regulations would largely fall on institutions, as well as some administrative costs for the Department. For institutions that fail to provide clear financial aid information or lack sufficient career services staff, they may face costs either updating their financial aid information (e.g., redoing financial aid offers) or hiring additional staff to bolster career services. The former costs would likely be a one-time, minimal expense, while the latter would be ongoing. Institutions may also face some administrative costs for creating procedures for verifying high school diplomas if they currently lack sufficient processes. This proposed requirement would not entail reviewing every individual high school diploma, so the costs would depend on how many students the institution enrolls that have high school diplomas that may merit additional investigation. Institutions currently enrolling large numbers of students who should not otherwise be deemed to have eligible high school diplomas under these revised policies may also face costs in the form of reduced transfers from the Federal government if these individuals are not able to enroll under an ability-to-benefit pathway. Finally, the costs to an institution associated with having a failing GE program are similar to those discussed in that section of the regulatory impact analysis.

These changes would also impose some administrative costs on the Department. The Department would need to incorporate procedures into its reviews of institutions to identify the added criteria. That could result in costs for retraining staff or added time to review certain institutions where these issues manifest.

Finally, institutions that face significant administrative capability problems related to issues such as State, accreditor, or other Federal agency sanctions or conducting misrepresentations could face costs in the form of reduced transfers from the Department if those actions result in loss of access to title IV, HEA financial assistance. Situations that do not reach that level may or may not result in added costs, including transfers, if they affect receipt of title IV, HEA aid, depending on the steps an institution needs to take to address the concerns.

Certification Procedures

An institution must be certified to participate in the title IV, HEA financial assistance programs. Doing so ensures the institution agrees to abide by the requirements of these programs, helping to maintain integrity and accountability around Federal dollars. Decisions about whether to certify an institution’s participation, how long to certify it for, and what types of conditions should be placed on that certification are a critical element of managing oversight of institutions, particularly the institutions that pose risks to students and taxpayers. Shorter certification periods or provisional certification can allow the Department greater flexibility to respond to an institution that may be exhibiting some signs of concern. This is necessary to ensure that students and taxpayer funds are well protected. Similarly, institutions that do not raise concerns can be certified for longer and with no additional conditions, allowing the Department to focus its resources where greater attention is most needed.

The proposed regulations are necessary to ensure that the Department can more effectively manage its resources in overseeing institutions of higher education. The proposed changes would remove requirements that risked giving institutions longer approval periods when they merit closer scrutiny and would clarify the options available when additional oversight is necessary. The net result would be an oversight and monitoring approach that is more flexible and effective.

Benefits

The proposed regulations would provide several important benefits for the Department that would result in better allocation of its administrative resources. One of these is the proposed elimination of § 668.13(b)(3). This is a recently added provision that requires the Department to issue a decision on a certification within 12 months of the date its participation expires. While it is important for the Department to move with deliberate speed in its oversight work, the institutions that have extended periods with a pending certification application are commonly in this situation due to unresolved issues that must be dealt with first. For instance, an institution may have a pending certification application because it may have an open program review or a Federal or State investigation that could result in significant actions. Being forced to make a decision on that application before the review process or an investigation is completed could result in suboptimal outcomes for the Department, the school, and students. For the institution, the Department may end up placing it on a short certification that would result in an institution facing the burden of redoing paperwork after only a few months. That would carry otherwise unnecessary administrative costs and increase uncertainty for the institution and its students.

The Department would similarly benefit from provisions in proposed § 668.13(c)(1) that provides additional circumstances in which an institution would become provisionally certified. The proposed change in § 668.13(c)(1)(i)(F) - giving the Secretary the ability to place an institution on provisional certification if there is a determination that an institution is at risk of closure – would be a critical tool for better protecting students and taxpayers when an institution appears to be on shaky footing. The same is true for the proposed changes in § 668.13(c)(1)(ii) related to how certain conditions can automatically result in provisional status. Institutional closures can occur very quickly. An institution may face a sudden shock that puts them out of business or the gradual accumulation of a series of smaller problems that culminates in a sudden closure. The pace at which these events occur requires the Department to be nimble in responding to issues and better able to add additional requirements for an institution’s participation outside of the normal renewal process. Absent this proposed language, the Department would be in a position where an obviously struggling institution might stay fully certified for years longer, despite the risk it poses.

Such benefits are also related to the provisions in proposed § 668.14(e) that lay out additional conditions that could be placed on an institution if it is in a provisional status. This non-exhaustive list of requirements specifies ways the Department can more easily protect students and taxpayers when concerns arise. Some of these conditions would make it easier to manage the size of a risky institution and would ensure that it does not keep growing when it may be in dire straits. Such size management would be accomplished by imposing conditions such as restricting the growth of an institution, preventing the addition of new programs or locations, or limiting the ability of the institution to serve as a teach-out partner for other schools or to enter into agreements with other institutions to provide portions of an educational program.

Other conditions in proposed § 668.14(e) would give the Department better ability to ensure that it is receiving the information it needs to properly monitor schools and that there are plans for adequately helping students. The additional reporting requirements proposed in § 668.14(e)(7) would help the Department more quickly receive information about issues so it could react in real-time as concerns arise. The proposed requirements in §

668.14(e)(1), meanwhile, would give the Department greater tools to ensure students are protected when a college is at risk of closure. Too often of late, colleges have closed without any meaningful agreement in place for where students could continue their programs. According to SHEEO, of the more than 143,000 students who experienced a closure over 16 years, 70 percent experienced an abrupt closure without a teach-out plan or adequate notice.[257] Additionally, even for those with a teach-out plan, some of the teach-out plans were at another branch campus that later closed. The proposed changes would, therefore, increase the number of meaningful teach-out plans or agreements in place prior to a closure.

To get a sense of the potential effect of these changes, Table 4.4 below breaks down the certification status of all institutions participating in title IV, HEA programs. This provides some sense of which institutions might currently be subject to additional conditions.

Table 4.6. Certification status of institutions participating in the title IV, HEA Federal student aid programs

	Fully certified	Provisionally certified	Month-to-month certification
Public	1,732	95	32
Private Nonprofit	1,461	197	57

[257] sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.

Private For-Profit	1,120	502	78
Foreign Public	2	1	0
Foreign Private Nonprofit	312	59	60
Foreign Private For-Profit	0	9	1
Total	4,627	863	228

Source: Postsecondary Education Participants Systems as of January 2023.
Note: The month-to-month column is a subset of schools that could be in either the fully certified or the provisionally certified column.

Other provisions in proposed § 668.14 would provide benefits to the Department by increasing the number of entities that could be financially liable for the cost of monies owed to the Department that are unpaid when a college closes. Electronic Announcement (EA) GENERAL 22-16 updated PPA signature requirements for entities exercising substantial control over non-public institutions of higher education.[258] While EA GENERAL 22-16 used a rebuttable presumption, we propose language in § 668.14(a)(3) that would not only require a representative of the institution to sign a PPA, but also an authorized representative of an entity with direct or indirect ownership of a private institution. Historically, the Department has often seen colleges decide to close when faced with significant liabilities instead of paying them. The result is both

[258] Updated Program Participation Agreement Signature Requirements for Entities Exercising Substantial Control Over Non-Public Institutions of Higher Education. https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-23/updated-program-participation-agreement-signature-requirements-entities-exercising-substantial-control-over-non-public-institutions-higher-education

that the existing liability is not paid and the cost to taxpayers may further increase due to closed school discharges due to students.

To get a sense of how often the Department successfully collects on assessed liabilities, we looked at the amount of institutional liabilities established as an account receivable and processed for repayment, collections, or referral to Treasury following the exhaustion of any applicable appeals over the prior 10 years. This does not include liabilities that were settled or not established as an account receivable and referred to the Department's Finance Office. Items in the latter category could include liabilities related to closed school loan discharges that the Department did not assess because there were no assets remaining at the institution to collect from.

We then compared estimated liabilities to the amount of money collected from institutions for liabilities owed over the same period. The amount collected in a given year is not necessarily from a liability established in that year, as institutions may make payments on payment plans, have liabilities held while they are under appeal, or be in other similar circumstances.

Table 4.7 Liabilities versus collections from institutions ($ in millions)

Federal fiscal year	Established liabilities	Amounts collected from institutions
2013	19.6	26.9
2014	86.1	37.5
2015	108.1	13.1
2016	64.5	30.8
2017	149.7	34.5
2018	126.2	51.1
2019	142.9	52.3
2020	246.2	31.7
2021	465.7	29.1
2022	203.0	37.0
2013-2022	1,611.9	344.2

Source: Department analysis of data from the Office of Finance and Operations including reports from the Financial Management Support System.

At the same time, there may be many situations where the entities that own the closed college still have resources that could be used to pay liabilities owed to the Department. The provisions in proposed § 668.14(a)(3) would make it clearer that the Department would seek signatures on program participation agreements from those types of entities, making them financially liable for the costs to the Department. In addition to the financial benefits in the form of the greater possibility of transfers from the school or other entities to the Department, this provision would also provide deterrence benefits. Entities considering whether to invest in or otherwise purchase an institution would want to conduct greater levels of due diligence to ensure that they are not supporting a place that might be riskier and, therefore, more likely to generate liabilities the investors would have to repay. The effect should mean that riskier institutions receive less outside investment and are unable to grow unsustainably. In turn, outside investors may then be more willing to consider institutions that generate lower returns due to more sustainable business practices. This could include institutions that do not grow as quickly because they want to ensure they are capable of serving all their students well, or make other choices that place a greater priority on student success.

The added provisions in proposed § 668.14(b)(32) through (34) would also provide benefits to the Department, largely by ensuring that Federal student aid is spent more efficiently, is paying for fewer wasted credits, and is not withheld from students in a way that may harm completion. On the first point, proposed § 668.14(b)(32) would make it harder for institutions to offer programs that lead to licensure or certification whose length far exceeds what is required to obtain the approvals necessary to work in that field in a student's State. While it is important that students get enough aid to finish their program, the Department is concerned that overly long programs may end up generating unnecessary transfers from the Department to the institution in the form of financial aid funding courses that are not needed for the borrower to obtain a position in the field for which they are being prepared. For instance, if a State only requires 1,000 hours for a program but an institution sets its program length at 1,500 hours, then the taxpayer would be supporting significant additional courses that are not required by the state and are potentially superfluous. These types of protections are also necessary for students and families, as some of these additional transfers may come from them in tuition dollars paid, often in the form of greater and unnecessary student loan debt, increasing both the amount students have to pay back and representing potentially a larger share of their annual income. Other parts of paragraph (32), meanwhile, would ensure that colleges enrolling online students from another State would not be able to avoid any relevant key State consumer protection laws regarding closure, recruitment, or misrepresentation. This would help the Federal government by ensuring States can continue to play meaningful roles in the three areas that are most likely to be a source of liabilities in the form of closed school or borrower defense discharges.

Proposed § 668.14(b)(33), meanwhile would reduce the number of credits paid for with title IV, HEA funds that a student is unable to transfer to another institution or use to verify education to potential employers due to a hold on their transcript. The Department is concerned that credits funded with taxpayer money that are on transcripts that an institution will not release due to mistakes on its own part or returns of title IV, HEA funds through the Return of Title IV Funds process represent an unacceptable loss of Federal money. Credits that cannot be redeemed elsewhere toward a credential do not help a student complete a program and increase the potential for the government to pay for the same courses twice. Credits that cannot be verified do not help students obtain employment. While this proposed change may not address broader issues of credit transfer or transcript withholding, it would mitigate some of those problems and at least benefit the government by preventing withholding and wasting of credits due to administrative errors or required functions related to the title IV, HEA programs.

Proposed § 668.14(b)(34) would provide benefits to the Department. Research shows that additional financial aid can provide important supports to help increase the likelihood that students graduate. For example, one study showed that increasing the amount some students were allowed to borrow improved degree completion, later-life earnings, and their ability to repay their loans.[259] This proposed language would prevent situations in which an institution may prevent a student from receiving all the title IV aid they are entitled to without replacing it with other grant aid. This would diminish the risk that students are left with gaps that could otherwise have been covered by title IV aid, which would help them finish their programs.

<u>Students</u>

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[259] www.nber.org/papers/w27658.

Many of the same benefits for the Department would also accrue to students. In most cases, college closures are extremely disruptive for students. As found by GAO and SHEEO, only 44 to 47 percent of students enroll elsewhere and even fewer complete college.[260] SHEEO also found that over 100,000 students were affected by sudden closures from July 2004 to June 2020.[261] Proposed § 668.13(e) would benefit students in two ways. First, some potential conditions added to the program participation agreement would protect students from enrolling in an at-risk institution in the first place. Preventing a risky school from growing or adding new programs would mean enrollment does not increase and, therefore, fewer students attending a place that may close. Second, the requirements around teach-out plans and agreements would increase the number of schools where there is better planning on what will happen to students' educational journeys should a college cease operating. That would help more students make informed decisions about when to re-enroll versus walk away from their programs.

Students would also benefit from the proposed requirements in § 668.14(a)(3) around making additional entities responsible for unpaid liabilities. This proposed

[260] www.gao.gov/products/gao-21-105373; sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.
[261] https://sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/

provision would make outside investors more cautious in engaging with riskier institutions, making it harder for them to grow as quickly. This in turn would reduce the number of students enrolling in risky institutions that might not serve them well.

The proposed changes in § 668.14(b)(32) would provide benefits to students by reducing the likelihood of them paying more for education and training programs that artificially extend their program length beyond what is needed to earn the licensure or certification for which they are being prepared. Programs that are unnecessarily long may depress students' ability to complete, as it introduces more opportunities for life to interfere with academics, and cost students time out of the labor force where they could be earning money in the occupation for which they are training. It can also result in students taking out more student loans than otherwise needed, potentially increasing the risk of unaffordable loan payments, followed by delinquency and default. Similarly, the provision that an institution must abide by State laws related to closure, recruitment, and misrepresentation would ensure that students are protected by key State consumer protection laws regardless of whether they attend an institution that is physically located in their State.

Restrictions on the ability of institutions to withhold transcripts as proposed in § 668.14(b)(33) would benefit students by helping them better leverage the credits they earned in courses paid for by their title IV, HEA aid. Refusing to release a transcript means that students cannot easily transfer their credits. That can arrest progress toward completion elsewhere and result in credits paid for by title IV, HEA dollars that never lead to a credential. A 2020 study by Ithaka S+R estimated that 6.6 million students have credits they are unable to access because their transcript is being withheld by an institution.[262] That study and a 2021 study published by the same organization estimate that the students most affected are likely adult learners, low-income students, and racial and ethnic minority students.[263] This issue inhibits students with some college, but no degree from completing their educational programs, as well as prevents some students with degrees from pursuing further education or finding employment if potential employers are unable to verify that they completed a degree or if they are unable to obtain licensure for the occupation for which they trained.

The proposal in § 668.14(b)(34), meanwhile, would provide benefits to students by ensuring that they receive all the Federal aid they are entitled to. This could result in an increase in transfers from the Department to students as they receive aid that would otherwise have been

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[262] sr.ithaka.org/publications/solving-stranded-credits/.
[263] sr.ithaka.org/publications/stranded-credits-a-matter-of-equity/.

withheld by the school. Research shows that increased ability to borrow can increase completed credits and improve grade point average, completion, post-college earnings, and loan repayment for some students.[264]

Costs

The proposed regulations would create some modest administrative costs for the Department. These would consist of staffing costs to monitor the additional conditions added to program participation agreements, as well as any increase in changes to an institution's certification status. This cost would likely be larger than the amount the Department spends on reviews of less risky institutions. Beyond these administrative costs, the Department could see a slight increase in costs in the title IV, HEA programs that come in the form of greater transfers to students who would otherwise have received less financial aid under the conditions prohibited in proposed § 668.14(b)(34). As discussed in the benefits section, greater aid could help students finish their programs.

The Department is not anticipating that these proposals would have a significant cost for students. While some of the proposals could affect the institution in which a student chooses to enroll, the Department does not believe that these provisions would likely have a

[264] www.aeaweb.org/articles?id=10.1257/pol.20180279; www.nber.org/papers/w24804.

significant effect on whether students enroll in a postsecondary institution at all.

The proposed regulations would establish costs in various forms for institutions. For some, the changes would create costs in the form of reduced transfers from the Department. This would occur in situations such as growth restrictions or preventing institutions from starting new programs or opening new locations. It is not possible to clearly estimate these costs, as which conditions are placed on institutions would be fact-specific and gauging their effect would require judging how many students the institution would then have otherwise enrolled.

Institutions that would be affected by the proposed requirements to limit programs to the required length in their State (or that of a neighboring state in certain limited circumstances) would also face administrative costs to redesign programs. This could require determining what courses to eliminate or how to otherwise make a program shorter. These changes could also reduce transfers from the Department to the institution as aid is no longer provided for the portion of the program that is eliminated.

Other costs to institutions would come in the form of administrative expenses. Institutions that are placed on provisional status may need to submit additional information for reporting purposes, which would require some staff time. Similarly, an institution that becomes provisionally certified may have to submit an application for recertification sooner than anticipated, which would require additional staff time. The extent of these administrative costs would vary depending on the specific demands for an institution and it is not possible to model them.

Ability to Benefit

The HEA requires students who are not high school graduates to fulfill an ATB alternative and enroll in an eligible career pathway program to gain access to title IV, HEA aid. The three ATB alternatives are passing an independently administered ATB test, completing six credits or 225 clock hours of coursework, or enrolling through a State process.[265] Colloquially known as ATB students, these students are eligible for all title IV, HEA aid, including Federal Direct loans. The ATB regulations have not been updated since 1994. In fact, the current Code of Federal Regulations makes no mention of eligible career pathway programs. Changes to the statute have been implemented through subregulatory guidance laid out in Dear Colleague Letters (DCLs). DCL GEN 12-09, 15-09, and 16-09 explained the implementation procedures for the statutory text. Due to the changes over the years, as described in the Background section of this proposed rule, the Department

[265] As of January 2023, there are six States with an approved State process.

seeks to update, clarify, and streamline the regulations related to ATB.

Benefits

The proposed regulations would provide benefits to States by more clearly establishing the necessary approval processes. This would help more States have their applications approved and reduce the burden of seeking approval. This would be particularly achieved by the proposal to separate the application into an initial process and a subsequent process. Currently, States that apply are required to submit a success rate calculation under current § 668.156(h) as a part of the first application. Doing so is very difficult because the calculation requires that a postsecondary institution is accepting students through its State process for at least one year. This means that a postsecondary institution needs to enroll students without the use of title IV aid for one year to gather enough data to submit a success rate to the Department. Doing so may be cost prohibitive for postsecondary institutions.

The proposed regulations would also benefit institutions by making it easier for them to continue participating in a State process while they work to improve their results. More specifically, reducing the success rate calculation threshold from 95 percent to 85 percent, and the proposal for struggling institutions to meet a 75 percent threshold for a limited number of years, would give institutions additional opportunities to improve their outcomes before being terminated from a State process. This added benefit would not come at the expense of costs to the student from taking out title IV, HEA aid to attend an eligible career pathway program. This is because the Department proposes to incorporate more guardrails and student protections in the oversight of ATB programs, including documentation and approval by the Department of the eligible career pathway program. That means the proposed changes would not on the whole decrease regulatory oversight.

Institutions that are not struggling to maintain results would also benefit from these proposed regulations. Under current regulations, the success rate calculation includes all institutions combined. The result is that an institution with strong outcomes could be combined with those that are doing worse. Under this proposal, the Department would calculate the success rate for each individual participating institution, therefore allowing other participating institutions that are in compliance with the proposed regulations to continue participation in the State process.

Costs

The proposed regulatory changes would impose additional costs on the Department, postsecondary institutions, and entities that apply for the State process.

The proposed regulations would break up the State process into an initial and subsequent application that must be submitted to the Department after two years of initial approval. This would increase costs to the State and participating institutions. This new application process would be offset because the participating institutions would no longer need to fund their own State process without title IV, HEA program aid to gain enough data to submit a successful application to the Department.

In the proposed initial application, the institution would have to calculate the withdrawal rate for each participating institution, and the Department would verify a sample of eligible career pathway programs offered by participating institutions to verify compliance with the proposed definition under § 668.2. This would increase costs to the State and participating institutions. The increased administrative costs associated with the new outcome metric would be minimal because a participating institution would already know how to calculate the withdrawal rate as it is already required under Administrative Capability regulations. These costs are also worthwhile because they allow for the added benefit that the State could remove poorer performing institutions from its application.

The increase in program eligibility costs associated with the eligible career pathway verification process would be minimal because schools are already required to meet to the definition of an eligible career pathway program under the HEA.

The Department is also proposing to place additional reporting requirements on States, including information on the demographics of students. This would increase administrative burden costs to the State and participating institutions. There is a lack of data about ability to benefit and eligible career pathway programs, and the new reporting the Department would be able to analyze the data and may be able to report trends publicly.

Proposed §668.157 prescribes the minimum documentation requirements that all eligible career pathway programs would have to meet in the event of an audit, program review, or review and approval by the Department. Currently the Department does not approve eligible career pathway programs, therefore, the proposed regulation would increase costs to any postsecondary institutions that provide an eligible career pathway program. For example, proposed § 668.157(a)(2) would require a government report demonstrate that the eligible career pathway program aligns with the skill needs of industries in the State or regional labor market. Therefore, if no such report exists the program would not be title IV, HEA eligible. Further, under proposed § 668.157(b) the Department would approve every eligible career pathway program for postsecondary institutions that admit students under the six credit and ATB test options. We believe that benefits of the new documentation standards outweigh their costs because the proposed regulations would increase program integrity and oversight and could stop title IV, HEA aid from subsidizing programs that do not meet the statutory definition. Institutions currently use their best faith to comply with the statute which means there are likely many different interpretations of the HEA. These proposed regulations would set clear expectations and standardize the rules.

Elsewhere in this section under the Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

5. Methodology for Budget Impact and Estimates of Costs, Benefits, and Transfers

In this section we describe the methodology used to estimate the budget impact as well as the main costs, benefits, and transfers. Our modeling and impact only include the Financial Value Transparency and GE parts of the proposed rule. We do not include separate estimates for Financial Responsibility, Administrative Capability, Certification Procedures, or ATB because we anticipate these to have negligible impact on the budget in our primary scenario. We do, however, include a sensitivity analysis for Financial Responsibility.

The main behaviors that drive the direction and magnitudes of the budget impacts of the proposed rule and the quantified costs, benefits, and transfers are the performance of programs and the enrollment and borrowing decisions of students. The Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA funds per student to estimate the budget impact of these proposed regulations. Additional assumptions about the earnings outcomes and instructional spending associated with program enrollment and tax revenue from additional earnings were used to quantify costs, benefits, and transfers. The model (1) takes into account a program's past results under the D/E and EP rates measure to predict future results, and (2) tracks a GE program's cumulative results across multiple cycles of results to determine title IV, HEA eligibility.

Assumptions

We made assumptions in four areas in order to estimate the budget impact of the proposed regulations: (1) Program performance under the proposed regulations; (2) Student behavior in response to program performance; (3) Borrowing of students under the proposed regulation; and (4) Enrollment growth of students in GE and non-GE programs.

Table 5.1 below provides an overview of the main categories of assumptions and the sources. Assumptions that are included in our sensitivity analysis are also highlighted. Wherever possible, our assumptions are based on past performance and student enrollment patterns in data maintained by the Department or documented by scholars in prior research. Additional assumptions needed to quantify costs, benefits, and transfers are described later when we describe the methodology for those calculations.

Table 5.1 Main Assumptions and Sources

Category	Detail	Source	Included in sensitivity?
Assumptions for Budget Impact and Calculation of Costs, Benefits, and Transfers			
Program Performance at Baseline	Share in each performance category at baseline (GE and non-GE programs)	ED data	No
Enrollment Growth	Annual enrollment growth rate by sector/level and year	Sector-level projections based on Department data	No
Program transition between performance categories	AY2025-26, AY2026-27 onward, separately by loan risk group and for GE and non-GE programs	Based on Department data + program improvement assumptions	Yes
Student response	Share of students who remain in programs, transfer to passing programs, or withdraw or decline to enroll by program performance category and transfer group; separately for GE and non-GE programs	Assumptions from 2014 RIA and prior work	Yes
Student borrowing	Debt changes if students transfer to passing program by program performance, risk group, and cohort; separately for GE and non-GE programs	Based on Department data	No
Additional Assumptions for Calculation of Costs, Benefits, and Transfers			
Earnings gain	Average program earnings by risk group and program performance, separately for GE and non-GE programs	Based on Department data	Yes
Tax rates	Federal and State average marginal tax and transfer rates	Hendren and Sprung-Keyser 2020 estimates based on CBO	No
Instructional cost	Average institution-level instructional expenditure by risk group and program performance; separately for GE and non-GE programs	IPEDS	No

Enrollment Growth Assumptions

For AYs 2023 to 2034, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program funds in GE and non-GE programs in absence of the rule.[266] We compute the average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2022, separately by the combination of control and credential level. We assume this rate of growth for each type of program for AYs 2023 to 2034 when constructing our baseline enrollment projections.[267] Table 5.2 below reports the assumed average annual percent change in title IV, HEA enrollment.

Table 5.2 Annual Enrollment Growth Rate (Percent) Assumptions

	Public	Private, Non-Profit	Proprietary
UG Certificates	-2.6	-6.9	4.1
Associate's	-3.7	-3.9	-3.7
Bachelor's	-0.5	-0.8	-2.7
Post-BA Certs	4.2	-2.3	-0.4
Master's	3.0	0.5	-1.1
Doctoral	4.9	3.1	-1.7
Professional	0.9	-0.1	-0.4
Grad Certs	1.2	2.0	-0.8

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific

[266] AYs 2023 to 2034 are transformed to FYs 2022 to 2023 later in the estimation process.

[267] The number of programs in proprietary post-BA certificates and proprietary professional degrees was too low to reliably compute a growth rate. Therefore, we assumed a rate equal to the overall proprietary rate of -0.4%.

programs, but rather by groupings of programs by broad credential level and control, the number of alternative programs available, whether the program is GE or non-GE, and whether the program passes or fails the D/E and EP metrics. The model estimates the flow of students between these groups due to changes in program performance over time and reflects assumptions for the share of enrollment that would transition between the following four performance categories in each year:

- Passing (includes with and without data)
- Failing D/E rate only
- Failing EP rate only
- Failing both D/E and EP rates

A GE program becomes ineligible if it fails either the D/E or EP rate measures in two out of three consecutive years. We assume that ineligible programs remain that way for all future years and, therefore, do not model performance transitions after ineligibility is reached. The model applies different assumptions for the first year of transition (from year 2025 to 2026) and subsequent years (after 2026). It assumes that the rates of program transition reach a steady state in 2027. We assume modest improvement in performance, indicated by a reduction in the rate of failing and an increase in the rate of passing, among programs that fail one of the metrics, and an increase in the rate of passing again, among GE programs that pass the metrics. All transition probabilities are estimated separately for GE and non-GE programs and for four aggregate groups: proprietary 2-year or less; public or non-profit 2-year or less; 4-year programs; graduate programs.[268]

The assumptions for the 2025 to 2026 transition are taken directly from an observed comparison of actual rates results for two consecutive cohorts of students. The initial assignment of performance categories in 2025 is based on the 2022 PPD for students who completed programs in award years 2015 and 2016, whose earnings are measured in calendar years 2018 and 2019. The program transition assumptions for 2025 to 2026 are based on the outcomes for this cohort of students along with the earnings outcomes of students who completed programs in award years 2016 and 2017 (earnings measured in calendar years 2019 and 2020) and debt of students who completed programs in award years 2017 and 2018. A new set of D/E and EP metrics was computed for each program using this additional two-year cohort. Programs with fewer than 30 completers or with fewer than 30 completers with earnings records are determined to be passing, though can transition out of this category between years. The share of enrollment that

[268] The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

transitions from each performance category to another is computed separately for each group.[269]

The left panels of Tables 5.3 and Table 5.4 report the program transition assumptions from 2025 to 2026 for non-GE and GE programs, respectively. Program performance for non-GE is quite stable, with 95.8 percent of passing enrollment in two-year or less public and non-profit expected to remain in passing programs. Persistence rates are even higher among 4-year and graduate programs. Among programs that fail the EP threshold, a relatively high share – more than one-third among 2-year and less programs – would be at passing programs in a subsequent year. The performance of GE programs is only slightly less persistent than that of non-GE programs. Note that GE programs would become ineligible for title IV, HEA funds the following year if they fail the same metric two years in a row. Among enrollment in less than two-year proprietary programs that fail the EP metric in 2025, 21.7 percent would pass in 2026 due to a combination of passing with data and no data.

