



DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, and 685

[Docket ID ED-2026-OPE-0100]

RIN 1840-AE06

**Accountability in Higher Education and Access through
Demand-driven Workforce Pell: Student Tuition and
Transparency System (STATS) and Earnings Accountability**

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Secretary of Education (Secretary) proposes to amend the regulations governing institutional eligibility, general provisions regulations, and the William D. Ford Direct Loan (Direct Loan) Program under title IV of the Higher Education Act (HEA) of 1965, as amended (the title IV, HEA programs). The proposed regulations would implement statutory changes to the title IV, HEA programs included in the One Big Beautiful Bill Act (OBBA), signed by President Trump on July 4, 2025. The OBBA made numerous changes to the HEA, including changes to program eligibility requirements for the Direct Loan program and the introduction of an earnings accountability framework that is intended to limit Direct Loan eligibility to programs whose graduates meet certain earnings benchmarks. This document proposes regulations, based on consensus reached during negotiated rulemaking, to implement the provisions

of the OBBB related to low-earning outcome programs and the Direct Loan program, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs).

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on anticipated effective dates for the proposed regulatory changes, please see the discussion on the waiver of the HEA master calendar requirements in the “Authority for This Regulatory Action” section below.

ADDRESSES: You may find a plain language summary of the proposed rule and submit your comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for sending comments. 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.

Information on using Regulations.gov, including instructions for 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 regulationshelpdesk@gsa.gov or by phone at 1-866-

498-2945. Include [docket number and/or RIN number] in the subject line of the message. If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking at www.regulations.gov. Therefore, commenters should include in their comments only information that they wish to make publicly available. Additionally, commenters should not include in their comments any personally identifiable information (PII) in comments about other individuals. For example, if your comment describes an experience of someone other than yourself, please do not identify that individual or include any personal information that identifies that individual. The Department reserves the right to redact a portion of a comment or the entire comment at any time any PII about other individuals is included.

FOR FURTHER INFORMATION CONTACT: Joe Massman, Office of Postsecondary Education, 400 Maryland Ave., SW, Washington, DC 20202. Telephone: (202) 453-7771. Email: Joe.Massman@ed.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Secretary proposes regulations to overhaul the accountability framework for the title IV, HEA programs by

replacing the former debt-to-earnings ("D/E") metric with a revised earnings premium measure, expanding transparency, and strengthening institutional compliance standards. Maintaining robust accountability measures would ensure program integrity and protect students from low-earning outcomes, aligning with Congressional objectives for higher education oversight. The Department proposes to remove outdated definitions tied to D/E metrics, introduce the term "earnings," and revise several existing definitions. The Student Tuition and Transparency System ("STATS") would apply to all programs qualifying for title IV, HEA assistance, using the earnings premium measure as the new accountability standard. Institutions would be required to report program-level data, including tuition, fees, and financial aid details such as grants and scholarships to the Department. This reporting would enable the Department to provide enhanced informational disclosures of net program cost to the public. A revised version of the earnings premium measure would apply to both GE and non-GE programs; those failing the earnings premium measure in two of three consecutive years would lose Direct Loan eligibility, though limited extensions may be granted when an orderly program closure described under § 668.603(c)(4) is in students' best interest. Institutions would be required to update Direct Loan-eligible program lists, issue warnings about program risk and Pell Grant lifetime

limits, and meet a new administrative capability standard. These proposed changes aim to incentivize institutions in every sector of higher education to offer programs that deliver economic value, enhance data accessibility for students, and protect taxpayers and students through stricter oversight and comprehensive disclosures on program outcomes.

II. Summary of the Major Provisions of this Regulatory

Action:

General Definitions

The proposed regulations would:

- Amend § 668.2 to remove the definitions of “annual debt-to-earnings rate,” “debt-to-earnings rates,” “discretionary debt-to-earnings rate,” “metropolitan statistical area,” “poverty guideline,” “qualifying graduate program,” and “substantially similar program.”
- Amend § 668.2 to add “earnings” and revise existing key terms, including “cohort period,” “earnings threshold,” “eligible non-GE program,” “Federal agency with earnings data,” and “institutional grants and scholarships.”

Subpart Q - Student Tuition and Transparency System (STATS)

The proposed regulations would:

- Amend several provisions in subpart Q to reflect new numbering.

- Amend §§ 668.401, 668.402, 668.403, 668.404, and 668.405 to remove all references to the former D/E metric and use the earnings premium measure as the new accountability standard.
- Amend § 668.401 to remove exclusions for institutions located in the U.S. Territories or Freely Associated States, and to remove an exclusion for institutions with no groups of substantially similar programs that produced 30 or more total completers over the four most recently completed award years.
- Amend § 668.402 to establish that if a program does not have an earnings threshold for its State and 50 percent or more of enrolled students are from that State, the Department would not calculate the earnings premium measure but would make earnings data publicly available.
- Amend § 668.403(b) to establish that the Secretary would obtain the median annual earnings of students who completed a GE program or eligible non-GE program during the cohort period for the fourth tax year following program completion. The earnings data would be obtained from a Federal agency and would include students who are working and are not excluded from the earnings premium measure calculation.
- Amend § 668.406 to require an institution offering any GE program or eligible non-GE program to report the

total amount of Federal, State, private, or other grants and scholarships each student received for their entire enrollment. This reporting requirement would only apply to students who completed or withdrew from the program during the award year.

Subpart S - Earnings Accountability

The proposed regulations would:

- Amend §§ 668.601, 668.602, 668.603, and 668.605 to remove all references of the former D/E metric.
- Amend § 668.601 to establish that earnings accountability applies to an eligible non-GE program or a GE program offered by an eligible institution and the Secretary determines whether the program is eligible for Direct Loan program funds.
- Amend § 668.603(a) to establish that a low-earning outcome program is a GE program or eligible non-GE program that fails 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. A low-earning outcome program's participation in the Direct Loan program would end upon the completion of a termination action of Direct Loan program eligibility under subpart G.
- Add § 668.603(c)(4) to allow a program that has failed to satisfy the requirements of § 668.402 but is not a low-earning outcome program, to continue participating

in the Direct Loan program if the institution voluntarily agrees to conduct an orderly program closure, provided the Secretary determines that it is in the best interest of the students. This flexibility would be limited to 3 years or the full-time duration of the program, whichever is less, and would require the institution and the Secretary to agree to make certain amendments to the institution's program participation agreement (PPA).

- Amend § 668.604 to remove the transitional certification requirements and require an institution to establish a program's eligibility for Direct Loan program funds by updating the list of the institution's Direct Loan-eligible programs maintained by the Department. An institution would be prohibited from including programs that share the same 4-digit Classification of Instructional Programs (CIP) code and any overlapping Standard Occupational Classification (SOC) codes as a failing program that was subjected to a two-year loss of eligibility.
- Amend § 668.605(c) to require an institution to provide a student who is eligible for Pell Grant funds with an indication of their remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in

the program count against their future lifetime eligibility.

- Amend § 668.605(d) to require an institution to provide an enrolled student with information regarding their remaining Pell Grant eligibility at the time that the institution makes a disbursement of Pell Grant funds to them.

Standards for Participation in Title IV, HEA Programs

The proposed regulations would:

- Add § 668.14(h) (1) to require institutions to be placed on provisional status if they fail to comply with 34 CFR § 668.16(t) in two out of any three consecutive award years, which would result in the institution's low earning outcome programs becoming ineligible for title IV, HEA funds.
- Add § 668.14(h) (2) to allow an institution to appeal the Secretary's determination if they are found to have failed the conditions in 34 CFR § 668.16(t) in two out of any three consecutive award years.
- Amend § 668.16(t) to require an institution to demonstrate administrative capability by showing that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S.

- Amend § 668.43(d)(1) to require that the program information website includes the median length of calendar time taken for full-time and less than full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.
- Amend § 668.43(d)(2) to no longer require institutions to provide a prominent link to the website maintained by the Secretary on any web page containing academic 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.

Cost and Benefits:

As further detailed in the Regulatory Impact Analysis (RIA), the proposed regulations would have significant impacts on students, educational institutions, and taxpayers. Certain degree programs are expected to lose eligibility for title IV, HEA funds under the earnings tests in the proposed regulation, while some undergraduate and graduate certificate programs are expected to gain eligibility relative to current regulations. Students will incur costs when the programs they attend lose eligibility for title IV, HEA funds, or if they enroll in low-earning certificate programs that gain access to title IV, HEA

funds. Students will also benefit in cases where the proposed regulation prevents them from attending low-earning and high-cost degree programs. Certain institutions (mainly public and private non-profit institutions) will incur costs when programs they offer lose access to title IV, HEA funds under the proposed regulation. Other institutions (such as proprietary institutions) will benefit as more programs in this sector will remain eligible for title IV, HEA funds. Taxpayers will incur new budget costs via an increase in transfers of title IV, HEA funds to institutions relative to current regulations because the proposed regulation results in a net increase in the number of students attending programs that will be eligible for title IV, HEA funds.

III. Directed Questions

General Definitions: Earnings (§ 668.2(b))

The Department seeks feedback from relevant stakeholders regarding the proposed earnings definition. This definition was developed during negotiated rulemaking to clearly identify the types of earnings income that would be utilized in the earnings premium calculation. During negotiations, several negotiators expressed concerns that the earnings definition may not accurately capture all of the appropriate earnings income necessary to properly compute an earnings premium calculation. Some earned income elements mentioned by negotiators as areas for concern

included tipped income and the value of untaxed housing benefits.

The Department contemplates using the Internal Revenue Service (IRS) as the Federal agency with earnings data as specified under current and proposed regulatory language. This use of data would be consistent with the Department's previous and current processes, including on the College Scorecard, simply with an adjustment for the CIP level under which programs are grouped. Under this approach, the Department would consider earned income sources from work as they are reported on IRS forms attached to IRS Form 1040, some of which include sources that are reported but not subject to Federal income tax. Tip income generally is required to be reported to employers and included in the wages reported in box 1 of IRS Form W-2 and additional tip income not otherwise reported is required to be included with wage income on the filer's tax form. As the Department explained in the preamble to the most recent final rule on gainful employment¹, individuals are legally required to report their taxable earned income to the IRS, including tipped income. The Department relies on this reported income in the administration of title IV, HEA programs for determinations of earnings for program eligibility and for calculating payments under income-driven repayment plans. The Department's past experiences with the earnings appeal

¹ 88 FR 70004

processes under the 2014 GE regulations did not demonstrate that substituted sources of data used in appeals improved the quality of earnings information available to determine program eligibility (see **Low-earning outcome programs (§ 668.603)** below for more information). No other form of survey or reporting will result in greater accuracy than the income tax reporting process, which has a built-in oversight and enforcement apparatus and involves significant legal penalties for failing to accurately report earned income. Moreover, a 2022 study² showed that underreporting tips among barbers in Texas makes up a small share of total income that, even if accounted for, the difference would be insufficient to cause programs to pass the earnings premium test. And while ministerial housing allowances may not be subject to Federal income tax, they are reported on the tax forms for determining self-employment tax and would be available for use in median earnings calculations.

The Department must use reliable data for all calculations and believes that federal agencies use reliable methods for collecting earnings data that will ensure that using such data to calculate institutional cohorts will yield accurate results that reflect the actual post-graduation earnings of graduates. This method will

² Cellini, Stephanie Riegg & Blanchard, Kathryn J. (2022). Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income. Geo. Wash. Univ. (https://www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf).

allow for a consistent approach as we harmonize the implementation of the OBBB with the existing Financial Value Transparency and Gainful Employment (FVT/GE) regulatory framework.

As discussed below, the OBBB provides that the Secretary shall establish an appeals process so that if a program is determined to be a low-earning outcome program, the institution may appeal that determination. The OBBB did not instruct the Secretary to allow institutions to appeal at each step of the determination, including the reliability of the data set as to that program. The OBBB leaves the Department discretion to make a reasoned choice of the best available data on which to make the low-earning outcome determination. *See Hosp. for Special Surgery v. Becerra*, No. CV 22-2928 (JDB), 2023 WL 5448017, at *9 (D.D.C. Aug. 24, 2023) (agency made a reasoned decision in determining which classification to use in making determination); *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1127 (6th Cir. 1996) (sufficiency of data collected left to agency discretion); *State of Conn. v. E.P.A.*, 696 F.2d 147, 159-60 (2d Cir. 1982) (agency's choice of data set was rationally based and "well within the Agency's discretion").

The Department also considered the difficulty in verifying alternative data in a timely manner and does not believe that, supposing it is accurate, alternative data is

likely to have a significant impact on the overall calculation. The Secretary declines to allow such appeals for these reasons.

The Department seeks to understand whether this earnings data may be subject to other limitations that the Department is not aware of, such as if certain types of income are not captured in data held by the federal government or are potentially subject to distorting factors. Please ensure that any feedback provided includes the rationale for any modifications to the definition or the Department's proposed process for obtaining earnings data, details the specific earnings data the Department should or should not factor in, and any relevant resources that may help support any changes to the earnings definition. Please also provide details for the broad applicability of any recommended data source to most or all covered program graduates, such as geographic or demographic limitations. The Department is specifically seeking broadly applicable administrative data. The Department has concerns that sources of data that vary across states may not be comparable due to different data definitions, assumptions, and criteria for inclusion. The Department also generally seeks to avoid any data source that would create a significant reporting burden on institutions. To maintain the Department's efforts to keep data as comparable as possible between the earnings used

for the program and the comparison group used for the earnings threshold, please accompany suggestions for additional programmatic earnings elements with an explanation for why the importance of their inclusion would outweigh any potential problems from those items being covered differently by Census Bureau data in the American Community Survey (ACS).

Earnings threshold (§ 668.2(b))

The Department seeks feedback on the process by which “fields of study” are defined in Section 668.2(b) for the purposes of determining earnings thresholds for graduate-level programs.

To calculate the earnings thresholds, the statute under HEA Section 454(c)(2), as revised by the OBBB, requires the Department to use data from the Census Bureau. The Department contemplates using the Census Bureau’s ACS for this calculation, as it is the only dataset we are aware of that is maintained by the Census Bureau that is nationally representative, is annually updated, and contains all the data elements needed to calculate the earnings threshold metrics specified under Section 84001 of the OBBB.

However, there are some potential limitations with the ACS when calculating one of the graduate-level earnings thresholds described in Section 668.2(b). Specifically, in some instances, it may not be possible for the Department

to calculate the median earnings of working adults aged 25-34 with a bachelor's degree in the same field of study (defined using 2-digit or 4-digit CIP codes) in the state in which the institution is located and who are not enrolled in college.

In some cases, especially in uncommon fields of study and in less-populated states, the ACS may not sample any individuals (or only a very small number of individuals) who meet all of these criteria. As described in Section 668.2(b), for cases where fewer than 30 individuals are sampled, the Department proposes not calculating this measure. Instead, these graduate programs would be compared to the lower of the other two thresholds described in Section 668.2(b). The Department is concerned that calculating an earnings threshold using a small number of individuals could produce non-representative values in which programs are judged against. This issue is largest for cases where there are zero individuals sampled in the ACS who meet the criteria for this metric.

As such, the Department seeks feedback on this approach and other alternative approaches. For example, the Department seeks feedback on whether this issue could be mitigated by grouping fields of study into broader categories in the ACS. Alternatively, the Department seeks feedback on whether there are other datasets maintained by the Census Bureau, like the National Survey of College Students, as

well as datasets that can be supplemented with Census Bureau datasets, that would allow the Department to calculate this metric when fields of study are defined at the 2-digit or 4-digit CIP level, in a more statistically reliable and accurate manner.

IV. Invitation to Comment

We invite you to submit comments regarding these proposed regulations. For your comments to 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. The Department will not accept comments submitted after the comment period closes.

The following tips are meant to help you prepare your comments:

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and subsections of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.
- Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal

or professional experiences. We encourage commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials which have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist us in analyzing the comments.

- Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.

- Submit your public comment only; do not submit comments on the behalf of others.

- Do not include personally identifiable information (PII) such as Social Security numbers or loan account numbers for yourself or for others in your submission.

- Do not include any information that directly identifies or could identify other individuals or that permits readers to identify other individuals.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to

Regulations.gov. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all of the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. A well-supported comment is more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM, and in the Regulatory Impact Analysis and Paperwork Reduction Act sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that contain promotion of commercial services or products, and spam.

We may not address comments outside of the scope of these proposed regulations in the final regulations. Comments that are outside of the scope of these proposed regulations are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the Final Rule.

We invite you to assist us in complying with the 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.

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

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide 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 the Information Technology Accessibility Program Help Desk at ITAPSupport@ed.gov to help facilitate this request.

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 the regulation

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) aid or reduce its 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 General definitions.)

- 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 regulation 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.

V. Background

Gainful Employment (GE) Prior Rules

Under Sections 101 and 102 of the HEA, there are two broad categories of title IV-eligible programs: degree programs offered by public and private nonprofit institutions, and programs required to lead to gainful employment in a recognized occupation (which include nondegree programs at any type of institution, and nearly all programs offered by proprietary institutions). The statute does not further elaborate on the gainful employment requirement.

The Department has issued four previous regulations on GE, most recently in 2023 as part of the current FVT/GE accountability framework. These regulations required the Department to calculate two separate metrics for the vast majority of programs eligible for title IV, HEA funds - a debt-to earnings (D/E) rate and an earnings premium - but did not impose program eligibility consequences for programs other than GE programs. The regulations also established a process by which the Department would disclose key information about academic programs to current and prospective students at a point when the information would be most useful for them.

OBBB Earnings Accountability Framework

The OBBB, signed by into law by President Trump on July 4, 2025, amended the HEA to establish a new

accountability framework for most postsecondary programs of study that participate in the Direct Loan program. Congress designed this framework to compare the median earnings of graduates to those of working adults, and it requires the Department to discontinue a program's Direct Loan program eligibility if its graduates earn less than the comparison group.

The OBBB framework does not include D/E rates, and although the earnings comparison metric largely resembles the earnings premium measure under current the FVT/GE regulations, there are differences in the populations of institutions and programs covered by the new framework, in the methodology by which the comparison must be performed, and in consequences for failing programs. To provide students, families, institutions, and the public with meaningful and comparable program information and to promote consistency in the treatment of programs across all credential levels and institutional sectors, the Department seeks to amend and simplify its existing FVT and GE framework to harmonize with the accountability framework required under the OBBB. This would result in the establishment of a single metric that would be calculated for nearly all programs eligible for title IV, HEA funds and that has the same program eligibility consequences for failure of GE and eligible non-GE programs alike.

This NPRM complies with Section 492 of the HEA, which requires the Secretary to obtain public input and conduct negotiated rulemaking before issuing proposed regulations for the title IV, HEA programs. To meet those requirements and implement the new statutory directives provided for in the OBBB, the Department convened the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) negotiated rulemaking committee, which reached consensus agreement on the entirety of the regulatory text included in this NPRM.

VI. Authority for This Regulatory Action

The Department's authority to engage in this rulemaking action and pursue a transparency and accountability framework for GE programs and eligible non-GE programs is derived primarily from seven categories of statutory enactments: (1) the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV, HEA; (2) 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; (3) the definition of institution of higher education under Section 102 of the HEA and other provisions within title IV of the HEA that address programs that prepare students for gainful

employment; (4) the Secretary's authority to establish procedures and requirements relating to the administrative capacities of institutions of higher education; (5) recently enacted changes within title IV, HEA as a result of Section 84001 of the OBBB, which establishes an accountability system limiting Direct Loan eligibility for programs that demonstrate low earning outcomes; (6) the Secretary's authority to develop a quality assurance system under the Direct Loan Agreement; and (7) the Secretary's authority to include other provisions in the Direct Loan Agreement that she determines are necessary to protect the interests of the United States and to promote the purposes of the Direct Loan program. Finally, this section also addresses OBBB's waiver of the HEA's master calendar requirements for some of the proposed regulations discussed in this NPRM.

The Secretary has broad powers to engage in rulemaking to administer programs administered by the Department. Specifically, 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," such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, to assist in pursuing either eligible non-GE programs or GE

programs. 20 U.S.C. 1221e-3. Likewise, Section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to "prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department." 20 U.S.C. 3474.

Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) brought about a sea change in administrative law by overturning *Chevron* deference; however, *Loper Bright* did not disrupt Congress's ability to provide "a degree of deference" to agencies in specific statutes. 603 U.S. 369, 394 (2024). Indeed, the Court directly acknowledged that Congress may "delegate... discretionary authority to any agency" by giving directions to agencies to promulgate rules that are "reasonable" or "appropriate." *Id.* In a post-*Loper Bright* case challenging the 2023 FVT/GE rule, a lower court specifically held that the Department has been explicitly granted such deference by Congress under the provisions of GEPA and the DEOA. *American Assoc. of Cosmetology Sch. v. Dep't of Educ.*, 2025 WL 4219345, at *5 (N.D. Tex. Oct. 2, 2025) (*citing* 20 U.S.C. § 1221e-3); 20 U.S.C. § 3474). The court further stated that, through the HEA, the Congress had clearly granted the Secretary to promulgate rules necessary for the administration of the title IV, HEA programs: "the Supreme Court in *Loper Bright* recognized that Congress may 'delegate[] particular

discretionary authority to an agency' by leaving it with 'flexibility' through terms 'such as 'appropriate' or 'reasonable'" and that HEA confers such authority [on the Secretary] by including the additional specific direction to 'prescribe such regulations as may be necessary to provide for ... any matter the Secretary deems necessary to the sound administration of the financial aid programs[.]'" *American Assoc. of Cosmetology Sch.* *6 (citing 20 U.S.C. §§ 1094(c)(1)(B); 1099c).

Section 431 of the GEPA grants the Secretary additional authority to establish rules to require institutions to make data available to the public about the performance of Federally supported education programs and about students enrolled in those programs and 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. See 20 U.S.C. 1231a. This provision authorizes the reporting and disclosure requirements in the proposed rule, which would enable the Department to collect data and information for the purpose of developing objective measures of program performance. The reporting is not only for the Department's use in evaluating programs but also serves to inform the public – including enrolled students, prospective students, their families, institutions, and other stakeholders –

about relevant information to those Federally supported programs.

The Secretary's authority to establish rules requiring institutions to provide information to the Department is further bolstered by the fact that certain provisions of the HEA would be rendered inoperable if such data was not provided. For example, without collecting data from institutions regarding students participating in title IV, HEA programs, the Department would have no ability to determine whether a program offered by that institution satisfies the earnings test set forth in HEA Section 454(c)(2), added by OBBB. Therefore, in any such case in which the HEA directs the Department to conduct analysis that requires information that an institution possesses, the Secretary is permitted to establish regulations regarding such data collection under the Secretary's broad authority to promulgate regulations necessary or appropriate for governing the applicable programs administered by the Department. See 20 U.S.C. 3474.

Furthermore, 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, but also has authority to use certain metrics to determine that an institution's program is not eligible to benefit from one or more of the title IV, HEA programs. 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 assistance from one or more title IV, HEA programs at the program in question. Without direct communication from the institution to prospective and enrolled students, the students themselves risk losing the ability to make informed choices about their educational pursuits. Congress clearly intended to require institutions to provide this manner of direct communication to students, as plainly evidenced by the presence of the student notice requirements for at-risk degree programs under HEA Section 424(c)(7), as revised by the OBBB. In keeping with the Department's effort to harmonize the accountability requirements for non-GE and GE programs, we believe it is appropriate to similarly require institutions to provide warnings to prospective and enrolled students regarding at-risk GE programs consistent with the warnings expressly required in statute for eligible non-GE programs and that the Secretary is authorized to do so under the Secretary's general authority to promulgate regulations that are necessary or appropriate to administer the title IV, HEA Programs. See 20 U.S.C. 1221e-3; 20 U.S.C. 3474.

The data to be collected and analyzed by the Department will not violate the student unit record prohibition found in HEA Section 134. The Department does not propose creating any new databases of student records. It will collect from institutions individual title IV, HEA recipient data, including PII, and will securely transmit that data to a Federal agency with earnings data for matching. The metric calculation will only utilize median earnings data that does not include PII data from student recipients of title IV, HEA assistance. The proposed regulation is also 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 title IV, HEA funds to their students. 20 U.S.C. 1099c. 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." 20 U.S.C. 1001(b)(1)(A)(i), (c)(1)(A). Section 481 of the HEA articulates this requirement by defining, an "eligible program," in part, as a "program of training to prepare students for gainful employment in a recognized profession." The HEA does not more specifically define the

terms "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 programs. At the same time, the Secretary and the Department have a legal duty to interpret, implement, and apply those concepts in order to observe the statutory eligibility requirements in the HEA.

The Department has long interpreted the word "gainful" in this context to mean "profitable." Program Integrity: Gainful Employment, 79 FR 64890, 64894 (Oct. 31, 2014); *American Assoc. of Cosmetology*, 2025 WL 4219345, at *5.³ And the Department has consistently interpreted the broader phrase "gainful employment" to mean that the program "actually train[s] and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation."⁴ This would *not* include, for example, "baccalaureate degree[s] in liberal arts" as those programs are statutorily prohibited from being in most instances.⁵

It is relevant to acknowledge that there is some degree of ambiguity in the term "gainful employment." See

³ "Gainful." *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/gainful>. Accessed March 20, 2026.

⁴ Financial Value Transparency and Gainful Employment (GE), 88 FR 32,300, 32,342 (May 19, 2023).

⁵ Section 102(b)(1)(A)(ii) provides that baccalaureate degrees in liberal arts are no longer considered to be gainful employment programs, but Congress provided a grandfather clause to allow certain institutions that have offered such programs since January 1, 2009 to continue to offer such programs. Those baccalaureate degree programs are now covered by the accountability provisions in OBBA.

Ass'n of Priv. Colleges & Universities v. Duncan, 870 F. Supp. 2d 133, 145 (D.D.C. 2012) (stating that "There is no unambiguous meaning of what makes employment "gainful'"); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015) (quoting *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133 at 145, and adopting its conclusion that "There is no unambiguous meaning of what makes employment "gainful'"). Indeed, some dictionaries that define the whole phrase "gainful employment" define it as meaning "work that you get paid for."⁶ Under this definition, the only programs that do not prepare students for "gainful employment" would be programs that train students for unpaid volunteer positions or hobbies. But courts have warned about reading phrases in isolation like this, as the text of a statute must be construed as a whole. See *Kmart Corp. v. Cartier, inc.* 486 U.S. 281, 291 (1988) (per Kennedy, J.) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." The interpretative canon, which is generally referred to as the Whole-Text Canon or the Whole Act Rule, provides that the context of the broader statutory scheme is the "primary

⁶ See "Gainful Employment", *Cambridge Dictionary Online*, <https://dictionary.cambridge.org/us/dictionary/english/gainful-employment>. Accessed March 22, 2026.

determinant of meaning.” Scalia & Garner, *Reading Law*, 167 (2012).

As we look to other parts of the statute, we find provisions that help provide clarity regarding the definition of gainful employment. In the first instance, Congress has created two definitions of “institution of higher education.” The first definition, which is in Section 101 of the HEA, authorizes non-profits and public institutions to participate in title IV student aid programs. 20 U.S.C. 1001. The definition in Section 101 does not include references to gainful employment, which is a notable omission and strongly suggests that Congress did intend to limit the universe of eligible programs when using that phrase elsewhere.

In Section 102, Congress provides its second definition of institution of higher education, this time defining it to mean proprietary institutions, vocational institutions, and foreign institutions. Here, Congress tells us that if a subset of these types of institutions (proprietary and vocational) want to participate, they must provide “an eligible program of training to prepare students for gainful employment in a recognized occupation.” The broader phrase makes it clear that these programs “train” students for “a recognized occupation.” Further, we know that Congress does not think baccalaureate degree programs in liberal arts are gainful employment

programs, because Congress says that proprietary institutions can offer (1) gainful employment programs, OR (2) programs leading to a baccalaureate degree in liberal arts if the program has been provided since January 1, 2009 and the institution is accredited by a certain type of accreditor. The disjunctive "or" in this context shows us that "gainful employment" does not mean liberal arts.

For the reasons above, it is clear that the operative purpose of Section 102(b)-(c) is to use taxpayer funds to help support students in their quest to obtain more training such that they may enter a recognized occupation. The Department thinks that this context is key in demonstrating that Congress only wants to fund programs that help make the student better off in their "gainful employment." Gainful means "profitable," so Congress wants students to get training that enables them to be more profitable than before they went to school. As such, the Department interprets the term "gainful employment" to mean that a program must, on average, make students better off financially than they would have been had they not attended the program. In other words, institutions must ensure that the median student in a gainful employment program earns a premium, compared to what they would have earned if they had never gone to school. This is the same earnings premium measure called for in OBBB, but the Department believes that the gainful employment statute calls for this type of

accountability independent from the amendments made by OBBB.

The Department's interpretation of the phrase "gainful employment" aligns with the statute and is supported by case law concerning Department's previous gainful employment regulations. In *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012), the court stated that term "gainful employment" must be understood in the context of the statutory command that "a given program 'prepare students for gainful employment in a recognized occupation.'" That court reasoned that the "real question, then, is not how much gain is enough but rather how much preparation is enough" and found that the Department's attempt to "answer that question by reference to the economic success of a program's former students" was not precluded by the HEA, as the HEA does not specifically state "how to determine which programs actually prepare their students and which programs do not." *Id* at 146.⁷ Additionally, in a post-*Loper Bright* case, *American Assoc. of Cosmetology*, the court stated that the ordinary meaning analysis supported the Department's conclusion that students are not prepared for gainful employment if a program is designed to leave its graduates financially

⁷ This conclusion was directly restated several years later in *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015), which excerpted a considerable portion of the D.D.C.'s opinion in *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012).

worse off than when they started, and unable to repay their loans. 2025 WL 4219345, at *5.

Furthermore, the Secretary is authorized to establish and enforce administrative capability standards for institutions participating in title IV, HEA programs and to terminate the participation of any institution who the Secretary determines does not meet those standards. Section 498(a) of the HEA provides that, for purposes of qualifying institutions of higher education for participation in title IV, HEA programs, the Secretary shall determine administrative capability of an institution of higher education.

Section 498(d)(1) authorizes the Secretary "to establish procedures and requirements relating to the administrative capacities of institutions of higher education" which can include "consideration of past performance of institutions." Section 498(d)(2) further authorizes the Secretary to any other reasonable procedures necessary to ensure compliance with the administrative capability standard. Therefore, because of the broad authority conferred on the Secretary to establish such standards and procedures, as well as to consider the past practice of an institution in determining whether or not it satisfies the administrative capability standard, the Department believes that it is well within the Secretary's authority to establish a standard would penalize an

institution where at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are from low-earning outcome programs under subpart S (and have remained so for two out of three consecutive years) by terminating the overall title IV, HEA program eligibility of all such programs and requiring the institution to participate in title IV, HEA program on a provisional basis.

Section 84001 of the OBBB amends HEA Section 454 to create a new accountability framework, including an earnings test under HEA Section 454(c)(2) for title IV, HEA programs that lead to an undergraduate degree, graduate or professional degree, or graduate certificate. It further specifies under HEA Section 454(c)(7) that such programs which fail the earnings test are ineligible for Direct Loan program participation for a period of not less than two years. HEA Section 454(c)(6) further requires institutions to provide warnings to students regarding at-risk programs.

Direct Loan Agreement Authority

Institutions that participate in the Direct Loan program must agree to comply with the requirements set for in Section 454 of HEA. The requirements in this section, which has been called the Direct Loan Agreement, have been incorporated into the PPA which covers other title IV programs, not just the Direct Loan program. As part of the Direct Loan Agreement, institutions must "provide for the

implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives.” 20 U.S.C. 1087d(a) (4). The Department has never developed a formal quality assurance system before this rulemaking,⁸ but believes that the GE framework proposed herein is authorized by this provision and is itself a quality assurance system.⁹

The quality assurance system authority requires the Secretary to ensure that the institution is complying with program requirements and meeting program objectives. As such, it is important to discuss the “program requirements and program objectives” referenced in HEA Section 454. 20 USC 1087d(a) (4). The legal scholars Dan Zibel and Aaron Ament have noted that “the HEA is silent as to what is meant by ‘quality assurance,’ ‘program requirements,’ and

⁸ See Dan Zibel & Aaron Ament, Protection and the unseen: How the US Department of Education’s underdeveloped authorities can protect students and promote equity in higher education, BROOKINGS ECONOMIC STUDIES, 13 (Oct. 2020) (noting that the quality assurance authority in Section 454(a) (4) has never been relied upon, but that “[n]evertheless, section 454(a) (4) of the HEA (the “QA authority”) unambiguously provides that the DLA” shall implement a quality assurance system”), available at <https://www.brookings.edu/wp-content/uploads/2020/10/ES-10.13.20-Zibel-Ament.pdf>.

⁹ The Department has relied on its authority in Section 454(a) (7) to justify certain aspects of the 2016 Borrower Defense regulations, such as provisions prohibiting arbitration agreements in certain settings. See Student Assistance General Provisions, 81 FR 75926, 75932 (Nov. 1, 2026). These provisions were ultimately removed when the Department published 2019 borrower defense regulations, which are now in effect under Section 85001 of the OBBB; however, the Department did not disclaim the authority to impose these provisions and made the change for policy reasons. See Student Assistance General Provisions, 84 FR 49788, (Sept. 23, 2019).

what it means for an institution to 'meet[] program objectives.' In such situations, the law affords the Department ample discretion to fill these statutory voids, resolve statutory ambiguities, and ensure that institutions of higher education are serving students and taxpayers."¹⁰ Zibel and Ament have argued that "a core 'program objective' of the Direct Loan program is to ensure not only that students have access to higher education, but also to ensure that federally issued loans are repaid."¹¹ The Department largely agrees with these assertions that we have broad authority to provide details as to what the purpose of these programs are and that the Direct Loan program is designed to provide borrowers with capital to attend college and to repay their loans in most circumstances. However, certain subsets of programs within the HEA have additional purposes that are narrower in scope.

Here, the Department believes that the gainful employment text in Section 102(b)-(c) of the HEA provides significant context as to what the program objectives are for proprietary and vocational institution programs as they participate in the Direct Loan program. Both of these types of institutions are required to provide "an eligible program of training to prepare students for gainful employment in a recognized occupation." 20 U.S.C. 1002(b)-

¹⁰ Ziebel & Ament, *supra* note 8 at 14 (cleaned up).

¹¹ *Id.*

(c). As such, the purpose of these programs is to provide "gainful employment." With that in mind, it is clear that the gainful employment authority operates in tandem with the quality assurance system authority, in that guardrails to protect the purpose of a GE program can be incorporated into a quality assurance system. As such, the Secretary is permitted to develop a quality assurance system on a curated basis for these specific GE programs that ensures quality in how these institutions are preparing students for gainful employment. As discussed above, the Department has determined that the gainful employment statute requires institutions to ensure that most graduates of a gainful employment program earn a premium compared to what they would have earned if they had never gone to the program.

In sum, the Department has concurrent authority under Section 454(a)(4) along with Section 102(b)-(c) of the HEA to require institutions to comply with the earnings premium. Institutions that fail to comply with Section 102 fail to meet the definition of "institution of higher education" for the purposes of title IV, and are no longer eligible institutions and the Secretary must terminate eligibility. And institutions that fail to comply with the terms of the Direct Loan Agreement under Section 454 are not eligible to participate in the Direct Loan program. As such, as part of this rulemaking the Department is proposing the earnings premium measure to be a quality

assurance system that establishes eligibility for all GE programs to participate only in the Direct Loan program, consistent with the scope of Section 454, which only applies to Direct Loans.

The quality assurance system authority also requires the Department to develop the quality assurance system in consultation with institutions of higher education, which we have done as part of the negotiated rulemaking process. In addition, institutions will have the ability to comment on this proposed rule. The Department is required to consider making changes in response to all substantive comments under informal notice-and-comment rulemaking, and as such, we are effectively consulting with institutions of higher education under the existing rulemaking procedures because we are seeking and obtaining advice from institutions. 5 USC 553; 20 USC 1098a.

Institutions must also comply with "other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." 20 USC 1087d(a)(7). Failure to abide by the terms of the Direct Loan Agreement results in disqualification from participating in the Direct Loan program, but not necessarily other title IV, HEA programs.

The Department believes that it has authority under these provisions in Section 454 of the HEA, as well as the GE provisions in Section 102, to require GE programs to

comply with the earnings premium standard. However, the Department believes that the appropriate remedy for programmatic noncompliance is loss of eligibility for Direct Loans for such programs that fail the earnings premium, except when a large number of an institution's programs fail, which is discussed in greater length below. The Secretary has been given significant deference by Congress in Section 454 in designing the quality assurance system, and that includes the option to tailor the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. Indeed, it would not be in the interest of the United States to disqualify all programs at an institution if only one or a few programs are not performing because students in high performing programs would also lose access to programs that are adding value.

The Department also has authority under Section 454(a)(7) for this rulemaking, which authorizes the Secretary to include in the Direct Loan agreement (which is incorporated into the PPA) "such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." 20 U.S.C. 1087d(a)(7).

Indeed, this broad grant of deference to the Secretary gives the Department significant latitude in designing to protect the interests of the United States and promote the

purposes of this part. As explained above, the holding in *Loper Bright* does no work to disrupt deference provided to the Department in broad statutory grants of authority like we have here. *Loper Bright*, 603 U.S. at 394-95.

As stated above, the purpose of authorizing proprietary institutions and vocational institutions to participate in title IV, HEA programs is to provide students opportunities for training designed to ensure that they may become gainfully employed in a recognized occupation. As such, the Department believes that Section 454(a)(7) provides additional authority for the Department to require the earnings premium measure, because doing so advances the purposes of the Direct Loan program through institutional eligibility under Section 102(b)-(c).

In sum, the Department has overlapping and concurrent authority to require an earnings premium for GE programs under the gainful employment authority in Section 102(b)-(c), the quality assurance system authority in Section 454(a)(4), the "protect" and "promote" authority in Section 454(a)(7), and our broad authority to regulate Section 410 of GEPA. The Department believes that all of these authorities work in tandem and authorize us, independent from the amendments made by OBBB related to accountability, require an earnings premium for such GE programs.

In practice, the proposed earnings premium under OBBB is the same as the earnings premium under GE. The only type

of program not covered by the earnings premium under OBBB are certificate programs, which are covered by GE. As such, if a court disagrees with our assessment of the robust legal authority we have, the accountability provisions relating to GE are severable and would only have a practical impact on certificate programs.

Summary of authorities

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 earnings measures established by the Department; (3) Implement Direct Loan program eligibility requirements pertaining to graduate earnings outcomes, including an earnings premium metric and associated reporting, certification, and warning processes; and (4) Define the GE requirement in the HEA by establishing similar measures to determine the eligibility of GE programs for participation in the Direct Loan program, which also is supported by the overlapping authority the Department has to create a Quality Assurance System for institutions participating in the Direct Loan program. Where helpful and appropriate, the Department will elaborate on the relevant statutory authority in our overviews and section-by-section discussions below.

Waiver of HEA Master Calendar Requirements

Congress may waive, modify, or rescind requirements in the HEA and Administrative Procedure Act (APA) that require the Department to follow certain processes and procedures when engaging in informal notice-and-comment rulemaking. See, e.g., *Asiana Airlines v. F.A.A.*, 134 F.3d 393, 398 (D.C. Cir. 1998); *Methodist Hospital of Sacramento v. Shalala*, 38 F.3d 1225, 1237 (D.C. Cir. 1998) (finding that certain parts of the APA procedural framework had been waived when Congress gave an agency direction that conflicts with and is irreconcilable with the APA).

At the same time, the court in *Asiana Airlines* made clear that the APA requires "clear intent" from Congress to justify a departure from the procedural requirements in the APA, noting that 5 USC 559 requires an explicit waiver of APA procedural requirements. Here, the Department is complying with all of the requirements for informal notice-and-comment rulemaking in 5 USC 553, so an express waiver is not needed. The explicit waiver standard in 5 USC 559 only applies to the procedural requirement of the APA, and does not apply to the Master Calendar provision in Section 482(c) the HEA. Had Congress wished for the HEA Master Calendar provision to have the same rule of construction as it does for procedural requirements of the APA, we would have expected that Congress would either cross reference and incorporate 5 USC 559 into the HEA or use similar

language to 5 USC 559 within Section 482(c) of the HEA. Congress knows how to create these types of special rules of construction when they want to, and they declined to do so in Section 482(c) of the HEA.

Absent an explicit rule of construction in the HEA, we rely on the ordinary tools of statutory interpretation to glean the meaning of the statute. The Harmonious-Reading Canon provides that statutes should, when possible, be interpreted in a way that renders them compatible, not contradictory, but such an approach is not always possible if context and other considerations (including the application of other canons) make it impossible to do so, another approach to statutory interpretation, such as the General/Specific Canon must be applied. See Scalia & Garner, *Reading Law*, 155 (2012). The General/Specific Canon dictates that, in cases where a general prohibition is contradicted by a specific permission or a general permission that is contradicted by a specific prohibition, the more specific of the two provisions controls. *Id.* at 158. Because, as discussed below, the OBBB contains provisions with effective dates that cannot possibly be implemented in regulation in accordance with the HEA's master calendar requirements, and as such, implicitly provides a limited waiver of the HEA's master calendar requirement, so far as it is necessary to promulgate regulations that give effect to those provisions. See

Dorsey v. United States, 567 U.S. 260, 274 (2012) (stating that an agency's compliance with an existing statute "cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment" (*quoting Great Northern R. Co. v. United States*, 208 U. S. 452, 465 (1908)).

Here, the OBBB was enacted on July 4, 2025. The OBBB directs the Department to implement roughly a dozen provisions by July 1, 2026. Many of these provisions are not self-executing and could not be implemented absent the Department promulgating regulations to provide details for institutions on how to comply with the OBBB. Congress gave the Secretary discretion within the OBBB to implement the provisions impacting the title IV, HEA programs and knew that its commands were not self-executing when directing the Secretary to take action. Congress expected the Secretary to act via rulemaking before July 1, 2026, to enable these provisions to actually go into effect.

The master calendar in the HEA provides that regulatory changes initiated by the Secretary affecting the title IV, HEA programs must be published in final form by November 1st in order for them to go into effect by July 1st of the following year. 20 U.S.C § 1089(c)(1). Section 492 of the HEA requires the Department to undertake negotiated rulemaking as part of any regulation under title IV of the HEA. In order to conduct negotiated rulemaking

and meet APA requirements, the Department must have a public hearing (providing notice to the public), solicit nominations from the public to serve on a negotiated rulemaking committee, select non-Federal negotiators, hold negotiations, develop an NPRM, publish an NPRM (with at least a 30-day comment period), and then publish a final rule that responds to any substantive comments received. The fastest possible timeframe in which the negotiated rulemaking process for the rulemaking packages assigned to the AHEAD Committee could have occurred is 149 days, which is irreconcilable with the timeline allowed by the enactment of the OBBB, due to the fact that there were 120 days from July 4, 2025, (the day the OBBB was enacted), through and including November 1, 2025, (the publication date of the final rule required by the master calendar).

It would not have been possible for the Department to undertake every step of the negotiated rulemaking process by November 1, 2025, in order to implement the provisions that become effective in the OBBB by July 1, 2026, which is the statutory effective date. Congress was aware of this temporal impossibility when they passed the OBBB, yet Congress decided that these provisions would still go into effect on July 1, 2026. Because these provisions are not self-implementing and cannot go into effect unless the Department promulgates a final rule, the OBBB implicitly waives the master calendar.

With important details unanswered by the plain text of the OBBB, it is clear that the policy scheme set forth in the HEA made by the OBBB cannot be implemented absent regulatory action by the Department. At the same time, even though the requirements of negotiated rulemaking are onerous, it is possible to undergo negotiated rulemaking and publish a final rule at least 30 days prior to the effective date of these OBBB provisions on July 1, 2026. Therefore, the OBBB does not waive negotiated rulemaking nor any provision in the APA. For provisions in the OBBB that become effective July 1, 2027, and beyond, Congress did not implicitly repeal the master calendar because it is possible for the Department to publish a final rule that complies with the master calendar to implement those provisions.

Severability

"It is axiomatic" that a regulation may be invalid in part but not in whole or as applied to one set of facts but not another. *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006). If a court finds one part of a regulation is unlawful, the "normal rule" is to enjoin only that part. *Id.* (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)).

It is the Department's intent that if any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or

the application of its provisions to any person, act, or practice shall not be affected thereby.

Statutes and regulations are severable if the separate provisions are "wholly independent of each other" and can operate independently. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 502 (1985). That is the case here. No part herein will be affected if another part is found to be unlawful. Nor does the Department believe courts or regulated parties would be unable to apply the rule if one part is held invalid. *C.f. Dep't of Educ. v. Louisiana*, 603 U.S. 866, 868 (2024) (per curiam) (denying the government's request to stay a preliminary injunction against an entire rule where only parts were found to be invalid because "schools would face in determining how to apply the rule for a temporary period with some provisions in effect and some enjoined").

VII. Public Participation

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by the title IV, HEA programs. Prior to developing this NPRM, the Department obtained advice and recommendations from individuals and representatives of groups involved in the title IV, HEA programs. This outreach included a 30-day public comment period, one day of public hearings, and five days of in-person negotiated rulemaking on these proposed

regulations at the Department's headquarters in Washington, DC. Further details regarding these efforts are provided below.

On July 25, 2025, the Department published in the Federal Register (90 FR 35261) a notice of our intent to hold public hearings and to establish two negotiated rulemaking committees to consider regulatory changes to the title IV, HEA programs, with one committee addressing topics including institutional and programmatic accountability and the Pell Grant Program. The engagement included a 30-day written public comment period, a public hearing on August 7, 2025, and five days of negotiated rulemaking specific to this NPRM.

Public Comments and Hearings

We received 1,864 written comments in response to the Federal Register notice. Additionally, we held a virtual public hearing on August 7, 2025. A total of 57 individuals testified virtually at the hearing.

