

REVISED DEBT-TO EARNINGS & GAINFUL EMPLOYMENT RULES  
SUBMITTED BY BRAD ADAMS | PROPRIETARY SCHOOLS  
ROUND 3 | MARCH 14 - 18, 2022

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**§ 600.10 Date, extent, duration, and consequence of eligibility.**

\* \* \*

**(c) Educational programs.**

**(1)** An eligible institution that seeks to establish the eligibility of an educational program must -

- (i) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval;
- (ii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; ~~and~~
- (iii) For a first direct assessment program under 34 CFR 668.10, the first direct assessment program offered at each credential level, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; ~~and-~~
- (iv) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under § 600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.407504.

**(2)** Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1) of this section.

**§ 600.21 Updating application information.**

**(a) Reporting requirements.** Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

\* \* \*

**(11)** For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation -

- (i) Establishing the eligibility or reestablishing the eligibility of the program;
- (ii) Discontinuing the program's eligibility;
- (iii) Ceasing to provide the program for at least 12 consecutive months;
- (iv) Losing program eligibility under § 600.40; ~~or~~
- (v) Changing the program's name, CIP code, or credential level; ~~or~~
- (vi) Updating the certification pursuant to 34 CFR 668.410505.

\* \* \*

**Subpart Q—Gainful Employment (GE) Programs**~~Debt-to-Earnings (DE) programs and rates.~~

**§ 668.401 Scope and purpose.**

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

**Commented [A1]:** We have placed the D/E rate calculation and disclosure framework under this revised subpart Q, clarifying that D/E rates would be calculated and disclosed for all "D/E programs." The calculation and disclosure of these informational rates is authorized under 20 U.S.C. § 1092, the same statutory authority used for 668.43. D/E rates would still be used to determine eligibility for GE programs under the new subpart R.

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~~(a)~~ The Secretary determines that the program is eligible for title IV, HEA program funds; and

~~(b)~~ An institution reports information about the program to their D/E programs to the Secretary and the Secretary calculates and issues D/E rates.

**§ 668.402 Definitions.**

The following definitions apply to this subpart, and to subpart R.

*Annual earnings rate.* The percentage of a ~~GED~~/E program's annual loan payment compared to the annual earnings of the students who completed the D/E program, as calculated under ~~§668.404403~~.

*Classification of instructional program (CIP) code.* A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). Specific D/E programs offered by institutions are classified using a six-digit CIP code. ~~However, for purposes of this subpart, the Secretary uses the first four digits of the CIP code to identify gainful employment programs that have comparable content and objectives.~~

*Cohort period.* The set of award years used to identify a cohort of students who completed a D/E program and whose debt and earnings outcomes are used to calculate debt-to-earnings rates. The Secretary uses a two-year cohort period to ~~calculate~~ calculate the debt-to-earnings rates for a D/E program when the number of students (after exclusions identified in ~~§668.404403(e)~~) in the two-year cohort period is 30 or more. The Secretary uses a four-year cohort period to calculate the debt-to-earnings rates when the number of students completing the D/E program in the two-year cohort period is less than 30 and when the number of students completing the D/E program in the four-year cohort period is 30 or more. The cohort period covers consecutive award years that are--

(1) For the two-year cohort period--

(i) ~~The fifth and sixth third and fourth~~ award years prior to the award year for which the D/E rates are calculated pursuant to ~~§668.4034~~. For example, if D/E rates are calculated for award year 2021-2022, the two-year cohort period is award years 2015-2016 and 2016-2017~~2017-2018 and 2018-2019~~; and earnings data used will be for calendar years ~~2020 and 2021~~; or

(ii) For a D/E program whose students ~~are required to~~ may complete an ~~medical or dental~~ internship or residency, the ~~eighth and ninth sixth and seventh~~ award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2021-2022, the two-year cohort period is award years 2012-2013 and 2013-2014~~2014-2015 and 2015-2016~~. For this purpose, an ~~required medical or dental~~ internship or residency is a supervised training program that--

~~(A)~~

~~(B)~~(A) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

~~(B)~~ (C) Must be commonly completed before the student ~~may be~~ becomes licensed by a State and board -certified for professional practice or service.

~~(C)~~ (2) Is programmatically accredited if required under Federal or State law.

(2) For the four-year cohort period--

**Commented [A2]:** Both the two-year and four-year cohort periods would begin with the fifth year preceding the award year for which rates are being calculated. Placing the initial measurement four full years following graduation will afford graduates additional time to establish normal earning levels and thus better capture whether typical earnings for the program are reasonable relative to typical debt burden.

**Commented [A3]:** We have clarified that the earnings data for all cohorts is the data from the most recent calendar year, consistent with all prior D/E metrics.

**Commented [A4]:** We have extended this accommodation to all programs with qualifying internships and residencies, not just medical and dental programs. This will ensure more consistent measurement across all such programs.

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~~(i) The third, fourth, fifth, sixth, seventh, and eighth award years prior to the award year for which the D/E rates are calculated pursuant to §668.404403. For example, if D/E rates are calculated for award year 2021-2022, the two four-year cohort period is award years 2013-2014, 2014-2015, 2015-2016, and 2016-2017, 2017-2018, and 2018-2019; and earnings data used will be for 2020 and 2021; or~~

~~(ii) For a D/E program whose students are required to may complete a medical or dental an internship or residency, the sixth, seventh, eighth, and ninth, tenth, and eleventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2021-2022, the four-year cohort period is award years 2010-2011, 2011-2012, 2012-2013, and 2013-2014, 2014-2015, and 2015-2016. For this purpose, a required medical or dental an internship or residency is a supervised training program that--~~

~~(A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;~~

~~(B)(A) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and~~

~~(C)(B) Must be commonly completed before the student may be licensed by a State and board certified for professional practice or service; and~~

~~(C) Is programmatically accredited if required under Federal or State law.~~

~~Credential level. The level of the academic credential awarded by an institution to students who complete the D/E program. For the purposes of this subpart, the hierarchy of undergraduate credential levels are: credentials, from lowest to highest, is: undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the.~~