The observed results also serve as the baseline for each subsequent transition of results (2026 to 2027, 2027 to 2028, etc.). The model applies additional assumptions from this baseline for each transition beginning with 2026

[269] In order to produce transition rates that are stable over time and that do not include secular trends in passing or failing rates (which are already reflected in our program growth assumptions), we compute transition rates from Year 1 to Year 2 and from Year 2 to Year 1 and average them to generate a stable rate shown in the tables.

to 2027. Because the baseline assumptions are the actual observed results of programs based on a cohort of students that completed programs prior to the Department's GE rulemaking efforts, these transition assumptions do not account for changes that institutions have made to their programs in response to the Department's regulatory actions or would make after the final regulations are published.

As done with analysis of the 2014 rule, the Department assumes that institutions at risk of warning or sanction would take at least some steps to improve program performance by improving program quality, job placement, and lowering prices (leading to lower levels of debt), beginning with the 2026 to 2027 transition. There is evidence that institutions have responded to past GE measures by aiming to improve outcomes or redirecting enrollment from low-performing programs. Institutions subject to GE regulations have experienced slower enrollment and those that pass GE thresholds tend to have a lower likelihood of program or institution closure.[270] Some leaders of institutions subject to GE regulation in 2014 did make improvements, such as lowering costs, increasing job placement and academic support staff, and other

[270] Fountain, J. (2019). The Effect of the Gainful Employment Regulatory Uncertainty on Student Enrollment at For-Profit Institutions of Higher Education. Research in Higher Education, Springer; Association for Institutional Research, vol. 60(8), 1065-1089. Kelchen, R. & Liu, Z. (2022) Did Gainful Employment Regulations Result in College and Program Closures? *Education Finance and Policy*; 17 (3): 454–478.

changes.[271] We account for this by increasing the baseline observed probability of having a passing result by five percentage points for programs with at least one failing metric in 2026. Additionally, we improve the baseline observed probability of passing GE programs having a sequential passing result by two and a half percentage points to capture the incentive that currently passing programs have to remain that way. These new rates are shown in the right panels of Tables 5.3 and 5.4.

We assume the same rates of transition between performance categories for subsequent years as we do for the 2026 to 2027 transitions.

Since the budget impact and net costs, benefits, and transfers depend on assumptions about institutional performance after the rule is enacted, we incorporate alternative assumptions about these transitions in our sensitivity analysis.

Table 5.3 Program Transition Assumptions non-GE Programs

		Percent in Year t+1 Status (2026)					Percent in Year t+1 Status (2027-2033)			
		Pass	Fail D/E only	Fail EP only	Fail Both		Pass	Fail D/E only	Fail EP only	Fail Both
Public and Non-Profit 2-year or less										
Year t Status	Pass	95.8	0.0	4.1	0.1		95.8	0.0	4.1	0.1
	Fail D/E only	9.8	86.0	0.0	4.2		14.8	81.0	0.0	4.2
	Fail EP only	37.8	0.0	62.0	0.1		42.8	0.0	57.0	0.1
	Fail Both	21.7	5.2	3.2	69.9		26.7	5.2	3.2	64.9
4-year										
Year t	Pass	99.0	0.3	0.5	0.2		99.0	0.3	0.5	0.2

[271] Hentschke, G.C., Parry, S.C. Innovation in Times of Regulatory Uncertainty: Responses to the Threat of "Gainful Employment". Innov High Educ 40, 97–109 (2015). doi.org/10.1007/s10755-014-9298-z

Status	Fail D/E only	26.9	66.1	0.0	7.0		31.9	61.1	0.0	7.0
	Fail EP only	36.8	0.0	58.7	4.6		41.8	0.0	53.7	4.6
	Fail Both	22.5	10.6	7.0	59.8		27.5	10.6	7.0	54.8
Graduate										
Year t Status	Pass	98.4	1.5	0.0	0.0		98.4	1.5	0.0	0.0
	Fail D/E only	20.2	78.7	0.0	1.1		25.2	73.7	0.0	1.1
	Fail EP only	75.6	0.0	24.4	0.0		80.6	0.0	19.4	0.0
	Fail Both	21.5	38.8	0.0	39.7		26.5	38.8	0.0	34.7

Table 5.4 Program Transition Assumptions GE Programs

		Share in Year t+1 Status (2026)					Share in Year t+1 Status (2027-2033)			
		Pass	Fail D/E only	Fail EP only	Fail Both		Pass	Fail D/E only	Fail EP only	Fail Both
Proprietary 2-year or less										
Year t Status	Pass	93.4	0.6	5.8	0.1		95.9	0.4	3.6	0.1
	Fail D/E only	10.0	82.1	0.0	7.9		15.0	77.1	0.0	7.9
	Fail EP only	21.7	0.0	77.8	0.6		26.7	0.0	72.8	0.6
	Fail Both	10.0	5.5	6.9	77.6		15.0	5.5	6.9	72.6
Public and Non-Profit 2-year or less										
Year t Status	Pass	92.4	0.5	6.2	0.9		94.9	0.4	4.2	0.6
	Fail D/E only	14.0	31.2	0.0	54.8		19.0	26.2	0.0	54.8
	Fail EP only	38.8	0.0	57.6	3.6		43.8	0.0	52.6	3.6
	Fail Both	34.8	1.5	2.5	61.2		39.8	1.5	2.5	56.2
4-year										
Year t Status	Pass	94.6	4.8	0.2	0.4		97.1	2.6	0.1	0.2
	Fail D/E only	18.6	72.5	0.0	8.9		23.6	67.5	0.0	8.9
	Fail EP only	14.0	0.0	86.0	0.0		19.0	0.0	81.0	0.0
	Fail Both	5.1	37.8	0.0	57.0		10.1	37.8	0.0	52.0
Graduate										
Year t Status	Pass	97.3	2.6	0.0	0.1		99.8	0.2	0.0	0.0
	Fail D/E only	15.1	83.0	0.0	1.9		20.1	78.0	0.0	1.9
	Fail EP only	100.0	0.0	0.0	0.0		100.0	0.0	0.0	0.0
	Fail Both	8.7	37.4	0.0	53.9		13.7	37.4	0.0	48.9

<u>Student Response Assumptions</u>

The Department’s model applies assumptions for the probability that a current or potential student would transfer or choose a different program, remain in or choose the same program, or withdraw from or not enroll in any postsecondary program in reaction to a program's performance. The model assumes that student response would be greater when a program becomes ineligible for title IV, HEA aid than when a program has a single year of inadequate performance, which initiates warnings and the acknowledgment requirement for GE programs, an acknowledgement requirement non-GE programs that fail D/E, and publicly reported performance information in the ED portal for both GE and non-GE programs. We also let the rates of transfer and withdrawal or non-enrollment differ with the number of alternative transfer options available to students enrolled (or planning to enroll) in a failing program. Specifically, building on the analysis presented in “Measuring Students’ Alternative Options” above, we categorize individual programs into one of four categories:

- High transfer options: Have at least one passing program in the same credential level at the same institution and in a related field (as indicated by being in the same 2-digit CIP code).

- Medium transfer options: Have a passing transfer option within the same ZIP3, credential level, and narrow field (4-digit CIP code).

- Low transfer options: Have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code.

- Few transfer options: Do not have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code. Students in these programs would be required to enroll in either a distance education program or enroll outside their ZIP3. As shown in "Measuring Students' Alternative Options," all failing programs have at least one non-failing program in the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, we make assumptions for each type of student transition. Programs with passing metrics are assumed to retain all of their students.

Students that transfer are assumed to transfer to passing programs, and for the purposes of the budget simulation this includes programs with an insufficient n-size. We assume that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the warning/acknowledgment is required (GE programs with one year of a failing metric and non-GE programs with a failing D/E metric). We also assume that rates of transfer are weakly decreasing (and rates of dropout and remaining in program are both weakly increasing) as programs have fewer transfer options. These assumptions regarding student responses to program results are provided in Table 5.5 and Table 5.6. Coupled with the scenarios presented in the "Sensitivity Analysis," these assumptions are intended to provide a reasonable estimation of the range of impact that the proposed regulations could have on the budget and overall social costs, benefits, and transfers.

The assumptions above are based on our best judgment and from extant research that we view as reasonable guides to the share of students likely to transfer to or choose another program when their program loses title IV, HEA eligibility. For instance, a 2021 GAO report found that about half of non-completing students who were at closed institutions transferred.[272] This magnitude is similar to recent analysis that found that 47 percent of students reenrolled after an institutional closure.[273] The authors of this report find very little movement from public or non-profit institutions into for-profit institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed for-profit 2-year institutions moved to public 2-year institutions, whereas less than 3% of re-enrollees at closed public and private non-profit 4-year institutions moved to for-profit institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at for-profit colleges that were subject to loss of federal financial aid disbursement eligibility,

[272] https://www.gao.gov/products/gao-22-104403.
[273] sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.

with much of that shift to public two-year institutions.[274] The Department also conducted its own internal analysis of ITT Technical Institute closures. About half of students subject to the closure re-enrolled elsewhere (relative to pre-closure patterns). The majority of students that re-enrolled did so in the same two-digit CIP code. Of Associate's degree students that re-enrolled, 45% transferred to a public institution, 41% transferred to a different for-profit institution, and 13% transferred to a private non-profit institution. Most remained in Associate's or certificate programs. Of Bachelor's degree students that re-enrolled, 54% transferred to a different for-profit institution, 25% shifted to a public institution, and 21% transferred to a private non-profit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information on students' general patterns through and across postsecondary institutions (not specific to responses to sanctions or closures). Of students that started at a public or private non-profit 4-year institution, about 3 percent shifted to a for-profit institution within 5 years. Of those that began at a public or private non-profit 2-

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[274] Cellini, S. R., Darolia, R., & Turner, L. J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy*, 12(2), 46-83.

year institution, about 8 percent shifted to a for-profit institution within 5 years.

Table 5.5 Student Response Assumptions, by Program Result and Number of Alternative Program Options Available

Program Result →	Pass			Fail once			
Student Response →	Remain	Transfer	Withdrawal / Non-enrollment	Remain	Transfer	Withdrawal / Non-enrollment	Remain
GE							
High Alternatives	1.00	0.00	0.00	0.40	0.45	0.15	0.20
Medium Alternatives	1.00	0.00	0.00	0.45	0.35	0.20	0.20
Low Alternatives	1.00	0.00	0.00	0.50	0.30	0.20	0.25
Few Alternatives	1.00	0.00	0.00	0.55	0.25	0.20	0.25
Non-GE							
High Alternatives	1.00	0.00	0.00	0.80	0.20	0.00	na
Medium Alternatives	1.00	0.00	0.00	0.85	0.15	0.00	na
Low Alternatives	1.00	0.00	0.00	0.90	0.10	0.00	na
Few Alternatives	1.00	0.00	0.00	0.95	0.05	0.00	na

In Table 5.6, we provide detail of the assumptions of the destinations among students who transfer, separately for the following groups:[275]

- Risk 1 (Proprietary <= 2 year)
- Risk 2 (Public, NonProfit <= 2 year)
- Risk 3 (Lower division 4 year)
- Risk 4 (Upper division 4 year)
- Risk 5 (Graduate)

Table 5.6 Student Response Assumptions, Among Transferring Students, Share Shifting Sectors

	Shift to GE Programs					Shift to Non-GE Programs			
Shift from…	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5	Risk 2	Risk 3	Risk 4	Risk 5
GE									
Risk 1	0.50	0.30	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 2	0.30	0.50	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 3	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00	0.00

[275] Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

Risk 4	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00
Risk 5	0.00	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20
Non-GE									
Risk 2	0.05	0.05	0.00	0.00	0.00	0.70	0.20	0.00	0.00
Risk 3	0.00	0.00	0.05	0.00	0.00	0.05	0.90	0.00	0.00
Risk 4	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95	0.00
Risk 5	0.00	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95

As we describe below, the assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth.

Student Borrowing Assumptions

Analyses in the Regulatory Impact Analysis of the 2014 Prior Rule assumed that student debt was unchanged if students transferred from failing to passing programs, but we believe this assumption to be too conservative given that one goal of the GE rule is to reduce the debt burden of students. Recall that tables 3.29 and 3.30 above reported the percent difference in mean debt between failing GE and non-GE programs and their transfer options, by credential level and 2-digit CIP code. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, movement to alternative programs from failing programs is associated with lower debt levels while movement from failing to passing Associate’s programs is associated with an increase in debt. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

To incorporate changes in average loan volume associated with student transitions, we compute average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment separately for GE and non-GE programs by risk group and program performance group. These averages are then applied to shifts in enrollment to generate changes in the amount of aid.

Methodology for Net Budget Impact

The budget model estimates a yearly enrollment for AYs 2023 to 2034 and the distribution of those enrollments in programs characterized by D/E and EP performance, risk group, transfer category, and whether it is a GE program. This enrollment is projected for a baseline (in absence of the proposed rule) and under the proposed policy. The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received by this distribution of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the proposed policy. We do not simulate the impact on the rule at the individual program level because doing so would necessitate very specific assumptions about which programs' students transfer to in response to the regulations. While we made such assumptions in the "Measuring Students' Alternatives" section above, we do not think it is analytically tractable to do for all years. Therefore, for the purposes of budget modeling, we perform analysis with aggregations of programs into groups defined by the following[276]:

- Five student loan model risk groups: (1) 2-year (and below) for-profit; (2) 2-year (and below) public or non-profit; (3) 4-year (any control) lower division, which is students in their first two years of a Bachelor's program; (4) 4-year (any control) upper division, which is students beyond their first two years of a Bachelor's program; (5) Graduate student (any control).[277]
- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is a program-level characteristic that is assumed not to change.
- Two GE program categories (GE and eligible non-GE) by which the program transitions are assumed to differ.
- Six performance categories: Pass, Fail D/E, Fail EP, Fail Both, Pre-ineligible (a program's current

[276] Note that non-GE programs do not include risk group 1 (2-year and below for-profit institutions) or the pre-ineligible or ineligible performance categories. Some groups also do not have all four transfer group categories. There are 184 total groups used in the analysis.

enrollment is Title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not Title IV, HEA eligible).

We refer to groups defined by these characteristics as "program aggregate" groups.

We first generate a projected baseline (in absence of the proposed rule) enrollment, Pell volume, and loan volume for each of the program aggregate groups from 2023 to 2033. This baseline projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2022. These growth rates are presented in Table 5.5. We then apply these annual growth rates to the actual enrollment by program in 2022 to forecast enrollment in each program in 2023. This step is repeated for each year to get projected enrollment by program through 2033. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group, program performance group, and GE vs. non-GE for 2022. These averages are then adjusted according to the PB2024 loan volume and Pell Grant baseline assumptions for the change in average loan by loan type and the change in average Pell Grant. We then multiply the projected enrollment for each program by these average aid amounts to get projected total aid volume by program through 2033. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, 2023 to 2033.

The most significant task is to generate projected enrollment, Pell volume, and loan volume for each of the program aggregate groups from 2023 to 2033 with the rule in place. We assume the first set of rates would be released in 2025 award year, so this is starting year for our projections. Projecting counterfactual enrollment and aid volumes involves several steps:

Step 1: Start with the enrollment by program aggregate group in 2025. In this first year there are no programs that are ineligible for Title IV, HEA funding.

Step 2: Apply the student transition assumptions to the enrollment by program aggregate group. This generates estimates of the enrollment that is expected to remain enrolled in the program aggregate group, the enrollment that is expected to drop out of postsecondary enrollment, and the enrollment that is expected to transfer to a different program aggregate group.

Step 3: Compute new estimated enrollment for the start of 2026 (before the second program performance is revealed) for each cell by adding the remaining enrollment to the enrollment that is expected to transfer into that group. We assume that (1) students transfer from failing or ineligible programs to passing programs in the same transfer group and GE program group; (2) Students in risk groups 3 (lower division 4-year), 4 (upper division 4-year college) or 5 (graduate) stay in those risk groups; (3) Students in risk group 1 can shift to risk groups 2 or 3; (4) Students in risk group 2 can shift to risk groups 1 or 3. Therefore, we permit enrollment to shift between proprietary and public or non-profit certificate programs and from certificate and Associate's programs to lower-division Bachelor's programs. We also allow enrollment to shift between GE and non-GE program, based on the assumptions listed in Table 5.6.

Step 4: Determine the change in aggregate baseline enrollment between 2025 and 2026 for each risk group and allocate these additional enrollments to each program aggregate group in proportion to the group enrollment computed in Step 3.

Step 5: Apply the program transition assumptions to the aggregate group enrollment from Step 4. This results in estimates of the enrollment that would stay within or shift from each performance category to another performance category in the next year. This mapping would differ for GE and non-GE programs and by risk group, as reported in Table 5.3 and 5.4 above. For non-GE programs, every performance category can shift enrollment to every performance category. For GE programs, however, enrollment in each failure category would not remain in the same category because if a metric is failed twice, this enrollment would move to pre-ineligibility. The possible program transitions for GE programs are:

- Pass → Pass, Fail D/E, Fail EP, Fail Both
- Fail D/E → Pass, Fail EP, Pre-Ineligible
- Fail EP → Pass, Fail D/E, Pre-Ineligible
- Fail Both → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2026 (after program performance is revealed) for each program aggregate group by adding the number that stay in the same performance category plus the number that shift from other performance categories.

Step 7: Repeat steps 1 to 6 above using the end of 2026 enrollment by group as the starting point for 2027 and repeat through 2034. The only addition is that in Step 5, two more program transitions are possible for GE programs: Pre-Ineligible moves to Ineligible and Ineligible remains Ineligible.

Step 8: Generate projected Pell and loan volume by program aggregate group from AY 2023 to 2034 under the proposed rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) to get projected total aid amounts by group through 2034. Any enrollment that has dropped out (not enrolled in postsecondary) or in the ineligible category get zero Pell and loan amounts. Note that the average aid amounts by cell come from the PB projections, so are allowed to vary over time.

Step 9: Shift Pell and loan volume under the proposed rule from AYs 2025 to 2034 to FYs 2025 to 2033 for calculating budget cost estimates.

A net savings for the title IV, HEA programs comes through four mechanisms. The primary source is from students who drop out of postsecondary education in the year after their program receives a failing D/E or EP rate or becomes ineligible. The second is for the smaller number of students who remain enrolled at a program that becomes ineligible for title IV, HEA program funds. Third, we assume a budget impact on the title IV, HEA programs from students who transfer from programs that are failing to better-performing programs because the typical aid levels differ between programs according to risk group and program performance. For instance, subsidized direct loan borrowing is 24 percent less ($2044 vs. $1547) for students at GE programs failing the D/E metric in risk group 1 than in passing programs in the same risk group in 2026.

Finally, consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the title IV, HEA programs also reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. To determine the estimated budget impact from reduced loan volume, the difference in yearly loan volumes between the baseline and policy scenarios were calculated as a percent of baseline scenario volumes. This generated an adjustment factor that was applied to loan volumes in the Student Loan Model (SLM) for each cohort, loan type, and risk group combination in the President's Budget for FY2024 (PB2024). The reduced loan volumes are also expected to result in some decrease in future consolidations which is also captured in the model run. Since the implied subsidy rate for each loan type differs by risk group, enrollment shifts to risk groups with greater expected repayment would generate a net budget savings. Since our analysis does not incorporate differences in subsidy rates between programs in the same risk group, such as between programs passing and failing the D/E or EP metrics, these estimates potentially understate the increase in expected repayment resulting from the proposed regulations.

Methodology for Costs, Benefits, and Transfers

The estimated enrollment in each aggregate program group is used to quantify the costs, benefits, and transfers resulting from the proposed regulations for each year from 2023 to 2033. As described in the Discussion of Costs, Benefits, and Transfers, we quantify an earnings gain for students from attending higher financial value programs and the additional tax revenue that comes from that additional earnings. We quantify the cost associated with additional instructional expenses to educate students who shift to different types of programs and the transfer of instructional expenses as students shift programs. We also estimate the transfer of title IV, HEA program funds from programs that lose students to programs that gain students.

Earnings Gain Benefit

A major goal of greater transparency and accountability is to shift students towards higher financial value programs--those with greater earnings potential, lower debt, or both. To quantify the earnings gain associated with the proposed regulation, we estimate the aggregate annual earnings of would-be program graduates under the baseline and policy scenarios and take the difference. For each risk group and program performance group, we compute the enrollment-weighted average of median program earnings. Average earnings for programs that have become ineligible is assumed to be the average of median earnings for programs in the three failing categories, weighted by the enrollment share in these categories. This captures, for instance, that the earnings of 2-year programs that become ineligible are quite lower than those that enroll graduate students. Since we have simulated enrollment, but not completion, annual program enrollment is converted into annual program completions by applying a ratio that differs for 2-year programs or less, Bachelor's degree programs, or graduate programs.[278] Earnings for students that do not complete are not available and thus not included in our calculations. Students that drop out of failing programs (or decline to enroll altogether) are assumed to receive earnings equal to the median earnings of high school graduates in the State (the same measure used for the Earnings Threshold). Therefore, earnings could increase for this group if students reduce enrollment in programs leading to earnings less than a high school graduate. We estimate aggregate earnings by program group by multiplying enrollment by average earnings, reported in Table 5.7, and the completion ratio.

Table 5.7 Average Program Earnings by Group ($2019)

	Pass	Fall D/E	Fail EP only	Fail Both	Ineligible
GE Programs					
Proprietary 2yr or less	38,147	28,673	18,950	18,498	20,408
Public/NP 2yr or less	37,235	30,234	19,904	18,400	19,789
Bachelor Lower	51,096	31,160	5,147	23,491	30,427
Bachelor Upper	51,096	31,160	5,147	23,491	30,427
Graduate	66,848	47,523	15,891	19,972	46,056
Non-GE Programs					
Public/NP 2yr or less	36,473	29,626	23,502	19,071	N/A
Bachelor Lower	47,602	28,723	19,813	20,729	N/A
Bachelor Upper	47,602	28,723	19,813	20,729	N/A
Graduate	74,631	55,654	19,765	22,747	N/A

Students experience earnings gain each year they work following program completion. We compute the earnings

[278] The ratios used are 11.5% for 2-year or less, 16.5% for Bachelor's programs, and 27.3% for graduate programs. These are the ratio between number of title IV, HEA completers in the two-year earnings cohort and the average title IV, HEA enrollment in the 2016 and 2017 Award Years.

benefit over the analysis window by giving 2026 completers 7 years of earnings gains, 2027 completers 6 years of earnings gains, and so on. The earnings gain of students that graduate during 2033 are only measured for one year. In reality program graduates would experience an earnings gain annually over their entire working career; our estimates likely understate the total likely earnings benefit of the policy.

However, our approach can overstate the earnings gain of students that shift programs if students experience a smaller earnings gain than the average difference between passing and failing programs within each GE-by-risk group in Table 5.7. To account for this, we apply an additional adjustment factor to the aggregate earnings difference to quantify how much of the earnings difference is accounted for by programs.

There is not consensus in the research literature on the magnitude of this parameter, with some studies finding very large impacts of specific programs or institutions on earnings[279] and others finding smaller impacts.[280] Unfortunately, many of these studies are set in specific contexts (e.g. only public four-year universities in one state) and most look at institutions overall rather than programs, which may not extrapolate to our setting given the large outcome variation across programs in the same institution.

To select the value used for this adjustment factor, we compared the average earnings difference between passing and failing programs (conditional on credential level) before versus after controlling for the rich demographic characteristics described in "Student Demographic Analysis." We find that this conditional earnings difference declined by approximately 25 percent after controlling for the share of students in each race/ethnic category, the share of students that are male, independent, first-generation, and a Pell recipient, and the average

[279] Hoekstra, Mark (2009) The Effect of Attending the Flagship State University on Earnings: A Discontinuity-Based Approach, Review of Economics and Statistics 2009, 91 (4): 717-724.
Hoxby, C.M. 2019. The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education*, C. M. Hoxby and K. M. Stange(eds). University of Chicago Press: Chicago, 2019.
Andrews, R. J., & Stange, K. M. (2019). Price regulation, price discrimination, and equality of opportunity in higher education: Evidence from Texas. *American Economic Journal: Economic Policy*, 11.4, 31-65.
Andrews, Rodney, Scott Imberman, Michael Lovenheim, & Kevin Stange (2022). The Returns to College Major Choice: Average and Distributional Effects, Career Trajectories, and Earnings Variability. NBER Working Paper 30331, August 2022.
[280] Mountjoy, Jack and Brent Hickman (2021). The Returns to College(s): Relative Value-Added and Match Effects in Higher Education. NBER Working Paper 29276, September 2021.

family income of students.[281] Our primary estimates thus adjust the raw earnings difference in Table 5.7 down using an adjustment factor of 75 percent.

Given the uncertainty around the proper adjustment factor to use, we include a range of values in the sensitivity analysis. We seek public comment as to how best to craft any further assumptions of the earnings benefits of the Financial Value Transparency and Gainful Employment components of the proposed rule.

In the analysis of alternative options above, we showed the expected change in earnings for students that transfer from failing programs for each credential-level by 2-digit CIP code. Across all credential levels, students that shift from failing GE programs were expected to increase annual earnings by 44 percent and those transferring from failing non-GE programs were expected to increase annual earnings by 22 percent. These estimates are in line with those from Table 5.7 and used in the benefit impact.

Fiscal Externality Benefit

The increased earnings of program graduates would generate additional Federal and State tax revenue and reductions in transfer program expenditure. To the earnings gain, we multiply an average marginal tax and

[281] Note that both the "raw" and fully controlled regressions include indicators for credential level, as enrollment is not permitted to move across credential levels in our budget simulations other than modest shift from 2-year programs to lower-division four-year programs.

transfer rate of 18.6 percent to estimate the fiscal benefit. This rate was computed in Hendren and Sprung-Keyser (2020) specifically to estimate the fiscal externality of earnings gains stemming from improvement in college quality, so it is appropriate for use in our setting.[282] The rate is derived from 2016 CBO estimates and includes Federal and State income taxes and transfers from the Supplemental Nutrition Assistance Program (SNAP) but excludes payroll taxes, housing vouchers, and other safety-net programs. Note that this benefit is not included in our budget impact estimates.

Instructional Spending Cost and Transfer

To determine the additional cost of educating students that shift from one type of program to another or the cost savings from students who chose not to enroll, we estimate the aggregate annual instructional spending under the baseline and policy scenarios and take the difference. We used the instructional expense per FTE enrollee data from IPEDS to calculate the enrollment-weighted average institutional-level instructional expense per FTE student for programs by risk group and performance result, separately for GE programs and non-GE programs. Average spending for programs that have become ineligible is assumed to be the average of the three failing categories,

[282] Hendren, Nathaniel, and Ben Sprung-Keyser. 2020. "A Unified Welfare Analysis of Government Policies." Quarterly Journal of Economics 135 (3): 1209-1318.

weighted by the enrollment share in these categories. These estimates are reported in Table 5.8. We estimate aggregate spending by program group by multiplying enrollment from 2023 through 2033 by average spending.

Table 5.8 Average Instructional Cost per FTE by Group

	Pass	Fall D/E	Fail EP only	Fail Both	Ineligible
GE Programs					
Proprietary 2yr or less	4,392	3,038	4,347	3,957	4,045
Public/NP 2yr or less	7,334	5,859	4,956	3,681	4,838
Bachelor Lower	3,671	2,667	844	3,396	2,721
Bachelor Upper	3,671	2,667	844	3,396	2,721
Graduate	5,309	3,896	1,837	5,151	3,959
Non-GE Programs					
Public/NP 2yr or less	6,411	5,197	5,940	4,357	N/A
Bachelor Lower	11,274	7,467	8,572	11,419	N/A
Bachelor Upper	11,274	7,467	8,572	11,419	N/A
Graduate	15,696	15,874	7,528	24,355	N/A

Note that since we are using institution-level rather than program-level spending, this will not fully capture spending differences between undergraduate and graduate enrollment, between upper and lower division, and across field of study.[283]

[283] This may cause our estimates to slightly understate the instructional cost impact since failing programs are disproportionately in lower-earning fields and lower credential levels, which tend to have lower instructional costs. Though we anticipate most movement will be within field and credential level, which would mute this effect. See Steven W. Hemelt & Kevin M. Stange & Fernando Furquim & Andrew Simon & John E. Sawyer, 2021. "Why Is Math Cheaper than English? Understanding Cost Differences in Higher Education," Journal of Labor Economics, vol 39(2), pages 397-435.

