DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2014–OPE–0039]

RIN 1840–AD15

Program Integrity: Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations on institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions to establish measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation, and the conditions under which these educational programs remain eligible under the Federal Student Aid programs authorized under title IV of the HEA (title IV, HEA programs).

DATES: We must receive your comments on or before May 27, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Ashley Higgins, U.S. Department of Education, 1990 K Street NW., room 8037, Washington, DC 20006–8502.

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 Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: John Kolotos, U.S. Department of Education, 1990 K Street NW., Room 8018, Washington, DC 20006–8502. Telephone: (202) 502–7762 or by email: *gainfulemploymentregulations@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: As discussed in more detail under ''§ 668.401 Scope and purpose,'' the proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private non-profit institutions such as community colleges.

Specifically, the Department is concerned that a number of GE programs: (1) Do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to provide training, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. We are also concerned about the growing evidence, from Federal and State investigations and *qui tam* lawsuits, that many GE programs are engaging in aggressive and deceptive marketing and recruiting practices. As a result of these practices, prospective students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests.

For these reasons, through this regulatory action, the Department seeks to establish: (1) An accountability framework for GE programs that will define what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that would increase the quality and availability of information about the outcomes of students enrolled in GE programs. Better outcomes information would benefit: students, prospective students, and their families, as they make critical decisions about their educational investments; the public, taxpayers, and the Government, by providing information that would enable better protection of the Federal investment in these programs; and institutions, by providing them with meaningful information that they could use to help improve student outcomes in their programs.

The accountability framework is designed to define what it means to prepare students for gainful employment by establishing measures that would assess whether programs provide quality education and training to their students that lead to earnings that will allow students to pay back their student loan debts. For programs that perform poorly under the measures, institutions would need to make improvements in the initial years of the rule, or lose program eligibility for title IV, HEA program funds. For programs that are not among the very worst, but nonetheless do not have outcomes that meet minimum acceptable levels of performance, institutions would be required to make improvements after the regulations become effective to avoid losing eligibility, but would be given a relatively greater amount of time to do so.

The transparency framework is designed to establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that information is disseminated to students, prospective students, and their families that is accurate and comparable and could help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Further, this information would provide the public, taxpayers, and the Government with relevant information to better safeguard the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to improve student outcomes in these programs.

Authority for This Regulatory Action:

To accomplish these two primary goals of accountability and transparency, the Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations (CFR).

The Department's authority for this regulatory action is derived primarily from three sources, which are discussed in more detail in ''§ 668.401 Scope and purpose'' and ''§ 668.403 Gainful employment framework.'' First, sections 101 and 102 of the HEA define an eligible institution, as pertinent here, as one that provides an ''eligible program of training to prepare students for gainful employment in a recognized occupation.'' 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A). Section 481(b) of the HEA defines ''eligible program'' to include a program that ''provides a program of training to prepare students for gainful employment in a recognized profession.'' 20 U.S.C. 1088(b). Briefly, this authority establishes the requirement that the educational programs that are eligible for title IV, HEA program funds under these sections must provide training to prepare students for gainful employment in a recognized occupation—the requirement that the Department seeks to define through the proposed regulations.

Second, section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e-3. Furthermore, under section 414 of the Department of Education Organization Act, the Secretary is authorized 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. These authorities thus include promulgating regulations that, in this case: set measures to determine the eligibility of GE programs for title IV, HEA program funds; require institutions to report information about the program to the Secretary; and require the institution to disclose information about the program to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

As also explained in more detail in ''§ 668.401 Scope and purpose,'' the Department's authority for the transparency framework is further supported by section 431 of the Department of Education Organization Act, which provides authority to the Secretary, in relevant part, to inform the public regarding federally supported education programs; and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs. 20 U.S.C. 1231a.

The Department's authority for the proposed regulations is also informed by the legislative history of these provisions, as discussed in ''§ 668.403 Gainful employment framework,'' as well as the rulings of the U.S. District Court for the District of Columbia in *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012), and 930 F.Supp.2d 210 (D.D.C. 2013). Notably, the court specifically considered the Department's authority to define what it means to prepare students for gainful employment and to require institutions to report and disclose relevant information about their GE programs.

Summary of the Major Provisions of This Regulatory Action:

As discussed under ''Purpose of This Regulatory Action,'' the proposed regulations would establish an accountability framework and a transparency framework.

The accountability framework would, among other things, create a certification process by which an institution would establish a GE program's eligibility for title IV, HEA program funds, as well as a process by which the Department would determine whether a program remains eligible. First, an institution would establish the eligibility of a GE program by certifying that the program is included in the institution's accreditation and satisfies any applicable State or Federal program-level accrediting and licensing requirements for the occupations for which the program purports to prepare students to enter. This requirement would serve as a baseline protection against the harm that students could experience by enrolling in programs that do not meet all State or Federal accrediting standards and licensing requirements necessary to secure the jobs associated with the training.

Under the accountability framework, we also propose two complementary yet independent measures—the debt-to-earnings (D/E) rates measure and the program cohort default rate (pCDR) measure—that would be used to determine whether a GE program remains eligible for title IV, HEA program funds.

The D/E rates measure would evaluate the amount of debt students who completed a GE program incurred to attend that program in comparison to those same students' discretionary and annual earnings after completing the program. The proposed regulations would establish the standards by which the program would be assessed to determine, for each year rates are calculated, whether it passes or fails the D/E rates measure or is ''in the zone.'' Under the proposed regulations, to pass the D/E rates measure, the GE program must have a discretionary income rate less than or equal to 20 percent or an annual earnings rate less than or equal to 8 percent. The proposed regulations would also establish a zone for GE programs that have a discretionary income rate between 20 percent and 30 percent or an annual earnings rate between 8 percent and 12 percent. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent would fail the D/E rates measure. Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds, if it fails the D/E rates measure for two out of three consecutive years, or has a combination of D/E rates measures that are in the zone or failing for four consecutive years. We propose the D/E rates measure and the thresholds, as explained in more detail in ''§ 668.403 Gainful employment framework,'' to assess whether a GE program has indeed prepared students to earn enough to repay their loans, or was sufficiently low cost, such that students are not unduly burdened with debt, and to better safeguard the Federal investment in the program.

In addition to the D/E rates measure, the proposed regulations would establish a pCDR measure. The pCDR measure would evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program. Under the proposed regulations, a program would lose eligibility if its GE program has a pCDR of 30 percent or greater for three consecutive fiscal years. We propose the pCDR measure and the thresholds, as explained in more detail in ''§ 668.403 Gainful employment framework,'' to identify those programs that may pass, or may not be evaluated by, the D/E rates measure, but whose students incur debt they cannot repay and ultimately default on their loans. Unlike the D/E rates measure, the pCDR measure would include students who did not complete their programs and therefore could disqualify programs with low completion rates that, regardless of the earnings of students who complete the program, leave a significant number of students without credentials and with unmanageable debt.

The proposed regulations would also establish procedures for the calculation of the D/E rates and pCDR measures, as well as a process for challenging the information used to calculate the D/E rates and pCDR measures and appealing those determinations. For the D/E rates measure, the proposed regulations also would establish a transition period for the first four years of the rule to allow institutions an opportunity to pass the D/E rates measure by taking immediate steps to improve otherwise failing GE programs by reducing the loan debt of currently enrolled students.

For a GE program that could become ineligible in an immediately succeeding year, based on the program's performance in prior years, the proposed regulations would require the GE program to warn students and prospective students of the potential loss of eligibility for title IV, HEA program funds, as well as the implications of such loss. Specifically, institutions would be required to provide written warnings to students that describe the options available to continue their education at the institution, or at another institution, in the event that the program loses its eligibility and whether the students will be able to receive a refund of tuition and fees. The proposed regulations also provide that, for a GE program that loses eligibility for title IV, HEA program funds, as well as any failing or zone program that is discontinued by the institution, the loss of eligibility is for three calendar years.

Through these provisions, we intend to: Ensure that, in the initial few years after the proposed regulations become effective, institutions would have a meaningful opportunity and reasonable time to improve their programs and to ensure that those improvements would be reflected in the D/E rates; protect students and prospective students and ensure that they are informed about programs that are failing or could potentially lose eligibility; and provide institutions and other interested parties with clarity as to how the calculations would be made, the opportunities institutions would have to ensure the information used in the calculations is accurate, and the consequences of failing a measure and losing eligibility.

In addition to the accountability framework, the proposed regulations would establish a transparency framework. First, the proposed regulations would establish reporting requirements, under which institutions would report information related to their GE programs to the Secretary. The reporting requirements would both facilitate the Department's evaluation of the GE programs under the accountability framework, as well as support the goals of the transparency framework. Second, the proposed regulations would require institutions to disclose relevant information and data about the GE programs through a disclosure template developed by the Secretary. The proposed disclosure requirements would help ensure students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have access to meaningful and comparable information related to student outcomes and overall performance of GE programs.

Costs and Benefits:

There would be two primary benefits of the proposed regulations. Because the proposed regulations would establish an accountability framework that assesses program performance we would expect students, prospective students, taxpayers, and the Federal Government to receive a better return on money spent on education. The proposed regulations would also establish a transparency framework designed to improve market information that would assist students, prospective students, and their families in making critical decisions about their educational investment and in understanding potential outcomes of that investment. The public, taxpayers, the Government, and institutions would also gain relevant and useful information about GE programs, allowing them to better evaluate their investment in these programs. Institutions would largely bear the costs of the proposed regulations, which would fall into two categories: paperwork costs associated with institutions complying with the proposed regulations, and other costs that could be incurred by institutions if they attempt to improve their GE programs and due to changing student enrollment. In addition, if programs that provided valuable education to students shut down as a result of the proposed regulations, then the foregone value of that service would be another cost to society. See ''Discussion of Costs, Benefits, and Transfers'' in the regulatory impact analysis in Appendix A to this document for a more complete discussion of the costs and benefits of the proposed regulations.