~~Debt-to-earnings program (D/E program). An educational program offered by an institution under §668.8 and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.~~

~~Debt-to-earnings rates (D/E rates). The discretionary earnings rate and annual earnings rate as calculated under §668.404403.~~

~~Discretionary earnings rate. The percentage of a GE D/E program's annual loan payment compared to the discretionary earnings of the students who completed the D/E program, as calculated under §668.404403.~~

~~Federal agency with earnings data. A Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates. The agency must have data that includes unearned income and self-employment income for graduates and is sufficient to match with at least 90 percent of title IV graduates, and may include the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and/or the Census Bureau.~~

~~Gainful employment program (GE program). An educational undergraduate D/E program offered by an institution under §668.8(c)(3) or (d) and identified by a combination of the institution's six digit Office of Postsecondary Education ID (OPEID) number, the program's four digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.~~

**Commented [A5]:** This would clarify the hierarchy of undergraduate and graduate credentials when consolidating debt.

**Commented [A6]:** D/E rates would be calculated for all D/E programs at all institutions.

**Commented [A7]:** The full 6-digit CIP code would distinguish individual D/E programs, consistent with the design of the CIP taxonomic scheme.

**Commented [A8]:** This would ensure a more complete and accurate earnings number, and thus better D/E rates.

**Commented [A9]:** D/E rates calculated for graduate GE programs would be strictly for informational purposes. D/E rates are not an appropriate measure of "gainful employment" for graduate degree programs, for the reasons articulated in *Initial Comments and Concerns of Proprietary Schools*.

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

*Poverty Guideline.* The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services and available at <http://aspe.hhs.gov/poverty> or its successor site.

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

*Small D/E program.* A GED/E program for which the number of students completing the program in the two- and four-year cohort periods is fewer than 30.

*Small D/E program rates.* The discretionary earnings rate and annual earnings rate calculated on an aggregate basis for all small D/E programs sharing the same four-digit CIP code at an institution within the same credential level in accordance with §668.404(g).

*Student.* An individual who received title IV, HEA program funds for enrolling in the GE D/E program.

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

**§ 668.403 Gainful employment framework.**

~~(a) General.~~ A program provides training that prepares students for gainful employment in a recognized occupation if the program—

~~(1) Satisfies the applicable certification requirements in §668.414; and~~

~~(2) Is not an ineligible program under the D/E rates.~~

~~(b) Debt to earnings rates (D/E rates).~~ For each award year the Secretary calculates two D/E rates for a GE program, the discretionary earnings rate and the annual earnings rate, using the procedures in §668.404 through 668.406.

~~(c) Outcomes of the D/E rates.~~

~~(1) A GE program passes the D/E rates if—~~

~~(i) Its discretionary earnings rate is less than or equal to 20 percent; or~~

~~(ii) Its annual earnings rate is less than or equal to 8 percent.~~

~~—(2) A GE program fails the D/E rates if—~~

~~(i) Its discretionary earnings rate is greater than 20 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and~~

~~(ii) Its annual earnings rate is greater than 8 percent or the denominator of the rate (annual earnings) is zero.~~

~~(3) A GE program becomes ineligible, subject to paragraph (c)(4), if it fails the D/E rates in two out of any three consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.~~

**Commented [A10]:** This would ensure that the small D/E program relates bear some relationship to the programs and related occupations for which they have been calculated. As discussed during the negotiations, combining data for all small D/E programs will not provide meaningful data to students and could prove highly misleading.

**Commented [A11]:** This section concerning the GE framework has been moved to the new subpart R that applies solely to GE programs.

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~~(4)~~ If the Secretary does not calculate or issue D/E rates for a program for an award year, or calculates only a small program rate with respect to that program, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

~~§ 668.404~~ **Calculating D/E rates.**

~~(a)~~ ~~(a)~~ **General.** Except as provided under paragraphs (f) and (g) of this section, for each award year, the Secretary calculates D/E rates for a ~~GED/E~~ program as follows:

~~(1)~~ **Discretionary earnings rate** = annual loan payment / (the higher of the mean or median annual earnings – (1.5 x Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

~~(2)~~ **(1)** Annual earnings rate = annual loan payment / the higher of the mean or median annual earnings.

~~(b)~~ ~~(b)~~ **Annual loan payment.**

~~(1)~~ The Secretary calculates the annual loan payment for a ~~GED/E~~ program by--

~~(i)~~ ~~(i)~~ Determining the median loan debt of the students who completed the D/E program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph ~~(d)~~(1) of this section and the total amount actual cost for tuition and fees and books, equipment, and supplies for each student as determined under paragraph ~~(d)~~(2) of this section;

~~(ii)~~ Removing, if applicable, the appropriate number of highest loan debts as described in ~~§ 668.404403~~(b)(1)(ii); and

~~(iii)~~ Calculating the median of the remaining amounts.

~~(2)~~ **Amortizing**

~~(iii)~~ ~~(2)~~ The Secretary amortizes the median loan debt--

~~(i)~~ ~~(i)~~

~~(A)~~ Over a 10-year repayment period for a D/E program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

~~(B)~~ Over a 15-year repayment period for a D/E program that leads to a bachelor's degree or a master's degree; or

~~(C)~~ ~~(C)~~ Over a 20-year repayment period for any other D/E program; and

~~(ii)~~ ~~(iii)~~ Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during--

~~(A)~~ The three consecutive award years, ending in the final year of the cohort period, for undergraduate certificate D/E programs, post-baccalaureate certificate D/E programs, and

~~(A)~~ associate degree D/E programs. For these D/E programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

~~(B)~~ The three consecutive award years, ending in the final year of the cohort period, for graduate certificate D/E programs and master's degree D/E programs. For these D/E

**Commented [A12]:** Throughout this proposal, we have restored the use of the higher of the mean or median, consistent with all prior D/E metrics. This provides more balanced earnings data and thus better D/E rates.