To calculate the transfer of instructional expenses from failing to passing programs, we multiply the average instructional expense per enrollee shown in 5.7 by the estimated number of annual student transfers for 2023 to 2033 from each risk group and failing category.

Student Aid Transfers

To calculate the amounts of student aid that could transfer with students each year, we multiply the estimated number of students receiving title IV, HEA program funds transferring from ineligible or failing GE and non-GE programs to passing programs in each risk category each year by the average Pell Grant, Stafford subsidized loan, unsubsidized loan, PLUS loan, and GRAD PLUS loan per enrollment in the same categories.

To annualize the amount of benefits, costs, and title IV, HEA program fund transfers from 2023 to 2033, we calculate the net present value (NPV) of the yearly amounts using a discount rate of 3 percent and a discount rate of 7 percent and annualize it over 10 years.

6. Net Budget Impacts

These proposed regulations are estimated to have a net Federal budget impact of $-12.6 billion, consisting of $-8.6 billion in reduced Pell Grants and $-4.1 billion for loan cohorts 2024 to 2033.[284] A cohort reflects all loans

[284] Since the policy is not estimated to shift enrollment until AY 2026 (which includes part of FY 2025), we present enrollment and budget impacts starting in 2025. Impacts in both AY and FY 2024 are zero.

originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The baseline for estimating the cost of these final regulations is the President's Budget for 2024 (PB2024) as modified for the proposed changes to the REPAYE plan published in the NPRM dated January 10, 2023. The GE and Financial Transparency provisions are responsible for the estimated net budget impact of the proposed regulations, as described below. The other provisions are considered in the Other Provisions section of this Net Budget Impact topic.

Gainful Employment and Financial Transparency

The proposed regulations are estimated to shift enrollment towards programs with lower debt-to-earnings or higher median earnings or both, and away from programs that fail either of the two performance metrics. The vast majority of students are assumed to resume their education at the same or another program in the event they are warned about poor program performance or if their program loses eligibility. The proposed regulations are also estimated to reduce overall enrollment, as some students decide to not enroll. Table 6.1 summarize the main enrollment results for non-GE programs. Enrollment in non-GE programs is expected to increase by about 0.3 percent relative to baseline over the budget period. There is a modest enrollment shift towards programs that pass both metrics, with a particularly large (proportionate) reduction in the share of enrollment in programs that fail D/E. By the end of the analysis window, 96.5 percent of enrollment is expected to be in passing programs.

Table 6.1 Primary Enrollment Estimate (non-GE programs)

		2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)										
	Baseline	14.119	13.974	13.839	13.710	13.588	13.472	13.364	13.265	13.170
	Policy	14.119	14.001	13.885	13.766	13.646	13.530	13.418	13.311	13.209
Percent of Enrollment by Program Performance										
Pass	Baseline	95.6	95.6	95.6	95.6	95.7	95.7	95.7	95.8	95.8
	Policy	95.6	95.7	96.0	96.2	96.3	96.4	96.4	96.5	96.5
Fail D/E	Baseline	1.8	1.8	1.8	1.9	1.9	1.9	1.9	2.0	2.0
	Policy	1.8	1.7	1.5	1.4	1.4	1.3	1.3	1.3	1.4
Fail EP	Baseline	2.1	2.1	2.0	2.0	1.9	1.9	1.8	1.8	1.8
	Policy	2.1	2.2	2.1	2.0	2.0	1.9	1.9	1.8	1.8
Fail Both	Baseline	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
	Policy	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4

Table 6.2 reports comparable estimates for GE programs. Note that for GE programs we estimate enrollment in two additional categories: Pre-Ineligible, i.e., programs that would be ineligible for title IV, HEA aid the following year; and Ineligible. Enrollment in GE programs is projected to decline by 8 percent relative to baseline, with the largest marginal decline in the first year

programs become ineligible. There is a large enrollment shift towards programs that pass both metrics, with a particularly large reduction in the share of enrollment in programs that fail EP. By the end of the analysis window, 95.1 percent of enrollment is expected to be in passing programs, compared to 72.2 percent in the baseline scenario.

Table 6.2 Primary Enrollment Estimate (GE programs)

		2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)										
	Baseline	2.628	2.614	2.604	2.596	2.590	2.588	2.588	2.591	2.596
	Policy	2.628	2.472	2.443	2.444	2.437	2.425	2.410	2.394	2.378
Percent of Enrollment by Program Performance										
Pass	Baseline	76.0	75.5	75.1	74.6	74.2	73.7	73.2	72.7	72.2
	Policy	76.0	85.5	91.7	93.7	94.4	94.8	94.9	95.0	95.1
Fail D/E	Baseline	6.8	6.6	6.5	6.4	6.3	6.1	6.0	5.9	5.7
	Policy	6.8	2.3	1.1	1.2	1.2	1.2	1.1	1.1	1.1
Fail EP	Baseline	13.9	14.4	14.9	15.5	16.0	16.6	17.1	17.7	18.3
	Policy	13.9	2.4	1.7	1.8	1.8	1.8	1.8	1.8	1.9
Fail Both	Baseline	3.4	3.4	3.5	3.5	3.6	3.6	3.7	3.7	3.8
	Policy	3.4	0.4	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Pre-Inelig	Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Policy	0.0	9.3	3.2	1.5	1.2	1.2	1.2	1.2	1.2
Inelig	Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Policy	0.0	0.0	2.1	1.7	1.2	0.8	0.7	0.6	0.6

For non-GE programs, these shifts occur primarily across programs that have different performance in the same loan risk category, with a very modest shift from public and non-profit two-year and less programs to lower-division 4-year programs. This is shown in Table 6.3. Shifts away from the public and non-profit two-year sector within non-GE programs is partially offset from shifts into these programs from failing GE programs. Recall that in "Transfer Causes Net Enrollment Increase in Some Sectors" above we showed that the vast majority of community colleges would gain enrollment from the proposed regulations.

Table 6.3 Primary Enrollment Estimates by Risk Group (non-GE programs)

		2025	2026	2027	2028	2029	2030	2031	2032	2033
Projected Total Enrollment by Loan Risk Category (Millions)										
Public/NP 2-year & below	Baseline	2.926	2.818	2.715	2.615	2.519	2.426	2.337	2.251	2.169
	Policy	2.926	2.824	2.723	2.623	2.524	2.428	2.335	2.246	2.160
4-year (lower)	Baseline	6.163	6.093	6.026	5.960	5.896	5.833	5.771	5.712	5.654
	Policy	6.163	6.108	6.054	5.996	5.937	5.878	5.819	5.760	5.701
4-year (upper)	Baseline	2.597	2.580	2.563	2.546	2.530	2.513	2.496	2.481	2.464
	Policy	2.597	2.582	2.567	2.552	2.536	2.520	2.504	2.488	2.472
Graduate	Baseline	2.432	2.483	2.535	2.588	2.644	2.701	2.760	2.821	2.883
	Policy	2.432	2.487	2.541	2.595	2.649	2.704	2.760	2.817	2.875
Percent of Enrollment by Loan Risk Category										
Public/NP 2-year & below	Baseline	20.7	20.2	19.6	19.1	18.5	18.0	17.5	17.0	16.5
	Policy	20.7	20.2	19.6	19.1	18.5	17.9	17.4	16.9	16.4
4-year (lower)	Baseline	43.6	43.6	43.5	43.5	43.4	43.3	43.2	43.1	42.9
	Policy	43.6	43.6	43.6	43.6	43.5	43.4	43.4	43.3	43.2
4-year (upper)	Baseline	18.4	18.5	18.5	18.6	18.6	18.7	18.7	18.7	18.7
	Policy	18.4	18.4	18.5	18.5	18.6	18.6	18.7	18.7	18.7
Graduate	Baseline	17.2	17.8	18.3	18.9	19.5	20.0	20.7	21.3	21.9
	Policy	17.2	17.8	18.3	18.8	19.4	20.0	20.6	21.2	21.8

Table 6.4 reports a similar breakdown for GE programs. Shifts to passing programs are accompanied by a shift away from proprietary two-year and below programs and towards public and non-profit programs of similar length, along with a more modest shift towards lower-division 4-year programs.

Table 6.4 Primary Enrollment Estimates by Risk Group (GE programs)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	
Projected Total Enrollment by Loan Risk Category (Millions)											
Prop. 2-year & below	Baseline	0.710	0.734	0.759	0.785	0.813	0.842	0.872	0.904	0.938	
	Policy	0.710	0.605	0.592	0.606	0.621	0.637	0.653	0.668	0.683	
Public/ NP 2-year & below	Baseline	0.533	0.518	0.504	0.489	0.475	0.462	0.450	0.437	0.424	
	Policy	0.533	0.548	0.551	0.547	0.537	0.523	0.509	0.494	0.480	
4-year (lower)	Baseline	0.794	0.779	0.765	0.752	0.739	0.728	0.717	0.707	0.697	
	Policy	0.794	0.756	0.746	0.742	0.735	0.725	0.714	0.703	0.692	
4-year (upper)	Baseline	0.208	0.202	0.197	0.192	0.186	0.182	0.177	0.172	0.168	
	Policy	0.208	0.194	0.187	0.183	0.178	0.173	0.168	0.163	0.158	
Graduate	Baseline	0.383	0.381	0.379	0.378	0.376		0.374	0.373	0.371	0.369
	Policy	0.383		0.369	0.366	0.367	0.367	0.367	0.366	0.366	0.365
Percent of Enrollment by Loan Risk Category											
Prop. 2-year & below	Baseline	27.0	28.1	29.1	30.3	31.4	32.5	33.7	34.9	36.1	
	Policy	27.0	24.5	24.3	24.8	25.5	26.3	27.1	27.9	28.7	
Public/ NP 2-year & below	Baseline	20.3	19.8	19.4	18.9	18.4	17.9	17.4	16.9	16.3	
	Policy	20.3	22.2	22.5	22.4	22.0	21.6	21.1	20.7	20.2	
4-year (lower)	Baseline	30.2	29.8	29.4	29.0	28.5	28.1	27.7	27.3	26.8	
	Policy	30.2	30.6	30.6	30.4	30.1	29.9	29.6	29.4	29.1	
4-year (upper)	Baseline	7.9	7.7	7.6	7.4	7.2	7.0	6.8	6.6	6.5	
	Policy	7.9	7.9	7.7	7.5	7.3	7.1	7.0	6.8	6.7	
Graduate	Baseline	14.6	14.6	14.6	14.5	14.5	14.5	14.4	14.3	14.2	
	Policy	14.6	14.9	15.0	15.0	15.1	15.1	15.2	15.3	15.3	

As reported in Tables 6.5 and 6.6, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033.

Table 6.5 Estimated Annual Change in Title IV, HEA Aid Volume Relative to Baseline (millions, $2019)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs	Pell	(80)	(157)	(217)	(157)	(149)	(150)	(197)	(210)	(221)	(1,538)

	Subs.	(46)	(54)	(51)	(48)	(52)	(54)	(51)	(53)	(51)	(460)
	Unsub.	(18)	(34)	(123)	(88)	(110)	(175)	(194)	(219)	(238)	(1,200)
	Grad PLUS	87	(30)	(69)	(68)	(199)	(249)	(269)	(285)	(300)	(1,381)
	Par. PLUS	38	53	88	71	77	13	15	13	14	381
GE Programs	Pell	(102)	(354)	(648)	(838)	(906)	(944)	(1,003)	(1,077)	(1,168)	(7,040)
	Subs.	(133)	(327)	(383)	(374)	(372)	(381)	(397)	(418)	(444)	(3,229)
	Unsub.	(229)	(531)	(631)	(595)	(579)	(593)	(610)	(634)	(665)	(5,067)
	Grad PLUS	(10)	(49)	(58)	(49)	(57)	(57)	(54)	(53)	(51)	(437)
	Par. PLUS	(8)	(25)	(18)	(10)	(5)	(11)	(14)	(19)	(26)	(135)
Total	Pell	(181)	(510)	(864)	(995)	(1,055)	(1,094)	(1,200)	(1,287)	(1,388)	(8,574)
	Subs.	(180)	(381)	(435)	(423)	(424)	(435)	(448)	(471)	(495)	(3,689)
	Unsub.	(247)	(564)	(754)	(683)	(689)	(769)	(804)	(853)	(903)	(6,267)
	Grad PLUS	76	(78)	(127)	(117)	(255)	(305)	(323)	(338)	(351)	(1,818)
	Par. PLUS	30	29	70	62	72	2	1	(6)	(13)	246

Table 6.6 Estimated Annual Percent Change in Title IV, HEA Aid Volume by Fiscal Year (%)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs	Pell	-0.80	-0.78	-0.71	-0.18	-0.63	-0.63	-0.67	-0.73	-0.71	-0.65
	Subs.	-0.43	-0.50	-0.48	-0.46	-0.50	-0.52	-0.50	-0.52	-0.51	-0.49
	Unsub.	-0.08	-0.15	-0.55	-0.40	-0.49	-0.77	-0.85	-0.95	-1.03	-0.59
	Grad PLUS	1.72	-0.55	-1.25	-1.19	-3.26	-3.97	-4.21	-4.37	-4.50	-2.58
	Par. PLUS	0.42	0.59	0.96	0.77	0.83	0.13	0.17	0.14	0.15	0.46
GE Programs	Pell	-4.88	-11.87	-14.12	-13.51	-13.86	-14.23	-14.92	-15.74	-16.61	-13.31
	Subs.	-4.75	-10.78	-12.78	-12.12	-11.79	-12.01	-12.32	-12.77	-13.33	-11.41
	Unsub.	-4.74	-10.78	-12.79	-12.15	-11.86	-12.11	-12.44	-12.93	-13.51	-11.48
	Grad PLUS	-1.50	-6.81	-8.01	-6.63	-7.46	-7.42	-7.14	-6.95	-6.78	-6.56
	Par. PLUS	-1.11	-3.43	-2.47	-1.28	-0.63	-1.37	-1.77	-2.38	-3.19	-1.96
Total	Pell	-1.51	-2.73	-3.10	-2.59	-3.05	-3.15	-3.35	-3.60	-3.81	-2.97
	Subs.	-1.32	-2.82	-3.24	-3.17	-3.20	-3.30	-3.43	-3.63	-3.84	-3.10
	Unsub.	-0.95	-2.12	-2.81	-2.55	-2.55	-2.82	-2.93	-3.09	-3.25	-2.57
	Grad PLUS	1.33	-1.29	-2.03	-1.80	-3.73	-4.34	-4.52	-4.64	-4.73	-3.02

	Par. PLUS	0.31	0.29	0.71	0.62	0.72	0.02	0.01	-0.06	-0.13	0.28

Table 6.7 reports the annual net budget impact after accounting for estimated loan repayment. We estimate a net Federal budget impact of $12.6 billion, consisting of $8.6 billion in reduced Pell Grants and $4.1 billion for loan cohorts 2024 to 2033.

Table 6.7 Estimated Annual Net Budget Impact (Outlays in millions)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Pell	-181	-510	-864	-995	-1,055	-1,094	-1,200	-1,287	-1,388	-8,574
Subs.	-38	-99	-121	-117	-115	-115	-117	-140	-114	-975
Unsub.	-36	-115	-177	-174	-169	-185	-197	-208	-216	-1,476
PLUS (Par. & Grad)	-55	-56	-62	-66	-94	-106	-106	-108	-111	-764
Consol.	0	-1	-10	-33	-65	-109	-157	-207	-262	-844
Total	-310	-781	-1,234	-1,385	-1,498	-1,609	-1,777	-1,950	-2,091	-12,633

The provisions most responsible for the costs of the proposed regulations are those related to Financial Value Transparency and Gainful Employment. The Department does not anticipate significant costs related to the Ability to Benefit, Financial Responsibility, Administrative Capability, and Certification Procedures provisions.

The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. However, realized budget impacts will be heavily influenced by actual program performance, student response to program performance, student borrowing and repayment behavior, and changes in enrollment as a result of the regulations. For example, if students, including prospective students, react more strongly to the warnings, acknowledgement requirement, or potential ineligibility of programs than anticipated and, if many of these students leave postsecondary education, the impact on Pell Grants and loans could increase. Similarly, if institutions react to the regulations by improving performance, the assumed enrollment and aid amounts could be overstated, though this would be very beneficial to students. Finally, if students' repayment behavior is different than that assumed in the model, the realized budget impact could be larger or smaller than our estimate.

Other Provisions

The proposed regulations related to Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit have not been estimated to have a significant budget impact. This is consistent with how the Department has treated similar changes in recent regulatory packages related to Financial Responsibility and Certification Procedures. The Financial Responsibility triggers are intended to identify struggling institutions and increase the financial protection the Department receives. While this may increase recoveries from institutions for certain types of loan discharges, affect the level of closed school discharges, or result in the Department withholding title IV, HEA funds, all items that would have some budget impact, we have not estimated any savings related to those provisions. Historically, the Department has not been able to obtain much financial protection obtained from closed schools and existing triggers have not been used to a great extent. Therefore, we would wait to include any effects from the proposed revisions until indications are available in title IV, HEA loan data that they meaningfully reduce closed school discharges or significantly increasing recoveries. However, we did run some sensitivity analyses where these changes did affect these discharges, as described in Table 6.8. We only project these sensitivity analyses affecting future cohorts of loans since it would be related to financial protection obtained in the future.

Table 6.8 Financial Responsibility Sensitivity Analysis

Scenario	**Cohorts 2024-2033 Outlays ($ in millions)**
Closed School Discharges Reduced by 5 percent	-4,060
Closed School Discharges Reduced by 25 percent	-5,516
Borrower Defense Discharges Reduced by 5 percent	-4,130

Borrower Defense Discharges Reduced by 15 percent	-4,290

7. Accounting Statement

As required by OMB Circular A-4, we have prepared an accounting statement showing the classification of the benefits, costs, and transfers associated with the provisions of these regulations.

Primary Estimates

We estimate that by shifting enrollment to higher financial-value programs, the proposed regulations would increase student’s earnings, resulting in net after-tax gains to students and benefits for taxpayers in the form of additional tax revenue. Table 7.1 reports the estimated aggregate earnings gain for each cohort of completers, separately for GE and non-GE programs, and the cumulative (not discounted) earnings gain over the budget window. The proposed regulation is estimated to generate $19.4 billion of additional earnings gains over the budget window, both from GE and non-GE programs. Using the approach described in “Methodology for Costs, Benefits, and Transfers,” we expect $15.8 billion to benefit students and $3.6 billion to benefit Federal and State governments and taxpayers.

Table 7.1 Annual and Cumulative Earnings Gain and Distribution between Students and Government (millions, $2019)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total

Single-year Earnings Gains of Each Cohort of Completers										
Non-GE	0	251	513	644	703	701	670	599	520	4,602
GE	0	378	654	780	824	818	792	756	712	5,714
Total	0	629	1,167	1,423	1,527	1,519	1,463	1,355	1,232	10,316
Cumulative Earnings Gain										
Cumulative gain	0	629	1,797	2,591	2,950	3,046	2,982	2,818	2,587	19,400
Student share	0	512	1,462	2,109	2,401	2,479	2,427	2,294	2,106	15,792
Gov't share	0	117	334	482	549	567	555	524	481	3,608

The proposed rule could also alter aggregate instructional spending, by shifting enrollment to higher-cost institutions (an increase in spending) or by reducing aggregate enrollment (a decrease in spending). Table 7.2 reports estimated annual and cumulative changes in instructional spending, overall and separately for GE and non-GE programs. The net effect is an increase in aggregate cumulative instructional spending of $2.7 billion (not discounted), though this masks differences between non-GE programs (net increase in spending) and GE programs (net decrease in spending). Spending is reduced in the first year of the policy due to the decrease in enrollment, but then increases as more students transfer to more costly programs.

Table 7.2 Instructional Spending Change (millions, $2019)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total

Non-GE	0	362	644	780	836	830	794	702	613	5,562
GE	0	-435	-358	-258	-240	-282	-352	-434	-525	-2,883
Total	0	-73	287	522	596	548	442	268	88	2,679

The proposed rule would create transfers between students, the Federal Government, and among postsecondary institutions by shifting enrollment between programs, removing title IV, HEA eligibility for GE programs that fail a GE metric multiple times, and causing some students to choose non-enrollment instead of a low value program. Table 7.3 reports the number of enrolments that transfer programs, remain enrolled at ineligible programs, or decline to enroll in postsecondary education altogether. We estimate that more than 1.6 million enrollments would transfer from low financial value programs to better programs over the decade. A more modest number would remain enrolled at a program that is no longer eligible for title IV, HEA aid.

Table 7.3 Estimated Enrollment of Transfers and Ineligible Under Proposed Regulation

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	Transfer	0	115,145	112,088	97,411	88,455	83,331	80,240	78,200	76,722	731,591
	Inelig	0	0	0	0	0	0	0	0	0	0
GE	Transfer	0	212,919	191,246	129,756	94,840	77,576	69,140	64,862	62,537	902,876
	Inelig	0	0	50,106	41,127	28,100	20,400	16,374	14,284	13,168	183,559
Total	Transfer	0	328,064	303,334	227,167	183,296	160,906	149,380	143,062	139,259	1,634,467
	Inelig	0	0	50,106	41,127	28,100	20,400	16,374	14,284	13,168	183,559

The resulting reductions in expenditures on title IV, HEA program funds from enrollment declines and continued enrollment at non-eligible institutions are classified as transfers from affected student loan borrowers and Pell grant recipients to the Federal Government. The combined reduction in title IV, HEA expenditures was presented in the Net Budget Impacts section above. Transfers also include title IV, HEA program funds that follow students as they shift from low-performing programs to higher-performing programs, which is presented in Table 7.4.

Table 7.4 Estimated Title IV, HEA Aid Transferred from Failing to Passing Programs Under Proposed Regulation ($2019, millions)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	0	547	532	466	430	409	396	387	381	3,548
GE	0	1,163	1,039	700	512	417	370	347	333	4,882
Total	0	1,710	1,571	1,167	942	826	766	734	715	8,430

Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another.

Table 7.5 provides our best estimate of the changes in annual monetized benefits, costs, and transfers as a result of these proposed regulations. Our baseline estimate with a discount rate of 3 percent is that the proposed regulation would generate $1.851 billion of annualized benefits against $371 million of annualized costs and $1.209 billion of transfers to the Federal government and $836 million transfers from failing programs to passing programs. A discount rate of 7 percent results in $1.734 billion of benefits against $361 million of annualized costs and $1.138 billion of transfers to the Federal government and $823 million transfers from failing programs to passing programs. Note that the accounting statement does not include benefits that are unquantified, such as benefits for students associated with lower default and better credit and benefits for institutions from improved information about their value.

Table 7.5 Accounting Statement for Primary Scenario

	Annualized Impact (millions, $2019)	
	Discount rate = 3%	Discount rate = 7%
Benefits		
Earnings gain (net of taxes) for students	1,507	1,411
Additional Federal and State tax revenue and reductions in transfer program expenditure (not included in budget impact)	344	323
For students, lower default, better credit leading to family and business formation, more retirement savings. For institutions, increased enrollment and revenue associated with new enrollments from improved information about value.	Not quantified	
Costs		
Greater instructional spending	258	245
Additional reporting by institutions	89.0	92.3
Warning/acknowledgment by institutions and students	20.1	20.1
Implementation of reporting, website, acknowledgement by ED	3.4	4.0
Time/moving cost for transfers; Investments to improve program quality	Not quantified	
Transfers		
Transfer of Federal Pell dollars to Federal government from enrollment reduction	821	773
Transfer of Federal loan dollars to Federal government from reduced borrowing and greater repayment	388	365
Transfer of aid dollars from non-passing programs to passing programs	836	823
Transfer of State aid dollars from failing programs for dropouts	Not quantified	

Sensitivity Analysis

We conducted the simulations of the rule while varying several key assumptions. Specifically, we provide estimates of the change in title IV, HEA volumes using varied assumptions about student transitions, student dropout, program performance, and the earnings gains associated with enrollment shifts. We believe these to be the main sources of uncertainty in our model.

<u>Varying levels of student transition</u>

Our primary analysis assumes rates of transfer and dropout for GE programs based on the research literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives and few alternatives, respectively, as shown in Table 5.5. As reported in Tables 7.6 and 7.7, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033, regardless of if all students have the highest or lowest amount of transfer alternatives.

Table 7.6 High Transfer Sensitivity Analysis - Estimated Annual Change in Title IV, HEA Aid Volume Relative to Baseline (millions, $2019)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs	Pell	(81)	(160)	(225)	(170)	(165)	(169)	(219)	(233)	(245)	(1,667)

	Subs.	(46)	(54)	(53)	(50)	(55)	(57)	(53)	(55)	(53)	(477)
	Unsub.	(32)	(68)	(168)	(137)	(159)	(224)	(242)	(266)	(284)	(1,580)
	Grad PLUS	71	(71)	(122)	(126)	(258)	(306)	(325)	(340)	(354)	(1,831)
	Par. PLUS	39	56	90	73	79	15	19	17	18	406
GE Programs	Pell	(100)	(338)	(607)	(778)	(841)	(886)	(954)	(1,035)	(1,129)	(6,668)
	Subs.	(131)	(313)	(356)	(348)	(350)	(363)	(382)	(404)	(431)	(3,079)
	Unsub.	(225)	(509)	(590)	(554)	(545)	(565)	(585)	(611)	(642)	(4,826)
	Grad PLUS	(11)	(49)	(55)	(45)	(53)	(53)	(51)	(49)	(48)	(415)
	Par. PLUS	(4)	(15)	(7)	0	3	(4)	(9)	(14)	(21)	(72)
Total	Pell	(179)	(497)	(832)	(947)	(1,005)	(1,055)	(1,171)	(1,267)	(1,373)	(8,326)
	Subs.	(177)	(367)	(409)	(399)	(405)	(420)	(435)	(460)	(484)	(3,555)
	Unsub.	(257)	(577)	(759)	(691)	(704)	(788)	(826)	(876)	(926)	(6,406)
	Grad PLUS	59	(120)	(178)	(172)	(311)	(360)	(376)	(389)	(401)	(2,247)
	Par. PLUS	35	41	83	73	82	11	10	3	(3)	334

Table 7.7 Low Transfer Sensitivity Analysis - Estimated Annual Change in Title IV, HEA Aid Volume Relative to Baseline (millions, $2019)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs	Pell	(77)	(149)	(203)	(133)	(114)	(106)	(144)	(149)	(154)	(1,229)
	Subs.	(43)	(44)	(40)	(35)	(38)	(40)	(36)	(38)	(37)	(351)
	Unsub.	13	50	(6)	50	43	(11)	(23)	(41)	(55)	18
	Grad PLUS	121	64	64	92	(19)	(58)	(71)	(81)	(91)	21
	Par. PLUS	37	53	88	73	79	15	17	14	14	391
GE Programs	Pell	(96)	(367)	(721)	(987)	(1,100)	(1,139)	(1,184)	(1,245)	(1,326)	(8,165)
	Subs.	(125)	(352)	(459)	(461)	(453)	(454)	(464)	(480)	(504)	(3,753)

	Unsub.	(216)	(572)	(758)	(740)	(716)	(716)	(722)	(739)	(766)	(5,946)
	Grad PLUS	(10)	(55)	(73)	(66)	(73)	(71)	(68)	(65)	(64)	(546)
	Par. PLUS	(10)	(39)	(46)	(40)	(33)	(37)	(38)	(41)	(47)	(331)
Total	Pell	(173)	(516)	(924)	(1,119)	(1,214)	(1,245)	(1,328)	(1,393)	(1,480)	(9,392)
	Subs.	(168)	(396)	(499)	(497)	(492)	(494)	(500)	(519)	(540)	(4,104)
	Unsub.	(203)	(522)	(765)	(690)	(672)	(728)	(745)	(781)	(822)	(5,928)
	Grad PLUS	111	9	(9)	26	(93)	(130)	(139)	(147)	(155)	(525)
	Par. PLUS	27	13	43	33	46	(22)	(20)	(27)	(34)	59

No program improvement

Our primary analysis assumes that both non-GE and GE programs improve performance after failing either the D/E or EP metric and that GE programs that pass both metrics still improve performance in response to the rule. We incorporate this by increasing the fail to pass program transition rate by 5 percentage points for each type of program failure after 2026 for GE and non-GE programs, by reducing the rate of repeated failure by 5 percentage points for GE and non-GE programs, and by increasing the rate of a repeated passing result by two and a half percentage points for GE programs. The alternative model will assume no program improvement in response to failing metrics.

As reported in Table 7.8, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033, regardless of if programs show improvement.