You may view the written comments submitted in response to the July 29, 2025 "Intent to Establish Negotiated Rulemaking Committees; Correction" correction notice (90 FR 35652), by visiting the Federal eRulemaking Portal at Regulations.gov, within docket ID ED-2025-OPE-0151. Instructions for finding comments are also available on the site under "FAQ."

Transcripts of the public hearings can be accessed at

<https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>.

VIII. Negotiated Rulemaking

On July 25, 2025, we published the notice in the Federal Register referenced earlier in the **Public Participation** section. That notice also set forth a schedule for committee meetings and requested nominations for individual negotiators to serve on the AHEAD Committee.

We chose members of the negotiated rulemaking committee from individuals nominated by groups involved in the title IV, HEA programs. We selected individuals with demonstrated expertise or experience with the proposed topics. The negotiated rulemaking committee included the following members, representing their respective constituencies:

- Students who are currently enrolled and receiving assistance from the title IV, HEA programs: Eric Atchison, Arkansas State University System, and Magnus Noble (alternate), University of Illinois Springfield.

- Students who are veterans, U.S. military service members or groups representing them: Matthew Feehan, Veterans Education Project, and Julie Howell (alternate), Paralyzed Veterans of America.

- Employers and groups representing the business community, including small, medium, and large businesses:

David Kafafian, CLASP, and Dennis Cariello (alternate), Hogan Marren Babbo & Rose.

- Legal assistance organizations that represent students and borrowers, consumer advocates, and civil rights groups that represent students: Tamar Hoffman, Community Legal Services of Philadelphia, and Zoe Kemmerling (alternate), Legal Aid of the District of Columbia.

- Public institutions of higher education, including institutions eligible to receive Federal assistance under Title III and Title V of the HEA, Tribal Colleges and Universities, and Historically Black Colleges and Universities: Kristin Hultquist, HCM Strategists, and Tonjua Williams (alternate), St. Petersburg College.

- Private nonprofit institutions of higher education including institutions eligible to receive Federal assistance under title III and title V of the HEA, Tribal Colleges and Universities, and Historically Black Colleges and Universities: Aaron Lacey, Thompson Coburn LLP, and Joanna Roush (alternate), Liberty University.

- Proprietary institutions of higher education, as defined in 34 CFR 600.5: Jeff Arthur, ECPI University, and Ryan Claybaugh (alternate), Paul Mitchell Advanced Education.

- State workforce agencies and workforce development boards: Rachael Stephens Parker, Maryland Governor's

Workforce Development Board, and Andrea DeSantis (alternate), North Carolina Department of Commerce.

- State grant agencies, and other State and non-profit higher education financing organizations: J. Ritchie Morrow, Nebraska Coordinating Commission for Higher Education, and Elizabeth McCloud (alternate), Pennsylvania Higher Education Assistance Agency.

- State higher education executive officers, State authorizing agencies, and other State regulators: Randy Stamper, Virginia Community College System, and Heather DeLange (alternate), Colorado Department of Higher Education.

- Accrediting agencies recognized by the Secretary of Education: Michale McComis, Accrediting Commission of Career Schools and Colleges, and Gedalia (Gary) Litke (alternate), Association of Advanced Rabbinical and Talmudic Schools.

- Organizations representing taxpayers and the public interest: Preston Cooper, American Enterprise Institute, and Ethan Pollack (alternate), Jobs for the Future.

After obtaining extensive advice and recommendations from the public, the Secretary, as required by Section 492 of the HEA, 20 U.S.C. 1098a, prepared draft regulations and submitted them to a negotiated rulemaking process. The Committee for these proposed regulations convened on January 5, 2026, and concluded on January 9, 2026. The

Committee reviewed and discussed draft regulations prepared by the Department, as well as alternative regulatory language and suggestions proposed by Committee members. Additionally, during each negotiated rulemaking meeting, some non-Federal negotiators shared feedback that they had received from stakeholders in their respective constituencies. This approach facilitated the inclusion of a wide array of ideas and perspectives, which contributed to the development of the consensus language.

Under the organizational protocols for negotiated rulemaking agreed to by all members of the Committee, if the Committee reaches consensus on the proposed regulations, the Department agrees to publish, without substantive alteration, a defined group of regulations on which the Committee reached consensus – unless the Secretary reopens the process or provides a written explanation to the participants stating why she has decided to depart from the agreement reached during negotiations. In this instance, consensus is considered to be the absence of dissent by any member of the negotiated rulemaking Committee (abstaining members are not considered to be dissenting from the proposal). The Committee reached consensus on the entirety of the draft regulations on January 9, 2026. As a result, this NPRM reflects the consensus language with minor technical and non-substantive

corrections which are noted in subsequent sections of this NPRM.

As part of this process, the Department engaged in extensive consultation with institutions of higher education in accordance with Section 454(a)(4) of the HEA. Institutions were represented on the negotiated rulemaking committee, were able to comment at the August 7, 2025 hearing, and are able to submit comments in response to this proposed rule.

IX. Significant Proposed Regulations

The Department discusses 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.

General Definitions

Annual debt-to-earnings rate (Annual D/E rate) (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The current regulations provide that the annual debt-to-earnings rate is 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.

Proposed Regulations: None.

Reasons: The Department is proposing to eliminate references to the D/E rates that are not needed for

calculation of the earnings premium metric and is eliminating this definition accordingly. For a more detailed explanation for and analysis of the removal of the D/E rates, please see the discussion later under the section "**§ 668.402 - Student tuition and transparency system framework.**"

Cohort period (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, added by the OBBB Section 84001, specifies that the initial period used to evaluate program completers is the academic year four years before the year of determination. Section 454 (c)(4) provides a procedure to obtain further data to reach the minimum threshold requirement.

Current Regulations: Initially, the Department uses completers from the third and fourth award year prior to the calendar year for which the most recent earnings data is available, constructing a two-year cohort period. If the program does not have at least 30 completers who can be matched with earnings data, completers from the fifth and sixth award years prior to the calendar year for which the most recent earnings data is available are added to the two-year cohort period, constructing a four-year cohort period. If at least 30 completers in the four-year cohort period cannot be matched, metrics will not be calculated for the program for that award year.

If a program is a qualifying graduate program, the award years used for graduation shift three years further into the past (sixth and seventh award year prior for the two-year cohort, adding the eighth and ninth award year prior for a four-year cohort if needed to reach an n-size of 30) to account for delayed earnings growth for mandatory post-graduation training such as a residency program.

Proposed Regulations: Under the proposed regulations, the cohort of students used to determine a program's median student earnings and calculate the earnings premium metric under proposed 34 CFR 668 subpart Q would begin with the program's graduates from a single award year ending four years prior to the calendar year used to source earnings data. For example, in 2027, earnings data from IRS records would be available for calendar year 2025, and students who completed the program in award year 2020-2021 would be included in this cohort.

If the single year cohort does not yield 30 completers or if a sufficient number cannot be paired with earnings, the Department would add completers from the fifth, sixth, seventh, and eighth award years prior to the earnings year, one award year at a time, until a minimum number of completers is reached. For example, if a program did not yield enough completers from award year 2020-2021, students who completed in award years 2019-2020, 2018-2019, 2017-2018, and 2016-2017 would be added as needed.

If the expanded cohort group still does not reach the minimum number of completers, the cohort would continue to include the completers from all five years (fourth through eighth award years prior to the earnings year) at that six-digit CIP code and credential level. Then, completers from programs at the same credential level sharing the first four CIP code digits would be added one at a time, starting with the fourth award year prior to the earnings year. Continuing with the same example, the Department would keep completers at the six-digit level for award years 2016-2017 through 2020-2021 and add 2020-2021 completers at the four-digit CIP level, then 2019-2020, and so on as needed, stopping after adding completers from award year 2016-2017.

If adding completers from all five award years at the same credential level sharing the same first four CIP code digits still does not reach the minimum number of completers, the Department would keep the completers at the six-digit and four-digit CIP levels and add completers sharing the same credential level and first two digits of a CIP code one award year at a time as needed, going from the fourth award year through the eighth award year prior to the earnings year, following the same pattern used to add completers at the four-digit CIP level.

If cohort expansion proceeds through the addition of students who completed a program in the fourth through eighth award years prior to the earnings year at the six,

four, and two-digit CIP levels and a minimum number of completers still cannot be reached, the Department would not publish median earnings or an earnings premium for the program.

Reasons: The proposed regulatory language aligns with statutory requirements in Sections 454(c)(2) and (4) of the HEA, added by Section 84001 of the OBBB, which requires the creation of a one-year cohort, then aggregates additional years of programmatic data if needed, then expands to add data from other similar educational programs. The Department interprets the statutory phrase "educational programs of equivalent length" used in Sections 454(c)(2) and (4) to refer to programs offered at the same credential level.

Because the proposed framework only matches completers who are working and who are not enrolled in an eligible institution during the earnings year or subject to another exclusion, it is possible that a cohort that meets the n-size of 30 will have too few matches to earnings data for the federal agency with earnings data to meet their own threshold to release what they consider to be statistically reliable median earnings to the Department. In this case, it is possible that further cohort expansion to additional steps in the sequence would be required to obtain statistically reliable data.

Debt-to-earnings rates (D/E rates) (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The current regulations define "debt-to-earnings rates" as including discretionary debt-to-earnings rate and annual debt-to-earnings rate as calculated under current § 668.403.

Proposed Regulations: None.

Reasons: The Department is proposing to eliminate references and requirements related to the current D/E rates that are not needed for calculation of the earnings premium metric, and is eliminating this definition accordingly. For a more detailed explanation for and analysis of the removal of the D/E rates, please see the discussion later under the section "**§ 668.402 - Student tuition and transparency system framework.**"

Discretionary debt-to-earnings rate (discretionary D/E rate) (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The current regulations define "discretionary debt-to-earnings rate" as the percentage of a program's annual loan payment compared to the discretionary earnings of the students who completed the program, with discretionary earnings defined as the median earnings for the program minus 150 percent of the poverty

guideline for a single person in the continental United States.

Proposed Regulations: None.

Reasons: Discretionary debt-to-earnings rates are one of the components of debt-to-earnings rates, which would be eliminated under the proposed consensus language.

Earnings (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, specifies that the Secretary is to determine the earnings of program completers.

Current Regulations: None.

Proposed Regulations: The Department proposes to define earnings for the purposes of subparts Q and S of this part, as wages, and other earned income as reported to the IRS, including net income reported from self-employment. This does not include other forms of income (whether taxed or untaxed).

Reasons: After discussions with negotiators, the Department developed an earnings definition to provide clarity and transparency regarding the types of earnings that would be included in the median earnings used in the accountability metrics. Several negotiators raised concerns regarding the types of income that would be included in or excluded from the earnings metric, including unreported tips and the value of certain housing allowances. The Department believes that the proposed definition includes all relevant

earnings sources for the accountability metric; however, during negotiations, the Department committed to asking a directed question on this topic to ensure that we have considered all of the appropriate earnings from work and source limitations in our definition. Please refer to the **Directed Questions** section listed under the Supplementary Information section III for more information.

Earnings premium (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, added by Section 84001 of the OBBB, prescribes an accountability metric that compares the median earnings for recipients of title IV, HEA program funds who completed a program during a specific cohort period to the median earnings of a working adult described in Section 454(c)(3). The statute stipulates that if the program's median earnings are less than those of the comparison group in two out of three award years, the program is a low-earning outcome program. See also the **"Authority for This Regulatory Action"** section of this NPRM.

Current Regulations: The Department currently defines the term "earnings premium" as the amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under current § 668.404.

Proposed Regulations: The proposed regulatory language matches the language in existing regulations but revises the citation from § 668.404 to § 668.403.

Reasons: The proposed change would update the regulatory citation to align with the structure of the new proposed regulatory language.

Earnings threshold (§ 668.2(b))

Statute: Section 454(c)(3) of the HEA, as amended by Section 84001 of the OBBB, specifies the populations used to develop the comparison groups for the accountability metric under the OBBB.

Current Regulations: Median earnings are currently based on data from the Census Bureau for working adults aged 25-34 with only a high school diploma (or recognized equivalent), who were not currently enrolled in an institution of higher education, and who either worked during the year or indicated they were unemployed in the State in which the institution is located. The median earnings would use national data if fewer than 50 percent of the students in the program are from the State where the institution is located or if the institution is a foreign institution.

Proposed Regulations: The Department proposes to align the earnings threshold definition with statutory requirements for both undergraduate and graduate programs using the following methodology.

For undergraduate programs offered by an eligible institution located in a State, the comparison group is based on data from the Census Bureau, using the median earnings for working adults aged 25-34 with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution. The Department uses data for the State in which the institution is located, or national data if fewer than 50 percent of the students enrolled in the institution are from the State where the institution is located.

For graduate programs offered by an eligible institution located in a State, the earnings threshold is based on data from the Census Bureau for the median earnings of working adults aged 25-34 with only a baccalaureate degree, who worked and were not enrolled in an eligible institution at the time earnings were measured by the Census Bureau. The median earnings used for the earnings threshold will be the lowest of: 1) the median earnings of working adults in the State in which the institution is located; 2) the median earnings of working adults in the same field of study under the two-digit CIP or four-digit CIP code in the State in which the institution is located; or 3) the median earnings of working adults nationally in the same field of study under the two-digit CIP or four-digit CIP code. If fewer than 50 percent of the students enrolled in the institution are

from the State where the institution is located, the earnings threshold would use national data, taking the lowest of the median earnings of working adults with a baccalaureate degree, or the median earnings of working adults with a baccalaureate degree in the same field of study under the two-digit CIP or four-digit CIP code.

For States and certain U.S. Territories, where the Census Bureau data necessary to perform the calculations set forth in subsections (1) and (2) is not available, there will be no earnings threshold.

For eligible foreign institutions, the Department proposes using different methodologies for undergraduate and graduate programs. For undergraduate programs offered by eligible foreign institutions, the comparison group would be based on data from the Census Bureau, which provides the median earnings of working adults aged 25-34 in the United States with only a high school diploma or recognized equivalent and who were not enrolled in an eligible institution during the year of the associated measured earnings. For graduate programs offered by eligible foreign institutions the comparison group is based on data from the Census Bureau, the median earnings of working adults aged 25-34 with only a baccalaureate degree, who were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be the lowest of the median earnings of

working adults nationally in the United States; or nationally in the United States in the same field of study under the two-digit CIP code or four-digit CIP code.

Reasons: The Department's methodology for establishing the earnings threshold is derived largely from Section 454(c)(3) of the HEA, as amended by Section 84001 of the OBBB, with several exceptions described below that are based on limitations on the Census Bureau data that the law requires the Department to use.

Some negotiators raised questions about various elements of the Census Bureau's ACS being used to determine the earnings threshold for evaluation. The ACS is the only dataset maintained by the Census Bureau that contains the data elements needed to compute the metric specified in statute. During negotiated rulemaking, several negotiators indicated concern about whether data for high school graduates might sometimes include individuals with undergraduate certificates. The Department has sought further clarification from the Census Bureau on how individuals with undergraduate certificates are instructed to complete the "highest educational attainment" question on the ACS and will incorporate these findings in the final regulations. We also encourage commenters with insights into this data element to submit information for the Department's consideration.

The law is prescriptive with regard to the exact manner in which program earnings would be evaluated, specifying factors for comparison such as age ranges, working status, education level, and geography. Congress did not include a regional price parity adjustment in Section 84001, even though they included it elsewhere in the OBBB for value-added earnings for eligible workforce programs. See Section 83002 of the OBBB (adjusting median earnings based upon regional price parities of the Bureau of Economic Analysis based on the location of the program). In doing so, Congress demonstrated it knows how to require a regional price adjustment when it wants to. *Id.*; see also *Kimbrough v. United States*, 552 U.S. 85, 87 (2007) (reading implicit directives into statutes is disfavored where Congress has demonstrated it knows how and has previously directed such practices in express terms). Here, it omitted such an adjustment, and we assume it did so intentionally because it did not want such an adjustment. Therefore, the Department believes that it would be inconsistent with the statute for the program earnings to be computed using a regional price adjustment.

Another negotiator submitted a suggestion to adjust the earnings threshold for certificate programs having at least 75 percent of female completers downward to 85 percent of the median earnings for the comparison group to account for sex-based wage gaps. The Department does not

believe that it possesses the statutory authority to establish different standards for completers of different sexes when analyzing the outcomes of Title IV, HEA programs as the statute does not provide any indication that Congress intended the Department to such distinctions, either implicitly or explicitly.

Distinctions based upon sex are subject to intermediate scrutiny under the Fifth Amendment to the Constitution. To survive such review, the government must show "at least that the challenged [sex-based] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." See *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982), and *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150 (1980)) (cleaned up). To survive such review, the government must demonstrate an "exceedingly persuasive justification" for that action. *Virginia*, 518 U.S. at 531.

As stated previously, there is no clear statutory command in the OBBB or the HEA more broadly directing the Department to create an earnings variance based upon sex. Construing the statute to give us the authority to create such a sex-based variance would create a constitutional difficulty. Even if we assumed the statute was ambiguous, the constitutional doubt canon would caution against

reading the statute to permit such a sex-based variance. Indeed, when an ambiguous statute could be construed in either a constitutional manner or a manner that creates constitutional difficulties, the constitutional doubt canon directs the Department to construe the statute “to avoid the need even to address serious questions about their constitutionality” See *United States v. Davis*, 588 U.S. 445, 463 n. 7, (2019) (citing *Rust v. Sullivan*, 500 U.S. 173, 190–191 (1991)). Here, even if the statute could be read implicitly as giving us the authority to create a sex-based variance, the constitutional doubt canon requires us to avoid that constitutional difficulty by reading the statute in a sex-neutral manner.

A sex-based variance could also raise problems with consistent treatment of programs and could potentially lead to confusion. Furthermore, a sex-based variance would conflict with Executive Branch policy as required under Executive Order 14173’s prohibition on identity-based preferential treatment based on race, color, sex, sexual preference, religion, or national origin.¹²

For the purposes of constructing the earnings threshold, a working adult is an individual who earns a positive, non-zero income from wages, salary, farm income, or self-employment and was not enrolled in an eligible

¹² Exec. Order No. 14,173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 FR 8633 (January 21, 2025)

institution at the time earnings are measured by the Census Bureau.

One negotiator submitted a proposal for incorporating SOC codes, licensure-linked professional categories, predominant feeder bachelor's degree fields, and two-digit, four-digit, and six-digit CIP codes into the construction of the earnings threshold, with the Department using whichever of the named categories has the lowest reliable median earnings as a program's "same field of study" benchmark. When the Department said that it did not currently have the data to support the adoption of that proposal, the negotiator indicated a preference for use of the four-digit CIP level instead of the two-digit level to narrow interpretation of field of study around occupational field.

At this time, the Department believes the best data available for matching field of study is the two-digit CIP data as recommended by the statute. At this time, the ACS currently contains field of study information that is only disaggregated at the 2-digit CIP level. Further, the Department believes the two-digit CIP data is most appropriate because it reasonably approximates earnings for similar programs and is reliable. Should earnings data through ACS become widely available and statistically reliable at the four-digit CIP level at some point in the future, the Department would consider using such data.

For graduate-level programs at institutions where at least 50 percent of enrollment is from the State in which the institution is located, if statistically significant data (n-size of at least 30) for working adults aged 25-34 in the same field of study in the same State is unavailable, the Department proposes that the program will be evaluated against the lower of median income for working adults with a baccalaureate degree aged 25-34 in the same State and median income for working adults aged 25-34 with a baccalaureate degree in the same field of study nationally. The Department is concerned that calculating an earnings threshold using less than 30 individuals could produce arbitrary and non-representative values in which programs are judged against. As described in the **Directed Questions** section above, the Department is seeking feedback on this approach and possible alternative approaches. Specifically, the Department is interested in feedback related to the way that fields of study are defined. For example, the Department is interested in feedback about grouping 2-digit CIP codes into broader fields of study, which could reduce the extent to which the Department is unable to calculate this median earnings value. Further, the Department is interested in feedback about other possible datasets maintained by the Census Bureau, and other Federal agencies or external sources, that could be used for this calculation. Please refer to the **Directed**

Questions section listed under the Supplementary

Information section III for more information.

Eligible non-GE program (§ 668.2(b))

Statute: Section 431 of the GEPA grants the Secretary 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.

Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, establishes the accountability framework that makes programs with low-earning outcomes ineligible for the Direct Loan program. This section mentions the inclusion of undergraduate degrees, and graduate and professional degrees, covering the scope of programs participating in the title IV aid programs beyond merely gainful employment programs.

Current Regulations: The Department defines an eligible non-GE program as an educational program other than a GE program offered by an institution and included in the institution's participation 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.

Proposed Regulations: In the proposed regulation, the Department provides a cross reference to HEA Section 454(c).

Reasons: The proposed additional phrase referencing 454(c) of the HEA would provide clarity as to the source of authority being used, making it clear that change is being made in direct response to accountability provisions established in such section by the OBBB.

Federal agency with earnings data (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, specifies that earnings used in the accountability metric are derived by a process to be determined by the Secretary.

Current Regulations: The regulations define a Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates and earnings threshold. This may include agencies such as the Treasury Department (including the IRS), the Social Security Administration, the Department of Health and Human Services, and the Census Bureau.

Proposed Regulations: The proposed regulations continue to define the term to mean a Federal agency with which the

Department enters into an agreement to access earnings data for the earnings threshold or value-added earnings measure and provide several examples of agencies the Department may work with. The only changes to the definition include the removal of a reference to D/E rates and the inclusion of a reference to value-added earnings pertaining to eligible workforce programs.

Reasons: The meaning of "Federal agency with earnings data" remains essentially the same under the proposed regulatory language as compared to the current regulations. The reference to D/E rates was eliminated because the Department is proposing to eliminate that metric from the regulations. The reference to value-added earnings was added as a conforming change to align with other parts of the regulatory scheme.

Institutional grants and scholarships (§ 668.2(b))

Statute: Section 431 of the GEPA grants the Secretary 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.

Current Regulations: The Department defines institutional grants and scholarships as assistance that the institution or its affiliate(s) controls or directs to reduce or offset the original amount of a student's institutional costs and that do not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver.

Proposed Regulations: The Department proposes to expand the definition to include grants or scholarships that could convert to loans if students do not meet certain requirements, and also would outline what is not considered institutional grants or scholarships, including Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Campus-based programs; or assistance that must be repaid.

Reasons: The proposed additions would provide further clarification and resolve confusion among stakeholders for which data elements should be included in this reporting category. In reporting under the FVT/GE regulations, this was a data field that generated numerous questions from institutions regarding which aid types were and were not included as institutional grants or scholarships. The Department believes that further clarification would improve data quality.

Metropolitan statistical area (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The Department defines a metropolitan statistical area as a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

Proposed Regulations: None.

Reasons: The current regulations require institutions to report whether a program meets licensure requirements or prepares students to sit for a licensure exam for all states in their metropolitan statistical area. The Department originally proposed to eliminate the related reporting requirement because it was burdensome to institutions and was not specifically relevant to the development of a net price. However, several non-federal negotiators argued that the information would be valuable for consumer information purposes, and the administrative burden associated with the reporting would be diminished if the required reporting aligned with the existing licensure disclosure requirements under 34 CFR 668.43(a)(5)(v). The Department agreed, and amended the proposed regulations to require institutions to report whether a program meets licensure requirements or prepares students to sit for a licensure examination in any State, and a list of all States where the institution has determined the program

meets such requirements. Thus, the metropolitan statistical area is no longer part of the reporting requirements and the regulatory definition would no longer be necessary. As such, the Department proposes to eliminate the definition from the regulations.

Poverty guideline (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: In section 668.2(b), the Department defines poverty guideline as the U.S. Department of Health and Human Services' published poverty guideline for a single person in the continental United States.

Proposed Regulations: None.

Reasons: The poverty guideline's role in 34 CFR 668 subpart Q was to establish discretionary earnings for the calculation of discretionary debt-to-earnings rates, with discretionary earnings equal to earnings minus 150 percent of the poverty guideline. With the proposed removal of discretionary debt-to-earnings rates, the Department no longer needs a definition for poverty guideline in part 668 and proposes to eliminate it.

Qualifying graduate program (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The Department defines a qualifying graduate program as one where at least half of the

program's graduates obtain licensure in a field where post-graduation training requirements apply, in a degree field specified by the Department and published in the *Federal Register*. For the first three years of rates, these programs would be in the fields of medicine, osteopathy, dentistry, clinical psychology, marriage and family counseling, clinical social work, and clinical counseling.

Proposed Regulations: None.

Reasons: Under the current regulations, the distinction for qualifying graduate programs was created to account for the fact that graduates in required post-graduation training programs, such as residency programs, have reduced earnings for a longer period of time following graduation. The time frame prescribed by the OBBB uses the same span between graduation and earnings measurement for all program types, including undergraduate and graduate programs. Since the framework in proposed 34 CFR 668 subpart Q uses the time span prescribed by statute for graduates of all program types, creating a separate distinction for qualifying graduate programs is no longer necessary, and the Department therefore proposes to eliminate the definition.

Substantially similar program (§ 668.2(b))

Statute: See the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The Department indicates that two programs are deemed substantially similar if they share a 4-digit CIP code, regardless of credential level.

Proposed Regulations: None.

Reasons: The concept of substantially similar programs as currently described in the regulations does not comport with the Department's proposed earnings accountability framework. The current definition uses a different restriction on establishing new programs with subject matter overlapping programs that were voluntarily discontinued or lost eligibility following failing metrics under proposed 34 CFR 668.604(b)(2), but that restriction employs different criteria and different terminology. The exemption from reporting for substantially similar program groupings under FVT/GE did not have an equivalent provision in the OBBB statute, nor was a similar provision added in negotiated rulemaking. Therefore, due to changes in statute and proposed regulatory changes related to the new accountability metric, the Department determined that the substantially similar program definition is no longer necessary and proposes to eliminate it.

Student Tuition and Transparency System (STATS)

Student tuition and transparency system scope and purpose (§ 668.401)

Statute: Section 431 of the GEPA requires the Secretary to prepare and disseminate information about applicable

programs to states, LEAs, and institutions. The Secretary must also inform the public about federally supported education programs. The Secretary is required to collect data and information on applicable programs for the purpose of obtaining objective measures of effectiveness of such programs to achieve their intended purpose. In addition, Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, establishes an accountability framework that identifies low-earning program outcomes.

Current Regulations: The current regulations require institutions to report information about a GE program or eligible non-GE program to the Secretary. The Secretary evaluates the program's debt and earnings outcomes for the programs. The regulations in part 668, subpart Q generally exempt institutions located in U.S. Territories or Freely Associated States, except for the reporting requirements under current § 668.408. In addition, the regulations also exempt institutions that did not offer any groups of substantially similar programs, meaning groups of programs with the same four-digit CIP code, that produced fewer than 30 total completers within the last four award years.

Proposed Regulations: The Department proposes to rename part 668, subpart Q from Financial Value Transparency to Student Tuition and Transparency System (STATS) to better reflect the subpart's focus on students and transparency. The current version of this regulation does not apply to

institutions in the U.S. Territories and the Freely Associated States, except that such institutions are required to report data under current § 668.408. The proposed regulations would update the regulations to create a framework that applies to those institutions. We further clarify that the STATS framework applies to nearly all programs eligible for title IV, HEA funds, including both GE programs and eligible non-GE programs offered by an eligible institution.

Reasons: We believe it is necessary to update the language to clearly affirm the removal of the exemptions for institutions located in U.S. Territories or Freely Associated States and institutions with no groups of substantially similar programs with a total of at least 30 completers over the four most recently completed award years. The OBBB does not specifically exempt such programs and, in order to avoid confusion, complexity, and additional burden to institutions, the Department is proposing to harmonize the OBBB's earnings accountability framework with requirements for GE programs. Additionally, given the sequential expansion of cohorts provided under the OBBB explained in the proposed changes to the definition of "cohort period" at § 668.2, we anticipate few instances where the earnings premium measure would not be calculated for a program.

The U.S. Territories and Freely Associated States are already required to report data under the FVT framework. The Department believes that modification of this regulation to include all eligible institutions and a wider range of programs would benefit students and the general public by providing useful and comparable information across institutions and programs, regardless of where the institution is located.

Student tuition and transparency system framework (§ 668.402)

Statute: Section 454(c) of the HEA), as amended by Section 84001 of the OBBB, describes a process whereby the Secretary determines the Direct Loan eligibility for certain programs based on the calculation of the median earnings of program completers. In addition, Section 431 of the GEPA requires the Secretary to collect and publish data on applicable programs to obtain objective measurements of effectiveness of such programs in achieving their intended purposes. See also the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: The current regulations at § 668.402(b) establish a framework through which the Secretary determines the debt and earnings outcomes for a GE program or an eligible non-GE program using debt-to-earnings rates and an earnings premium measure. Currently, the debt-to-earnings rates are determined when 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. The discretionary D/E rate compares annual loan payments for student debt to the borrower's total discretionary income above 150 percent of the Federal poverty line. The annual debt-to earning rate compares annual loan payments for student debt to the borrower's total annual income.

A program passes the D/E rates if its discretionary debt-to earnings rate is less than or equal to 20 percent, if its annual debt-to-earnings rate is less than or equal to 8 percent, or if the median annual or discretionary earnings of either rate is zero and the median debt payment amount is zero.

A program fails the D/E rates if it fails both parts of a two-prong test. First a program fails the D/E rates test if its discretionary debt-to-earnings rate is greater than 20 percent, or the income for the median discretionary earnings is negative or zero and the median debt payment amount is positive. Second, a program fails the D/E rates if its annual debt-to-earnings rate is greater than 8 percent or the median annual earnings is zero and the median debt payment amount is positive.

The Secretary also calculates the earnings premium measure for an eligible program for each award year. A program passes the earnings premium measure if the median

annual earnings of the students who completed the program exceed the earnings threshold, which represents the median annual earnings of those who did not attend postsecondary education. 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.

Proposed Regulations: The current FVT/GE framework includes two tests: the earnings premium measure test and the debt-to-earnings rate test. Under the existing regulations under part 668, subpart S, GE programs that fail the same test in two out of three consecutive years for which rates were calculated lose all title IV, HEA program eligibility. The Department proposes to remove the D/E rate metric and use only an earnings premium measure.

For programs in States where an earnings threshold cannot be determined, an earnings premium would only be calculated if at least 50 percent of the students enrolled in the institution are from locations other than that State. If, during the award year in which the calculations are performed, 50 percent or more of the students enrolled in the institution are from the State, no earnings premium measure would be calculated; the Department would, however, make the earnings data for these programs available to the public.

Reasons: We believe the proposed revision to remove D/E rates is consistent with the statute, which provides for an earnings premium and does not establish a D/E rate. The Department recognizes and acknowledges that it is changing its position on this issue. The Department has previously issued regulations on these issues four times. This includes the 2011 Prior Rule (76 FR 34385), the 2014 Prior Rule (79 FR 64889), and the 2019 Prior Rule (84 FR 31392), which rescinded the 2014 Prior Rule, and the 2023 Prior Rule, which restored and revised major aspects of the 2014 Major Rule.

The 2011 Prior Rule (which was vacated in federal court), the 2014 Prior Rule, and the 2023 Prior Rule all asserted that the gainful employment statute authorized a D/E eligibility test. The 2019 Prior Rule repealed the D/E eligibility test, arguing that had "the Department believes that the GE regulations do not align with the authority granted by section 431 of the Department of Education Organization Act since the D/E rates measure that underpins the GE regulations does not provide an objective measure of the effectiveness of such programs." 84 FR 31395.

The Department did not take the position in the 2019 Prior Rule that Section 102 of the HEA did not permit it to establish an earnings outcome measure under the gainful employment authority. Rather, the Department abandoned the D/E rate because it viewed it as a "flawed metric that

inflates a borrower's monthly or annual repayment obligation above that which is required by the law and does not accurately distinguish between high-quality and low-quality programs." 84 FR 31434. The Department is changing its position here because the Department agrees with the 2019 rule that D/E metric does not accurately distinguish between high-quality and low-quality programs and for other reasons discussed below.

The Department also proposes to harmonize the requirements for GE programs, including undergraduate certificate programs, with the requirements of the OBBB for all other programs, reducing complexity, taxpayer cost, and burden on institutions. During negotiated rulemaking, some negotiators agreed from the outset with the Department's proposed changes to eliminate the D/E rate calculation. They noted that the Department's effort to implement the accountability framework enacted in the OBBB would be coherent, administrable, and applied consistently across proprietary, nonprofit, and public institutions. They acknowledged that the proposed elimination of the debt-to-earnings metric reduces unnecessary complexity while preserving meaningful accountability. These negotiators believed the shift reflects statutory intent and promotes regulatory durability. On the other hand, other negotiators initially believed that the D/E test should continue to apply to all GE programs because it is an important

accountability measure to ensure the Department does not waste valuable resources funding programs that may leave students in a position where they are unable to pay their debt. They argued that the D/E metric protects students from spending their time, money, and resources on programs that could leave them in a position where they are unable to afford their student loan payment relative to their earnings. These negotiators also stressed their belief that the D/E metric would remain important in the years to come as policy shifts. They opined that the new loan limits established by the OBBB will cause an uptick in private lending which may leave students vulnerable to predatory lending, high interest, and unable to repay their loans. Although these negotiators were initially reluctant to eliminate the D/E metric, they ultimately voted to do so.

The Department agrees with the negotiators who supported removing the D/E rates. Calculation of D/E rates requires the use of a significant amount of data reported by institutions to the Department beyond what is normally necessary to administer the title IV, HEA programs. During the implementation of the current FVT regulations, many institutions expressed confusion with the reporting requirements, which may have resulted in reporting of inaccurate data. The Department's proposed approach would dramatically reduce complexity for institutions because the earnings premium test relies on administrative enrollment

data that institutions have become accustomed to reporting for more than 10 years.

Furthermore, the Department's analysis of data obtained for the College Scorecard revealed that it is likely that including a D/E test for GE programs would not result in a substantial number of additional programs failing the metric. The Department estimates that, after accounting for the programs that fail the earnings premium measure, maintaining the D/E metric would result in a 0.2 percentage point increase in the share of all programs that would, and that share would likely be even smaller once pending changes to loan limits¹³ under the OBBB are implemented (see Table 6.1 in the "**Alternatives Considered**" section, below). In the Department's view, this amounts to a de minimis number of impacted programs. The Department notes that the estimated net budget impact for the proposed regulation reflects a larger effect from removing the D/E metric than the Department's separate analysis that identifies additional failing programs used for research purposes.¹⁴

¹³ The OBBB establishes new loan limits for students enrolled in graduate programs that will become effective July 1, 2026. For more information, see *91 FR 4254*.

¹⁴ The 0.2 percentage point increase in failing programs that would occur if a D/E metric were added to the accountability framework is estimated using data from a more recent cohort of students than those used to estimate fail rates in the budget baseline. The more recent cohort has higher earnings than the older cohort, partly because the older cohort earnings were measured during the COVID-19 pandemic. Additionally, the D/E metric in the budget baseline uses a different earnings metric that produces lower earnings and therefore higher fail rates under the D/E metric than in the count of failing programs.

The Department seeks to reduce unnecessary regulatory burden on institutions as part of our broader effort to implement Executive Order 14192, entitled "Unleashing Prosperity Through Deregulation." 90 FR 9065. After considering the de minimis impact that continuing to use the D/E rates would have on eligibility, the Department believes that the value-added earnings premium test would have virtually the same substantive effect in providing quality assurance that programs lead to gainful employment while substantially reducing the burden on institutions. Given the significant reduction in regulatory burden and the de minimis effect on program eligibility, the Department has determined that deregulating by eliminating the D/E rates is appropriate and advances the Executive Branch's policy to deregulate under Executive Order 14192. In sum, the Department believes eliminating the D/E metric would be fairer to institutions, more consistent across sectors and program types, and would provide useful and comparable information to students and the general public when comparing all types of programs.

The Department has considered reliance interests relating to the current D/E rate calculation. The Department thinks the reliance interests are minimal here because the Department is not aware of D/E rates from any of the GE regulations being widely used by consumers as a gauge of institutional quality. The Department thinks that

reliance on the part of institutions is minimal as the D/E rate creates institutional burden associated with reporting and compliance.

Calculating earnings premium measure (§ 668.403)

Statute: Section 454 (c) (3) of the HEA, as amended by the OBBA, explains the requirements for calculating the median earnings of program completers. The Secretary is also required to collect data and information on programs to ascertain the effectiveness of such programs in achieving their intended purposes under Section 431 of the GEPA.

Current Regulations: The current regulation entitled "Calculating Earnings Premium Measure" is numbered as § 668.404. The Secretary calculates the earnings premium measure for a program by determining whether students' annual earnings exceed the earnings threshold.

Under current regulations, a Federal agency with earnings data provides the Secretary with the most currently available median annual earnings of the students who completed the program during the cohort period. The Secretary uses the median annual earnings of students with a high school diploma or GED to calculate the earnings threshold. The Secretary annually publishes the earnings thresholds in the Federal Register.

In current § 668.404(c), students are excluded from the earnings premium measure calculation if the Secretary determines that (1) one or more of the student's Direct

Loans have been approved for a total and permanent disability discharge; (2) the student was enrolled full-time in any other program qualifying for title IV, HEA funds during the calendar year of the earnings data; (3) for an undergraduate program, the student completed a higher credentialed undergraduate program at the same institution prior to the earnings premium measure calculation; (4) for a graduate program, the student completed a higher credentialed graduate program at the institution prior to the earnings premium measure calculation; (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.

The Secretary does 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 or when the Federal agency with earnings data does not provide the programs median earnings data for the program.

Proposed Regulations: First, the Department proposes to strike the existing 668.403 regulation entitled Calculating D/E rates, consistent with our proposal to eliminate that metric. As a conforming change, we propose to renumber the "Calculating Earnings Premium Measure" provisions currently in § 668.404 to 668.403.

The proposed regulations would slightly broaden the programs considered to be passing the earnings premium measure calculation to include those in which the median annual earnings of the students who completed the program equal or exceed the earnings threshold, as opposed to only those whose earnings exceed the threshold as under the current regulations. In proposed § 668.403(b)(1), the proposed regulations clarify that the calculation would use the most currently available median annual earnings of the students who completed the program during the cohort period and would specifically consider earnings from the fourth tax year following program completion of students who are working. Proposed changes to § 668.403(b)(2) would more generally describe the earnings thresholds as using the median annual earnings of working adults, removing the reference to students with a high school diploma or GED, consistent with the proposed changes to the definition of the earnings threshold discussed in § 668.2. Under proposed § 668.403(b)(3), the Secretary would no longer publish the earnings thresholds using a notice in the Federal Register, instead allowing the Department to publish the earnings threshold through other, less formal means, such as, on a website.

Reasons: The Department proposes to update which programs would pass the earnings premium measure to incorporate the changes included in the OBBB accountability framework.

Section 84001 of the OBBB states that a program only fails if the median earnings of its graduates are less than the median earnings of a working adult, which would allow a program to pass if the median graduate earnings were equal to working adults. The OBBB accountability framework only includes working students in that median calculation, a change from the current regulations which include both working and non-working students in the calculation of median earnings for a program.

Initially, the Department proposes to remove an exclusion for completers of graduate programs, whereby the Secretary would exclude a student from the earnings premium measure calculation for a graduate program if the Secretary determined that 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. The Department believed that this exclusion for higher credentialed graduate programs would apply less frequently than in undergraduate programs, and that removing it could potentially reduce confusion and burden for institutions. Institutions raised numerous questions during the 2024 and 2025 FVT/GE reporting cycles. For example, institutions repeatedly asked why an associate degree completer would be excluded if they later completed a bachelor's degree, but a bachelor's completer would not

be similarly excluded if they later completed a graduate or professional degree. Institutions also voiced confusion about higher credential roll-up when graduate-level sequences of study did not follow a numerical progression of credential levels. For example, as a first professional degree, a Juris Doctor (JD) would have the credential level "07". In many cases a student pursuing further study after the JD would seek a Master of Laws (LLM), which as a master's degree would correspond with the credential level "05". Because a master's degree corresponds to a lower-numbered credential level in the FVT/GE framework, debt from a JD program would not roll up to a subsequently completed LLM degree at the same institution, despite the fact that a LLM is considered to be further along the sequence of study. With this in mind, the Department initially proposed removing higher credential roll-up for graduate-level programs. However, during negotiated rulemaking, negotiators noted the importance of maintaining higher credential roll-up. In response to negotiators who advocated for the retention of this exclusion, we agreed to retain the language to exclude students who completed graduate programs and then went on to complete a higher-credentialed graduate program at the same institution. The Department agreed with the negotiators that there are several potential downsides associated with the removal of the higher credential exclusion and roll-up, including the

possibility that the earnings of a student completing a master's degree on the way to completing a doctoral degree could be counted in the master's program rather than the doctoral program. Typically, in such circumstances, the doctoral degree is the terminal degree and would be the program that is more appropriately evaluated under the earnings accountability framework.

For undergraduate certificate programs only, some negotiators also proposed to use the 60th percentile of completer earnings, rather than the median, for undergraduate certificate programs only. Those negotiators believed that using the 60th percentile would provide a more accurate and stable measure of program performance while preserving rigorous accountability. They believed that this approach would not alter the comparison benchmark, the timing of earnings measurement, or the statutory structure of the earnings premium test. The negotiators also believed that the refinement would improve measurement accuracy, reduce false negative determinations driven by known statistical distortions, and remain consistent with the accountability objectives of the OBBB. The Department disagreed, indicating that using the 60th percentile of completer earnings for undergraduate certificate programs only would unfairly advantage these programs compared with other programs and would contradict the Department's goal of a fair framework that treats all types of academic

programs consistently. Furthermore, using the 60th percentile of completer earnings is inconsistent with the accountability framework established in the OBBB, which calls for the use of medians.

The Department believes that it is important to publish earnings thresholds annually, however the publication of the earnings threshold in the Federal Register annually would be burdensome for the Department. The Department believes it is more appropriate to include it with other guidance that we publish, such as a Dear Colleague Letter or publication on a Department website, in part because there would be significantly more variants of the earnings thresholds under the OBBB framework than for the existing FVT framework.

Process for obtaining data and calculating earnings premium measure (§ 668.404)

Statute: Section 454(c) of the HEA, as amended by the OBBB, describes the data that the Secretary uses to calculate the median earnings of certain student cohorts to determine low earning outcome programs. In addition, Section 431 of the GEPA requires the Secretary to prepare and disseminate information about applicable programs to determine whether programs achieved their intended purpose.

Current Regulations: The current regulations at § 668.405 explain the process the Department uses to calculate D/E rates and earnings premiums for programs using enrollment,

disbursement, and program data, along with other title IV, HEA participation data institutions are required to report to the Secretary. An institution must correct or update any reported data within 60 days after an award year.

The current process allows the Secretary to use the data to create a list of students who completed programs during the cohort period, obtain from a Federal agency with earnings data the median annual earnings of the students on each list, calculate the D/E rates and earnings premium measure, and provide them to the institution.

Proposed Regulations: The Department proposes renumbering § 668.405 to 668.404 as a conforming change, following the elimination of §668.403 "Calculating D/E rates" as mentioned above. We would also modify the process described in the regulations to allow the Secretary to calculate the earnings premium measure using Federal agency earnings data reports from records of earnings on at least 16 students who are working. We propose to strike the current provision that removes the highest loan debts for the number of completers not matched to earnings data, because it is unnecessary after removal of D/E rates.

Reasons: Since the IRS would most likely be the Federal agency to provide earnings data, and it sets its threshold for returning aggregated earnings data to more than 15 individuals, we propose to change to 16 individuals to establish that threshold. The Department indicated that it

expects that the IRS would be the Federal agency that provides the earnings data, but as discussed above in § 668.2, the proposed regulations would offer the Department flexibility to use data from another Federal agency or a combination of data from multiple agencies if appropriate. Additionally, we propose removing language from the current regulation which required the highest loan debts to be removed for the number of completers that did not match earnings data. That calculation would no longer be needed, because it is unnecessary after removal of D/E rates calculations.

Determination of the earnings premium measure (§ 668.405)

Statute: HEA Section 454 (c) (6) requires institutions to provide warnings to students regarding at-risk programs. Section 454 (c) (7) also states that programs that fail the earnings test are ineligible for Direct Loan program participation for a period of not less than two years.

Current Regulations: The Secretary calculates D/E rates and the earnings premium measure for a program, for each award year. The Secretary issues a notice of determination to inform institutions of the D/E rates for each program, the earnings premium measure for each program, and the consequences of passing or failing GE programs. The Secretary also determines whether student acknowledgments are required. For GE programs, the notice of determination informs the institution whether the GE program could become

ineligible based on its final D/E rates or earnings premium measure for the next award year, and whether the institution must provide student warnings for a GE program at the risk of losing title IV, HEA eligibility.

Proposed Regulations: We propose to renumber §668.406 to § 668.405 and to rename the section consistent with the elimination of the D/E rate calculation from the transparency framework. The proposed regulations would also eliminate all references to the D/E rate calculation and the acknowledgement process and would refer to all programs, instead of GE programs, when describing program eligibility consequences for failing the measure.

Reasons: The Department would determine if programs pass or fail the earnings premium measure and reference warnings across all types of programs. Institutions would no longer need to require student acknowledgments under § 668.407, since the accountability framework in part 668, subpart S, including the student warning process in § 668.605, would now apply to both GE and non-GE programs. The separate student acknowledgement process is not required under the OBBB framework, and it is duplicative with the warning process described in 34 CFR 668.605. Overall, the changes to this section would be made to reflect the elimination of the D/E rates calculation from the regulation and to reflect the change of scope to apply provisions

consistently to both GE programs and eligible non-GE programs.

Reporting requirements (§ 668.406)

Statute: Section 431 of the GEPA grants the Secretary 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 measures of the effectiveness of such programs in achieving their intended purposes and also to inform the public about Federally supported education programs.

Current Regulations: Current 34 CFR 668.408(a) specifies the data elements that institutions must report to the Department under the FVT framework. An institution offering any group of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers in total over the four most recent award years, must report to the Department certain data at the program level and at the student level.