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programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six consecutive award years, ending in the final year of the cohort period, for bachelor's degree D/E programs. For these D/E programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six consecutive award years, ending in the final year of the cohort period, for doctoral D/E programs and first professional degree D/E programs. For these D/E programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

Note to paragraph (b)(2)(ii): For example, for an undergraduate certificate D/E program, if the two-year cohort period is award years ~~2017-2018~~2015-2016 and ~~2018-2019~~2016-2017, the interest rate would be the average of the interest rates for the years from 2014-2015 through 2016-2017 ~~through 2018-2019.~~

(c) ~~(e)~~ Annual earnings.

(1) The Secretary obtains from a Federal agency with earnings data, under §668.405~~402~~, the most currently available mean and median annual earnings of the students who completed the GED/E program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the higher of the mean and median annual earnings to calculate the D/E rates.

(d) ~~(e)~~ Loan debt and ~~assessed charges~~ actual cost.

(1) ~~(1)~~ In determining the loan debt for a student, the Secretary ~~includes --~~

(i) ~~The~~ includes the amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the ~~GE~~ program, including Direct PLUS Loans made to parents of dependent students but excluding Direct Unsubsidized Loans that were converted from TEACH Grants; D/E program;

(ii) ~~Any~~ includes any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the D/E program and that are required to be reported by the institution under §668.408~~407~~; and

(iii) ~~The~~ includes the amount outstanding, as of the date the student completes the D/E program, on any other credit ~~(including any unpaid charges)~~ extended by or on behalf of the institution for enrollment in any ~~GE-D/E~~ program attended at the institution that the student is obligated to repay after completing the ~~GE-D/E~~ program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term "private education loan" in 34 CFR 601.2;

(iv) ~~Excludes~~ the amount of any Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants.

(2) The Secretary uses the information reported by the institution under §668.407(a)(2)~~(1)~~(iv) and (v) to determine the actual cost for a student. In determining the actual cost for a student, the Secretary-

(i) Includes the total amount of tuition, fees, books, supplies, and equipment for the program;

(ii) Excludes any institutional grant, scholarship, or discount provided to the student; and

**Commented [A13]:** We have replaced "assessed charges" with "actual cost" to emphasize that this represents the amount the institution actually charged the student.

**Commented [A14]:** Consistent with the 2014 rule, non-student debt and grants would be excluded. If parental debt is included in the numerator, parental earnings would need to be included in the denominator.

**Commented [A15]:** This approach produces a more accurate D/E rate, as it captures the actual cost paid by students, not the "sticker price" that may have been assessed prior to the application of institutional aid. This is extremely important given the prevalence of tuition discounting and institutional aid in higher education.

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- (iii) Excludes any Federal or State non-loan funds the student received and used to pay the cost of tuition, fees, books, supplies, and equipment.
- (3) The Secretary attributes all the loan debt incurred by the student for, and attributes the actual costs reported for the student under § 668.407(a)(2)(iv) and (v), for enrollment in any--
- (i) ~~(i)~~ Undergraduate ~~GE~~ ~~uncompleted~~ undergraduate D/E program at the institution to the highest credentialed undergraduate ~~GE~~ D/E program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; ~~and~~
- (ii) Graduate ~~GE~~ program at the institution to the highest credentialed graduate ~~GE~~ program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and
- (4) ~~(3)~~ The Secretary excludes any loan debt and actual costs incurred by the student for enrollment in D/E programs at other institutions. However, the Secretary may include loan debt or actual costs incurred by the student for enrollment in ~~GE~~ ~~uncompleted~~ D/E programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.
- (5) ~~(4)~~ The Secretary uses the lesser of the loan debt or actual costs to calculate the annual loan payment for the D/E rates.
- (e) Exclusions. The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that--
- (1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;
- (2) One or more of the student's title IV loans were in a ~~military-related deferment~~ status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;
- ~~(2)~~(3) The student was enrolled full-time in any other eligible D/E program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;
- ~~(3)~~(4) For undergraduate ~~GE~~ D/E programs, the student completed a higher credentialed undergraduate ~~GE~~ D/E program at the institution subsequent to completing the D/E program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; or
- ~~(4)~~(5) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; or
- ~~(5)~~(6) The student died.
- (f) ~~(f)~~ D/E rates not issued. The Secretary does not issue D/E rates for a ~~GE~~ D/E program under §668.405404 if--

**Commented [A16]:** This clarifies that debt/actual costs are only rolled up if the lower level program was not completed. If the lower level program was completed, the debt/actual cost taken on should remain attached to that completed program. D/E rates the incorporate debt/actual cost from prior or unrelated programs corrupt the quality of the rates and may mislead consumers.

**Commented [A17]:** We have reinstated this important exclusion, which appeared in the 2014 rule and acknowledges that earnings of graduates in a military-related deferment are not representative of graduate earnings and thus corrupt the quality of the D/E rates.

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- (1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the D/E program during the two-year or four-year cohort period, except as provided in paragraph (g); or
- (2) The Federal agency with earnings data does not provide the mean and median earnings for the D/E program as provided under paragraph (c) of this section.

**(g) ~~(g)~~ Small D/E program rates.** For each award year, the Secretary—

- (i) Determines the total number of students who completed small D/E programs within a credential level at the institution during the four-year cohort period; and
- (ii) If that total is 30 or more students, calculates the small D/E program rates for those small D/E programs under the provisions of this section.