Table 7.8 No Program Improvement Sensitivity Analysis - Estimated Annual Change in Title IV, HEA Aid Volume Relative to Baseline (millions, $2019)

		2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs	Pell	(80)	(157)	(214)	(147)	(124)	(110)	(139)	(135)	(131)	(1,237)
	Subs.	(46)	(54)	(49)	(41)	(40)	(38)	(31)	(29)	(24)	(353)
	Unsub.	(18)	(34)	(110)	(51)	(54)	(105)	(111)	(124)	(132)	(739)
	Grad PLUS	87	(30)	(56)	(34)	(150)	(191)	(204)	(215)	(226)	(1,020)
	Par. PLUS	38	53	90	77	88	28	34	36	40	483
GE Programs	Pell	(102)	(354)	(650)	(854)	(948)	(1,015)	(1,104)	(1,204)	(1,321)	(7,552)
	Subs.	(133)	(327)	(388)	(393)	(404)	(426)	(453)	(484)	(520)	(3,529)
	Unsub.	(229)	(531)	(639)	(627)	(639)	(677)	(714)	(758)	(807)	(5,621)
	Grad PLUS	(10)	(49)	(60)	(55)	(68)	(72)	(73)	(74)	(76)	(535)
	Par. PLUS	(8)	(25)	(22)	(20)	(20)	(31)	(39)	(48)	(59)	(270)
Total	Pell	(181)	(510)	(865)	(1,000)	(1,071)	(1,124)	(1,243)	(1,341)	(1,451)	(8,786)
	Subs.	(180)	(381)	(437)	(434)	(445)	(464)	(484)	(514)	(544)	(3,881)
	Unsub.	(247)	(564)	(749)	(678)	(694)	(782)	(825)	(881)	(939)	(6,360)
	Grad PLUS	76	(78)	(116)	(89)	(218)	(263)	(277)	(290)	(301)	(1,555)
	Par. PLUS	30	29	68	58	67	(4)	(4)	(12)	(19)	213

Alternative earnings gain

Our primary analysis assumes that the earnings change associated with shifts in enrollment is equal to the difference in average earnings between groups defined by loan risk group, program performance category, and whether the program is a GE program or not, multiplied by an adjustment factor equal to 0.75. This adjustment factor was derived from a regression model where the earnings difference between passing and failing programs conditional on credential level was shown to decline by 25 percent when a rich set of student characteristics are controlled for. The estimated earnings gain associated with the rule scales directly with the value of this adjustment factor. A value of 1.0 (all of the difference in average earnings between groups would manifest as earnings gain) would increase the total annualized earnings gain for students from $1.412 billion up to $1.883 billion (3 percent discount rate).

A value of 0.40 reduces it to $0.754 billion; a value of 0.20 reduces it to $0.377 billion. The net fiscal externality increases or decreases proportionately. Each of these two scenarios would involve more of the raw earnings difference between passing and failing programs of the same credential level being explained by factors we are not able to measure (such as student academic preparation) than those that we are able to measure (such as race, sex, parent education, family income, and Pell receipt).[285] Even

[285] In unpublished analysis of approximately 600 programs (defined by 2-digit CIP by institution) at four-year public colleges in Texas as part of their published work, Andrews & Stange (2019) find that a 1 percent increase in log program earnings (unadjusted) is associated with a .72 percent increase in log program earnings after controlling for student

at these low values for the adjustment factor, the estimated earnings benefits of the rule by themselves outweigh the estimated costs.

Additional sensitivity analysis

The Department is currently examining the sensitivity to changes in the following assumptions.

- Constant aid amounts for students that transfer. Our primary analysis assumes that students' aid volume (Pell and loans) would change as they shift enrollment between types of programs. This assumption captures the fact that students moving to less expensive programs would likely require less financial aid. The alternative model will assume that students' aid packages are unchanged when they transfer between institutions.
- Alternative enrollment growth rates. Our primary analysis projects program-level enrollment based on annual growth rates for each credential level and control from 2016 to 2022. It is possible that these recent growth patterns will not continue for the next

race/ethnicity, limited English proficiency, economic disadvantage, and achievement test scores. Additionally controlling for students' college application and admissions behavior reduces this to 0.62. Using the correlation of institution-level average earnings and value-added in Figure 2.1 of Hoxby (2018) we estimate that an earnings gain of $10,000 is associated with a value added gain of roughly $6,000 over the entire sample, of roughly $4,000 for scores below 1200, and of roughly $2,000 for scores below 1000. These relationships imply parameter values of 0.72, 0.62, 0.60, 0.40, and 0.20, respectively. Again, institution-level correlations may not be directly comparable to program-level data.

decade. The alternative model will project baseline enrollment growth using assumed higher and lower growth rates for the sectors that have the highest failure rates of the performance metrics.

We seek public comment as to how best to craft any further assumptions of the possible budgetary effect of the Financial Value Transparency and Gainful Employment components of the proposed rule.

Financial responsibility triggers

We also conducted several sensitivity analyses to provide some indication of the potential effects of the Financial Responsibility triggers if they did result in meaningful increases in financial protection obtained that can offset either closed school or borrower defense discharges. We modeled these as reductions in the amount of projected discharges in these categories. This would not represent a reduction in benefits given to students, but a way of considering what the cost would be if the Department was reimbursed for a portion of the discharges. These are described above in Net Budget Impacts. We seek public comment as to how best to craft any further assumptions of the possible budgetary effect of these triggers.

8. Distributional Consequences

The proposed regulation would advance distributional equity aims because the benefits of the proposed regulation--better information, increased earnings, and more manageable debt repayment--would disproportionately be realized by students who otherwise would have low earnings. Students without access to good information about program performance tend to be more disadvantaged; improved transparency about program performance would be particularly valuable to these students. The proposed regulation improves program quality in the undergraduate certificate sector in particular, which, as documented above, disproportionately enrolls low-income students. Students already attending high-quality colleges, who tend to be more advantaged, would be relatively unaffected by the regulation. The major costs of the program involve additional paperwork and instructional spending, which are not incurred by students directly.

9. Alternatives Considered

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

Financial Value Transparency and Gainful Employment

D/E Rate Only

The Department considered using only the D/E rates metric, consistent with the 2014 Prior Rule. Tables 9.1 and 9.2 show the share of GE and non-GE programs and enrollment that would fail under only the D/E metric compared to our preferred rule that considers both D/E and EP metrics.

Table 9.1 - Percent of GE Students and Programs that Fail Under D/E Only vs. D/E + EP

	Programs		Students	
	Fail D/E Only	Fail D/E + EP	Fail D/E Only	Fail D/E + EP
Public				
UG Certificates	0.0	1.0	0.4	4.4
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.1	0.1	0.4	0.4
Total	0.0	0.9	0.4	4.1
Private, Nonprofit				
UG Certificates	0.6	5.8	4.9	43.5
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.7	0.7	3.5	3.5
Total	0.5	2.6	4.2	28.9
Proprietary				
UG Certificates	5.0	34.0	8.7	50.0
Associate's	10.8	14.8	33.8	38.3
Bachelor's	10.7	10.8	24.3	24.4
Post-BA Certs	0.0	0.0	0.0	0.0
Master's	10.1	10.1	17.9	17.9
Doctoral	10.0	10.0	15.1	15.1
Professional	13.8	13.8	50.7	50.7
Grad Certs	4.8	7.3	37.9	38.6
Total	7.8	22.8	20.5	33.5
Foreign Private				
UG Certificates	0.0	0.0	0.0	0.0
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	1.5	1.5	84.2	84.2
Total	0.9	0.9	79.6	79.6
Foreign For-Profit				
Master's	0.0	0.0	0.0	0.0
Doctoral	0.0	0.0	0.0	0.0
Professional	28.6	28.6	20.3	20.3
Total	11.8	11.8	17.2	17.2

Table 9.2 - Percent of Non-GE Programs and Enrollment at GE Programs that Fail Under D/E Only vs. D/E + EP

	Programs		Students	
	Fail D/E Only	Fail D/E + EP	Fail D/E Only	Fail D/E + EP
Public				
Associate's	0.2	1.7	0.5	7.8
Bachelor's	0.9	1.4	1.3	1.8
Master's	0.4	0.4	1.5	1.5
Doctoral	0.2	0.2	2.6	2.6
Professional	3.3	3.3	7.5	7.5
Total	0.5	1.2	1.0	4.6
Private, Nonprofit				
Associate's	2.7	3.2	23.0	24.7
Bachelor's	0.7	0.9	2.9	4.3
Master's	2.4	2.4	7.7	7.8
Doctoral	2.3	2.3	19.7	19.7
Professional	17.1	17.7	34.6	34.7
Total	1.4	1.7	6.9	7.9
Foreign Private				
Associate's	0.0	0.0	0.0	0.0
Bachelor's	0.1	0.1	1.2	1.2
Master's	0.1	0.1	1.8	1.9
Doctoral	0.0	0.0	0.0	0.0
Professional	3.4	3.4	20.7	20.7
Total	0.2	0.2	2.9	2.9

Alternative Earnings Thresholds

The Department examined the consequences of two different ways of computing the earnings threshold. For the first, we computed the earnings threshold as the annual earnings among all respondents aged 25-34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education. The second is the median annual earnings among respondents aged 25-34 in the American Community Survey who have a high school diploma or GED, but no postsecondary education, and who worked a full year prior to being surveyed. These measures, which are included in the 2022 PPD, straddle our preferred threshold, which includes all respondents in the labor force, but excludes those that are not in the labor force.

Tables 9.3 and 9.4 reports the share of programs and enrollment that would pass GE metrics under three different earnings threshold methods, with our proposed approach in the middle column. The share of enrollment in undergraduate proprietary certificate programs that would fail ranges from 34 percent under the lowest threshold up to 66 percent under the highest threshold. The failure rate for public undergraduate certificate programs is much lower than proprietary programs under all three scenarios, ranging from 2 percent for the lowest threshold to 9 percent under the highest. The earnings threshold chosen would have a much smaller impact on failure rates for degree programs, which range from 36 percent to 46 percent of enrollment for associate's programs and essentially no impact for Bachelor's degree or higher programs.

Table 9.3 - Share of Enrollment in GE Programs that Fail, by Where Earnings Threshold is Set

	% Failing			Total
	DTE + Lower EP	DTE + Medium EP	DTE + Higher EP	Number of Enrollees
Public				
UG Certificates	1.7	4.4	9.1	869,600
Post-BA Certs	0.0	0.0	0.0	12,600
Grad Certs	0.4	0.4	0.4	41,900
Private, Nonprofit				
UG Certificates	27.9	43.5	46.1	77,900
Post-BA Certs	0.0	0.0	0.0	7,900
Grad Certs	3.5	3.5	5.5	35,700
Proprietary				
UG Certificates	31.4	50.0	64.1	549,900
Associate's	34.5	38.3	44.7	326,800
Bachelor's	24.3	24.4	24.9	675,800
Post-BA Certs	0.0	0.0	0.0	800
Master's	17.9	17.9	17.9	240,000
Doctoral	15.1	15.1	15.1	54,000
Professional	50.7	50.7	50.7	12,100
Grad Certs	38.3	38.6	38.6	10,800

Note: Enrollment counts rounded to the nearest hundred.

Table 9.4: Share of GE Programs that Fail, by Where Earnings Threshold is Set

	% Failing			Total
	DTE + Lower EP	DTE + Medium EP	DTE + Higher EP	Number of Programs
Public				
UG Certificates	0.6	1.0	1.6	19,00
Post-BA Certs	0.0	0.0	0.0	900
Grad Certs	0.1	0.1	0.1	1,900
Private, Nonprofit				
UG Certificates	3.3	5.6	6.3	1,400
Post-BA Certs	0.0	0.0	0.0	600
Grad Certs	0.6	0.6	0.7	1,400
Proprietary				
UG Certificates	21.7	33.2	39.8	3,200
Associate's	11.1	14.1	18.1	1,700
Bachelor's	10.5	10.6	11.4	1,000
Post-BA Certs	0.0	0.0	0.0	50
Master's	10.0	10.0	10.0	500
Doctoral	9.8	9.8	9.8	100
Professional	12.5	12.5	12.5	30
Grad Certs	5.5	7.0	7.0	100

Note: Program counts rounded to the nearest 100, except where 50 or fewer.

Tables 9.5 and 9.6 illustrate this for non-GE programs. As with GE programs, the earnings threshold chosen would have almost no impact on the share of Bachelors' or higher programs that fail but would impact failure rates for associate degree programs at public institutions, where the share of enrollment in failing programs ranges from 2 percent at the lowest threshold to 23 percent at the highest. Our proposed measure would result in 8 percent of enrollment failing.

Table 9.5: Share of Enrollment in non-GE Programs that Fail, by Where Earnings Threshold is Set

	% Failing			Total
	DTE + Lower EP	DTE + Medium EP	DTE + Higher EP	Number of Enrollees
Public				
Associate's	1.6	7.8	23.2	5,496,800
Bachelor's	1.4	1.8	4.3	5,800,700
Master's	1.5	1.5	1.6	760,500
Doctoral	2.6	2.6	2.6	145,200
Professional	7.5	7.5	7.5	127,500
Private, Nonprofit				
Associate's	23.3	24.7	27.0	266,900

Bachelor's	3.7	4.3	6.0	2,651,300
Master's	7.7	7.8	7.9	796,100
Doctoral	19.7	19.7	19.7	142,900
Professional	34.7	34.7	34.7	130,400
Note: Enrollment counts rounded to the nearest hundred.				

Table 9.6: Share of non-GE Programs that Fail, by Where Earnings Threshold is Set

	% Failing			Total
	DTE + Lower EP	DTE + Medium EP	DTE + Higher EP	Number of Programs
Public				
Associate's	0.4	1.7	3.6	27,300
Bachelor's	1.0	1.4	3.0	24,300
Master's	0.4	0.4	0.4	14,600
Doctoral	0.2	0.2	0.2	5,700
Professional	3.2	3.2	3.2	600
Private, Nonprofit				
Associate's	2.8	3.1	4.0	2,300
Bachelor's	0.8	0.9	1.4	29,800
Master's	2.4	2.4	2.4	10,400
Doctoral	2.3	2.3	2.3	2,900
Professional	17.2	17.2	17.2	500
Note: Program counts rounded to the nearest 100.				

No Reporting, Disclosure, and Acknowledgment for Non-GE Programs

The Department considered proposing to apply the reporting, disclosure, and acknowledgment requirements only to GE programs, and calculating D/E rates and the earnings premium measure only for these programs, similar to the 2014 Prior Rule. This approach, however, would fail to protect students, families, and taxpayers from investing in non-GE programs that deliver low value and poor debt and earnings outcomes. As higher education costs and student debt levels increase, students, families, institutions, and the public have a commensurately growing interest in ensuring their higher education investments are justified through positive career, debt, and earnings outcomes for graduates, regardless of the sector in which the institution operates or the credential level of the program. Furthermore, comprehensive performance information about all programs is necessary to guide students that would otherwise choose failing GE programs to better options.

Small Program Rates

While we believe the D/E rates and earnings premium measure are reasonable and useful metrics for assessing debt and earnings outcomes, we acknowledge that the minimum n-size of 30 completers would exempt small programs from these Financial Value Transparency measures. In our initial proposals during negotiated rulemaking, the Department considered calculating small program rates in such instances. These small program rates would have been calculated by combining all of an institution's small programs to produce the institution's small program D/E rates and earnings premium measure, which would be used for informational purposes only. In the case of GE programs, these small program rates would not have resulted in program eligibility consequences. Several negotiators questioned the usefulness of the small program rates because they would not provide information specific to any particular program, and because an institution's different small programs in various disciplines could lead to vastly different debt and earnings outcomes. In addition, several negotiators expressed concerns about the use of small program rates as a supplementary performance measure under proposed § 668.13(e). Upon consideration of these points, and in the interest of simplifying the proposed rule, the Department has opted to omit the small program rates.

Alternative components of the D/E rates measure

The Department considered alternative ways of computing the D/E rates measure, including:

- Lower completer thresholds n-size
- Different ways of computing interest rates
- Different amortization periods

We concluded that the proposed parameters used in the D/E rates and earnings premium calculations were most consistent with best practices identified in prior analysis and research.

Discretionary earnings rate

The Department considered simplifying the D/E rates metric by only including a discretionary earnings rate. We believe that using only the discretionary earnings rate would be insufficient because there may be some instances in which a borrower's annual earnings would be sufficient to pass an 8 percent annual debt-to-earnings threshold, even if that borrower's discretionary earnings are insufficient to pass a 20 percent discretionary debt-to-earnings threshold. Utilizing both annual and discretionary D/E rates would provide a more complete picture of a program's true debt and earnings outcomes and would be more generous to institutions because a program that passes either the annual earnings rate or the discretionary earnings rate would pass the D/E rates metric.

Pre- and post- earnings comparison

A standard practice for evaluating the effectiveness of postsecondary programs is to compare the earnings of students after program completion to earnings before program enrollment, to control for any student-specific factors that determine labor market success that should not be attributed to program performance. While the Department introduced limited analysis of pre-program earnings from students' FAFSA data into the evidence above, it is not feasible to perform such comparisons on a wide and ongoing scale in the proposed regulation. Pre-program earnings data is only available for students who have labor market experience prior to postsecondary enrollment, which excludes many students who proceed directly to postsecondary education from high school. Furthermore, earnings data from part-time work during high school is mostly uninformative for earnings potential after postsecondary education. Although some postsecondary programs enroll many students with informative pre-program earnings, many postsecondary programs would lack sufficient numbers of such students to reliably incorporate pre-program earnings from the FAFSA into the proposed regulation.

Financial Responsibility

We considered keeping the existing set of financial responsibility triggers, but ultimately decided it was important to propose to expand the options. The Department is concerned that the existing set of triggers do not properly account for all the scenarios in which there is significant financial risk at an institution. We also believe these additional triggers are necessary due to concerns about the frequency with which institutions close or can face liabilities without sufficient financial protection in place.

The Department considered proposing a mandatory trigger for borrower defense based solely upon the approval of claims. However, we decided not to propose that given that there may be circumstances in which we did not decide to seek to recoup the cost of approved claims or would not be able to do so under the relevant regulations, and in these circumstances it is not necessary to retain financial protection to ensure the institution is able to cover the cost of approved borrower defense claims.

We also considered constructing the proposed trigger related to closing a location or a program solely in terms of the share of locations or programs at an institution. However, we decided that a component that reflects student enrollment is important because if an institution only has two locations but enrolls 95 percent of its students at one of them, then closing the smaller location should not be as much of a concern.

We also considered constructing more of the proposed triggers as requiring a recalculation of the composite score as was done in the 2016 regulations. However, we are concerned that determining how to recalculate the composite score in many circumstances would be challenging and could create additional burden internally and externally to properly assess the financial situation. Moreover, composite scores by their very nature always have a built-in lag since an institution must wait for its fiscal year to end and then conduct a financial audit. The result is that recalculating composite scores that may reflect a quite old financial situation for an institution would not help further the goal of better protecting against unreimbursed discharges or unpaid liabilities. Instead, dividing triggers into situations that would automatically require financial protection versus those where the Department has discretion ensures that the Department can obtain protection more readily when severe situations necessitate it.

Administrative Capability

The Department considered additional guidance regarding the validity of a high school diploma. We are proposing that a high school diploma should not be valid if 1) it does not meet the requirements set by the State agency where the high school is located, 2) it has been deemed invalid by the Department, State agency where the high school is located, or through a court proceeding, 3) was obtained from an entity that requires little or no secondary instruction, or 4) was obtained from an entity that maintains a business relationship with the eligible institution or is not accredited. We considered providing greater discretion to the institution around how it would determine that a high school diploma is valid. However, we are concerned that the current situation, which already incorporates extensive deference, has led to the too many instances of insufficient verification of high school diplomas.

Certification Procedures

For circumstances that may lead to provisional certification, the Department initially considered proposing to make an institution provisionally certified when an institution received the same finding of noncompliance in more than one program review or audit. However, after hearing negotiators' concerns on how and when this provision would be used, we abandoned this proposed specification. We agreed with negotiators who noted that we already have the authority to place an institution on provisional status for repeat findings of noncompliance.

In addition, to address excessive program hours in GE programs, the Department considered proposing to limit title IV, HEA eligibility for GE programs to no longer than the national median of hours required for the occupation in all States that license the occupation (if at least half of States license the occupation). However, negotiators were concerned with funding being cut off before students finished their programs, and many negotiators also pointed out how harmful it would be for students to begin programs with title IV, HEA funds but not be able to finish with them. During negotiations there was also support for the Department to revert to using the "greater" language instead of “lesser”. Ultimately, we are proposing the “greater” language, and we also dropped the proposal of establishing a limitation on the amount of title IV, HEA aid that can be provided to a GE program that is subject to State licensure requirements. We did not propose this out of concern about its complexity and the confusing situation that would arise where a borrower would potentially only receive funding for a portion of their program.

Moreover, to address transcript withholding we initially considered language for institutions at risk of closure to release holds on student transcripts over a de minimis amount of unpaid balances, and to release all holds on student transcripts in the event of a closure. However, negotiators felt that this approach was too narrow and did not go far enough to help students. Several negotiators stated that students of color are disproportionately unable to access their transcripts due to transcript withholding. In addition, one negotiator argued that if an institution was being considered at risk for closure, most students would want to transfer institutions, but unfortunately transcript holds for certain amounts would negatively impact a student's ability to transfer to another institution. As mentioned during negotiations, the Department’s authority to prohibit institutions from withholding transcripts is limited to instances where the institution’s reason for withholding the transcript involves the title IV, HEA functions. However, if an institution is provisionally certified, we may apply other conditions that are necessary or appropriate to the institution, including, but not limited to releasing holds on student transcripts. Accordingly, we are proposing to expand the provisional conditions related to transcript withholding to increase students’ access to their educational records at institutions with risk of closure or institutions that are not financially responsible or administratively capable.

Ability to Benefit

The Department considered not regulating in this area. We were concerned, however, that the lack of an update to ATB regulations since the mid-1990s could create confusion. Moreover, the Department had stated in DCL GEN 16-09 that we would not develop a career pathway program approval process but would instead review the eligibility of these programs through program reviews and audits. This statement in effect allowed institutions to use their best-faith determinations to initiate eligible career pathway programs but provided no framework for how the Department would evaluate these programs from through a program review. This led to a vacuum in guidance for institutions and authority to intervene for the Department. We also think this ultimately chilled the usage of a State process, the first application we received was in 2019 and as of February 2023 only six States have applied for approval. The Department also noted that there were technical updates to the regulations necessary to codify the changes to student eligibility made by Pub. L. 113-235 in 2014. Therefore, we decided the added clarity from these proposed regulations would result in greater usage of the State process for ATB, while still preserving protections for students and taxpayers.

The Department also considered using completion rates as an outcome metric in our approval of a State process, as opposed to the success rate calculation that is required under the current regulation and amended in this proposed regulation. We were concerned with the complexity of developing a framework for a completion rate in regulation for eligible career pathway programs. These programs can be less than two-years, two-years, or four-years long. We did not want to create a framework in regulation that did not account for the nuances between programs. We believe we have clarified the calculation with the proposed amendments to the success rate calculation. We also propose to lower the success rate threshold from 95 percent to 85 percent and to give the Secretary the ability to lower it to 75 percent for up to two years if more than 50 percent of the participating institutions in the State cannot achieve the 85 percent success rate. This would provide participating institutions and the Department reasonable accommodations for unintended or unforeseen circumstances that may arise.

In drafting proposed § 668.157, we initially did not require postsecondary institutions to document that students would receive adult education and literacy activities as described in 34 CFR 463.30 and workforce preparation activities as described in 34 CFR § 463.34, simultaneously. A negotiator recommended that the Department utilize existing definitions in the Code of Federal regulations for concepts like adult education and literacy services and workforce preparation activities, and the Department agreed to propose to cross reference them instead of creating different standards in 34 CFR 668.157. We also did not initially consider proposing to require that, in order to demonstrate that the program aligns with the skill needs of industries in the State or regional labor market, the institution would have to submit (1) Government reports (2) Surveys, interviews, meetings, or other information, and (3) Documentation that demonstrates direct engagement with industry. We were persuaded by a committee member that the documentation the Department initially considered proposing was lacking and could allow programs that did not comply with the definition of an eligible career pathway program to be approved. Our goal is to ensure students have ability to benefit and we believe these proposed reasonable documentation standards would achieve that.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms

or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.2.)

- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

10. Regulatory Flexibility Act Analysis

This section considers the effects that the proposed regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C et seq., Public Law 96-354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a "significant impact on a substantial number of small entities." As we describe below, the Department anticipates that the proposed regulatory action would have a significant economic impact on a substantial number of small entities. We therefore present this Initial Regulatory Flexibility Analysis. Our analysis focuses on the financial value transparency and gainful employment (GE) components of the proposed regulation, as those would have the most economically significant implications for small entities.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is proposing new regulations to address concerns about the rising cost of postsecondary education and training and increased student borrowing by establishing an accountability and transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes, apprise current and prospective students of those outcomes, and provide better information about program price. Proposed regulations for gainful employment would establish eligibility and certification requirements tied to the debt-to-earnings and median earnings (relative to high school graduates) of program graduates. These regulations address ongoing concerns about educational programs that are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings or earnings lower than that of a typical high school graduate. These programs often lead to default or provide no earnings benefit beyond that provided by a high school education, thus failing to fulfill their intended goal of preparing students for gainful employment.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Through the proposed financial value transparency regulations, the Department aims to ensure that prospective students, families, and taxpayers can receive accurate information about program costs, typical borrowing, available financial aid, and realistic earnings potential to evaluate a program and compare it to similar programs offered at other institutions before investing time and resources in a postsecondary program. The GE regulations further aim to ensure that students receiving title IV, HEA aid only enroll in GE programs if such programs prepare students for gainful employment.

The Department's authority to pursue financial value transparency in GE programs and eligible non-GE programs and accountability in GE programs is derived primarily from three categories of statutory enactments: first, the Secretary's generally applicable rulemaking authority in 20 U.S.C. 1221e-3 (section 410 of the General Education Provisions Act) and 20 U.S.C. 3474 (section 414 of the Department of Education Organization Act), along with 20 U.S.C. 1231a, which applies in part to title IV, HEA; second, authorizations and directives within sections 131 and 132 of title IV of the HEA, regarding the collection and dissemination of potentially useful information about higher education programs, as well as section 498 of the HEA, regarding eligibility and certification standards for institutions that participate in title IV; and third, the further provisions within title IV of the HEA, such as sections 101 and 481, which address the limits and responsibilities of gainful employment programs. The specific statutory sources of this authority are detailed in the Authority for This Regulatory Action section of the Preamble above.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Regulations Would Apply

The Small Business Administration (SBA) defines "small institution" using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report data on revenue that is directly comparable across institutions. As a result, for purposes of this NPRM, the Department proposes to continue defining "small entities" by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for a small two-year institution is less than 500 full-time-equivalent (FTE) students and for a small four-year institution, less than 1,000 FTE students.[286] We invite public comment on whether our Regulatory Flexibility Analysis would more accurately reflect the burden on small entities if we instead used the revenue standards set out in 13 CFR part 121, sector 61 – Educational Services.

Table 10.1 Small Institutions Under Enrollment-Based Definition

	Small	**Total**	**Percent**

[286] The Department uses an enrollment-based definition since this applies the same metric to all types of institutions, allowing consistent comparison across all types. For a further explanation of why the Department proposes this alternative size standard, please see Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program (Borrower Defense) proposed rule published July 31, 2018 (83 FR 37242).

Proprietary	1,973	2,331	85%
2-year	1,734	1,990	87%
4-year	239	341	70%
Private not-for-profit	983	1,831	54%
2-year	185	203	91%
4-year	798	1,628	49%
Public	380	1,924	20%
2-year	317	1,145	28%
4-year	63	779	8%
Total	3,336	6,086	55%

Table 10.1 summarizes the number of institutions affected by these proposed regulations. As seen in Table 10.2, the average total revenue at small institutions ranges from $2.6 million for proprietary institutions to $16.6 million at private institutions.

