

# Small Entity Compliance Guide

## Financial Value Transparency and Gainful Employment Regulations

### Introduction

This guide was prepared by the staff of the U.S. Department of Education as a “small entity compliance guide” under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains the Financial Value and Gainful Employment final rule published in the *Federal Register* by the Department on October 10, 2023 (88 FR 70004). This guide is not a substitute for the rule itself. Only the rule itself can provide complete and definitive information regarding its requirements.

### Purpose of This Regulatory Action

Title 34 CFR part 668, subpart Q, establishes a financial value transparency framework. That framework increases the quality and availability of information provided directly to students about the costs, sources of financial aid, and outcomes of students enrolled in nearly all educational programs that participate in the title IV, Higher Education Act (HEA) student aid programs. In part, the transparency framework establishes measures of enhanced earnings and affordable debt — more specifically, the earnings premium (EP measure) that typical program graduates experience relative to the earnings of typical high school graduates, as well as the debt service burden (debt-to-earnings ratio or D/E rates measure) for typical graduates. It further establishes performance benchmarks for each measure, denoting a threshold level of performance below which the program may have adverse financial consequences to students. This information will be made available to all students via a program information website maintained by the Department and described in amended § 668.43. For programs other than undergraduate degrees that do not meet the performance benchmarks for the D/E rates measure, prospective students are required to acknowledge having viewed these disclosures before entering into enrollment agreements with an institution. Further, the Department’s program information website will provide the public, taxpayers, and the Government with relevant information with which they may act to better safeguard the Federal investment in these programs. The transparency framework also provides institutions with meaningful information that they can use to compare their program’s performance to other programs and institutions and to improve student outcomes.

Title 34 CFR part 668, subpart S, establishes an accountability and eligibility framework for gainful employment (GE) programs. This GE program accountability framework is specific to educational programs that, as a statutory condition of eligibility to participate in title IV, HEA, are required to provide training that prepares students for gainful employment in a recognized occupation or profession (GE programs). GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private nonprofit institutions such as community colleges. The GE program eligibility framework uses the same earnings premium and debt-burden measures from the transparency framework to determine whether a GE program remains eligible for title IV, HEA participation.

The GE eligibility criteria define what it means to prepare students for gainful employment in a recognized occupation, and they tie program eligibility to whether GE programs provide education and training to their title IV, HEA students that lead to earnings beyond those of high school graduates and sufficient to allow students to affordably repay their student loans. GE programs that fail the same measure in any two out of three consecutive years for which the measure is calculated will not be eligible to participate in title IV, HEA programs.

### **Summary of the Major Provisions**

These regulations --

- Amend § 600.10 to require an institution seeking to establish or reestablish the eligibility of a GE program to add the program to its application.
- Amend § 600.21 to require an institution to notify the Secretary within 10 days of any update to information included in the GE program's certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including "annual debt-to-earnings rate," "classification of instructional programs (CIP) code," "cohort period," "credential level," "debt-to-earnings rates (D/E rates)," "discretionary debt-to-earnings rates," "earnings premium," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," "gainful employment program (GE program)," "institutional grants and scholarships," "length of the program," "metropolitan statistical area," "poverty guideline," "prospective student," "qualifying graduate program," "student," and "substantially similar program."
- Amend § 668.43 to establish a Department-operated website with program-level financial information; to require institutions to provide a prominent link to that website on institutional webpages that contain academic, cost, financial aid, or admissions information; to require institutions to inform a prospective student how to access that website before the student enrolls, registers, or makes a financial commitment to the institution; and to require institutions to inform an enrolled student how to access that website each award year the student continues enrollment at the institution.
- Amend § 668.91 to provide that a hearing official must terminate the eligibility of a GE program that fails to meet the GE program accountability metrics established in this rule, unless the hearing official concludes that the Secretary erred in the calculation.
- Add § 668.401 to identify the scope and purpose of the newly established financial value transparency regulations in subpart Q.
- Add § 668.402 to provide a framework for the Secretary to determine whether a program leads to high debt burden or low earnings, including establishing annual and discretionary D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.