**§ 668.405404 Issuing and challenging D/E rates.**

**(a) ~~(a)~~ Administrative data-Process Overview.** In calculating the D/E rates for a GED/E program and the small D/E program rates, 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 set forth in this section, each award year, the Secretary uses this administrative data to determine the D/E rates for a D/E program at an institution ~~must update or otherwise correct any reported data no later than 60 days after the end of an award year by —~~

**(b) ~~(b)~~ Process overview.** The Secretary uses the administrative data to —

(1) ~~Compile~~Creating a list of the students who completed each GED/E D/E program during the applicable cohort period and a list of providing the completers in small programs. The Secretary removes list to the institution;

(2) Allowing the institution to correct the information about the students on the completers list;

~~(1)~~ Obtaining from these lists students who are excluded under §668.404(e) and provides the list to institutions;

~~(2)(3)~~ Obtain from the Federal agency with earnings data the mean and median annual earnings of the students on each the list, as provided in paragraph (c) of this section; and;

~~(3)(4)~~ Calculate theCalculating draft D/E rates and provideproviding them to the institution-;

(5) ~~(c)~~ Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates;

(6) Calculating final D/E rates and providing them to the institution; and

(7) Allowing the institution to appeal the final D/E rates.

**(b) ~~(b)~~ Creating the completers list.**

(1) The Secretary selects the students to be included on the list by -

(i) Identifying the students who completed the program during the cohort period from the data provided by the institution under § 668.407; and

(ii) Indicating which students would be removed from the list under § 668.403(e) and the specific reason for the exclusion.

**Commented [A18]:** In this section 668.404, we have reintroduced the processes for reviewing completers lists, challenging the median loan debt, and filing alternate earnings appeals. These processes, all present in the 2014 rule and absent from the Department's current proposal, afford critical opportunities for institutions to correct data. This process makes for better, more accurate D/E rates.



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(2) The Secretary provides the list to the institution and states which cohort period was used to select the students.

**(c) Institutional corrections to the completers list.**

(1) The Secretary presumes that the list of students and the identity information for those students are correct unless, as set forth in procedures established by the Secretary, the institution provides evidence to the contrary satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(2) No later than 45 days after the date the Secretary provides the completers list to the institution, the institution may -

(i) Provide evidence showing that a student should be included on or removed from the completers list pursuant to § 668.403(e); or

(ii) Correct or update a student's identity information and the student's program attendance information.

(3) After the 45-day period expires, the institution may no longer seek to correct the completers list of students or revise the identity or program information of those students included on the list.

(4) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final completers list. The Secretary provides the institution with the final list and indicates the cohort period or cohort periods used to create the final completers list.

**(d) Obtaining earnings data. For each completers list submitted to the Federal agency with earnings data, the agency returns to the Secretary--**

(1) The mean and median annual earnings of the students on the list whom the Federal agency with earnings data has matched with earnings data of \$1.00 or more, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list who reported no income or that the Federal agency with earnings data could not match.

**(e) ~~(d)~~ Calculating draft D/E rates.**

(1) If the Federal agency with earnings data includes reports from records of earnings ~~of~~ at least \$1.00 or more for at least 30 students, the Secretary uses the higher of the mean or median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates for each ~~GED/E~~ program or the small D/E program rate, as provided in § 668.404403.

(2) If the Federal agency with earnings data reports that it was unable to match or had no reported income for one or more of the students on the final completers list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings ~~SSA~~ the Federal agency with earnings data did not match or reported no income. For example, if the Federal agency with earnings data is unable to match ~~three~~ two students out of 100 students and one student reported no income, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

**Commented [A19]:** We have clarified that individuals with no reported income would be excluded from the D/E rate calculations. An individual who reports no income does not provide earnings data that is representative of what may be earned by an individual actively employed in the field. Further, individuals reporting no income may not be seeking employment, or may be unable to secure employment for reasons unknown to the Department (e.g., temporary disability, lack of child care). D/E rates incorporating this data could be significantly misleading and particularly damaging for D/E programs graduating high percentages of women. Multiple studies have shown that women, more often than men, are forced to leave the workforce to care for children (e.g., Center for American Progress, "[The Child Care Crisis is Keeping Women Out of the Workforce](#)").

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**(3)** The Secretary notifies the institution of the draft D/E rates for the D/E program and provides the mean and median annual earnings obtained from the Federal agency with earnings data and the individual student loan information used to calculate the rates, including the loan debt that was used in the calculation for each student.

**(4)** The draft D/E rates and the data described in this paragraph (e) are not considered public information.

**(f) *Institutional corrections to draft D/E rates.***

**(1)** The Secretary presumes that the loan debt information used to calculate the median loan debt for the program under § 668.403 is correct unless the institution provides evidence satisfactory to the Secretary, as provided in paragraph (f)(2) of this section, that the information is incorrect. The institution bears the burden of proof to show that the loan debt information is incorrect and to show how it should be corrected.

**(2)** No later than 45 days after the Secretary notifies an institution of the draft D/E rates for a D/E program, the institution may challenge the accuracy of the loan debt information that the Secretary used to calculate the median loan debt for the program under § 668.403 by submitting evidence, in a format and through a process determined by the Secretary, that demonstrates that the median loan debt calculated by the Secretary is incorrect.

**(3)** In a challenge under this section, the Secretary does not consider -

**(i)** Any objection to the mean or median annual earnings that the Federal agency with earnings data provided to the Secretary;

**(ii)** More than one challenge to the student-specific data on which draft D/E rates are based for a D/E program for an award year; or

**(iii)** Any challenge that is not timely submitted.

**(1)** The Secretary considers the evidence provided by an institution challenging the median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.

**(2)** If the information from an accepted challenge changes the median loan debt of the D/E program, the Secretary recalculates the D/E program's draft D/E rates.

**(3)** Except as provided under § 668.404, an institution that does not timely challenge the draft D/E rates for a program waives any objection to those rates.

**(g) *Final D/E rates.***

**(1)** After expiration of the 45-day period and subject to resolution of any challenge under paragraph (f) of this section, a program's draft D/E rates constitute its final D/E rates.

**(2)** The Secretary informs the institution of the final D/E rates for each of its D/E programs by issuing the notice of determination described in § 668.406(a).

**(3)** After the Secretary provides the notice of determination to the institution, the Secretary may publish the final D/E rates for the program, unless the Secretary has received timely notice that the institution intends to file an alternate earnings appeal under § 668.405.