Invitation to Comment: We invite you to submit comments regarding the proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. Please do not submit comments outside the scope of the specific proposals in this notice of proposed rulemaking. We will not respond to comments that do not specifically relate to the proposed regulations. See ''**ADDRESSES**'' for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the 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 all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8037, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Background of the Proposed Regulations, Public Participation, and Negotiated Rulemaking

Background

The Secretary proposes to amend parts 600 and 668 of title 34 of the CFR. The regulations in 34 CFR part 600 and 668 pertain to institutional eligibility under the HEA and participation in title IV, HEA programs. We propose these amendments to establish measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation and the conditions under which these educational programs remain eligible under the title IV, HEA programs.

Negotiated Rulemaking Requirement

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html*.

Prior Negotiated Rulemaking

Between November 2009 and January 2010, the Department held three negotiated rulemaking sessions aimed at improving program integrity in the title IV, HEA programs, and that discussed gainful employment and 13 other program integrity topics. As a result of those discussions, during which consensus was not reached on issues related to gainful employment, the Department published three notices of proposed rulemaking (NPRM) related to the topic of gainful employment. Notably, those proposed regulations included two debt measures to determine whether a program provides training that prepares students for gainful employment in a recognized occupation. One measure was based on the Federal student loan repayment rates of students enrolled in the program, and the other measure was based on the debt-to-earnings ratios of students who completed the program.

On October 29, 2010, and June 13, 2011, the Department published final regulations on gainful employment: ''Program Integrity: Reporting/Disclosure Requirements for GE Programs''; ''Program Integrity: Gainful Employment—New Programs''; and ''Gainful Employment: Gainful Employment—Debt Measures'' (75 FR 66832; 75 FR 66665; 76 FR 34385). In this document, we refer to those final regulations, when discussing them collectively, as the ''2011 Final Rules.'' We did not publish final regulations for the NPRM published on September 27, 2011, relating to the application and approval process for new programs that prepare students for gainful employment in a recognized occupation.

Among other things, with respect to the two debt measures for determining whether a program provides training that prepares students for gainful employment in a recognized occupation, the 2011 Final Rules established a maximum debt-to-earnings ratio of 30 percent of discretionary income and 12 percent of annual earnings and a minimum standard of 35 percent for the loan repayment rate.

The chart below summarizes the past NPRMs and 2011 Final Rules.

Date	NPRM	Date	Final rule
June 18, 2010	Program Integrity Issues (75 FR 34806)	Oct. 29, 2010	Reporting/Disclosure Requirements for GE Programs. Effective on July 1, 2011 (75 FR 66832).
July 26, 2010	Gainful Employment (75 FR 43616)	Oct. 29, 2010	Gainful Employment—New Programs (75 FR 66665).
		June 13, 2011	Gainful Employment—Debt Measures (76 FR 34385).
Sept. 27, 2011	Application and Approval Process for New Programs (76 FR 59864).		(No final rule published).

Litigation on the 2011 Final Rules

In July 2011, immediately after the first set of final regulations for gainful employment took effect, the Association of Private Sector Colleges and Universities (APSCU), an industry organization representing for-profit institutions, brought suit against the Department in the U.S. District Court for the District of Columbia challenging, among other things, the debt measures, reporting and disclosure requirements, and new program approval requirements in the 2011 Final Rules. On June 30, 2012, the court struck down most of the 2011 Final Rules, finding that the threshold for the loan repayment measure lacked a reasoned basis. *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012). We refer to the case in this document as ''*APSCU* v. *Duncan.''* Although the court rejected APSCU's argument that the debt-to-earnings measure was not the product of reasoned decision-making, the court nonetheless found that the two debt measures and other provisions of the regulations were so intertwined that the threshold in the loan repayment measure could not be severed from the debt measures and other parts of the regulations. For this reason, the court vacated almost all of the 2011 Final Rules.

Notably, however, the disclosure requirements survived and are still in effect. Under the disclosure requirements, for each GE program, an institution must disclose the occupation that the program prepares students to enter; the on-time graduation rate for students completing the program; the tuition and fees charged; and the placement rate and median loan debt for students completing the program. The court held that the disclosure requirements are within the Department's authority under the HEA and are not arbitrary or capricious.

Additionally, the court noted in its opinion that the Secretary enjoys broad authority to make, promulgate, issue, rescind, and amend the rules and regulations governing the applicable programs administered by the Department and that the Secretary is ''authorized 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.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 141; see 20 U.S.C. 3474 (2006). Furthermore, in responding to the question of whether the Department's regulatory effort to define gainful employment is within the Department's authority, the court agreed with the Department and concluded that the phrase ''gainful employment in a recognized occupation'' is ambiguous and that in enacting it Congress delegated interpretive authority to the Department. Id. at 146.

The Department subsequently filed a motion to alter or amend the judgment, asking the court to reinstate the vacated reporting requirements, as they were required for the Department to comply with its obligations under the provisions relating to the disclosure requirements. The court denied this motion on March 19, 2013.

In its opinion, the court refused to reinstate the reporting requirements for the reason that they required institutions to report to the Department information about students enrolled in GE programs who did not apply for or receive title IV, HEA program funds. The court concluded that the Department was prohibited under section 134 of the HEA, 20 U.S.C. 1015c, from maintaining information about those students in the Department's National Student Loan Data System (NSLDS), as planned. *APSCU* v. *Duncan,* 930 F.Supp.2d 210 (D.D.C. 2013). Neither the Department nor APSCU appealed the court's rulings.

As a result of *APSCU* v. *Duncan,* certain sections of the 2011 Final Rules were vacated either in whole or in part. For the purpose of this NPRM, when referencing a section that was vacated in part, we treat the entire section as vacated. Throughout this document, we refer to the sections that were vacated or are treated here as vacated as part of the ''2011 Prior Rule.'' Although the text of these vacated sections remains in the CFR and we refer to them in this document in the present tense, these sections are of no effect. Section 668.6(b) of the 2011 Final Rules, relating to disclosure requirements for GE programs, was not vacated as a result of *APSCU* v. *Duncan*. This section remains in effect, and we refer to this section in this document as the ''2011 Current Rule.'' In discussing the current regulations and proposed regulations under ''Significant Proposed Regulations,'' we discuss relevant parts of the 2011 Final Rules, but we distinguish between sections that are part of the 2011 Prior Rule and sections that are part of the 2011 Current Rule.

New Negotiated Rulemaking

On May 1, 2012, the Department published a document in the **Federal Register** (77 FR 25658) announcing its intent to establish a negotiated rulemaking committee under section 492 of the HEA, 20 U.S.C. 1098a, to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV, HEA program funds. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking mechanisms for disbursing title IV, HEA program funds, and to improve and streamline the campus-based Federal Student Aid programs. We also announced two public hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings were held on May 23, 2012, in Phoenix, Arizona, and on May 31, 2012, in Washington, DC. We invited parties to comment and submit topics for consideration in writing, as well.

On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467, as corrected at 78 FR 25235), announcing additional topics for consideration for action by the negotiated rulemaking committee. Those additional topics for consideration included cash management of funds provided under the title IV, HEA programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes made by the Violence Against Women Reauthorization Act of 2013, Public Law 113–4, to the campus safety and security reporting requirements in the HEA; and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program. We also announced three public hearings at which interested parties could comment on the new topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committee.

On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The four hearings were held in May 2013, in Washington, DC, Minneapolis, Minnesota, and San Francisco, California; and in June 2013, in Atlanta, Georgia. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from all six public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html*. Written comments submitted in response to the May 1, 2012, and April 16, 2013, notices may be viewed through the Federal eRulemaking Portal at *www.regulations.gov*. Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket.

On June 12, 2013, we announced in the **Federal Register** (78 FR 35179) our intent to establish a negotiated rulemaking committee to prepare proposed regulations for the title IV, HEA programs. The proposed regulations would establish measures for programs that prepare students for gainful employment in a recognized occupation. The notice requested nominations of individuals for membership on the committee who could represent the interests of key stakeholder constituencies.

The Department considered nominations submitted between the time of the publication of the notice on June 12, 2013, and July 12, 2013. Negotiators were sought to represent constituencies that generally included students; legal assistance organizations that represent students; consumer advocacy organizations; financial aid administrators at postsecondary institutions; State higher education executive officers; State Attorneys General and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; and regional accrediting agencies, national accrediting agencies, and specialized accrediting agencies. Each constituency selected would have a primary and an alternate member. On August 2, 2013, the Department published the list of negotiators who were selected on its Web site.[1]

The negotiated rulemaking committee met to develop proposed regulations on September 9–11 and November 18–20, 2013. The latter session was rescheduled from October 21–23, due to the shutdown of the Federal Government from October 1–16, which resulted from a lapse in appropriations. At the request of the committee, the Department added a third and final session held on December 13, 2013. These sessions, unlike the sessions

[1] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

involving the 2011 Final Rules, were focused solely on the topic of gainful employment.

At its first meeting, the committee reached agreement on its protocols, which generally set out the committee membership, the topics of discussion and negotiation, and the standards by which the committee would operate. These protocols provided, among other things, that the non-Federal negotiators would represent in negotiations the organizations listed after their names in the protocols. The committee included the following members:

Rory O'Sullivan, Young Invincibles, and Kalwis Lo (alternate), United States Students Association, representing students.