- Add § 668.403 to establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payment, annual earnings, loan debt, and assessed charges, as well as to provide exclusions and specify when D/E rates will not be calculated.
- Add a new § 668.404 to establish a methodology to calculate a program's earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions and specify when the earnings threshold measure will not be calculated.
- Add § 668.405 to establish a process by which the Secretary will obtain administrative and earnings data to calculate D/E rates and the earnings premium measure.
- Add § 668.406 to require the Secretary to issue a notice of determination notifying institutions of their financial value transparency metrics and outcomes.
- Add § 668.407 to require prospective students to acknowledge having seen the information on the website maintained by the Secretary if a program other than an undergraduate degree program has failed the D/E rates measure, to specify the content and delivery parameters of such acknowledgments, and to require that students must provide the acknowledgment before entering an enrollment agreement with an institution.
- Add § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a program and to define the time frame for institutions to report this information.
- Add § 668.409 to establish severability protections ensuring that if any provision in subpart Q is held invalid, the remaining provisions of that subpart and other subparts would continue to apply.
- Add § 668.601 to identify the scope and purpose of newly established GE regulations under subpart S.
- Add § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.
- Add § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility solely on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.

- Add § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify, when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution's recognized accreditation or, if the institution is a public postsecondary vocational institution, that the program is approved by a recognized State agency.
- Add § 668.605 to require institutions to distribute warnings to current and prospective students if a GE program is at risk of a loss of title IV, HEA eligibility, to specify the content and delivery requirements for such warnings, and to provide that students must acknowledge having seen the warning through the Department's program information website before the institution may disburse any title IV, HEA funds.
- Add § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

### **Compliance Date for Entities Subject to These Regulations**

Section 482(c) of the Higher Education Act (HEA) requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. Under section 482(c) of the HEA, most of the final Financial Value Transparency and Gainful Employment regulations become effective July 1, 2024. However, the requirements under § 668.43(d), to establish and maintain a Department website for posting and distributing key information pertaining to institutions' programs, the requirement that students acknowledge information about an institution's programs under § 668.407, and the warning requirements under § 668.605 are not applicable until July 1, 2026.

### **Entities Subject to the Rule**

The regulations affect institutions that participate in the title IV, HEA programs. For purposes of these final regulations, the Department continues to define "small entities" by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for small less-than-two-year institutions (below associate degrees) is less than 750 full-time-equivalent (FTE) students and for small institutions of at least two but less-than-4-years and 4-year institutions, less than 1,000 FTE students. The Department consulted with the Office of Advocacy for the Small Business Administration and the Office of Advocacy approved these size standards for this rulemaking. As many of the entities subject to the regulations are "small entities," we have prepared this Small Entity Compliance Guide.

### **Description of (and Where Feasible) an Estimate of the Number of Small Entities to Which the Regulations Will Apply**

The following table summarizes the number of institutions potentially affected by these final regulations.

	Small	Total	Percent
Proprietary	2,114	2,331	91%
2-year	1,875	1,990	94%
4-year	239	341	70%
Private not-for-profit	997	1,831	54%
2-year	199	203	98%
4-year	798	1,628	49%
Public	524	1,924	27%
2-year	461	1,145	40%
4-year	63	779	8%
Total	3,635	6,086	60%

Source: 2020-21 IPEDS data reported to the Department.

**Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations (Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record)**

The final rule involves six types of reporting and compliance requirements for institutions, including small entities. First, under § 600.10, institutions are required to update their application when establishing or reestablishing the eligibility of a GE program. Second, under § 600.21, institutions are required to update their application no later than 10 days after any change to a GE program’s name, CIP code, credential level, or certification status. Third, under § 668.43, institutions are required to distribute information about the Department’s program information website to current and prospective students and to provide links to that website on any institutional webpage that includes cost, academic, financial aid, or admissions information about the program or the institution. Fourth, under § 668.407, prospective students must acknowledge viewing the Department’s program information website if an eligible certificate or graduate program leads to high debt outcomes based on its D/E rates. Fifth, under § 668.408, institutions are required to provide new annual reporting about programs, current students, and students that complete or withdraw during each award year. This reporting includes student-level information on enrollment, cost of attendance, tuition and fees, allowances for books and supplies, allowances for housing, institutional and other grants, and private loans disbursed. Finally, under § 668.605, institutions with GE programs that fail at least one of the metrics are required to provide warnings to current and prospective students about the risk of losing title IV,

HEA eligibility and students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

### **Other Resources**

The final regulations published for Financial Value Transparency and Gainful Employment regulations can be found at [2023-20385.pdf \(govinfo.gov\)](#). The Department will provide additional guidance and training in the coming months through the [Federal Student Aid Knowledge Center](#) website.

### **Contacting the Department of Education**

The Department of Education is available to assist small entities with questions regarding the Financial Value Transparency and Gainful Employment regulations. Please direct questions via email to [GE24@ed.gov](mailto:GE24@ed.gov).