**(h) *Conditions for corrections and challenges.*** An institution must ensure that any material that it submits to make any correction or challenge under this section is complete, timely, accurate, and in a format

**Commented [A20]:** This ensures that misleading D/E rates would not be published. The Secretary would publish rates only after alternate earnings appeals were completed and the most accurate D/E rates calculated.

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acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.

**§ 668.405 D/E rates alternate earnings appeals.**

**(a) D/E rates alternate earnings appeals.** An institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates issued by the Secretary. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from the Federal agency with earnings data to calculate the final D/E rates under § 668.403.

**(b) Basis for appeals.**

**(1)** The institution may use alternate earnings from an institutional survey conducted under paragraph (c) of this section, or from a State-sponsored data system under paragraph (d) of this section, to recalculate the program's final D/E rates.

**(2)** When submitting its appeal of the final D/E rates, the institution must -

- (i)** Use the annual loan payment used in the calculation of the final D/E rates; and
- (ii)** Use the higher of the mean or median alternate earnings.

**(3)** The institution must include in its appeal the alternate earnings of all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.403 or a comparable cohort period, provided that the institution may elect -

- (i)** If conducting an alternate earnings survey, to exclude from the survey, in accordance with the standards established by NCES, all or some of the students excluded from the D/E rates calculation under § 668.403(e); or
- (ii)** If obtaining annual earnings data from one or more State-sponsored data systems, and in accordance with paragraph (d)(2) of this section, to exclude from the list of students submitted to the administrator of the State-administered data system all or some of the students excluded from the D/E rates calculation under § 668.403(e).

**(c) Survey requirements for appeals.** An institution must -

**(1)** In accordance with the standards included on an Earnings Survey Form developed by NCES, conduct a survey to obtain annual earnings information of the students described in paragraph (b)(3) of this section. The Secretary will publish in the Federal Register the Earnings Survey Form that will include a universe survey pilot-tested following the effective date of this regulation, as well as the survey standards. An institution is not required to use the Earnings Survey Form but, in conducting a survey under this section, must adhere to the survey standards and present to the survey respondent in the same order and same manner the same survey items, included in the Earnings Survey Form; and

**(2)** Submit to the Secretary as part of its appeal -

- (i)** A certification signed by the institution's chief executive officer attesting that the survey was conducted in accordance with the survey standards in the Earnings Survey Form, and that the mean or median earnings used to recalculate the D/E rates was accurately determined from the survey results; and
- (ii)** Supporting documentation requested by the Secretary.

**(d) State-sponsored data system requirements for appeals.** An institution must -

**Commented [A21]:** We have restored this critical opportunity, found in the 2014 rule, for institutions to correct and improve their earnings data. We have also provided this opportunity to all institutions for all D/E programs to ensure that the data and rates are as accurate for consumers as possible.

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- (1) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students described in paragraph (b)(3) of this section to the administrator of each State-sponsored data system used for the appeal;
- (2) Demonstrate that annual earnings data were obtained for more than 50 percent of the number of students in the cohort period not excluded pursuant to paragraph (b)(3) of this section, and that number of students must be 30 or more; and
- (3) Submit as part of its appeal -
  - (i) A certification signed by the institution's chief executive officer attesting that it accurately used the State-provided earnings data to recalculate the D/E rates; and
  - (ii) Supporting documentation requested by the Secretary.

**(e) Appeals procedure.**

- (1) For any appeal under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.404 and the notice of determination under § 668.406, the institution must -
  - (i) Notify the Secretary of its intent to submit an appeal no earlier than the date that the Secretary provides the institution the draft D/E rates under § 668.404(e)(3), but no later than 14 days after the date the Secretary issues the notice of determination under § 668.406(a) informing the institution of the final D/E rates under § 668.404(g); and
  - (ii) Submit the recalculated D/E rates, all certifications, and specified supporting documentation related to the appeal no later than 60 days after the date the Secretary issues the notice of determination.
- (2) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under § 668.504 based on the D/E rates under appeal while the Secretary considers the appeal. If the Secretary has published final D/E rates under § 668.404(g), the program's final D/E rates will be retracted until the appeal has been determined.
- (3) An institution that does not submit a timely appeal waives its right to appeal the D/E program's failing D/E rates for the relevant award year.

**(f) Appeals determinations.**

- (1) Appeals denied. If the Secretary denies an appeal, the Secretary notifies the institution of the reasons for denying the appeal, and the program's final D/E rates previously issued in the notice of determination under § 668.406(a) remain the final D/E rates for the program for the award year.
- (2) Appeals granted. If the Secretary grants the appeal, the Secretary notifies the institution that the appeal is granted, that the recalculated D/E rates are the new final D/E rates for the program for the award year, and of any consequences of the recalculated rates under § 668.504. The Secretary also publishes the D/E program's new final D/E rates.

**(g) Conditions for alternate earnings appeals.** An institution must ensure that any material that it submits to make an appeal under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of determination.

**§ 668.406 Determination and publication of the final D/E rates— following appeal.**

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~~(a) **Notice of determination- of D/E rates.** For each award year for which the Secretary calculates D/E rates for a GED/E program or the small D/E program rate, the Secretary issues a notice of determination informing the institution of the following:~~

~~(1)(a) **The D/E rates for each GED/E program and for its small D/E programs as determined under §668.404-403.**~~

~~(2) **The determination by the Secretary of whether each GE program is passing, failing, or ineligible, as described in §668.403, and the consequences of that determination;**~~

~~(3) **Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program; and**~~

~~(4) **Whether the institution is required to provide the student warning under §668.407.**~~

~~(b) **Effective date of Secretary's determination.** The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination, subject to the challenges and appeals described in §§ 668.404 and 668.405, respectively.~~

~~§ 668.407 **Consequences of the D/E rates.**~~

~~(a) **Student warning.**~~

~~(1) **Events requiring a warning to students and prospective students.** The institution must provide a warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its D/E rates for the next award year.~~

~~(2) **Content of warning.** The institution must provide—~~

~~(i) **The relevant information to access the website maintained by the Secretary;**~~

~~(iv) **A warning, as specified by the Secretary in a notice published in the Federal Register, that the program has not passed standards established by the U.S. Department of Education and may face restrictions on enrollment and/or could lose access to Federal grants and loans in the subsequent award year; and**~~

~~(v) **A statement that the student must attest to having seen the warning through the disclosure website established and maintained by the Secretary.**~~

~~(vi) **For warnings provided to enrolled students—**~~

~~(A) **A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;**~~

~~(B) **An indication of whether the institution will—**~~

~~(1) **Continue to provide instruction in the program to allow students to complete the program; and**~~

~~(2) **Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and**~~

**Commented [A22]:** This section concerning consequences has been moved to the new subpart R that applies solely to GE programs.