Eileen Connor, New York Legal Assistance Group, and Whitney Barkley (alternate), Mississippi Center for Justice, representing legal assistance organizations that represent students.

Margaret Reiter, a California-based consumer protection attorney, and Tom Tarantino (alternate), Veterans of America, representing consumer advocacy organizations.

Kevin Jensen, College of Western Idaho, and Rhonda Mohr (alternate), California Community Colleges Chancellor's Office, representing financial aid administrators.

Jack Warner, South Dakota Board of Regents, and Sandra Kinney (alternate), Louisiana Community and Technical College System, representing State higher education executive officers.

Della Justice, Office of the Kentucky Attorney General, and Libby DeBlasio (alternate), Office of the Colorado Attorney General, representing State attorneys.

Ted Daywalt, VetJobs, and Thomas Kriger (alternate), AFL–CIO, representing the business and labor communities.

Helga Greenfield, Spelman College, and Ronnie Higgs (alternate), California State University at Monterey Bay, representing minority-serving institutions.

Richard Heath, Anne Arundel Community College, and Glen Gabert (alternate), Hudson County Community College, representing two-year public institutions.

Barmak Nassirian, American Association of State College and Universities, and Barbara Hoblitzell (alternate), University of California, representing four-year public institutions.

Jenny Rickard, University of Puget Sound, and Thomas Dalton (alternate), Excelsior College, representing private, non-profit institutions.

Brian Jones, Strayer University, and Raymond Testa (alternate), Empire Education Group, representing private, for-profit institutions—publicly traded.

Marc Jerome, Monroe College, and Justin Berkowitz (alternate), Daytona College, representing private, for-profit institutions—not publicly traded.

Belle Wheelan, Southern Association of Colleges and Schools Commission on Colleges, and Neil Harvison (alternate), American Occupational Therapy Association, representing accrediting agencies.

John Kolotos, U.S. Department of Education, representing the Federal Government.

The protocols also provided that, unless agreed to otherwise, consensus on all issues in the proposed regulations had to be achieved for consensus to be reached on the entire proposed rule. The protocols also specified that consensus means that there must be no dissent by any members.

During each of the committee meetings, the committee reviewed and discussed the Department's drafts of proposed regulations and the committee member's alternative proposals and suggestions. At the final meeting on December 13, 2013, the committee did not reach consensus on the Department's proposed regulations. For that reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainful employment.html*.

Summary of Relevant Data Available

The Gainful Employment Data

After the effective date of the 2011 Final Rules on July 1, 2011, the Department received, pursuant to the reporting requirements of the 2011 Final Rules, information from institutions on their GE programs for award years 2006–2007 through 2010–2011 (GE Data). The GE Data included information on students who received title IV, HEA program funds, as well as students who did not. After the decisions in *APSCU* v. *Duncan,* the Department removed from NSLDS and destroyed the data on students who did not receive title IV, HEA program funds.

The 2011 GE Informational Rates

In June 2012, the Department released the ''2011 GE informational rates.'' [2] The 2011 GE informational rates include informational debt-to-earnings rates and dollar-based loan repayment rates for GE programs. The 2011 informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students who completed GE programs between October 1, 2006, and September 30, 2008—the ''07/08 2011 D/E rates cohort''. The annual loan payment component of the debt-to-earnings formulas was calculated for each program using information from the GE Data and NSLDS. For the annual earnings figures that were used to make the debt-to-earnings calculations, the Department obtained from the Social Security Administration (SSA) the 2010 annual earnings, by program, of the 07/08 2011 D/E rates cohort. The 2011 informational dollar-based loan repayment rates were calculated by program for students who entered repayment between October 1, 2006, and September 30, 2008—the ''07/08 2011 repayment rates cohort''—on loans under the Federal Family Education Loan (FFEL) Program and under the William D. Ford Direct Loan (Direct Loan) Program for attendance in a GE program. The repayment rate calculations were made using student loan information for the 07/08 2011 repayment rates cohort from the GE Data and NSLDS.

The 2011 GE informational rates had no effect on the eligibility of GE programs. This information was intended to help institutions understand how their programs might fare under the 2011 Final Rules when they became effective.

The Session 1 2012 GE Informational Rates

On August 29, 2013, prior to the first meeting of the negotiated rulemaking committee for the new negotiated rulemaking, the Department released the ''Session 1 2012 GE informational rates'' [3] to inform the committee's discussion of the Department's proposals. The Session 1 2012 GE informational rates include two sets of informational debt-to-earnings rates, informational dollar-based repayment rates, and informational borrower-based

[2] Available at: *http://studentaid.ed.gov/about/data-center/school/ge/data*.

[3] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-debt-earnings-data.xls* and *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-repayment-rate-data.xls*; also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

repayment rates for GE programs. The Department also issued an explanation of the methodology used to make the Session 1 2012 GE informational rates calculations.[4] The first set of Session 1 2012 GE informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2006, and September 30, 2008—the ''07/08 2012 D/E rates cohort.'' The second set of Session 1 2012 GE informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2007, and September 30, 2009—the ''08/09 2012 D/E rates cohort.''

The annual loan payment component of the debt-to-earnings formula for both sets of Session 1 2012 GE informational debt-to-earnings rates were calculated for each program using information from the GE Data and other information in NSLDS. For the annual earnings figures that were used in the debt-to-earnings calculations, the Department obtained from SSA the 2011 annual earnings, by program, of the 07/08 2012 D/E rates cohort and the 08/09 2012 D/E rates cohort. Both Session 1 2012 GE informational debt-to-earnings rates were calculated using the following criteria:

- N-size: 10
- Amortization schedule: 10 years for all credential levels
- Interest rate: 6.8 percent

See ''§ 668.404 Calculating D/E rates'' for an explanation of these criteria. The Session 1 2012 GE informational debt-to-earnings rates files also include rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The Session 1 2012 GE informational dollar-based and borrower-based loan repayment rates were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2006, and September 30, 2008—the ''07/08 2012 repayment rates cohort''—on FFEL and Direct Loans for enrollment in a GE program. The repayment rate calculations were made using student loan information for the 07/08 2012 repayment rates cohort from the GE Data and NSLDS.

The Session 1 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of August 2013.

The Session 3 2012 GE Informational Rates

Prior to the third rulemaking session in December 2013, the Department released the ''Session 3 2012 GE informational rates.'' [5] The Session 3 2012 GE informational rates include a revised version of one of the Session 1 2012 GE informational debt-to-earnings rates and, additionally, informational program cohort default rates for GE programs. The Department also issued an explanation of the methodology used to make the 2012 Session 3 GE informational rate calculations.[6]

As described above, one set of the Session 1 2012 GE informational debt-to-earnings rates is based on the debt and earnings of the 08/09 2012 D/E rates cohort. For Session 3, this set of informational debt-to-earnings rates was revised to remove a small group of non-GE programs that were included in the Session 1 2012 GE informational rates by error and, also, recalculated using an interest rate of 3.37 percent. The Session 3 2012 GE informational rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The Session 3 2012 GE informational program cohort default rates were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2008, and September 30, 2009—the ''09 2012 program cohort default rates cohort''—on FFEL and Direct Loans for enrollment in a GE program. The program cohort default rate calculations were made using student loan information for the 09 2012 program cohort default rates cohort from the GE Data and NSLDS.

The Session 3 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of August 2013 for programs with D/E rates data. Sector and institution type for programs with pCDR data but no D/E rates data were based on NSLDS records as of November 2013.

The 2012 GE Informational Rates

With this NPRM, the Department has released the ''2012 GE informational rates.'' [7] The 2012 GE informational rates include a recalculated version of the Session 3 2012 GE informational debt-to-earnings rates using the following criteria:

- N-size: 30
- Amortization schedule: 10 years for certificate and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional programs
- Interest rate: 5.42 percent

See ''§ 668.404 Calculating D/E rates'' for an explanation of these criteria. The 2012 GE informational debt-to-earnings rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes. In addition to the 2012 GE informational debt-to-earnings rates, the 2012 GE informational rates also include the same informational program cohort default rates released as a part of the Session 3 2012 GE informational rates. The Department's D/E rates analysis and pCDR analysis in this NPRM are based on the 2012 GE informational rates unless otherwise specified.

The 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of November 2013 for all informational rate programs.

Summary of Proposed Regulations

The proposed regulations would—

- Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation.
- Create a process by which an institution establishes the eligibility of a GE program by certifying that the GE program satisfies applicable accrediting and licensing requirements for the occupations for which the program purports to prepare students.
- Establish an accountability framework, in which two complementary yet independent measures—the D/E rates measure and the pCDR measure—would be used to determine whether a GE program remains eligible for title IV, HEA program funds.
- Establish the process by which a GE program would be evaluated and the

[4] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-methodology.doc*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[5] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/s3-ge-datafile121113.xls*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[6] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/s3-informational-rates-methodology121113.doc*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[7] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

standards by which the program would be assessed, under the accountability framework using—

○ The D/E rates measure to evaluate the amount of debt students completing a GE program incurred in the program in comparison to their discretionary and annual earnings after completing the program.

○ The pCDR measure to evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program.

• Require institutions with GE programs that could become ineligible in an immediately succeeding year to provide a written warning to students and prospective students of the potential loss of ineligibility and the implications.

• Provide that, for a GE program that loses eligibility for title IV, HEA program funds, as well as any program that is not passing the D/E rates measure and the pCDR measure and that is discontinued by the institution, the loss of eligibility is for three calendar years.

• Require institutions to report relevant information related to its GE programs to the Secretary.

• Require an institution to disclose, including to students and prospective students, relevant information about its GE programs through a disclosure template developed by the Secretary.