At the program level, for each GE program and eligible non-GE program, an institution must report for its most recently completed award year—

- The name, CIP code, credential level, and length of the program;

- Whether the program is programmatically accredited and, if so, the name of the accrediting agency;
- 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;
- 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
- Whether the program is a qualifying graduate program whose students are required to complete postgraduate training programs, as described in the current definition under 34 CFR 668.2.

Current 34 CFR 668.408(a)(2) specifies the student-related data elements that must be reported annually to the Department. For each student, institutions must report the following—

- Information needed to identify the student and the institution;
- The date the student initially enrolled in the program;
- The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year;

- 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;
- The student's total annual cost of attendance (COA);
- The total tuition and fees assessed to the student for the award year;
- The student's residency tuition status by State or district;
- The student's total annual allowance for books, supplies, and equipment from their COA under HEA section 472;
- The student's total annual allowance for housing and food from their COA under HEA section 472;
- The amount of institutional grants and scholarships disbursed to the student;
- The amount of other State, Tribal, or private grants disbursed to the student; and
- The amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution.

The current regulation under 34 CFR 668.408(a)(3) further requires an institution to report the following information on students who completed or withdrew from the program during the award year—

- The date the student completed or withdrew from the program;
- The total amount the student received from private education loans, as described in current 34 CFR 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;
- The total amount of institutional debt, as described in 34 CFR 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;
- The total amount of tuition and fees assessed to the student for the student's entire enrollment in the program;
- The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed by the institution for such expenses; and
- The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program.

The current regulation under 34 CFR 668.408(a)(4) states that institutions must report any other information the Secretary requires, as published by the Department in the Federal Register.

The current regulations under 34 CFR 668.408(b)(1) provides the timing for initial and annual reporting. Except as provided under the transitional reporting option

under paragraph (c) of this section, for initial reporting an institution was required to report the program-level and student-level information described above no later than July 31, 2024.

For all subsequent award years, institutions must annually report the required information by October 1 following the end of the relevant award year, unless the Secretary establishes different dates in a notice published in the Federal Register.

The current regulations under 34 CFR 668.408(b)(2) address the possible failure of an institution to provide all or some of the required information. For any award year in which an institution fails to provide all or some of the required information, the institution must provide to the Secretary an explanation, acceptable to her, of why the institution failed to comply with any of the reporting requirements.

The current regulations under 34 CFR 668.408(c)(1) provide for an optional transitional reporting period and metrics.

For the first six years for which D/E rates and the earnings premium are calculated under the current regulations, institutions could opt to instead initially report the required program-level and student-level information for its eligible programs for only the two most recently completed award years.

The current regulations under 34 § CFR 668.408(c)(2) provide that if an institution chose the transitional reporting option, the Department would for the first six years calculate transitional D/E rates using the earnings for students who graduated during the cohort period but the median debt for the more recent period reported. In other words, as the Department explained in Dear Colleague Letter GEN 24-04, for institutions using transitional rates, to calculate D/E rates for the institution's programs, the Department would use earnings for the students from the appropriate cohort period but would use debt information for different students from the most recently completed award years covered by transitional reporting.

Proposed Regulations: The proposed regulations would modify the data elements reported to the Department by adding new items, adding specificity to others, and removing items that would no longer be needed under the proposed STATS framework. The Department proposes to retain many of the existing reporting requirements in current 34 CFR § 668.408. We intend to renumber 34 CFR § 668.408 to § 668.406 to conform with deleted prior sections of this part.

In 34 CFR § 668.406(a), we are proposing to make several changes. We propose to expand the types of institutions required to report by removing the current exemption for institutions with no groups of substantially

similar programs with 30 or more total completers over the four most recently completed award years. With regard to licensure reporting, we also seek to collect a list of all States where the institution has determined a program meets licensure requirements, rather than collecting only information about the States in the institution's metropolitan statistical area.

The proposed regulations would clarify the reporting requirement for the cost of attendance by requiring institutions to report values for the award year. We also wish to clarify that when reporting the tuition and fees assessed to the student, institutions should report the actual amount for that student (not a general amount for a category of students). Institutions would report a student's residency tuition status only as applicable (rather than in all cases). This would capture whether a student was charged in-State (or in-county or in-district) tuition rates or out-of-State rates, or if residency status is irrelevant (i.e., tuition is calculated without regard to residency). The proposed regulations would also more clearly describe the amount and types of aid disbursed for the award year (e.g., grants and private loans).

For students who completed or withdrew from a program during the award year, the proposed regulations would remove reported items related to certain graduate programs that require postgraduate training, student attendance

dates, withdrawal dates (if applicable), enrollment statuses, and total institutional debt upon completing or withdrawing from a program.

In 34 CFR § 668.406(b), the proposed regulations would change the date institutions must initially report the information specified in 34 CFR § 668.406(a) to October 1 following the date the regulations take effect, while for subsequent annual reporting the date would remain October 1 of each year as under the current reporting requirements.

We propose to remove references to 34 CFR § 668.406(c) and to remove references to qualifying graduate programs.

The proposed regulations would also remove the transitional reporting process and metrics provided under current 34 CFR § 668.406(c).

Reasons: Renumbering 34 CFR § 668.408 to § 668.406 is a conforming change required by the deletion of 34 CFR § 668.403 and 668.407. This is necessary to ensure consistency and alignment throughout the CFR.

The modifications to the data elements defined in 34 CFR § 668.406(a)(1), and ultimately reported to the Department, are required in part because the Department seeks to reexamine and remove reporting items when possible. We believe removing certain items would be helpful to institutions because it should reduce reporting burden and complexity. Some items would be removed because they support metrics or processes that would not be used;

other items would be removed because they would not support the Department's more focused priorities for transparency data.

When reporting under the current FVT/GE requirements, institutions often questioned the Department about how to best report the licensure status for each State in the institution's metropolitan statistical area. During negotiated rulemaking, several negotiators indicated that they believed that the licensure information provided substantial value to consumers, and that reporting burden on institutions could be minimized if the list of States matched the similar listing in existing public disclosure requirements. Therefore, in 34 CFR § 668.406(a)(1)(iii), the Department agreed to instead require institutions to provide a list of all States where the institution determines the program meets such requirements. Although this change would expand the number of States that an institution would be required to report, because that list would be consistent with existing disclosure requirements under 34 CFR 668.43(a)(5)(v), the requirement would still be simpler for institutions to perform than narrowing the reporting to only certain metropolitan statistical areas. This change would clarify and simplify the reporting requirement for institutions while still yielding useful information for informational disclosures to students.

In 34 CFR § 668.406(a)(1)(v), we propose removing the reporting element addressing whether a program is a qualifying graduate program whose students are required to complete postgraduate training programs. We propose this because under HEA Section 454(c)(2), the Department must measure earnings four years after graduation for all types of programs, with no extended earnings measurement period for graduate programs with postgraduate training requirements.

In 34 CFR § 668.406(a)(2), the proposed regulations would clarify the items to be reported to the Department. These clarifications are intended to help institutions regarding which amounts should be reported (e.g., actual tuition and fees) and the time period applicable to those amounts (e.g., award year).

We propose the addition of the phrase "as applicable" in the context of reporting the student's residency tuition status by State or district because some institutions do not distinguish between States or districts or make residency status distinctions related to tuition charges. We believe this change would help reduce confusion for institutions reporting this information.

In 34 CFR § 668.406(a)(3), the Department now believes it can obtain the date the student withdraws or completes the program from routine NSLDS enrollment reporting data

and does not need a separate reporting item under the STATS requirements.

We propose to remove the total amount of institutional debt the student may owe any party after completing or withdrawing from the program because it would no longer be needed for purposes of the debt-to-earnings rate (which we propose to eliminate) and because of the complicated way that institutions were required to report this information, particularly for withdrawn students. We believe this change would substantially reduce burden for institutions.

We propose to include the total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program to obtain a more complete picture of the amount of aid an individual receives from an institution in order to calculate a more accurate net price. The Department has collected this through FVT annual amount reporting for the 2024 and 2025 reporting cycles, so this is not a new concept, but we believe it is also necessary for institutions to report this as total amount data for students who complete or withdraw. However, we believe it is appropriate to add a regulatory requirement for something that we would need to collect.

One negotiator argued that private loan debt should not be reported to the Department. The negotiator stressed that reporting this item would introduce data quality,

interpretive, and equity concerns and could lead to misleading conclusions, particularly when used in conjunction with earnings-based accountability measures. The Department disagrees and believes private loan debt that the institution is, or normally should be, aware of should be reported in order to convey the greatest extent of consumer information regarding current and future costs (e.g., tuition due at once and future loan repayment obligations) to prospective and current students. In accordance with 34 CFR § 668.16(f)(3), the Department does not expect that private loans that the institution does not know about, or should not be normally aware of, be reported.

In 34 CFR 668.406(b) we made conforming changes to remove references to the eliminated section 34 CFR § 668.406(c) and to improve readability and clarity. We made further changes by proposing to limit the scope of information that must be reported under this section from five years' worth to two. The Department has already, in most cases, collected data from the prior period through the reporting process under the existing FVT regulations.

We propose removal of 34 CFR § 668.406(c) because we see no need for a transitional reporting process under the revised accountability framework. The OBBB requirements are specific and do not provide for a transitional reporting period and metrics. The proposed new framework does not

demand institutional reporting of debt, scholarship, or grant values for cohorts of students who graduated or withdrew numerous years in the past.

Earnings Accountability

Earnings accountability scope and purpose (§ 668.601)

Statute: Section 481 of the HEA defines, in part, certain categories of an "eligible program," including most undergraduate nondegree programs, as a "program of training to prepare students for gainful employment in a recognized profession." Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an accountability framework for programs qualifying for title IV, HEA assistance that lead to an undergraduate degree, graduate or professional degree, or graduate certificate that evaluates such programs by measuring the earnings outcomes of graduates.

Current Regulations: Current regulations under 34 CFR § 668.601 establish the scope and purpose of the Department's existing accountability framework under part 668, Subpart S. As noted in § 668.601(a), the current accountability framework applies to programs that prepare students for gainful employment in a recognized occupation and establishes rules and procedures for the Department to make title IV, HEA eligibility determinations regarding such programs.

Current § 668.601(b) provides two exemptions from the GE accountability framework under subpart S. First, the current regulations categorically exempt institutions located in U.S. Territories or Freely Associated States. Second, the regulations exempt a particular institution if it offered no groups of substantially similar programs, at any credential level within the same four-digit CIP code, that produced a combined total of 30 or more completers over the four most recently completed award years.

Proposed Regulations: Proposed changes to § 668.601 would rename the accountability framework under subpart S from Gainful Employment to Earnings Accountability and would broaden its scope to cover both GE programs and eligible non-GE programs, applying the accountability framework to include the same institutions and programs covered under the transparency framework and thereby extending accountability to nearly all programs qualifying for title IV, HEA assistance. Notwithstanding the significantly expanded universe of institutions and programs that the revised accountability framework would cover, the proposed changes would also narrow the scope of the Department's eligibility determinations under subpart S from determinations of a program's overall title IV, HEA eligibility to determinations of Direct Loan program eligibility only.

The proposed changes would also eliminate the exemptions under current § 668.601(b) for institutions located in U.S. Territories and Freely Associated States and for institutions that offer no groups of substantially similar programs that produced at least 30 total completers over the four most recently completed award years.

Reasons: The accountability framework delineated under Section 84001 of the OBBB applies broadly to undergraduate degree programs, graduate or professional degree programs, and graduate certificate programs, without regard to institutional sector. Some negotiators proposed that the Department entirely rescind the existing GE accountability framework in favor of the OBBB accountability framework to reduce regulatory complexity. Other negotiators countered that rescinding the current GE accountability framework would exclude undergraduate certificate programs from oversight, putting students and taxpayers at an increased risk that may lead to poor earnings outcomes in these programs. If the Department were to rescind the GE accountability framework, it would leave undergraduate certificate programs without any meaningful programmatic accountability, in stark contrast to virtually all other programs, which would remain subject to accountability measures. Similar to the non-federal negotiators, who ultimately voted in favor of the proposed framework here, the Department is firmly unpersuaded that undergraduate

certificate programs should be exempt from consequences due to low earnings. Such an exception would not be in the best interest of students or taxpayers.

Although undergraduate certificate programs were not specifically mentioned in Section 84001 of the OBBB, the Department notes that Congress nonetheless did not explicitly forbid the Secretary from applying the accountability framework to those programs, nor did Congress choose to otherwise eliminate, limit, or curtail the Department's existing GE accountability framework, either when crafting the OBBB or in any other prior legislative act. Additionally, Congress did not eliminate other authorities that authorize the Department to ensure accountability, such as under the quality assurance system authority in the HEA. 20 U.S.C. 1087d(a)(4), (7).

Conversely, records clearly demonstrate that Congress was well aware that undergraduate certificate programs were already covered using a similar earnings test under the Department's GE accountability framework.¹⁵ When Congress passed the OBBB, the Department was implementing final rules on GE that were in effect and had not been enjoined, yet Congress made no attempt to alter those regulations.

¹⁵ See Senate Comm. on Health, Educ., Labor, and Pensions, Q&A'S ABOUT HIGHER EDUCATION IN THE ONE BIG BEAUTIFUL BILL at 4 ("Which types of programs are covered by the "do no harm" earnings standard? . . . The earnings standard applies to undergraduate degree, graduate degree, and graduate certificate programs. (It does not apply to undergraduate certificate programs, which are covered by a similar earnings test in the Gainful Employment regulation)'), available at https://www.help.senate.gov/imo/media/doc/faq_docpdf.pdf.

This stands in contrast to how the OBBB delayed the Department's borrower defense to repayment and closed school loan discharge regulations until 2035, eliminated the statutory authority for three income-driven repayment plans that had been created by the Department in regulations, and most importantly created accountability rules for all programs that were not covered by the GE framework.

This context provides compelling support for the notion that Congress did not implicitly relieve only undergraduate certificate programs from all levels of accountability at the same time that it established earnings accountability measures for all other programs for the first time. The better reading is that Congress did not, in the OBBB, disrupt the statutory authority that the Department had, prior to enactment, relating to GE, the quality assurance system authority, and other authorities in the HEA. The Department therefore believes that rescinding the existing GE framework outright, and thereby excluding undergraduate certificate programs from the accountability framework, would be inconsistent with the statute. Again, we also fully agree with the negotiators who noted that doing so would put students and taxpayers at an increased risk.

A negotiator also suggested that for severability purposes, the Department should maintain two separate

accountability frameworks, one for GE programs and another for the programs specified under Section 84001 of the OBBB. As stated above, the Department maintains that it has the legal authority to impose an accountability regime on undergraduate certificate programs, a position upheld by federal courts.¹⁶ But even if we do not (which we would vigorously contest), a court could narrowly tailor a remedy to enjoin application of the rule against only certificate programs while leaving the rest of the scheme intact. As such, the negotiator's concerns about severability are overstated. In addition, having separate GE and OBBB accountability frameworks would add significant complexity, increase administrative burden and costs for institutions and the Department, and could generate increased confusion for students in comparing and understanding differing informational disclosures and warnings generated from multiple frameworks that apply to different institutions and programs. As the Department explained during negotiated rulemaking, we view harmonization of the existing FVT/GE framework and the OBBB accountability framework to be essential in promoting parity among institutions and

¹⁶ See *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 640 F. App'x 5, 8 (D.C. Cir. 2016) ("Had Congress been uninterested in whether the loan-funded training would result in a job that paid enough to satisfy loan debt, it would have created a federal grant system instead of a federal loan system focusing on preparation for gainful employment."); *American Assoc. of Cosmetology*, 2025 WL 4219345, at *5; *Ass'n of Priv. Colleges & Univs. v. Duncan (Duncan I)*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012); See *Ass'n of Private Sector Colleges & Univs. v. Duncan (Duncan II)*, 110 F. Supp. 3d 176, 184, 186 (D.D.C. 2015); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 358, 362-63 (S.D.N.Y. 2015).

program types through a single accountability framework that covers the vast majority of programs qualifying for title IV, HEA assistance and nearly all title IV, HEA recipients.

While the Department appreciates the negotiator's concerns about severability, as we explain above in the **"Authority for This Regulatory Action"** section, we believe this proposed rule falls squarely within the Secretary's statutory authority. Nonetheless, as we explain in the discussion of definitions under § 668.2(b), the Department proposes a minor revision to the current definition of an eligible non-GE program, in part to address the negotiator's concerns about severability and to provide additional clarity regarding which programs would be subject to the accountability framework.

Some negotiators suggested that programs the Department determines to lead to low-earning outcomes under the proposed accountability framework should lose access to all title IV, HEA programs, as required under the current GE accountability framework, rather than only losing eligibility for the Direct Loan program. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on programs that are not performing well, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would better incentivize institutions to shift their

program offerings away from failing programs or to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would in many cases already lead to the closure of the program, or in some cases even the institution itself.

The Department notes that it has a greater interest in applying an earnings accountability framework to the Direct Loan program because, unlike the other title IV, HEA programs, the government and taxpayers expect loan funds to be repaid, and a student's earnings generally correlates with their ability to repay. We further note that the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. To the extent that undergraduate certificate programs would be covered by the proposed accountability framework under another statutory authority (i.e., the longstanding HEA requirement for such programs that lead to gainful employment in a recognized occupation), we believe that such authority does not explicitly or inherently require loss of all title IV, HEA eligibility as the sole remedy for noncompliance.

In addition, to address negotiator concerns regarding continued Pell Grant eligibility for low-earning outcome

programs, the Department further proposes changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16, respectively, that would terminate title IV, HEA eligibility for all of an institution's low-earning outcomes programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs. We further address those provisions in the discussions below for the relevant regulatory sections.

We further note that while a 15-year history of pendular regulatory changes pertaining to GE has contributed to an environment of lasting uncertainty for institutions, students, and other stakeholders, not one program has yet lost eligibility under the current GE accountability framework or any of the multiple prior iterations of GE accountability rules. We believe that treating institutions and programs consistently would reduce the likelihood of ongoing regulatory fluctuation. The Department's goal in proposing this unified framework is to at last set forth a harmonized, reasonable, data-driven, minimally burdensome, and implementable accountability framework that ensures parity across all institutions and program types. This framework is designed to withstand the test of time, provide stability for institutions, and offer actual, realized protections for students and taxpayers. To that end, we firmly believe the

scope of this proposed accountability framework strikes the correct balance, is well founded, and is consistent with our statutory authority, as further demonstrated by the higher education community's support, expressed through consensus in negotiated rulemaking.

With regard to the proposed removal of the exemptions under current § 668.601(b)(1), Section 84001 of the OBBB does not extend authority to the Department to categorically exempt institutions located in the U.S. Territories or Freely Associated States from the earnings accountability framework. Regarding the proposed removal of the current exemption under § 668.601(b)(2) for institutions that offer no groups of substantially similar programs that produced at least 30 total completers over the four most recently completed award years, Section 84001 of the OBBB similarly does not include this specific exemption. With that said, as discussed above with regard to § 668.403, the Department proposes not to issue an earnings premium measure if the fully expanded cohort period includes fewer than 30 completers and – given the robust cohort period expansion procedures proposed – we anticipate that few students attend programs that would fall below this minimum threshold. Similarly, as discussed above, earnings thresholds would not be calculated for programs in States (including U.S. Territories) where

available data from the Census Bureau does not allow for a computation of such a threshold.

Earnings accountability criteria (§ 668.602)

Statute: Section 481 of the HEA defines, in part, an “eligible program” as a “program of training to prepare students for gainful employment in a recognized profession.” Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an accountability framework that evaluates earnings and employment outcomes using an earnings test and limits Direct Loan program eligibility to programs that do not fail this metric in two out of three years.

Current Regulations: Current § 668.602(a) stipulates that the Department considers a GE program to lead to gainful employment in a recognized occupation if it satisfies three conditions. First, the GE program must meet certain certification requirements as set forth in § 668.604. Second, the GE program must not fail the D/E rates measure in two out of any three consecutive award years in which the Department calculates D/E rates for the program. Third, the GE program must similarly not fail the earnings premium measure in two out of any three consecutive award years in which the Department calculates said measure for the program.

If the Department does not calculate or issue D/E rates for a program for an award year, current § 668.602(b)

clarifies that the program receives no result under the D/E rates for that award year and would remain in the same status under the D/E rates metric as the previous award year. Current § 668.602(c) further provides that when making program eligibility determinations, the Department disregards any D/E rates that were calculated more than five calculation years prior.

Similarly, if the Department does not calculate or issue the earnings premium measure for a program for an award year, current § 668.602(d) clarifies that the program receives no result under the earnings premium measure for that award year and would remain in the same status under said metric as the previous award year. Current § 668.602(e) similarly provides that when making program eligibility determinations, the Department disregards any earnings premium that was calculated more than five years prior.

Proposed Regulations: Consistent with the proposed changes in scope discussed above with § 668.601, proposed changes to § 668.602 would rename the section from "Gainful employment criteria" to "Earnings accountability criteria" and would expand the universe of programs covered by those criteria to include both GE programs and eligible non-GE programs. In addition, consistent with proposed changes discussed above in § 668.402, proposed changes to § 668.602 would remove all references to the D/E rates metric,

establishing the earnings premium measure as the sole earnings accountability metric. Under the proposed earnings accountability criteria, the Department would consider a GE program or eligible non-GE program to lead to acceptable earnings outcomes if the program satisfies the certification requirement under § 668.604 and the program does not fail the earnings premium measure in two out of any three consecutive award years in which the Department calculates it.

As under the current GE framework, if the Department does not calculate or issue the earnings premium measure for an award year, the program would receive no result for that award year and would remain in the same status under the accountability framework as in the previous award year. For example, if the program fails said measure in one year, and the following year the Department does not calculate the measure, the program would retain eligibility and would continue to be treated as a program that has failed in one year (e.g., the program would remain eligible, student warning requirements would continue to apply, and the program would become ineligible for Direct Loan program participation if the Department calculates a failing earnings premium measure in either of the following two years in which the measure is calculated). The Department would no longer disregard an earnings premium that was calculated more than five years prior.

Reasons: The Department proposes to rename this section to reflect the revised scope of the institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended under Section 84001 of the OBBB, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without regard to whether those programs are GE programs or eligible non-GE programs. For the reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.602 by which the Department would determine whether a program leads to acceptable earnings outcomes, to encompass both GE programs and eligible non-GE programs.

With regard to the proposed removal of D/E rates as an accountability metric, as the Department notes in the discussion of proposed § 668.402, the Direct Loan program accountability framework in HEA Section 454(c) establishes an earnings comparison metric only, not a debt-to-earnings measurement. Moreover, we again note that the Department's data analysis shows that maintaining the D/E rates metric would result in a 0.2 percentage point increase in the share of failing programs (see Table 6.1 in the "Regulatory Impact Analysis" section). In the Department's view this marginal addition would not justify the significant

difference in complexity, cost, and administrative burden of including D/E rates.

Retaining a program for which the Department does not calculate the earnings premium measure for a given award year under the program's same status as the preceding year is consistent with the Department's treatment of programs under the current GE framework, and we believe it remains logical for the program to retain the same status 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. With that having been said, the Department proposes to no longer discard a calculated earnings premium measure from more than five award years prior, as HEA Section 454(c) does not provide that exclusion, and – given the more robust cohort period expansion procedures proposed in this rule as discussed above in §§ 668.2 and 668.403 – we anticipate that few students attend programs that would fall below the minimum completer threshold and believe that the vast majority of students will attend programs where an earnings premium measure is calculated.

Low-earning outcome programs (§ 668.603)

Statute: Section 454(c)(1) of the HEA, as amended by Section 84001 of the OBBB, stipulates that a low-earning outcome program is ineligible for Direct Loan program

participation. HEA Section 454(c)(5) provides the opportunity for an institution to appeal the Department's determination of a program's low-earning outcome status. HEA Section 454(c)(7) establishes a period of ineligibility of not less than two years for a low-earning outcome program. See also the "**Authority for This Regulatory Action**" section of this NPRM.

Current Regulations: Current § 668.603(a) stipulates that a GE program becomes ineligible for title IV, HEA participation if it either fails the D/E rates metric in two out of any three consecutive award years in which the Department calculates its D/E rates or fails the earnings premium measure in two out of any three consecutive award years in which the Department calculates said measure.

Depending upon the institution's circumstances, there are three mechanisms whereby the Department may process an ineligible GE program's loss of eligibility. For an institution that is fully certified at the time of the loss of eligibility, the Department would initiate a termination action of program eligibility under part 668, subpart G. For an institution that is provisionally certified at the time of the loss of eligibility, the Department would initiate a revocation of the failing GE program's eligibility. If the Department is currently reviewing the institution's application for title IV, HEA recertification at the time of the loss of eligibility, the Department may

simply issue a new PPA that does not include the ineligible GE program.

The current regulations at § 668.603(b) explain the conditions under which an institution may appeal a GE program's loss of title IV, HEA eligibility. An institution may only appeal in instances when the Department processes a GE program's loss of eligibility through a termination action under part 668, subpart G, and it may only do so on the basis that the Department erred in the calculation of the program's D/E rates or earnings premium measure. The current regulations do not provide a similar appeal option in cases where the Department processes a GE program's loss of eligibility through a revocation action for a provisionally certified institution, or where the Department simply issues a new PPA that does not include the ineligible GE program.

The current regulations at § 668.603(c) stipulate that an institution may not disburse title IV, HEA funds to students enrolled in an ineligible program, except as provided in the Department's existing regulations at § 668.26(d) which allow conditional disbursements of Pell Grant and Direct Loan program funds for, respectively, the remaining portion of the payment period or period of enrollment during which the program lost eligibility. It also establishes a three-year period of ineligibility during which an institution may not seek to reestablish the

eligibility of a program that is ineligible under the D/E rates or the earnings premium measure, or to reestablish the eligibility of a failing GE program that the institution discontinued voluntarily before or after the Department issued the program's D/E rates or earnings premium measure. Either of these categories of programs remains ineligible until the institution again establishes the eligibility of the program under current § 668.604(c).

Proposed Regulations: Consistent with the proposed changes in scope discussed above in § 668.601, proposed changes to § 668.603 would rename the section from "Ineligible GE programs" to "Low-earning outcome programs" and would expand the universe of programs covered under this section to include both GE programs and eligible non-GE programs. In addition, the changes would remove all references to the D/E rates metric, leaving the earnings premium measure as the sole earnings accountability metric. Under proposed § 668.603(a), the Department would classify a GE program or eligible non-GE program as a low-earning outcome program if it fails the earnings premium measure in two out of any three consecutive award years in which it is calculated.

Unlike the current regulations, which include several mechanisms by which the Department may process a program's loss of title IV, HEA eligibility, the proposed changes would require the Department in all instances to process a low-earning outcome program's loss of Direct Loan program

eligibility as a termination action under part 668, subpart G. This change would extend to all institutions the option to appeal a low-earning outcome program's loss of Direct Loan program eligibility as provided under proposed § 668.603(b). Similar to the current regulations, the proposed regulations would limit appeals to only instances where the Department erred in the calculation of the program's earnings premium measure.

Proposed § 668.603(c) would generally limit the consequences for a low-earning outcome program to the loss of Direct Loan program eligibility only, and it would reduce the period of ineligibility from three years under the current regulations to two years. Similar to the current regulations, a low-earning outcome program, or a failing program that the institution voluntarily discontinues, would remain ineligible until the institution reestablishes the eligibility of the program under proposed § 668.604.

Proposed § 668.603(c)(4) would provide an institution with a program that fails the earnings premium measure in a single year an alternative option to retain limited eligibility for the lesser of three years or the full-time normal duration of the program during an orderly closure of the program, provided that the Secretary determines this extension is in the best interest of students. To qualify for the orderly program closure option, the failing program

must not yet meet the criteria of a low-earning outcome program (i.e., has not failed the earnings premium measure in two out of three years in which it was calculated), and the institution must, within 120 days of the Department's notice of determination under proposed § 668.405, amend the institution's PPA. Under the amended PPA, the institution would-

- 1) Cease accepting new enrollments to the program, regardless of the student's title IV, HEA eligibility, on or after the date of the agreement;
- 2) Engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program, regardless of their academic progress at the time of program closure;
- 3) Inform the institution's State authorizing agency and accrediting agency of the orderly program closure, and meet any program discontinuation or closure requirements of those agencies;
- 4) Acknowledge that the program has been voluntarily discontinued and is otherwise subject to the two-year ineligibility period under proposed § 668.603(c)(2), which would begin when the last student exits the program;
- 5) Maintain the program under a warning status and provide the warning notice to students as otherwise required under proposed § 668.605, with the exception of the warning element under proposed § 668.605(c)(1)(ii) informing

students that the program could lose access to Direct Loans based on the next calculated program metrics;

6) Provide students the academic and financial options to continue their education in another program, either at the same institution or a different institution, to which the student's academic credit would transfer and that has not failed to satisfy the earnings premium measure; and

7) Not restart the same program or start a program sharing the same four-digit CIP code for at least two award years following the completion of the orderly program closure.

Proposed § 668.603(c)(4)(ii) would prevent an institution from accessing the orderly program closure option in cases where, based on the program's compliance, the program or the institution is subject to a probation or equivalent action by a recognized accrediting agency or State regulatory agency, including licensing boards, or where the institution is subject to the Department's heightened cash monitoring 2 (HCM2) or reimbursement method of payment under § 668.162(c).

Reasons: As with sections §§ 668.601 and 668.602 above, the Department proposes to rename this section to reflect the revised scope of the institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended by Section 84001 of the OBBB, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without

regard to whether those programs are GE programs or eligible non-GE programs. For reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.603 by which the Department would determine whether a program leads to acceptable earnings outcomes, to encompass both GE programs and eligible non-GE programs, while also generally limiting the consequences for a low-earning outcome program to the loss of Direct Loan eligibility only, as provided in statute. Consistent with the wording Congress selected in HEA Section 454(c)(2), as revised by Section 84001 of the OBBB, and to reflect the narrower scope of the earnings determination given the proposed removal of the current D/E rates metric, the Department proposes to refer to GE and non-GE programs that fail the accountability metric as "low-earning outcome programs." As specified in HEA Section 454(c)(7), the period of Direct Loan program ineligibility for such programs would be two years.

A negotiator recommended that the Department retain the existing mechanisms provided under the current regulations for the streamlined removal of low-earning outcome programs in cases where the institution is provisionally certified or where the low-earning outcome determination occurs during the Department's consideration of an institution's recertification application, arguing

that removing these mechanisms would increase administrative burden on the Department and delay it in acting to protect students and taxpayers from investing in low-earning outcome programs. Although the Department appreciates the negotiator's concerns, we believe the requirement in HEA Section 454(c)(5) to provide an appeal option applies in all instances where a low-earning outcome program would lose Direct Loan program eligibility under the accountability framework, which necessitates the proposed change to the mechanisms under current § 668.603(a) by which the Department would process the change in eligibility. Processing all such losses of Direct Loan program eligibility as termination actions would extend the existing appeal process under part 668, subpart G to any institution with a low-earning outcome program, consistent with the OBBB requirement. Moreover, this approach would also reflect the Department's goal of harmonizing the requirements and processes across institutions and programs, as further discussed above in § 668.601.

Some negotiators suggested that low-earning outcome programs should not retain Direct Loan program eligibility during the appeal process, arguing that a higher volume of appeals could be expected under the proposed rule, which could slow the Department's processing of appeals while low-earning outcome programs remain eligible during the appeal process. Negotiators also suggested that the

Department require institutions to provide a letter of credit during the appeal process.

The Department, however, notes that the statutory language in HEA Section 454(c)(5) allows such programs to continue to participate in the Direct Loan program during an appeal. Administering the required appeals process using existing procedures under part 668, subpart G would allow the Department to both meet this requirement and provide consistency with the Department's treatment of institutions in other types of eligibility appeals. In addition, given that no programs would lose Direct Loan program eligibility under the proposed rule until the second year of calculations, we believe there is sufficient time for the Department to plan and prepare for any anticipated change to the volume of appeals. With regard to the suggestion to require a letter of credit during the appeals process, while we concur that doing so would likely reduce the volume of appeals, we note that providing a letter of credit involves many consequences for institutions and may not be necessary in all instances to protect taxpayer interests. Imposing a LOC is principally used by the Department to protect taxpayers against potential unpaid institutional liabilities and would not be reasonable in all circumstances where a program at an institution fails the earnings premium and chooses to appeal.

Similar to the current GE accountability framework, the proposed earnings accountability framework would limit appeals to instances where the Department erred in the calculation of the program's earnings premium measure. Some negotiators proposed broadening the factors that an institution could appeal to include the underlying median graduate earnings data used to calculate the earnings premium measure, arguing that there would otherwise rarely be a basis for an institution to appeal under the proposed criteria as both the median graduate earnings and earnings benchmark would be based on elements an institution could not dispute. Negotiators further suggested that the Department consider alternative earnings data, such as local earnings data or survey data, that might address limitations in available administrative earnings data and improve fairness and due process, or that the Department introduce an earnings variance to address unreported tipped income in certain professions. Other negotiators expressed support for the scope of the appeals process as proposed, arguing that appeals in other areas of title IV, HEA administration, such as cohort default rates, can sometimes consume significant time and costs, that the earnings standards set forth in the OBBB are specific enough that an appeal would oftentimes not be fruitful, and appeals must not look at factors that could effectively circumvent the intent of Congress.

The Department disagrees with negotiators who claimed that the proposed basis for appeals would deprive institutions of a meaningful opportunity to appeal a low-earning outcome determination. As under the current GE framework, institutions would have the opportunity to review and correct the list of completers provided to the Federal agency with earnings data to obtain median graduate earnings and could meaningfully appeal any discrepancies pertaining to the completers list.

The Department disagrees with suggestions that we should allow appeals to substitute or modify the earnings data with alternative earnings data. We maintain, as discussed in response to public comments in the FVT/GE Final Rule published October 10, 2023, that it is inappropriate to accept appeals on the basis of alternative earnings for a variety of reasons.¹⁷ IRS earnings data represent the highest quality and most accurate available data source and, accordingly, are also currently used for determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Moreover, the Department recalls the low quality of past data submitted by institutions in alternate earnings appeals, such as graduate earnings surveys and employment verifications, including in submissions after litigation

¹⁷ See Financial Value Transparency and Gainful Employment, 88 FR 70004, 70095 (Oct. 10, 2023).

over the 2014 Program Integrity: Gainful Employment Rule.¹⁸ One study concluded, after examining publicly available data from 2017, that after the D.D.C.'s ruling in *Am. Ass'n of Cosmetology Schs. v. Devos*, 258 F. Supp. 3d 50, 76,77 (D.D.C. 2017) prevented the Department from enforcing limitations on the types of appeals alternate earnings, data submitted by cosmetology programs that had initially failed were 82 percent higher than the median reported earnings that the Department had received from SSA.¹⁹ This was significantly greater than the approximately 8 percent of cosmetologists' annual income that was comprised of unreported tipped income, according to estimates in the same study based on IRS "tax gap" and audit data. *Id.* at 4. The problem of such alternative earnings data was addressed in *American Assoc. of Cosmetology Sch. v. Dep't of Educ*, where the court concluded that the Department's choice of data and its rejection of alternate earnings appeals in the FVT/GE Final Rule published on October 10, 2023 was reasonable. See 2025 WL 4219345 at *8, *9. The court noted that, in crafting the FVT/GE Final Rule, the Department had reviewed and responded to comments about the reported earnings, the debt to earnings ratio, and the earnings premium. *Id.* The court further noted that the Department

¹⁸ See Program Integrity: Gainful Employment, 79 FR 64890 (Oct. 31, 2014).

¹⁹ Cellini, Stephanie Riegg & Blanchard, Kathryn J. (2022). Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income. Geo. Wash. Univ. (https://www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf).

cited studies²⁰ that found underreporting was not a widespread issue, that the FVT/GE Final Rule specifically noted that safeguards that had been put in place to address purported underreporting, if it was in fact an issue. *Id.*

We similarly disagree with suggestions to adjust the median graduate earnings data for a program based on purported underreporting of tipped or self-employment income within an occupation. As the Department explained during negotiated rulemaking, any existing underreporting of income would impact both sides of the earnings premium calculation, i.e., both the measured median earnings of program graduates and the benchmark median earnings of working adults in the earnings threshold. The Department intentionally selected the use of median earnings rather than the mean earnings for both the program and benchmark earnings, in no small part because it would take over half of the respective earners to shift the median value by even a small amount. Adjusting program earnings across the board by any amount would therefore very likely over adjust for unreported or underreported earnings, to whatever extent they may exist. In addition, as a Federal agency the Department maintains that it would be profoundly inappropriate to legitimize underreporting by adjusting

²⁰ See FVT/GE Final Rule at 32336, 32346 (*citing* Stephanie R. 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)

earnings data in an effort to account for purported, yet unsubstantiated, underreporting of wages or tips in certain fields, when earners in those fields are in fact ultimately required by law to truthfully report those wages and tips to the IRS.

Section 454(c)(5) of the HEA does not require the Department to consider appeals of earnings data, only of the low-earning outcome determination in HEA Section 454(c)(2). We further note that if the Department fails to thoughtfully and purposefully manage the scope and basis of appeals, it could result in institutions inundating both the Department and, potentially, the courts with cumbersome appeals and challenges that are unlikely to impact eligibility outcomes based on the merits but would, nonetheless, generate significant burden and costs for both institutions and the Department, all while delaying accountability and leaving students and taxpayers at a continued risk during what would likely be a protracted appeals process. Though the Department proposes to allow narrow appeals, our proposed appeal process would nevertheless be reasoned, meaningful, clear, consistent, and would provide due process and transparency. The proposed appeals process will help ensure that institutions have an opportunity to point out errors, which will help to reduce the instances where the Department takes action against a program based upon erroneous data. Although we

understand concerns about the consequences for institutions and students if a program loses Direct Loan program eligibility under the proposed earnings accountability framework, it is equally important to recognize that in any meaningful accountability framework, some programs will fail, something that is clearly in line with OBBB. Finally, given the limited grounds for appeals under the proposed rule, to address truly extenuating circumstances, we note that the Department still has the option to exercise other existing authorities to waive or modify title IV, HEA program requirements in national emergencies under the Higher Education Relief Opportunities for Students (HEROES) Act.²¹

The orderly program closure provisions in § 668.603(c)(4) of the consensus language was the result of a joint proposal from several non-Federal negotiators. These negotiators pointed out that the Department's proposed earnings accountability framework narrowly measures a program's earnings outcomes at a specific point in time, rather than the lifetime earnings benefit of a program, the quality of instruction, or the more holistic value of a program to society or to a graduate's personal well-being. Negotiators also argued that, regardless of these types of

²¹ Edward Lio and Sean Stiff, CONG. RSCH. SERV., R47505, Student Loan Cancellation Under the HEROES Act 2 (2023). "(During the course of the COVID-19 pandemic, which Presidents Trump and Biden both declared a national emergency, the Secretary of Education (Secretary) has used the HEROES Act to provide a number of flexibilities to both borrowers and schools that participate in HEA student loan programs.)"

unmeasured value such a program may offer, the predominant impact of a low-earning outcome program's loss of Direct Loan program eligibility would fall on students currently enrolled in that program. Negotiators advocated for an optional pathway for institutions to carefully and transparently wind down a failing program that might not continue to operate without Direct Loan program access while creating a pathway for students to complete their program of study, all while otherwise leaving the earnings accountability framework and appeals process in place for institutions that do not choose to promptly initiate an orderly program closure for a failing program. The Department believes this option would appropriately balance the interests of fostering accountability, minimizing sudden disruption, helping encourage completion, and allowing institutions to proactively and responsibly wind down programs at risk of losing Direct Loan eligibility, all while still benefiting taxpayers by incentivizing institutions to cease enrolling new students in at-risk programs one year earlier than the program would otherwise lose Direct Loan program eligibility if determined to be a low-earning outcome program. We applaud the negotiators for their creativity in conceiving this innovative provision.

Notwithstanding the general support of the proposed orderly program closure option, some negotiators questioned the provision at proposed § 668.603(c)(4)(i) stipulating

that the option would apply if the Secretary determines that it is in the best interest of students. Negotiators voiced concern about whether the Department might selectively choose whether or not to agree to the PPA addendum allowing orderly program closure. The Department clarifies that it included the language in question primarily to reflect the reality that any PPA amendment must be countersigned by the Secretary or her representative. To the limited extent this provision could be used to disallow the extension of Direct Loan program eligibility, the Department would only do so under unusual and compelling circumstances, such as in the case of a precipitous institutional closure or an emergency action against the institution (e.g., in a case of suspected fraud). Absent such severe and unusual circumstances, or the less uncommon disqualifying circumstances already specified in proposed § 668.603(c)(4)(ii), the Department does not consider approving the orderly program closure to be a discretionary decision and anticipates that the Secretary would approve requests for the associated PPA amendments in nearly all cases.

Certification requirements for GE programs and eligible non-GE programs (§ 668.604)

Statute: Section 481 of the HEA defines, in part, certain categories of an "eligible program," including most undergraduate nondegree programs, as a "program of training

to prepare students for gainful employment in a recognized profession." Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an accountability framework for programs that lead to an undergraduate degree, graduate or professional degree, or graduate certificate, evaluating such programs by measuring the earnings outcomes of graduates.

Current Regulations: The current regulations at § 668.604 describe the institutional certification requirements for GE programs. In particular, § 668.604(d) requires an institution to certify to the Department, for each GE program included on the institution's Eligibility and Certification Approval Report (ECAR), that the 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, that the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

Current § 668.604(a) generally requires an institution to have certified to the Department, by December 31 of the year the GE regulations took effect, that each of its eligible GE programs met the above criteria. Current § 668.604(b) further requires an institution to provide a similar certification as a condition of continued title IV,

HEA eligibility when applying for recertification or when making changes that may otherwise impact a GE program's eligibility.

The current provisions at § 668.604(c)(1) highlight the process whereby an institution establishes the title IV, HEA eligibility of a GE program by updating its list of eligible programs as provided under current § 600.21(a)(11)(i), and notes that by doing so an institution affirms that the program satisfies the GE program certification requirements. The current version of the regulation at § 668.604(c)(2) prohibits an institution from updating its list of eligible programs to include a GE program, or a GE program that is substantially similar (i.e., sharing the same four-digit CIP code as) to a failing GE program that the institution voluntarily discontinued or that became ineligible under the D/E rates or the earnings premium measure until the three-year period of ineligibility under current § 668.603(c) expires.

Proposed Regulations: The proposed changes to § 668.604 would expand the scope of the certification requirements to encompass both GE programs and eligible non-GE programs. The content of institutional certifications under proposed § 668.604(c) would largely reflect the existing content under current § 668.604(d), but would additionally specify that an institution agrees to comply with the requirements of the STATS framework under part 668, subpart Q, as well

as those of the Earnings Accountability framework under part 668, subpart S.

The Department proposes to remove the transitional certification requirements for existing programs under current § 668.604(a).

Most of the remaining proposed revisions to this section would be technical or conforming changes, with only two notable exceptions. One substantive change would revise the restriction for updating an institution's list of Direct Loan-eligible programs, which currently applies to the same program or a substantially similar program to a failing program that lost eligibility or that the institution voluntarily discontinued. The revision would instead apply to the same program or one at the same credential level sharing both the same four-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk provided by a Federal agency. The other substantive change would prohibit an institution from updating its list of Direct Loan-eligible programs to reinstate a program that was subject to the two-year ineligibility period, or a program sharing the same four-digit CIP code and any overlapping SOC codes, even after the ineligibility period expires if the program has continued to fail the earnings premium measure in either of the two most recent award years.

Reasons: As with §§ 668.601 through 668.603 above, the Department proposes to rename this section to reflect the revised scope of the institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended under Section 84001 of the OBBB, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without regard to whether those programs are GE programs or eligible non-GE programs. For reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.604, by which the Department would certify the program eligibility under the earnings accountability framework to encompass both GE programs and eligible non-GE programs, while also reflecting the scope of consequences for a low-earning outcome program as a loss of Direct Loan eligibility only, as provided in statute.

The Department proposes to remove the transitional certification requirements under § 668.604(a) for currently eligible programs because they were duplicative of existing requirements for accreditation of all eligible programs. Requiring institutions to provide transitional certifications at the outset for all GE programs would have imposed substantial up-front burden on both institutions and the Department. Moreover, in the Department's view, an institution's existing, signed PPA satisfied the

transitional certification requirement, except in circumstances where the Department had reason to believe that a GE program was not accredited by a recognized agency (or, in the case of a public postsecondary vocational institution, the program was not approved by a recognized State agency for the approval of public postsecondary vocational education).²² Under the current FVT/GE rule, the Department considered an institution's existing PPA to satisfy the transitional certification requirement unless the Department notified an institution otherwise, and for similar reasons we do not believe a transitional certification requirement would be necessary going forward.

With regard to the additional content of eligibility certifications under proposed § 668.604(c)(1), the Department believes that naming in the regulatory certification text the otherwise implicit condition that an institution must agree to comply with the requirements of the transparency framework under part 668, subpart Q and the accountability framework under part 668, subpart S would help improve clarity for institutions by reminding an institution's signing official of important responsibilities the institution must assume when choosing

²² See also Dear Colleague Letter GEN-24-04 "Regulatory Requirements for Financial Value Transparency and Gainful Employment" (updated Sept. 16, 2026) at <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-03-29/regulatory-requirements-financial-value-transparency-and-gainful-employment-updated-sept-16-2024>

to maintain, establish, or reestablish Direct Loan program eligibility for a program of study.

Some negotiators expressed concern regarding the restrictions on establishing Direct Loan program eligibility for a program that is similar to a low-earning outcome program that was subject to an ineligibility period. These negotiators noted that the committee addressed a similar issue in the context of ineligible Workforce Pell programs, where proposed regulations sought to balance the need for guardrails to prevent gaming by an institution adding programs closely resembling a program that lost eligibility while also preserving the ability for otherwise compliant institutions to seek eligibility for programs that are sufficiently distinct from the program that lost eligibility. The Department understands these concerns, and the consensus language at proposed § 668.604(b) (2) would also limit the prohibition on new programs to those with both the failing program's four-digit CIP code and any overlapping SOC codes.