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~~— (C) An explanation of whether the students could transfer credits earned in the program to another institution.~~

~~(3) *Alternative languages.* To the extent practicable, the institution must provide alternatives to the English language student warning for those students and prospective students for whom English is not their first language.~~

~~(4) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under §668.406 and maintain documentation of its efforts to provide that warning.~~

~~— (5) *Delivery to prospective students.*~~

~~(i) An institution must provide the warning as required under paragraph (2) of 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—~~

~~(A) Hand-delivering the warning and the relevant information to access the website maintained by the Secretary as a separate document to the prospective student or third party individually, or as part of a group presentation;~~

~~(B) Sending the warning and the relevant information to access the website maintained by the Secretary 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~~

~~(C) Providing the warning and the relevant information to access the website maintained by the Secretary orally to the student or third party if the contact is by telephone.~~

~~(ii) 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 student completes the attestation in subparagraph (a)(2)(iii).~~

~~— (b) *Restrictions.*~~

~~(1) *Ineligible program.* Except as provided in §668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.~~

~~(2) *Period of ineligibility.* An institution may not seek to reestablish the eligibility of a failing program that it discontinued voluntarily either before or after D/E rates are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing program.~~

~~(3) *Restoring eligibility.* An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under §668.410(c).~~

~~§ 668.408~~ **Reporting requirements for GED/E programs.**

~~(a) (a) In accordance with procedures established by the Secretary, an institution must report--~~

**Commented [A23]:** We urge the Department to consider each of the information reporting obligations detailed in this section and to consider removing those data points that can be obtained by the Department directly through NSLDS and other available systems. This would reduce the already considerable administrative burden this rule places on institutions.

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(1) ~~(1)~~ For each student enrolled in a GED/E program during an award year who received title IV, HEA program- funds for enrolling in that program—

- (i) Information needed to identify the student and the institution;
- (ii) The name, CIP code, credential level, and length of the D/E program;
- (iii) Whether the D/E program is a ~~medical or dental~~ program whose students ~~are required to~~ complete an internship or residency, as described in § 668.402;
- (iv) The date the student initially enrolled in the D/E program;
- (v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the D/E program during the award year; and
- (vi) 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 D/E program;

(2) ~~(2)~~ If the student completed or withdrew from the GED/E program during the award year—

- (i) The date the student completed or withdrew from the D/E program;
- ~~(ii)~~ The total amount the student received from private education loans, as described in § ~~668.404403~~(d)(1)(ii), for enrollment in the D/E program that the institution is, or should reasonably be,
  - (ii) aware of;
- (iii) The total amount of institutional debt, as described in § 668.404403(d)(1)(iii), the student owes any party after completing or withdrawing from the D/E program;
- (iv) The total amount of tuition and fees assessed the student for the student's entire -enrollment in the D/E program and any institutional grants, scholarships, or discounts provided to the student; ~~and~~
- ~~(iv)~~(v) The total amount of Federal or State non-loan funds the student received and used to pay the cost of tuition, fees, books, supplies, and equipment; and
- ~~(v)~~(vi) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was -enrolled in the D/E program, or a higher amount if assessed the student by the institution;

(3) ~~(3)~~ As described in a notice published by the Secretary in the *Federal Register*, any other information the Secretary requires the institution to report in order to calculate the D/E rates described in this section.

(b) ~~(b)(1)~~

(1) An institution must report the information required under paragraphs (a)(1) and (2) of this section -no later than—

- (i) ~~July 31~~ ~~October 1~~, following the date these regulations take effect, or 90 days following the date the Secretary makes available the procedures and reporting instructions, whichever is later, for the ~~second through fifth, sixth, seventh-, and eighth~~ award years prior to that date;
- (ii) For ~~medical and dental~~ D/E programs that ~~require~~ include an internship or residency, ~~July 31~~ ~~October 1~~, following the date these regulations take effect, or 90 days following the date the Secretary makes

**Commented [A24]:** This would afford institutions additional time to gather the data required to calculate the initial round of D/E rates. We do not believe one month following the effective date of the regulations is sufficient.

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available the procedures and reporting instructions, whichever is later, for the second through eighth, ninth, tenth, and eleventh award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the *Federal Register*.

(2) ~~(2)~~ For any award year, if an institution fails or is unable to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed or was unable to comply with any of the reporting requirements. The Secretary will deem acceptable the inability of an institution to provide all or some of the required information if the institution is no longer required to maintain such information under applicable Federal or State record retention requirements.

**§ 668.408 Severability.**

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.

\* \* \*

**Commented [A25]:** Institutions would not be penalized if unable to produce data from years that exceed required record retention periods.



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**Subpart QR—Gainful Employment (GE) Programs**

**§ 668.401501 Scope and purpose.**

This subpart applies to an educational GE program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

(a) The Secretary determines that the program is eligible for title IV, HEA program funds; and

(b)(a) An institution reports information about the program to the Secretary; and

(a) Beginning with the 2026-2027 award year, the Secretary determines whether a GE program is eligible for title IV loans or otherwise subject to the consequences set forth in §668.403504.