Significant Proposed Regulations

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

Section 668.401 Scope and Purpose

Current Regulations: There is no equivalent provision in the 2011 Final Rules.

Proposed Regulations: Proposed § 668.401 establishes the scope and purpose for subpart Q of the proposed regulations. Subpart Q would establish the rules and procedures under which the Secretary determines a GE program's eligibility for title IV, HEA program funds; an institution reports information about the GE program to the Secretary; and the institution discloses information about the GE program to students and prospective students.

We note that the terms ''gainful employment program'' or ''GE program,'' ''student,'' and ''prospective student,'' which are defined in proposed § 668.402, are first substantively used in proposed § 668.401 and are therefore explained here. Proposed § 668.402, as in § 668.7(a)(2) of the 2011 Prior Rule, provides that a ''gainful employment program'' or ''GE program'' is an educational program offered by an institution under § 668.8(c)(3) or (d) that is identified by using a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit Classification of instructional program (CIP) code, and credential level. Proposed § 668.401 defines a GE program, for the purpose of subpart Q, as an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation and that meets the title IV, HEA program eligibility and other requirements in the proposed regulations.

Under the proposed regulations, the term ''student'' would refer to an individual who received title IV, HEA program funds for enrolling in the applicable GE program. Although we did not specifically define the term ''student'' in the 2011 Final Rules, operationally, ''student'' included any individual enrolled in a GE program, regardless of whether the individual received title IV, HEA program funds. Limiting the term ''student'' to refer to an individual who received title IV, HEA program funds is a significant difference between the proposed regulations and the 2011 Final Rules.

The proposed regulations also define the term ''prospective student'' to refer to an individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or indirectly through advertising about enrolling in a GE program. In the 2011 Final Rules, the definition of ''prospective student'' in § 668.41(a) was used in connection with the disclosure requirements in § 668.6(b) and the warning requirements in § 668.7(j). That definition refers only to individuals who have contacted the institution requesting institutional admission information.

Reasons:

Scope

Through this rulemaking, the Department seeks to establish standards for title IV, HEA eligibility of postsecondary educational programs that prepare students for ''gainful employment'' in a recognized occupation, which include nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level, as well as non-degree programs at public and private non-profit institutions such as community colleges. Common GE programs provide training for occupations in cosmetology, business administration, interior design, graphic design, medical assisting, dental assisting, nursing, and massage therapy.

Based on information in the Department's databases, we estimate that there are approximately 50,000 GE programs at postsecondary institutions around the country. We estimate that about 60 percent of these programs are at public institutions, 10 percent at private non-profit institutions, and 30 percent at for-profit institutions. The Federal investment in students attending these programs is significant. We estimate that in fiscal year 2010, approximately 4 million students receiving title IV, HEA program funds were enrolled in GE programs. These students received approximately $9.7 billion in Federal student aid grants and approximately $26 billion in loans.

Purpose

The proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. Many GE programs are producing positive student outcomes. But a disproportionate number are failing to do so.

The Department's primary concerns, which drive both the accountability and transparency frameworks, are that a number of GE programs: (1) do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. The causes of these problems for students are numerous, including excessive costs, low completion rates, a failure to satisfy requirements that are necessary for students to obtain higher paying jobs in a field such as licensing, work experience, and programmatic accreditation, a lack of transparency regarding program outcomes, and aggressive or deceptive marketing practices.

Our analysis of the D/E rates component of the 2012 GE informational rates reveals these poor outcomes among some GE programs. For example, 27 percent of GE programs evaluated produced graduates with average annual earnings below those of a full-time worker earning no more than the Federal minimum wage ($15,080).[8 9] Sixty-four percent of GE programs evaluated produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school diploma ($24,492).[10 11] Of programs with average earnings below those of a high school dropout, approximately 24 percent of former students defaulted on their Federal student loans within the first three years of entering repayment.[12]

As we noted in connection with the 2011 Prior Rule, the outcomes of students who attend for-profit educational institutions are of particular concern. 76 FR 34386. There is growing evidence of troubling practices at many of these institutions, such as some proprietary institutions overstating job placement rates. There has been growth in the number of *qui tam* lawsuits brought by private parties alleging wrongdoing at these institutions and numerous investigations brought by other Federal and State oversight agencies. Such activity only increases the Department's concerns about poor outcomes in GE programs.

For-profit institutions typically charge higher tuitions than do public postsecondary institutions. 76 FR 34386. Average tuition and fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions.[13] Attending a two-year for-profit institution costs a student four times as much as attending a community college.[14] Not surprisingly then, students enrolled in for-profit institutions accumulate far greater debt than students at public institutions. 76 FR 34386. In 2011–2012, 86 percent of students who earned certificates from for-profit institutions took out student loans compared to 35 percent of certificate recipients from public two-year institutions.[15] Of those who borrowed, the median loan amount borrowed of for-profit certificate recipients was $11,000 as opposed to $8,000 for certificate recipients from public two-year institutions.[16] Eighty-eight percent of associate degree graduates from for-profit institutions took out student loans, while only 40 percent of associate degree recipients from public two-year institutions took out student loans.[17] Of those who borrowed, for-profit associate degree recipients had a median loan amount borrowed of $23,590 in comparison to $10,000 for students who received their degrees from public two-year institutions.[18] Approximately 22 percent of borrowers who attended for-profit institutions default on their Federal student loans within the first three years of entering repayment as compared to about 13 percent of borrowers who attended public institutions.[19]

Although more expensive, there is growing evidence that many for-profit programs may not prepare students as well as comparable programs at public institutions. 75 FR 43618. A 2011 GAO report reviewed results of licensing exams for 10 occupations that are, by enrollment, among the largest fields of study.[20] The GAO report showed that for 9 out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[21] Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[22] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of thirty prominent for-profit institutions found that they spend almost 23 percent of their revenues on marketing and recruiting, but merely 17 percent on instruction.[23] Among the institutions that provided useable data to the committee, schools employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff.[24]

Lower rates of completion in many four-year for-profit institutions are also a cause for concern. 76 FR 34409. The six-year graduation rate of first-time undergraduate students who began at a four-year degree-granting institution in 2003–2004 was 34 percent at for-profit institutions in comparison to 65 percent at public institutions. However, for first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year graduation rate was 40 percent at for-profit institutions in comparison to 35 percent at public institutions.[25]

The higher costs of for-profit institutions, and the consequently greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether for-profit programs lead to earnings that justify the investment made by students. See 75 FR 43617. As we stated in connection with the 2011 Prior Rule, this ''value proposition'' is what ''distinguishes programs 'that lead to gainful employment in a recognized occupation.' '' 76 FR 34386. Analysis of data collected on the outcomes of 2003–2004 first-time beginning postsecondary students as a part of the Beginning Postsecondary Students Longitudinal Study shows that students who attend for-profit institutions are more likely to be idle, not working or in school, six years after starting their programs of study in comparison to students who attend other types of institutions.[26] Further, for-profit students no longer enrolled in school six years after beginning postsecondary education have lower earnings at the six-year mark than students who attend other types of institutions.[27]

These outcomes are troubling for two reasons. First, some students will have earnings that will not support the debt

[8] At the Federal minimum wage of $7.25 per hour (*www.dol.gov/whd/minimumwage.htm*), an individual working 40 hours per week for 52 weeks per year would have annual earnings of $15,080.

[9] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 30 percent of for-profit programs and 13 percent of public non-profit programs produced graduates with average annual earnings below a Federal minimum wage worker.

[10] Based on a weekly wage of $471 (*http://www.bls.gov/emp/ep_chart_001.htm*) for 52 weeks.

[11] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 72 percent of for-profit programs and 32 percent of public non-profit programs produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school degree.

[12] 2012 GE informational rates.

[13] IPEDS First Look (July 2013), table 2. Average costs (in constant 2012–13 dollars) associated with attendance for full-time, first-time degree/certificate-seeking undergraduates at Title IV institutions operating on an academic year calendar system, and percentage change, by level of institution, type of cost, and other selected characteristics: United States, academic years 2010–11 and 2012–13.

[14] Id.

[15] National Postsecondary Student Aid Study 2012.

[16] Id.

[17] Id.

[18] Id.

[19] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2010, U.S. Department of Education, available at *www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans*.

[20] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[21] Id.

[22] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[23] Id.

[24] Id.

[25] U.S. Department of Education, National Center for Education Statistics (NCES), 2003–04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09) (cumulative certificate, associate's degree, and bachelor's degree attainment at any institution).

[26] Deming, D., Goldin, C., and Katz, L., The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, *Journal of Economic Perspectives,* vol. 26, no. 1, Winter 2012.

[27] Id.

they incurred to enroll in these GE programs. Second, because students are limited under the HEA in the amounts of Federal grants and loans they may receive to support their education, their options to move to higher-quality and affordable programs are constrained as they may no longer have access to sufficient student aid. Specifically, Federal law sets lifetime limits on the amount of grant and subsidized loan assistance students may receive: Federal Pell Grants may be received only for the equivalent of 12 semesters of full-time attendance, and Federal subsidized loans may be received for no longer than 150 percent of the published program length.[28] These limitations make it even more critical that students' initial choices in GE programs prepare them for employment that provides adequate earnings and do not result in excessive debt.