Table 10.2 Average and Total Revenues at Small Institutions

	Average	**Total**
Proprietary	2,593,382	5,116,742,179
2-year	1,782,969	3,091,667,694
4-year	8,473,115	2,025,074,485
Private not-for-profit	16,608,849	16,326,498,534
2-year	3,101,962	573,862,938
4-year	19,740,145	15,752,635,596
Public	8,644,387	3,284,866,903
2-year	4,153,842	1,316,767,990
4-year	31,239,665	1,968,098,913
Total	7,412,502	24,728,107,616

These proposed regulations require additional reporting and compliance by all title IV postsecondary institutions, including all small entities, and thus would have a significant impact on a substantial number of small entities. Furthermore, GE programs at small institutions could be at risk of losing the ability to distribute title IV, HEA funds under the proposed regulations if they fail either the debt-to-earnings (D/E) or Earnings Premium (EP) metrics, as described in the Financial Value and Transparency and GE sections of the proposed regulation. Non-GE programs at small institutions that fail the D/E metric would be required to have students acknowledge having seen this information prior to aid disbursement.

Thus, all (100 percent) of small entities will be impacted by the reporting and compliance aspects of the rule, which we quantify below. As we describe in more detail below, the Department estimates that 1.2 percent of non-GE programs at small institutions would fail the D/E metric, thus triggering the acknowledgement requirement. The Department also estimates that 15.9 percent of GE programs at small institutions would fail either the D/E or EP metric, thus being at risk of losing title IV, HEA eligibility. GE programs represent 45 percent of enrollment at small institutions.

The Department's analysis shows programs at small institutions are much more likely to have insufficient sample size to compute and report D/E and EP metrics, though the rate of failing to pass both metrics is higher for programs at such institutions.[287]

As noted in the net budget estimate section, we do not anticipate that the proposed Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit components of the regulation would have any significant budgetary impact, this includes on a substantial number of small entities. We have, however, run a sensitivity analysis of what an effect of the Financial Responsibility provisions could be on offsetting the transfers of certain loan discharges from the Department to borrowers by obtaining additional funds from institutions. We conclude that these provisions could increase recoveries via closed school discharges or borrower defense of $4 to $5 million from all types of institutions, not just small institutions. Since these amounts scale with the number of students, we anticipate the impact to be much smaller at small entities.

Table 10.3 and 10.4 show the number and percentage of non-GE enrollees and non-GE programs at small institutions in each status relative to the performance standard. The share of non-GE programs that have sufficient data and fail

[287] The minimum number of program completers in a two-year cohort that is required in order for the Department to compute the D/E and EP performance metrics is referred to as the "n-size." An n-size of 30 is used in the proposed rule; GE and non-GE programs with fewer than 30 completers across two years would not have performance metrics computed.

the D/E metric is higher for programs at small institutions (1.6 percent) than it is for all institutions (0.6 percent, Table 3.5). Failing the D/E metric for non-GE programs initiates a requirement that the institution must have title IV, HEA students acknowledge having seen the informational disclosures before Federal student aid is disbursed. The share of title IV, HEA enrollment in such programs is also higher at small institutions (9.3 percent for small institutions vs. 1.9 percent for all institutions, Table 3.5).

Table 10.3 - Number of Enrollees in non-GE Programs at Small Institutions by Result, by control and credential level

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public										
Associate's	23,000	85.0	3,500	13.0	0	0.0	0	0.0	500	2.0
Bachelor's	8,900	75.1	3,000	24.9	0	0.0	0	0.0	0	0.0
Master's	500	32.2	1,100	67.8	0	0.0	0	0.0	0	0.0
Doctoral	300	36.3	600	63.7	0	0.0	0	0.0	0	0.0
Professional	2,100	45.3	1,400	29.8	1,200	24.9	0	0.0	0	0.0
Total	35,000	75.6	9,500	20.7	1,200	2.5	0	0.0	500	1.2
Private, Nonprofit										
Associate's	27,000	58.6	13,500	29.3	2,500	5.5	1,400	3.1	1,600	3.4
Bachelor's	160,200	73.9	43,300	19.9	4,600	2.1	5,100	2.4	3,700	1.7
Master's	28,100	58.1	15,400	31.9	3,700	7.6	1,100	2.3	50	0.1
Doctoral	6,300	37.9	3,600	21.3	6,800	40.4	70	0.4	0	0.0
Professional	8,000	22.4	8,300	23.1	19,400	53.8	0	0.0	200	0.7
Total	229,800	63.1	84,100	23.1	37,000	10.2	7,700	2.1	5,600	1.5
Total										
Associate's	50,000	68.4	17,000	23.3	2,500	3.4	1,400	2.0	2,100	2.9
Bachelor's	169,100	73.9	46,200	20.2	4,600	2.0	5,100	2.2	3,700	1.6
Master's	28,600	57.3	16,500	33.0	3,700	7.4	1,100	2.2	50	0.1
Doctoral	6,700	37.8	4,200	23.5	6,800	38.3	70	0.4	0	0.0
Professional	10,200	25.0	9,700	23.9	20,500	50.5	0	0.0	200	0.6
Total	264,600	64.5	93,600	22.8	38,100	9.3	7,700	1.9	6,100	1.5

Note: Enrollment counts rounded to the nearest 100.

Table 10.4 - Number of non-GE Programs at Small Institutions by Result, by control and credential level

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public										
Associate's	700	97.3	20	2.3	0	0.0	0	0.0	3	0.4
Bachelor's	200	95.4	9	4.6	0	0.0	0	0.0	0	0.0
Master's	30	81.1	7	18.9	0	0.0	0	0.0	0	0.0
Doctoral	20	89.5	2	10.5	0	0.0	0	0.0	0	0.0
Professional	10	60.0	4	26.7	2	13.3	0	0.0	0	0.0
Total	100	95.6	40	3.9	2	0.2	0	0.0	3	0.3

Private, Nonprofit										
Associate's	700	91.6	50	6.7	3	0.4	5	0.6	6	0.7
Bachelor's	4,200	94.7	200	4.1	20	0.4	19	0.4	20	0.4
Master's	900	87.2	100	9.5	30	2.6	6	0.6	2	0.2
Doctoral	200	87.1	10	4.9	20	7.6	1	0.4	0	0.0
Professional	80	65.6	10	10.9	30	21.1	0	0.0	3	2.3
Total	6,100	92.3	400	5.4	90	1.4	31	0.5	30	0.4
Total										
Associate's	1,500	94.3	70	4.6	3	0.2	5	0.3	9	0.6
Bachelor's	4,400	94.7	200	4.1	20	0.4	19	0.4	20	0.3
Master's	1,000	86.9	100	9.8	30	2.5	6	0.6	2	0.2
Doctoral	200	87.2	10	5.3	20	7.0	1	0.4	0	0.0
Professional	100	65.0	20	12.6	30	20.3	0	0.0	3	2.1
Total	7,100	92.7	400	5.2	100	1.2	31	0.4	30	0.4

Note: Program counts rounded to nearest hundred when above hundred, nearest 10 when below 100, and unrounded when below 10.

Tables 10.5 and 10.6 report similar tabulations for GE programs at small institutions. GE programs include non-degree certificate programs at all institutions and all degree programs at proprietary institutions. GE programs at small institutions are more likely to have a failing D/E or EP metrics (15.9 percent of all GE programs at small institutions, compared to 5.5 percent for all institutions in Table 3.9) and have a greater share of enrollment in such programs (45.3 percent vs. 24.0 percent for all institutions in Table 3.8). GE programs that fail the same performance metric in two out of three consecutive years will become ineligible to administer Federal title IV, HEA student aid.

Table 10.5 Number of Enrollees in GE Programs at Small Institutions by Result, by control and credential level

	Result in 2019									
	No data	Pass	Fail D/E only	Fail both D/E and EP			Fail EP only			
	N	%	N	%	N	%	N	%	N	%
Public										
UG Cert.	26,000	71.8	9,300	25.7	0	0.0	0	0.0	900	2.6
Post-BA Cert.	<30	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Cert.	100	77.2	40	22.8	0	0.0	0	0.0	0	0.0
Total	26,100	71.8	9,300	25.6	0	0.0	0	0.0	900	2.6
Private, Nonprofit										

UG Cert.	9,100	45.6	5,100	25.8	0	0.0	100	0.6	5,500	27.9
Post-BA Cert.	1,400	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Cert.	1,400	70.3	0	0.0	600	29.7	0	0.0	0	0.0
Total	11,900	51.0	5,100	22.0	600	2.6	100	0.5	5,500	23.8
Proprietary										
UG Cert.	44,700	21.6	36,500	17.6	80	0.0	25,200	12.1	101,000	48.7
Associate's	18,800	40.9	12,600	27.4	7,100	15.5	5,200	11.3	2,300	5.0
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.2	200	1.7	0	0.0
Post-BA Cert.	50	55.8	40	44.2	0	0.0	0	0.0	0	0.0
Master's	2,900	74.2	200	3.9	300	8.2	600	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Cert.	300	77.8	0	0.0	0	0.0	0	0.0	70	22.2
Total	78,200	28.3	53,000	19.2	10,500	3.8	31,100	11.3	103,400	37.4
Total										
UG Cert.	79,800	30.3	50,900	19.3	80	0.0	25,300	9.6	107,500	40.8
Associate's	18,800	40.9	12,600	27.4	7,100	15.5	5,200	11.3	2,300	5.0
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.2	200	1.7	0	0.0
Post-BA Certs	1,400	97.4	40	2.6	0	0.0	0	0.0	0	0.0
Master's	2,900	74.2	200	3.9	300	8.2	500	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Certs	1,800	71.7	30	1.4	600	24.0	0	0.0	70	2.9
Total	116,300	34.6	67,400	20.1	11,100	3.3	31,300	9.3	109,800	32.7

Note: Enrollment counts rounded to the nearest 100, except where counts are less than 100, where they are rounded to nearest 10 (and suppressed when under 30).

Table 10.6 Number of GE Programs at Small Institutions by Result, by control and credential level

	Result in 2019									
	No data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public										
UG Certificates	1,700	92.4	100	6.3	0	0.0	0	0.0	20	1.3
Post-BA Certs	10	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	10	91.7	1	8.3	0	0.0	0	0.0	0	0.0
Total	1,700	92.5	100	6.3	0	0.0	0	0.0	20	1.2
Private, Nonprofit										
UG Certificates	300	83.9	40	9.0	0	0.0	1	0.2	30	6.8
Post-BA Certs	100	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	100	98.1	0	0.0	2	1.9	0	0.0	0	0.0
Total	600	89.6	40	5.7	2	0.3	1	0.2	30	4.3
Proprietary										
UG Certificates	1,000	52.3	200	10.6	1	0.1	100	6.4	600	30.6
Associate's	500	79.6	70	9.6	36	5.3	20	2.9	20	2.5
Bachelor's	200	87.9	20	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs	10	91.7	1	8.3	0	0.0	0	0.0	0	0.0
Master's	90	91.8	2	2.0	2	2.0	4	4.1	0	0.0
Doctoral	30	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	20	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	20	84.2	0	0.0	0	0.0	0	0.0	3	15.8
Total	1,900	63.3	300	9.7	52	1.7	200	5.0	620	20.4
Total										
UG Certificates	3,100	72.8	400	8.6	1	0.0	100	3.0	650	15.5
Associate's	500	79.6	70	9.6	36	5.3	20	2.9	20	2.5
Bachelor's	200	87.9	20	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs	200	99.4	1	0.6	0	0.0	0	0.0	0	0.0
Master's	100	91.8	2	2.0	2	2.0	4	4.1	0	0.0
Doctoral	30	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	20	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	100	95.6	1	0.7	2	1.5	0	0.0	3	2.2
Total	4,200	76.1	500	8.1	54	1.0	200	2.8	700	12.1

Note: Program counts rounded to nearest hundred when above hundred, nearest 10 when below 100, and unrounded when below 10.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Regulations, Including an Estimate of the Classes of Small Entities That Would Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule involves four types of reporting and compliance requirements for institutions, including small entities. First, under proposed § 668.43, institutions would be required to provide additional programmatic information to the Department and make this and additional information assembled by the Department available to current and prospective students by providing a link to a Department-administered disclosure website. Second, under proposed § 668.407, the Department would require acknowledgments from current and prospective students prior to the disbursement of title IV, HEA funds if an eligible non-GE program leads to high debt outcomes based on its D/E rates. Third, under proposed § 668.408, institutions would be required to provide new annual reporting about programs, current students, and students that complete or withdraw during each award year. As described in the Preamble of this proposed rule, reporting includes student-level information on enrollment, cost of attendance, tuition and fees, allowances for books and supplies, allowances for housing, institutional and other grants, and private loans disbursed. Finally, under proposed § 668.605, institutions with GE programs that fail at least one of the metrics would be required to provide warnings to current and prospective students about the risk of losing title IV, HEA eligibility and would require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

Initial estimates of the reporting and compliance burden for these four items for small entities are provided in

Table 10.7, though these are subject to revision as the content of the required reporting is refined.[288]

Table 10.7 Initial and Subsequent Reporting and Compliance Burden for Small Entities		
§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	6,700,807
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.	25,522
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	31,121,875 initial, 12,689,497 subsequent years
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.	415,809

[288] For subparts 68.43, 668.407, and 668.605, these estimates were obtained by proportioning the total PRA burden falling on institutions by the share of institutions that are small entities, as reported in Table 10.1 (55 percent).

As described in the Preamble, much of the necessary information for GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. Furthermore, 88 percent of public and 47 percent of private non-profit institutions operated at least one GE program and thus have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, the Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past for the first year of implementation, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

The Department recognizes that institutions may have different processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. As noted previously, a high percentage of institutions have already reported data related to the 2014 Prior Rule or similar variables for other purposes. Many institutions may have systems that can be queried or existing reports that can be adapted to meet these reporting requirements. On the other hand, some institutions may still have data entry processes that are very manual in nature and generating the information for their programs could involve many more hours and resources. Small entities may be less likely to have invested in systems and processes that allow easy data reporting because it is not needed for their operations. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others.

We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level. There would be a cost to establish the query or report and validate it upfront, but then the marginal increase in costs to process additional programs or students should not be too significant. The reporting process will involve staff members or contractors with different skills and levels of responsibility. We have estimated this using Bureau of Labor statistics median hourly wage rates for postsecondary administrators of $46.59[289]. Table 10.8 presents the Department's estimates of the hours associated with the reporting requirements.

Table 10.8: Estimated Hours for Reporting Requirements

Process	**Hours**	**Hours basis**
Review systems and existing reports for adaptability for this reporting	10	Per institution
Develop reporting query/result template		
Program-level reporting	15	Per institution
Student-level reporting	30	Per institution
Run test reports		
Program-level reporting	0.25	Per institution
Student-level reporting	0.5	Per institution
Review/validate test report results		
Program-level reporting	10	Per institution
Student-level reporting	20	Per institution
Run reports		
Program-level reporting	0.25	Per program
Student-level reporting	0.5	Per program
Review/validate report results		
Program-level reporting	2	Per program
Student-level reporting	5	Per program
Certify and submit reporting	10	Per institution

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first reporting cycle includes information from several prior years, means that the expected burden should decrease significantly after the first reporting cycle. We estimate that the hours associated with reviewing systems,

[289] Available at https://www.bls.gov/oes/current/oes119033.htm.

developing or updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. The queries or reports would have to be run and validated to make sure no system changes have affected them and the institution will need to confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation, or other items, but we expect that would be less burdensome than initially establishing the reporting. Table 10.9 presents estimates of reporting burden for small entities for the initial year and subsequent years under proposed § 668.408.

Table 10.9.1: Estimated Reporting Burden for Small Entities for the Initial Reporting Cycle

Control and Level	Institution Count	Program Count	Hours	Amount
Private 2-year	139	393	25,492	1,187,684
Proprietary 2-year	1,227	2,635	199,170	9,279,342
Public 2-year	286	2,058	91,183	4,248,193
Private 4-year	655	6,876	275,872	12,852,888
Proprietary 4-year	146	1,098	48,018	2,237,135
Public 4-year	52	751	28,260	1,316,633
Total	2,505	13,811	667,995	31,121,875

Table 10.9.2: Estimated Reporting Burden for Small Entities for Subsequent Reporting Cycle

Control and Level	Institution Count	Program Count	Hours	Amount
Private 2-year	139	393	12,220	569,318

Proprietary 2-year	1,227	2,635	101,403	4,724,377
Public 2-year	286	2,058	34,826	1,622,520
Private 4-year	655	6,876	96,519	4,496,820
Proprietary 4-year	146	1,098	18,146	845,399
Public 4-year	52	751	9,252	431,062
Total	2,505	13,811	272,365	12,689,497

The Department welcomes comments from small entities on the processes and burden required to meet the reporting requirements under the proposed regulations.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap or Conflict with the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations, institutions are already required to disclose data and provide reporting in a number of areas related to the regulations. The regulations propose using data that is already reported by institutions or collected administratively by the Department wherever possible.

Alternatives Considered

As described in section 9 of the Regulatory Impact Analysis above, “Alternatives Considered”, we evaluated several alternative provisions and approaches including using D/E rates only, alternative earnings thresholds, no reporting or acknowledgement requirements for non-GE programs, and several alternative ways of computing the performance metrics (smaller n-sizes and different interest rates or amortization periods). Most relevant to small entities was the alternative of using a lower n-size, which would result in larger effects on programs at small entities, both in terms of risk for loss of eligibility for GE programs and greater burden for providing warnings and/or disclosure acknowledgement. The alternative of not requiring reporting or acknowledgements in the case of failing metrics for non-GE programs would result in lower reporting burden for small institutions but was deemed to be insufficient to achieve the goal of creating greater transparency around program performance.

11. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600.21, 668.14, 668.15, 668.16, 668.23, 668.43, 668.156, 668.157, 668.171, 668.407, 668.408, and 668.605 of this proposed rule contain information collections requirements.

Under the PRA, the Department has or will at the required time submit a copy of these sections and Information Collection requests to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 600.21-Updating application information.

Requirements: The proposed change to §§ 600.21((1)(11)(v) and (vi), would require an institution with GE programs to update any changes in certification of those program(s).

Burden Calculations: The proposed regulatory change would require an update to the current institutional application form, 1845-0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845-0012, Application for Approval to Participate in Federal Student Aid Programs.

Section 668.14-Program participation agreement.

Requirements: The NPRM proposes to redesignate current § 668.14(e) as § 668.14(h). The Department also proposes to add a new paragraph (e) that outlines a non-exhaustive list of conditions that we may opt to apply to provisionally certified institutions. The NPRM proposes that institutions at risk of closure must submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. The NPRM proposes that institutions at risk of closure must submit an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented, to the Department.

The NPRM also proposes that an institution at risk of closure that is teaching out, closing, or that is not financially responsible or administratively capable, would release holds on student transcripts. Other conditions for institutions that are provisionally certified and may be applied by the Secretary are also proposed.

Burden Calculations: The proposed NPRM regulatory language in § 668.14 would add burden to all institutions, domestic and foreign. The proposed change in § 668.14(e) would potentially require provisionally certified institutions at risk of closure to submit to the Department acceptable teach-out plans, and acceptable record retention plans. For provisionally certified institutions at risk of closure, are teaching out or closing, or are not financially responsible or administratively capable, the proposed change requires the release of holds on student transcripts.

We believe that this type of update would require 10 hours for each institution to provide the appropriate material, or required action based on the proposed regulations. As of January 2023, there were a total of 863 domestic and foreign institutions that were provisionally certified. We estimate that of that figure 5% or 43 provisionally certified institutions may be at risk of closure. We estimate that it would take private non-profit institutions 250 hours (25 x 10 = 250) to complete the submission of information or required action. We estimate that it would take proprietary institutions 130 hours (13 x 10 = 130) to complete the submission of information or required action. We estimate that it would take public institutions 50 hours (5 x 10 = 50) to complete the submission of information or required action.

The estimated § 668.14(e) total burden is 430 hours with a total rounded estimated cost for all institutions of $20,035 (430 x $46.59 = $20,033.70).

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	25	25	250	$11,648
Proprietary	13	13	130	$6,057
Public	5	5	50	$2,330
Total	43	43	430	$20,035

Section 668.15-Factors of financial responsibility

Requirements: This section is being removed and reserved.

Burden Calculations: With the removal of regulatory language in Section 668.15 the Department would remove the associated burden of 2,448 hours under OMB Control Number 1845-0022.

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	-866	-866	-816	-$38,017
Proprietary	-866	-866	-816	-$38,017
Public	-866	-866	-816	-$38,017
Total	-2,598	-2,598	-2,448	-$114,051

Section 668.16-Standards of administrative capability

Requirements:

The Department proposes to amend § 668.16 to clarify the characteristics of institutions that are administratively capable. The NPRM proposes amending § 668.16(h) which would require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available to enrolled students. This would include clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts. Institutions would also have to provide students with information about the institution's cost of attendance, the source and type of aid offered, whether it must be earned or repaid, the net price, and deadlines for accepting, declining, or adjusting award amounts.

The NPRM also proposes amending § 668.16(p) which would strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The Department proposes to update the references to high school completion in the current regulation to high school diploma which would set specific requirements to the existing procedural requirement for adequate evaluation of the validity of a student's high school diploma.

Burden Calculations: The proposed NPRM regulatory language in § 668.16 would add burden to all institutions, domestic and foreign. The proposed changes in § 668.16(h) would require an update to the financial aid communications provided to students.

We believe that this update would require 8 hours for each institution to review their current communications and make the appropriate updates to the material based on the proposed regulations. We estimate that it would take private non-profit institutions 15,304 hours (1,913 x 8 = 15,304) to complete the required review and update. We estimate that it would take proprietary institutions 12,302 hours (1,504 x 8 = 12,302) to complete the required review and update. We estimate that it would take public institutions 14,504 hours (1,813 x 8 = 14,504) to complete the required review and update. The estimated § 668.16(h) total burden is 41,840 hours with a total rounded estimated cost for all institutions of $1,949,326 (41,840 x $46.59 = 1,949,325.60).

The proposed changes in § 668.16(p) would add requirements for adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

We believe that this update would require 3 hours for each institution to review their current policy and procedures for evaluating high school diplomas and make the appropriate updates to the material based on the proposed regulations. We estimate that it would take private non-profit institutions 5,739 hours (1,913 x 3 = 5,739) to complete the required review and update. We estimate that it would take proprietary institutions 4,512 hours (1,504 x 3 = 4,512) to complete the required review and update. We estimate that it would take public institutions 5,439 hours (1,813 x 3 = 5,439) to complete the required review and update. The estimated § 668.16(p) total burden is 15,690 hours with a total rounded estimated cost for all institutions of $730,997 (15,690 x $46.59 = $730,997.10).

The total estimated increase in burden to OMB Control Number 1845-0022 for § 668.16 is 57,530 hours with a total rounded estimated cost of $2,680,323.

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	1,913	3,826	21,043	$980,394
Proprietary	1,504	3,008	16,544	$770,785
Public	1,813	3,626	19,943	$929,144

Total	5,230	10,460	57,530	$2,680,323

Section 668.23-Compliance audits and audited financial statements.

Requirements: The Department proposes to add § 668.23(d)(2)(ii) that would require that an institution, domestic or foreign, that is owned by a foreign entity holding at least a 50 percent voting or equity interest to provide documentation of its status under the law of the jurisdiction under which it is organized, as well as basic organizational documents. The submission of such documentation would better equip the Department to obtain appropriate and necessary documentation from an institution which has a foreign owner or owners with 50 percent or greater voting or equity interest which would provide a clearer picture of the institution's legal status to the Department, as well as who exercises direct or indirect ownership over the institution.

The Department also proposes adding new § 668.23(d)(5) that would require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

Burden Calculations: The proposed NPRM regulatory language in § 668.23(d)(2)(ii) would add burden to foreign institutions and certain domestic institutions to submit documentation, translated into English as needed.

We believe this reporting activity would require an estimated 40 hours of work for affected institutions to complete. We estimate that it would take private non-profit institutions 13,520 hours (338 x 40 = 13,520) to complete the required documentation gathering and translation as needed. We estimate that it would take proprietary institutions 920 hours (23 x 40 = 920) to complete the required footnote activity. The estimated § 668.23(d)(2)(ii) total burden is 14,440 hours with a total rounded estimated cost for all institutions of $672,760 (14,440 x $46.59 = $672,759.60).

The proposed NPRM regulatory language in § 668.23(d)(5) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.23(d)(5) would require a footnote to its financial statement audit regarding the dollar amount spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

We believe that this footnote reporting activity would require an estimated 8 hours per institution to complete. We estimate that it would take private non-profit institutions 15,304 hours (1,913 x 8 = 15,304) to complete the required footnote activity. We estimate that it would take proprietary institutions 12,032 hours (1,504 x 8 =

12,032) to complete the required footnote activity. We estimate that it would take public institutions 14,504 hours (1,813 x 8 = 14,504) to complete the required footnote activity. The estimated § 668.23(d)(5) total burden is 41,840 hours with a total rounded estimated cost for all institutions of $1,949,326 (41,840 x $46.59 = $1,949,325.60).

The total estimated increase in burden to OMB Control Number 1845-0022 for § 668.23 is 56,280 hours with a total rounded estimated cost of $2,622,085.

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	1,913	2,251	28,824	$1,342,910
Proprietary	1,504	1,527	12,952	$603,434
Public	1,813	1,813	14,504	$675,742
Total	5,230	5,591	56,280	$2,622,086

Section 668.43-Institutional and programmatic information.

Requirements: Under proposed § 668.43(d), the Department would establish and maintain a website for posting and distributing key information and disclosures pertaining to the institution's educational programs. An institution would provide such information as the Department prescribes through a notice published in the *Federal Register* for disclosure to prospective and enrolled students through the website.

This information could include, but would not be limited to, the primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site; the program's or institution’s completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; the length of the program in calendar time; the total number of individuals enrolled in the program during the most recently completed award year; the total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; the percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV, HEA loan, a private education loan, or both; whether the program is programmatically accredited and the name of the accrediting agency; and the supplementary performance measures in proposed § 668.13(e).

The institution would be required to provide a prominent link and any other needed information to access the website on any webpage containing academic, cost, financial aid, or admissions information about the program or institution. The Department could require the institution to modify a webpage if the information about how to access the Department’s website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

In addition, the Department would require the institution to provide the relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

Burden Calculations: The proposed NPRM regulatory language in § 668.43(d) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.43(d) would require institutions to supply the Department with specific information about programs it is offering as well as disclose to enrolled and prospective students this information.

We believe that this reporting or disclosure activity would require an estimated 50 hours per institution. We estimate that it would take private non-profit institutions 95,650 hours (1,913 x 50 = 95,650) to complete the required reporting or disclosure activity. We estimate that it would take proprietary institutions 75,200 hours (1,504 x 50 = 75,200) to complete the required reporting or disclosure activity. We estimate that it would take public institutions 90,650 hours (1,813 x 50 = 90,650) to complete the required reporting/disclosure activity.

The total estimated increase in burden to OMB Control Number 1845-0022 for § 668.43 is 261,500 hours with a total rounded estimated cost of $12,183,286.

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	1,913	1,913	95,650	$4,456,334
Proprietary	1,504	1,504	75,200	$3,503,568.00
Public	1,813	1,813	90,650	$4,223,384
Total	5,230	5,230	261,500	$12,183,286.00

Section 668.156 Approved State process.

Requirements: The proposed changes in the NPRM to § 668.156 would clarify the requirements for the approval of a State process. Under proposed § 668.156, a State must apply to the Secretary for approval of its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program. The State process is one of the three ability to benefit alternatives that an individual who is not a high school graduate could fulfill to receive title IV, HEA, Federal student aid to enroll in an eligible career pathway program.

The NPRM proposes to amend the monitoring requirement in redesignated § 668.156(c) to provide a participating institution that has failed to achieve the 85 percent success rate up to three years to achieve compliance.

The NPRM also proposes to amend redesignated § 668.156(e) to require that States report information on race, gender, age, economic circumstances, and education attainment and permit the Secretary to publish a notice in the *Federal Register* with additional information that the Department may require States to submit.

Burden Calculation: We estimate that it would take a State 160 hours to create and submit an application for a State Process to the Department under the regulations in Section 668.156(a) for a total of 1,600 hours (160 hours x 10 States).

We estimate that it would take a State an additional 40 hours annually to monitor the compliance of the institution's use of the State Process under Section 668.156(c) for a total of 400 hours (40 hours x 10 States). This time includes the development of any Corrective Action Plan for any institution the State finds not be complying with the State Process.

We estimate that it would take a State 120 hours to meet the reapplication requirements in Section 668.156(e) for a total of 1,200 hours (120 hours x 10 States).

The total hours associated with the change in the regulations as of the effective date of the regulations are estimated at a total of 3,200 hours of burden (320 hours x

10 States) with a total estimated cost of $1,149,088.00 in OMB Control Number 1845-NEW1.

Approved State Process - 1845-NEW1

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
State	10	30	3,200	$149,088
Total	10	30	3,200	$149,088

Section 668.157 Eligible career pathway program.