**§ 668.502 Gainful employment framework.**

(a) ~~(a)~~ **General.** A GE program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in §668.414505; and

(2) Is not an ineligible program under the D/E rates calculated pursuant to §668.403.

(b) ~~(b)~~ **Debt-to-earnings rates (D/E rates) for GE programs.** For each award year, the Secretary calculates two D/E rates for a -GE program, the discretionary earnings rate and the annual earnings rate, using the procedures in ~~§§668.404 through §668.406-403.~~

(c) ~~(c)~~ **Outcomes of the D/E rates for GE programs.**

(1) ~~(1)~~ A GE program passes the D/E rates if—

(i) Its discretionary earnings rate is less than or equal to 2030 percent; or

(ii) Its annual earnings rate is less than or equal to 812 percent.

(2) ~~(2)~~ A GE program fails the D/E rates if—

(i) Its discretionary earnings rate is greater than 2030 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and

(ii) Its annual earnings rate is greater than 812 percent or the denominator of the rate (annual earnings) is zero.

(3) A GE program becomes ineligible, subject to paragraph (c)(4), if it fails the D/E rates in two out of any three consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.

(4) If the Secretary does not calculate or issue D/E rates for a program for an award year, or calculates only a small program rate with respect to that program, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

**§ 668.406503 Determination of the D/E rates for GE programs.**

(a) ~~(a)~~ **Notice of determination.** For each award year for which the Secretary calculates D/E rates for a GE program or the small program rate, the Secretary issues a notice of determination informing the institution of the following:

(1) The D/E rates for each GE program and for its small programs as determined under §668.404403;

**Commented [A1]:** This helps to ensure that sanctions would not be imposed for metrics calculated using data from years that precede the effective date of the rule.

**Commented [A2]:** We have returned these D/E rate thresholds to those promulgated by the Obama administration in the 2011 rule. We believe these thresholds are more reasonable, and this simplified approach is superior to one involving a zone, as contemplated in 2014.

**Commented [A3]:** These paragraphs were relocated to the next section in the discussion of consequences.

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- (2) The determination by the Secretary of whether each GE program is passing, failing, or ineligible, as described in §668.403502, and the consequences of that determination;
  - (3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program; and
  - (4) ~~(4)~~ Whether the institution is required to provide the student warning under §668.407504.
- (b) ~~(b)~~ Effective date of Secretary's determination. The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination.

**§ 668.407504 Consequences of the D/E rates for GE programs.**

**(a) ~~(a)~~ Waiver of consequences.**

- (1) The Secretary will waive and will not impose the consequences set forth in this section based on D/E rates calculated using data from award or calendar years that precede July 1, 2023.
- (2) For any given year, the Secretary may waive sanctions if the Secretary determines –
  - (i) That the GE program trains students to be essential workers or to enter professions experiencing critical national job shortages;
  - (ii) That the GE program's earnings were negatively and materially impacted by an unforeseen event beyond the institution's control such as a global pandemic; or
  - (iii) That the GE program's earnings were negatively and materially impacted by wage discrimination experienced by the program's graduates.

**(a) Loss of Eligibility.**

- (1)
  - (i) A GE program becomes ineligible for title IV loans, subject to paragraph (b)(2), if it fails the D/E rates in three out of any four consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.
  - (ii) In the event a GE program becomes ineligible pursuant to paragraph (b)(1)(i), students currently enrolled in the GE program at the time the program becomes ineligible may continue to receive title IV loans until they have graduated from the program.
- (2) If the Secretary does not calculate or issue D/E rates for a GE program for an award year, or calculates only a small program rate with respect to that program, the GE program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

**(b) Student warning.**

- (1) Events requiring a warning to students and prospective students. The institution must provide a -warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the GE program could become ineligible to disburse title IV loan funds based on its D/E rates for the -next award year.
- (2) Content of warning. The institution must provide—

**Commented [A4]:** Sanctions would not be imposed for metrics calculated using data from years that precede the effective date of the rule.

**Commented [A5]:** This would afford the Secretary flexibility to ensure that critical training opportunities are not reduced during times of great need, or based on wage discrimination or events beyond an institution's control.

**Commented [A6]:** This additional year would afford institutions a more reasonable opportunity to adjust for market shifts or other unforeseen events like a global pandemic.

**Commented [A7]:** This would ensure that students who have enrolled in or remained enrolled in a program with full knowledge of the program's D/E rates would be permitted to receive title IV aid until they complete their program. The GE rule should not force mass withdrawals. This would be terrible for students.

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- (i) The relevant information to access the website maintained by the Secretary;
- (ii) A warning, as specified by the Secretary in a notice published in the *Federal Register*, that the program has not passed standards established by the U.S. Department of Education and ~~may face restrictions on enrollment and/or~~ could lose access to Federal ~~grants and~~ loans in the subsequent award year; and
- (iii) A statement that the student must attest to having seen the warning through the disclosure website established and maintained by the Secretary.
- (iv) For warnings provided to enrolled students--
  - (A) ~~(A)~~ A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could attempt to transfer credits earned in the program to another program at the institution, ~~and which course credits might~~ would transfer, and an express statement that whether to receive credits on transfer is always at the discretion of the receiving institution, in the event that the program loses eligibility for title IV, ~~HEA program funds~~ loans;
  - (B) ~~(B)~~ An indication of whether the institution will--
    - (1) Continue to provide instruction in the program to allow students to complete the program; and
    - (2) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and
  - (C) ~~(C)~~ An explanation of whether the students could transfer credits earned in the program to another institution.
- (3) *Alternative languages.* To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.
- (4) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under §668.406 and maintain documentation of its efforts to provide that warning.
- (5) ~~(5)~~ *Delivery to prospective students.*
  - ~~(i) An institution must provide the warning as required under paragraph (c)(2) of 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~~~~
  - ~~(A) Hand delivering the warning and the relevant information to access the website maintained by the Secretary as a separate document to the prospective student or third party individually, or as part of a group presentation;~~
  - ~~(B) Sending the warning and the relevant information to access the website maintained by the Secretary 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~~