In addition to concerns that some GE programs are not meeting the gainful employment requirement, the Department remains concerned that students seeking to enroll in these programs do not have access to reliable information that will enable them to compare programs in order to make informed decisions about where to invest their time and limited educational funding. As we noted in the 2011 Prior Rule, the Government Accountability Office (GAO) and other investigators have found evidence of high-pressure and deceptive recruiting practices at some for-profit institutions. See 76 FR 34386. In 2010, the GAO released results of undercover testing at 15 for-profit colleges across several States.[29] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[30] Similarly, a more recent report by the Senate HELP Committee on the for-profit education sector found evidence that many of the most prominent for-profit institutions engage in aggressive sales practices and provide misleading information to prospective students.[31] Recruiters described ''boiler room''-like sales and marketing tactics and internal institutional documents showed that recruiters are taught to identify and manipulate emotional vulnerabilities and target non-traditional students.[32]

More recently, a growing number of State and other Federal law enforcement authorities have launched investigations into whether the institutions that offer GE programs are using aggressive or even deceptive marketing and recruiting practices. Several State Attorneys General have already sued for-profit institutions to stop these fraudulent marketing practices and manipulations of job placement rates. On August 19, 2013, the New York State Attorney General announced a $10.25 million settlement with Career Education Corporation (CEC), a private for-profit education company, after its investigation revealed that CEC significantly inflated its graduates' job placement rates in disclosures made to students, accreditors, and the State.[33] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[34] The Commonwealth of Kentucky has filed lawsuits against several private for-profit institutions, including National College of Kentucky, Inc., for misrepresenting job placement rates, and Daymar College, Inc., for misleading students about financial aid and overcharging for textbooks.[35] And most recently, early this year, a group of 13 State Attorneys General issued Civil Investigatory Demands to Corinthian Colleges, Inc., Education Management Co., ITT Educational Services, Inc., and CEC, seeking information about student placement rate data and marketing and student recruitment practices of the companies. The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

A 2012 report released by the Senate HELP Committee found extensive evidence of aggressive and deceptive recruiting practices, excessive tuition, and regulatory evasion and manipulation by for-profit colleges that preyed on service members, veterans, and their families as ''dollar signs in uniform.'' [36] The Los Angeles Times reported that recruiters from for-profit colleges have been known to recruit at Wounded Warriors centers and at veterans hospitals, where injured soldiers are pressured into enrolling through promises of free education and more.[37] Some for-profit colleges lure service members and veterans through a number of improper practices, including by offering post-9/11 GI Bill benefits that are intended for living expenses as ''free money,'' which is difficult for jobless veterans returning home to turn down.[38] This results in many veterans enrolling in online courses to get the monthly benefits even if they have no intention of completing the coursework.[39] In addition, some institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing adequate support and counseling, engaged in misleading recruiting practices onsite at military installations, and failed to accurately disclose information regarding the graduation rates of veterans.[40] In June 2012, an investigation in 20 States, led by the Commonwealth of Kentucky's Attorney General, resulted in a $2.5 million settlement with QuinStreet, Inc. and the closure of GIBill.com, a Web site that appeared as if it was an official site of the U.S. Department of Veterans Affairs, but was in reality a for-profit portal that steered veterans to 15 colleges, almost all for-profit institutions, including Kaplan University, the University of Phoenix, Strayer University, DeVry University, and Westwood College.[41]

Further, the Consumer Financial Protection Bureau issued Civil

[28] See section 401(c)(5) of the HEA, 20 U.S.C. 1070a(c)(5), for Pell Grant limitation; see section 455(q) of the HEA, 20 U.S.C. 1087e(q), for the 150 percent limitation.

[29] For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices (GAO–10–948T), GAO, August 4, 2010 (reissued November 30, 2010).

[30] Id.

[31] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[32] Id.

[33] ''A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement with For-Profit Education Company That Inflated Job Placement Rates to Attract Students,'' press release, Aug. 19, 2013. Available at: *www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit.*

[34] ''Attorneys General Take Aim at For-Profit Colleges' Institutional Loan Programs,'' The Chronicle of Higher Education, March 20, 2012. Available at: *http://chronicle.com/article/Attorneys-General-Take-Aim-at/131254/.*

[35] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits.*

[36] ''Dollar Signs in Uniform,'' Los Angeles Times, Nov. 12, 2012. Available at: *http://articles.latimes.com/2012/nov/12/opinion/la-oe-shakely-veterans-college-profit-20121112*; citing ''Harkin Report,'' S. Prt. 112–37, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, July 30, 2012.

[37] Id.

[38] Id.

[39] Id.

[40] ''We Can't Wait: President Obama Takes Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and their Families,'' White House Press Release, April 26, 2012. Available at: *www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading.*

[41] ''$2.5M Settlement over 'GIBill.com','' Inside Higher Ed, June 28, 2012. Available at: *www.insidehighered.com/news/2012/06/28/attorneys-general-announce-settlement-profit-college-marketer.*

Investigatory Demands to Corinthian Colleges, Inc. and ITT Educational Services, Inc. in November, 2013, demanding information about their marketing, advertising, and lending policies.[42] The Securities and Exchange Commission also subpoenaed records from Corinthian Colleges, Inc. on June 6, 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[43] These inquiries supplement the Department's existing monitoring and compliance efforts to protect against such abuses.

Simply put, without reliable information, students, prospective students, and their families are vulnerable to inaccurate or misleading information when they make critical decisions about their educational investments and, based on that information, may enroll in poorly performing programs. Furthermore, without accurate and comparable information, the public, taxpayers, and the Government are in the dark as to the performance of these programs and the return on the Federal investment in these programs. Although we do not seek to impose requirements through this rulemaking that specifically address all of these allegations of abuse, the proposed regulations would help ensure, among other things, that students, prospective students, and their families and the public, taxpayers, and the Government are provided with reliable and comparable information about the student outcomes of GE programs.

We acknowledge that since the prior rulemaking effort in 2011, some for-profit institutions have made positive changes to their GE programs. For example, some institutions now offer trial enrollment periods for students before they require a full financial commitment and scholarships to students who reach milestones toward completing their programs.[44] These steps show that positive change is possible, but the concerns highlighted here demonstrate that more improvement in the sector is needed. To encourage institutions to start or continue to take effective action to reduce debt and increase earnings prospects for students, by this regulatory action, we propose to define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation by establishing measures a program must meet in order to be eligible for title IV, HEA program funds, and to better inform students, prospective students, and their families, as well as the public, taxpayers, and the Government, by requiring institutions to report and disclose relevant information about the outcomes of their GE programs.

Legal Authority

We seek, through this regulatory action, to define a statutory requirement that applies only to certain educational programs—GE programs—and which is a condition of eligibility for title IV, HEA program funds. Title IV, HEA program funds are Federal student aid funds available to students and parents to assist them in paying for a postsecondary educational program. These funds include student loans under the Direct Loan Program, the Federal Perkins Loan (Perkins Loan) Program, and (until 2010) the FFEL Program; grants under the Federal Pell Grant Program, the Federal Supplemental Educational Opportunity Grant Program, the Iraq-Afghanistan Service Grant Program, and the TEACH Grant Program; and earnings under the Federal Work-Study Program.

Under title IV of the HEA, institutions must establish eligibility to offer eligible programs in order for their students to receive Federal student aid funds. In some cases, eligible institutions must separately establish the eligibility of their programs in order for students in those programs to receive title IV, HEA assistance. See, e.g., 20 U.S.C. 1001(a)(3), 34 CFR 668.8(c) (educational program offered by public or private non-profit institution of higher education must lead to or be creditable toward recognized credential); 34 CFR 600.20(c) (approval required for institution to increase level of programs from undergraduate to graduate); 20 U.S.C. 1088(b)(3), 34 CFR 668.8(m) (program offered through telecommunications eligible only if accredited by agency recognized by the Department to evaluate such programs).

One type of program for which an institution must establish program-level title IV, HEA eligibility is "a program of training to prepare students for gainful employment in a recognized occupation," which is the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A). Section 481 of the HEA articulates this same requirement: as pertinent here, it defines an "eligible program" as a "program of training to prepare students for gainful employment in a recognized profession." 20 U.S.C. 1088(b). This statutory requirement—the "gainful employment" requirement—is what the Department seeks to define here.

The Department's authority for this regulatory action is derived primarily from these provisions, which establish the gainful employment requirement, and two additional sources. These authorities, including relevant legislative history which supports components of the GE accountability framework, are discussed here and also in more detail in "§ 668.403 Gainful employment framework." Specifically, section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e–3. This authority includes the power to promulgate regulations relating to programs administered by the Department, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students. Furthermore, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations the Secretary determines necessary or appropriate to administer and manage the functions of the Department. 20 U.S.C. 3474. These authorities thus empower the Secretary to promulgate regulations that, in this case, define the gainful employment requirement in the HEA by: establishing measures to determine the eligibility of GE programs for title IV, HEA program funds; requiring institutions to report information about the programs to the Secretary; and requiring institutions to

[42] "For Profit Colleges Face New Wave of State Investigations, Bloomberg, Jan. 29, 2014. Available at: *www.bloomberg.com/news/2014–01–29/for-profit-colleges-face-new-wave-of-coordinated-state-probes.html*.

[43] "Corinthian Colleges Crumbles 14% on SEC probe," Fox Business, June 11, 2013. Available at: *www.foxbusiness.com/government/2013/06/11/corinthian-colleges-crumbles-14-on-sec-probe/*.