Requirements: The NPRM proposes changes to subpart J by adding § 668.157 to clarify the documentation requirements for eligible career pathway program. This new section would dictate the documentation requirements for eligible career pathway programs for submission to the Department for approval as a title IV eligible program. Under § 668.157(b) we propose that, for career pathways programs that do not enroll students through a State process as defined in § 668.156, the Secretary would verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to proposed § 668.157(a). Under proposed § 668.157(b), we would also provide an institution with the opportunity to appeal any adverse eligibility decision.

Burden Calculations: The proposed NPRM regulatory language in § 668.157 would add burden to institutions to participate in the eligible career pathway programs. The proposed regulations in § 668.157 would require institutions to demonstrate to the Department that the eligible career pathways programs being offered meet the regulations as proposed.

We estimate that 1,000 institutions would submit the required documentation to determine eligibility for the eligible career pathway programs. We believe that this documentation and reporting activity would require an estimated 10 hours per program per institution. We estimate that each institution would document and report on five individual eligible career pathways programs for a total of 50 hours per institution. We estimate it would take private non-profit institutions 18,000 hours (360 institutions x 5 programs = 1,800 programs x 10 hours per program = 18,000) to complete the required documentation and reporting activity. We estimate that it would take proprietary institutions 6,500 hours (130 institutions x 5 programs = 650 programs x 10 hours per program = 6,500) to complete the required documentation and reporting activity. We estimate that it would take public institutions 25,500 hours (510 institutions x 5 programs = 2,550 programs x 10 hours per program = 25,500) to complete the required documentation/reporting activity. The total estimated increase in burden to OMB Control Number 1845-NEW2 for § 668.157 is 50,000 hours with a total estimated cost of $2,329,500.00.

Eligible Career Pathways Program – 1845-NEW2

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	360	1,800	18,000	$838,620
Proprietary	130	650	6,500	$302,835
Public	510	2,550	25,500	$1,188,045
Total	1,000	5,000	50,000	$2,329,500

Section 668.171 General Requirements: The NPRM proposes to amend § 668.171(f) by adding several new events to the existing reporting requirements, and expanding others, that must be reported generally no later than 10 days following the event. Implementation of the proposed reportable events would make the Department more aware of instances that may impact an institution's financial responsibility or stability. The proposed reportable events are linked to the financial standards in § 668.171(b) and the proposed financial triggers in § 668.171 (c) and (d) where there is no existing mechanism for the Department to know that a failure or a triggering event has occurred. Notification regarding these events would allow the Department to initiate actions to either obtain financial protection, or determine if financial protection is necessary, to protect students from the negative consequences of an institution's financial instability and possible closure.

The NPRM also proposes to amend § 668.171(g) by adding language which would require a public institution to provide to the Department a letter from an official of the government entity or other signed documentation acceptable to the Department. The letter or documentation must state that the institution is backed by the full faith and credit of the government entity. The Department also proposes similar amendments to apply to foreign institutions.

Burden Calculations: The proposed NPRM regulatory language in § 668.171(f) would add burden to institutions regarding evidence of financial responsibility. The proposed regulations in § 668.171(f) would require institutions to demonstrate to the Department that it met the triggers set forth in the regulations. We estimate that domestic and foreign, have the potential to hit a trigger that would require them to submit documentation to determine eligibility for continued participation in the title IV programs. The overwhelming majority of reporting would likely stem from the mandatory triggering event on gainful employment programs that are failing with limited reporting under additional events. We believe that this documentation and reporting activity would require an estimated 2 hours per institution. We estimate it would take private non-profit institutions 100 hours (50 institutions x 2 hours = 100) to complete the required documentation and reporting activity. We estimate that it would take proprietary institutions 1,300 hours (650 institutions x 2 hours = 1,300) to complete the required documentation and reporting activity.

The proposed NPRM regulatory language in § 668.171(g) would add burden to public institutions regarding evidence of financial responsibility. The proposed regulations in § 668.171(g) would require institutions to demonstrate to the Department that the public institution is backed by the full faith and credit of the government entity. We believe that this document filing would be done by the majority of the public institutions upon recertification of currently participating institutions. We estimate that 36 public institutions (two percent of the currently participating public institutions) would be required to recertify in a given year. We further estimate that it would take each institution 5 hours to procure the required documentation from the appropriate governmental agency for a total of 180 hours (36 institutions x 5 hours = 180 hours).

The total estimated increase in burden to OMB Control Number 1845-0022 for § 668.171 is 1,580 hours with a total rounded estimated cost of $73,612.

Student Assistance General Provisions – OMB Control Number 1845-0022

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution
Private non-profit	50	50	100	$4,659
Proprietary	650	650	1,300	$60,567
Public	36	36	180	$8,386
Total	736	736	1,580	$73,612

Section 668.407 Student disclosure acknowledgments.

Requirements: The NPRM proposes in Subpart Q - Financial Value Transparency § 668.407(a)(1) that a student would be required to provide an acknowledgment of the D/E rate information for any year for which the Secretary notifies an institution that the eligible non-GE program has failing D/E rates for the year in which the D/E rates were most recently calculated by the Department.

Burden Calculations: The proposed NPRM regulatory language in § 668.407 would add burden to institutions. The proposed changes in § 668.407 would require institutions to develop and provide notices to enrolled and prospective students that a program has unacceptable D/E rates for non-GE programs or an unacceptable D/E rate and earnings premium measure for GE programs for the year in which the D/E rates or earnings premium measure were most recently calculated by the Department.

We believe that most institutions would develop the notice directing impacted students to the Department's disclosure website and make it available electronically to current and prospective students. We believe that this action would require an estimated 1 hour per affected program. We estimate that it would take private institutions 661 hours (661 programs x 1 hour = 661) to develop and deliver the required notice based on the information provided by the Department. We estimate that it would take public institutions 335 hours (335 programs x

1 hour = 335) to develop and deliver the required notice based on the information provided by the Department.

The proposed changes in § 668.407 (a)(1) would require institutions to direct prospective and students enrolled in the non-GE programs that failed the D/E rates for the year in which the D/E rates were most recently calculated by the Department to the Department's disclosure website. We estimate that it would take the 401,600 students 10 minutes to read the notice and go to the disclosure web site to acknowledge receiving the information for a total of hours (401,600students x .17 hours = 68,272).

The total estimated increase in burden to OMB Control Number 1845-NEW3 for § 668.407 is 69,268 hours with a total rounded estimated cost of $1,548,388.

Student disclosure acknowledgments – OMB Control Number 1845-NEW3

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution $22.00 per individual
Individual	401,600	401,600	68,272	$1,501,984
Private non-profit	173	661	661	$30,796
Public	74	335	335	$15,608
Total	401,847	402,596	69,268	1,548,388

Section 668.408 Reporting requirements.

Requirements: The NPRM proposes in Subpart Q - Financial Value Transparency to add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.

Burden Calculations: The proposed regulatory change would require an update to a Federal Student Aid data system. The reporting update would be made available for comment through a full public clearance package before being made available for use on or after the effective dates of the regulations. The burden changes would be assessed to the OMB Control Number assigned to the system.

Section 668.605 Student warnings and acknowledgments.

Requirements: The NPRM adds a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

In addition, warnings provided to students enrolled in GE programs would include a description of the academic and financial options available to continue their education in another program at the institution in the event that the program loses eligibility, including whether the students could transfer academic credit earned in the program to another program at the institution and which course credit would transfer; an indication of whether, in the event of a loss of eligibility, the institution would continue to provide instruction in the program to allow students to complete the program, and refund the tuition, fees, and other required charges paid to the institution for enrollment in the program; and an explanation of whether, in the event that the program loses eligibility, the students could transfer credits earned in the program to another institution through an established articulation agreement or teach-out.

The institution would be required to provide alternatives to an English-language warning for current and prospective students with limited English proficiency.

Burden Calculations: The proposed NPRM regulatory language in § 668.605 would add burden to institutions. The proposed changes in § 668.605 would require institutions to provide warning notices to enrolled and prospective students that a GE program has unacceptable D/E rates or an unacceptable earnings premium measure for the year in which the D/E rates or earnings premium measure were most recently calculated by the Department along with warnings about the potential loss of title IV eligibility.

We believe that most institutions would develop the warning and make it available electronically to current and prospective students. We believe that this action would require an estimated 1 hour per affected program. We estimate that it would take private institutions 86 hours (86 programs x 1 hour = 86) to develop and deliver the required warning based on the information provided by the Department. We estimate that it would take proprietary institutions 1,524 hours (1,524 programs x 1 hour = 1,524) to develop and deliver the required warning based on the information provided by the Department. We estimate that it would take public institutions 193 hours (193 programs x 1 hour = 193) to develop and deliver the required warning based on the information provided by the Department.

The proposed changes in § 668.605 (d) would require institutions to provide alternatives to the English-language warning notices to enrolled and prospective students with limited English proficiency.

We estimate that it would take private institutions 688 hours (86 programs x 8 hours = 688) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it would take proprietary institutions 12,192 hours (1,524 programs x 8 hours = 12,192) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it would take public institutions 1,544 hours (193 programs x 8 hours = 1,544) to develop and deliver the required warning based on the information provided by the Department.

The proposed changes in § 668.605 (e) would require institutions to provide the warning notices to students enrolled in the GE programs with failing metrics. We estimate that it would take the 703,200 students 10 minutes to read the warning and go to the disclosure web site to acknowledge receiving the information for a total of 119,544 hours (703,200 students x .17 hours = 119,544).

The proposed changes in § 668.605 (f) would require institutions to provide the warning notices to prospective students who express interest in the effected GE programs. We estimate that it would take the 808,680 prospective students 10 minutes to read the warning and go to the disclosure web site to acknowledge receiving the information for a total of 137,476 hours (808,680 students x .17 hours = 137,476).

The total estimated increase in burden to OMB Control Number 1845-NEW4 for § 668.605 is 273,247 hours with a total rounded estimated cost of $6,410,456.

GE Student Warnings and Acknowledgments – OMB Control Number 1845-NEW4

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 per institution $22.00 per individual
Individual	1,511,880	1,511,880	,257,020	$5,654,440
Private non-profit	86	172	774	$36,061
Proprietary	873	3,048	13,716	$639,028
Public	193	386	1,737	$80,927
Total	1,513,032	1,515,486	273,247	$6,410,456

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, $22.00 per hour according to BLS. https://www.bls.gov/oes/current/oes_nat.htm#00-0000. For institutions, lenders, and guaranty agencies we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS. https://www.bls.gov/oes/current/oes119033.htm.

COLLECTION OF INFORMATION

Regulatory section	Information Collection	OMB Control Number and estimated burden	Estimated cost $46.59 Institutional $22.00 Individual unless otherwise noted.
§ 600.21	Amend § 600.21 to require an institution to notify the Secretary within 10 days of any update to information included in the GE program's certification.	Burden will be cleared at a later date through a separate information collection.	Costs will be cleared through separate information collection.
§ 668.14	Amend § 668.14(e) to establish a non-exhaustive list of conditions that the Secretary may apply to provisionally certified	1845-0022 +430 hrs.	$+20,035

	institutions, such as the submission of a teach-out plan or agreement. Amend § 668.14(g) to establish conditions that may apply to an initially certified nonprofit institution, or an institution that has undergone a change of ownership and seeks to convert to nonprofit status.		
§ 668.15	Remove and reserve § 668.15 thereby consolidating all financial responsibility factors, including those governing changes in ownership, under part 668, subpart L.	1845-0022 - 2,448 hrs.	$-114,051
§ 668.16	Amend § 668.16(h) to require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available. Amend § 668.16(p) to strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.	1845-0022 +57,530 hrs.	$+2,680,323
§ 668.23	Amend § 668.23(d) to require that any domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution must provide documentation of the entity's status under the law of the jurisdiction under which the entity is organized. Amend § 668.23(d) to require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment	1845-0022 +56,280 hrs.	$+2,622,086

	expenditures.		
§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information and disclosures pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	1845-0022 +261,500 hrs.	$+12,183,286
§ 668.156	Amend § 668.156 to clarify the requirements for the approval of a State process. The State process is one of the three ability to benefit alternatives that an individual who is not a high school graduate could fulfill to receive title IV, Federal student aid to enroll in an eligible career pathway program.	1845-NEW1 +3,200	$+149,088
§ 668.157	Add a new § 668.157 to clarify the documentation requirements for eligible career pathway programs.	1845-NEW2 +50,000	$+2,329,500
§ 668.171	Amend § 668.171(f) to revise the set of conditions whereby an institution must report to the Department that a triggering event, described in § 668.171(c) and (d), has occurred. Amend § 668.171(g) to require public institutions to provide documentation from a government entity that confirms that the institution is a public institution and is backed by the full faith and credit of that government entity to be considered as financially responsible.	1845-0022 +1,580 hrs.	$+73,612
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the disclosure website	1845-NEW3 +69,268	$+1,548,388

	maintained by the Secretary if an eligible non-GE program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may disburse any title IV, HEA funds.		
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	Burden will be cleared at a later date through a separate information collection.	Costs will be cleared through separate information collection.
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.	1845-NEW4 +273,247	$6,410,456

The total burden hours and change in burden hours associated with each OMB Control number affected by the final regulations follows: 1845-0022, 1845-NEW1, 1845-NEW2, 1845-NEW3, 1845-NEW4.

Control No.	**Total burden hours**	**Change in burden hours**
1845-0022	2,663,120	+374,872
1845-NEW1	3,200	+3,200
1845-NEW2	50,000	+50,000

Control No.	Total burden hours	Change in burden hours
1845-NEW3	69,268	+69,268
1845-NEW4	273,247	+273,247
Total	3,058,835	770,587

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs in OMB, Attention: Desk Officer for the U.S. Department of Education. Send these comments by email to OIRA_DOCKET@omb.eop.gov or by fax to (202)395-6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of the preamble.

We have prepared the Information Collection Request (ICR) for these collections. You may review the ICR which is available at www.reginfo.gov. Click on Information Collection Review. These collections are identified as collections 1845-022, 1845-NEW1, 1845-NEW2, 1845-NEW3, 1845-NEW4.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to one of the program contact persons listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs--education, Reporting and recordkeeping requirements, Selective service system, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

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Miguel A. Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600 - INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

AUTHORITY: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.10, amended October 28, 2022 at 87 FR 65426, is further amended by:

a. In paragraph (c)(1)(iii) removing the word "and" at the end of the paragraph;

b. Revising paragraph (c)(1)(iv); and

c. Adding paragraph (c)(1)(v).

The revisions and addition read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(1) * * *

(iv) For the first eligible prison education program under subpart P of 34 CFR part 668 offered at the first two additional locations (as defined in § 600.2) at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution; and

(v) For a gainful employment program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the eligibility of the program, update its application under §600.21.

* * * * *

3. Section 600.21 is amended by:

a. Revising paragraph (a) introductory text.

b. In paragraph (a)(11)(iv) by removing the word "or".

c. Revising paragraph (a)(11)(v).

d. Adding paragraph (a)(11)(vi).

The revisions and addition read as follows:

§ 600.21 Updating application information.

(a) *Reporting requirements*. Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary, in a manner prescribed by the Secretary and no later than 10 days after the change occurs, any change in the following:

* * * * *

(11) * * *

(v) Changing the program's name, CIP code, or credential level; or

(vi) Updating the certification pursuant to 34 CFR 668.604.

* * * * *

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for part 668 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1001-1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221e-3, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

5. In § 668.2 amend paragraph (b) by adding, in alphabetical order, definitions of "Annual debt-to-earnings rate," "Classification of instructional program (CIP) code," "Cohort period," "Credential level," "Debt-to-earnings rates (D/E rates)," "Discretionary debt-to-earnings rate (Discretionary D/E rate)", "Earnings premium," "Earnings threshold," "Eligible career pathway program," "Eligible non-GE program," "Federal agency with

earnings data," "Financial exigency", "Gainful employment program (GE program)," "Institutional grants and scholarships," "Length of the program," "Metropolitan statistical area," "Poverty Guideline," "Prospective student," "Student," and "Title IV loan" to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Annual debt-to-earnings rate (Annual D/E rate): The ratio of a program's annual loan payment amount to the annual earnings of the students who completed the program, expressed as a percentage, as calculated under § 668.404.

* * * * *

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). Specific programs offered by institutions are classified using a six-digit CIP code.

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate debt-to earnings rates and the earnings premium measure under subpart Q of this part. The Secretary uses a two-year cohort period to calculate the debt-to-earnings rates and earnings premium measure for a program when the number of students (after exclusions identified in §§ 668.403(e) and 668.404(c)) in the two-year cohort period is 30 or more. The Secretary uses a four-year cohort period to calculate the debt-to-earnings rates and earnings premium measure when the number of students completing the program in the two-year cohort period is fewer than 30 and when the number of students completing the program in the four-year cohort period is 30 or more. The cohort period covers consecutive award years that are—

(1) For the two-year cohort period--

(i) The third and fourth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated. For this purpose, a required medical or dental internship or residency is a supervised training program that--

(A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(C) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

(2) For the four-year cohort period—

(i) The third, fourth, fifth, and sixth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated. For this purpose, a required medical or dental internship or residency is a supervised training program that meets the requirements in paragraph (1)(ii) of this definition.

Credential level. The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are master's degree, doctoral degree, first-professional degree (e.g., MD, DDS, JD), and graduate certificate (including a postgraduate certificate).

Debt-to-earnings rates (D/E rates). The discretionary debt-to-earnings rate and annual debt-to-earnings rate as calculated under § 668.403.

* * * * *

Discretionary debt-to-earnings rate (Discretionary D/E rate). The percentage of a program's annual loan payment compared to the discretionary earnings of the students who completed the program, as calculated under § 668.403.

Earnings premium. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.404. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

Earnings threshold. Based on data from a Federal agency with earnings data, the median earnings for working adults aged 25-34, who either worked during the year or indicated they were unemployed when interviewed, with only a high school diploma (or recognized equivalent)—

(1) In the State in which the institution is located; or

(2) Nationally, if fewer than 50 percent of the students in the program are located in the State where the institution is located while enrolled.

Eligible career pathway program. A program that combines rigorous and high-quality education, training, and other services that--

(1) Align with the skill needs of industries in the economy of the State or regional economy involved;

(2) Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.);

(3) Include counseling to support an individual in achieving the individual's education and career goals;

(4) Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(5) Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(6) Enable an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

(7) Help an individual enter or advance within a specific occupation or occupational cluster.

Eligible non-GE program. For purposes of subpart Q of this part, an educational program other than a GE program offered by an institution and approved by the Secretary to participate in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Includes all coursework associated with the program's credential level.

* * * * *

Federal agency with earnings data. A Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates and earnings threshold measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any title IV-eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

* * * * *

Financial exigency. A status declared by an institution to a governmental entity or its accrediting agency representing severe financial distress that, absent significant reductions in expenditures or increases in revenue, reductions in administrative staff or faculty, or the elimination of programs, departments, or administrative units, could result in the closure of the institution.

* * * * *

Gainful employment program (GE program). An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

* * * * *

Institutional grants and scholarships. Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid.

Typically a grant, scholarship, fellowship, discount, or fee waiver.

* * * * *

Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

* * * * *

Metropolitan statistical area: A core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

* * * * *

Poverty Guideline. The Poverty Guideline for a single person in the continental United States, as published by the U.S. Department of Health and Human Services and available at http://aspe.hhs.gov/poverty or its successor site.

* * * * *

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

* * * * *

Student. For the purposes of subparts Q and S of this part, an individual who received title IV, HEA program funds for enrolling in the program.

* * * * *

Title IV loan. A loan authorized under the William D. Ford Direct Loan Program (Direct Loan).

* * * * *

6. Section 668.13 is amended by:

a. Removing paragraph (b)(3).

b. Revising paragraphs (c)(1) an (2).

c. Revising paragraph (d)(2)(ii).

d. Adding paragraph (e).

The revisions and addition read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) * * *

(1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution that is applying for a renewal of certification -

(*1*) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under subpart L of this part or the standards of administrative capability under § 668.16;

(*2*) Whose participation has been limited or suspended under subpart G of this part; or

(*3*) That voluntarily enters into provisional certification;

(D) The institution seeks to be reinstated to participate in a Title IV, HEA program after a prior period of participation in that program ended;

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 602; or

(F) The Secretary has determined that the institution is at risk of closure.

(G) The institution is under the provisions of subpart L.

(ii) An institution's certification becomes provisional upon notification from the Secretary if—

(A) The institution triggers one of the financial responsibility events under §668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection; or

(B) Any owner or interest holder of the institution with control over that institution, as defined in 34 CFR 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability.

(iii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year if it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Federal educational assistance funds, as required under § 668.14(b)(16).

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraph (c)(3) of this section or subpart L, a provisionally certified institution's period of participation expires--

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution for its initial certification;

(ii) Not later than the end of the second complete award year following the date on which the Secretary provisionally certified an institution for reasons related to substantial liabilities owed or potentially owed to the Department for discharges related to borrower defense to repayment or false certification, or arising from claims under consumer protection laws;

(iii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution as a result of a change in ownership, recertification, reinstatement, automatic re-certification, or a failure under 668.14(b)(32); and

(iv) If the Secretary provisionally certified the institution as a result of its accrediting agency losing recognition, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

* * * * *

(d) * * *

(2) * * *

(ii) The revocation takes effect on the date that the Secretary transmits the notice to the institution.

* * * * *

(e) *Supplementary performance measures.* In determining whether to certify, or condition the participation of, an institution under §§ 668.13 and 668.14, the Secretary may consider the following, among other information at the program or institutional level:

(i) *Withdrawal rate*. The percentage of students who withdrew from the institution within 100 percent or 150 percent of the published length of the program.

(ii) *Debt-to-earnings rates*. The debt-to-earnings rates under §668.403, if applicable.

(iii) *Earnings premium measure*. The earnings premium measure under §668.404, if applicable.

(iv) *Educational and pre-enrollment expenditures*. The amounts the institution spent on instruction and instructional activities, academic support, and support services, and the amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures, as provided through a disclosure in the audited financial statements required under § 668.23(d).

(v) *Licensure pass rate*. If a program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, and the institution is required by an accrediting agency or State to report passage rates for the licensure exam for the program, such passage rates.

* * * * *

7. Section 668.14 is amended by:

a. Adding paragraph (a)(3).

b. Revising paragraphs (b)(5), (17), (18), and (26).

c. In paragraph (b)(30)(ii)(C) removing the word "and" at the end of the paragraph.

d. Adding paragraphs (b)(32) through (b)(34).

e. Redesignating paragraphs (e) through (h) as paragraphs (h) through (k), respectively.

f. Adding new paragraphs (e) through (g).

The revisions and additions read as follows:

§ 668.14 Program participation agreement.

(a) * * *

(3) An institution's program participation agreement must be signed by—

(i) An authorized representative of the institution; and

(ii) For a proprietary or private nonprofit institution, an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution. The Secretary considers the following as examples of circumstances in which an entity has such power:

(A) If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.

(B) If the entity has the power to block significant actions.

(C) If the entity is the 100 percent direct or indirect interest holder of the institution.

(D) If the entity provides or will provide the financial statements to meet any of the requirements of 34 CFR 600.20(g) or (h), or subpart L of this part.

(b) * * *

(5) It will comply with the provisions of subpart L relating to factors of financial responsibility;

* * * * *

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, Federal agencies, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, and State attorneys general have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the title IV, HEA programs or any information on fraud, abuse, or other violations of law;

(18) It will not knowingly--

(i) Employ in a capacity that involves the administration of the title IV, HEA programs or the receipt of funds under those programs, an individual who has been

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds;

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(C) An owner, director, officer, or employee who exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program, requirement and is not making payments in accordance with an agreement to repay that liability; or

(D) A Ten-percent-or-higher equity owner, director, officer, principal, executive, or contractor at an institution in any year in which the institution incurred a loss of Federal funds in excess of 5 percent of the participating institution's annual title IV, HEA program funds.

(ii) Contract with any institution, third-party servicer, individual, agency, or organization that has, or whose owners, officers or employees have --

(A) Been convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds;

(B) Been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(C) Had its participation in the title IV programs terminated, certification revoked, or application for certification or recertification for participation in the title IV programs denied;

(D) Been an owner, director, officer, or employee who exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program requirement and is not making payments in accordance with an agreement to repay that liability; or

(E) Been a ten-percent-or-higher equity owner, director, officer, principal, executive, or contractor affiliated with another institution in any year in which the other institution incurred a loss of Federal funds in excess of 5 percent of the participating institution's annual title IV, HEA program funds.

* * * * *

(26) If an educational program offered by the institution is required to prepare a student for gainful

employment in a recognized occupation, the institution must--

(i) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(ii) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student by limiting the number of hours in the program to the greater of--

(A) The required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency or the institution's accrediting agency; or

(B) Another State's required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares the student, if certain criteria is met. This exception to paragraph (A) would only be applicable if the institution documents, with substantiation by a certified public accountant who prepares the institution's compliance audit report as required under § 668.23 that--

(*1*) A majority of students resided in that State while enrolled in the program during the most recently completed award year;

(*2*) A majority of students who completed the program in the most recently completed award year were employed in that State; or

(*3*) The other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State;

* * * * *

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds—

(i) Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency;

(ii) Satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

(iii) Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions;

(33) It will not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution’s administration of the title IV, HEA programs, any fraud or misconduct by the institution or its personnel, or returns of title IV, HEA funds required under § 668.22 unless the balance owed was the result of fraud on the part of the student; and

(34) It will not maintain policies and procedures to encourage, or condition institutional aid or other student benefits in a manner that induces, a student to limit the amount of Federal student aid, including Federal loan funds, that the student receives, except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

* * * * *

(e) If an institution is provisionally certified, the Secretary may apply such conditions as are determined to be necessary or appropriate to the institution, including, but not limited to–

(1) For an institution that the Secretary determines may be at risk of closure—

(i) Submission of an acceptable teach-out plan or agreement to the Department, the State, and the institution’s recognized accrediting agency; and

(ii) Submission to the Department of an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented;

(2) For an institution that the Secretary determines may be at risk of closure, that is teaching out or closing, or that is not financially responsible or administratively capable, the release of holds on student transcripts;

(3) Restrictions or limitations on the addition of new programs or locations;

(4) Restrictions on the rate of growth, new enrollment of students, or Title IV, HEA volume in one or more programs;

(5) Restrictions on the institution providing a teach-out on behalf of another institution;

(6) Restrictions on the acquisition of another participating institution, which may include, in addition to any other required financial protection, the posting of financial protection in an amount determined by the Secretary but not less than 10 percent of the acquired institution’s Title IV, HEA volume for the prior fiscal year;

(7) Additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements;

(8) Limitations on the institution entering into a written arrangement with another eligible institution or an ineligible institution or organization for that other eligible institution or ineligible institution or organization to provide between 25 and 50 percent of the institution’s educational program under § 668.5(a) or (c); and

(9) For an institution alleged or found to have engaged in misrepresentations to students, engaged in aggressive recruiting practices, or violated incentive compensation rules, requirements to hire a monitor and to submit marketing and other recruiting materials (e.g., call scripts) for the review and approval of the Secretary.

(f) If a proprietary institution seeks to convert to nonprofit status following a change in ownership, the following conditions will apply to the institution following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:

(1) The institution must continue to meet the requirements under §668.28(a) until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years in which the institution meets the requirements of §668.14(b)(16) under its new ownership, or until the Department approves the institution’s request to convert to nonprofit status, whichever is later.

(2) The institution must continue to meet the gainful employment requirements of subpart S of this part until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership, or until the Department approves the institution’s request to convert to nonprofit status, whichever is later.

(3) The institution must submit regular and timely reports on agreements entered into with a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution, so long as the institution participates as a nonprofit institution.

(4) The institution may not advertise that it operates as a nonprofit institution for the purposes of Title IV, HEA until the Department approves the institution’s request to convert to nonprofit status.

(g) If an institution is initially certified as a nonprofit institution, or if it has undergone a change of ownership and seeks to convert to nonprofit status, the following conditions will apply to the institution upon initial certification or following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:

(1) The institution must submit reports on accreditor and State authorization agency actions and any new servicing agreements within 10 business days of receipt of the notice of the action or of entering into the agreement, as applicable, until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following initial certification, or two complete fiscal years after a change in ownership, or until the Department approves the institution’s request to convert to nonprofit status, whichever is later.