Negotiators also raised the issue of safeguarding students and taxpayers when an institution potentially seeks to establish or re-establish Direct Loan program eligibility for a low-earning outcome program that was subject to the two-year ineligibility period, but after the ineligibility period expired, the program nonetheless continues to fail the earnings premium measure. To address

this concern, as part of the consensus language the Department added proposed § 668.604(b)(3), which would prevent an institution from establishing or reestablishing the eligibility of the failing program, or of a program sharing the same four-digit CIP code and any overlapping SOC codes as the failing program, until the program has demonstrated acceptable earnings performance by not failing the earnings premium measure in either of the two most recent award years. We also note that the draft consensus language at proposed § 668.604(b)(3) contained two minor technical errors, in the form of incorrect cross references which erroneously referred to the two-year ineligibility period under proposed § 668.403(c) when the ineligibility period can actually be found at proposed § 668.603(c). We have corrected those cross references in this proposed rule and informed the negotiators of this change consistent with 20 U.S.C. 1098a(b)(2), which requires the Secretary to provide negotiators with a written explanation when we depart from the consensus agreement.

Student warnings (§ 668.605)

Statute: Section 431 of the GEPA grants the Secretary 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. Further, the OBBB requires warnings for programs at risk of losing Direct Loan eligibility under Section 454(c)(6) of the HEA.

Current Regulations: The current regulations at 34 CFR § 668.605 specify the warnings, warning types, contents, language alternatives, delivery methods, and student acknowledgments relevant to warnings that must be given to current and prospective students when a program could become ineligible under this subpart (e.g., the program could become ineligible based on D/E rates or the earnings premium measure for the next award year for which it is calculated). The current regulations explain the situations that require a warning to be given to current and prospective students. The regulations further explain that a subsequent warning is required when a student does not enroll until more than 12 months after receiving the warning, 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.

The current regulations at § 668.605(c) explain the content that must be included in warnings to help students understand the risks of enrolling in failing programs, as

well as the potential for the program's loss of title IV, HEA eligibility. The institution must provide in the warning a statement that the student must acknowledge having viewed the warning. The warning must also include a description of the academic and financial options available to students to continue their education in another program at the institution, as well as an indication of whether, in the event that the program loses eligibility for title IV, HEA program funds, the institution will continue to provide instruction, or refund the tuition, fees, and other required charges. The warning must include an explanation of whether, if the program loses eligibility for title IV, HEA program funds, students could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach-out plan or agreement. It also requires that the institution provide the warning in alternative languages for those students and prospective students who have limited proficiency in English. The regulation further explains how the warnings must be delivered to enrolled and prospective students. The regulation details the specific items that are required in the warning:

- That the program has not passed standards established by the Department;
- The program could lose access to Federal grants and loans;

- The relevant information to access the program information website maintained by the Secretary;
- A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds;
- A description of the academic and financial options available to students to continue their education in another program at the institution;
- An indication of whether, if the program loses eligibility for title IV, HEA program funds, the institution will continue to provide instruction in the program; and refund the tuition and fees; and
- An explanation of whether, if 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 articulation agreement or teach-out plan or agreement.

The regulation further stipulates that the warning acknowledgment must be obtained from the student prior to enrollment and disbursement, and retained in the institution's records. The final paragraph explains that a student warning or the student's acknowledgment of having received the warning does not lessen the institution's responsibility to provide accurate information to students concerning program status, nor will the Department consider

this as dispositive evidence against a student's claim if the student applies for a loan discharge.

Proposed Regulations: The proposed regulations would broaden the recipients of warnings to include any prospective or current student enrolled in a GE program or eligible non-GE program at risk of a loss of program eligibility for Direct Loan program funds, consistent with other changes to these regulations harmonizing requirements for GE and eligible non-GE programs. The warnings would no longer include information about D/E rates and would no longer refer to an acknowledgement to the Department.

The proposed regulations would modify the contents of the warnings, including removing the D/E rate calculation as a warning criterion, specifying that students would lose Direct Loan eligibility rather than eligibility for all title IV aid, and providing more specific information related to program pass/fail eligibility and the student's Pell Grant lifetime eligibility usage. The proposed regulations would also eliminate requirements for an institution to inform students of the academic and financial options available to them in the event that their program lost eligibility for Direct Loan funds, provide information about potential continuation of coursework or tuition refunds, and explain the availability of articulation agreements and options for credit transfer.

Finally, under the proposed regulations, institutions would be required to convey to Pell Grant-eligible students information about their remaining lifetime Pell Grant eligibility and communicate that any Pell Grant funds received will count against future lifetime Pell Grant eligibility.

Reasons: The statute requires institutions to actively warn prospective and current students when an eligible non-GE program may become ineligible for the Direct Loan program based on its earnings premium measure in order to help the student make educated decisions on where to invest their time and money in pursuit of higher education. The Department is applying the same set of requirements to both GE and eligible non-GE programs consistent with its intent to harmonize all earnings accountability requirements and establish a more uniform framework for providing consumers with information about failing programs. The Department is also removing all references to the D/E rate and a Department-managed acknowledgement process consistent with its intent to eliminate that metric and the Department-managed acknowledgement, respectively.

The Department would continue to 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, which

would allow current and prospective students to make enrollment decisions based upon timely and accurate information. The Department initially proposed to remove this requirement. However, it was added back to the consensus language in response to a negotiator's concerns that eliminating such a requirement would limit the effectiveness of any such warning on a student's ability to make an effective choice after a long period of time has elapsed since the last warning.

The Department proposes to add language regarding Pell Grant lifetime eligibility usage in response to concerns raised by negotiators during negotiated rulemaking. The Department agreed with negotiators that institutions must supplement their efforts to keep students informed of their remaining lifetime Pell Grant eligibility and that any Pell Grant funds received will count against their future Pell Grant eligibility. The Department believes that the most appropriate time to communicate this is when Pell Grant funds are disbursed to the student, particularly since notification is already required at disbursement. The Pell Grant lifetime eligibility notification may be completed as part of disbursement notifications already provided by institutions, but the warning must be separate and contain only the content regarding the possible loss of eligibility in accordance with proposed 34 CFR § 668.605(c).

The Department proposes to eliminate the current warning contents specified under 668.605(c)(4), (5), and (6) to reduce institutional burden and better focus the content of the warnings on the items that are most important for students to know under these circumstances. Several studies have found that college students have limited attention for disclosures and notices.²³ Therefore, the Department's view is that consumer disclosures with too much information are more difficult for individuals to focus on, and therefore, only essential information should be provided. The Department also proposes to include disclosures similar to the ones removed here to require an institution to provide to students if it opts to initiate an orderly program closure under the proposed regulation at § 668.603(c)(4).

We propose to eliminate the requirement to provide the warnings in an alternate language. This is consistent with Administration policy under Executive Order 14224, "Designating English as the Official Language of The United States," and guidance issued by the Department of Justice directing agencies regarding how to implement the Executive Order.²⁴ This also eliminates burden on institutions due to

²³ See Moss, B. G., & Yeaton, W. H., Failed warnings: Evaluating the impact of academic probation warning letters on student achievement. *Evaluation Review*, 39(5), 501-524 (2015); and Moss, B. G., & Kelcey, B., Words of warning: A randomized study of the impact of assorted warning letters on academic probation students, *Community College Review*, 50(3), 253-268 (2022).

²⁴ Exec. Order No. 14,224, Designating English as the Official Language of The United States, 90 FR 11363 (March 1, 2025); U.S. Dep't of Just.,

the burden associated with providing such a translation in comparison with the small number of students who may be interested in such translations, given that most instruction at institutions that participate in title IV programs is in English. In addition, the Department believes that a student who may prefer a warning in an alternative language could quickly and easily obtain one on his or her own using one of the many free translation options commonly available on the Internet.

Standards for Participation in Title IV, HEA Programs

Standards of administrative capability (§ 668.16)

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements that postsecondary institutions must follow to demonstrate that they are administratively capable.

Current Regulations: The regulations at current § 668.16 list the standards an eligible institution must meet to demonstrate to the Secretary the institution's administrative capability to administer the title IV, HEA programs. Among these standards, for an institution that offers GE programs to demonstrate administrative capability, current § 668.16(t) requires that at least half of the institution's total title IV, HEA funds in the most

Memorandum to All Agencies, Implementation of Executive Order 14,224; Designating English as the Official Language of the United States of America, (July 14, 2025), available at https://www.justice.gov/ag/media/1407776/dl?inline=&utm_medium=email&utm_source=govdelivery.

recent award year are not from failing GE programs. Currently, when the Department determines that an institution has failed to demonstrate administrative capability, it takes significant steps to increase oversight and scrutiny of the institution, including, in some cases, placing the institution on a provisional PPA or taking a limitation or termination action against the institution.

Proposed Regulations: The proposed changes would revise the administrative capability requirement at § 668.16(t) to require that at least half of the institution's title IV, HEA recipients and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under the earnings accountability framework in proposed part 668, subpart S.

Reasons: The Department proposes to revise this section in part to reflect the revised scope of the institutions and programs covered under the earnings accountability framework. For reasons discussed in § 668.601 above, the Department proposes elsewhere in this rule to expand the scope of the earnings accountability framework, including the potential eligibility consequences for failing programs, to encompass both GE programs and eligible non-GE programs. Because the proposed earnings standard would apply consistently across GE programs and eligible non-GE programs, including the consequences for low-earning

outcome programs, we believe it is logical and consistent to update the related administrative capability standard as well.

The proposed earnings accountability regulations in subpart S of part 668 would operate on a programmatic basis and would allow the Department to identify situations where specific offerings at an institution may not provide sufficient earnings benefits to graduates. However, when a majority of an institution's title IV, HEA funding or enrollment is from low-earning outcome programs - regardless of whether those failing programs include GE programs, eligible non-GE programs, or both - those results would suggest a more widespread and systemic set of concerns that is not limited to individual programs and could represent a more substantial risk to students and taxpayers. Revising § 668.16(t) as proposed would allow the Department to take additional steps to increase its oversight of these institutions, such as placing them on a provisional PPA, as discussed in proposed § 668.14 below.

During negotiated rulemaking, some negotiators expressed confusion over whether the wording of this proposed administrative capability standard should use an "and" or an "or" in describing the two criteria. Given the committee's intent to require both half of the institution's title IV, HEA recipients and half of the institution's title IV, HEA revenue to come from passing

programs, the use of "and" is appropriate in the wording of the standard. As a result, if more than half of the institution's title IV, HEA funds or more than half of the institution's title IV, HEA recipients come from failing programs, the standard would not be met.

Program participation agreement (§ 668.14(h))

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(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.

Current Regulations: The regulations under § 668.14 outline the various provisions governing an institution's written agreement with the Secretary authorizing the institution's participation in the title IV, HEA programs, also known as the PPA. The current regulations at § 668.14(h) provide for the occasions in which a PPA becomes effective, specifying that a PPA becomes effective on the date the Secretary

signs the agreement and that a new PPA supersedes any prior PPA.

Proposed Regulations: The Department proposes to add a new provision as § 668.14(h) and to renumber current paragraphs (h) through (k) as (i) through (l), respectively.

The proposed new § 668.14(h)(1) would establish consequences for an institution that fails to meet the proposed administrative capability requirement at § 668.16(t). Specifically, if an institution fails in two out of any three consecutive years to demonstrate administrative capability because more than half of its title IV, HEA recipients or more than half of its title IV, HEA funds are from low-earning outcome programs under part 668, subpart S, the Department would place the institution on a provisional PPA status and each of the institution's low-earning outcome programs would be ineligible for all title IV, HEA funds.

Proposed § 668.14(h)(2) would provide the opportunity for an institution to appeal the Department's determination that the institution failed to demonstrate administrative capability under the proposed standard at § 668.16(t) using the appeal and hearing procedures furnished under part 668, subpart G.

Reasons: As we explain above in the context of § 668.601, some negotiators proposed that programs the Department determines to lead to a low-earning outcome under the

proposed accountability framework in part 668, subpart S should lose access to all title IV, HEA programs, rather than losing eligibility for the Direct Loan program only. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on poor performing programs, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would incentivize institutions to shift program offerings away from failing programs or to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would, in many cases, already lead to the closure of the program, or in some cases even the institution itself, which could adversely impact students and reduce available postsecondary education and training options.

As we explain in that discussion above, the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. As explained further in the **"Authority for This Regulatory Action"** section, institutions must sign an agreement with the Secretary to participate in the Direct Loan program. 20 U.S.C. 1087d. This agreement, which has been called the

Direct Loan Agreement, has been incorporated into the PPA which covers other title IV, HEA programs, not just the Direct Loan program. As part of the Direct Loan Agreement, institutions must "provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives." 20 USC 1087d(a)(4).

Institutions must also comply with "other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." Failure to abide by the terms of the Direct Loan Agreement results in disqualification from participating in the Direct Loan program, but not necessarily other title IV, HEA programs.

The Department believes that it has authority under these provisions in Section 454 of the HEA, as well as the GE provisions in Section 102 to require GE programs to comply with the earnings premium standard. However, the Department believes that the appropriate remedy for programmatic noncompliance is loss of eligibility for Direct Loans for such programs that fail the earnings premium. The Secretary has been given significant deference by Congress in Section 454 in designing the quality assurance system, and that includes the option to tailor

the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. Indeed, it would not be in the interest of the United States to disqualify all programs at an institution if only one or a few programs are not performing because students in high performing programs would also lose access to programs that are adding value.

Even though the Supreme Court in *Loper Bright v. Raimondo* overturned the deference agencies had in construing ambiguous statutes, it did not foreclose the ability of Congress to provide agencies deference in certain scenarios. 603 U.S. 369, 394 (2024). The Supreme Court noted that “[i]n a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion.” *Id.*

Here, Congress directed the Secretary to develop a “quality assurance system” without explanation as to what quality should mean, except that it should be a system designed to meet “program requirements and . . . objectives.” 20 USC 1087d(a) (4). These GE programs are required to prepare students for gainful employment in a recognized occupation. 20 USC 1002. As such, the Secretary has discretion to ensure that they are meeting those program requirements, and may impose loss of Direct Loan eligibility as a consequence for failing to meet that requirement.

In addition, the Secretary has overlapping authority to "[i]nclude such other provisions [in the Direct Loan agreement] as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." The statute vests with the Secretary, and the Secretary alone, to determine what is necessary to protect the interests of the United States and to promote the purposes of the United States. *Loper Bright* does no work here in altering this broad delegation handed down by Congress to the Secretary. Here, she has determined that it is not in the interest of the United States to have programs where graduates have low earnings participating in the Direct Loan program because those programs do not do a good job helping prepare students to repay Direct Loans. When students do not repay their Direct Loans, it hurts the interests of the United States in collecting on those student loans, and we aim to eliminate passing along the cost of such loans to taxpayers.

Given those general considerations, the Department further proposes changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16, respectively, that would eventually terminate title IV, HEA eligibility for all of an institution's low-earning outcome programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs in two out of any three

consecutive years. As explained in the "**Authority for This Regulatory Action**" section, the Secretary must determine that an institution possesses the requisite administrative capability to participate in title IV, HEA programs and 20 U.S.C. 1099c(a). The Secretary has broad authority to establish administrative capability standards, which can include "consideration of past performance of institutions". As noted above in the discussion of proposed § 668.16(t), if a majority of an institution's title IV, HEA funding or enrollment is from low-earning outcome programs, those results would suggest a systemic institutional-level issue that is not limited to individual programs and could represent a substantial risk to students and taxpayers. We believe that placing such an institution on a provisional PPA status and terminating title IV, HEA eligibility for all of the institution's low-earning outcome programs would be an appropriate remedy to address an established pattern of serious and systemic administrative capability concerns.

The proposed approach would align with other existing administrative capability standards that are designed to carefully address systemic issues, such as, for example, establishing that an institution must have a cohort default rate under a specific threshold, but clarifying that if this is the sole reason that the institution's administrative capability is impaired, and if the cohort

default rate is below the threshold necessary to trigger a loss of eligibility under § 668.187(a) or § 668.206(a), the institution will generally be allowed to continue to participate in the title IV, HEA programs on a provisional basis. See 34 CFR § 600.16(m).

The Department chose the proposed standard on the basis that if a majority of an institution's title IV, HEA funding or enrollment in two out of three years is from low-earning outcome programs, and such programs have in turn failed to satisfy the earnings threshold for two out of three consecutive years, it suggests that there is a systemic issue that goes beyond the programs themselves and, due to the failure of the institution to remedy the issue across a wide swath of programs for several years, a sustained lack of administrative capability to do so. The specific thresholds (a majority of an institution's title IV, HEA funding or a majority of an institution's enrollment) are intended to ensure that the standard only penalizes institutions where there appears to be a large-scale, sustained issue with low-earnings value programs.

The Department chose this specific penalty to offer a degree of balance. The Department believes that it has the authority to establish an administrative capability standard that would completely preclude an institution from participation in title IV, HEA programs if a majority of an institution's title IV, HEA funding or enrollment in two

out of three consecutive years is from low-earning outcome programs, and such programs have failed to satisfy the earnings threshold in two out of three consecutive years. However, the Department is aware that loss of institutional eligibility can be catastrophic for institutions (sometimes leading to closure of the institution). Therefore, the Department believes that the interests of institutions, students, and taxpayers would be best served by allowing such institutions to continue participating in title IV, HEA programs on a provisional basis and for other programs offered by that institution to retain title IV, HEA eligibility. This balance was chosen because it keeps with the accountability framework set forth in Section 454 of the HEA, as amended by Section 84001 of the OBBA, which provides for loss of programmatic eligibility, rather than loss of institutional eligibility, giving institutions the opportunity to take the necessary steps to correct the issues with the low-earning outcome programs, while continuing to offer other, compliant programs.

The Department further believes that the regulations, as proposed, would provide sufficient due process to protect institutions and their students from the abrupt loss of title IV, HEA eligibility while safeguarding program integrity from the worst performers. First, we note that an institution could not fail the administrative capability standard based on any single year of poor

earnings performance, as the administrative capability standard is tied to low-earning outcome programs, not merely to failing programs, and a program could not be deemed a low-earning outcome program until it fails the earnings premium measure in two out of three years in which the metric is calculated. Second, even in a case where an institution fails the administrative capability standard in the proposed version of § 668.16(t) by deriving more than half of its title IV, HEA recipients or title IV, HEA funds from low-earning outcome programs, the consequences at proposed § 668.14(h) would not apply until the institution remained in this status for two out of three consecutive years.

Described another way, the earliest an institution could possibly be subject to provisional status and loss of title IV, HEA eligibility for low-earning outcome programs under proposed § 668.14(h) would be after three years of consistently failing the earnings premium measure calculations. In year one, the program(s) must receive a failing earnings premium measure. In year two, the program(s) must fail the measure again, at which point the program would be deemed a low-earning outcome program and would face a loss of Direct Loan program eligibility only. Then, for the purposes of the administrative capability requirement at § 688.16(t), the Department would determine if more than 50 percent of the institution's title IV, HEA

enrollment or revenue is in low-earning outcome programs, and non-compliant institutions would be notified by the Department at this time. Finally, in year three, the program(s) must yet again receive a failing earnings premium measure, and more than 50 percent of the institution's title IV, HEA enrollment or revenue must once again come from the program(s) in question, at which point the proposed consequences under § 668.14(h) would apply. At that time, the institution could nevertheless still appeal the administrative capability determination and limitation action under part 668, subpart G. Moreover, long before reaching this point, the institution would have had the opportunity to appeal the low-earning outcome program determination under part 668, subpart G, or to voluntarily discontinue its failing program(s) while retaining Direct Loan program eligibility under the orderly program closure provisions in proposed § 668.603(c)(4).

We believe that these proposed options, timeframes, and procedural safeguards would provide institutions with ample due process and opportunities for improvement. We further believe, as evidenced by the fact that this proposed rule achieved consensus among the negotiators, that the proposed rule strikes a reasonable balance between fairness and accountability.

Institutional and Financial Assistance Information for Students

Institutional and programmatic information (§ 668.43)

Statute: Section 431 of the GEPA grants the Secretary 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. Additionally, Section 485(a)(1)(e) of the HEA requires an institution to disclose to all prospective and enrolled students "the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;".

Current Regulations: The regulations in 34 CFR § 668.43 outline a number of broad requirements pertaining to institutional and financial assistance information for students. The current regulations at 34 CFR § 668.43(d) explain that beginning on July 1, 2026, the Secretary will establish and maintain a website with information about

institutions and their educational programs. Therefore, an institution must provide the Department such information about the institution and its programs as the Secretary prescribes, such as under current § 668.408. The current regulations at § 668.43(d)(1)(i) list certain information the program information website must provide, including the following items:

- The published length of the program in calendar time (i.e., weeks, months, years)
- 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;
- The percentage of individuals enrolled in the program during the most recently completed award year who received a Direct Loan program loan, a private loan, or both;
- 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, as calculated by the Department;
- The median earnings of students who completed the program, as provided by the Department;
- Whether the program is programmatically accredited and the name of the accrediting agency;
- The program's debt-to-earnings rates, as calculated by the Department; and

- The program's earnings premium measure, as calculated by the Department.

The website may also include other information deemed appropriate by the Secretary, including but not limited to:

- 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, the Department of Labor's web-based source of occupational information located at <https://www.onetonline.org/>;
- The program 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 medians of the total cost of tuition and fees, the total cost of books, supplies, and equipment, and the total net cost of attendance, as calculated by the Department;
- The loan repayment rate for students or graduates who entered repayment on Direct Loan program loans, as calculated by the Department; and
- Whether students who graduate from a program are required to complete postgraduation training program to obtain licensure before eligible for independent practice.

The current regulations at 34 CFR § 668.43(d)(2) specify that the institution must provide a prominent link to, and any other needed information to access, the program information website on any web page containing academic,

cost, financial aid, or admissions information about the program or institution.

The current regulations at § 668.43(d)(3) require the institution to provide the relevant information to access the program information website 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.

Finally, the current regulations at § 668.43(d)(4) require the institution to provide the relevant information to access the program information website 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.

Proposed Regulations: The Department proposes to remove three items from the list above: the July 1, 2026, date that the Secretary will establish the website with information about institutions and their educational purpose, the requirement to disclose the program's debt-to-earnings rates, and the disclosure of whether students who graduate from a program are required to complete a postgraduate training program to obtain licensure before becoming eligible for independent practice. We propose adding one item to the list of mandatory disclosure items:

the median length of calendar time taken for full-time and less than full-time students to complete their program. In addition, we propose clarifying that the disclosure of the median earnings of completers would reflect the earnings data obtained from the Federal agency with earnings data under § 668.404(c).

Reasons: In 34 CFR § 668.43(d)(1), we propose to remove the requirement for the Secretary to establish and maintain a website beginning on July 1, 2026, because it is no longer necessary to specify that date under this provision alone. The original FVT/GE framework became effective July 1, 2024, but contained certain provisions which were delayed until July 1, 2026, including the program information website under § 668.43(d), as well as student acknowledgment requirements and warning requirements under §§ 668.407 and § 668.605, respectively. Under the new OBBB framework and the implementation timeline for these regulations, there is no longer a need for this specified date.

In 34 CFR § 668.43(d)(1)(i)(B), we propose to add the median length of calendar time taken for full-time and less than full-time students to complete the program's academic requirements to obtain a clearer idea of the actual amount of calendar time (in weeks, months, or years) that students take to complete those requirements. We believe that students and consumers should be aware that many students

do not finish their programs within the published program length. For example, according to the National Student Clearinghouse (NSC), the average time to degree for associate degree completers is 3.3 years, and the average time to degree for bachelor's degree completers is 5.1 years.²⁵ During negotiated rulemaking, a negotiator raised a concern about students who may start and stop enrollment in a program for necessary reasons and thus increase the apparent timeline for program completion. However, we note that the length of time is based on the median length of time for program completion, which is not as easily influenced by outliers (in this case, students who stop out) because the median measures the middle student. Outliers could influence the mean, but the Department is not using that average measure.

A negotiator also proposed that the Department require the addition of the percentage of full-time and less than full-time students in a program of study; however, the Department argued that the proposed disclosure of the median length of calendar time for full-time and less than full-time sufficiently addresses this issue. Many students change enrollment status during the enrollment period. The definition of full-time may vary between institutions and even by program. The proposed language in 34 CFR §

²⁵ NSC Research Center (2025). "Yearly Progress and Completion." National Student Clearinghouse. <https://nscresearchcenter.org/category/completions/>.

668.43(d)(1)(i)(B), should provide the student with meaningful data to estimate how long it may take to complete the program. In addition, we remind institutions that they can always supplement their consumer information materials to explain why a measure or statistic appears a certain way.

Another negotiator raised a concern regarding tracking and reporting private loans to the Department. We acknowledge that private loans can be a burdensome item for institutions to track; however, we believe that it is valuable data for students to consider. A private loan is often the difference between Federal loan annual maximums and the overall cost of attendance. The amount of the private loan can be significant, and in some cases the terms and conditions of the loan are less favorable to students than those of Direct Loans. Generally, we consider private loans to be loans certified by the institution and intended for enrollment at the institution, and we do not consider private loans to include other forms of credit of which the school is not reasonably aware.

In 34 CFR § 668.43(d)(1)(i)(G), we propose adding the reference to 34 CFR § 668.404(c) to clarify where the data used in calculating the median earnings would be obtained. We propose removing current 34 CFR § 668.43(d)(1)(i)(H) regarding debt-to-earnings rates because they would no longer be calculated, consistent with Section 84001 of the

OBBB and the proposed changes to the transparency framework discussed under § 668.402.

We propose to remove the disclosure under current § 668.43(d)(1)(ii)(E) about whether students who graduate from a program are required to complete a postgraduation training program to obtain licensure before becoming eligible for independent practice because that information is specific to qualifying graduate programs. As discussed more fully above in the context of general definitions at § 668.2(b), the Department proposes to remove the definition and concept of a qualifying graduate program because HEA Section 454(c)(2) does not provide a distinction between different occupations and credential levels with regard to the prescribed four-year earnings measurement period.

The Department originally proposed to remove 34 CFR § 668.43(d)(2) because we were concerned about the burden of complying with the regulation on institutions. During negotiated rulemaking, non-Federal negotiators presented arguments on both sides of this issue. In the interest of consensus and in an attempt to find the best balance of meaningful consumer information and institutional effort, we determined it was appropriate to retain this requirement as written, except to remove the requirement to include a link to the program information website on any page containing academic information. We believe this change will substantially reduce burden on institutions while

providing adequate dissemination of helpful information to prospective students and the public.

The remainder of the changes to this section are conforming changes to allow for renumbering required for regulatory insertions and deletions throughout this section.

Technical and Conforming Changes

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

Statute: As explained above, Section 84001 of the OBBB modifies HEA Section 454 to create low-earning outcome programs, and this rulemaking adds the definition of eligible non-GE program to round out what kinds of programs can be low-earning outcome programs.

Current Regulations: Section 600.10(c) explains steps that institutions must follow regarding the eligibility of educational programs, and paragraph (3) refers to GE programs that have become subject to restrictions under 34 CFR 668.603 and instructs eligible institutions that they must update their application according to 600.21.

Proposed Regulations: We proposed to add to the reference to GE programs in paragraph (3) eligible non-GE programs as also requiring institutions to update their applications when the programs have become low-earning outcome programs under the proposed 668.603. We are also adding "Direct Loan" before "eligibility of the program" to specify that

it is such loan eligibility that would be relevant rather than the broad eligibility for title IV, HEA programs.

Reasons: This is a necessary conforming change that clarifies what programs would be subject to the updating requirement when they have become low-earning outcome programs and what eligibility (for Direct Loans rather than other title IV, HEA aid) they lose as a consequence. The Department will need information on all programs qualifying for title IV, HEA program assistance in order to ensure that it can end eligibility for a program due to failing the earnings premium metric.

Updating application information (§ 600.21)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBB.

Current Regulations: Section 600.21 explains the conditions under which institutions must update their application to participate in the title IV, HEA programs, including when changing the program's name, CIP code, or credential level, or when updating the program's certification under § 668.604.

Proposed Regulations: We are changing the reference in paragraph (a)(11)(vi) to 34 CFR 668.604(b), Program participation agreement certification, from paragraph (b) to (a).

Reasons: This is a minor conforming change resulting from the deletion of the current paragraph (a), Transitional

certification for existing programs under current § 668.604. That paragraph concerns only GE programs and a transitional certification that had to have occurred by December 31, 2024, and it would no longer apply under the proposed accountability framework.

Also, we have noticed that the stem language to paragraph (a)(11) mentions only GE programs and not non-GE programs. This was an oversight during the Department's drafting of the proposed regulations, but due to the fact that we achieved consensus in the negotiations, we are not proposing to correct it here. We do intend to correct it in the final rule so that non-GE programs are included in the stem language, consistent with the changes to the scope of the accountability framework discussed in § 668.602 and elsewhere in this NPRM, and we invite commenters to discuss this conforming change in their submissions.

Initial and final decisions (§ 668.91)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBA.

Current Regulations: The initial and final decisions of Section 668.91 relate to fine, limitation, suspension, and termination proceedings the Department brings against institutions and third-party servicers.

Proposed Regulations: In paragraph (a)(3)(vi) regarding termination actions against GE programs based on their failure to meet the requirements in § 668.403 or 404, we

are including eligible non-GE programs as being subject to this provision. We are also removing the reference to § 668.404.

Reasons: These are conforming changes to include non-GE programs, which have been added under the proposed framework, in this provision and to account for the elimination of the D/E rate measure under the current § 668.403. Because that section would be deleted, the current § 668.404, on calculating the earnings premium measure, would replace it.

Definitions (§ 685.102)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBB.

Current Regulations: Paragraph (a)(1) of Section 685.102 lists terms that are used in part 685, which pertains to Direct Loans, but that are defined in part 668.

Proposed Regulations: We are adding to this list "eligible non-GE program" and "gainful employment program (GE program)."

Reasons: The above terms will appear in the part on Direct Loans because the proposed accountability measure bears on institutional eligibility to participate in the Direct Loan program. Therefore, this minor conforming change is necessary to refer to the place in the regulations where the terms would be defined.

Agreements between an eligible school and the Secretary for participation in the Direct Loan program (§ 685.300)

Statute: Sections 451 and 454 of the HEA, as modified by Section 84001 of the OBBB, govern the requirements to participate in the Direct Loan program.

Current Regulations: Section 685.300 explains the agreements between eligible schools and the Secretary for participation in the Direct Loan program.

Proposed Regulations: We are adding paragraph (a)(3) to the general requirements that institutions must comply with under the Direct Loan program. Paragraph (3) states that GE and eligible non-GE programs must meet the new STATS and earnings accountability requirements under 34 CFR part 668 subparts Q and S, respectively. At a negotiator's suggestion, the Department modified the original proposed language to clarify that it is the relevant programs that must meet the above requirements to continue to participate in the Direct Loan program and this provision exists as part of the institution's PPA.

Reasons: Because the new requirements in 34 CFR part 668 subparts Q and S determine the eligibility of GE and non-GE programs for Direct Loans, this addition places a reference to those requirements in the Direct Loan regulations. The modification by the Department during negotiations was to attach this provision specifically to the PPA and to emphasize that it applies solely to Direct Loan

eligibility, which would be determined separately for each GE and non-GE program. Pell Grant eligibility for students in these programs, for example, would not generally be affected by this provision.

X. Regulatory Impact Analysis

Executive Orders 12866 and 13563

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 (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;
- (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 legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

The Department estimates the downward net budgetary impacts to be \$979 million from changes in transfers between the Federal Government and student loan borrowers and transfers of \$5,145 million between the Federal Government and Pell Grant recipients resulting from replacing the current regulations with the accountability framework. Quantified benefits include a net reduction in costs of compliance with paperwork requirements (\$108.6/\$99.1 million) while quantified costs include administrative updates to Government systems (\$2.4/\$2.8 million), implementation staffing and contract costs (\$1.4/\$1.6 million), long-term staffing costs (\$0.9/\$0.9 million), and ongoing contract costs (\$1.9/\$1.8 million) at 3 percent and 7 percent discounting, respectively. Therefore, based on our estimates of quantified costs and benefits, OIRA has determined that this proposed regulation is "economically significant" under section 3(f)(1) of Executive Order 12866 and subject to OMB review.

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 considering—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." OIRA has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

This action is expected to be considered a deregulatory action under Executive Order 14192. This Executive Order directs agencies of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people. This final rule complies with the Executive Order's requirements and estimates quantified economic impacts include annualized transfers of Pell Grants of \$497 million and \$475 million at 3 percent and 7 percent discounting rates, respectively, and student loan transfers of \$95 million and \$92 million at 3 percent and 7 percent discounting rates, respectively.

Consistent with OMB Circular A-4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Costs and Benefits: As further detailed in the regulatory impact analysis (RIA), the proposed regulations would have significant costs and benefits to students, educational institutions, and taxpayers. The Department will also incur new administrative costs under the proposed regulations.

In this RIA, we discuss the need for regulatory action, the potential costs and benefits of the proposed regulations, the net budget impacts, and the regulatory alternatives we considered in cases where the Department had discretion. Unless otherwise noted, throughout this RIA we compare the effects of the proposed regulation relative to a pre-statutory baseline where the OBBB has not been enacted. This baseline includes the current Financial Value Transparency and Gainful Employment regulation (enacted October 10, 2023).

Defining Key Terms: Key terms used throughout this RIA are defined as follows:

- "Current Regulations" - refers to the current Financial Value Transparency and Gainful Employment regulations that were enacted on October 10, 2023 (88 FR 70004);²⁶
- "Accountability framework" - refers collectively to the Debt to Earnings (D/E) and Earnings Premium (EP)

²⁶ Financial Value Transparency and Gainful Employment, 34 CFR Parts 600 and 668 Docket ID ED-2023-OPE-0089. www.federalregister.gov/documents/2023/10/10/2023-20385/financial-value-transparency-and-gainful-employment.

tests in the context of the current regulation, or to the revised EP test in the context of the proposed regulation;²⁷

- “GE programs” – refers to programs that are subject to the gainful employment rule and the accountability framework under the current regulations, which includes all non-degree programs and all types of programs offered at proprietary institutions;
- “Non-GE programs” – refers to programs that are not subject to the gainful employment rule and accountability framework under the current regulations, which includes degree programs offered at public and non-profit institutions.

1. Need for Regulatory Action

These proposed regulations are needed to implement certain provisions of the OBBB that affect students and program participants in the Federal student loan programs authorized under title IV of the HEA. The OBBB amended the HEA to create new eligibility criteria for programs of study at institutions to receive title IV loans. These changes establish an accountability framework for all undergraduate degree programs and all types of graduate programs that participate in the Direct Loan program. The

²⁷ The EP and D/E metrics are defined in the “Methodology for Current Regulation Calculations” and “Methodology for Proposed Regulation Calculations” sections below. In the context of the proposed regulations, “accountability framework” also includes the proposed revisions to the standards of administrative capabilities, discussed in the “Standards of administrative capability (§ 668.16)” section above.

proposed regulations are also needed to align existing accountability framework under the current FVT/GE rule (88 FR 70004) with those in the OBBB.

The Department has limited discretion in implementing many of the provisions contained in the OBBB. Many of the changes included in these proposed regulations simply modify the Department's regulations to reflect statutory changes made by the OBBB. In some cases, the Secretary has exercised her limited discretion to implement certain provisions of the OBBB. Areas of limited discretion include:

- General definitions (§ 668.2), including how earnings would be measured and defined;
- The student tuition and transparency system framework (§ 668.402), including the specific reporting requirements for institutions;
- The method for calculating the earnings premium (§ 668.403), and whether the Department should adjust or exempt certain programs for various reasons;
- The appeals process (§ 668.603), including the usage of alternative earnings data from State data systems; and
- The scope and purpose of the earnings accountability framework (§ 668.601), including whether undergraduate certificate programs should be exempted and whether

the sanction for failing programs should be the loss of all title IV eligibility.

These areas of limited discretion are discussed in the "Alternatives Considered" section below. In general, where the Secretary had discretion, she sought to align the accountability framework in Section 84001 of the OBBB with the accountability framework under the current regulations such that all postsecondary programs are covered by the same accountability framework. In addition to the reasons stated earlier in the "Significant Proposed Regulations" section, this alignment reduces complexity, burden, confusion, and compliance costs for both institutions and the Department. Additionally, the Secretary sought to reduce reporting burden under the STATS framework while maintaining the disclosure of relevant information on college costs and outcomes to students and families.

2. Summary of Proposed Provisions

The table below provides a summary of the proposed provisions.

Table 2.1 - Summary of Key Changes in the Proposed Regulations

Provision	Regulatory Section	Description of proposed provision
STATS and Earnings Accountability		
Date, extent, duration, and	§ 600.10	Would require an institution to update its eligibility application when seeking to

consequence of eligibility		establish or reestablish a program's Direct Loan program eligibility.
Updating application information	§ 600.21	Would require an institution to report to the Secretary within 10 days any change to a program's name, CIP code, credential level, or earnings accountability certification under § 668.604(a).
General definitions	§ 668.2	Would remove definitions of "annual debt-to-earnings rate," "debt-to-earnings rates," "discretionary debt-to-earnings rate," "metropolitan statistical area," "poverty guideline," "qualifying graduate program," and "substantially similar program." Would add a definition of "earnings." Would revise existing definitions of "cohort period," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," and "institutional grants and scholarships."
Program participation agreement	§ 668.14	For an institution that does not comply with the administrative capability requirement at § 668.14(t), would require provisional certification status and loss of title IV, HEA eligibility for all of the institution's low-earning outcome programs.
Standards of administrative capability	§ 668.16	Would require an institution to demonstrate that at least half of the institution's title IV, HEA recipients and title IV, HEA funds are not from low-earning outcome programs.
Institutional and programmatic information	§ 668.43	Would require that the Department's program information website include the median length of calendar time taken for

		<p>full-time and less than full-time students to complete the program. Would remove informational disclosures of a program's D/E rates and whether graduates are required to complete a postgraduation training program to become eligible for independent practice. Would no longer require institutions to provide a prominent link to the program information website maintained on any web page containing academic information about the program or institution, while still requiring such a link on any page containing cost, financial aid, or admissions information.</p>
Initial and final decisions.	§ 668.91	<p>Would limit the basis for an appeal of the termination of Direct Loan program eligibility for a low-earning outcome GE program or non-GE program to an error in the earnings premium calculation.</p>
Student tuition and transparency system scope and purpose	§ 668.401	<p>Would rename the existing Financial Value Transparency (FVT) framework to Student Tuition and Transparency System (STATS). Would remove existing exemptions for institutions located in U.S. Territories or Freely Associated States and for institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.</p>
Student tuition and transparency system framework	§ 668.402	<p>Would remove D/E rates from the STATS and the Earnings Accountability framework. Would provide that if a program does not have an earnings threshold for its State and 50 percent or more</p>

		of enrolled students are from that State, the Department would not calculate the earnings premium measure but would make earnings data publicly available.
Calculating earnings premium measure	§ 668.403	Would revise the earnings premium calculation to use the median annual earnings of working completers in the applicable cohort from the fourth tax year following program completion.
Process for obtaining data and calculating earnings premium measure	§ 668.404	Would rename this section and remove provisions specific to D/E rates. Would clarify that the earnings data obtained from the Federal agency with earnings data would be the median earnings of students on the completers list who are working.
Determination of the earnings premium measure	§ 668.405	Would remove provisions specific to D/E rates and would clarify that the remaining provisions apply both to GE programs and eligible non-GE programs.
Reporting requirements	§ 668.406	Would remove the current reporting exemption for an institution that offers no groups of substantially similar programs with 30 or more total completers over the four most recent award years. Would revise the current requirement to report whether a program meets State licensure requirements for each State within the institution's metropolitan statistical area to instead require an institution to report a list of all States where the institution has determined the program meets such requirements. Would remove the current requirement to report whether a program is

		<p>a qualifying graduate program. Would remove current requirements to report the student's attendance dates and attendance status during the award year. Would remove the current requirement to report the student's enrollment status as of the first day of the student's enrollment in the program. Would remove the current requirement to report the date the student completed or withdrew from the program. Would remove the current requirement to report the total amount of institutional debt the student owes after completing or withdrawing from the program. Would require institutions to report for graduated and withdrawn students the total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program. Would revise the initial reporting deadline to October 1 following the date the final regulations take effect and would reduce the initial reporting period to include only students who attended, completed, or withdrew during the two most recently completed award years. Would remove the optional transitional reporting and rate calculations provided under current regulations.</p>
Earnings accountability scope and purpose	§ 668.601	<p>Would rename the accountability framework in part 668, subpart S and expand it to cover both GE programs and eligible non-GE programs. Would remove</p>

		existing exemptions for institutions located in U.S. Territories or Freely Associated States and for institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.
Earnings accountability criteria	\$ 668.602	Would remove provisions specific to D/E rates. Would remove the existing exclusion for accountability metrics calculated more than five years prior.
Low-earning outcome programs	\$ 668.603	Would rename this section and remove provisions specific to D/E rates. Would limit the consequences for programs that fail the accountability metric two out of three consecutive years to a loss of Direct Loan program eligibility only. Would specify that the Department would process all such losses of Direct Loan program eligibility as termination actions under part 668, subpart G. Would shorten the period of ineligibility from three years to two years. Would establish a process to allow a failing program that is not yet a low-earning outcome program to conditionally continue participating in the Direct Loan program for a limited period if the institution voluntarily opts to conduct an orderly program closure.
Certification requirements for GE programs and eligible non-GE programs	\$ 668.604	Would apply earnings accountability certification requirements to both GE programs and eligible non-GE programs. Would prohibit an institution from updating its list of Direct Loan-eligible programs to include

		<p>programs that share the same four-digit CIP code and any overlapping SOC codes as a failing program that was subjected to a two-year loss of eligibility. Would prohibit an institution from updating its list of Direct Loan-eligible programs to include a program that was subject to the two-year loss of eligibility, or one sharing the same four-digit CIP code and any overlapping SOC codes, if the program is a failing program in either of the two most recent award years. Would require an institution to certify, when seeking Direct Loan program eligibility for a program, that it agrees to comply with the requirements of subparts Q and S of part 668.</p>
Student warnings	§ 668.605	<p>Would extend student warning requirements to eligible non-GE programs as well as GE programs. Would expand the content of warnings to include a description of the student's remaining lifetime Pell Grant eligibility and an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility, which must be delivered at the time the institution makes a Pell Grant disbursement to the student. Would streamline the content of warnings to remove the description of academic and financial options available to students to continue their education in another program at the institution, information about whether the institution will continue to offer or provide</p>

		a refund for a program that loses eligibility, and an explanation of whether students could transfer credits to another institution under an established articulation agreement or teach-out plan. Would remove the requirement for an institution to provide warnings in alternative languages for students with limited proficiency in English.
Definitions	§ 685.102	Would adopt by reference under the William D. Ford Federal Direct Loan program provisions at 34 CFR part 685 the definitions of "Eligible non-GE program" and "Gainful employment program (GE program)" from the Student Assistance General Provisions at 34 CFR part 668.
Agreements between an eligible school and the Secretary for participation in the Direct Loan program	§ 685.300	Would require an institution to demonstrate, as a condition of its eligibility to participate in the Direct Loan program, that a program meets the STATS requirements under 34 CFR part 688, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

3. Impact of the Proposed Regulation

This section presents the Department's analysis on the anticipated impact of the proposed regulations. For this analysis, the Department estimated which programs would fail the proposed regulations relative to the current regulations, which is the baseline for the analysis. The Department also analyzed the characteristics of these failing programs and the characteristics of students who

attend them. The following subsections describe the data and methodology the Department used and the estimated impacts on students, programs, and institutions.

Data Description

Throughout this RIA, we use data from a modified version of the 2026 Program Participation Data (PPD:2026) that the Department compiled for the negotiated rulemaking sessions. This data was made publicly available on the Department's website prior to the January 2026 negotiated rulemaking sessions, along with additional details. You may find the data at www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026.²⁸

PPD:2026 was assembled by combining data from a variety of public and private sources, including the Integrated Postsecondary Education Data System (IPEDS), the College Scorecard, the Internal Revenue Service (IRS), the Office of Federal Student Aid (FSA), and the American Community Survey (ACS). It includes information on enrollments, earnings, and title IV, HEA disbursements, among other variables.

²⁸ U.S. Department of Education AHEAD Session 2 Program Performance Data Fact Sheet, <https://www.ed.gov/media/document/ahead-session-2-program-performance-data-fact-sheet-112902.pdf> ; AHEAD Session 2 Program Performance Data Variable Codebook, <https://www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf> ; AHEAD Session 2 Program Performance Data Technical Appendix <https://www.ed.gov/media/document/ahead-session-2-program-performance-data-technical-appendix-112901.pdf>.

The unit of analysis in PPD:2026 is the unique combination of institutional ID (*opeid6*), credential level (*credlev*), and four-digit classification of instructional program (CIP) code (*cip4*).^{29,30} When necessary, OPEIDs are linked to UNITIDs using the UNITID of the main campus, identified using the College Scorecard crosswalk files.³¹ The universe of programs in PPD:2026 includes all programs eligible for title IV, HEA funds that had at least one title IV enrollee reported to the National Student Loan Data System (NSLDS) during the 2023-24 or 2024-25 award years. In total, PPD:2026 includes information for 209,321 unique programs offered at 5,096 unique higher education institutions.

There is one key difference between the data used in this RIA and the public dataset available on the Department's website. Specifically, the data used in this RIA contains information on the specific counts of enrollees regardless of program size. This differs from the publicly released version of PPD:2026, where student counts

²⁹ Programs are defined using the unique combination of institutional ID (OPEID6), credential level, and 4-digit CIP codes. In almost all cases, 4-digit CIP code titles align with the 2010 CIP code taxonomy. In some cases, 4-digit CIP codes appear only in the 2020 CIP code taxonomy. In these cases, the 2020 CIP code taxonomy is used to title the program. Programs with CIP codes that do not appear in the 2010 or 2020 CIP code taxonomies are dropped. This removes fewer than 20 individual programs, representing less than 0.006% of all higher education programs in the final data set.