[44] See, e.g., "More Selective For-Profits," *Inside Higher Ed,* Nov. 11, 2011 (Kaplan University and the University of Phoenix both "recently began new programs that make it easier for unprepared students to leave without taking on debt"), available at *www.insidehighered.com/news/2011/11/11/enrollments-tumble-profit-colleges*. See also, e.g., DeVry University, Form 10–Q, United States Securities and Exchange Commission, for the quarterly period ended Sept. 30, 2013 ("Over the past year DeVry has reduced costs through staffing adjustments and by lowering costs. Management has made the decision to close or consolidate certain DeVry University campuses while balancing the potential impact on enrollment and student satisfaction. Management is also focused on process redesign and restructuring in areas such as student finance. . . . Under the Career Catalyst Scholarship DeVry University has committed more than $15 million over the next three years to be awarded to qualifying students who enroll in the September 2013 session), available at *www.sec.gov/Archives/edgar/data/730464/000114420413058782/v357757_10q.htm*.

disclose information about the programs to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

Section 431 of the DEOA gives the Department added authority to establish rules to require institutions to make data available to the public on the performance of their GE programs and about students enrolled in those programs. That section gives the Secretary the authority to inform the public about federally supported education programs, and to collect data and information on applicable programs for the purpose of obtaining objective measurements of their effectiveness in achieving their intended purposes. 20 U.S.C. 1231a. This provision lends additional support for the proposed reporting and disclosure requirements, which will enable the Secretary to collect data and information related to GE programs, for the purpose of evaluating whether they are achieving their intended purpose, and to inform the public about relevant information related to those federally supported programs.

As discussed in the ''Background of The Proposed Regulations, Public Participation, and Negotiated Rulemaking,'' some of these authorities were subject to scrutiny by the U.S. District Court for the District of Columbia in *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012), and 930 F.Supp.2d 210 (D.D.C. 2013), a suit brought by APSCU to challenge the Department's 2011 prior rulemaking efforts to define the gainful employment requirement. In deciding that challenge, the court reached several conclusions about the Department's rulemaking authority in this matter, and its conclusions have informed and framed the Department's exercise of that authority in proposing these regulations. Notably, the court agreed with the Department's position that the Secretary enjoys broad authority to make, promulgate, issue, rescind, and amend the rules and regulations governing the applicable programs administered by the Department, such as the title IV, HEA programs, and that the Secretary is ''authorized 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.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 141; see 20 U.S.C. 3474. Furthermore, in answering the question whether the Department's regulatory effort to define the gainful employment requirement fell within its statutory authority, the court found the exercise within that power. Specifically, it concluded that the phrase ''gainful employment in a recognized occupation'' is ambiguous and that in enacting the requirement that used that phrase, Congress delegated interpretive authority to the Department. *APSCU* v. *Duncan,* 870 F.Supp.2d at 146.

Likewise, the court upheld the Department's disclosure requirements, which are still in effect, rejecting APSCU's challenge to this provision and finding that the disclosure requirements ''fall comfortably within [the Secretary's] regulatory power,'' and are ''not arbitrary or capricious.'' Id. at 156.

Overview of Accountability and Transparency Frameworks

As stated previously, the Department's goals in the proposed regulations are twofold: to establish an accountability framework for GE programs, and to increase the transparency of student outcomes of GE programs. In addition, we believe a key benefit of this regulatory action would be to receive suggestions on how to identify programs that are exceptional performers, and how to share best practices with institutions interested in improving their programs. Although recognition of exceptional programs is not expressly addressed in the proposed regulations, we invite comment on ways in which the best programs could, consistent with our authority under the HEA, be identified and rewarded and how best practices could be highlighted and shared with others.

In service of these goals, we are proposing an accountability framework based upon program certification requirements and minimum standards for program outcomes. We are also proposing reporting and disclosure requirements designed to both support the accountability framework and to increase transparency so that relevant information regarding GE programs is disseminated to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

As part of the accountability framework, to determine whether a program provides training that prepares students for gainful employment as required by the HEA, we propose procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. To establish a program's eligibility, an institution would be required to certify that each of its GE programs meets all applicable accreditation and licensure requirements necessary for a student to obtain employment in the occupation for which the program provides training. This certification would be incorporated into the institution's program participation agreement. For a more detailed discussion of the proposed certification requirements, see ''§ 668.414 Certification requirements for GE programs.''

To assess the continuing eligibility of a GE program, we propose to use two measures—one measure that compares the debt incurred by students completing the program against their earnings (the ''debt-to-earnings rates'' or ''D/E rates'') and a second measure that examines the rate at which borrowers who previously enrolled in the program default on their FFEL or Direct Loans (''program cohort default rate'' or ''pCDR''). The proposed regulations would establish minimum thresholds for the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently of each other, as they are designed to achieve complementary objectives, capturing two ways a program could fail to meet the gainful employment requirement.

In addition to the accountability framework, the proposed regulations include institutional reporting and disclosure requirements designed to increase the transparency of student outcomes for GE programs. As discussed more fully under ''§ 668.411 Reporting requirements for GE programs,'' we would require institutions to report information that is necessary to implement aspects of the proposed regulations that support the Department's two goals of accountability and transparency. This would include information needed to calculate the D/E rates and the pCDR, as well as some of the specific required disclosures. As discussed more fully under ''§ 668.412 Disclosure requirements for GE programs,'' the proposed disclosure requirements would operate independently of the proposed eligibility requirements and ensure that relevant information regarding GE programs is made available to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. These provisions would provide for accountability and transparency throughout the admissions and enrollment process so that students, prospective students, and their families can make informed decisions. Specifically, institutions would be required to make information regarding such items as cost of attendance, completion, debt, earnings, and student loan repayment available in a meaningful and easily accessible format.

In the proposed regulations, we use the term ''student'' to refer specifically to individuals who received title IV, HEA program funds for enrolling in the applicable GE program. The term would not include individuals who did not receive title IV, HEA program funds to enroll in an eligible GE program, even if they filed a Free Application for Federal Student Aid (FAFSA).

We believe that this definition is appropriate for two reasons. First, this approach is aligned with the court's interpretation in *APSCU* v. *Duncan* of relevant law regarding the Department's authority to maintain records in its NSLDS. See ''Background of The Proposed Regulations, Public Participation, and Negotiated Rulemaking'' for a more complete discussion of *APSCU* v. *Duncan.* Second, because the primary purpose for which we would use the GE measures is to determine whether a program should continue to be eligible for title IV, HEA program funds, we believe we can make a sufficient assessment of whether a program prepares students for gainful employment based only on the outcomes for students who receive title IV, HEA program funds. By limiting the GE measures to assess outcomes of only students who receive title IV, HEA program funds, the Department can effectively evaluate how the GE program is performing with respect to the students who received the Federal benefit that we are charged with administering. We note that this definition of ''student'' would apply throughout subpart Q.

Some of the negotiators believed that there were instances where the definition of ''student'' should be defined more broadly. Negotiators proposed that the term include all students who enrolled in a program or, in light of *APSCU* v. *Duncan,* all students who are in NSLDS because they applied for title IV, HEA program funds by filing a FAFSA or because they received title IV, HEA program funds for attendance in other eligible programs, in both cases irrespective of whether they received title IV, HEA program funds for the GE program. The negotiators proposed that the broader definition could be used for some purposes, such as calculating the completion and withdrawal rates, or the median loan debt, for a GE program.

We believe that our proposed definition is better aligned with our goals of evaluating a GE program's performance for the purpose of continuing eligibility for title IV, HEA program funds. In addition, this approach is consistent with our goal of providing students and prospective students who are eligible for title IV, HEA program funds with relevant information that will help them in considering where to invest their resources and limited eligibility for title IV, HEA program funds.

Similarly, we also propose to define the term ''prospective student'' in subpart Q in order to add clarity to the regulations. Our proposed definition is broader than the one used in the 2011 Final Rules. In response to comments we received from a number of the negotiators, the proposed definition accounts for the various ways that institutions and prospective students commonly interact. Specifically, we modified the definition of ''prospective student'' to address concerns raised by some of the negotiators that the definition of prospective student in § 668.41(a), which was used in the 2011 Final Rules, is inadequate for the purpose of subpart Q. In particular, the negotiators noted that this definition only applies where an individual has initiated contact with an institution for information and not when the institution contacts the individual. We agree with the negotiators that this would not capture the common circumstances in which institutions first contact individuals about enrollment in a GE program, and that this type of outreach should be captured in the definition.

Section 668.402 Definitions

Current Regulations: Section 668.7(a)(2) of the 2011 Prior Rule defines, for use in the 2011 Prior Rule, the terms ''program,'' ''debt measures,'' ''fiscal year,'' ''two-year period,'' ''four-year period,'' and ''discretionary income.''

Proposed Regulations: Proposed § 668.402 defines a number of terms that are used in the proposed regulations. The proposed defined terms and the sections in which they would be first substantively used are:

- Annual earnings rate, § 668.403
- Classification of instructional program (CIP) code, § 668.411
- Cohort period, § 668.404
- Credential level, § 668.411
- Debt-to-earnings rates (D/E rates), § 668.403
- Discretionary income rate, § 668.403
- Four-year cohort period, § 668.404
- Gainful employment program (GE program), § 668.401
- GE measures, § 668.403
- Length of the program, § 668.411
- Metropolitan Statistical Area (MSA), § 668.412
- Poverty Guideline, § 668.404
- Program cohort default rate (pCDR), § 668.403
- Prospective student, § 668.401
- Student, § 668.401
- Title IV loan, § 668.404
- Two-year cohort period, § 668.404

Generally, where the 2011 Prior Rule and the proposed regulations are similar, the relevant defined terms are similar, with clarifications and changes as needed to reflect any differences.

Reasons: Section 668.402 would provide definitions for significant terms used in the proposed regulations. Although some of these terms were not defined in the 2011 Final Rules, uniform usage of the terms would make it easier for institutions to understand the proposed standards and requirements for GE programs and for students and prospective students to understand the information about GE programs that the proposed regulations would provide. Our reasoning for proposing each definition is discussed in the section in which the defined term is first substantively used.