(2) The institution must submit a report and copy of the communications from the Internal Revenue Service or any State or foreign country related to tax-exempt or nonprofit

status within 10 business days of receipt so long as the institution participates as a nonprofit institution.

* * * * *

§ 668.15 [Removed and Reserved]

8. Remove and reserve § 668.15.

9. Section 668.16 is amended by:

a. Revising the introductory text, and paragraphs (h_, (k), (m), (n) and (p); and

b. Adding paragraphs (q) through (v).

The revisions and additions read as follows:

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution--

* * * * *

(h) Provides adequate financial aid counseling with clear and accurate information to students who apply for title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling and financial aid communications advise students and families to accept the most beneficial types of financial assistance available to them and include information regarding--

(1) The cost of attendance of the institution as defined under section 472 of the HEA, including the individual components of those costs and a total of the estimated costs that will be owed directly to the institution, for students, based on their attendance status;

(2) The source and amount of each type of aid offered, separated by the type of the aid and whether it must be earned or repaid;

(3) The net price, as determined by subtracting total grant or scholarship aid included in paragraph (h)(2) of this section from the cost of attendance in paragraph (h)(1) of this section;

(4) The method by which aid is determined and disbursed, delivered, or applied to a student's account, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts; and

(5) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid, including the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

* * * * *

(k)(1) Is not, and has not been--

(i) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(ii) Engaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or previously exercised substantial control over the institution as defined in § 668.174(c)(3), who--

(i) Has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, Tribal, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(ii) Is a current or former principal or affiliate (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or exercised substantial control as defined in § 668.174(c)(3), of another institution whose misconduct or closure contributed to liabilities to the Federal government in excess of 5 percent of its title IV, HEA program funds in the award year in which the liabilities arose or were imposed;

* * * * *

(m)(1) Has a cohort default rate--

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent;

(2) Provided that—

(i) if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under § 668.187(a) or § 668.206(a), the Secretary allows the institution to continue to participate in the title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii) through (v) of this section;

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) of this section based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section if it--

(A) Has timely filed a request for adjustment or appeal under § 668.209, § 668.210, or § 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent;

(B) Has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(*1*) Has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 with respect to either or both of the two rates, and the challenge or appeal is either pending or successful; or

(*2*) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful;

(iii) The institution may appeal the loss of full participation in a title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in § 668.192 or § 668.211 as applicable;

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates; and

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (m)(1)(ii) and (2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

(n) Has not been subject to a significant negative action or a finding as by a State or Federal agency, a court or an accrediting agency where the basis of the action is repeated or unresolved, such as non-compliance with a prior enforcement order or supervisory directive, and the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution.

* * * * *

(p) Develops and follows adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education, consistent with the following requirements:

(1) Adequate procedures to evaluate the validity of a student’s high school diploma must include--

(i) Obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following—

(A) Transcripts;

(B) Written descriptions of course requirements; or

(C) Written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school;

(ii) If the high school is regulated or overseen by a State agency, Tribal agency, or Bureau of Indian Education, confirming with, or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency; and

(iii) If the Secretary has published a list of high schools that issue invalid high school diplomas, confirming that the high school does not appear on that list; and

(2) A high school diploma is not valid if it—

(i) Did not meet the applicable requirements established by the appropriate State agency, Tribal agency, or Bureau of Indian Education in the State where the high school is located and, if the student does not attend in-person classes, the State where the student was located at the time the diploma was obtained;

(ii) Has been determined to be invalid by the Department, the appropriate State agency in the State where the high school was located, or through a court proceeding;

(iii) Was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under 34 CFR 600.2; or

(iv) Was obtained from an entity that—

(A) Maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled; and

(B) Is not accredited.

(q) Provides adequate career services to eligible students who receive title IV, HEA program assistance. In determining whether an institution provides adequate career services, the Secretary considers–

(1) The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation;

(2) The number and distribution of career services staff;

(3) The career services the institution has promised to its students; and

(4) The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution;

(r) Provides students, within 45 days of successful completion of other required coursework, geographically accessible clinical or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation;

(s) Disburses funds to students in a timely manner that best meets the students' needs. The Secretary does not consider the manner of disbursements to be consistent with students' needs if, among other conditions—

(1) The Secretary is aware of multiple verified and relevant student complaints;

(2) The institution has high rates of withdrawals attributable to delays in disbursements;

(3) The institution has delayed disbursements until after the point at which students have earned 100 percent of their eligibility for title IV, HEA funds, in accordance with the return to title IV, HEA requirements in 34 CFR 668.22; or

(4) The institution has delayed disbursements with the effect of ensuring the institution passes the 90/10 ratio;

(t) Offers gainful employment (GE) programs subject to subpart S of this part and--

(1) At least half of its total title IV, HEA funds in the most recent award year are not from programs that are "failing" under subpart S; and

(2) At least half of its full-time equivalent title IV-receiving students are not enrolled in programs that are "failing" under subpart S;

(u) Does not engage in misrepresentations, as defined in subpart F of this part, or aggressive and deceptive recruitment tactics or conduct, including as defined in subpart R of this part; or

(v) Does not otherwise appear to lack the ability to administer the title IV, HEA programs competently.

* * * * *

10. Section 668.23 amended October 28, 2022 at 87 FR 65426, is further amended by

a. Revising paragraphs (a)(4), (a)(5), (d)(1), and (d)(2).

b. Adding paragraph (d)(5).

The revisions and addition read as follows:

§ 668.23 Compliance audits and audited financial statements.

(a) * * *

(4) *Submission deadline*. Except as provided by the Single Audit Act, chapter 75 of title 31, United States Code, an institution must submit annually to the Department

its compliance audit and its audited financial statements by the date that is the earlier of--

(i) Thirty days after the later of the date of the auditor's report for the compliance audit and the date of the auditor's report for the audited financial statements; or

(ii) Six months after the last day of the institution's fiscal year.

(5) *Audit submission requirements*. In general, the Department considers the compliance audit and audited financial statements submission requirements of this section to be satisfied by an audit conducted in accordance with 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards, or the audit guides developed by and available from the Department of Education's Office of Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission.

* * * * *

(d) * * *

(1) *General*. To enable the Department to make a determination of financial responsibility, an institution must, to the extent requested by the Department, submit to the Department a set of acceptable financial statements for its latest complete fiscal year (or such fiscal years as

requested by the Department or required by these regulations), as well as any other documentation the Department deems necessary to make that determination. Financial statements submitted to the Department must match the fiscal year end of the entity's annual return(s) filed with the Internal Revenue Service. Financial statements submitted to the Department must include the Supplemental Schedule required under § 668.172(a) and section 2 of Appendix A and B to subpart L of this part, and be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States and other guidance contained in 2 CFR part 200--Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards; or in audit guides developed by and available from the Department of Education's Office of Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in Accounting Standards Codification (ASC) 850. The disclosure requirements under this provision extend beyond those of ASC 850 to include all related parties and a level of detail that would enable the Department to readily identify the related party. Such information must include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional information*. (i) In determining whether an institution is financially responsible, the Department may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements, or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Department.

(ii) For a domestic or foreign institution that is owned directly or indirectly by any foreign entity holding at least a 50 percent voting or equity interest in the institution, the institution must provide documentation of the entity's status under the law of the jurisdiction under which the entity is organized, including, at a minimum, the date of organization, a current certificate of good standing, and a copy of the authorizing statute for such entity status. The institution must also provide documentation that is equivalent to articles of organization and bylaws and any current operating or shareholders' agreements. The Department may also require the submission of additional documents related to the entity's status under the foreign jurisdiction as needed to assess the entity's financial status. Documents must be translated into English.

* * * * *

(5) *Disclosure of amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures.* An institution must disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

* * * * *

11. Section 668.32, amended October 28, 2022 at 87 FR 65426, is further amended by revising paragraphs (e)(2), (e)(3), and (e)(5) to read as follows:

§ 668.32 Student eligibility.

* * * * *

(e) * * *

(2) Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part, and either-

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2;

(3) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part, and either-

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2;

* * * * *

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution, and either--

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2.

* * * * *

12. Section 668.43, amended October 28, 2022 at 87 FR 65426, is further amended by:

a. Revising the section heading.

b. Revising paragraph (a)(5)(v).

c. Adding paragraph (d).

The revisions and addition read as follows:

§ 668.43 Institutional and programmatic information.

(a) * * *

(5) * * *

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, a list of all States where the institution is aware that the program does and does not meet such requirements;

* * * * *

(d)(1) *Disclosure website*. An institution must provide such information about the institution and educational programs it offers as the Secretary prescribes through a notice published in the *Federal Register* for disclosure to prospective students and enrolled students through a website established and maintained by the Secretary. The Secretary may conduct consumer testing to inform the design of the website. The Secretary may include on the website the following items, among others:

(i) The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site.

(ii) As reported to or calculated by the Secretary, the program's or institution’s completion rates and withdrawal rates for full-time and less-than-full-time students.

(iii) The published length of the program in calendar time (i.e., weeks, months, years).

(iv) The total number of individuals enrolled in the program during the most recently completed award year.

(v) As calculated by the Secretary, the program’s debt-to-earnings rates;

(vi) As calculated by the Secretary, the program’s earnings premium measure.

(vii) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on title IV loans during a period determined by the Secretary.

(viii) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(ix) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan, a private loan, or both for enrollment in the program.

(x) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(xi) As provided by the Secretary, the median earnings of students who completed the program or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(xii) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(xiii) The supplementary performance measures in § 668.13(e).

(xiv) A link to the U.S. Department of Education's College Navigator website, or its successor site, or other similar Federal resource.

(2) *Program webpages*. The institution must provide a prominent link to, and any other needed information to access, the website maintained by the Secretary on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Secretary may require the institution to modify a webpage if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

(3) *Distribution to prospective students*. The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(4) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

* * * * *

13. Section 668.91 is amended by:

a. In paragraph (a)(3)(v)(B)(*2*) removing the period at the end of the paragraph and adding, in its place, "; and".

b. Adding paragraph (a)(3)(vi).

The addition reads as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a termination action against a GE program based upon the program's failure to meet the requirements in § 668.403 or § 668.404, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

14. Revise § 668.156 to read as follows:

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) A State's application for approval of its State process must include--

(i) The institutions located in the State included in the proposed process, which need not be all of the institutions located in the State;

(ii) The requirements that participating institutions must meet to offer eligible career pathway programs through the State process;

(iii) A certification that, as of the date of the application, each proposed career pathway program intended for use through the State process constitutes an "eligible career pathway program” as defined in § 668.2 and as documented pursuant to § 668.157;

(iv) The criteria used to determine student eligibility for participation in the State process; and

(v) For an institution listed for the first time on the application, an assurance that not more than 33 percent of the institution’s undergraduate regular students withdrew from the institution during the institution's latest completed award year. For purposes of calculating this rate, the institution must count all regular students who were enrolled during the latest completed award year, except those students who, during that period–

(A) Withdrew from, dropped out of, or were expelled from the institution; and

(B) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees.

(3) Before approving the State process, the Secretary will verify that a sample of the proposed eligible career pathway programs constitute an “eligible career pathway program” as defined in § 668.2 and as documented pursuant to § 668.157.

(b) For a State applying for approval for the first time, the Secretary may approve the State process for a two-year initial period if--

(1) The State's process satisfies the requirements contained in paragraphs (a), (c), and (d) of this section; and

(2) The State agrees that the total number of students who enroll through the State process during the initial period will total no more than the greater of 25 students or 1.0 percent of enrollment at each institution participating in the State process.

(c) A State process must—

(1) Allow the participation of only those students eligible under § 668.32(e)(3);

(2) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process, including the success rate as calculated in paragraph (f) of this section;

(3) Require corrective action if an institution is found to be in noncompliance with the State process requirements;

(4) Provide a participating institution that has failed to achieve the success rate required under paragraphs (e)(1) and (f) up to three years to achieve compliance;

(5) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements, including exceeding the total

number of students referenced in paragraph (b)(2) of this section; and

(6) Prohibit an institution from participating in the State process for at least five years after termination.

(d)(1) The Secretary responds to a State's request for approval of its State process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

(2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart--

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six-month period.

(e) After the initial two-year period described in paragraph (b) of this section, the State must reapply for continued participation and, in its application—

(1) Demonstrate that the students it admits under that process at each participating institution have a success rate as determined under paragraph (f) of this section that is within 85 percent of the success rate of students with high school diplomas;

(2) Demonstrate that the State's process continues to satisfy the requirements in paragraphs (a), (c), and (d) of this section; and

(3) Report information to the Department on the enrollment and success of participating students by eligible career pathway program and by race, gender, age, economic circumstances, and educational attainment, to the extent available.

(f) The State must calculate the success rate for each participating institution as referenced in paragraph (e)(1) of this section by-

(1) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in the same programs as students participating in the State process at each participating institution and--

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section,

enrolled in the same programs as students participating in the State process at each participating institution;

(3) Determining the number of students calculated in paragraph (f)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from each participating institution and received a 100 percent refund of their tuition under the institution's refund policies;

(4) Dividing the number of students determined under paragraph (f)(1) of this section by the number of students determined under paragraph (f)(3) of this section; and

(5) Making the calculations described in paragraphs (f)(1) through (f)(4) of this section for students who enrolled through a State process in each participating institution.

(g)(1) For purposes of paragraph (f) of this section, the applicable award year is the latest complete award year for which information is available.

(2) If no students are enrolled in an eligible career pathway program through a State process, then the State will receive a one-year extension to its initial approval of its State process.

(h) A State must submit reports on its State process, in accordance with deadlines and procedures established and published by the Secretary in the *Federal Register*, with such information as the Secretary requires.

(i) The Secretary approves a State process as described in paragraph (e) of this section for a period not to exceed five years.

(j)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(i) If a State has not terminated an institution from the State process under paragraph (c)(5) of this section for failure to meet the success rate, then the Secretary withdraws approval of the State process, except in accordance with paragraph (j)(1)(ii) of this section.

(ii) At the Secretary's discretion, under exceptional circumstances, the State process may be approved once for a two-year period.

(iii) If 50 percent or more participating institutions across all States do not meet the success rate in a given year, then the Secretary may lower the success rate to no less than 75 percent for two years.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information

that the State submitted as a basis for approval of the State process was inaccurate.

(3) If the Secretary upholds the withdrawal of approval of a State process, then the State cannot reapply to the Secretary for a period of five years.

(Approved by the Office of Management and Budget under control number 1845-0049)

(Authority: 20 U.S.C. 1091(d))

15. Adding § 668.157 to subpart J to read as follows:

§ 668.157 Eligible career pathway program.

(a) An institution demonstrates to the Secretary that a student is enrolled in an eligible career pathway program by documenting that--

(1) The student has enrolled in or is receiving all three of the following elements simultaneously--

(i) An eligible postsecondary program as defined in § 668.8;

(ii) Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in 34 CFR 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and

(iii) Workforce preparation activities as described in 34 CFR 463.34;

(2) The program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on research the institution has conducted, including--

(i) Government reports identifying in-demand occupations in the State or regional labor market;

(ii) Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market; and

(iii) Documentation that demonstrates direct engagement with industry;

(3) The skill needs described in paragraph (a)(2) of this section align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;

(4) The program provides academic and career counseling services that assist students in pursuing their credential and obtaining jobs aligned with skill needs described in paragraph (a)(2) of this section, and identifies the individuals providing the career counseling services;

(5) The appropriate education is offered, concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster through an agreement,

memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the secondary education is aligned with the students' career objectives; and

(6) The program is designed to lead to a valid high school diploma as defined in § 668.16(p) or its recognized equivalent.

(b) For career pathway programs that do not enroll students through a State process as defined in § 668.156, the Secretary will verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to paragraph (a) of this section. The Secretary provides an institution with the opportunity to appeal any adverse eligibility decision.

16. Section 668.171, as amended October 28, 2022 at 87 FR 65495, is further amended by revising paragraph (b) introductory text, paragraphs (b)(3), and (c) through (i) to read as follows:

§ 668.171 General

* * * * *

(b) *General standards of financial responsibility*. Except as provided in paragraph (h) of this section, the Department considers an institution to be financially responsible if the Department determines that--

* * * * *

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if--

(i) It fails to make refunds under its refund policy, return title IV, HEA program funds for which it is responsible under § 668.22, or pay title IV, HEA credit balances as required under § 668.164(h)(2);

(ii) It fails to make repayments to the Department for any debt or liability arising from the institution's participation in the title IV, HEA programs;

(iii) It fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days;

(iv) It fails to satisfy payroll obligations in accordance with its published payroll schedule;

(v) It borrows funds from retirement plans or restricted funds without authorization; or

(vi) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or an action or event that the Department has determined to have a material adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

* * * * *

(c) *Mandatory triggering events*. (1) Except for the mandatory triggers that require a recalculation of the institution's composite score, the mandatory triggers in this paragraph (c) constitute automatic failures of financial responsibility. For any mandatory triggers under this paragraph (c) that result in a recalculated composite score of less than 1.0, and for those mandatory triggers that constitute automatic failures of financial responsibility, the Department will require the institution to provide financial protection as set forth in this subpart. The financial protection required under this paragraph is not less than 10 percent of the total title IV, HEA funding in the prior fiscal year. If the Department requires financial protection as a result of more than one mandatory or discretionary trigger, the Department will require separate financial protection for each individual trigger. The Department will consider whether the financial protection can be released following the institution's submission of two full fiscal years of audited financial statements following the Department's notice that requires the posting of the financial protection. In making this determination, the Department considers whether the administrative or financial risk caused by the event has ceased or been resolved, including full payment of all damages, fines, penalties, liabilities, or other financial relief.

(2) The following are mandatory triggers:

(i) *Debts, liabilities, and losses*. (A) For an institution or entity with a composite score of less than 1.5, other than a composite score calculated under 34 CFR 600.20(g) and § 668.176, that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, or a final judgment in a judicial proceeding, and as a result of the debt or liability, the recalculated composite score for the institution or entity is less than 1.0, as determined by the Department under paragraph (e) of this section;

(B) The institution or any entity whose financial statements were submitted in the prior fiscal year to meet the requirements of 34 CFR 600.20(g) or this subpart, is sued by a Federal or State authority to impose an injunction, establish fines or penalties, or to obtain financial relief such as damages, or through a qui tam lawsuit in which the Federal government has intervened, and the action was brought on or after July 1, 2024, and the action has been pending for 120 days, or a qui tam has been pending for 120 days following intervention, and no motion to dismiss has been filed, or if a motion to dismiss has been filed within 120 days and denied, upon such denial.

(C) The Department has initiated action to recover from the institution the cost of adjudicated claims in favor of borrowers under the loan discharge provisions in

34 CFR part 685 and, the recalculated composite score for the institution or entity as a result of the adjudicated claims is less than 1.0, as determined by the Department under paragraph (e) of this section; or

(D) For an institution or entity that has submitted an application for a change in ownership under 34 CFR 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in paragraph (c)(2)(i)(B) or (C) of this section, at any point through the end of the second full fiscal year after the change in ownership has occurred.

(ii) *Withdrawal of owner's equity*. (A) For a proprietary institution whose composite score is less than 1.5, or for any proprietary institution through the end of the first full fiscal year following a change in ownership, and there is a withdrawal of owner's equity by any means, including by declaring a dividend, unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; or is the equivalent of wages in a sole proprietorship or general partnership or a required dividend or return of capital; and

(B) As a result of that withdrawal, the institution's recalculated composite score for the entity whose financial statements were submitted to meet the requirements of § 668.23 for the annual submission, or § 600.20(g) or (h) for a change in ownership, is less than 1.0, as determined by the Department under paragraph (e) of this section.

(iii) *Gainful employment*. As determined annually by the Department, the institution received at least 50 percent of its title IV, HEA program funds in its most recently completed fiscal year from gainful employment (GE) programs that are "failing" under subpart S of this part.

(iv) *Teach-out plans*. The institution is required to submit a teach-out plan or agreement, by a State or Federal agency, an accrediting agency or other oversight body.

(v) *State actions*. The institution is cited by a State licensing or authorizing agency for failing to meet State or agency requirements and the agency provides notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement.

(vi) *Publicly listed entities*. For an institution that is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, the entity is subject to one or more of the following actions or events:

(A) *SEC actions*. The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of any of the entity's securities pursuant to section 12(j) of the Securities Exchange Act of 1934 (the "Exchange Act") or suspends trading of the entity's securities pursuant to section 12(k) of the Exchange Act.

(B) *Other SEC actions*. The SEC files an action against the entity in district court or issues an order instituting proceedings pursuant to section 12(j) of the Exchange Act.

(C) *Exchange actions*. The exchange on which the entity's securities are listed notifies the entity that it is not in compliance with the exchange's listing requirements, or its securities are delisted.

(D) *SEC reports*. The entity failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b-25.

(E) *Foreign exchanges or Oversight Authority*. The entity is subject to an event, notification, or condition by a foreign exchange or oversight authority that the Department determines is equivalent to those identified in paragraphs (c)(2)(vi)(A)-(D) of this section.

(vii) *Non-Federal educational assistance funds*. For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than Federal educational assistance, as provided under § 668.28(c). The financial protection provided under this requirement will remain in place until the institution passes the 90/10 revenue requirement for two consecutive years.

(viii) *Cohort default rates*. The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless--

(A) The institution files a challenge, request for adjustment, or appeal under subpart N of this part with respect to its rates for one or both of those fiscal years; and

(B) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both of those years or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(ix) *Loss of eligibility*. The institution has lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school.

(x) *Contributions and distributions*.(A) An institution's financial statements required to be submitted under § 668.23 reflect a contribution in the last quarter of the fiscal year, and the institution then made a distribution during the first two quarters of the next fiscal year; and

(B) The offset of such distribution against the contribution results in a recalculated composite score of less than 1.0, as determined by the Department under paragraph (e) of this section.

(xi) *Creditor events*. As a result of an action taken by the Department, the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement.

(xii) *Declaration of financial exigency*. The institution declares a state of financial exigency to a Federal, State, Tribal or foreign governmental agency or its accrediting agency.

(xiii) *Receivership*. The institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law.

(d) *Discretionary triggering events*. The Department may determine that an institution is not able to meet its financial or administrative obligations if the Department determines that a discretionary triggering event is likely to have a significant adverse effect on the financial condition of the institution. For those discretionary triggers that the Department determines will have a significant adverse effect on the financial condition of the institution, the Department will require the institution to provide financial protection as set forth in this subpart. The financial protection required under this paragraph is not less than 10 percent of the total title IV, HEA funding in the prior fiscal year. If the Department requires financial protection as a result of more than one mandatory or discretionary trigger, the Department will require separate financial protection for each individual trigger. The Department will consider whether the financial protection can be released following the institution's submission of two full fiscal years of audited financial statements following the Department's notice that requires the posting of the financial protection. In making this determination, the Department considers whether the administrative or financial risk caused by the event has ceased or been resolved, including full payment of all damages, fines, penalties, liabilities, or other financial relief. The discretionary triggers include, but are not limited to, the following events:

(1) *Accrediting agency and government agency actions*. The institution’s accrediting agency or a Federal, State,

local or Tribal authority places the institution on probation or issues a show-cause order or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization or eligibility.

(2) *Other defaults, delinquencies, creditor events, and judgments*.

(i) Except as provided in paragraph (c)(2)(xi) of this section, the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart is subject to a default or other condition under a line of credit, loan agreement, security agreement, or other financing arrangement;

(ii) Under that line of credit, loan agreement, security agreement, or other financing arrangement, a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose on the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

(iii) Any creditor of the institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart takes action to terminate, withdraw, limit, or suspend a loan agreement or other financing arrangement or calls due a balance on a line of credit with an outstanding balance;

(iv) The institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart enters into a line of credit, loan agreement, security agreement, or other financing arrangement whereby the institution or entity may be subject to a default or other adverse condition as a result of any action taken by the Department; or

(v) The institution or any entity included in the financial statements submitted in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or this subpart has a judgment awarding monetary relief entered against it that is subject to appeal or under appeal.

(3) *Fluctuations in Title IV volume*. There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs.

(4) *High annual dropout rates*. As calculated by the Department, the institution has high annual dropout rates.

(5) *Interim reporting*. For an institution required to provide additional financial reporting to the Department due to a failure to meet the financial responsibility standards in this subpart or due to a change in ownership, there are negative cash flows, failure of other liquidation ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or other indicators of a material change in the financial condition of the institution.

(6) *Pending borrower defense claims*. There are pending claims for borrower relief discharge under 34 CFR 685.400 from students or former students of the institution and the Department has formed a group process to consider claims under 34 CFR 685.402 and, if approved, those claims could be subject to recoupment.

(7) *Discontinuation of programs*. The institution discontinues academic programs, that affect more than 25 percent of enrolled students.

(8) *Closure of locations*. The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students.

(9) *State citations*. The institution is cited by a State licensing or authorizing agency for failing to meet State or agency requirements.

(10) *Loss of program eligibility*. One or more programs at the institution has lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school or its programs.

(11) *Exchange disclosures*. If an institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law.

(12) *Actions by another Federal agency*. The institution is cited and faces loss of education assistance funds from another Federal agency if it does not comply with the agency's requirements.

(e) *Recalculating the composite score*. When a recalculation of an institution's most recent composite score is required by the mandatory triggering events described in paragraph (c) of this section, the Department makes the recalculation as follows:

(1) For a proprietary institution, debts, liabilities, and losses(including cumulative debts, liabilities, and losses for all triggering events) since the end of the prior fiscal year incurred by the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this

subpart, and debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) through the end of the first full fiscal year following a change in ownership incurred by the entity whose financial statements were submitted for 34 CFR § 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount.

(ii) For the equity ratio, decreasing modified equity by that amount.

(iii) For the net income ratio, decreasing income before taxes by that amount.

(2) For a nonprofit institution, debts, liabilities, and losses(including cumulative debts, liabilities, and losses for all triggering events) since the end of the prior fiscal year incurred by the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this subpart, and debts, liabilities, and losses (including cumulative debts, liabilities, and losses for all triggering events) through the end of the first full fiscal year following a change in ownership incurred by the entity whose financial statements were submitted for 34 CFR § 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount.

(ii) For the equity ratio, decreasing modified net assets by that amount.

(iii) For the net income ratio, decreasing change in net assets without donor restrictions by that amount.

(3) For a proprietary institution, the withdrawal of equity (including cumulative withdrawals of equity) since the end of the prior fiscal year from the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23 or this subpart, and the withdrawal of equity (including cumulative withdrawals of equity) through the end of the first full fiscal year following a change in ownership from the entity whose financial statements were submitted for 34 CFR § 600.20(g) or (h), will be adjusted as follows:

(i) For the primary reserve ratio, decreasing adjusted equity by that amount.

(ii) For the equity ratio, decreasing modified equity by that amount.

(4) For a proprietary institution, a contribution and distribution in the entity whose financial statements were submitted in the prior fiscal year to meet the requirements of § 668.23, this subpart, or 34 CFR 600.20(g) will be adjusted as follows:

(i) For the primary reserve ratio, decreasing adjusted equity by the amount of the distribution.

(ii) For the equity ratio, decreasing modified equity by the amount of the distribution.

(f) *Reporting requirements*. (1) In accordance with procedures established by the Department, an institution must timely notify the Department of the following actions or events:

(i) For a liability incurred under paragraph (c)(2)(i)(A) of this section, no later than 10 days after the date of written notification to the institution or entity of the final judgment or determination.

(ii) For a lawsuit described in paragraph (c)(2)(i)(B) of this section, no later than 10 days after the institution or entity is served with the complaint, and an updated notice must be provided 10 days after the suit has been pending for 120 days.

(iii) No later than 10 days after the institution receives a civil investigative demand, subpoena, request for documents or information, or other formal or informal inquiry from any local, State, Tribal, Federal, or foreign government or government entity.

(iv) For a withdrawal of owner's equity described in paragraph (c)(2)(ii) of this section--

(A) For a capital distribution that is the equivalent of wages in a sole proprietorship or general partnership, no later than 10 days after the date the Department notifies the institution that its composite score is less than 1.5. In response to that notice, the institution must report the total amount of the wage-equivalent distributions it made during its prior fiscal year and any distributions that were made to pay any taxes related to the operation of the institution. During its current fiscal year and the first six months of its subsequent fiscal year (18-month period), the institution is not required to report any distributions to the Department, provided that the institution does not make wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year, less any distributions that were made to pay any taxes related to the operation of the institution. However, if the institution makes wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year less any distributions that were made to pay any taxes related to the operation of the institution at any time during the 18-month period, it must report each of those distributions no later than 10 days after they are made, and the Department recalculates the institution's composite score based on the cumulative amount of the distributions made at that time;

(B) For a distribution of dividends or return of capital, no later than 10 days after the dividends are declared or the amount of return of capital is approved; or

(C) For a related party receivable/other assets, no later than 10 days after that receivable/other assets are booked or occur.