³⁰ Credential levels are defined by the following eight categories: (1) Undergraduate certificate programs, (2) Associate degree programs, (3) Bachelor's degree programs, (4) Post-Baccalaureate degree programs, (5) Master's degree programs, (6) Doctoral programs, (7) First-Professional Programs, and (8) graduate certificate programs.

³¹ UNITIDs are the unique institution identifiers used in IPEDS data.

fewer than 20 are privacy-suppressed or perturbed. Estimates in this RIA may therefore differ slightly from those using the publicly released version of PPD:2026. Additional information is available in the technical documentation for PPD:2026 on the Department's website.³²

Data Limitations & Assumptions

The data used in this RIA (PPD:2026) differs slightly from what the Department would use to evaluate programs under the current and proposed regulations. These differences are summarized in Table 3.1. We make several assumptions in our analysis to account for these differences and note that the estimates in this RIA may slightly differ from the actual rates.

Table 3.1 - Comparison of PPD:2026 to Data to be Assembled for the Current and Proposed Regulations

³² For more information, see: www.ed.gov/media/document/ahead-session-2-program-performance-data-technical-appendix-112901.pdf.

	PPD:2026	Final Data used to Evaluate Programs Under Current Rule	Final Data used to Evaluate Programs Under Proposed Rule
Program Definition	Unique combination of OPEID6 by Credential level by 4-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.
Cohort Construction	A single, pooled cohort of Title IV completers from two award years.	Title IV completers for either two or four years of pooled award years, depending on program size.	Title IV completers from a single award year, unless the program does not meet the minimum size threshold.
Program Failure	For current regulations: Assumed to fail if the program fails the Debt to Earnings or the Earnings Premium metric after 1 year. For the proposed regulations: Assumed to fail if the program fails the Earnings Premium metric after 1 year.	Failing the Debt to Earnings metric in 2 out of 3 consecutive years, or failing the Earnings Premium metric in 2 out of 3 consecutive years.	Failing the Earnings Premium metric in 2 out of 3 consecutive years.
Missing Earnings Values	76% of programs have missing earnings values.	69% of programs are expected to have missing earnings values.	38% of programs are expected to have missing earnings values.

Notes. Missing earnings values occur due to IRS privacy protocols. Programs that do not meet a minimum cohort size will have missing earnings data and therefore be exempt from the accountability framework in the current and/or proposed regulations.
Source. Department of Education calculations using PPD:2026.

First, our estimates may slightly overcount the share of programs that ultimately fail the accountability framework in the current and proposed regulations because programs in PPD:2026 are identified by a unique combination of 6-digit OPEID, credential level, and 4-digit CIP code. However, in the current and proposed regulations, programs are identified by a unique combination of 6-digit OPEID, credential level, and 6-digit CIP code. We therefore assume that earnings outcomes of programs within the same 4-digit CIP code, credential level, and institution are equally

distributed across (unobserved) 6-digit CIPs. Fail rates may not match exactly between this analysis and the proposed regulations if different programs (defined at the 6-digit CIP level) that are nested with the same overarching 4-digit CIP have different earnings outcomes. Any effect this has on our estimates should be small because approximately 83 percent of 4-digit CIP codes have only a single 6-digit CIP code nested within it.³³

Second, student completer cohorts in PPD:2026 are constructed differently than under the current and proposed regulations. Specifically, the cohort for earnings in PPD:2026 includes title IV completers from two pooled award years; these data were drawn from the College Scorecard for expediency and therefore use the cohort construction from that source. Under the current regulation, cohorts would include title IV completers from two or four pooled award years, depending on program size. Under the proposed regulation, cohorts will generally include title IV completers from a single award year unless the program does not meet the minimum size threshold (discussed in the “Cohort period (§ 668.2(b))” section above), in which case cohorts will be aggregated with similar programs for up to four prior award years, until a statistically reliable cohort size is achieved. We therefore must assume that the

³³ Blagg, K., (2026). Measuring Program-Level Outcomes in Higher Education. Washington, DC: The Urban Institute. www.urban.org/sites/default/files/2026-01/Measuring_Program-Level_Outcomes_in_Higher_Education.pdf.

cohort aggregation processes for the current and proposed regulations would result in programs having similar earnings as the cohorts used in PPD:2026.

Third, our estimates use the earnings outcomes from the single pooled cohort of completers, but in the current and proposed regulations, programs face sanctions only if they fail the accountability framework for multiple cohorts (two out of three consecutive years).³⁴ A single cohort is used for the analysis in this section because PPD:2026 does not include multiple, consecutive years of program-level earnings outcomes. This is another reason why our estimates may slightly overcount the share of programs that fail the accountability framework under the current and proposed regulation.³⁵

Another caveat is that earnings are missing for many programs in PPD:2026, usually due to the IRS's privacy protocols.³⁶ Earnings data will, however, be collected for

³⁴ In the current regulation, GE programs that fail the D/E test in two out of three consecutive years or GE programs that fail the EP test in two out of three consecutive years lose access to *all* title IV, HEA funds. Under the proposed regulations, programs that fail the EP test in two out of three consecutive years lose access to title IV Federal student loans.

³⁵ We anticipate this issue will be very small given that program earnings outcomes are based on completers who exited a program approximately six calendar years prior to the date in which earnings are measured. For this reason, there is little, if anything, colleges could do to alter the earnings outcomes of their former students. In other words, we anticipate that failing the earnings test one year will be highly correlated with failing the earnings test in the subsequent year.

³⁶ The IRS (which was the agency that provided the Department with earnings data used in PPD:2026) is usually unable to provide the Department with median earnings estimates for programs where there is a relatively small number of working title IV recipients with available tax records. In some cases, the IRS may be unable to provide the Department with median earnings estimates depending on the distribution

many of these programs because cohorts will be aggregated to include more students under the proposed regulation. Table 3.2 presents the total counts of programs in PPD:2026 (by credential level) and the share with missing (unobserved) earnings data. In total, 76 percent of programs in PPD:2026 have missing earnings data for evaluating the proposed regulation, and 89 percent of programs have missing earnings data for evaluating the current regulation.

To estimate the pass and fail rates for programs in PPD:2026 where earnings data are missing, we assume that these programs fail the accountability framework at equivalent rates as similar programs with reported earnings data in PPD:2026. Specifically, using the subset of programs where earnings data are available, we calculate the fail rates within each sector, broad field of study, credential level, and institutional level. Using those rates, we then assume that programs with missing earnings data will fail the accountability frameworks under the current and proposed regulations at the same rate as programs with reported earnings data from the corresponding sector, broad field of study, credential level, and institutional level.³⁷ This method for estimating pass and

of earnings within programs. This results in many small programs having unobserved (missing) program earnings.

³⁷ This means our estimates may undercount the true share of programs that fail the earnings test in the proposed regulation if the earnings of small programs are systematically lower than the earnings of larger

fail rates slightly differs from the preliminary analysis presented by the Department during the negotiated rulemaking sessions in January 2026 (available at: www.ed.gov/media/document/2025-ahead-results-of-earnings-test-and-ge-changes-112932.pdf) because that preliminary analysis excluded programs with missing earnings data.³⁸

To account for the fact that some programs are so small that they will not have an earnings value computed (even with the cohort aggregation process described in the "Cohort period (§ 668.2(b))" section above), we limit our analysis to programs in PPD:2026 that will likely meet the minimum size requirement under the proposed regulation.³⁹ This includes a total of 128,934 unique programs (of which, 37 percent have earnings data reported in PPD:2026). The Department estimates that the other 80,000 programs in

programs. Conversely, our estimates may overcount the true share of programs that fail the earnings test if the earnings of small programs are systematically higher than the earnings of large programs.

³⁸ In most cases, the Department's preliminary analysis presented during the negotiated rulemaking sessions in January 2026 are within a fraction of a percentage point from the estimates presented in this RIA. The marginal difference in estimates is because the preliminary analysis presented at the negotiated rulemaking sessions excluded programs with missing earnings, whereas the analysis in this RIA includes these programs and assumes they pass and fail the accountability framework at equivalent rates as similar programs (programs in the corresponding sector, broad field of study, credential level, and institutional level) with observed earnings data.

³⁹ To determine if a program would likely meet the minimum size requirement, we used PPD:2026 and summed the number of title IV completers from the 2020-21 to 2024-25 award years. Following the aggregation process described in the "Cohort period (§ 668.2(b))" section, we summed together completers from the same college and credential level who shared the same four-digit or two-digit CIP code and completed within during the 2020-21, 2021-22, 2022-23, 2023-24 and 2024-25 award years. If this value did not exceed 30 unique title IV completers, we assume the program (defined at the OPEID6 x CREDLEV x CIP4 level) would not reach the minimum size requirement needed to be included under the proposed rule and therefore removed it from the sample.

PPD:2026 will likely be exempt from the accountability framework in the current and proposed regulations because these programs are unlikely to reach the minimum size requirement.⁴⁰ Table 3.3 displays the final counts of programs used in our analysis, disaggregated by credential level.

⁴⁰ As shown in Table 3.2, 78 percent of programs in PPD:2026 have missing earnings data to be evaluated under the current regulations.

Table 3.2 - Share of Programs with No Earnings Data in

PPD:2026

	All Programs		GE Programs	
	N	Percent	N	Percent
		with No		with No
		Earnings		Earnings
(1)	Data	(3)	Data	
(2)	(4)	(3)	(4)	
A. Public				
Undergrad Cert	32,277	89.3	32,277	92.7
Associate	37,539	83.0	0	--
Bachelor	30,715	50.0	0	--
Post-Bacc Cert	2,175	97.3	2,175	98.5
Masters	18,090	72.4	0	--
Doctoral	7,282	92.4	0	--
Professional	747	52.9	0	--
Grad Cert	4,682	96.6	4,682	97.1
Total	133,507	76.5	39,134	93.5
B. Non-Profit				
Undergrad Cert	2,527	89.4	2,527	90.9
Associate	3,719	84.9	13	100.0
Bachelor	37,080	75.5	45	86.7
Post-Bacc Cert	1,231	97.8	1,231	99.2
Masters	14,813	72.4	12	100.0
Doctoral	4,345	89.4	2	100.0
Professional	830	64.0	0	--
Grad Cert	3,513	95.6	3,513	97.0
Total	68,058	78.0	7,343	95.2
C. Proprietary				
Undergrad Cert	3,545	43.1	3,545	51.3
Associate	1,675	58.6	1,630	62.8
Bachelor	1,176	57.7	1,083	67.3
Post-Bacc Cert	63	100.0	63	96.8
Masters	737	61.6	713	69.8
Doctoral	232	70.7	225	77.8
Professional	71	77.5	70	84.3
Grad Cert	257	85.2	257	87.5
Total	7,756	53.4	7,586	60.5
Grand Total	209,321	76.2	54,063	89.1

Notes. Data includes all programs from PPD:2026. Programs are counted as GE programs if they were ever classified as a GE program between the 2016 and 2025 award years. Earnings data in column 2 are median 4-year earnings of working title IV completers from the pooled 2017-18 and 2018-19 award years, where earnings are measured in 2022 and 2023, respectively. Earnings data in column 4 are median 4-year earnings of title IV completers from the pooled 201-15 and 2015-16 award years. Throughout the analysis, these different earnings variables are used to account for the different definitions of "earnings" across the proposed and current regulations.

Source. Department of Education calculations using PPD:2026.

**Table 3.3 - Share of Programs with No Earnings Data in
PPD:2026, After Excluding Programs with < 30 Title IV
Completers**

	All Programs		GE Programs	
	N	Percent with No Earnings Data	N	Percent with No Earnings Data
	(1)	(2)	(3)	(4)
A. Public				
Undergrad Cert	14,201	77.1	14,201	84.8
Associate	21,094	70.8	0	--
Bachelor	26,375	42.5	0	--
Post-Bacc Cert	545	90.5	545	96.3
Masters	13,830	64.7	0	--
Doctoral	3,888	86.2	0	--
Professional	534	35.6	0	--
Grad Cert	1,570	90.8	1,570	93.1
Total	82,037	62.8	16,316	86.0
B. Non-Profit				
Undergrad Cert	750	68.0	750	74.1
Associate	1,205	57.8	3	100.0
Bachelor	25,186	65.0	36	83.3
Post-Bacc Cert	189	89.4	189	96.8
Masters	10,279	61.7	7	100
Doctoral	2,129	79.1	0	--
Professional	491	39.7	0	--
Grad Cert	1,030	87.5	1,030	91.9
Total	41,259	65.1	2,015	85.6
C. Proprietary				
Undergrad Cert	2,849	32.6	2,849	42.7
Associate	1,141	44.1	1,114	52.1
Bachelor	849	43.9	769	56.4
Post-Bacc Cert	12	100.0	12	91.7
Masters	501	45.1	479	57.4
Doctoral	136	50.7	133	62.4
Professional	30	50.0	29	65.5
Grad Cert	120	72.5	120	79.2
Total	5,638	39.3	5,505	49.3
Grand Total	128,934	62.5	23,836	77.5

Notes: The sample includes all programs from PPD:2026 that are estimated to have at least 30 title IV completers under the cohort aggregation process from the proposed regulation. Programs are counted as GE programs if they were ever classified as a GE program between the 2016 and 2025 award years. Earnings data in column 2 are median 4-year earnings of working title IV completers from the pooled 2017-18 and 2018-19 award years, where earnings are measured in 2022 and 2023, respectively. Earnings data in column 4 are median 4-year earnings of title IV completers from the pooled 2014-15 and 2015-16 award years. Throughout the analysis, these different earnings variables are used to account for the different definitions of "earnings" across the proposed and current regulations.

Source. Department of Education calculations using PPD:2026.

Further, the Department's analysis may slightly overestimate the share of programs and students that fail the accountability framework under the proposed rule because the Department is unable to accurately incorporate two policies into its analysis, both of which are described in the "Low-earning outcome programs (§ 668.603)" section above. First, the proposed rule includes a teach-out provision that allows institutions to continue receiving title IV, HEA funds if they agree to an orderly program closure. Failing programs that exercise this teach-out option can continue to receive title IV, HEA funds for the lesser of three years or the full-time normal duration of the program, meaning students currently enrolled in these failing programs would not be immediately impacted. Second, the proposed rule includes an appeals process that allows institutions to appeal the Department's determination for failing programs. If institutions successfully appeal, those programs initially identified as failing would not lose eligibility for Federal student loans.⁴¹

Finally, our analysis in the remainder of this section ("Impact of the Proposed Regulations") assumes that students who attend failing programs will not switch to a

⁴¹ The inability to account for these factors may ultimately result in a slight overestimate in the share of programs, students, and title IV student aid disbursements impacted under the proposed rule.

different, non-failing program.⁴² We expect this assumption to have a minimal impact on our estimates because this assumption is applied consistently to our estimates of both the current and proposed regulations.⁴³

Methodology for Current Regulation Calculations

Throughout the RIA, the Department estimates the share of programs that fail the accountability framework under the current and proposed regulations to determine the net-effects of the proposed regulation relative to the baseline.⁴⁴ We first estimate which programs would fail the earnings premium metric and D/E metrics under the current regulations. Consistent with the current GE regulation, we count a GE program as failing if it failed either the

⁴² The Department's analysis in the "Impact of the Proposed Regulations" section does not account for the possibility of program switching. This is because the analysis in this section is presented at specific fields of study and credential levels, and the Department is unable to predict how students may switch across specific types of fields of study and credentials. This differs from the assumptions made in the "Net Budget Impact" section, which does account for the possibility of program switching when estimating the budgetary impact of the proposed rule. The "Net Budget Impact" section can account for program switching because the estimates are derived with assumptions using broad volume-based groups that students may switch to; the budget estimates are not disaggregated by specific fields of study or credential levels.

⁴³ Our estimates could differ from the true impact of the proposed regulation if students would differentially switch programs under the proposed regulation relative to how they would switch programs under the current regulation. This could occur, for example, if under the current regulation students are more likely to drop out of college (due to losing access to both Pell Grant and Federal student loan eligibility) relative to the extent that students drop out of college (rather than switch programs) under the proposed rule, since under the proposed rule students would lose access to Federal student loans only.

⁴⁴ While the baseline assumes the current regulations are in effect, we note that no program has actually failed the current regulations at the time this NPRM is published because the EP and D/E metrics (as defined under the current regulations) have not yet been computed by the Department. However, in the absence of the proposed rule, these rates would be calculated, which is why we use the impact of the current regulation as the baseline to judge the impact of the proposed rule.

earnings premium metric or the D/E metric according to our estimates of these measures using PPD:2026.

GE programs are counted as failing the earnings premium metric under the current regulation if the median earnings of program graduates is below the earnings threshold, which is defined as the median annual earnings of working individuals aged 25 to 34 whose highest level of educational attainment is a high school diploma (or equivalent) in the relevant geographic area.⁴⁵ For this calculation, we used the three-year median earnings of title IV program graduates in the labor market who completed during the 2014-15 and 2015-16 pooled award years, obtained from the IRS.⁴⁶ To calculate the earnings threshold, we used the median annual earnings of working high school graduates using the 2023 ACS 5-Year Estimates,

⁴⁵ For programs that enrolled greater than half of their students from in-State, the relevant geographic area is the State in which the college is located. For programs that enroll less than half of their students from in-State, the relevant geographic area is the entire United States. In our analysis, we do not observe the share of enrollees in a program that are from out of State. We proxy for program-level in-State enrollment shares using institution-level data on the share of students across the entire institution who are from in-State. To determine whether an institution enrolls more than half its students from out-of-state, we use each enrolled student's address reported in the student's most recently reported FAFSA relative to the award year being evaluated.

⁴⁶ These data were collected by the Department for the original version of the PPD during development of the current GE/FVT regulation. It is the only cohort of students for which readily available earnings data match the requirements of the current GE/FVT regulation. The Department does not have more recent data that match these requirements. Note that one of the measurement years for earnings was during the COVID-19 pandemic. Specifically, title IV completers from the 2014-15 award year had their earnings measured during the 2019 calendar year, and title IV completers from the 2015-16 award year had their earnings measured during the 2020 calendar year. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. The median earnings value includes statistical noise added by the IRS to protect student privacy.

obtained from IPUMS.⁴⁷ All monetary values were adjusted to constant 2024 dollars using the CPI-U.

Next, we counted GE programs as failing the D/E metric if they failed either the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation.⁴⁸ For this calculation the Department used program-level data on cumulative student debt from the College Scorecard for individuals who completed during the pooled 2017-18 and 2018-19 award years.⁴⁹ To calculate the annual loan payment amount (which is used in both the Earnings Rate Measure and Discretionary Earnings Rate measure), we assumed a 4.45 percent interest rate on loans for undergraduate programs and a 6.23 percent interest rate

⁴⁷ Earnings were defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and farm income (*incbus00*). The median earnings value is taken using individuals who live in the relevant geographic area (e.g., the corresponding state, or nationally), who have the relevant educational attainment level (e.g., those who only have a high school diploma or equivalent with no postsecondary education), who are between 25-34 years old (inclusive), and who have a positive, non-zero income. Appropriate survey weights were utilized to ensure estimates were representative at the national and state levels.

⁴⁸ The Annual Earnings Rate measure is defined as $\text{Annual Earnings Rate} = (\text{Annual Loan Payment}) / (\text{Annual Earnings})$; the Discretionary Earnings Rate measure is defined as $\text{Discretionary Earnings Rate} = (\text{Annual Loan Payment}) / (\text{Discretionary Earnings})$. Under current regulation, programs are counted as failing the D/E metric if the Annual Earnings Rate measure exceeds 8% or if the Discretionary Earnings Rate measure exceeds 20% in two out of three consecutive years.

⁴⁹ To calculate the Annual Loan Payment amount, the Department used the following amortization periods: undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs are amortized over 10 years; bachelor's and master's degree programs are amortized over 15 years; and doctoral and first professional degree programs are amortized over 20 years. These differing 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. The amortization rates mirror those used in the 2014 and 2023 prior rules.

for graduate programs.⁵⁰ To calculate the denominator for the Annual Earnings Rate measure and the Discretionary Earnings Rate measures, we used the same program-level earnings measure described above. When relevant, we used 150 percent of the Federal Poverty Guidelines for a single person in 2024, which was \$22,590.⁵¹

Methodology for Proposed Regulation Calculations

The Department estimated which programs would fail the revised earnings premium metric under the proposed regulation using PPD:2026. Programs are counted as failing if the median earnings of *working* program graduates are below the relevant earnings threshold. For this calculation, we used the four-year median earnings (obtained from the IRS) of title IV program graduates who completed during the 2017-18 and 2018-19 pooled award years and were working at the time earnings was measured.⁵²

⁵⁰ These interest rates were determined by taking a weighted average of the interest rates on Undergraduate Unsubsidized Stafford Loans, Graduate Stafford Loans, and Grad PLUS Loans between 2016 and 2019, which were the available interest rates on these loans around the time that borrowers completed their programs.

⁵¹ The Federal Poverty Guideline is used to calculate the denominator of the Discretionary Earnings Rate measure.

⁵² Specifically, title IV completers from the 2017-18 award year had their earnings measured during the 2022 calendar year, and title IV completers from the 2018-19 award year had their earnings measured during the 2023 calendar year. Earnings were inflation adjusted to 2024. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. Individuals are determined to be "working" if they had positive income reported to the IRS from wages, salary, or self-employment during the calendar year earnings were measured. The median earnings value includes statistical noise added by the IRS to protect student privacy.

The relevant earnings thresholds for each program are listed in Table 3.4. There are six different earnings thresholds in which a program could be judged under the proposed regulation, including:

- *In-State High School (HS)*. The median earnings of individuals aged 25-34 in the state where the college is located, who are working⁵³, and have only a high school diploma or its recognized equivalent.
- *National HS*. The median earnings of individuals aged 25-34 in the entire United States, who are working, and have only a high school diploma or its recognized equivalent.
- *Same-State, Same-Field Bachelor's degree (BA)*. The median earnings of individuals aged 25-34 in the state where the college is located, who are working, and have a bachelor's degree in the same field of study.
- *Same-State BA*. The median earnings of individuals aged 25-34 in the state where the college is located, who are working, and have a bachelor's degree.

⁵³ For all six ETs in the proposed regulation, we determine an individual was working if the individual reported positive, non-zero personal income from wages, salary, or self-employment income (including farm income) during the year. Individuals who reported that they were currently unemployed (at the time they completed the survey) but had otherwise worked during other parts of the year (meaning they had positive personal income from wages, salary, or self-employment) are still counted as working.

- *National Same-Field BA.* The median earnings of individuals aged 25-34 in the entire United States who are working and have a bachelor's degree in the same field of study.
- *National BA.* The median earnings of individuals aged 25-34 in the entire United States who are working and have a bachelor's degree.

Table 3.4 - List of Earnings Thresholds used in the Revised Earnings Premium Metric

	Earnings Thresholds Applied Under the Proposed Regulations	
	<50% Institution Enrollment from Out of State	≥ 50% Institution Enrollment from Out of State
	(1)	(2)
Undergrad Cert	In-State HS Median	National HS Median
Associates	In-State HS Median	National HS Median
Bachelors	In-State HS Median	National HS Median
Post-Bacc Cert	In-State HS Median	National HS Median
Masters	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Doctoral	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Professional	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Grad Cert	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median

Notes: See text for a definition of the earnings threshold names used in this table. Note that this analysis defines each institution's in-state and out-of-state enrollment shares using enrollment from the entire institution, not enrollment in particular programs. The proposed regulation makes that determination on at the program level. To determine the share of in-state students at an institution in this analysis, we use students' home location based on the address reported in their most recently reported FAFSA relative to the award year being evaluated.

To calculate each of the six earnings thresholds, we used data from the 2023 ACS 5-Year Estimates, obtained from IPUMS. We defined earnings using the same approach

described in the "Methodology for Current Regulation Calculations" section.⁵⁴ We computed each specific earnings threshold by using the corresponding group of individuals aged 25-34 who live in the relevant geographic area (e.g., the corresponding state, or nationally), who have the relevant educational attainment level (e.g., high school diploma/recognized equivalent or bachelor's degree in the relevant field of study), and who are not currently enrolled in college.⁵⁵

A majority of programs are compared against the in-state earnings thresholds, reflective of the fact that most postsecondary students are in-state residents of the college they attend. Summary statistics on the share of programs that compared against the in-state thresholds are shown in Table 3.5. This reveals variation in the rate at which certain types of programs are judged against the in-state thresholds. For example, undergraduate culinary programs are most likely to be compared to the in-state

⁵⁴ Specifically, earnings are defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and farm income (*incbus00*), and are adjusted to 2024 dollars using CPI-U. Individuals with \$0 or non-positive earnings are omitted from the medians.

⁵⁵ Appropriate survey weights were utilized to ensure estimates were representative at the National and state levels. For programs that enrolled greater than half of their students from in-state, the relevant geographic area is the State in which the college is located. For programs that enroll less than half of their students from in-state, the relevant geographic area is the entire United States. In our analysis, we do not observe the share of enrollees in a program that are from out-of-state. We proxy for program-level in-state enrollment shares using institution-level data on the share of Title IV students across the entire institution who are from in-state. We use each enrolled Title IV student's address reported in the student's most recently reported FAFSA relative to the award year being evaluated to determine if students are in-state or out-of-state.

earnings threshold (97%), whereas graduate-level religious studies programs are least likely to be compared to the in-state earnings threshold (53%).

Table 3.5 - Share of Programs Compared to In-state and Out-of-state Earnings Thresholds, by Broad Field of Study and Credential Level

Broad Field of Study	Share of Programs at Institutions with >50% Enrollment from In-State	Share of Programs at Institutions with >50% Enrollment from Out-of-State
A. Undergraduate Programs		
Humanities/Liberal Arts	82.4%	17.6%
Social/Behavioral Sciences	82.1	17.9
Life Sciences	83.4	16.6
Physical Sciences	80.2	19.8
Computer/Information Science	89.2	10.8
Engineering/Math	82.2	17.8
Education	90.4	9.6
Business/Management	90.1	9.9
Health-Related	93.5	6.5
Vocational/Technical	96.9	3.1
Other Technical/Professional	87.8	12.2
Culinary & Personal Services	97.0	3.0
Religious Studies	68.5	31.5
B. Graduate Programs		
Humanities/Liberal Arts	79.0%	21.0%
Social/Behavioral Sciences	80.5	19.5
Life Sciences	79.2	20.8
Physical Sciences	81.1	18.9
Computer/Information Science	75.8	24.2
Engineering/Math	79.1	20.9
Education	87.5	12.5
Business/Management	79.0	21.0
Health-Related	81.4	18.6
Vocational/Technical	78.8	21.2
Other Technical/Professional	78.4	21.6
Culinary & Personal Services	75.0	25.0
Religious Studies	53.2	46.8

Notes: Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services"

(CIP2=12) and "Religious Studies" (CIP2=38 or 39). Undergraduate programs include ungraduated certificate programs, associate degree programs, baccalaureate degree programs, and post-baccalaureate certificate programs. Graduate programs include master's degree programs, doctoral programs, professional programs, and graduate certificate programs. Note that this analysis defines each institution's in-state and out-of-state enrollment shares using enrollment from the entire institution, not enrollment in particular programs. That determination is made using the students' home location based on the address reported on their most recently reported FAFSA relative to the award year being evaluated. The proposed regulation makes that determination at the program level.
Source. Department of Education calculations using PPD:2026.

For the "*Same-State, Same-Field BA*" and "*National Same-Field BA*" earnings thresholds, we determined programs to have the same field of study if the graduate program shared the same 2-digit CIP as the bachelor's degree program.⁵⁶ Monetary values were adjusted to constant 2024 dollars using the CPI-U. In a small number of cases we could not reliably calculate the "*Same-State, Same-Field BA*" earnings threshold due to the small number of individuals sampled in the ACS in the correct age range who had a bachelor's degree in a specific field and were located in the relevant state.⁵⁷ In these cases, we compared graduate programs at in-State serving institutions to the lower of the other two ETs specified in the regulation and shown in Table 3.4 (i.e., these programs were compared to

⁵⁶ We used the variable DEGFIELD from the ACS to crosswalk fields of study to two-digit CIP codes. To do so, we subtracted 10 from the value of DEGFIELD to match the corresponding two-digit CIP code. One exception was DEGFIELD=38 (Military Technologies), where we had to subtract 11 (rather than 10) to achieve the corresponding two-digit CIP code. For more information, see https://usa.ipums.org/usa-action/variables/DEGFIELD#codes_section.

⁵⁷ If an earnings threshold would be based on fewer than 30 individuals in the ACS, we did not calculate the earnings threshold because we believed it would not be statistically reliable or representative. The Department seeks feedback on this approach or alternative possible approaches. See the "Directed Questions" section for additional information.

the lower of the “*Same-State BA*” and the “*National Same-Field BA*”). Approximately 3 percent of graduate programs are impacted by this limitation.

Consistent with the regulations, we counted programs as failing the revised earnings premium test under the proposed regulation if the median earnings of program graduates were below the relevant earnings threshold in Table 3.4. The proposed regulations also modify the standards of administrative capability as described in the “Standards of administrative capability (§ 668.16)” section above. Under the proposed regulations, all programs (GE- and non-GE programs alike) that fail the revised earnings premium test will lose access to Pell Grants (in addition to losing access to Federal student loans) if:

- More than half of title IV, HEA funds disbursed to an institution are to students attending programs that fail the revised EP test under the proposed regulations; or
- More than half of title IV students enrolled at an institution are in programs that fail the revised EP test under the proposed regulations.

The Department estimated which programs will be impacted by the proposed changes to the standards of administrative capability. We used PPD:2026 to estimate the amount of title IV, HEA funds (Pell Grants and Federal student loans) disbursed during the 2024-25 award year to

failing programs as a percentage of all title IV, HEA funds disbursed to each institution during that award year. Similarly, we calculated the share of title IV enrollees in failing programs during the 2024-25 award year as a share of all title IV enrollees during that award year at each institution. If either of those percentages exceeded 50 percent, failing programs at those institutions are assumed to lose Pell Grant eligibility, in addition to Federal student loan eligibility.⁵⁸

Impact of the Proposed Regulations on Institutions

Although the current and proposed regulations would establish an accountability framework for individual programs, we considered their effects on institutions with two approaches: by estimating how many programs fail within each level of institution type, and how many institutions will see high and low rates of program failure. For this analysis, higher education institutions are categorized into levels by their predominant degree offered (Less-than 2-year; 2-year; 4-year; Exclusively Graduate-degree Granting).

⁵⁸ Our estimates may slightly overcount the share of programs that lose access to Pell Grants under the proposed regulation's revisions to the standards of administrative capabilities. This is because the revised standards in the proposed regulation apply to institutions after three years of failing the revised earnings premium metric. However, as described above, we do not observe multiple, consecutive years of program-level earnings data in PPD:2026. Thus, our estimates may slightly overcount the share of programs that are impacted by the proposed regulation's revisions to the standards of administrative capabilities since we assume they fail this standard after failing the accountability framework in a single year.

Examining the rate of program failure within levels, we estimate that 26 percent of programs at the less-than two-year level would fail under the current regulation, whereas only 18 percent are estimated to fail under the proposed regulation (Table 3.6). At the two-year, four-year, and graduate levels, we estimate an increase in the share of programs that fail the accountability framework under the proposed regulation. Overall, the Department estimates that slightly more programs will fail under the proposed regulation relative to the current regulation (5.1 percent vs. 4.6 percent), but these programs enroll fewer students than those that fail under the proposed regulation (4.4 percent vs. 4.7 percent) resulting in a smaller loss in title IV disbursements (3.9 percent vs. 5.0 percent). This is consistent with the estimated net cost from the proposed regulation in the net budget impact section, as shown in Tables 5.1A and 5.1B.

Table 3.6 - Estimated Impact of the Proposed Regulation on Institutions, by Predominant Degree Awarded

Institution Level	Number of Institutions	Programs		Title IV Enrollments		Title IV Volume	
		Number of Programs	Share of Programs that Fail	Number of Students	Enrollment In Failing Programs	Annual Volume (\$ Millions)	Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
A. Current Regs							
L/T 2-Year	1,990	15,800	25.8%	2,444,900	23.6%	\$11,361	32.0%
2-Year	840	23,200	6.1	4,341,700	3.5	13,937	5.2
4-Year	1,700	89,100	0.5	11,849,000	1.3	86,688	1.6
Exclusively Grad	180	900	4.0	115,400	1.7	4,006	1.5
Total	4,710	129,000	4.6	18,751,000	4.7	115,992	5.0
B. Proposed Regs							
L/T 2-Year	1,990	15,800	18.1%	2,444,900	17.1%	\$11,361	19.4%
2-Year	840	23,200	7.3	4,341,700	5.0	13,937	4.8
4-Year	1,700	89,100	2.1	11,849,000	1.6	86,688	1.7
Exclusively Grad	180	900	10.7	115,400	4.7	4,006	3.2
Total	4,710	129,000	5.1	18,751,000	4.4	115,992	3.9

Notes. This table excludes 300 institutions that exclusively had programs that were estimated to not achieve the minimum cohort size requirement. The sample includes all programs in PPD:2026 except those that are estimated to have fewer than 30 title IV completers after the cohort aggregation process under the proposed regulation. Source. Department of Education calculations using PPD:2026.

Next, we estimated how many programs within each institution would fail the accountability framework under the current and proposed regulations and then assigned institutions to one of five groups based on the degree to which students attend programs that fail (Tables 3.6 and 3.7). For this analysis we disaggregate institutions by level and sector (Public; Private Non-Profit; Proprietary).⁵⁹

This analysis shows that approximately 91 percent and 98 percent of public and private non-profit institutions, respectively, have 0 percent of their enrollment in failing GE programs under the baseline (Table 3.7). At the other end of the distribution, we find that just 1 percent of public and private non-profit institutions have all (100 percent) of their enrollment in failing GE programs under the baseline.

These rates noticeably differ from shares estimated for the proposed regulation (Table 3.8). Under the proposed regulation, 65 percent and 80 percent of public and private

⁵⁹ Estimates for the current regulation are based on enrollments in GE programs with non-missing earnings data, while estimates for the proposed regulation are based on enrollments in all types of programs with non-missing earnings data.

non-profit institutions, respectively, are unaffected by the proposed regulation (these institutions have 0 percent of their enrollment in failing programs). On the other end of the distribution, about 4 percent of private non-profit institutions have 100 percent of their enrollment in failing programs - more than four times the rate as the current regulation.

Table 3.7 - Share of Enrollment in Programs that Fail the Current Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing GE Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	570	80.7%	10.2%	3.2%	2.6%	3.3%
2-Year	640	92.0	7.2	0.3	0.3	0.2
4-Year	550	99.6	0.4	<0.1	<0.1	<0.1
Exclusively Grad	10	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,770	90.8	6.0	1.1	0.9	1.1
B. Non-Profit						
L/T 2-Year	110	82.3%	0.9%	1.8%	3.5%	11.5%
2-Year	100	97.0	2.0	1.0	<0.1	<0.1
4-Year	1,090	99.5	0.4	<0.1	<0.1	0.1
Exclusively Grad	150	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,450	98.1	0.5	0.2	0.3	0.9
C. Proprietary						
L/T 2-Year	1,310	45.5%	1.1%	2.5%	3.4%	47.5%
2-Year	100	59.2	11.7	4.9	6.8	17.5
4-Year	70	69.6	11.6	13.0	2.9	2.9
Exclusively Grad	30	80.0	<0.1	<0.1	<0.1	20.0
Total	1,510	48.2	2.3	3.1	3.5	42.9

Notes. Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing GE programs (conditional on having earnings data) under the current regulations out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T" = Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year. Source. Department of Education calculations using PPD:2026.

Table 3.8 - Share of Enrollment in Programs that Fail the Proposed Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	570	64.6%	25.4%	5.4%	2.6%	1.9%
2-Year	640	64.7	31.9	1.9	1.4	0.2
4-Year	550	64.7	34.9	0.2	0.2	<0.1
Exclusively Grad	10	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,770	64.9	30.6	2.5	1.4	0.7
B. Non-Profit						
L/T 2-Year	110	71.7%	3.5%	2.7%	5.3%	16.8%
2-Year	100	85.0	7.0	2.0	2.0	4.0
4-Year	1,090	78.7	16.3	1.7	0.8	2.5
Exclusively Grad	150	84.1	5.5	1.4	0.7	8.3
Total	1,450	79.2	13.6	1.8	1.2	4.3
C. Proprietary						
L/T 2-Year	1,310	35.1%	4.3%	2.1%	3.7%	54.7%
2-Year	100	70.9	14.6	1.9	4.9	7.8
4-Year	70	69.6	23.2	2.9	2.9	1.4
Exclusively Grad	30	88.0	<0.1	<0.1	<0.1	12.0
Total	1,510	40.1	5.8	2.1	3.7	48.3

Notes. Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing programs (conditional on having earnings data) under the proposed regulations out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent% due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T"=Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year. Source. Department of Education calculations using PPD:2026.

The Department also estimated the impact of the proposed regulation on special types of institutions and those with unique missions, including Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), Minority Serving Institutions (MSIs), religiously affiliated institutions, rural institutions, and institutions located in foreign territories (Table 3.9). We find that HBCUs, religiously affiliated colleges, and foreign institutions will be more

negatively impacted by the proposed regulation relative to the current regulation. This is because these institutions are estimated to have more students and title IV, HEA funds in programs that would fail the accountability framework under the proposed regulation (Panel B) relative to the accountability framework in the current regulations (Panel A).

Table 3.9 - Estimated Impact of the Proposed Regulation on Institutions with Specialized Missions

Institution Type	Programs		Students		Title IV Volume	
	Number of Programs	Share of Programs that Fail	Number of Students	Enrollment In Failing Programs	Annual Volume (\$ Millions)	Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)
A. Current Regulations						
HBCUs	2,300	1.8%	307,700	0.2%	\$3,000	0.1%
TCCUs	100	<0.1	8,500	<0.1	23	<0.1
Other MSIs	32,700	4.4	5,997,100	2.5	29,454	1.7
Religiously Affiliated	21,600	0.6	1,610,100	0.5	14,294	0.2
Rural	13,200	4.8	1,468,900	1.7	7,457	1.4
Foreign Institutions	1,700	<0.1	226,700	<0.1	1,493	<0.1
B. Proposed Regulations						
HBCUs	2,300	4.1%	307,700	4.3%	\$3,000	2.3%
TCCUs	100	<0.1	8,500	<0.1	23	<0.1
Other MSIs	32,700	3.7	5,997,100	2.9	29,454	2.3
Religiously Affiliated	21,600	1.9	1,610,100	2.5	14,294	1.8
Rural	13,200	5.1	1,468,900	2.2	7,457	1.1
Foreign Institutions	1,700	5.7	226,700	4.6	1,493	2.2

Notes. "Other MSIs" include colleges with any of the following designations: PBI, AANAPII, HSI, and ANNHI. "Religiously affiliated" institutions include colleges with any listed religious affiliation from any denomination. "Rural" institutions are institutions located in counties where greater than 50 percent of the population in the county lives in a designated rural census tract. "Foreign Institutions" include institutions of higher education located in any of the following territories: AS, FM, GU, MH, MP, PR, PW, VI. Counts in columns 1 and 3 are rounded to the nearest 100. Counts in column 5 are rounded to the nearest million. Percentages in columns 2, 4, and 6 are computed prior to rounding. Enrollment includes title IV enrollees during the 2024-25 award year. title IV volume is the annual title IV volume disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

The Department also estimated the share of institutions that fail the standards of administrative capabilities under the current and proposed regulations (Table 3.10). Overall, similar shares of institutions will fail the standard (16.3 percent and 15.4 percent under the proposed and current regulations, respectively). Although these are similar shares, the penalty for failing the standard is less under the proposed regulation. Under the proposed rule, only programs that fail the accountability framework would lose eligibility for Pell Grants. Under the

current regulations, all programs at an institution that fails to meet the standard would lose access to all title IV, HEA funds.

Proprietary institutions are expected to fail the standards of administrative capabilities at the highest rates. Under the proposed standard, approximately half (47 percent) of proprietary institutions are estimated to fail. One reason the proprietary sector has higher fail rates is because these institutions offer fewer programs, making it more likely that failing programs will account for a majority of enrollment or title IV HEA funds at the institution. Less than two-year proprietary institutions offer an average of just 3 programs (Panel C, column 4). If just one program at one of these institutions fails the accountability framework under the current or proposed regulations, the institution has a higher probability of failing the standards of administrative capabilities than other institutions that offer a broad range of programs.

Table 3.10 - Percent of Institutions that Fail the Standards of Administrative Capability Requirements, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Percent that Fail the Standards of Administrative Capabilities		Average Number of Programs Per Institution
		Current Regulations	Proposed Regulations	
		(1)	(2)	
A. Public				
L/T 2-Year	610	2.6%	1.2%	36
2-Year	650	2.0	0.2	65
4-Year	550	0.5	0.2	124
Exclusively Grad	10	<0.1	<0.1	15
Total	1,820	1.7	0.5	73
B. Non-Profit				
L/T 2-Year	150	12.4%	14.5%	7
2-Year	130	1.6	2.4	12
4-Year	1,180	1.1	2.5	54
Exclusively Grad	220	1.9	6.5	6
Total	1,680	2.3	4.1	40
C. Proprietary				
L/T 2-Year	1,380	49.3%	53.3%	3
2-Year	110	16.7	9.6	10
4-Year	80	14.5	3.6	27
Exclusively Grad	30	20.0	6.7	6
Total	1,600	44.8	46.9	5
Grand Total	5,100	15.4%	16.3%	41

Notes. Programs with missing earnings data are assumed to pass accountability framework under the current and proposed rule. The sample in this table includes all programs and institutions (see Table 3.2). The N sizes (institution counts) in column 1 differ from the institution counts in prior tables because the counts in prior tables were based on the subset of programs used in the main analysis (see Table 3.3).

Source. Department of Education calculations using PPD:2026.

Impact of the Proposed Regulations on Programs

The Department estimated the share of programs by credential level that will be impacted by the proposed regulation (Table 3.11). We estimate the proposed regulation will result in a slight increase in the total share of programs that would fail the accountability framework, growing from 4.6 percent of all programs under current regulation to 5.1 percent under the proposed regulation (Panel A). This increase is driven by

associate's, bachelor's, master's, and professional degree programs. Many of these programs are offered at institutions that are exempt from the accountability framework under the current regulation but are now subject to it under the proposed regulation. In contrast, undergraduate and graduate certificate programs are expected to fail the accountability framework at lower rates under the proposed regulations. These reductions in fail rates, however, are not enough to offset the large increase in expected fail rates among associate's, bachelor's, master's, and professional degree programs, resulting in a net increase in the share of programs that fail.

In terms of students (Panel B), we estimate the proposed regulation will result in a slight reduction in the total share of students enrolled at programs that would fail the accountability framework, dropping from 4.7 percent of students under the current regulation to 4.4 percent under the proposed regulation. Even though a larger share of programs would fail under the proposed regulation relative to the baseline, those programs enroll fewer students than programs that fail under the current regulation on average.

Table 3.11 - Estimated Share of Programs that Fail and Enrollment in Failing Programs, by Credential Level

Credential Level	N	Share that Fail	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Program-Weighted			
Undergrad Cert	17,800	29.3%	18.1%
Associate	23,400	1.6	6.0
Bachelor	52,400	0.3	1.4
Post-Bacc Cert	700	<0.1	1.3
Masters	24,600	0.4	4.2
Doctoral	6,200	0.2	0.4
Professional	1,100	0.8	2.3
Grad Cert	2,700	4.1	3.2
Total	128,900	4.6	5.1
B. Student-Weighted			
Undergrad Cert	1,726,900	39.4%	25.5%
Associate	5,305,000	1.5	4.1
Bachelor	8,911,200	0.9	0.8
Post-Bacc Cert	21,300	<0.1	0.9
Masters	1,975,100	1.0	4.1
Doctoral	400,700	1.6	0.7
Professional	297,000	2.4	3.9
Grad Cert	113,800	5.7	5.4
Total	18,751,000	4.7	4.4

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to nearest 100. Total Ns may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

When looking at the effect of the proposed regulation on sectors (Tabel 3.12), we estimate that the public and non-profit sectors will experience a net-increase in the share of programs that fail. This is because many programs offered in these sectors are exempt from the accountability framework under the current regulation. Conversely, under the proposed regulation, we estimate that the proprietary

sector will experience a reduction in the share of programs expected to fail - primarily driven by the reduction in failing undergraduate certificate programs. This is largely because under the current regulations, undergraduate programs at proprietary institutions are subject to a more-punitive earnings premium metric relative to the proposed regulations.

We find this pattern holds when weighting by title IV enrollment (Table 3.13). Under the proposed regulations, we estimate that 2.2 percent of students at programs in the public sector attend programs expected to fail the accountability framework. This is modestly higher than the estimated share who attended failing programs under current regulations (1.5 percent). The increase is driven by the large number of students who attended associate's, bachelor's, and master's degree programs at public institutions that would be subject to the accountability framework but are currently exempt. This increase more than offsets the reduction in students attending undergraduate certificate programs at public institutions that are no longer expected to fail the accountability framework. A similar pattern exists for students who attend private non-profit programs (Panel B). While there is a reduction in the share of students who attended failing certificate programs at those institutions, there are increases in the shares of students who attend failing programs in all other

credentials, resulting in an overall increase in the share of students who attend failing programs.

In the proprietary sector (Panel C), we estimate that fewer students attend programs that fail the proposed regulation relative to the current regulation (18.5 percent vs. 30.2 percent), mainly because the EP test was made slightly easier under the proposed regulation (program earnings are measured after 4-years and include only working individuals).