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~~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~~

~~(c)(i) Providing the warning and the relevant information to access the website maintained by the Secretary orally to the student or third party if the contact is by telephone.~~

~~(ii) (iii) 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 student completes the attestation in subparagraph (ac)(2)(iii).~~

~~(iii)(iii) The Secretary shall provide institutions with real-time, on demand access to the website maintained by the Secretary for the purposes of identifying the students who have completed the attestation in subparagraph (a)(2)(iii) and determining the date such attestation was completed.~~

**(c) ~~(b)~~ Restrictions.**

~~(1) Ineligible program. Except as provided in §668.26(d), an institution may not disburse title IV, HEA program loan funds to students enrolled in an ineligible GE program.~~

~~(2) Period of ineligibility. An institution may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after failing D/E rates are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing program.~~

~~(3) Restoring eligibility. An ineligible GE program, or a failing program that an institution voluntarily discontinues after failing D/E rates are issued for that program, remains ineligible until the institution establishes the eligibility of that program under §668.410505(c).~~

~~(3)(d) Exclusion. For any year for which the Secretary provides the institution a notice of determination under section 668.503 that a D/E rate is failing for a GE program, the program is excluded from consequences in this section if the D/E rate contained in that notice of determination exceeds the median debt to earnings rate for programs leading to the same primary occupation (by name and/or CIP code) as calculated by the Secretary using the median loan debt and median earnings data provided by all participating institutions under section 668.43 and subpart Q or as published on the College Scorecard.~~

**~~§ 668.409 Supplementary performance measures.~~**

~~(a) General. The Secretary assesses and analyzes the following information prior to issuing an institution a new Program Participation Agreement, and may consider the information in determining whether to certify, or condition the participation of, an institution under §§ 668.13 and 668.14--~~

~~(1) Withdrawal rate. The percentage of students in the enrollment cohort who withdrew from the institution within 100 percent or 150 percent of the length of the program.~~

~~(2) Debt-to-earnings rates. The debt-to-earnings rates under §668.403, if applicable.~~

~~(3) Small program rates. The small program rates under §668.404(g), if applicable.~~

~~(4) Instructional, advertising, and administrative expenses. The amounts the institution spent on instruction/instructional activities; advertising or recruiting activities; and administrative activities, which~~

**Commented [A8]:** Any discussion regarding information that the Department will review as part of certification or recertification determinations should appear in 668.13 and apply to all institutions.

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~~include the salaries and compensation of the owners and principal officers, as provided through a disclosure in the audited financial statements required under §668.23(d).~~

~~(5) *Job placement rate.* If the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or a program, or both, the placement rate or rates, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State.~~

**§ 668.410505 Certification requirements for GE programs.**

**(a) ~~(a)~~ *Transitional certification for existing programs.***

**(1)** ~~Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under §668.14.~~

~~**(2)** If an institution makes the certification in its program participation agreement pursuant to paragraph~~

~~**(2)** (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.~~

~~**(b) ~~(b)~~ *Program participation agreement certification.*** As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under §668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that make an existing certification no longer accurate.~~

**(c) ~~(c)~~ *Establishing eligibility and disbursing funds.***

~~**(1) ~~(1)~~** An institution establishes the eligibility for title IV, HEA program funds loans of a GE program by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds loans to students enrolled in that program.~~

~~**(2) ~~(2)~~** An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in §668.407504(b), that was subject to the three-year loss of eligibility under §668.407504(b), until that three-year period expires.~~

~~**(d) ~~(d)~~ *GE program eligibility certifications.*** An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that each eligible GE program it offers 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.~~

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**§ 668.506411 Severability.**

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.

\* \* \*

**§ 668.43 Institutional and programmatic information.**

\* \* \*

~~(d)~~

(d) (1)

- (1) D/E program rates. An institution must make readily available to enrolled and prospective students the D/E rates calculated for D/E programs under subpart Q.
- (2) Disclosure website. An institution must provide such information as the Secretary prescribes through -a Federal Register notice for disclosure to prospective and enrolled students through a website established and maintained by the Secretary. The Secretary will conduct consumer testing to inform the design of the website. The Secretary may include on the website, among other disclosures:
  - (i) The D/E rates calculated for D/E programs under subpart Q.
  - (ii) The primary occupations (by name and/or SOC code) that the D/E program prepares students to enter, along with links to occupational profiles on O\*NET ([www.onetonline.org](http://www.onetonline.org)) or its successor site.
  - (iii) As reported to or calculated by the Secretary, the D/E program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.
  - (iv) The length of the D/E program in calendar time (i.e., weeks, months, years).
  - (v) The total number of individuals enrolled in the D/E program during the most recently completed award year.
  - (vi) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on title IV loans during a period determined by the Secretary.
  - (vii) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, other institutional charges that a student would incur for completing the D/E program within the length of the program.
  - (viii) Of the individuals enrolled in the D/E program during the most recently completed award year, the percentage who received a title IV loan and/or a private loan for enrollment in the program.
  - (ix) As calculated by the Secretary in accordance with § 668.403, the median loan debt of students who completed the D/E program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.
  - (x) As provided determined by the Secretary in accordance with § 668.403, the greater of the mean or median earnings of students who completed the D/E program- or of all students who completed or withdrew from the program, during a period determined by the Secretary.

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~~(2)(xi)~~ Whether the D/E program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

~~(xi)~~ The supplementary performance measures in § 668.409.

~~(xii)~~ A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

~~(2)(3)~~ Program web pages. The institution must provide a link and any needed information to access the website maintained by the Secretary on any ~~web page~~ webpage containing academic, cost, financial aid, or admissions information about the D/E program. The Secretary may require the institution to modify a webpage if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

~~(3)(4)~~ Distribution to prospective students. The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student (as defined in 34 CFR 668.402), 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.