(v) For a contribution and distribution described in paragraph (c)(2)(x) of this section, no later than 10 days following each transaction.

(vi) For the provisions relating to a publicly listed entity under paragraph (c)(2)(vi) or (d)(11) of this section, no later than 10 days after the date that such event occurs.

(vii) For any action by an accrediting agency, Federal, State, local or Tribal authority that is either a mandatory or discretionary trigger, no later than 10 days after the date on which the institution is notified of the action.

(viii) For the creditor events described in paragraph (c)(2)(xi) of this section, no later than 10 days after the date on which the institution is notified of the action by its creditor.

(ix) For the other defaults, delinquencies, or creditor events described in paragraph (d)(2)(i), (ii), (iii), and (iv) of this section, no later than 10 days after the event occurs, with an update no later than 10 days after the creditor waives the violation, or the creditor imposes sanctions or penalties, including sanctions or penalties imposed in exchange for or as a result of granting the waiver. For a monetary judgment subject to appeal or under appeal described in paragraph (d)(2)(v), no later than 10 days after the court enters the judgment, with an update no later than 10 days after the appeal is filed or the period for appeal expires without a notice of appeal being filed. If an appeal is filed, no later than 10 days after the decision on the appeal is issued.

(x) For the non-Federal educational assistance funds provision in paragraph (c)(2)(vii) of this section, no later than 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(3).

(xi) For an institution or entity that has submitted an application for a change in ownership under 34 CFR § 600.20 that is required to pay a debt or incurs a liability from a settlement, arbitration proceeding, final judgment in a judicial proceeding, or a determination arising from an administrative proceeding described in paragraph (c)(2)(i)(B) or (C) of this section, the institution must report this no later than ten days after the action. This reporting requirement is applicable to any action described herein occurring through the end of the second full fiscal year after the change in ownership has occurred.

(xii) For a discontinuation of academic programs described in paragraph (d)(7) of this section, no later than 10 days after the discontinuation of programs.

(xiii) For a failure to meet any of the standards in paragraph (b) of this section, no later than 10 days after the institution ceases to meet the standard.

(xiv) For a declaration of financial exigency, no later than 10 days after the institution communicates its declaration to a Federal, State, Tribal or foreign governmental agency or its accrediting agency.

(xv) If the institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a State or Federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law, no later than 10 days after either the filing for receivership or the order appointing a receiver or appointing a person of similar status under foreign law, as applicable.

(xvi) The institution closes more than 50 percent of its locations or closes locations that enroll more than 25 percent of its students no later than 10 days after the closure that meets or exceeds these thresholds.

(xvii) If the institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, and the entity discloses in a public filing that it is under investigation for possible violations of State, Federal or foreign law, no later than ten days after the public filing.

(2) The Department may take an administrative action under paragraph (i) of this section against an institution, or determine that the institution is not financially responsible, if it fails to provide timely notice to the Department as provided under paragraph (f)(1) of this section, or fails to respond, within the timeframe specified by the Department, to any determination made, or request for information, by the Department under paragraph (f)(3) of this section.

(3)(i) In its notice to the Department under this paragraph, or in its response to a preliminary determination by the Department that the institution is not financially responsible because of a triggering event under paragraph (c) or (d) of this section, in accordance with procedures established by the Department, the institution may--

(A) Show that the creditor waived a violation of a loan agreement under paragraph (d)(2) of this section. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (d)(2)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not significantly affect the institution's ability to meet its financial obligations;

(B) Show that the triggering event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the liabilities that arise under paragraph (c)(2)(i)(A) of this section; or

(C) Explain or provide information about the conditions or circumstances that precipitated a triggering event under paragraph (c) or (d) of this section that demonstrates that the triggering event has not had, or will not have, a material adverse effect on the financial condition of the institution.

(ii) The Department will consider the information provided by the institution in determining whether to issue a final determination that the institution is not financially responsible.

(g) *Public institutions*. (1) The Department considers a domestic public institution to be financially responsible if the institution--

(i) Notifies the Department that it is designated as a public institution by the State, local, or municipal government entity, Tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter or other documentation acceptable to the Department and signed by an official of that government entity confirming that the institution is a public institution and is backed by the full faith and credit of the government entity. This letter must be submitted before the institution's initial certification, upon a change in ownership and request to be recognized as a public institution, and for the first re-certification of a public institution after the effective date of these regulations. Thereafter, the letter must be submitted —

(A) When the institution submits an application for re-certification following any period of provisional certification;

(B) Within 10 business days following a change in the governmental status of the institution whereby the institution is no longer backed by the full faith and credit of the government entity; or

(C) Upon request by the Department;

(iii) Is not subject to a condition of past performance under § 668.174; and

(iv) Is not subject to an automatic mandatory triggering event as described in paragraph (c) of this section or a discretionary triggering event as described in paragraph (d) of this section that the Department determines will have a significant adverse effect on the financial condition of the institution.

(2) The Department considers a foreign public institution to be financially responsible if the institution--

(i) Notifies the Department that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter or other documentation acceptable to the Department and signed by an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity. This letter must be submitted before the institution's initial certification, upon a change in ownership and request to be recognized as a public institution, and for the first re-certification of a public institution after the effective date of these regulations. Thereafter, the letter must be submitted in the following circumstances —

(A) When the institution submits an application for re-certification following any period of provisional certification;

(B) Within 10 business days following a change in the governmental status of the institution whereby the institution is no longer backed by the full faith and credit of the government entity; or

(C) Upon request by the Department;

(iii) Is not subject to a condition of past performance under § 668.174 and

(iv) Is not subject to an automatic mandatory triggering event as described in paragraph (c) of this section or a discretionary triggering event as described in paragraph (d) of this section that the Department determines will have a significant adverse effect on the financial condition of the institution.

(h) *Audit opinions and disclosures*. Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Department does not consider the institution to be financially responsible if the institution's audited financial statements-

(1) Include an opinion expressed by the auditor that was an adverse, qualified, or disclaimed opinion, unless the Department determines that the adverse, qualified, or disclaimed opinion does not have a significant bearing on the institution's financial condition; or

(2) Include a disclosure in the notes to the institution’s or entity’s audited financial statements about the institution's or entity’s diminished liquidity, ability to continue operations, or ability to continue as a

going concern, unless the Department determines that the diminished liquidity, ability to continue operations, or ability to continue as a going concern has been alleviated. The Department may conclude that diminished liquidity, ability to continue operations, or ability to continue as a going concern has not been alleviated even if the disclosure provides that those concerns have been alleviated.

(i) *Administrative actions*. If the Department determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial statements and compliance audits by the date and in the manner required under § 668.23, the Department may--

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs;

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d); or

(3) Deny the institution's application for certification or recertification to participate in the title IV, HEA programs.

17. Section 668.174 is amended by:

a. Revising paragraphs (a)(2) and (b)(2)(i);

b. Adding paragraph (b)(3); and

c. Revising paragraph (c)(1).

The revisions and addition read as follows:

§ 668.174 Past performance

(a) * * *

(2) In either of its two most recently submitted compliance audits had a final audit determination or in a Departmentally issued report, including a final program review determination report, issued in its current fiscal year or either of its preceding two fiscal years, had a program review finding that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

* * * * *

(b) * * *

(2) * * *

(i) The institution notifies the Department, within the time permitted and as provided under 34 CFR 600.21, that the person or entity referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

* * * * *

(3) An institution is not financially responsible if an owner who exercises substantial control, or the owner’s spouse, has been in default on a Federal student loan, including parent PLUS loans, in the preceding five years, unless --

(i) The defaulted Federal student loan has been fully repaid and five years have elapsed since the repayment in full;

(ii) The defaulted Federal student loan has been approved for, and the borrower is in compliance with, a rehabilitation agreement and has been current for five consecutive years; or

(iii) The defaulted Federal student loan has been discharged, canceled or forgiven by the Department.

(c) * * *

(1) An ownership interest is defined in 34 CFR 600.31(b).

* * * * *

18. Section 668.175 is amended by revising paragraphs (b), (c), (d), (f)(1) and (2) to read as follows:

§ 668.175 Alternative standard and requirements.

* * * * *

(b) *Letter of credit or cash escrow alternative for new institutions*. A new institution that is not financially responsible solely because the Department determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Department, or providing other surety described under paragraph (h)(2)(i) of this section, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Department determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Financial protection alternative for participating institutions*. A participating institution that is not financially responsible, either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), (c), or (d), or because of an audit opinion or disclosure about the institution's liquidity, ability to continue operations, or ability to continue as a going concern described under § 668.171(h), qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Department, or providing other financial protection described under paragraph (h)(2)(i) of this section, for an amount determined by the Department that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution. For purposes of a failure under § 668.171(b)(2) or (3), the institution must also remedy the issue(s) that gave rise to the failure to the Department's satisfaction.

(d) *Zone alternative*. (1) A participating institution that is not financially responsible solely because the Department determines that its composite score under § 668.172 is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Department determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statements for its most recently completed fiscal year, the Department determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statements for each of its subsequent two fiscal years, the Department determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years, or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Department.

(2) Under the zone alternative, the Department--

(i) Requires the institution to make disbursements to eligible students and parents, and to otherwise comply with the provisions, under either the heightened cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events--

(A) Any event that causes the institution, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statements; or

(B) Any losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015-01 and ASC 225;

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must--

(i) For any oversight or financial event described in paragraph (d)(2)(ii) of this section for which the institution is required to provide information, in accordance with procedures established by the Department, notify the Department no later than 10 days after that event occurs; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraph (d)(2) or (3) of this section, the Department may determine that the institution no longer qualifies under this alternative.

* * * * *

(f) *Provisional certification alternative*. (1) The Department may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if -

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b), its recalculated composite score under § 668.171(e) is less than 1.0, it is subject to an action or event under § 668.171(c), or an action or event under paragraph (d) has an adverse material effect on the institution as determined by the Department, or because of an audit opinion or going concern disclosure described in § 668.171(h); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Department that it has satisfied or resolved that condition; and

(2) Under this alternative, the institution must -

(i) Provide to the Department an irrevocable letter of credit that is acceptable and payable to the Department, or provide other financial protection described under paragraph (h) of this section, for an amount determined by the Department that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution that the Department determines is backed by the full faith and credit of the State or equivalent governmental entity;

(ii) Remedy the issue(s) that gave rise to its failure under § 668.171(b)(2) or (3) to the Department's satisfaction; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

* * * * *

§ 668.176 [Redesignated]

19. Redsignate § 668.176 as § 668.177.

20. Add § 668.176 to read as follows:

§ 668.176 Change in Ownership.

(a) *Purpose*. To continue participation in the title IV, HEA programs during and following a change in ownership, institutions must meet the financial responsibility requirements in this section.

(b) *Materially complete application*. To meet the requirements of a materially complete application under 34 CFR 600.20(g)(3)(iii) and (iv)-

(1) An institution undergoing a change of ownership and control as provided under 34 CFR 600.31 must submit audited financial statements of its two most recently completed fiscal years prior to the change in ownership, at the level of the change in ownership or the level of financial statements required by the Department, that are prepared and audited in accordance with the requirements of § 668.23(d);

(2) The institution must submit audited financial statements of the institution's new owner's two most recently completed fiscal years prior to the change in

ownership that are prepared and audited in accordance with the requirements of § 668.23 at the highest level of unfractured ownership or at the level required by the Department.

(i) If the institution's new owner does not have two years of acceptable audited financial statements, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year;

(ii) If the institution's new owner only has one year of acceptable financial statements, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year; or

(iii) For an entity where no individual new owner obtains control, but the combined ownership of the new owners is equal to or exceeds the ownership share of the existing ownership, financial protection in the form of a letter of credit or cash to the Department in the amount of 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, based on the combined ownership share of the new owners, except for any new owner that submits two years or one year of acceptable audited financial statements as described in paragraphs (b)(2)(i) and (ii) of this section.

(3) The institution must meet the financial responsibility requirements. In general, the Department considers an institution to be financially responsible only if it—

(i) For a for-profit institution evaluated at the ownership level required by the Department for the new owner-

(A) Has not had operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution’s tangible net worth at the beginning of the first year of the two-year period. The Department may calculate an operating loss for an institution by excluding prior period adjustment and the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth must exclude all related party accounts receivable/other assets and all assets defined as intangible in accordance with the composite score;

(B) Has, for its two most recent fiscal years, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution’s tangible assets exceed its liabilities. The calculation of tangible net worth excludes all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(C) Has a passing composite score and meets the other financial requirements of this subpart for its most recently completed fiscal year.

(ii) For a nonprofit institution evaluated at the ownership level required by the Department for the new owner-

(A) Has, at the end of its two most recent fiscal years, positive net assets without donor restrictions. The Department will exclude all related party receivables/other assets from net assets without donor restrictions and all assets classified as intangibles in accordance with the composite score;

(B) Has not had an excess of net assets without donor restriction expenditures over net assets without donor restriction revenues over both of its two latest fiscal years that results in a decrease exceeding 10 percent in either the net assets without donor restrictions from the start to the end of the two-year period or the net assets without donor restriction in either one of the two years. The Department may exclude from net changes in fund balances for the operating loss calculation prior period adjustment and the cumulative effect of changes in accounting principle. In calculating the net assets without donor restriction, the Department will exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(C) Has a passing composite score and meets the other financial requirements of this subpart for its most recently completed fiscal year.

(iii) For a public institution, has its liabilities backed by the full faith and credit of a State or equivalent governmental entity.

(4) For a for-profit or nonprofit institution that is not financially responsible under paragraph (b)(3) of this section, provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

(c) *Acquisition debt*. (1) Notwithstanding any other provision in this section, the Department may determine that the institution is not financially responsible following a change in ownership if the amount of debt assumed to complete the change in ownership requires payments (either periodic or balloon) that are inconsistent with available cash to service those payments based on enrollments for the period prior to when the payment is or will be due.

(2) For a for-profit or nonprofit institution that is not financially responsible under this provision, provide financial protection in the form of a letter of credit or cash in an amount that is not less than 10 percent of the prior year title IV, HEA funding or an amount determined by the Department, and follow the zone requirements in § 668.175(d).

(d) Terms of the extension. To meet the requirements for a temporary provisional program participation agreement following a change in ownership, as described in 34 CFR 600.20(h)(3)(i), an institution must meet the following requirements:

(1) For a proprietary institution or a nonprofit institution—

(i) The institution must provide the Department a same-day balance sheet for a proprietary institution or a statement of financial position for a nonprofit institution that shows the financial position of the institution under its new owner, as of the day after the change in ownership, and that meets the following requirements:

(A) The same-day balance sheet or statement of financial position must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing

Standards (GAGAS) published by the U.S. Government Accountability Office (GAO);

(B) As part of the same-day balance sheet or statement of financial position, the institution must include a disclosure that includes all related-party transactions, and such details as would enable the Department to identify the related party in accordance with the requirements of § 668.23(d). Such information must include, but is not limited to, the name, location, and description of the related entity, including the nature and amount of any transaction between the related party and the institution, financial or otherwise, regardless of when it occurred;

(C) Such balance sheet or statement of financial position must be a consolidated same-day financial statement at the level of highest unfractured ownership or at a level determined by the Department for an ownership of less than 100 percent;

(D) The same-day balance sheet or statement of financial position must demonstrate an acid test ratio of at least 1:1. The acid test ratio must be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio must exclude all related party receivables/other assets and all assets classified as intangibles in accordance with the composite score;

(E) A proprietary institution's same-day balance sheet must demonstrate a positive tangible net worth the day after the change in ownership. A positive tangible net worth occurs when the tangible assets exceed liabilities. The calculation of tangible net worth must exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score; and

(F) A nonprofit institution's statement of financial position must have positive net assets without donor restriction the day after the change in ownership. The calculation of net assets without donor restriction must exclude all related party accounts receivable/other assets and all assets classified as intangible in accordance with the composite score.

(ii) If the institution fails to meet the requirements in paragraphs (d)(1)(i) of this section, the institution must provide financial protection in the form of a letter of credit or cash to the Department in the amount of at least 25 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, or an amount determined by the Department, and must follow the zone requirements of § 668.175(d); and

(2) For a public institution, the institution must have its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity, or must follow the requirements of this section for a proprietary or nonprofit institution.

21. Add subpart Q to part 668 to read as follows:

Subpart Q—Financial Value Transparency

Subpart Q—Financial Value Transparency

§ 668.401 Financial value transparency scope and purpose.

This subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

(a) An institution reports information about the program to the Secretary; and

(b) The Secretary assesses the program's debt and earnings outcomes.

§ 668.402 Financial value transparency framework.

(a) *General*. The Secretary assesses the program's debt and earnings outcomes using debt-to-earnings rates (D/E rates) and an earnings premium measure.

(b) *Debt-to-earnings rates*. The Secretary calculates for each award year two D/E rates for an eligible program, the discretionary debt-to-earnings rate and the annual debt-to-earnings rate, using the procedures in §§ 668.403 and 668.405.

(c) *Outcomes of the D/E rates*. (1) A program passes the D/E rates if—

(i) Its discretionary debt-to-earnings rate is less than or equal to 20 percent;

(ii) Its annual debt-to-earnings rate is less than or equal to 8 percent; or

(iii) The denominator (median annual or discretionary earnings) of either rate is zero and the numerator (median debt payments) is zero.

(2) A program fails the D/E rates if—

(i) Its discretionary debt-to-earnings rate is greater than 20 percent or the income for the denominator of the rate (median discretionary earnings) is negative or zero and the numerator (median debt payments) is positive; and

(ii) Its annual debt-to-earnings rate is greater than 8 percent or the denominator of the rate (median annual earnings) is zero and the numerator (median debt payments) is positive.

(d) *Earnings premium measure*. For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in § 668.404 and 668.405.

(e) *Outcomes of the earnings premium measure*.(1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program exceed the earnings threshold.

(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are equal to or less than the earnings threshold.

§ 668.403 Calculating D/E rates.

(a) *General*. Except as provided under paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a program as follows:

(1) Discretionary debt-to-earnings rate = annual loan payment / (the median annual earnings – (1.5 x Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the most recent calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual debt-to-earnings rate = annual loan payment / the median annual earnings.

(b) *Annual loan payment*. The Secretary calculates the annual loan payment for a program by—

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d) of this section or the total amount for tuition and fees and books, equipment, and supplies for each student, less the amount of institutional grant or scholarship funds provided to that student;

(ii) Removing, if applicable, the appropriate number of largest loan debts as described in § 668.405(d)(2); and

(iii) Calculating the median of the remaining amounts;

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for any other program; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three consecutive award years, ending in the final year of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three consecutive award years, ending in the final year of the cohort period, for graduate certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six consecutive award years, ending in the final year of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six consecutive award years, ending in the final year of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

(c) *Annual earnings*.(1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the median annual earnings to calculate the D/E rates.

(d) *Loan debt and assessed charges*. (1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments except for those related to false certification, borrower defense discharges, or debt relief initiated by the Secretary as a result of a national emergency) for enrollment in the program, excluding Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants;

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that are required to be reported by the institution under § 668.408; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any program attended at the institution that the student is obligated to repay after completing the program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term "private education loan" in 34 CFR 601.2;

(2) The Secretary attributes all the loan debt incurred by the student for enrollment in any—

(i) Undergraduate program at the institution to the highest credentialed undergraduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(ii) Graduate program at the institution to the highest credentialed graduate program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in any program at any other institution. However, the Secretary may include loan debt incurred by the student for enrollment in programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions*. The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's

total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(f) *D/E rates not issued*. The Secretary does not issue D/E rates for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (c) of this section.

§ 668.404 Calculating earnings premium measure.

(a) *General*. Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the earnings premium measure for a program by determining whether the median annual earnings of the title IV, HEA recipients who completed the program exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold*. (1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of students with a high school diploma or GED using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually through a notice in the *Federal Register*.

(c) *Exclusions*. The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that--

(1) One or more of the student’s title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student’s total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full-time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(d) *Earnings premium measures not issued*. The Secretary does not issue the earnings premium measure for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

§ 668.405 Process for obtaining data and calculating D/E rates and earnings premium measure.

(a) *Administrative data*. In calculating the D/E rates and earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview*. The Secretary uses the administrative data to—

(1) Compile a list of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under §§ 668.403(e) or 668.404(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information about the students on the list, as provided in paragraph (a) of this section;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the D/E rates and the earnings premium measure and provide them to the institution.

(c) *Obtaining earnings data*. For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary—

(1) The median annual earnings of the students on the list whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match.

(d) *Calculating D/E rates and earnings premium measure*. (1) If the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates and earnings premium measure for each program.

(2) If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt for D/E rates the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

§ 668.406 Determination of the D/E rates and earnings premium measure.

(a) *Notice of determination*. For each award year for which the Secretary calculates D/E rates and the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The D/E rates for each program as determined under § 668.403.

(2) The earnings premium measure for each program as determined under § 668.404.

(3) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(4) For non-GE programs, whether the student acknowledgement is required under § 668.407.

(5) For GE programs, whether the institution is required to provide the student warning under § 668.605.

(6) For GE programs, whether the program could become ineligible under subpart S of this part based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the program.

§ 668.407 Student disclosure acknowledgments.

(a) *Events requiring an acknowledgment from students*.

(1) *Eligible non-GE programs*. The student must provide an acknowledgment with respect to an eligible non-GE program in the manner specified in this section for any year for which the Secretary notifies an institution that the eligible non-GE program has failed the D/E rates for the year in which the D/E rates were most recently calculated by the Department.

(2) *GE Programs*. Warnings and acknowledgments with respect to GE programs are required under the conditions and in the manner specified in § 668.605.

(b) *Content and mechanism of acknowledgment*.

(1) The student must acknowledge having seen the information about the program provided through the disclosure website established and maintained by the Secretary described in § 668.43(d).

(2) The Department will administer and collect the acknowledgment through the disclosure website established and maintained by the Secretary described in § 668.43(d).

(c) An institution may not disburse title IV, HEA funds to the student until the student provides the acknowledgment required in paragraph (a)(1) of this section.

(d) The acknowledgment required in paragraph (a)(1) of this section does not mitigate the institution’s responsibility to provide accurate information to students concerning program status, nor will it be considered as evidence against a student’s claim if applying for a loan discharge.

§ 668.408 Reporting requirements.

(a) *General*. In accordance with procedures established by the Secretary, an institution must report to the Department—

(1) For each GE program and eligible non-GE program--

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each State in the institution’s metropolitan statistical area;

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and

(v) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in the definition of “cohort period” under § 668.2.

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; and

(iv) The student's enrollment status (e.g., full time, three quarter time, half time, less than half time) as of the first day of the student's enrollment in the program;

(v) The student’s total annual cost of attendance;

(vi) The total tuition and fees assessed to the student for the award year;

(vii) The student’s residency tuition status by State or district;

(viii) The student’s total annual allowance for books, supplies, and equipment from their cost of attendance under HEA section 472;

(ix) The student’s total annual allowance for housing and food from their cost of attendance under HEA section 472;

(x) The amount of institutional grants and scholarships disbursed to the student;

(xi) The amount of other State, Tribal, or private grants disbursed to the student; and

(xii) The amount of any private education loans disbursed, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and

(vi) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the *Federal Register*, any other information the Secretary requires the institution to report.

(b)(1) *Reporting deadlines.* Except as provided under paragraph (c) of this section, an institution must report the information required under paragraph (a) of this section no later than—

(i) For programs other than medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect, for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the *Federal Register*.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(c) *Transitional reporting period and metrics*.

(1) For the initial award year for which D/E rates and the earnings premium are calculated under this part, institutions may opt to report the information required under paragraph (a) of this section for its eligible programs that are not GE programs either--

(i) For the time periods described in paragraph (b)(1)(i) and (ii) of this section; or

(ii) For only the two most recently completed award years.

(2) If an institution provides transitional reporting under paragraph (c)(1)(ii) of this section, the Department

will calculate transitional D/E rates and earnings premium measures based on the period reported.

§ 668.409 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

22. Add subpart S to part 668 to read as follows:

Subpart S—Gainful Employment (GE)

Subpart S—Gainful Employment

§ 668.601 Gainful employment (GE) scope and purpose.

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation and establishes rules and procedures under which the Secretary determines that the program is eligible for title IV, HEA program funds.

§ 668.602 Gainful employment criteria.

(a) A GE program provides training that prepares students for gainful employment in a recognized occupation if the program--

(1) Satisfies the applicable certification requirements in § 668.604;

(2) Is not a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program’s D/E rates are calculated; and

(3) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program’s earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates for that award year and remains in the same status under the D/E rates as the previous award year.

(c) If the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

(d) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

(e) If the Secretary does not calculate the earnings premium measure for the program for four or more consecutive award years, the Secretary disregards the program's earnings premium for any award year prior to the four-year period in determining the program's eligibility.

§ 668.603 Ineligible GE programs.

(a) *Ineligible programs*. If a GE program is a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program's D/E rates are calculated, or the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated, the program becomes ineligible and its participation in the title IV, HEA programs ends upon the earliest of—

(1) The issuance of a new Eligibility and Certification Approval Report that does not include that program;

(2) The completion of a termination action of program eligibility, if an action is initiated under subpart G of this part; or

(3) A revocation of program eligibility, if the institution is provisionally certified.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a)(2) of this section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. Institutions may not dispute a program's ineligibility based upon its D/E rates or the earnings premium measure except as described in this paragraph (b).

(c) *Restrictions*--(1) *Ineligible program*. Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility*. An institution may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after D/E rates or the earnings premium measure are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates or the earnings premium measure, until three years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility*. An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.604(c).

§ 668.604 Certification requirements for GE programs.

(a) *Transitional certification for existing programs*. (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under § 668.14.

(2) If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *Program participation agreement certification*. As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(c) *Establishing eligibility and disbursing funds*. (1) An institution establishes a GE program's eligibility for title IV, HEA program funds by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in § 668.603(c), that was subject to the three-year loss of eligibility under § 668.603(c), until that three-year period expires.

(d) *GE program eligibility certifications*. An institution certifies for each eligible GE program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that such program is approved by a recognized accrediting agency or is otherwise included in the institution’s accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

§ 668.605 Student warnings and acknowledgments.

(a) *Events requiring a warning to students and prospective students*. The institution must provide a warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the GE program could become ineligible under this subpart based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the GE program.

(b) *Subsequent warning*. If a student or prospective student receives a warning under paragraph (a) of this section with respect to a GE program, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student, unless, since providing the initial warning, the program has passed both the D/E rates and earnings premium measures for the two most recent consecutive award years in which the metrics were calculated for the program.

(c) *Content of warning*. The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the Federal Register, that —

(i) The program has not passed standards established by the U.S. Department of Education based on the amounts students borrow for enrollment in the program and their reported earnings, as applicable; and

(ii) The program could lose access to Federal grants and loans based on the next calculated program metrics;

(2) The relevant information to access the disclosure website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having seen the warning through the disclosure website maintained by the Secretary described in § 668.43(d) before the institution may disburse any title IV, HEA funds;

(4) A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(5) An indication of whether, in the event that the program loses eligibility for title IV, HEA program funds, the institution will—

(i) Continue to provide instruction in the program to allow students to complete the program; and

(ii) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(6) An explanation of whether, in the event that the program loses eligibility for title IV, HEA program funds, the students could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach-out plan or agreement.

(d) *Alternative languages*. In addition to providing the English-language warning, the institution must also provide translations of the English-language student warning for those students and prospective students who have limited proficiency in English.

(e) *Delivery to enrolled students*. An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.406 and maintain documentation of its efforts to provide that warning. The warning must be the only substantive content contained in these written communications.

(f) *Delivery to prospective students*. (1) An institution must provide the warning as required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(i) Hand-delivering the warning as a separate document to the prospective student or third party individually, or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in paragraph (f) of this section.

(g) *Restriction on disbursement.* An institution may not disburse title IV, HEA funds to the student until the student completes the acknowledgment described in paragraph (c)(3) of this section, as administered and collected through the disclosure website maintained by the Secretary described in § 668.43(d).

(h) *Disclaimer*. The provision of a student warning or the acknowledgment described in paragraph (c)(3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as evidence against a student's claim if applying for a loan discharge.

§ 668.606 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

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