**Table 3.12 - Estimated Share of Programs that Fail, by
Credential Level and Sector**

Credential Level	Number of Programs (1)	Share that Fail	
		Current Regs (2)	Proposed Regs (3)
A. Public			
Undergrad Cert	14,200	21.2%	11.0%
Associate	21,100	0.0	5.6
Bachelor	26,400	0.0	1.0
Post-Bacc Cert	500	<0.1	<0.1
Masters	13,800	0.0	3.5
Doctoral	3,900	0.0	0.2
Professional	500	0.0	0.0
Grad Cert	1,600	2.6	3.2
Total	82,000	3.7	4.3
B. Non-Profit			
Undergrad Cert	800	29.9%	21.9%
Associate	1,200	0.0	7.8
Bachelor	25,200	0.0	1.8
Post-Bacc Cert	200	<0.1	5.2
Masters	10,300	0.0	4.7
Doctoral	2,100	0.0	1.0
Professional	500	0.0	3.5
Grad Cert	1,000	5.0	3.1
Total	41,300	0.7	3.1
C. Proprietary			
Undergrad Cert	2,800	69.1%	52.2%
Associate	1,100	33.1	11.5
Bachelor	800	16.0	3.1
Post-Bacc Cert	<100	<0.1	<0.1
Masters	500	17.5	12.7
Doctoral	100	7.1	0.0
Professional	<100	26.7	21.1
Grad Cert	100	14.8	3.5
Total	5,400	47.0	31.1

Notes. Ns are rounded to nearest 100. Total program counts may not sum to their subcomponents due to rounding.

Source. Department of Education calculations using PPD:2026.

Table 3.13 - Estimated Share of Enrollment in Programs that Fail, by Credential Level and Sector

Credential Level	Title IV Enrollment (1)	Enrollment in Failing Programs	
		Current Regs (2)	Proposed Regs (3)
A. Public			
Undergrad Cert	901,600	20.7%	9.7%
Associate	4,679,800	0.0	3.2
Bachelor	5,744,400	0.0	0.4
Post-Bacc Cert	15,800	<0.1	<0.1
Masters	901,300	0.0	1.7
Doctoral	160,600	0.0	0.1
Professional	137,800	0.0	<0.1
Grad Cert	56,300	1.4	1.8
Total	12,597,600	1.5	2.2
B. Non-Profit			
Undergrad Cert	73,000	49.8%	36.8%
Associate	257,500	0.0	16.2
Bachelor	2,470,400	0.0	1.5
Post-Bacc Cert	5,000	<0.1	4.1
Masters	807,800	0.0	4.1
Doctoral	189,000	0.0	1.3
Professional	145,100	0.0	3.6
Grad Cert	43,600	2.5	7.9
Total	3,991,400	0.9	3.8
C. Proprietary			
Undergrad Cert	752,300	60.9%	43.3%
Associate	367,800	21.5	6.5
Bachelor	696,400	11.3	1.3
Post-Bacc Cert	600	<0.1	<0.1
Masters	266,000	7.3	12.2
Doctoral	51,000	12.4	<0.1
Professional	14,100	51.3	44.8
Grad Cert	13,900	33.2	11.8
Total	2,162,100	30.2	18.5

Notes. Ns are rounded to nearest 100. Total enrollment may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

The Department also estimated the share of title IV, HEA funds disbursed to students who attend programs expected to fail the accountability framework, disaggregated by credential level (Table 3.14).^{60, 61} Overall, the Department estimates that failing programs under the proposed regulation would lose a smaller amount of title IV, HEA funds than under the current regulations (3.9 percent vs. 5.0 percent). Undergraduate certificate programs will experience the largest change. Under the current regulations, almost half (49 percent) of all title IV, HEA funds disbursed to undergraduate certificate programs are projected to be lost due to the accountability framework. Under the proposed regulations, only 28 percent is projected to be lost. This reduction is driven by the fact that programs lose eligibility for only Federal student loans under the proposed regulation (unless it is offered at an institution that also fails the standards of administrative capabilities, in which case the program also loses eligibility for Pell Grants), and because undergraduate certificate programs face an easier accountability framework.

⁶⁰ Under the current regulations, lost title IV HEA funds includes both Pell Grants and Federal student loans. Under the proposed regulations, lost title IV, HEA funds includes only Federal student loans, unless the program is at an institution that is estimated to also fail the administrative capability standards—in which case, lost title IV HEA funds also includes Pell Grants for that program.

⁶¹ Our estimates on title IV, HEA student aid disbursements assume no program switching for students who switch from a failing program to a passing program and therefore continue to receive title IV, HEA funds.

Table 3.14 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Credential Level

Credential Level	Annual Title IV Volume (\$ Millions)	Volume to Failing Programs	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
Undergrad Cert	\$8,042	48.5%	27.6%
Associate	17,493	4.0	3.7
Bachelor	53,068	1.3	0.8
Post-Bacc Cert	15	<0.1	1.3
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	115,992	5.0	3.9

Notes: Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Percentages in columns 2 and 3 are estimated prior to rounding. Annual volume corresponds to disbursements made during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

When disaggregated by sector (Table 3.15), we estimate no net change in the overall amount of title IV, HEA funds disbursed to failing programs at public institutions. While more undergraduate and graduate certificate programs in the public sector (Panel A) will pass the proposed accountability framework relative to the baseline, all other credential levels in the public sector fail at higher rates, resulting in no net change in the title IV disbursements.

The Department's estimates suggest that there could be a sizeable reduction in title IV, HEA funds disbursed to

the non-profit sector (Panel B) because all programs in this sector are now subject to an accountability framework. Under the current regulations, failing non-profit programs account for just 0.7 percent of the total title IV, HEA funds disbursed to programs in the non-profit sector. Under the proposed regulations, that figure is estimated to rise to 4 percent, driven by the large increase in failing associate's, bachelor's, master's, and professional degree programs. The proprietary sector (Panel C) demonstrates the opposite pattern. Under the proposed regulations, these programs will see an increase in title IV, HEA funds relative to the baseline. This is because the accountability framework is (generally) easier for these programs to pass, and the proposed regulation allows failing programs to continue receiving Pell Grants (as long as the institution does not fail the standards of administrative capability requirements).

Table 3.15 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Credential Level and Sector

Credential Level	Annual Title IV Volume (\$ Millions) (1)	Volume to Failing Programs	
		Current	Proposed
		Regs (2)	Regs (3)
A. Public			
Undergrad Cert	\$1,990	22.1%	2.3%
Associate	12,652	0.0	0.8
Bachelor	31,614	0.0	0.2
Post-Bacc Cert	7	<0.1	<0.1
Masters	7,066	0.0	1.7
Doctoral	1,421	0.0	0.1
Professional	4,745	0.0	<0.1
Grad Cert	241	2.3	1.0
Total	59,736	0.7	0.6
B. Non-Profit			
Undergrad Cert	\$461	57.4%	39.8%
Associate	1,769	0.0	22.2
Bachelor	16,385	0.0	1.6
Post-Bacc Cert	7	<0.1	3.0
Masters	9,685	0.0	4.0
Doctoral	3,717	0.0	2.3
Professional	6,518	0.0	3.7
Grad Cert	279	4.5	0.5
Total	38,821	0.7	4.0
C. Proprietary			
Undergrad Cert	\$5,592	57.2%	35.6%
Associate	3,073	22.8	5.0
Bachelor	5,069	14.1	2.1
Post-Bacc Cert	1	<0.1	<0.1
Masters	2,566	8.7	12.2
Doctoral	696	15.9	<0.1
Professional	355	20.3	9.8
Grad Cert	83	32.6	10.5
Total	17,435	28.9	15.0

Notes. Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Total volume may not sum to their subcomponents due to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.
Source. Department of Education calculations using PPD:2026.

Next, we estimated how the proposed regulation would impact specific fields of study.⁶² The Department estimates that some programs, such as Humanities/Liberal Arts programs (CIPs=05, 16, 23, 24, and 50) and Religious Studies programs (CIPs=38 and 39) will fail at a higher rate relative to the baseline (Table 3.16). Other programs, such as Health-Related undergraduate programs (CIPs=51, 60, 34, and 61), Business/Management undergraduate programs (CIP=52), Computer/Information Science undergraduate programs (CIP=11), and Vocational/Technical undergraduate programs (CIPs=15, 41, 46, 47, 48, and 49), are estimated to fail at lower rates. Culinary & Personal Services undergraduate programs (CIP=12) will fail the accountability framework at the highest rates, though the share that fail under the proposed regulation (76 percent) is slightly lower than the share under the current regulation (79 percent).

A similar pattern is observed when estimates are weighted by enrollment (Table 3.17). For example, approximately five times as many students are enrolled in Religious Studies undergraduate programs that are expected

⁶² The Department grouped programs into broad field of study categories using a slightly modified version of the field of study categories defined in the variable "MAJORS12" from NPSAS:2020. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). For more information, see <https://nces.ed.gov/datalab/codebooks/by-subject/157-national-postsecondary-student-aid-study-2020-undergraduate-students>.

to fail under the proposed regulation relative to the share of these students attending Religious Studies programs that would fail under the current regulations. Many of these programs are offered at public and private non-profit institutions, which are exempt from accountability framework under the baseline.

Undergraduate programs in Religious Studies are also estimated to have a sizeable loss in title IV, HEA funds (Table 3.18). These programs will experience an estimated five-fold reduction in title IV, HEA disbursements. Other types of programs, however, are expected to experience large increases in the amount of title IV, HEA funds under the proposed regulations. This includes programs in Culinary & Personal Services, Health, Technical/Professional Programs, and Business.

Table 3.16 - Estimated Share of Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Number of Programs	Share of Programs that Fail	Number of Programs	Share of Programs that Fail
	(1)	(2)	(3)	(4)
A. Current Regulations				
Culinary & Personal Services	1,800	79.2%	<100	<0.1%
Health-Related	17,300	12.3	6,500	1.3
Vocational/Technical	7,500	6.1	200	<0.1
Business/Management	14,100	5.6	3,800	0.1
Computer/Information Science	5,200	3.7	900	<0.1
Education	4,500	3.0	6,700	0.4
Humanities/Liberal Arts	10,800	2.6	1,800	1.0
Other Technical/Professional	12,800	2.2	4,200	0.3
Religious Studies	1,200	1.0	600	0.3
Life Sciences	5,400	0.2	2,800	1.5
Social/Behavioral Sciences	7,600	0.1	2,900	0.8
Engineering/Math	4,200	<0.1	3,100	<0.1
Physical Sciences	2,000	<0.1	1,000	<0.1
Total	94,400	6.1	34,500	0.6
B. Proposed Regulations				
Culinary & Personal Services	1,800	75.6%	<100	60.0%
Health-Related	17,300	6.7	6,500	7.2
Vocational/Technical	7,500	1.7	200	<0.1
Business/Management	14,100	3.1	3,800	1.1
Computer/Information Science	5,200	1.0	900	3.0
Education	4,500	7.7	6,700	0.3
Humanities/Liberal Arts	10,800	8.2	1,800	17.1
Other Technical/Professional	12,800	4.8	4,200	1.9
Religious Studies	1,200	8.8	600	6.6
Life Sciences	5,400	1.8	2,800	2.3
Social/Behavioral Sciences	7,600	2.3	2,900	3.3
Engineering/Math	4,200	<0.1	3,100	0.2
Physical Sciences	2,000	0.4	1,000	<0.1
Total	94,400	5.7	34,500	3.3

Notes. Program counts (columns 1 and 3) are rounded to nearest 100. Total program counts may not sum to the sum of their subcomponents due to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Source. Department of Education calculations using PPD:2026.

Table 3.17 - Estimated Share of Enrollment in Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Title IV Enrollment	Share of Enrollment in Failing Programs	Title IV Enrollment	Share of Enrollment in Failing Programs
	(1)	(2)	(3)	(4)
A. Current Regulations				
Culinary & Personal Services	299,800	82.3%	400	<0.1%
Health-Related	3,043,900	11.2	823,100	3.1
Vocational/Technical	683,200	4.9	11,400	<0.1
Business/Management	2,492,000	1.3	437,800	0.3
Computer/Information Science	950,900	2.0	80,400	<0.1
Education	617,700	1.5	530,300	0.1
Humanities/Liberal Arts	2,951,100	2.4	55,500	3.0
Other Technical/Professional	1,801,400	4.0	405,000	0.8
Religious Studies	80,400	4.7	45,600	0.9
Life Sciences	1,029,000	0.1	94,400	0.9
Social/Behavioral Sciences	1,266,600	0.9	209,400	3.1
Engineering/Math	624,100	<0.1	72,300	<0.1
Physical Sciences	124,400	<0.1	20,900	<0.1
Total	15,964,500	5.3	2,786,500	1.4
B. Proposed Regulations				
Culinary & Personal Services	299,800	74.5%	400	19.8%
Health-Related	3,043,900	6.3	823,100	9.1
Vocational/Technical	683,200	0.9	11,400	<0.1
Business/Management	2,492,000	1.0	437,800	0.4
Computer/Information Science	950,900	1.2	80,400	1.1
Education	617,700	5.5	530,300	0.1
Humanities/Liberal Arts	2,951,100	3.7	55,500	16.4
Other Technical/Professional	1,801,400	3.9	405,000	0.8
Religious Studies	80,400	22.5	45,600	14.6
Life Sciences	1,029,000	1.2	94,400	1.0
Social/Behavioral Sciences	1,266,600	1.9	209,400	1.4
Engineering/Math	624,100	<0.1	72,300	<0.1
Physical Sciences	124,400	0.4	20,900	<0.1
Total	15,964,500	4.5	2,786,500	3.6

Notes. Student counts (columns 1 and 3) are rounded to nearest 100. Percentages are computed prior to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

Table 3.18 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Annual Title IV Volume (\$ Millions)	Share of Volume to Failing Programs (2)	Annual Title IV Volume (\$ Millions)	Share of Volume to Failing Programs (4)
A. Current Regs				
Culinary & Personal Services	\$1,820	85.7%	\$1	<0.1%
Health-Related	15,472	13.8	18,332	1.2
Vocational/Technical	3,703	5.1	62	<0.1
Business/Management	11,796	1.7	3,481	0.4
Computer/Information Science	4,300	1.6	496	<0.1
Education	3,176	0.9	3,525	0.2
Humanities/Liberal Arts	11,874	3.5	537	5.7
Other Technical/Professional	9,125	6.4	7,101	0.9
Religious Studies	474	4.5	212	1.7
Life Sciences	5,900	<0.1	813	0.7
Social/Behavioral Sciences	6,866	1.4	2,486	4.6
Engineering/Math	3,466	0.1	285	<0.1
Physical Sciences	646	<0.1	41	<0.1
Total	78,618	6.7	37,372	1.2
B. Proposed Regs				
Culinary & Personal Services	\$1,820	69.1%	\$1	<0.1%
Health-Related	15,472	7.4	18,332	5.3
Vocational/Technical	3,703	0.5	62	<0.1
Business/Management	11,796	0.5	3,481	0.4
Computer/Information Science	4,300	1.2	496	0.7
Education	3,176	1.0	3,525	0.1
Humanities/Liberal Arts	11,874	3.4	537	22.3
Other Technical/Professional	9,125	2.0	7,101	0.5
Religious Studies	474	28.7	212	1.7
Life Sciences	5,900	0.1	813	1.3
Social/Behavioral Sciences	6,866	0.2	2,486	1.4
Engineering/Math	3,466	<0.1	285	<0.1
Physical Sciences	646	<0.1	41	<0.1
Total	78,618	4.2	37,372	3.2

Notes. Annual title IV volume (columns 1 and 3) is rounded to nearest million. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

To conclude the program-level analysis, the Department examined the programs estimated to fail the proposed regulations at the highest rates (Table 3.19).⁶³ Some of

⁶³ The Department included the twelve programs (defined by the unique combination of *cip4* and *credlev*) that had the highest share of programs

these - such as Cosmetology (CIP=12.04), Somatic Bodywork (CIP=51.35), and Dental Support Services (CIP=51.06) - fare better under the proposed regulation relative to the baseline. For example, the Department estimates that 97 percent of undergraduate certificate programs in Cosmetology would fail under the baseline, but 93 percent fail under the proposed regulation. So, while many Cosmetology certificate programs will fail under the proposed regulation, it is less punitive for these programs than the current regulation.

Mental and Social Health & Allied Professions master's degree programs (CIP=51.15), Teacher Education and Professional Development associate's degree programs (CIP=13.12), and Drama/Theater Arts bachelor's degree programs (CIPs=50.05, 50.07, and 50.09) are anticipated to be most impacted by the proposed regulations. These programs are often between 10 and 20 times more likely to fail the accountability framework under the proposed regulation relative to the current regulations. These higher fail rates are driven by the fact that a large share of these programs are offered at public and non-profit institutions, which would no longer be exempt from the accountability framework under the proposed rule.

estimated to fail under the proposed regulations. Programs where there were fewer than 100 observations with non-missing earnings data nationally were excluded from the ranking.

Table 3.19 - Twelve Most-Impacted Programs Under the Proposed Regulation

Program (CIP4)	Credential Level	N	Share that Fail	
			Current Regs	Proposed Regs
		(1)	(2)	(3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	1,200	97.4%	92.5%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	300	98.8	89.3
Mental/Social Health Services & Allied Professions. (5115)	Master's	400	1.1	38.7
Dental Support Services and Allied Professions. (5106)	Ug Cert	400	84.7	38.5
Allied Health and Medical Assisting Services. (5108)	Ug Cert	900	84.4	37.1
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	400	0.8	29.1
Health and Medical Administrative Services. (5107)	Ug Cert	800	78.5	28.3
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	700	0.5	15.9
Fine and Studio Arts. (5007)	Bachelor	900	0.8	14.9
Music. (5009)	Bachelor	900	1.2	14.3
Health and Medical Administrative Services. (5107)	Associate	700	8.3	13.5
Rehabilitation and Therapeutic Professions. (5123)	Master's	300	<0.1	11.8
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	225,400	97.3%	92.5%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	18,000	99.7	89.0
Mental/Social Health Services & Allied Professions. (5115)	Master's	84,600	10.1	64.3
Dental Support Services and Allied Professions. (5106)	Ug Cert	31,000	91	58.9
Allied Health and Medical Assisting Services. (5108)	Ug Cert	155,200	89.9	50.0
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	77,900	2.7	24.0
Health and Medical Administrative Services. (5107)	Ug Cert	111,000	80.1	31.0
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	43,800	1.3	11.4
Fine and Studio Arts. (5007)	Bachelor	107,100	1.4	8.5
Music. (5009)	Bachelor	63,800	5.8	11.0
Health and Medical Administrative Services. (5107)	Associate	116,100	13.9	29.7
Rehabilitation and Therapeutic Professions. (5123)	Master's	19,300	<0.1	9.0
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	\$1,424	97.9%	93.0%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	91	99.7	89.6
Mental/Social Health Services & Allied Professions. (5115)	Master's	964	8.5	54.7
Dental Support Services and Allied Professions. (5106)	Ug Cert	188	92.5	64.0
Allied Health and Medical Assisting Services. (5108)	Ug Cert	957	91.6	54.0
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	253	5.9	24.7
Health and Medical Administrative Services. (5107)	Ug Cert	621	83	38.4
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	402	2.1	12.7
Fine and Studio Arts. (5007)	Bachelor	748	2.2	8.7
Music. (5009)	Bachelor	462	8.7	11.9
Health and Medical Administrative Services. (5107)	Associate	660	19.8	47.2
Rehabilitation and Therapeutic Professions. (5123)	Master's	356	<0.1	7.4

Notes. The twelve programs on this list are the twelve programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the proposed regulations in which there were at least 100 programs with non-missing earnings data nationally. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student enrollment counts. In Panel C, "N" refers to total title IV loan volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 100 in Panels A and B. N sizes are rounded to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and title IV volume correspond to the amounts in the 2024-25 award year. Source. Department of Education calculations using PPD:2026.

Impact of the Proposed Regulations on Students

Lastly, the Department estimated the share of students in failing programs from each sex and race category using

data from IPEDS for completers from the 2017-18 and 2018-19 pooled award years (Table 3.20). For each program, we multiplied the number of title IV enrollees from the 2024-25 award year by the ratio of completers from the given sex or race category.⁶⁴ As reported above, fewer students attend programs that are estimated to fail under the proposed regulation relative to the baseline. Consistent with this finding, we estimate a reduction in the overall share of students from both sex categories and all race categories who attend failing programs. The estimated reduction is largest for male students and white students.

⁶⁴ For example, we multiplied the number of title IV enrollees in each program by the ratio of completers from the program (using IPEDS data) who were male to calculate the share of male students in passing and failing programs.

Table 3.20 - Estimated Demographic Characteristics of Students in Failing Programs

Student Characteristic	Enrollment (Millions)	Current		Proposed		Percent Change in Fail Rate
		Pass	Fail	Pass	Fail	
	(1)	(2)	(3)	(4)	(5)	(6)
Male	6.5	97.5%	2.5%	97.9%	2.1%	-16.0%
Female	10.0	93.5	6.5	94.2	5.8	-10.8
White	8.7	96.2	3.8	96.8	3.2	-15.8
Black	2.1	91.5	8.5	92.6	7.4	-12.9
Hispanic	2.9	92.5	7.5	93.3	6.7	-10.7
Asian	1.0	97.5	2.5	97.6	2.4	-4.0
Other Race	2.0	95.6	4.4	96.2	3.8	-13.6

Notes. See PPD:2026 codebook for definitions of race categories, available at: www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf. Enrollments correspond to the estimated number of title IV enrollees from the sex or race category during the 2024-25 year. Column 6 presents the percent change using the values in columns 3 and 5.

Source. Department of Education calculations using PPD:2026.

4. Discussion of Costs and Benefits

As shown in the prior analysis, the proposed regulations will result in costs and benefits for various entities. Specifically, the Department anticipates that certain students and institutions will incur new costs, along with the Department and taxpayers. Further, the Department anticipates that certain students, institutions, and the Department itself will incur new benefits because of the proposed regulations.

Costs of the Proposed Regulations:

The proposed regulations will result in costs to students, institutions, and taxpayers. We further discuss the costs in that order.

Students will experience costs due to the impact the proposed regulation would have on certain programs. Some students - especially current and prospective students in public and private non-profit degree programs - attend programs that would fail the accountability framework under the proposed regulation but pass under the current regulation (shown in Tables 3.11 and 3.13). Institutions may choose to close these programs due to the loss of eligibility for Federal student loans. Students in these programs may be negatively impacted if they desire to attend those closed programs despite the low-earning outcomes. For example, some Drama programs may close due to the proposed regulations, but students may desire to attend these programs for reasons other than the monetary return.

Certain students in specific fields of study may be disproportionately impacted by the proposed regulation (Tables 3.17 and 3.19). At the undergraduate level, students in Religious Studies programs, Humanities/Liberal Arts programs, Education programs, Drama programs, and Music programs will be most impacted. At the graduate level, students in Religious Studies programs, Mental/Social Health Services & Allied Professions programs, Humanities/Liberal Arts programs, and Health-related programs will be most impacted (Tables 3.17 and 3.19). Thus, current, former, and prospective students pursuing credentials in these specific fields of study are

most likely to experience costs associated with the proposed regulations due to the high rates of program closures that may occur in these fields.

In some cases, program closures may occur abruptly and cause further disruption for enrolled students.⁶⁵ If closures are sudden, students may inadvertently cease their enrollment if they are not instructed on how to transfer. Other students may choose to end their postsecondary education if there are no substitutable programs to attend. For students who choose to remain enrolled, program closure may force them to change majors or transfer to a different institution, imposing search costs and possible financial costs on affected students.

The proposed regulation may also impose reputational costs on the former graduates of failing programs. Graduates from degree programs in the public and non-profit sectors would be most impacted, as certain programs in these sectors are more likely to fail the accountability framework under the proposed regulation relative to the baseline (Tables 3.11 and 3.13). Prospective job applicants who formerly graduated from these failing programs may become disadvantaged in the labor market relative to other job applicants from non-failing programs. For example, employers may view degrees awarded from failing programs as

⁶⁵ The Department has attempted to mitigate these disruptions by including a teach-out provision in the proposed regulations that allows programs to implement an orderly program closure.

less valuable. This would occur if failing the accountability framework under the proposed regulations sends a negative signal to employers about the graduates' former program quality, potentially impacting the ability for graduates to find employment.

Lastly, certain students pursuing undergraduate certificates may also experience new costs. The accountability framework under the proposed regulation will allow more programs at that credential level to remain eligible for title IV, HEA funds, and some of these programs leave students with relatively lower earnings. The typical earnings of students who attend passing undergraduate certificate programs under the proposed regulations are slightly lower than the typical earnings of passing programs under the current regulations (Table 4.1, column 1 vs. 2). Furthermore, earnings are lower for students who complete programs that pass the accountability framework under the proposed regulation but fail it under the current regulation (columns 1 vs. 4). These students may be negatively impacted by the proposed regulation because they may be better off not attending such programs, though it is difficult for the Department to estimate a proper counterfactual for these students.

Table 4.1 - Median Earnings for Students in Passing and Failing Programs under the Current and Proposed Accountability Framework

Four-Year Median Earnings of 2017-18 & 2018-19 Title IV Completers who are Working and Not Enrolled				
	Passes Current Regulations	Passes Proposed Regulation	Fails Proposed Regulation, Passes Current Regulation	Passes Proposed Regulation, Fails Current Regulation
	(1)	(2)	(3)	(4)
Undergrad Certificate	\$50,000	\$48,700	\$28,400	\$37,500
Associate	47,900	48,100	32,300	38,700
Bachelor	63,100	63,100	33,300	47,000
Master's	79,400	80,300	58,000	60,000
Total	62,700	62,900	29,300	39,000

Notes. Credential levels are not shown if there were fewer than 10 programs with non-missing earnings data to calculate the median earnings values in columns 3 or 4. Earnings data are for title IV completers who graduated during the 2017-18 or 2018-19 award years, with earnings measured in 2022 and 2023, inflation adjusted to 2024 dollars using CPI-U. Median earnings values in this table are calculated by taking the median of "md_earn_wne_p4", weighted by "count_wne_p4". See PPD:2026 codebook for details. Median earnings values are rounded to the nearest \$100.

Source. Department of Education calculations using PPD:2026.

The second group that will experience costs are institutions of higher education; more specifically, institutions of higher education that participate in title IV, HEA programs. These costs will vary across institutions depending on the extent to which they offer GE-programs vs. non-GE programs. While the current regulation calculates the EP and D/E metrics for non-GE programs, those programs are not subject to sanctions (loss of all title IV eligibility) if they fail those metrics. Under the proposed regulation, all programs - regardless of credential level and the sector of the institution at which they are offered - are now subject to sanctions (loss of Federal student

loan eligibility)⁶⁶ for failing the accountability framework.

In other words, some non-GE programs will lose access to Federal student loans due to the proposed regulations because these programs will be covered by the accountability framework for the first time. Without access to Federal student loans, these programs may experience enrollment declines, ultimately resulting in lost revenue to the institutions that offer them. This loss in revenue may exceed the loss in Federal student loan revenue because institutions often receive additional revenues from students who pay tuition and fees using non-Federal resources.

Next, some institutions will incur new costs due to the loss of Pell Grant eligibility for certain programs. Programs lose Pell Grant eligibility, in addition to Federal student loan eligibility, if they are offered at institutions that fail the standards of administrative capability under the proposed regulations. This loss in Pell Grant revenue may drive further enrollment and revenue declines and, for some institutions, lead them to close their institution altogether. Note that only degree programs at public and non-profit institutions stand to incur new costs related to loss of Pell Grant eligibility,

⁶⁶ Programs can also lose eligibility for Federal Pell Grants under the proposed regulation if they are offered at institutions that fail the standards of administrative capability.

because these programs are exempt from the accountability framework under the current regulation.

The Department estimates that certain public institutions and private non-profit institutions will incur greater costs from the proposed regulations relative to the current regulations. Specifically, public and private non-profit institutions offering large shares of associate's degree programs, bachelor's degree programs, and master's degree programs will incur the largest costs, as these programs are projected to fail the accountability framework under the proposed regulation at the highest rates relative to the current regulations (Tables 3.12 and 3.13).

Additionally, certain types of institutions (mainly those located in foreign territories and those that exclusively offer Religious Studies programs, Humanities/Liberal Arts programs, and Music/Theater programs) may be uniquely impacted because they offer programs that are anticipated to fail the accountability framework under the proposed regulation at the highest rates relative to the baseline (Tables 3.9, 3.17, and 3.19).

Should these institutions obtain a reputation for offering low-quality educational services because of the proposed accountability framework, they may struggle to recruit and enroll students. Ultimately, these institutions may incur financial costs due to lost tuition revenue from

students who now choose to avoid these institutions due to reputational risks.

Further, institutions that offer programs that fail the accountability framework under the proposed regulation but pass under the current regulation (e.g., degree programs at public and non-profit institutions) will experience new costs related to compliance. First, institutions with failing programs must notify students in those programs to alert them of the failing status. Tracking and alerting students will create administrative costs for institutions if they must hire additional staff to manage this process. Even if institutions do not hire new staff to oversee this process, they may still experience non-monetary costs if these regulations require colleges to divert their existing staff away from other essential activities. Second, institutions may choose to appeal the Department's determination of a failing program. This process will impose administrative costs and (potentially) legal costs on institutions who choose to exercise this option.

Taxpayers are the third group that will experience costs. They will incur costs from the budgetary costs due to increased transfers of title IV loans to GE programs that now pass the accountability framework under the proposed regulation but fail under current regulation. As noted in the accounting statement (Table 5.12), these

annualized costs are approximately \$95 million at a 3 percent discount rate.

Taxpayers will also incur budgetary costs due to increased transfers of Pell Grants to programs. Unlike the current regulation, programs that fail the accountability framework under the proposed regulation remain eligible for Pell Grants unless they are offered at institutions do not meet the standards for administrative capability. As noted in the accounting statement (Table 5.12), these annualized costs are approximately \$497 million at a 3 percent discount rate.

Taxpayers may also face costs if the loss of title IV revenue and enrollment under the proposed regulation causes institutions to close. Under 34 CFR 685.214, students who are enrolled at an institution upon closure (or withdraw within 180 days of such closure) and do not complete their program may be eligible for discharges on their federal student loans if they are unable to complete their program at another institution. Thus, for institutions that close because of the proposed accountability framework, there may be some cost to taxpayers if those closures result in additional loan discharges that may not have occurred if the proposed regulations were not in place.⁶⁷

⁶⁷ Note that this cost to taxpayers only includes public and non-profit institution closures, because these institutions offer programs that are subject to an accountability framework for the first time. Costs associated with closing proprietary institutions are not considered a cost to taxpayers because these institutions were more likely to close

The Department, and by extension the taxpayer, is the final group that will experience costs due to the proposed regulation. Costs to the Department are due to the administrative costs needed to implement the changes to the Federal student loan and Pell Grant programs. We estimate that, based on comparable changes made in the past, those administrative costs would average approximately \$6.6 million (using a 3 percent discount rate, Table 5.12) in systems modifications, contract changes, and staffing on an annualized basis over the 2026-2035 period. Most of these estimated costs will be incurred during the first two years of implementation.

To implement the proposed changes, the Department needs to update its systems for loan and grant origination to align with the new eligibility rules for programs of study in order to correctly identify programs that maintain or lose eligibility. This includes changes to the Common Origination and Disbursement (COD) system, which supports origination, disbursement, and reporting for Direct Loan, Pell Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. The system uses a single "Common Record" (XML format) for efficiency and elimination of duplicate student and borrower data, providing a centralized system for title IV

under the current regulation relative to the proposed regulation, since the current regulation had a stricter accountability framework and removed eligibility for both Federal student loans and Pell Grants.

program administration used by the Department and all institutions that participate in the delivery of Federal student aid.

The Department must also update the National Student Loan Data System (NSLDS), which is the central database for all disbursements made through title IV, HEA programs. NSLDS tracks title IV loans and grants through their entire lifecycle, from approval to repayment or closure. The system provides an integrated view for institutions and the Department to track aid, loan status, and enrollment. It consolidates data from schools, lenders, and programs, enabling users to access loan history, disbursement details, and servicer information via the FSA Partner Connect portal. The NSLDS system provides the Department with the data needed to identify program enrollment and completer cohorts that are central to administering the earnings-based eligibility tests in the proposed regulation.

While most of the administrative costs the Department will incur implementing the OBBB occur in the first few years, the Department will incur long-term administrative costs for maintaining the Department's COD, NSLDS, and other system changes in future years to account for ongoing development, operations, and maintenance.

The Department expects to incur additional administrative costs to train and support institutions of

higher education that now must align their procedures and systems with the new eligibility rules for loans, grants, and programs of study.

The Department must also modify its internal systems and amend its data-sharing agreement with a federal agency with earnings data, which will be used to annually determine program eligibility under the new and modified earnings tests. The Department will incur minor, long-term administrative costs associated with the earnings tests and maintaining a data-sharing agreement with a federal agency with earnings data. As shown in Table 5.12, these costs will average \$1.9 million on an annualized basis (3% discount rate). Approximately 70% of these costs will support the data-sharing agreement with a federal agency with earnings data. The balance of the funds will be used to maintain the NSLDS system to support the annual operations of the accountability framework in the proposed regulation.

Benefits of the Proposed Regulations:

The proposed regulations provide benefits to students, institutions of higher education, and the Department. These benefits are discussed in that order.

Students will benefit under the proposed regulations in several ways. First, students in non-GE programs may experience higher earnings outcomes. Under the current regulations, these programs were exempt from the

accountability framework, but under the proposed regulation, low-earning non-GE programs at public and non-profit institutions can lose eligibility for title IV, HEA funds. Students will benefit from this because, in the absence of the proposed regulation, they may have attended these low-earning outcome programs and were at a heightened likelihood of experiencing financial harm as a result. The Department estimates that approximately 200,000 title IV students attend programs at public and non-profit institutions that will fail the accountability framework under the proposed regulation but would have passed under the current regulation (Table 3.13).

Certain students may also benefit due to the proposed regulation better positioning them to pay back their student loans through the possibility of higher earnings outcomes that occur as a result of low-earning outcome programs that close. As shown in Table 4.1, the typical earnings of students from passing associate and master's degree programs under the proposed regulation are slightly higher than the earnings of students who attended passing programs under the current regulation. This is because many low-earning associate and master's degree programs are offered at public and non-profit institutions, which were exempt from the accountability framework under the current regulations. Similarly, debt levels and default rates are lower, on average, for programs that pass the

accountability framework in the proposed regulation relative to passing programs under the current regulation (Tables 4.2 and 4.3). These estimates suggest that students may be better positioned to pay back their loans as a result of the proposed regulation, which benefits students if it saves them from experiencing these adverse outcomes related to debt and default.

Table 4.2 - Median Debt of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulation		Proposed Regulation		Difference in Median Debt Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	\$9,300	\$11,600	\$9,300	\$11,300	-\$300
Associate	21,600	14,500	18,200	14,600	100
Bachelor	38,300	22,400	24,700	22,500	100
Masters	71,900	44,600	52,700	44,500	-100
Doctoral	181,100	85,600	104,600	90,000	4,400
Professional	227,900	164,700	184,800	153,900	-10,800
Grad Cert	80,000	42,700	62,600	43,700	1,000
Total	14,200	29,900	16,000	28,900	-1,000

Note. Median debt is defined as the median cumulative student debt of borrowers who completed during the 2017-18 or 2018-19 award years. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the difference between columns 4 and 2. Debt values are rounded to the nearest 100.

Source. Department of Education calculations using PPD:2026.

Table 4.3 - Default Rates of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulation		Proposed Regulation		Difference in Default Rates Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	24.6%	25.8%	24.7%	24.1%	-1.67
Associate	24.5	25.2	26.5	24.7	-0.5
Bachelor	19.7	14.3	19.7	14.0	-0.3
Masters	8.2	6.2	7.3	5.8	-0.4
Doctoral	5.0	5.7	2.5	5.5	-0.2
Professional	1.7	1.5	1.9	1.6	0.1
Grad Cert	7.1	6.7	7.1	5.9	-0.8
Total	24.1	19.5	24.7	18.8	-0.8

Note. Default rates are calculated using the cohort of federal student loan borrowers who entered repayment during the 2015-16 award year. Default rate is the share of those borrowers who have ever entered default within three years of entering repayment. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the percentage point difference between columns 4 and 2. The difference may not sum to the total due to rounding.

Source. Department of Education calculations using PPD:2026.

Additionally, students who attend non-GE programs may benefit if institutions take measures to improve programs that are at risk of failing the accountability framework. Institutions offering non-GE programs had little incentive to improve these programs under the current regulations since these programs were exempt from the accountability framework. Given that they are subject to the accountability framework under the proposed regulation, institutions may choose to begin offering better student services, working with employers to ensure graduates have in-demand skills, and helping students with career

planning, or risk losing access to title IV, HEA funds. These efforts may lead to better graduation rates and labor market outcomes for students.⁶⁸

Lastly, a subgroup of students in GE programs may benefit from the proposed regulations. This would occur when two conditions are met: first, the GE program they attend passes the accountability framework under the proposed regulation but fails under the current regulations, and second, if the students in those programs desire to attend despite the earnings outcomes of the program. For this unique group of students, they benefit because they can continue receiving Federal student loans and Pell Grants to attend their program under the proposed regulation, and these students may attain other non-monetary benefits because they are able to continue their education in their desired program.

Institutions will also benefit from the proposed regulations in several ways. First, institutions will benefit from the reduced reporting requirements under the proposed regulation relative to the reporting requirements under the existing FVT regulations. In total, the proposed regulation reduces the number of data elements that institutions are required to report by approximately 30 percent. Many of these are elements the Department

⁶⁸ This is not a benefit for students who attend proprietary institution programs since these institutions face an easier accountability framework under the proposed regulations relative to the current regulations.

determined it can calculate and report through its administrative data systems (e.g., withdraw dates) and the Department will continue to report this information publicly under STATS. Because institutions no longer need to calculate and report this information, they will incur reduced administrative costs to comply with the proposed regulations.

Second, some institutions offer programs that fail the accountability framework under the current regulations but will pass under the proposed regulation and retain access to title IV, HEA funds. The Department estimates that this would primarily benefit programs at proprietary institutions and undergraduate and graduate certificate programs from all sectors (Table 3.14).

Lastly, many institutions that offer GE programs will benefit from the fact that failing the accountability framework under the proposed regulation results only in loss of eligibility for Federal student loans. To better understand this benefit, Table 4.4 decomposes the overall change in title IV, HEA funds disbursed to failing programs (Panel A) by separately showing the estimated change in Federal student loan disbursements (Panel B) and Pell Grant disbursements (Panel C).⁶⁹ As shown in Panel B, we estimate a similar share of Federal student loans are disbursed in

⁶⁹ Note that programs only lose eligibility for Pell Grants under the proposed regulation if they are at an institution that fails the standards of administrative capability requirements.

failing programs under both the current and proposed regulations. This is because the increase in failing associate, master's, and professional degree programs under the proposed rule is almost completely offset by the reduction in failing undergraduate certificate programs in terms of loan disbursements.

This differs from Panel C, where we estimate a smaller share of total Pell Grant volume will be disbursed to failing programs under the proposed regulation (6.2 percent) relative to the share of Pell volume disbursed to failing programs under the current regulation (7.1 percent). The reduction is driven by undergraduate certificate programs: under the current regulations, these programs were expected to lose half (49 percent) of their total Pell Grant volume, whereas under the proposed regulations these programs are estimated to lose one-third of their Pell Grant volume. This suggests institutions offering undergraduate certificates will benefit, as more of these programs will maintain access to Pell Grants under the proposed regulation. Maintaining eligibility for Pell Grants may buffer enrollment declines at these institutions and help their program continue to operate.

Table 4.4 - Estimated Annual Federal Title IV, HEA Funds and Share Disbursed to Programs that Fail, by Credential Level & Aid Type

	Annual Title IV Volume (\$ Millions) (1)	Volume to Failing Programs	
		Current Regs (2)	Proposed Regs (3)
A. Total Title IV Student Aid			
Undergrad Cert	\$8,042	48.5%	27.6%
Associate	17,493	4.0	3.7
Bachelor	53,068	1.3	0.8
Post-Bacc Cert	15	<0.1	1.3
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	115,992	5.0	3.9
B. Federal Student Loans Only			
Undergrad Cert	\$3,987	48.4%	32.5%
Associate	6,215	6.6	7.4
Bachelor	32,606	1.3	0.9
Post-Bacc Cert	14	<0.1	1.5
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	80,195	4.0	4.1
C. Pell Grants Only			
Undergrad Cert	\$4,055	48.5%	33.1%
Associate	11,278	2.6	5.4
Bachelor	20,462	1.4	1.3
Post-Bacc Cert	2	0.0	0.0
Masters	0	N/A	N/A
Doctoral	0	N/A	N/A
Professional	0	N/A	N/A
Grad Cert	0	N/A	N/A
Total	35,797	7.1	6.2

Notes: In Panel A, annual title IV volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. The corresponding cells below in Panels B and C may not sum to the total listed in Panel A due to rounding. Percentages in columns 2 and 3 are estimated prior to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

The Department will also benefit from the proposed regulation, largely from a streamlined and simplified

administrative process for the GE regulation. The proposed regulation removes the complicated D/E metric from the current accountability framework, which will reduce burden and save administrative costs.

5. Net Budget Impact

The accountability framework implemented by the proposed regulations is estimated to have a net Federal budget impact of \$979 million in Direct Loan cohorts 2026 to 2035 and \$5,145 million in Pell Grants in FYs 2026 to 2035 as shown in Tables 5.1A and 5.1B. A cohort reflects all loans 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 regulations is the President's Budget FY2026 baseline updated for other provisions of the OBBB. This baseline includes the Department's estimates for the current regulations and therefore the cost estimate captures changes in the accountability framework from that regulation. Direct Loan and Pell Grant volumes at failing programs under current regulations are higher than those at failing programs under the proposed accountability framework, so the estimated reduction in volume is greater under current regulations. Therefore, the net budget impact

of replacing the current regulations with the accountability framework in the proposed regulation is scored as a cost to the taxpayer.

Table 5.1A - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	33	44	48	51	53	52	56	58	59	455
Unsub.	0	27	36	37	37	32	28	29	33	32	290
PLUS (Par & Grad)	0	4	12	19	17	14	13	9	5	1	95
Consol	0	0	3	7	11	15	21	24	27	30	139
Total for Loans	0	64	94	110	116	114	115	119	124	122	979

Table 5.1B - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	450	306	345	349	413	486	567	660	751	4,327
Mandatory	0	87	59	66	66	78	92	106	124	140	818
Total for Pell	0	537	365	411	415	491	578	673	784	891	5,145

Methodology for Net Budget Impact

This section describes the methodology used to estimate the budget impact of the proposed regulations. The main behaviors that drive the direction and magnitudes of the budget impacts of the proposed regulations 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. These assumptions and results vary from those in the

"Impact of the Proposed Regulations" section, consistent with the Credit Reform Act of 1990. The model (1) uses PPD:2026 to synthesize programs' results on the earnings premium measure to predict future results, and (2) tracks programs' cumulative results across multiple cycles of results to determine title IV, HEA loan eligibility and estimated effects on borrowing and Pell Grant receipt. While programs will be defined at the six-digit CIP level for the regulation, the data file includes two-digit and four-digit CIP codes that are used in our estimation process.

Assumptions

Assumptions were made in four areas to estimate the budget impact of the proposed regulations: (1) Program performance under the proposed regulations (initial and continued); (2) Student behavior in response to program performance; (3) Borrowing of students under the proposed regulations; and (4) Enrollment growth of students in passing and failing programs. Table 5.2 provides an overview of the main categories of assumptions and sources. Assumptions that are included in our sensitivity analysis are also noted. 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.

Table 5.2 - Main Assumptions and Sources

Category	Detail	Source	Included in sensitivity?
Initial Program Performance	Share in each performance category in public data set	Department 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	AY2026-27 onward, separately by loan risk group	Based on Department Data	Yes
Student response	Share of students who remain in programs, transfer to passing programs, or dropout by program performance category and transfer group	External research and assumptions from 2023 RIA	Yes
Student borrowing	Debt changes if students transfer to passing program or dropout by program performance, risk group, cohort	Based on Department Data	No

Enrollment Growth Assumptions

For AYs 2026 to 2036, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program funds in absence of the rule.⁷⁰ The average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2025 is computed, separately by the combination of control and credential level. This rate of growth is assumed for each type of program for AYs 2026 to 2036 when constructing our baseline enrollment projections.⁷¹ Table 5.3 reports the assumed average annual percent change in title IV, HEA enrollment.

⁷⁰ AYs 2027 to 2036 are transformed to FYs 2026 to 2035 later in the estimation process.

⁷¹ The number of programs in proprietary graduate certificate 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 2.4 percent.

Table 5.3 - Annual Enrollment Growth Rate (Percent)

Assumptions

	Public	Private, Non-Profit	Proprietary
Associate	0.4	1.2	3.0
Bachelor	0.9	0.9	0.6
Doctoral	4.4	5.6	0.3
Graduate Certificate	8.1	6.9	5.4
Master's	3.4	1.3	1.5
Post-Bacc Certificate	12.4	1.8	2.4
Professional	1.9	2.0	2.4
Undergrad Certificate	3.9	0.7	4.7

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific programs, but rather by groupings of programs by broad credential level and control, the number of alternative programs available, and whether the program passes or fails the relevant performance measure. 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 two performance categories in each year:

- Passing (includes with and without data).
- Failing earnings premium measure.

A program becomes ineligible if it fails the earnings premium measure in two out of three consecutive years.⁷² The

⁷² Factors, such as in-state percentage, contribute to the earnings threshold used at the program-level and are incorporated into the

model applies the same program transition assumptions across the budget estimation window from FY 2026 to FY 2035. All transition probabilities are estimated separately for four aggregate groups: proprietary 2-year or less; public or non-profit 2-year or less; 4-year programs; and graduate programs.⁷³

The assumptions for program transition are taken directly from an observed comparison of actual rates in the PPD:2026 data results. The initial assignment of performance categories in 2027 is based on the PPD:2026 for students who completed programs during the 2017-18 and 2018-19 award years, whose earnings are measured in calendar years 2022 and 2023, respectively (adjusted to constant 2024 dollars using CPI-U). The program transition assumptions for 2027 to 2036 are based on the outcomes for this cohort of students. Programs with fewer than 16 completers with earnings records are determined to be passing.