Section 668.403 Gainful Employment Framework

Current Regulations: Under § 668.7(a)(1) of the 2011 Prior Rule, a program would meet the gainful employment requirement if (1) the program's annual loan repayment rate is at least 35 percent or (2) the program's annual loan payment is less than or equal to 30 percent of discretionary income (''discretionary income rate'') or less than or equal to 12 percent of annual earnings (''earnings rate''). Under the 2011 Prior Rule, the loan repayment rate, discretionary income rate, and the earnings rate would be collectively referred to as the ''debt measures.'' A program would also meet the gainful employment requirement if the data needed to determine whether the program satisfies the minimum standards under § 668.7(a)(1) of the 2011 Prior Rule are not available. Further, a program would satisfy the debt measures under any of the following circumstances: the program did not have the minimum number of students who completed the program over the applicable cohort period to calculate the debt-to-earnings ratios; SSA did not provide the earnings information necessary to calculate the debt-to-earnings ratios; or the median loan debt for the program is zero. Under § 668.7(i) of the 2011 Prior Rule, a program would become ineligible for title IV, HEA program funds if it does not satisfy any of the debt measures for three out of the four most recent fiscal years.

Proposed Regulations: Section 668.403 of the proposed regulations sets forth the accountability framework under which the Department would determine whether programs prepare students for gainful employment in a recognized occupation and whether those programs are eligible for title IV, HEA program funds. Under the accountability framework, to establish a program's eligibility for title IV, HEA program funds, an institution would be required to satisfy the certification requirements of proposed § 668.414 for each of its GE programs. To remain eligible for title IV, HEA program funds, an institution would have to satisfy the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently. Results of one measure would not affect results of the other.

Under the D/E rates measure, we would apply as accountability metrics the same two debt-to-earnings ratios (referred to in the proposed regulations as the ''debt-to-earnings rates'' or the ''D/E rates'')—the annual earnings rate and the discretionary income rate—as the 2011 Prior Rule. Also consistent with the 2011 Prior Rule, both D/E rates would evaluate the outcomes of only those students who completed a program. For an explanation of the methodology that would be used to calculate the D/E rates, see ''§ 668.404 Calculating D/E rates.''

We do not include in the proposed accountability framework the loan repayment rate metric of the 2011 Prior Rule. Instead, the proposed regulations replace the loan repayment rate with a program-level cohort default rate (pCDR) that measures the percentage of students who enrolled in a GE program and defaulted on their Direct and FFEL loans. Like the loan repayment rate in the 2011 Prior Rule, and unlike the D/E rates which only measure the outcomes of students who completed a program, the pCDR measure would evaluate the outcomes of students who enrolled in but did not complete a program in addition to the outcomes of students who completed the program. For an explanation of the methodology that would be used to calculate the pCDR measure, see ''§ 668.407 Calculating pCDR.''

Certification Requirements

Proposed §§ 668.403(a) and 668.414 would require that an institution certify that each of its GE programs meets applicable accreditation and State and Federal licensing requirements to be eligible for title IV, HEA program funds. The 2011 Prior Rule did not include any similar certification requirements. For a more detailed discussion of the proposed certification requirements, see ''§ 668.414 Certification requirements for GE programs.''

D/E Rates

D/E rates would be calculated each year for an eligible GE program if at least 30 students completed the program during an applicable cohort period, as described in ''§ 668.404 Calculating D/E rates.'' A GE program would pass the D/E rates measure if its discretionary income rate is less than or equal to 20 percent *or* its annual earnings rate is less than or equal to 8 percent. A program would fail the D/E rates measure if its discretionary income rate is greater than 30 percent *and* its annual earnings rate is greater than 12 percent. A program would be ''in the zone'' under the D/E rates measure if it is not a passing program and its discretionary income rate is greater than 20 percent but less than or equal to 30 percent *or* its annual earnings rate is greater than 8 percent but less than or equal to 12 percent. See ''§ 668.410 Consequences of GE measures'' for an explanation of the restrictions that would apply to programs with zone or failing D/E rates.

As under the 2011 Prior Rule, a program would pass both D/E rates if its median loan debt is zero. A program would fail the discretionary income rate if the discretionary income is zero or negative. A program would fail both D/E rates if its mean or median annual earnings are zero. Although the 2011 Prior Rule did not specifically include the latter provision, it follows that a program with zero mean or median annual earnings could not satisfy the debt-to-earnings ratios and would have been assessed accordingly.

A program would become ineligible under the D/E rates measure in either of two ways. First, a program would become ineligible if it is a failing program in two out of any three consecutive award years for which the program's D/E rates are calculated. Second, a program would become ineligible if, for four consecutive award years in which the D/E rates measure is calculated, it is failing or in the zone. It is important to note that a program could have a mix of zone and failing D/E rates and still remain eligible over the course of the four-year period as long as the program's failing results did not occur in two out of three consecutive award years. But, if a program does not pass at least once over any four-year period, it would become ineligible.

With respect to the D/E rates, the framework of the proposed regulations would differ from the 2011 Prior Rule in several ways. First, the D/E rates would be calculated for award years rather than fiscal years as they were in the 2011 Prior Rule. See ''§ 668.404 Calculating D/E rates'' for an explanation of the differences between an award year and a fiscal year. Second, the proposed regulations would establish stricter passing thresholds than the thresholds in the 2011 Prior Rule. The passing threshold for the discretionary income rate would be 20 percent instead of 30 percent, and the threshold for the annual earnings rate would be 8 percent instead of 12 percent. Third, the proposed regulations would add a zone category for programs with a discretionary income rate greater than 20 percent but less than or equal to 30 percent or an annual earnings rate greater than 8 percent but less than or equal to 12 percent. Fourth, the proposed regulations would allow programs with a mix of D/E rates that are failing and in the zone up to four years to become passing before losing eligibility. Finally, a program failing the D/E rates measure would lose eligibility sooner than under the 2011 Prior Rule. Specifically, a program would become ineligible after failing the D/E rates measure in two out of any three consecutive award years instead of in three out of any four consecutive fiscal years as provided under the 2011 Prior Rule. It is important to note that, as explained in ''§ 668.401 Scope and purpose'' and ''§ 668.404 Calculating D/E rates,'' unlike in the 2011 Prior Rule, which considered all students in its calculation of the debt measures, the D/E rates would only consider students who received title IV, HEA program funds for enrolling in the program.

pCDR

An eligible GE program's pCDR would be calculated each year. A GE program would pass the pCDR measure if its pCDR is less than 30 percent and would fail the pCDR measure if its pCDR is 30 percent or greater. See ''§ 668.410 Consequences of GE measures'' for an explanation of the restrictions that would apply to programs that fail the pCDR measure. A GE program would become ineligible if it fails the pCDR measure for three consecutive fiscal years.

The following charts illustrate the key components of the proposed GE measures.

OVERVIEW OF METRICS IN THE PROPOSED REGULATIONS

D/E rates	Program cohort default rate
Students	
Students who received title IV, HEA program funds and completed the program.	Students who received title IV, HEA program funds, whether or not they completed the program.
Funds	
Title IV, HEA FFEL or Direct Loans, Perkins Loans, title IV grants, private loans, institutional loans or credit (Students would be included in calculation even if they received grants only but no loans.).	Title IV FFEL or Direct Loans (Only borrowers would be included in calculation.)
Measurement period	
Annual loan payment of students who completed in the 3rd-4th (2-year period) or 3rd-6th award years (4-year period) prior to the award year for which D/E rates are calculated. Earnings of these students for most recently completed calendar year. For example, 2014–2015 D/E rates calculation: Annual loan payment of students who completed in award years 2010–2011 and 2011–2012 (2-year period); earnings for 2014 calendar year.	Of borrowers who entered repayment 3 fiscal years prior to the year in which pCDR is calculated, percentage who defaulted by end of the subsequent 2 fiscal years. For example, 2016 pCDR calculation: Of borrowers who entered repayment in fiscal year 2013, percentage who defaulted by end of fiscal year 2015.
Categories & thresholds	
Pass: annual D/E ≤ 8% Or discretionary D/E ≤ 20% .... Zone: 8% < annual D/E ≤ 12% Or 20% < discretionary D/E ≤ 30%. Fail: annual D/E > 12% AND discretionary D/E > 30%.	Pass: pCDR < 30% Fail: pCDR ≥ 30%
Ineligibility	
A program becomes ineligible for 3 years if: .... It fails in any 2 out of 3 consecutive years. *OR*. Does not pass in any 1 out of 4 consecutive years (can be mix of zone or failing results, but not 2 fails out of 3 consecutive years).	A program becomes ineligible for 3 years if it fails for 3 consecutive years.
Other consequences	
If a problem could become ineligible based on its next D/E rates, the institution must issue warnings to enrolled and prospective students and add warning to disclosure template.	If a problem could become ineligible based on its next pCDR, the institution must issue warnings to enrolled and prospective students and add warning to disclosure template.

Independence of the D/E Rates and pCDR Measures

To maintain eligibility, a GE program would have to pass either of the D/E rates—the discretionary income rate or the annual earnings rate—and would also have to pass the pCDR measure. Unlike the 2011 Prior Rule where a program could become ineligible only if it failed all of the metrics, under the proposed regulations, a program could become ineligible if it does not pass the D/E rates measure only, does not pass the pCDR measure only, or does not pass both the D/E rates and pCDR measures.

Under § 668.7(d)(2)(i)(A) of the 2011 Prior Rule, if the number of students reflected in the calculations did not meet the minimum number of students necessary to calculate either or both of the debt measures, the debt-to-earnings ratios and the loan repayment rate, then the program was considered to have satisfied both of the debt measures. This would be the case even if the minimum number of students necessary to calculate one of the measures was met and the rate for that measure was a failing rate.