As the earnings premium metric in this regulation is backwards looking, it is not expected for there to be much churn between failing and passing for programs across consecutive years. It is expected for there to realistically be a small amount of movement around the

public data file used in this analysis. For more information, see Table 3.4 in the "Methodology for Proposed Regulation Calculations" section.
⁷³ The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

earnings thresholds. To simulate this, the percentage of programs within a 1 percent band of their earnings premium threshold (0.5 percent on either side) were calculated for each group. The percentage of programs within the band, dependent on their initial status, were applied to calculate the share of enrollment that transitions from passing to failing or failing to passing. The percentages of programs outside of the band, dependent on their initial status, were applied to calculate the share of enrollment that remain passing or failing. The share of enrollment that transitions from each performance category to another is computed separately for each group. An alternative assumption was incorporated by increasing the band from 1 percent to 2 percent for calculating these transitions in the sensitivity analysis.

Table 5.4 - Program Transition Assumptions

		Percent in Year t+1 Status	
		Pass	Fail EP
Proprietary 2-year or less			
Year t Status	Pass	99.2	0.8
	Fail EP	6.0	94.0
Public and Non-Profit 2-year or less			
Year t Status	Pass	99.6	0.4
	Fail EP	3.3	96.7
4-year			
Year t Status	Pass	99.9	0.1
	Fail EP	5.3	94.7
Graduate			
Year t Status	Pass	99.9	0.1
	Fail EP	4.6	95.4

Student Response Assumptions

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 loans than when a program has a single year of inadequate performance, which initiates warnings and publicly disclosed performance information. 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, individual programs are categorized 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. Over 99 percent of failing programs have at least one non-failing program at the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, assumptions are made for each type of student transition. Programs with passing metrics are assumed to retain all their students. Students from programs with failing metrics that transfer are assumed to transfer to passing programs. It is assumed that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the warning is required. It is also assumed that rates of

transfer are decreasing (and rates of dropout and remaining in programs are both increasing) as students have fewer transfer options. These assumptions regarding student responses to program results are provided in Table 5.5.

Table 5.5 - Student Response Assumptions, by Program Result and Number of Alternative Program Options Available

Program Result Student Response	Pass			Fail once			Ineligible		
	Remain	Transfer	Dropout	Remain	Transfer	Dropout	Remain	Transfer	Dropout
High Alternatives	1	0	0	0.80	0.15	0.05	0.2	0.6	0.2
Medium Alternatives	1	0	0	0.85	0.09	0.06	0.2	0.55	0.25
Low Alternatives	1	0	0	0.90	0.03	0.07	0.25	0.45	0.3
Few Alternatives	1	0	0	0.90	0.02	0.08	0.25	0.35	0.4

The assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth. Table 5.6, includes details of the assumptions of the destinations among students who transfer, separately for the following groups: ⁷⁴

- Risk 1 (Proprietary <= 2 year)
- Risk 2 (Public, Non-Profit <= 2 year)
- Risk 3 (Lower division 4 year)
- Risk 4 (Upper division 4 year)
- Risk 5 (Graduate)

⁷⁴ Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

Table 5.6 - Student Response Assumptions, Among Transferring Students

	Shift to New Programs				
Shift from...	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5
Risk 1	0.5	0.4	0.1	0	0
Risk 2	0.2	0.7	0.1	0	0
Risk 3	0.05	0.1	0.85	0	0
Risk 4	0	0	0	1	0
Risk 5	0	0	0	0	1

The values in the student response tables are based on assumptions 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 Government Accountability Office (GAO) report found that about half of non-completing students who were enrolled at closed institutions transferred.⁷⁵ This magnitude is similar to recent analysis that found that 47 percent of students reenrolled in another program after an institutional closure.⁷⁶ The authors of this report find very little movement from public or non-profit institutions into proprietary institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed proprietary, 2-year institutions moved to public 2-

⁷⁵ U.S. Government Accountability Office. "College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges." July 15, 2022. www.gao.gov/products/gao-22-104403.

⁷⁶ State Higher Education Executive Officers Association (2022). "More Than 100,000 Students Experienced An Abrupt Campus Closure Between July 2004 and June 2020. November 15, 2022. sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.

year institutions, whereas less than 3 percent of re-enrollees at closed public and private non-profit 4-year institutions moved to proprietary institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at proprietary colleges that were subject to loss of federal financial aid disbursement eligibility, with much of that shift to public two-year institutions.⁷⁷ The Department also considered an 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 percent transferred to a public institution, 41 percent transferred to a different proprietary institution, and 13 percent transferred to a private non-profit institution. Most remained in associate's or certificate programs. Of bachelor's degree students that re-enrolled, 54 percent transferred to a different proprietary institution, 25 percent shifted to a public institution, and 21 percent transferred to a private non-profit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information

⁷⁷ 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.

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 proprietary institution within 5 years. Of those that began at a public or private non-profit 2-year institution, about 8 percent shifted to a proprietary institution within 5 years.

Student Borrowing Assumptions

To incorporate changes in average loan volume associated with student transitions, the average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per student enrolled are computed separately by risk group and program performance group. These averages are then applied to shifts in enrollment to generate changes in the amount of aid. The baseline incorporates the sunseting of Grad PLUS loans due to the OBBB. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

Process for Net Budget Impact Estimate

The budget model estimates a yearly enrollment for AYS 2027 to 2036 and the distribution of those enrollments in programs is characterized by earnings premium measure performance, risk group, and transfer category. This enrollment is projected for a baseline (in absence of the

accountability framework) and under the legislative changes implemented in the proposed regulations. The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received by these distributions of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the accountability framework. 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 proposed regulations. Therefore, for the purposes of budget modeling, we perform analysis with aggregations of programs into groups (called "program aggregate" groups) defined by the following:

- Five student loan model risk groups: (1) 2-year (and below) proprietary; (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).
- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is an initially assigned

program-level characteristic and is assumed not to change.

- Four performance categories: Pass, Fail earnings premium measure, Pre-ineligible (a program's current enrollment is title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not title IV, HEA eligible).

We first generate a projected baseline (in absence of the accountability framework) enrollment, Pell volume, and loan volume for each of the program aggregate groups from AYS 2027 to 2036. This baseline projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2025. These growth rates are presented in Table 5.3. We then apply these annual growth rates to the actual enrollment by program in 2025 to forecast enrollment in each program in 2026. This step is repeated for each year to get projected enrollment by program through 2036. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group and program performance group for 2025. These averages are then adjusted according to the President's Budget FY2027 assumptions 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 2036. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, AYs 2027 to 2036, and shift the baseline Pell and loan volume from AYs 2027 to 2036 to FYs 2026 to 2035 for calculating budget cost estimates.

The most significant task is to generate projected enrollment, Pell volume, and loan volume for each of the program aggregate groups from AYs 2027 to 2036 with the proposed accountability framework in place. We assume the first set of rates would be released in the 2027 award year, so this is the 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 2027. 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 2028 (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; (2) Students in risk groups 4 or 5 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; (5) Students in risk group 3 can shift to risk groups 1 or 2. Therefore, we permit enrollment to shift between proprietary and public or non-profit certificate, associate's, and lower-division bachelor's programs, based on the assumptions listed in Table 5.6.

Step 4: Determine the change in aggregate baseline enrollment between 2027 and 2028 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 by risk group, as reported in Table 5.4. Enrollment in a failing 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 programs are:

- Pass → Pass, Fail Earnings Premium
- Fail Earnings Premium → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2028 (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 2028 enrollment by group as the starting point for 2029 and repeat through 2036. The only addition is that in Step 5, two more program transitions are possible for failing programs:

- Pre-Ineligible → Ineligible
- Ineligible → Ineligible (no change)

Step 8: Generate projected Pell and loan volume by program aggregate group from AYS 2027 to 2036 under the proposed rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) that vary over time to get projected total aid amounts by group through 2036. Any enrollment that has dropped out (not enrolled in any postsecondary program) get zero Pell Grant and loan amounts. Enrollment in the Ineligible category initially receives Pell Grants but no loan amounts. To account for revisions to the standards of administrative capability (\$

668.16), Pell Grant amounts in the Ineligible category are reduced by 60 percent starting in 2030 to capture the estimated impact. This is based on an analysis, using PPD:2026, of the percentage of Pell Grant volume at low-earning outcome programs at institutions in which more than half of title IV, HEA recipients or more than half of title IV, HEA funds are from low-earning outcome programs. While the accountability framework does not make programs ineligible for Pell Grants immediately, we do estimate that borrowers whose programs lose eligibility for title IV, HEA loans will transfer programs or choose not to attend with corresponding effects on their Pell Grants.

Step 9: Shift Pell and loan volume under the proposed rule from AYs 2027 to 2036 to FYs 2026 to 2035 for calculating budget cost estimates.

Step 10: Calculate adjustment factors capturing the replacement of the current regulations with the accountability framework in the proposed regulations. This is done by first calculating the percentage change between the model results for the baseline and accountability framework scenarios described in the previous steps and then generating the inverses of the adjustment factors for the current regulations. These two adjustment factors are multiplied to create a final adjustment factor that represents both the removal of the current regulations and the impact of the accountability framework.

Accountability Framework and Model Results

Key distinctions between the proposed accountability framework and the current GE regulations are the applicability to programs regardless of institutional control and the removal of annual and discretionary debt-to-earnings rate metrics. Degree programs at private proprietary, private not-for-profit, and public institutions that fail the earnings premium measure in two of any three years will lose eligibility for title IV, HEA loans. The proposed regulations are estimated to shift enrollment towards passing programs with higher median earnings and away from programs that fail the earnings premium 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 not to enroll. Changes in enrollment patterns in Tables 5.7 and 5.8 reflect students transferring in and out of each risk group, as well as remaining in programs that do not provide title IV, HEA loans, or dropping out.⁷⁸ Table 5.7 summarizes the main enrollment results from within the accountability framework model. By the end of the analysis window, 99.6 percent of

⁷⁸ Tables 5.7 and 5.8 represent enrollment estimated within the accountability framework model, which is not equivalent to borrower count.

title IV, HEA enrollment is expected to be in passing programs.

Table 5.7 - Projected Title IV, HEA Enrollment Estimate within the Accountability Framework Model

		2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Projected Total Aggregate Enrollment (millions)											
	Baseline	20.99	21.29	21.60	21.92	22.25	22.60	22.95	23.31	23.68	24.07
	Policy	20.99	21.25	21.34	21.76	22.14	22.50	22.85	23.20	23.55	23.91
Percent of Enrollment by Program Performance											
Pass	Baseline	96.8	96.8	96.7	96.7	96.6	96.6	96.5	96.5	96.4	96.4
	Policy	96.8	97.2	99.4	99.6	99.6	99.6	99.6	99.6	99.6	99.6
Fail EP	Baseline	3.2	3.2	3.3	3.3	3.4	3.4	3.5	3.5	3.6	3.6
	Policy	3.2	2.8	0.6	0.4	0.4	0.4	0.4	0.4	0.4	0.4

Table 5.8 - Projected Percent of Title IV, HEA Enrollment Estimate by Loan Risk Category within the Accountability Framework Model

		2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Percent of Enrollment by Loan Risk Category											
Prop. 2-year & below	Baseline	5.63	5.77	5.93	6.08	6.24	6.40	6.56	6.73	6.90	7.08
	Policy	5.63	5.64	5.05	5.29	5.51	5.70	5.87	6.03	6.18	6.34
Public/NP 2-year & below	Baseline	33.49	33.36	33.24	33.11	32.99	32.87	32.73	32.60	32.47	32.34
	Policy	33.49	33.40	33.47	33.37	33.25	33.11	32.97	32.82	32.66	32.51
4-year (lower)	Baseline	32.60	32.42	32.25	32.07	31.88	31.69	31.50	31.30	31.10	30.89
	Policy	32.60	32.50	32.71	32.46	32.25	32.06	31.88	31.71	31.54	31.37
4-year (upper)	Baseline	13.55	13.47	13.40	13.33	13.25	13.18	13.10	13.02	12.93	12.85
	Policy	13.55	13.50	13.54	13.41	13.31	13.22	13.14	13.06	12.99	12.91
Graduate	Baseline	14.74	14.96	15.18	15.40	15.63	15.86	16.10	16.34	16.59	16.84
	Policy	14.74	14.97	15.24	15.46	15.68	15.91	16.15	16.39	16.63	16.87

In addition to changes in enrollment, both overall and between risk groups, differences in average loan amounts are a factor in estimating total volume. While Tables 5.7

and 5.8 display estimates from within the accountability framework model, total volume changes and the net budget impact include removal of the current regulations. While non-GE programs were not subject to potential ineligibility under the current regulations, students could react to poor performance, so the net budget impact reflected changes for all institution types. In the current regulations, higher-level and higher-debt programs were particularly impacted by the D/E measures and resulting student reactions. Additionally, Pell Grant eligibility was treated the same way as loan eligibility in the current regulations, while the impact of the accountability framework on Pell Grants from the standards of administrative capability is lesser.

The accountability framework estimation process described in the methodology, and the resulting change in Direct Loan and Pell Grant volume over the budget window compared to the estimated change in Direct Loan and Pell Grant volume from current regulations, generates the primary net budget impact shown in Tables 5.1A and 5.1B.

Sensitivity Analysis

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. Realized budget impacts will be heavily influenced by actual program performance, student response to program performance,

student borrowing, and changes in enrollment because of the regulations. For example, if students, including prospective students, react more strongly to the warnings or potential ineligibility of programs than anticipated, and if many of these students leave postsecondary education, the impact on Pell Grants and loans could change.

Therefore, we conducted 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, and program performance. We believe these to be the main sources of uncertainty in our model.

Along with the primary estimate, the scenarios presented in the "Sensitivity Analysis" are intended to provide a reasonable estimation of the range of impact that the proposed regulations could have on the budget.

Varying levels of student transition

The primary analysis assumes rates of transfer and dropout for programs based on relevant research and literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives (Tables 5.9A and 5.9B) and few alternatives (Tables 5.10A and 5.10B). As reported in Tables 5.9A, 5.9B, 5.10A, and

5.10B, it is estimated that the proposed regulations would result in an increase in title IV, HEA aid between fiscal years 2026 and 2035, regardless of whether all students have the highest or lowest amount of transfer alternatives.

Table 5.9A - High Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	35	48	51	54	55	54	57	59	60	472
Unsub.	0	28	37	38	38	36	30	30	33	32	302
PLUS (Par & Grad)	0	2	7	16	14	12	11	8	4	1	75
Consol	0	0	3	7	15	16	22	25	28	31	148
Total for Loans	0	65	96	112	121	119	117	120	125	123	997

Table 5.9B - High Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	462	357	393	396	447	511	586	676	764	4,592
Mandatory	0	90	68	75	75	85	96	110	127	143	869
Total for Pell	0	552	425	468	471	532	607	696	803	907	5,461

Table 5.10A - Low Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	27	31	35	41	45	46	50	53	55	382
Unsub.	0	23	28	26	30	28	23	26	31	31	247
PLUS (Par & Grad)	0	10	23	31	28	24	21	16	12	7	172
Consol	0	0	2	4	7	10	13	16	22	22	97
Total for Loans	0	60	84	97	106	107	103	109	118	115	898

Table 5.10B - Low Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	405	164	183	166	260	358	458	565	666	3,225
Mandatory	0	78	32	35	32	49	67	86	106	124	609
Total for Pell	0	483	196	218	198	309	425	544	671	790	3,834

Increased Program Transition Band

Our primary analysis assumes that programs in a one percent band around the relevant earnings threshold will transition from failing to passing, and vice versa, but the transition band could be higher. A sensitivity was modeled with a two percent band to demonstrate the effect of more programs changing between failing and passing statuses.

As reported in Tables 5.11A and 5.11B, we estimate that the regulations would result in an increase in title IV, HEA aid between fiscal years 2027 and 2036, regardless of whether a one or two percent band around the relevant earnings threshold is applied.

Table 5.11A - High Program Transition Band Sensitivity - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	33	45	47	50	52	51	54	56	57	445
Unsub.	0	28	36	37	37	31	24	27	32	31	284
PLUS (Par & Grad)	0	4	10	18	16	14	11	8	2	(2)	81
Consol	0	0	3	7	11	15	21	24	27	29	138
Total for Loans	0	65	94	109	114	112	108	113	118	116	949

**Table 5.11B - High Program Transition Band Sensitivity -
Estimated Annual Net Budget Impact for Pell Grants, Outlays
in Millions \$**

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	457	327	351	337	392	458	532	619	704	4,177
Mandatory	0	88	63	67	64	75	86	100	116	132	791
Total for Pell	0	545	390	418	401	467	544	632	735	836	4,968

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. As noted in the *Paperwork Reduction Act* section, some items are reductions in burden and others are increases, with a combination of one-time adjustments and recurring items. The net effect of this is a reduction in burden that is displayed as a benefit in the accounting statement. This is a contrast to the presentation in the *Paperwork Reduction Act* summary table that presents the annual burden without the subsequent net reductions in future years. Table 5.12 provides our best estimate of the changes in annualized monetized benefits,

costs, and transfers as a result of these proposed regulations.

Table 5.12 Accounting Statement for Primary Scenario

	Annualized Impact (millions, \$(2026))	
Category	Benefits	
	3 percent	7 percent
Net reduction in costs of compliance with paperwork requirements	\$108.6	\$99.1
Earnings gain for students at programs that are not low-earning outcome programs.	Not quantified	
Measures to improve programs at risk of failing, such as offering better student services, helping with career planning, and working with employers to ensure graduates have in-demand skills may lead to better graduation and labor market outcomes.	Not quantified	
Reduced risk that students enroll in high-cost programs that do not produce earnings that justify their costs	Not quantified	
Approximately 30 percent reduction in reporting elements required of institutions, many of which the Department can produce from its administrative data	Not quantified	
No loss of title IV, HEA aid and additional non-Federal revenues for programs, primarily programs at proprietary institutions and certificate programs from all sectors, that	Not quantified	

would lose eligibility under the current regulations but not the proposed regulations		
Category	Costs	
	3 percent	7 percent
Costs of system changes for Education to implement the proposed regulations	\$2.4	\$2.8
Federal implementation staffing and contract costs	\$1.4	\$1.6
Federal long-term staffing increases	\$0.9	\$0.9
Additional ongoing contract costs to operate and maintain systems to administer regulatory provisions	\$1.9	\$1.8
Potential for abrupt closures to disrupt enrolled students and impose search costs and financial costs to switch majors or institutions	Not quantified	
Reputational costs for former graduates of failing programs	Not quantified	
Students at lower-earnings certificate programs that would not remain eligible under the current regulations may earn less	Not quantified	
Reputational cost to institutions offering multiple failing programs	Not quantified	
Lost revenue from non-Federal sources because of enrollment declines at institutions with failing programs	Not quantified	
Category	Transfers	
	3 percent	7 percent
Reduced transfers from Federal government to Pell recipients at programs satisfying the earnings measure	\$497	\$475

Increased transfers of Federal loan dollars from the Federal Government to students at programs that pass the earnings measure	\$95	\$92
Transfer of State aid dollars from failing programs for dropouts	Not quantified	

6. Alternatives Considered

During the negotiated rulemaking process, the Department received more than 40 proposals from non-Federal negotiators representing numerous impacted constituencies on a variety of issues. Throughout the *Significant Proposed Regulations*, we noted proposals that were accepted by the committee, all other proposals were discussed and declined.

To view all submitted proposals, see here:

<https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>.

This section will summarize particularly significant alternatives to the proposed regulations which were declined during negotiated rulemaking.

§ 668.2 General definitions

In this rule, we propose to adapt the existing definition of the earnings threshold used in the earnings premium calculation under the current FVT regulations to conform with the earnings benchmark specified under the OBBB. This benchmark would use State or national earnings data from the ACS.

Some negotiators raised questions about various elements of the ACS, which is to be used to determine the earnings threshold for evaluation. In particular, negotiators expressed concern that the use of median earnings data at only the State or national level may disadvantage programs and institutions located in rural areas where expected wages may be lower compared to State and national medians.

The Department examined this issue and found that programs at rural institutions will be impacted by the proposed regulation at a roughly equivalent rate as the current regulation (Table 3.9). Specifically, the Department estimates that approximately 2.2 percent of enrollment at rural institutions is in programs that would fail under the proposed rule, which is a slight increase relative to the current regulations (1.7 percent). However, rural institutions would lose a smaller share of title IV, HEA funds under the proposed regulation relative to the current rule (1.1 percent vs. 1.4 percent).

Furthermore, the OBBB is highly prescriptive with regard to the precise manner in which program earnings would be evaluated, specifying factors for comparison such as age ranges, working status, education level, and geography. Congress did not include a regional price parity adjustment in Section 84001, even though they included it elsewhere in the OBBB for value-added earnings for eligible

workforce programs. The Department believes that the absence of a regional price parity in Section 84001, but its inclusion in other parts of the OBBB, suggests that Congress did not intend for the Department to adjust program earnings at rural institutions.

Another negotiator submitted a suggestion to adjust the earnings threshold for certificate programs having at least 75 percent of female completers downward to 85 percent of the median earnings for the comparison group to account for "gender-based" wage gaps. The Department disagrees with this proposal for several reasons. First, the Department does not believe that the statute allows this manner of adjustment to the earnings benchmark. Again, Congress was prescriptive regarding how the benchmark group must be defined. Second, such an adjustment could also undermine the consistent treatment of programs, could potentially lead to confusion among stakeholders, and would also appear to be in conflict with the spirit of Executive Order 14173's prohibition on identity-based preferential treatment based on race, color, sex, sexual preference, religion, or national origin. Third, the Department finds that undergraduate certificate programs that enroll at least 75 percent of female students do not earn less, on

average, than other types of programs after controlling for program field of study.⁷⁹

§ 668.402 Student tuition and transparency system framework.

In this rule, we propose to amend the existing FVT framework to harmonize with the earnings accountability framework provided under the OBBB. Among these changes, the proposed regulations would rescind the existing D/E rates metric, adapting the earnings premium measure as the sole earnings accountability metric.

Some negotiators proposed that the Department retain the D/E rates metric. These negotiators argued that D/E rates are valuable in preventing the flow of title IV, HEA funds to programs that leave students in a position where they may not be able to afford to repay their student debt. They further reasoned that D/E rates would remain important in the future because pending changes to Direct Loan limits under the OBBB may result in an increase in private lending. Other negotiators supported the Department's proposed changes to eliminate the D/E rates metric, noting that this change would reduce unnecessary complexity while preserving meaningful accountability. These negotiators

⁷⁹ For this analysis, the Department limited the sample to undergraduate certificate programs with earnings data and regressed program earnings on a binary indicator equal to 1 if at least 75 percent of program completers are female and program (cip4) fixed effects. Programs were weighted by the count of individuals in the earnings cohort (*count_wne_p4*) and standard errors were clustered at the program level. The coefficient on the indicator was not statistically significant at conventional levels.

reasoned that the change reflects statutory intent and may therefore reduce risk of future policy fluctuations.

As the Department notes above in the discussion of proposed § 668.402, we believe the proposed revision to remove the D/E rates metric reflects the intent of the OBBB, as the Direct Loan program accountability framework in revised HEA Section 454(c) establishes an earnings comparison metric only, not a debt-to-earnings measurement. While calculating an earnings premium measure requires very little reported data other than an accurate list of students who completed the program, D/E rates rely heavily on significant amounts of institutionally reported data regarding costs and sources of student financial assistance beyond the title IV, HEA programs. Such reporting can be burdensome and confusing for institutions and, given the Department's concerns about the completeness and accuracy of this reported data, we believe this data would be more appropriate for use in informational disclosures as we have proposed rather than in an accountability metric used to determine a program's eligibility for Direct Loan program funds.

Furthermore, the Department finds that maintaining the D/E metric would result in a very small increase in the overall share of programs that would fail the accountability framework. As shown in Table 6.1, maintaining the D/E metric would increase the share of

programs that fail from 5.1 percent to 5.3 percent (columns 3 vs. 4).⁸⁰ In real terms, this increase represents approximately 260 additional programs that would fail the accountability framework, which is an extremely small fraction of the 200,000+ programs that enroll title IV, HEA students nationally.

Furthermore, the Department believes this is likely an overestimate of impact of maintaining the D/E metric for two reasons. First, the debt measures in the PPD:2026 do not reflect the new annual Federal student loan limits that will take effect on July 1, 2026, under the OBBB. Those annual limits (\$20,500 for graduate programs and \$50,000 for professional programs) will reduce the debt that graduate and professional borrowers can accumulate, reducing the risk that program completers would accumulate unmanageable levels of debt.⁸¹ Second, the debt measure in PPD:2026 includes the debt of only Federal student loan borrowers, whereas the debt measure under the current regulation includes all students who received title IV, HEA aid, even if they did not borrow. That means the debt measure in PPD:2026 is higher than the one that would ultimately be used if the D/E metric was maintained in the proposed regulation, which would likely

⁸⁰ This analysis assumes that the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation are aligned with the new earnings definition from Section 84001 in the OBBB - specifically, the median earnings of working title IV graduates measured four years after completion who are not currently enrolled in college.

⁸¹ The Department approximates that a third of the programs it estimates would fail only the D/E test would instead pass once borrowers are subject to the OBBB loan limits for graduate and professional students.

result in a smaller share of programs failing the D/E test than what is estimated here.

In summary, the Department estimates that, at most, maintaining the D/E metric would result in a 0.2 percentage point increase in the overall share of programs that would fail the accountability framework. In the Department's view, this marginal addition would not justify the significant difference in complexity, cost, and administrative burden of including D/E rates.

Table 6.1 - Estimated Share of Failing Programs and Students in Failing Programs with D/E Maintained, by Credential Level

Credential Level	N	Share that Fail		
		Current Regs	Proposed Regs	Proposed Regs + Keeping DTE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	17,800	29.3%	18.1%	18.3%
Associate	23,400	1.6	6.0	6.2
Bachelor	52,400	0.3	1.4	1.5
Post-Bacc Cert	700	<0.1	1.3	1.3
Masters	24,600	0.4	4.2	4.3
Doctoral	6,200	0.2	0.4	0.8
Professional	1,100	0.8	2.3	2.5
Grad Cert	2,700	4.1	3.2	6.7
Total	128,900	4.6	5.1	5.3
B. Student-Weighted				
Undergrad Cert	1,726,900	39.4%	25.5%	25.5%
Associate	5,305,000	1.5	4.1	4.4
Bachelor	8,911,200	0.9	0.8	0.9
Post-Bacc Cert	21,300	<0.1	0.9	0.9
Masters	1,975,100	1.0	4.1	4.3
Doctoral	400,700	1.6	0.7	2.6
Professional	297,000	2.4	3.9	4.2
Grad Cert	113,800	5.7	5.4	11.3
Total	18,751,000	4.7	4.4	4.7

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV, HEA student counts. Ns are rounded to nearest 100. Total Ns may not sum to their subcomponents due to rounding. Title IV, HEA enrollment corresponds to enrollment during the 2024-25 award year. "DTE" = Debt to Earnings test. When calculating the Annual Earnings Rate and Discretionary Earnings Rate metrics, we use the 4-year median earnings of program completers who are working and not enrolled. This differs from current regulation, where those metrics are calculated using the 3-year median earnings of program completers who are not enrolled.

Source. Department of Education calculations using PPD:2026.

§ 668.403 Calculating earnings premium measure.

In this rule, we propose to calculate a program's earnings premium measure using the median annual earnings of working students who completed the program during the cohort period for the fourth tax year following program completion. As under the current FVT/GE regulations, a Federal agency with earnings data would provide this earnings data and the data would be unmodified other than the potential use of marginal statistical noise for privacy masking purposes.

Some negotiators proposed the use of alternative sources of earnings data. In particular, negotiators suggested that the Department consider obtaining earnings data from State data systems where available, speculating that such earnings data might in some cases be more accurate than data available at the Federal level and speculating that State data systems may improve over time. Other negotiators expressed concern about the use of non-Federal earnings data, noting that if the Department were to consider the use of State-level earnings data, the Department would need to evaluate whether the earnings data

is more reliable than what a Federal agency with earnings data would provide.

The Department disagrees with the proposal to use State-level earnings data, and we concur with the concerns of the negotiators who objected to this proposal. We believe it would be highly impractical for the Department to evaluate, on an ongoing basis for each State, whether the quality of State-level earnings data exceeds that of Federal-level earnings data. Moreover, even if this were feasible, HEA Section 454(c) does not provide authority for the Department to enter agreements with States to obtain State-level earnings data.

Some negotiators proposed that the Department adjust a program's median earnings data to account for various circumstances including tip income and self-employment. This discussion focused heavily on cosmetology programs, and negotiators suggested that the Department introduce an earnings modifier to address the possibility of unreported tipped income. Proponents of this view argued that some occupations - such as barbers - rely heavily on tips which may be underreported in Federal earnings data.

The Department disagrees with suggestions to adjust the median graduate earnings data for a program based on purported underreporting of tipped or self-employment income within an occupation. First, the Department's proposed approach includes earned income sources from work

as they are reported on IRS forms. Tip income is generally required to be reported to employers and included in the wages reported in box 1 of IRS Form W-2. Additional tip income not otherwise reported is required to be included with wage income on the filer's tax form. Any existing underreporting of income would impact both sides of the earnings premium calculation, i.e., both the measured median earnings of program graduates and the benchmark median earnings of working adults in the earnings threshold.

Second, the Department examined the share of cosmetology programs that would fail the accountability framework under the proposed regulation (Tables 3.16, 3.17, and 3.19). We found that cosmetology programs perform better under the Department's proposed regulation relative to the baseline without an earnings adjustment, implying that, at minimum, these programs will be better off than they would if the existing regulations were left unchanged.

Third, the Department finds that an earnings adjustment for cosmetology programs would not result in a meaningful change in fail rates for these programs (Table 6.2). Even with an 8 percent earnings boost, the vast majority of cosmetology programs (84 percent) would still fail the accountability framework under the proposed rule. These findings align with points raised by other negotiators, who argued that tips are usually reported, and

that to the extent that they may be underreported, that underreporting is minimal.

Table 6.2 - Estimated Share of Cosmetology Certificate Programs that Fail, with Earnings Adjustment

Cosmetology and Related Personal Grooming Services.	Credential Level	N	Share that Fail		
			Current Regs	Proposed Regs	Proposed Regs + Boosted Earnings
		(1)	(2)	(3)	(4)
Programs	Ug Cert	1,200	97.4%	92.5%	83.9%
Students	Ug Cert	225,400	97.3	92.5	83.6
Title IV Volume	Ug Cert	1,424	97.9	88.3	80.4

Notes. Program and student N sizes are rounded to the nearest 100. Title IV Volume, in \$ millions, is rounded to the nearest million. Percentages in columns 2, 3, and 4 are computed prior to rounding. In column 4, program earnings are boosted by 8 percent, reflecting the estimated share of un-reported tipped income found in Cellini & Blanchard (2022).

Source. Department of Education calculations using PPD:2026.

Fourth, Congress specifically selected the use of median earnings rather than mean earnings for both the program and benchmark earnings, likely because it would take over half of the respective earners to shift the median value by even a small amount. Adjusting graduate earnings across the board by any amount would over adjust for any unreported or underreported earnings, to the extent they may exist.

Fifth, negotiators arguing for an earnings adjustment offered no practical way to determine which programs, and by what amount, earnings should be adjusted to account for the possibility of unreported tips. There is limited research on the extent of underreporting of tipped income

by occupation, and the Department does not believe it is appropriate to create a variance for one type of program without clearer information about the extent to which underreporting exists in other occupations.

For all of these reasons, the Department determined that providing an earnings adjustment for certain programs to account for the possibility of unreported tipped income or self-employment income would be infeasible, burdensome, and arbitrary without stronger data to support establishing a variance to account for unreported earnings for particular types of programs.

Negotiators also suggested modifying a program's median earnings data to account for less than full-time work. The negotiators noted that in certain occupations, graduates may routinely work less than full time, which they argued would unfairly skew earnings premium results that compare their earnings to a full-time earnings benchmark. Other negotiators countered that the statute clearly defines the benchmark group and noted that it would be inappropriate to distinguish between full-time and part-time earnings because all graduates have costs, regardless of how many hours they choose to work. A negotiator further observed that a key function of higher education is to prepare students to obtain better jobs, and to that end the regulations should incentivize full-time work.

The Department disagrees with the suggestion to adjust program earnings to account for the possibility that graduates choose to work less than full time. It is important to note that although some graduates may work less than full time, the same is true of the earnings benchmark group, which considers all applicable working adults of ages 25 through 34 regardless of the number of hours worked. HEA Section 454(c) does not specify that only graduates working full time should be measured, nor does the statute seek to compare graduate earnings to only full-time working adults. Adjusting either side of the earnings premium equation would necessitate adjusting the other, and doing so would invite significant burden, costs, and increased risk of inaccurate determinations. Furthermore, this suggestion may not be feasible since the Federal agency with earnings data may not have access to information on the hours worked by program graduates, preventing them from making adjustments based on full-time and part-time work status. The Department also believes that the statute does not authorize this type of adjustment, as it would circumvent the specific methodology prescribed by Congress.

§ 668.601 Earnings accountability scope and purpose.

In this rule, we propose implementing the accountability framework required under the OBBB pertaining to Direct Loan program eligibility of undergraduate degree

programs, graduate and professional degree programs, and graduate nondegree programs, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs). Some negotiators proposed that the Department entirely rescind the existing GE accountability framework in favor of the OBBB accountability framework to reduce regulatory complexity. Other negotiators argued for retaining the existing GE accountability framework without alteration, arguing that it provides students and taxpayers a greater degree of protection from poorly performing undergraduate certificate programs and that fully rescinding the current GE accountability framework would exclude undergraduate certificate programs from oversight, putting students and taxpayers at increased risk.

As further discussed in the **"Significant Proposed Regulations"** section above, although undergraduate certificate programs were not specifically mentioned in Section 84001 of the OBBB, Congress nonetheless did not explicitly forbid the Secretary from applying the accountability framework to those programs, nor did Congress choose to otherwise eliminate, limit, or curtail the Department's existing GE accountability framework, either when crafting the OBBB or in any other prior legislative act. Congress was in fact aware when passing the OBBB that undergraduate certificate programs were

already covered using a similar earnings test under the Department's existing GE accountability framework. The Department therefore believes that rescinding the existing GE framework altogether, thereby excluding undergraduate certificate programs from the accountability framework, would contradict Congressional intent for program accountability in higher education, and we agree with the negotiators who noted that doing so would put students and taxpayers at increased risk.

However, we also disagree with the proposal to maintain the existing GE accountability framework in its current form, because maintaining competing GE and OBBB accountability frameworks would add significant complexity, increase administrative burden and costs for institutions and the Department, and could generate increased confusion for students in comparing and understanding differing informational disclosures and warnings generated from multiple frameworks that apply to different types of institutions and programs. We view harmonization of the existing FVT/GE framework and the OBBB accountability framework to be essential in establishing parity among institutions and program types through a single accountability framework that covers the vast majority of programs qualifying for title IV, HEA assistance and nearly all title IV, HEA recipients.

To better understand this issue, the Department examined the share of programs and students who would attend failing programs if the existing GE accountability framework was entirely rescinded (Table 6.3). We find that entirely rescinding the GE accountability framework would result in half as many failing programs relative to the proposed rule which maintains the GE accountability framework (2.6 percent vs. 5.1 percent). The reduction is entirely driven by undergraduate and graduate certificate programs: these programs would be exempt from the accountability framework if the GE regulation was rescinded. In addition to the reasons stated in the **"Significant Proposed Regulations"** section above, the Department believes maintaining the GE accountability framework is important because these programs usually produce earnings outcomes that are lower than other programs.

Table 6.3 - Estimated Share of Programs that Fail and Students in Failing Programs if GE were Eliminated, by Credential Level

Credential Level	N	Share that Fail		
		Current Regs	Proposed Regs	Proposed Regs + Eliminate GE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	17,800	29.3%	18.1%	0.0%
Associate	23,400	1.6	6.0	6.0
Bachelor	52,400	0.3	1.4	1.4
Post-Bacc Cert	700	<0.1	1.3	0.0
Masters	24,600	0.4	4.2	4.2
Doctoral	6,200	0.2	0.4	0.4
Professional	1,100	0.8	2.3	2.3
Grad Cert	2,700	4.1	3.2	3.2
Total	128,900	4.6	5.1	2.6
B. Student-Weighted				
Undergrad Cert	1,726,900	39.4%	25.5%	0.0%
Associate	5,305,000	1.5	4.1	4.1
Bachelor	8,911,200	0.9	0.8	0.8
Post-Bacc Cert	21,300	<0.1	0.9	0.0
Masters	1,975,100	1.0	4.1	4.1
Doctoral	400,700	1.6	0.7	0.7
Professional	297,000	2.4	3.9	3.9
Grad Cert	113,800	5.7	5.4	5.4
Total	18,751,000	4.7	4.4	2.1

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student counts. Ns are rounded to nearest 100. Percentages in columns 2, 3, and 4 are computed prior to rounding. Source. Department of Education calculations using PPD:2026.

Some negotiators suggested that programs that lead to low earning outcomes under the proposed accountability framework should lose access to all title IV, HEA programs, as under the current GE accountability framework, rather than losing eligibility for the Direct Loan program only. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on programs that are not performing well, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would better incentivize institutions to shift their program offerings away from failing programs or to

improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would in many cases already lead to the closure of the program or possibly the institution itself.

The Department notes that it has a greater interest in applying the accountability framework to the Direct Loan program because, unlike the other programs under title IV, HEA, the government and taxpayers expect loan funds to be repaid. We further note that the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. To the extent that undergraduate certificate programs would be covered by the proposed accountability framework under the GE statutory authority, we believe that authority does not explicitly require the loss of all title IV, HEA eligibility as the sole remedy for noncompliance. In addition, the further proposed changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16 would terminate title IV, HEA eligibility for all of an institution's low-earning outcome programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs. We believe these proposed provisions would sufficiently

address concerns about continued Pell Grant eligibility for institutions whose programs lead to consistently poor earnings outcomes for students.

§ 668.603 Low-earning outcome programs

In this rule, we propose to provide all institutions the option to appeal a low-earning outcome program's loss of Direct Loan program eligibility. Similar to the current GE accountability framework, the proposed earnings accountability framework would limit appeals to instances where the Department erred in the calculation of the program's EP measure.

Some negotiators proposed broadening the factors that an institution could appeal to include the underlying median graduate earnings data used to calculate the earnings premium measure, arguing that there would otherwise rarely be a basis for an institution to appeal under the proposed criteria as both the median graduate earnings and earnings benchmark would be based on elements an institution could not dispute. Negotiators further suggested that the Department consider alternative earnings survey data that might address limitations in available administrative earnings data and improve fairness and due process. Other negotiators expressed support for the scope of the appeals process as proposed, arguing that appeals in other areas of title IV, HEA administration, such as cohort default rates, can sometimes consume significant time and

costs, that the earnings standards set forth in the OBBB are specific, and appeals must not circumvent the will of Congress.

The Department disagrees with negotiators who claimed that the proposed basis for appeals would deprive institutions of a meaningful opportunity to appeal a low-earning outcome determination. As under the current GE framework, institutions would have the opportunity to review and correct the list of completers provided to the Federal agency with earnings data to obtain median graduate earnings and could meaningfully appeal any discrepancies pertaining to the completers list. The Department emphatically disagrees with suggestions to allow appeals on the basis of alternative earnings data. IRS earnings data represents the highest quality and most accurate available data source and, accordingly, is also currently used for many other title IV, HEA purposes such as determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Federal requirements for accurate reporting of income and the increasing prevalence of electronic transactions make underreporting income both more difficult and less likely than under past accountability frameworks. The Department also remains concerned about the low quality of data submitted by institutions in alternate earnings appeals,

such as graduate earnings surveys and employment verifications, given the Department's experience with such data in appeal submissions under past iterations of GE regulations.

HEA Section 454(c)(5) does not require the Department to consider appeals of earnings data, only of the low-earning outcome determination in HEA Section 454(c)(2). If the Department fails to thoughtfully and purposefully manage the scope and basis of appeals, it could result in institutions inundating both the Department and, potentially, the courts with cumbersome appeals and challenges that are unlikely to prevail but would, nonetheless, generate significant burden and costs for both institutions and the Department, all while delaying accountability and leaving students and taxpayers at continued risk during the appeals process. While we understand concerns about the consequences for institutions and students if a program loses Direct Loan program eligibility under the proposed earnings accountability framework, it is equally important to recognize that in any meaningful accountability framework, some programs will fail. Finally, even given the limited grounds for appeals under the proposed rule, to address truly extenuating circumstances we note that the Department still has the option to exercise other existing authorities to waive or modify title IV, HEA program requirements in national

emergencies and has exercised these authorities in the past when appropriate.

Regulatory Flexibility Act:

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 (APA) or any other statute unless the agency certifies that the rule will not have a "significant impact on a substantial number of small entities."

This proposed regulation amends the current gainful employment regulation to implement statutory changes to the title IV, HEA programs included in the OBBB. Currently, the Department's regulations apply two tests- a debt-to-earnings test and an earnings premium test- to all undergraduate certificate programs and any program offered

by proprietary institutions. If these programs fail one of the tests in two out of three consecutive award years, they lose eligibility for all types of title IV, HEA program funding, including both Pell Grants and Direct Loans. As stated throughout the RIA, the Department's baseline assumes the current gainful employment regulations are in effect. This is because, in the absence of the proposed rule, the requirements in the current regulation would be calculated. This is why we use the impact of the current regulation as the baseline to judge the impact of the proposed rule.

The OBBB applies an earnings premium test ("accountability framework") to each degree program at institutions, expanding the universe of affected programs to include degree programs at non-profit and public institutions. Programs where the median earnings of graduates do not meet a specified threshold in two out of three years lose access to title IV, HEA student loans. Under a separate provision (standards of administrative capability) the proposed regulations require that if a majority of an institution's students or title IV, HEA disbursements are in programs that fail the accountability framework for three years, those programs also lose access to Federal Pell Grants. The proposed regulation also modifies the current FVT/GE rule to replace its eligibility tests with the same earnings tests as under OBBB. However,

the law and the Department's proposed regulations would also eliminate one of the two tests by which programs are judged, i.e., the debt-to-earnings test. The law and regulations also amend the earnings premium test that is not as strict as the current version of the test.

For the purposes of this certification the Department has defined "significant economic impact" as increasing or reducing a small entity's revenues by more than 3 percent, and a "substantial number of small entities" as more the 5 percent of institutions that meet the Department's definition of a small entity.

While the Department is unable to assess the revenue effects of the proposed regulation on individual institutions of higher education due to missing data on the earnings of program completers (see "Data Limitations & Assumptions" section above), the Department can assess the average effects on institutions within different categories. Using that approach, the Department has determined that small institutions will experience a 0.5 percent increase in revenue on average due to the proposed regulations, less than what the Department defines as a significant economic impact. Small institutions are likely to experience an increase in revenue because the proposed accountability framework includes an easier earnings test than under the current accountability framework, resulting in fewer programs failing (and losing access to Federal

Title IV funds) within small institutions. Furthermore, the Department determines that each of the four subcategories of small institutions we examine will experience a change in total revenues of less than 3 percent (Table 7.4).

Description of, and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will 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 institutions of higher education, which do not report such data to the Department. 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. We construct four different categories of small entities for the purposes of classifying higher education institutions:⁸²

(1) Extremely Small (1-249 FTE, full-time equivalent student enrollees);

(2) Very Small (250-499 FTE);

⁸² The Department consulted with the SBA Office of Advocacy regarding the use of an alternative size standard. The Department seeks comments on the appropriateness of this size standard for this rule.

(3) Moderately Small (500-749 FTE); and

(4) Small (750-999 FTE).

Table 7.1 summarizes the number of institutions affected by these proposed regulations. In total, 53 percent of institutions are classified as small institutions under the enrollment-based definition. Specifically, 33 percent are Extremely Small (1-249 FTE), 9 percent are Very Small (250-499 FTE), 6 percent are Moderately Small (500-749 FTE), and 5 percent are Small (750-999 FTE).

As seen in Table 7.2, small entities (all four categories combined) in the public sector generate \$3.9 billion in revenues annually, small entities (all four categories combined) in the private non-profit sector generate \$11.7 billion in revenues annually, and small entities (all four categories combined) in the proprietary sector generate \$4.5 billion in revenues annually. An outsized share of these revenues come from institutions in the largest category of small entities (institutions with 750-999 FTE). These institutions make up just 9 percent of all institutions classified as a small entity (having fewer than 1,000 FTE) but comprise 36 percent of the annual revenues generated by these institutions.

Table 7.1 - Number of Small Institutions Under Enrollment-Based Definition, by Sector

	Small Entities					All Colleges	Percent Small
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal		
A. Public							
Public, Primarily 4yr	0	5	5	10	20	542	3.7%
Public, Primarily 2yr	180	68	68	81	397	1,231	32.3
Total	180	73	73	91	417	1,773	23.6
B. Non-Profit							
Non-prof, Primarily 4yr	288	101	119	103	611	1,372	44.5%
Non-prof, Primarily 2yr	154	34	21	8	217	246	88.2
Total	442	135	140	111	828	1,618	51.1
C. For-Profit							
For-prof, Primarily 4yr	29	15	10	5	59	100	59.0%
For-prof, Primarily 2yr	950	226	70	57	1,303	1,433	90.9
Total	979	241	80	62	1,362	1,533	88.8
Grand Total	1,601	449	293	264	2,607	4,924	52.9%

Notes: Institutions are defined using OPEID6 identification codes. in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length. Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Table 7.2 - Total Revenue in 2023-24, by Institution Size Categories (\$ in millions).

	Small Entities					All Colleges	Percent Small
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal		
A. Public							
Public, Primarily 4yr	0.0	92.7	170.7	514.4	777.8	361,144.6	0.2%
Public, Primarily 2yr	199.9	364.8	852.9	1,655.5	3,073.1	111,857.5	2.7
Total	199.9	457.5	1,023.6	2,169.9	3,850.9	473,002.1	0.8
B. Non-Profit							
Non-prof, Primarily 4yr	1,751.5	1,886.5	3,191.7	4,001.6	10,831.4	312,634.4	3.5%
Non-prof, Primarily 2yr	295.1	214.9	248.3	135.3	893.7	14,450.3	6.2
Total	2,046.6	2,101.4	3,440.0	4,136.9	11,725.1	327,084.7	3.6
C. For-Profit							
For-prof, Primarily 4yr	66.0	129.3	175.2	173.2	543.7	9,795.3	5.6%
For-prof, Primarily 2yr	1,377.5	1,111.9	624.2	825.7	3,939.3	10,686.9	36.9
Total	1,443.5	1,241.2	799.4	998.9	4,483.0	20,482.2	21.9
Grand Total	3,690.0	3,800.1	5,263.0	7,305.7	20,059.0	820,569.0	2.4%

Notes: Institutions are defined using OPEID6 identification codes. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutional revenues are from the 2023-24 academic year. Institutional revenues are defined using the fld01, f2b01, and f3d09 variables in IPEDS. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Table 7.3 compares the share of programs at small entities that are estimated to fail the accountability framework under the current regulations and the accountability framework under the proposed regulations. Both the current and proposed regulations include accountability frameworks and Table 7.3 shows the fail rates under each, revealing the net change from the proposed regulation. Relative to the current regulations, programs at small entities will fail at slightly lower rates under the proposed regulations. We find similar results when weighting estimates by title IV enrollments (Panel B).

Table 7.3 - Estimated Share of Programs that Fail and Enrollment in Programs that Fail, by Institution Size Categories

Institution Size Category	N	Share that Fail	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Program-Weighted			
Extremely Small (1-249 FTE)	2,100	61.2%	57.1%
Very Small (250-499 FTE)	1,700	41.2	34.6
Moderately Small (500-749 FTE)	2,500	15.3	12.7
Small (750-999 FTE)	3,300	13.5	12.3
Small Subtotal	9,600	29.3	26.2
All Colleges	128,900	4.6	5.1
B. Student-Weighted			
Extremely Small (1-249 FTE)	161,000	69.4%	64.6%
Very Small (250-499 FTE)	167,900	52.6	48.9
Moderately Small (500-749 FTE)	187,400	24.5	23.6
Small (750-999 FTE)	246,800	24.8	23.6
Small Subtotal	763,100	40.3	37.8
All Colleges	18,751,000	4.7	4.4

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to nearest 100. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

To assess the impact of the proposed regulation on small entities, the Department estimated how much revenue institutions may lose on average when programs become ineligible for title IV, HEA funds because their programs fail the accountability framework. Note that because the current regulations already include an accountability

framework⁸³, the Department's analysis is concerned with the change in program fail rates and revenue effects relative to the current regulations. The potential loss in revenue for small institutions can be compared with small institutions' total revenue to determine the effect on small entities (Table 7.4).

On average, small institutions are at risk of losing 11.3 percent of their total revenue due to the loss of title IV, HEA funds under the current regulations. Under the proposed regulations they are estimated to lose 10.8 percent of their revenue. That results in a net change of 0.5 percent in revenue due to the proposed regulations. Extremely small entities are the most impacted subgroup. Under the current accountability framework, they are at risk of losing 28.8 percent of their revenue, but under the proposed framework they are at risk of losing 26.0 percent of revenue, resulting in a net increase in funds equal to 2.8 percent of their revenue. Extremely small entities are the most affected subgroup because they tend to offer the types of programs (mainly undergraduate certificates in fields such as cosmetology) that see the largest change in eligibility for title IV, HEA funds under the proposed regulation.

⁸³ See Financial Value Transparency and Gainful Employment, 88 FR 70004, 70095 (Oct. 10, 2023).

Table 7.4 - Estimated Annual Federal Title IV, HEA Aid Volume and Institutional Revenues to Programs that Fail, by Institution Size Categories

Institution Size Category	Annual Title IV Volume (\$ Millions)	Share of Volume in Failing Programs	Total Institutional Revenue (\$ Millions)	Share of Title IV Volume in Failing Programs as a Share of Total Revenue
A. Current Regulations				
Extremely Small (1-249 FTE)	1,154.7	64.7%	2,588.1	28.8%
Very Small (250-499 FTE)	1,337.4	45.2	3,597.8	16.8
Moderately Small (500-749 FTE)	1,830.4	18.8	5,166.2	6.7
Small (750-999 FTE)	1,906.9	20.5	7,139.3	5.5
Small Subtotal	6,229.4	33.5	18,491.4	11.3
All Colleges	115,991.0	5.0	818,194.3	0.7
B. Proposed Regulations				
Extremely Small (1-249 FTE)	1,154.7	58.2%	2,588.1	26.0%
Very Small (250-499 FTE)	1,337.4	43.6	3,597.8	16.2
Moderately Small (500-749 FTE)	1,830.4	21.3	5,166.2	7.6
Small (750-999 FTE)	1,906.9	17.9	7,139.3	4.8
Small Subtotal	6,229.4	31.9	18,491.4	10.8
All Colleges	115,991.0	3.9	818,194.3	0.6

Notes. Annual volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutional revenues are from the 2023-24 academic year. Institutional revenues are defined using the fld01, f2b01, and f3d09 variables in IPEDS. Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Lastly, the Department examined the types of programs at small institutions that are estimated to fail the accountability framework at the highest rates (Table 7.5). As shown in Panel A, approximately 93% of cosmetology certificate programs (CIP=12.04) at small institutions are estimated to fail, which is the highest rate among all programs at small entities where there were at least 50 programs with non-missing earnings data. However, when compared the current accountability framework, these programs at small entities will fail at slightly lower

rates relative to the existing baseline (97%). Other common types of programs at small institutions that are estimated to fail the accountability framework in the proposed regulation include undergraduate certificate programs in somatic bodywork (CIP=51.35), allied health (CIP=51.08), dental support services (CIP=51.06), and health administrative services (CIP=51.07). Again, each of these programs will fail the accountability framework at lower rates relative to their fail rates under the current baseline.

The two most common types of programs at small entities that will fail at higher rates under the proposed regulation (relative to the baseline) are associate degree programs in liberal arts and sciences (CIP=24.01) and allied health diagnostic treatment (CIP=51.09). These programs at small institutions fail at higher rates under the proposed regulation because many of these degree programs were offered at institutions that were previously exempt from the accountability framework under the current regulation. Similar estimates are reported in Panels B and C, which are weighted by Title IV enrollment counts and title IV student aid volume, respectively.

Table 7.5 - Estimated Share of Programs, Enrollment, and Title IV Volume for the Fifteen Most-Impacted Programs at

Small Institutions (FTE < 1,000) Under the Proposed

Regulation

Program (CIP4)	Credential Level	N	Share that Fail	
			Current Regs (2)	Proposed Regs (3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	940	97.2%	92.8%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	170	98.3	90.6
Allied Health and Medical Assisting Services. (5108)	Ug Cert	330	89.2	45.8
Dental Support Services and Allied Professions. (5106)	Ug Cert	110	83.8	43.9
Health and Medical Administrative Services. (5107)	Ug Cert	200	85.4	40.3
Allied Health and Medical Assisting Services. (5108)	Associate	130	20.1	16.7
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	140	<0.1	13.0
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	180	20.0	3.6
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	140	2.8	3.3
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	130	17.5	2.8
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	410	7.2	2.5
Precision Metal Working. (4805)	Ug Cert	130	20.5	1.2
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	120	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	200	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	180	<0.1	<0.1
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	167,900	96.6%	94.7%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	10,700	99.6	94.8
Allied Health and Medical Assisting Services. (5108)	Ug Cert	30,800	92.4	44.0
Dental Support Services and Allied Professions. (5106)	Ug Cert	6,000	90.3	58.9
Health and Medical Administrative Services. (5107)	Ug Cert	7,700	81.8	59.5
Allied Health and Medical Assisting Services. (5108)	Associate	6,200	24.9	20.6
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	36,300	<0.1	6.3
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	9,600	16.8	2.9
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	17,600	1.8	2.2
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	18,000	5.5	0.7
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	43,700	6.3	2.2
Precision Metal Working. (4805)	Ug Cert	9,300	32.9	4.8
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	17,900	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	31,800	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	19,700	<0.1	<0.1
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	\$1,114	97.4%	97.1%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	56	99.6	96.5
Allied Health and Medical Assisting Services. (5108)	Ug Cert	206	93.0	54.2
Dental Support Services and Allied Professions. (5106)	Ug Cert	38	89.8	64.1
Health and Medical Administrative Services. (5107)	Ug Cert	41	85.7	68.2
Allied Health and Medical Assisting Services. (5108)	Associate	39	29.0	26.7
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	127	<0.1	10.8
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	60	23.6	2.9
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	158	2.1	3.0
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	173	3.0	0.5
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	323	5.5	2.5
Precision Metal Working. (4805)	Ug Cert	55	36.3	8.4
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	123	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	212	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	139	<0.1	<0.1

Notes. The sample of programs is limited to include only the subset of programs offered at small entities (defined as FTE < 1,000). The fifteen programs on this list are the fifteen programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the proposed regulations in which there were at least 50 programs with non-missing earnings data nationally at institutions classified as small entities. In Panel A, "N" refers to program counts. In Panel B, "N" refers to Title IV student enrollment counts. In Panel C, "N" refers to total Title VI Loan Volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 10 in Panel A, to the nearest 100 in B, and to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and Title IV volume correspond to the amounts in the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

Alternatives Considered (Small Entities)

The Department examined whether the proposed regulation could incorporate other options or changes to the rule intended to make compliance less burdensome for small institutions of higher education. Specifically, the Department considered whether small institutions of higher education could be exempted from the changes to the statute in the proposed regulation, or whether they could be granted a delayed start date to the changes. The Department does not have discretion in the OBBB to exempt certain institutions of higher education from the OBBB requirements. The statute also establishes the effective dates for the changes to the Federal student loan program and does not leave flexibility for the Department to consider granting a delay in compliance for small entities that may benefit from such a delay. Therefore, the Department determined that none of these options would be permissible under the statute, and could not identify any reasonable alternatives given the statutory directives. The agency invites comments on reasonable alternatives that are consistent with the stated objectives of the statute.

The Department acknowledges that this analysis defines small entities based on institutions' enrollment. The Department is interested in comments addressing this approach and other alternatives if they were to more fully capture the impact of the proposed regulation on small entities. The Department welcomes comments and data from

the public that may help it improve its impact analyses for small entities with respect to the changes in this proposed regulation.

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 make certain 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.

§ 600.10 Date, extent, duration, and consequence of eligibility, § 600.21 Updating application information, § 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program Summary

Sections §§ 600.10 and 600.21 would require a school to report all of its Direct Loan-eligible programs on its Eligibility Application (E-App). GE programs and eligible non-GE programs would need to meet the requirements of

STATS and earnings accountability to maintain eligibility for participation in the Direct Loan program. Currently only GE programs must be reported to the Department in all circumstances.

Burden

These regulatory changes 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.

§ 668.2 General Definitions

Summary

Institutions would be required to incorporate several key definitions related to earnings accountability into their policies and procedures. **Burden**

Proposed § 668.2 would create burden on institutions.

Institutions would be required to review the new regulations (8 hours), identify the scope of the new requirements and updates needed (20 hours), amend their policies and procedures (20 hours), train staff (80 hours), and update relevant systems (160 hours). The Department estimates this will take 288 hours per institution.

Entity	Respondents	Hours	Burden Hours
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Public	1,869	288	538,272
Private	1,674	288	482,112
For Profit	2,083	288	599,904
Total	5,626		1,620,288

§ 668.14 Program Participation Agreement

Summary

An institution would be permitted to appeal the Secretary's determination that a program is a low-earning outcome program under § 668.603(a)(2) based on the data used in the calculation. An institution would also be permitted to appeal the Secretary's determination that a program has failed to meet the proposed administrative capability conditions at proposed § 668.16(t) in two out of three consecutive award years.

Burden

The Department estimates that approximately 6,520 programs could fail the earnings premium measure the first year the calculation becomes effective. We believe that most programs that fail in the first year will fail in the next. For that reason, we anticipate that 40 percent of those programs will choose to do an orderly shutdown of the program that failed the earnings premium measure. Of the remaining 3,912 we anticipate that 50 percent of programs would seek an appeal, which is very common for institutions to do. However, the Department is also

proposing to limit an institution's ability to appeal only in instances where the institution believes the Department erred in its calculations. These regulations also propose an opportunity for an orderly program closure the first year a program fails the earnings premium metric.

Taking these factors into consideration, we expect about half of the institutions with a program that has lost Direct Loan eligibility may appeal the decision. If it takes an institution three hours to file an appeal, we anticipate this would increase 5,868 burden hours assigned to 1845-0022 Student Assistance General Provisions.

1,956 programs x 3 hours = 5,868 total burden hours.

Entity	Respondents	Hours	Burden Hours
Public	1,065	3	3,195
Private	387	3	1,161
For Profit	504	3	1,512
Total	1,956	N/A	5,868

§ 668.16 Standards of administrative capability

Summary

Proposed § 668.16 would require an institution to demonstrate that they have administrative capability by maintaining the standard that at least half of the institution's students and half of institutions' total title IV, HEA funds do not come from students enrolled in low-earning outcome programs. Failure to do so would cause the institution to be placed on a provisional PPA.

Burden

The Department does not believe proposed changes to 668.16(t) will increase burden on institutions, as administrative capability is an existing requirement of eligibility for title IV, HEA funds. However, we believe it may take institutions time to acknowledge and understand the new requirements. For that reason, we are adding 1 hour of burden per institution.

$5,626 \times 1 \text{ hour} = 5,626 \text{ burden hours}$

§ 668.43 Institutional and programmatic information**Summary**

The proposed regulation would limit the requirements for providing a prominent link to the program information website to only pages containing cost, financial aid, or admissions information. This will reduce burden on institutions.

Burden

When the Department proposed § 668.43 in 2023, it was estimated that these requirements would add an additional 5,230 responses and 261,500 hours of burden to 1845-0022. We propose to remove half of the burden for this regulation while retaining the current assessment of 5,230 responses.

$261,500 \text{ hours} / 2 = 130,750$

5,230 responses

§ 668.91 Initial and final decisions**Summary**

The Department proposes adding "eligible non-GE programs" to the requirements of these regulations.

Burden

The Department does not believe this regulation adds additional burden to institutions because this regulation pertains to final decisions on punitive actions. Any burden an institution may face because of this proposed regulation has already been accounted for elsewhere in this section.

§ 668.401 Student tuition and transparency system scope and purpose

Summary

Proposed regulations would require institutions to remove references to the debt-to-earnings metric and update, where necessary, the earnings premium metric.

Burden

Institutions would be required to review the revised earnings premium measure (10 hours), remove any references to the debt-to-earnings metric, and add the revised earnings premium measure to policies, procedures, systems, operations (160 hours), and train staff (60 hours).

230 hours x 5,626 institutions = 1,293,980 burden hours

§ 668.402 Student tuition and transparency system framework

Summary

Section 668.402 proposes to amend the current FVT/GE framework. The Department proposes removing the D/E rate metric and using only using an earnings premium measure.

Burden

Proposed § 668.402 would decrease burden on institutions. The new approach would use significantly less data reported by institutions and instead rely on administrative enrollment data that institutions have become accustomed to reporting. Currently, there are 5,104,110 burden hours assigned to 1845-0184. With the new framework, institutions will still have recordkeeping and reporting requirements, however, the Department estimates the proposed rule will eliminate 30 percent of the currently assessed reporting burden. This results in a decrease of 1,531,233 burden hours.

30 percent of 5,104,110 = 1,531,233

§ 668.403 Calculating earnings premium measure**Summary**

Proposed 668.403 explains the process the Secretary uses to calculate the earnings premium measure.

Burden

The Secretary is responsible for calculating the earnings premium measure; therefore, we are not changing any institutional burden based on this proposed regulation.

§ 668.404 Process for obtaining data and calculating earnings premium measure**Summary**

Section 668.404 of the proposed regulations explains the processes for the Secretary to obtain data to calculate the

earnings premium measure. The Secretary will send institutions lists of completers based on the requirements in this proposed regulation. An institution would have 60 days from receiving the lists to correct any information on the lists.

Burden

This would create burden on institutions. Proposed § 668.403 would allow an institution to review information by the Secretary and correct the information, if necessary, within 60 days of receiving the list. While this regulation is permissive rather than instructive, the Department believes that 80 percent of institutions would still take time to review the information on the list provided by the Department. If it takes an average of 3 hours to review the information, this adds 13,503 burden hours to 1845-0022.

Note that although this is not a new requirement, it was not reflected in the PRA analysis for the FVT/GE regulations in which this requirement originated.

Therefore, the Department is calculating burden for this requirement in these proposed regulations.

80 percent of 5,626 = 4,501 institutions

4,501 institutions x 3 hours = 13,503 burden hours

§ 668.405 Determination of the earnings premium measure

Summary

Section 668.405 describes the notice of determination that the Secretary sends to institutions each year with information on the outcomes of their programs.

Burden

The Department estimates it will take an institution 2 hours to review the notice of determination. This adds 11,252 additional burden hours.

5,626 institutions x 2 hours = 11,252 burden hours.

§ 668.406 Reporting requirements

Summary

Section 668.406 proposes reporting requirements for these regulations.

Burden

As stated in earlier sections of this NPRM, the Department estimates that under the proposed regulations, there could be a 30 percent decrease in burden on institutions for reporting. In 2023, we estimated that the annual burden hours for all institutions for reporting would be 1,459,603 hours. The Department believes there will be a 30 percent reduction in burden and will remove 437,801 hours from 1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings.

30 percent of 1,459,603 = 437,801 less burden hours

§ 668.601 Earnings accountability scope and purpose

Summary

Section 668.601 proposes to apply the earnings accountability program eligibility consequences to both GE programs and eligible non-GE programs. Previously, the program-level eligibility consequences only applied to GE programs.

Burden

Institutions will be required to apply the earnings accountability metric to nearly all of their title IV eligible programs. This would require an institution to review the new regulations and new metrics (8 hours), update relevant systems (100 hours), and update policies and procedures and train staff (100 hours). This would add 208 burden hours to institutions.

208 hours x 5,626 institutions = 1,170,208 total burden hours

§ 668.602 Earnings accountability criteria

Summary

The Department proposes to amend and rename § 668.602 to conform with proposed regulations.

Burden

We expect any burden stemming from this proposed regulation would be minimal, as the proposed regulation seeks to conform to the language in the regulation to align with new statutory requirements rather than alter any information collections.

668.603 Low-earning outcome programs

Summary

Under the proposed regulations, a program that has failed the earnings premium measure metric, as long as it is not yet a low-earning outcome program, could conduct a voluntary orderly program closure. This would require the institution to meet certain program discontinuation requirements. A voluntary orderly program closure would allow the program to retain Direct Loan eligibility for no more than 3 years while currently enrolled students completed their program.

Burden

The Department estimates that 6,520 programs will fail the earnings premium metric in the first year that the metrics are calculated. Of these, the Department predicts that 40 percent, or 2,608, will choose to complete a voluntary orderly program closure. Based on comparable situations, we anticipate it would take an institution 40 hours of preparation for an orderly program closure, which would include informing students and providing options and agreeing to amend their PPA. We estimate an additional 6 hours for reporting this information to the to the State, accrediting agency, and the Department.

2,608 orderly program closures X 46 hours = 119,968 Burden hours

§ 668.604 Certification requirements for GE programs and eligible non-GE programs 1845-0012

Summary

Proposed § 668.604 updates the eligibility requirements for participation in the Direct Loan program.

Burden

These regulatory changes 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.

§ 668.605 Student Warnings**Summary**

In the proposed regulations, student warning requirements would be extended to eligible non-GE programs for both enrolled and prospective students. The proposed regulations would also expand the content of the warnings to explain Pell lifetime eligibility used. Institutions would be required to send this warning when the Secretary notifies them that the program may become ineligible for the Direct Loan program. Additionally, the institution would be required to provide a Pell lifetime eligibility warning each time Pell is disbursed.

The Department proposes to amend the description of academic and financial options from the current requirements of the student warnings.

Burden

The Department estimates 831,000 students will need to receive such warnings. We believe it would take 5 hours to create this warning and an additional 1 hour per 100,000 students for review and transmission of the warnings, totaling 14 burden hours.

Institutions would also need to send the same group of recipients the Pell lifetime eligibility warning notification for each subsequent Pell disbursement. The Department believes it would take institutions 8 hours to create and implement this requirement. We estimate that subsequent warnings would take 1 hour per 100,000 students, adding 8.3 hours of burden. Pell disbursements may happen more than once during one award year. For this reason, we estimate 2 warnings per student per award year. This totals 16.6 hours of burden.

5,626 institutions X 16.6 hours = 93,392 annual burden hours.

§ 685.102 Definitions

Summary

To implement the new provisions enacted in the OBBB, we propose adding definitions for eligible non-GE program and GE program to 685.102.

Burden

Proposed § 685.102 will require institutions to update their internal system definitions. We believe the burden to conform with these new definitions will be minimal as the proposed definitions serve to provide consistency and clarity of these terms rather than change them.

In this NPRM, the Department seeks to promote consistency across institutions and programs by harmonizing the existing FVT/GE framework with the earnings accountability framework established by the OBBB. As part of that harmonization and to reduce burden for institutions, we intend to merge the following existing approved information collections:

1845-0184 Financial Value Transparency and Gainful
Employment Reporting Requirements

1845-0174 Student Disclosure Acknowledgements

1845-0173 Gainful Employment Student Warnings and
Acknowledgments

The Department requests to retain the 1845-0184 OMB Control number, but would amend the title of the collection to:
Earnings Accountability Reporting, Disclosures, and
Warnings

The Department would request that OMB discontinue 1845-0174 and 1845-0173 because the burden associated with those collections would be absorbed into 1845-0184. This

NPRM also proposes amending 1845-0022 Student Assistance General Provisions.

The Department has also created a new collection, 1845-NEW Accountability Definitions. Burden for § 685.102 is found in 1845-0021 William D. Ford Federal Direct Loan Program (DL) Regulations. That collection, 1845-0021, is currently under review with the Reimagining and Improving Student Education (RISE) Notice of Proposed Rulemaking (NPRM). To accurately track the burden associated with the new regulations and definitions regarding these regulations at the same time as the RISE NPRM, the Department has established a new collection to track burden for accountability changes in § 685.102. Once both sets of regulations are final, the Department plans to merge the new collection with 1845-0021 William D. Ford Federal Direct Loan Program (DL) Regulations.

For each proposed regulation containing burden in this NPRM, we provide below our preliminary estimates for potential burden changes.

To estimate costs for institutions, we used the median hourly wage for Education Administrators, Postsecondary (11-9033) from the U.S. Bureau of Labor Statistics. In 2024 this was \$49.98. To account for overhead costs and benefits, the Department has multiplied by this wage by two, resulting in hourly costs of \$99.96.

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
§ 668.2 General Definitions	1845-NEW Accountability Definitions	288 X 5,626 1,620,288 total burden hours	5,626	\$161,963,988
§ 668.14 Program Participation Agreement	1845-0022 Student Assistance General Provisions	1,956 X 3 = 5,868	1,956	\$586,565
§ 668.16 Standards of administrative capability	1845-0022 Student Assistance General Provisions	1 hour X 5,626 institutions = 5,626 burden hours	5,626	\$562,374
§ 668.43 Institutional and programmatic information	1845-0022 Student Assistance General Provisions	-24.5 burden hours X 5,320 institutions = -130,750	5,320	-\$13,069,770
§ 668.401 Student tuition and transparency system scope and purpose	1845-0184 Earnings Accountability Reporting, Disclosures , and Warnings	230 hours X 5,626 institutions = 1,293,980	5,626	\$129,346,240
§ 668.402 Student tuition and transparency system framework	1845-0184 Earnings Accountability Reporting, Disclosures , and Warnings	272 hours X 5,626 = - 1,531,233	5,626	-\$153,062,050
§ 668.404 Process for obtaining data and calculating earnings premium measure Summary	1845-0184 Earnings Accountability Reporting, Disclosures , and Warnings	4,501 X 3 hours = 13,503	4,501	\$1,349,759
§ 668.405 Determination of the earnings premium measure	1845-0184 Earnings Accountability Reporting, Disclosures , and Warnings	2 hours X 5,626 = 11,252	5,626	\$1,124,750

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
§ 668.406 Reporting requirements	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	-77.82 X 5,626 = -437,801	5,626	-\$43,762,588
§ 668.601 Earnings accountability scope and purpose	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	208 hours x 5,626 institutions = 1,170,208 total burden hours	5,626	\$116,973,991
668.603 Low-earning outcome programs	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	2,608 X 46 hours = 119,968 burden hours	2,608	\$11,992,001
§ 668.605 Student Warnings	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	16.6 hours X 5,626 = 93,392 burden hours	5,626	\$9,335,424
Total		2,234,301	37,501	\$223,340,684

Along with the two collections listed above, proposed § § 600.10, 600.21, 685.300, 668.604 in this NPRM would require the Department to update 1845-0012, Application for Approval to Participate in Federal Student Aid Programs:

Regulation	OMB Control #	Burden hours	# of responses	Costs
§ 600.10 Date, extent, duration, and consequence of eligibility, §	1845-0012 Application for Approval to Participate	The Department will assess the burden hours for	N/A	N/A

600.21 Updating application information, § 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program § 668.604 Certification requirements for GE programs and eligible non- GE programs	in Federal Student Aid Programs	proposed regulations with the form updates to 1845-0012		
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Form updates to 1845-0012 will be completed through the full clearance process prior to the date the regulations are effective.

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 will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

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 strengthen 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 Education 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 final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The proposed regulations do not have Federalism implications.

Accessible Format: On request to the program contact person(s) 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.

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List of Subjects

34 CFR Part 600

Colleges and universities, Grant program-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant program-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Nicholas Kent,

Under Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600, 668, and 685 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. Amend § 600.10 by revising paragraph (c) (3) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(3) For a gainful employment program or eligible non-GE program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the Direct Loan eligibility of the program, an eligible institution must update its application under § 600.21.

* * * * *

3. Amend § 600.21 by revising paragraph (a) (11) (vi) to read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) * * *

(vi) Updating the certification pursuant to 34 CFR
668.604(a).

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The general authority citation for part 668 continues 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.

5. Amend § 668.2(b) by:

a. Removing the definitions of "Annual debt-to-earnings
rate (Annual D/E rate)," "Debt-to-earnings rates (D/E
rates)," "Discretionary debt-to-earnings rate
(discretionary D/E rate)," "Metropolitan statistical area,"
"Poverty Guideline," "Qualifying graduate program," and
"Substantially similar program."

b. Adding, in alphabetical order, a definition of
"Earnings."

c. Revising the definitions of "Cohort period," "Earnings
premium," "Earnings threshold," "Eligible non-GE program,"
"Federal agency with earnings data," and "Institutional
grants and scholarships."

The addition and revisions read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose earnings outcomes are used to calculate the earnings premium measure under subpart Q of this part. The Secretary uses a single-year cohort period to calculate the earnings premium measure for a program when the number of students (after exclusions identified in § 668.403(c)) in the single-year cohort period is 30 or more. The Secretary sequentially expands the cohort period when the number of students completing the program in the single-year cohort period is fewer than 30. The cohort period includes award years that are—

(1) For the single-year cohort period, the fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

(2) For the expanded cohort period, the Secretary will sequentially add prior award year data to the single-year cohort in the following order until the cohort equals or exceeds 30 students (unless the Secretary determines the data is unreliable, in which case the cohort size may be increased until the Secretary determines the data is statistically reliable)—

(i) Sequential prior award years within the same program—

(A) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The eighth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(ii) Sequential award years for all programs within the same 4-digit CIP code and credential level-

(A) The fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(E) The eighth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(iii) Sequential award years for all programs within the same 2-digit CIP code and credential level-

(A) The fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(E) The eighth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

* * * * *

Earnings. For the purposes of subparts Q and S of this part, wages, income as reported to the Internal Revenue Service, and other earned income, including from self-employment.

* * * * *

Earnings premium. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.403. 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. (1) For undergraduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings for

working adults aged 25-34, with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution during the year of the associated measured earnings—

(i) In the State in which the institution is located; or
(ii) Nationally, if fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located.

(2) For graduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings of working adults aged 25-34, with only a baccalaureate degree, who worked and were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be—

(i) The lowest of the median earnings of working adults—

(A) In the State in which the institution is located;

(B) In the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable, in the State in which the institution is located; or

(C) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable; or

(ii) If fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located, the lowest of the median earnings of working adults—

(A) Nationally; or

(B) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable.

(3) For States where the Census Bureau Data necessary to perform the calculations set forth in subsections (1) and (2) are not available, there will be no earnings threshold.

(4) For programs offered by eligible foreign institutions—

(i) For undergraduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25-34 in the United States, with only a high school diploma or recognized equivalent, who were not enrolled in an eligible institution during the year of the associated measured earnings; or

(ii) For graduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25-34, with only a baccalaureate degree, who were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be the lowest of the median earnings of working adults—

(A) Nationally in the United States; or

(B) Nationally in the United States in the same field of study under the two-digit CIP code or four-digit CIP code, as such data is available and statistically reliable.

* * * * *

Eligible non-GE program. An educational program (other than a GE program) that is subject to HEA Section 454(c), offered by an institution and included in the institution's participation 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 earnings threshold or value-added earnings measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any 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.

* * * * *

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, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver, including a grant or scholarship which could convert to a loan if a student does not meet certain requirements. An institutional grant or scholarship does not include Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Campus-based programs; or assistance that must be repaid.

* * * * *

6. Amend § 668.14 by:

a. Redesignating paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l) respectively.

b. Adding new paragraph (h).

The addition reads as follows:

§ 668.14 Program participation agreement.

* * * * *

(h) (1) In addition to any other conditions that the Secretary may deem appropriate, if an institution does not comply with the provisions of 34 CFR § 668.16(t) (at time

of enactment) in two out of any three consecutive award years, the institution will be placed on provisional status and the institution's low-earning outcome programs shall not qualify for title IV, HEA funds.

(2) The institution shall have the opportunity to appeal the Secretary's determination that the institution failed to meet the conditions in 34 CFR § 668.16(t) in two out of any three consecutive award years under 34 CFR 668 Subpart G.

(i) (1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(j) (1) Except as provided in paragraphs (g) and (h) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date.

(k) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a) (1), (2), (4), or (7).

(1) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

* * * * *

7. Amend § 668.16 by revising paragraph (t) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(t) Demonstrates that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S of this part;

* * * * *

8. Amend § 668.43 by:

a. Revising paragraph (d) (1) .

b. Removing paragraph (d) (1) (i) (H) .

c. Redesignating paragraphs (d) (1) (i) (B) , (C) , (D) , (E) , (F) , and (G) as (d) (1) (i) (C) , (D) , (E) , (F) , (G) , and (H) respectively.

d. Adding paragraph (d) (1) (i) (B) .

e. Removing paragraph (d) (i) (ii) (E).

f. Revising paragraph (d) (2) to remove the word "academic,".

The revisions read as follows:

§ 668.43 Institutional and programmatic information.

* * * * *

(d) (1) *Program information website.* The Secretary will establish and maintain a website with information about institutions and their educational programs. For this purpose, an institution must provide to the Department such information about the institution and its programs as the Secretary prescribes through a notice published in the *Federal Register*. The Secretary may conduct consumer testing to inform the design of the website.

(i) The website must include, but is not limited to, the following items, to the extent reasonably available:

(A) The published length of the program in calendar time (i.e., weeks, months, years).

(B) As calculated by the Secretary, the median length of calendar time (i.e., weeks, months, years) taken for full-time and less-than-full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

(C) The total number of individuals enrolled in the program during the most recently completed award year.

(D) 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.

(E) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a Direct Loan program loan, a private loan, or both for enrollment in the program.

(F) 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.

(G) As provided by the Secretary, the median earnings of students who completed the program as obtained under 34 CFR 668.404(c), or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(H) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(I) As calculated by the Secretary, the program's earnings premium measure.

(ii) The website may also include other information deemed appropriate by the Secretary, such as the following items:

(A) 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.

(B) As reported to or calculated by the Secretary, the program or institution's completion rates and withdrawal rates for full-time and less-than-full-time students.

(C) As calculated by the Secretary, the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment, and the total net cost of attendance paid by students completing the program.

(D) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on Direct Loan program loans during a period determined by the Secretary.

(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 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.

* * * * *

9. Amend § 668.91(a)(3)(vi) by revising to read as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a termination action against a GE program or eligible non-GE program based upon the program's failure to meet the requirements in § 668.403, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

10. Rename Part 668 Subpart Q title from "Financial Value Transparency" to "Student Tuition and Transparency System"

11. Amend § 668.401 by revising to read as follows:

§ 668.401 Student tuition and transparency system scope and purpose.

General. 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 earnings outcomes.

* * * * *

12. Amend § 668.402 by:

- a. Revising paragraph (a).
- b. Removing paragraphs (b) and (c).
- c. Redesignating paragraphs (d) and (e) as (b) and (c) respectively.
- d. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 668.402 Student tuition and transparency system framework.

(a) *General.* The Secretary assesses the program's earnings outcomes using an earnings premium measure.

(b) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in §§ 668.403 and 668.404.

(c) *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 equal or 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 less than the earnings threshold.

(3) For programs which do not have an earnings threshold for the State, no earnings premium measure will be calculated if 50 percent or more of the students enrolled in the institution during the award year the calculations are made are from the State. In this circumstance, the Department will make earnings data for these programs publicly available.

* * * * *

13. Remove § 668.403.

14. Amend § 668.404 by:

a. Redesignating 668.404 as 668.403.

b. Revising paragraphs (a), (b), (c), and (d).

The redesignated and revised section reads as follows:

§ 668.403 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 students who completed the program equal or exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.*

(1) The Secretary obtains from a Federal agency with earnings data, under § 668.404, the median annual earnings

of the students who completed the program during the cohort period for the fourth tax year following program completion, who are working and are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of working adults 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.

(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 Direct Loan program 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 in any other educational program at the institution or at another eligible 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 § 668.405 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the fully expanded 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.

* * * * *

15. Amend § 668.405 by:

a. Redesignating § 668.405 to 668.404.

b. Revising section title to remove "D/E rates and".

c. Revising paragraphs (a), (b), (c), and (d).

The redesignated, renamed, and revised section reads as follows:

§ 668.404 Process for obtaining data and calculating earnings premium measure.

(a) *Administrative data.* In calculating the 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(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information reported by the institution on which the list was based, no later than 60 days after the date the Secretary provides the list to the institution;

(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 earnings premium measure and provide it to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary the median annual earnings of the students on the list who are working and whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form.

(d) *Calculating earnings premium measure.* If the Federal agency with earnings data includes reports from records of earnings on at least 16 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the earnings premium measure for each program.

* * * * *

16. Amend § 668.406 by:

- a. Redesignating § 668.406 to 668.405.
- b. Revising the section title to remove "D/E rates and".
- c. Revising paragraphs (a) and (b).

The redesignated and revised section reads as follows:

§ 668.405 Determination of the earnings premium measure.

(a) For each award year for which the Secretary calculates 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 earnings premium measure for each program as determined under § 668.403.

(2) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(3) Whether the institution is required to provide the student warning under § 668.605.

(4) Whether the program could become ineligible under subpart S of this part based on its final earnings premium measure for the next award year for which it is calculated for the program.

* * * * *

17. Remove § 668.407.

18. Revise § 668.408 by:

a. Redesignating § 668.408 to § 668.406

b. Revising paragraphs (a) and (b).

c. Removing paragraph (c).

The redesignated and revised section reads as follows:

§ 668.406 Reporting requirements.

(a) *Data elements.* In accordance with procedures established by the Secretary, an institution offering any

GE program or eligible non-GE program must report to the Department—

(1) For each GE program and eligible non-GE program, for its most recently completed award year—

(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 any State, and, consistent with the requirements in 34 CFR 668.43(a)(5)(v), a list of all States where the institution has determined the program meets such requirements, including as part of the institution's obligation under 34 CFR 668.14(b)(32); and

(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.

(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 total cost of attendance (COA) for the award year under HEA section 472;

- (iv) The total actual tuition and fees assessed to the student for the award year;
 - (v) The student's residency tuition status by State or district, as applicable;
 - (vi) The student's total allowance for books, supplies, and equipment from their COA for the award year under HEA section 472;
 - (vii) The student's total allowance for housing and food from their COA for the award year under HEA section 472;
 - (viii) The amount of institutional grants and scholarships disbursed to the student for the award year;
 - (ix) The amount of other Federal, State, Tribal, or private grants disbursed to the student for the award year; and
 - (x) The amount of any private education loans disbursed to the student for the award year for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;
- (3) If the student completed or withdrew from the program during the award year—
- (i) The total amount the student received from private education loans, as defined in 34 CFR 601.2(b), for enrollment in the program that the institution is, or should reasonably be, aware of;
 - (ii) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(iii) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA 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;

(iv) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program;

(v) The total amount of Federal, State, private, or other 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) *Initial and annual reporting.*

(1) An eligible institution must report the information required under paragraph (a) of this section no later than—

(i) October 1, following the date these regulations take effect, for the two most recently completed award years prior to that date; and

(ii) 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 of why the institution failed to comply with any of the reporting requirements that is acceptable to the Secretary.

* * * * *

19. Redesignate § 668.409 to § 668.407, to read as follows:

§ 668.407 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.

* * * * *

20. Revise Subpart S title from "Gainful Employment (GE)" to "Earnings Accountability".

21. Amend § 668.601 by:

a. Revising section title to remove "Gainful employment (GE)" and replace with "Earnings accountability".

a. Revising paragraph (a).

b. Removing paragraph (b).

The revised section reads as follows:

§ 668.601 Earnings accountability scope and purpose.

(a) *General*. This subpart applies to an eligible non-GE program or a GE program offered by an eligible institution and establishes rules and procedures under which the

Secretary determines that the program is eligible for Direct Loan program funds.

* * * * *

22. Amend § 668.602 by:

- a. Revising section title to remove "Gainful employment (GE)" and replace with "Earnings accountability".
- b. Revising paragraph (a).
- c. Removing paragraphs (b) and (c).
- d. Redesignating paragraph (d) as paragraph (b)
- e. Removing paragraph (e).

The revised section reads as follows:

§ 668.602 Earnings accountability criteria.

(a) A GE program or eligible non-GE program provides training that leads to acceptable earnings outcomes if the program—

(1) Satisfies the applicable certification requirements in § 668.604; and

(2) 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 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.

23. Amend § 668.603 by:

- a. Revising section title to remove "Ineligible GE" and replace with "Low-earning outcome".
- b. Revising paragraphs (a), (b), and (c).

The revised section reads as follows:

§ 668.603 Low-earning outcome programs.

(a) *Low-earning outcome programs.* If a GE program or eligible non-GE program is 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, the program is a low-earning outcome program and its participation in the Direct Loan program ends upon the completion of a termination action of Direct Loan program eligibility under subpart G of this part.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a) 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 earnings premium measure under § 668.403.

Institutions may not dispute a program's Direct Loan program ineligibility based upon its earnings premium measure except as described in this paragraph (b).

(c) *Restrictions.*

(1) *Direct Loan program ineligibility.* Except as provided in § 668.26(d), or as provided in paragraph (4), an institution may not disburse Direct Loan program funds to students enrolled in a low-earning outcome program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the Direct Loan program eligibility of a failing program that it discontinued voluntarily either before or after the earnings premium measure is issued for that program, or reestablish the Direct Loan program eligibility of a program that is ineligible under the earnings premium measure, until two 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.* A low-earning outcome program, or a failing program that an institution voluntarily discontinues, remains ineligible for Direct Loan program participation until the institution establishes the eligibility of that program under § 668.604(b).

(4) *Retaining eligibility during orderly program closure.*

(i) Notwithstanding paragraph (1), if the Secretary determines that a program has failed to satisfy the requirements of § 668.402, the program is not a low-earning outcome program, and the Secretary determines that it is in the best interest of students, the Secretary may allow such program to continue participation in the Direct Loan

program. Such participation shall not exceed the lesser of 3 years or the full-time normal duration of the program. The Secretary permits the extension of eligibility if, within 120 days of the Secretary's determination, the institution and the Secretary agree to add an amendment to the institution's program participation agreement, that requires the institution to-

(A) Cease accepting new enrollments on or after the date of the agreement;

(B) Engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program regardless of their academic progress at the time of closure;

(C) Inform the institution's State authorizing agency and accrediting agency and to meet any program discontinuation or closure requirements of those agencies;

(D) Acknowledge that the program has been voluntarily discontinued and subject to the requirements of 34 CFR 668.603(c)(2);

(E) Maintain the program under a warning status and provide warning notice to students in accordance with the requirements set forth in 34 CFR 668.605, with the exception of (c)(1)(ii) of that section;

(F) Provide to students the academic and financial options to continue their education in another program to which the student's academic credit would transfer that has not

failed to satisfy the requirements of § 668.402, either at the same institution or a different institution;

(G) Agree not to restart the same program or to start a program that shares the same 4-digit CIP code for at least two award years following the completion of the orderly closure described under paragraph (B).

(ii) An institution may not add the addendum provided in 668.603(c)(4)(i) in cases where the program or the institution based upon the program's compliance is subject to a probation or equivalent action by a recognized accrediting agency or State regulatory agency (including licensing Boards), or where the institution is subject to 34 CFR 668.162(c).

* * * * *

24. Amend § 668.604 by:

- a. Revising section title to add "and eligible non-GE programs".
- b. Removing paragraph (a).
- c. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c) respectively.
- d. Revising paragraphs (a), (b), and (c).

The retitled and revised section reads as follows:

§ 668.604 Certification requirements for GE programs and eligible non-GE programs.

(a) *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 and eligible non-GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (c) of this section. As provided under § 600.21(a)(11)(vi), 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.

(b) Establishing eligibility and disbursing funds.

(1) An institution establishes a program's eligibility for Direct Loan program funds by updating the list of the institution's Direct Loan-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 Direct Loan-eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (c) of this section. Except as provided in paragraphs (b)(2) and (3) of this section, after the institution updates its list of Direct Loan-eligible programs, the institution may disburse Direct Loan program funds to students enrolled in that program.

(2) An institution may not update its list of Direct Loan-eligible programs to include a program sharing both the same 4-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency as a failing program that the institution voluntarily discontinued or became ineligible as described in § 668.603(c), at the same credential level that was subject to the two-year loss of eligibility under § 668.603(c), until that period expires.

(3) An institution may not update its list of Direct Loan-eligible programs to include a program that was subject to the two-year loss of eligibility under 34 CFR 668.603(c) and is a failing program under 34 CFR 668.402 in either of the two most recent award years, or a program sharing the same 4-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency at the same credential level as a program that was both subject to the two-year loss of eligibility under 34 CFR 668.603(c) and is a failing program under 34 CFR 668.402 in either of the two most recent award years.

(c) *Direct Loan program eligibility certifications.* An institution certifies for each Direct Loan-eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that—

(1) The institution agrees to comply with the requirements of subparts Q and S of this part; and

(2) 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.

* * * * *

25. Amend § 668.605 by:

a. Revising paragraphs (a), (b), and (c).

b. Removing paragraph (d).

c. Redesignating paragraphs (e), (f), (g), and (h) as paragraph (d), (e), (f), and (g) respectively.

d. Revising paragraphs (d), (e), (f), and (g).

The revised section reads as follows:

§ 668.605 Student warnings.

(a) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program or eligible non-GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible for the Direct Loan program under this subpart based on its final earnings premium measure

for the next award year for which it is calculated for the program.

(b) *Subsequent warning.* If a student or prospective student receives a warning under paragraph (a) of this section, 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 the earnings premium measure for the two most recent consecutive award years in which the metric was 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 reported earnings of program graduates; and

(ii) The program could lose access to Direct Loans based on the next calculated program metrics;

(2) The relevant information to access the program information website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds to the student; and

(4) For a student who is eligible for Pell Grant funds, a description of the student's remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility.

(d) Delivery to enrolled students.

(1) 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 § 668.405 and maintain documentation of its efforts to provide that warning.

(2) The warning must be the only substantive content contained in these written communications.

(3) The warning regarding the student's remaining Pell Grant eligibility under 34 CFR 668.605(c)(4) must be provided to an enrolled student at the time that the institution makes a disbursement of Pell Grant funds to that student.

(e) 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.

(f) *Acknowledgment prior to enrollment and disbursement.* An institution may not allow a prospective student seeking title IV, HEA assistance to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse title IV, HEA funds to the student until the student or prospective student completes the acknowledgment described in paragraph (b) (3) of this section.

(g) *Discharge claims.* The provision of a student warning or the acknowledgment described in paragraph (b) (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 dispositive evidence against a student's claim if applying for a loan discharge.

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PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

26. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

27. Amend § 685.102(a)(1) to add, in alphabetical order, "Eligible non-GE program" and "Gainful employment program (GE program)".

The revisions read as follows:

§ 685.102 Definitions

(a)

(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year

Campus-based programs

Dependent student

Disbursement

Eligible program

Eligible non-GE program

Eligible student

Enrolled

Expected family contribution (EFC)

Federal Consolidation Loan Program

Federal Pell Grant Program

Federal Perkins Loan Program

Federal PLUS Program

Federal Supplemental Educational Opportunity Grant Program

Federal Work-Study Program

Full-time student

Gainful employment program (GE program)

Graduate or professional student

Half-time student

Independent student

One-third of an academic year

Parent

Payment period

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant

Two-thirds of an academic year

Undergraduate student

U.S. citizen or national

William D. Ford Federal Direct Loan (Direct Loan) Program

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28. Amend § 685.300(a) by revising to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program

(a) *General.* Participation of a school in the Direct Loan program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations;

(2) Enter into a written program participation agreement with the Secretary; and

(3) As part of such agreement, in order to maintain eligibility for a GE program or an eligible non-GE program to participate in the Direct Loan program, show that such program meets the student tuition and transparency system requirements under 34 CFR part 668, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

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