Under the proposed regulations, a program would receive a pCDR result that would be used to assess the program regardless of whether D/E rates could be calculated for the program. If the D/E rates also could be calculated, then the program would receive results under both metrics. Further, as stated previously, the results of one metric would not affect the results of the other. For example, a program could simultaneously pass the D/E rates measure, but fail the pCDR measure. Likewise, a program could simultaneously be ''in the zone'' under the D/E rates measure, but pass the pCDR measure.

Rates Not Calculated

As under the 2011 Prior Rule, under proposed § 668.404(f), D/E rates would not be calculated for an award year if fewer than 30 students completed the program during an applicable cohort period or if SSA did not provide earnings information for the program. In such instances, the program would not receive D/E rates for the award year. In the 2011 Prior Rule, however, the program would be deemed to have satisfied the debt measures.

For pCDR, on the other hand, due to the availability of certain challenge and appeal options, there is no minimum program size that would prevent the Department from calculating the pCDR. Even a program with zero borrowers entering repayment would receive an official pCDR of 0 percent and pass the measure. See ''§ 668.407 Calculating pCDR'' for more information on how pCDRs are calculated.

Reasons:

Background

The components of the proposed accountability framework that a program must satisfy to meet the gainful employment requirement are rooted in the legislative history of the predecessors to the statutory provisions of sections 101(b)(1), 102(b), 102(c), and 481(b) of the HEA that require institutions to establish the title IV, HEA program eligibility of gainful employment programs. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

The legislative history of the statute preceding the HEA that first permitted students to obtain federally financed loans to enroll in programs that prepared them for gainful employment in recognized occupations demonstrates the conviction that the training offered by these programs should equip students to earn enough to repay their loans. *APSCU* v. *Duncan,* 870 F.Supp.2d at 139; see also 76 FR 34392. Allowing these students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. 76 FR 34392. Specifically, the Senate Report accompanying the initial legislation (the National Vocational Student Loan Insurance Act (NVSLIA), Pub. L. 89–287) quotes extensively from testimony provided by University of Iowa professor Dr. Kenneth B. Hoyt, who testified on behalf of the American Personnel and Guidance Association. On this point, the Senate Report sets out Dr. Hoyt's questions and conclusions:

Would these students be in a position to repay loans following their training? . . .

If loans were made to these kinds of students, is it likely that they could repay them following training? Would loan funds pay dividends in terms of benefits accruing from the training students received? It would seem that any discussion concerning this bill must address itself to these questions. . . .

We are currently completing a second-year followup of these students and expect these reported earnings to be even higher this year. *It seems evident that, in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.* . . . I have found no reason to believe that such funds are not needed, *that their availability would be unjustified in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk.*

Sen. Rep. No. 758, 89th Cong., First Sess. (1965) at 3745, 3748–49 (emphasis added).

Notably, both debt burden to the borrower and financial risk to taxpayers and the Government were clearly considered in authorizing federally backed student lending. Under the loan insurance program enacted in the NVSLIA, the specific potential loss to taxpayers of concern was the need to pay default claims to banks and other lenders if the borrowers defaulted on the loans. After its passage, the NVSLIA was merged into the HEA, which in title IV, part B, has both a direct Federal loan insurance component and a Federal reinsurance component, under which the Federal Government reimburses State and private non-profit loan guaranty agencies upon their payment of default claims. 20 U.S.C. 1071(a)(1). Under either HEA component, taxpayers and the Government assume the direct financial risk of default. 20 U.S.C. 1078(c) (Federal reinsurance for default claim payments), 20 U.S.C. 1080 (Federal insurance for default claims).

Not only did Congress consider expert assurances that vocational training would enable graduates to earn wages that would not pose a ''poor financial risk'' of default, but an expert observed that this conclusion rested on evidence that ''included both those who completed and those who failed to complete the training.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 139, *citing* H.R. Rep. No. 89–308, at 4 (1965), and S. Rep. No. 89–308, at 7, 1965 U.S.C.C.A.N. 3742, 3748.

The concerns regarding excessive student debt reflected in the legislative history of the gainful employment eligibility provisions of the HEA are as relevant now as they were then. Indeed, excessive student debt affects students and the country in three significant ways: payment burdens on the borrower; the cost of the loan subsidies to taxpayers; and the negative consequences of default (which affect borrowers and taxpayers).

The first consideration is payment burdens on the borrower. As we said previously in connection with the 2011 Prior Rule and restate here, loan payments that outweigh the benefits of the education and training for GE programs that purport to lead to jobs and good wages are an inefficient use of the borrower's resources. See 75 FR 43621.

The second consideration is taxpayer subsidies. As we said previously in connection with the 2011 Prior Rule and restate here, borrowers who have low incomes but high debt may reduce their payments through income-driven repayment plans. These plans can either be at little or no cost to taxpayers or, through loan cancellation, can cost taxpayers as much as the full amount of the loan with interest. 75 FR 43622. Deferments and repayment options are important protections for borrowers because, although postsecondary education generally brings higher earnings, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance. However, these repayment options should not mean that institutions should increase the level of risk to the individual student or taxpayers through high-cost, low-value programs. See id.

The third consideration is default. The Federal Government covers the cost of defaults on Federal student loans. These costs can be significant to taxpayers. Id. And as we said previously in connection with the 2011 Prior Rule and restate here, loan defaults harm students and their families. Id. Their credit rating is damaged, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. And, increasingly, employers consider credit records in their hiring decisions. 75 FR 43622. In addition, former students who default on Federal loans cannot receive additional title IV, HEA program funds for postsecondary education. Id.; see also section 484(a)(3) of the HEA, 20 U.S.C. 1091(a)(3).

In accordance with the legislative intent behind the gainful employment eligibility provisions now found in sections 101, 102, and 481 of the HEA and the significant policy concerns they reflect, we propose to use the certification requirements to establish a program's eligibility and, to assess continuing eligibility, the metrics-based standards that measure whether students will be able to pay back the educational debt they incur to enroll in the occupational training programs that are the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

Certification Requirements

Under proposed §§ 668.403 and 668.414, institutions must certify through their program participation agreements that their GE programs meet all applicable accreditation and State and Federal licensing requirements to be eligible for title IV, HEA program funds. Through the certification requirements, institutions would be required to assess their programs to determine whether they meet these minimum required standards.

A program that cannot meet the basic certification requirements cannot be said to be preparing students for gainful employment in a recognized occupation. We believe that any student attending such a program would have a difficult time or be unable to secure employment in the occupation for which he or she received training and, consequently, would likely struggle to repay the debt incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes and are an appropriate condition that programs must meet to qualify for title IV, HEA program funds as they squarely address the debt repayment concerns underlying the gainful employment eligibility provisions of the HEA. As we have proposed that these certifications must be signed by an institution's most senior executive officer, we believe that institutions would make this self-assessment in good faith and after appropriate due diligence. The certification requirements are discussed in more detail in ''§ 668.414 Certification requirements for GE programs.''

The GE Measures

The debt-to-earnings measures under both the 2011 Prior Rule and the proposed regulations assess the debt burden incurred by students who completed a GE program in relation to their earnings. The pCDR measure, like the loan repayment rate in the 2011 Prior Rule, would assess the extent to which a program's borrowers are paying back their loans, whether or not they completed the program, by measuring the GE program's loan default rate.

Both the D/E rates measure and pCDR measure assess program outcomes that, consistent with legislative intent, indicate whether a program is preparing students for gainful employment. Although the measures supplement and complement one another, each focuses on separate and distinct expectations on which Congress relied in enacting legislation that make these programs eligible for title IV, HEA program funds based on the condition that they provide training that prepares students for gainful employment. Consequently, we believe the measures should operate independently.

Some negotiators questioned the proposed use of D/E rates and pCDR as independent eligibility measures. They suggested the accountability framework is inconsistent with the approach taken in the 2011 Prior Rule in which the debt measures, taken together, were designed to identify the worst performing programs. Our change in approach is a change not in overall objective, but in the manner in which we believe that objective is best accomplished.

The D/E rates and pCDR measures are designed to reflect and account for the three primary reasons that a program may fail to prepare students for gainful employment where former students are unable to earn wages adequate to manage their educational debt: (1) a program does not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) a program provides training for an occupation for which low wages do not justify program costs, and (3) the program is experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. See ''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings,'' for a more complete discussion of withdrawal rates and ''churn.''

The D/E rates measure assesses the outcomes of only those students who complete the program. The calculation includes former title IV, HEA program fund recipients who took on educational debt and recipients who did not. And, for those students who have debt, the D/E rates take into account private loans and institutional financing in addition to title IV, HEA program loans.

The D/E rates primarily assess whether the loan funds obtained by students ''pay dividends in terms of benefits accruing from the training students received,'' and whether such training has indeed equipped students to earn enough to repay their loans such that they are not unduly burdened. H.R. Rep. No. 89–308, at 4 (1956); S. Rep. No. 89–758, at 7 (1965). A 2002 survey found that a majority of borrowers felt burdened by their student loan payments and reported that they would borrow ''much less'' or a ''little less'' to finance their higher education if they were to enroll again in an educational program. An analysis of the 2002 survey combined borrowers' responses to questions about student loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' debt-to-income ratios; in other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[45] ''Burden'' and ''regret'' were significantly positively associated with one's debt-to-income ratio.[46]

As a result, the D/E rates measure identifies programs that fail to adequately provide students with the occupational skills needed to obtain employment or that train students for occupations with low demand and low wages. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.

In contrast to the D/E rates measure, pCDR measures the extent to which a program's former students are paying back their Direct and FFEL loans regardless of their earnings, if any. In comparison to the D/E rates measure, the pCDR measure applies to those programs that have relatively high enrollments but no or few completions such that students are left with debt they cannot repay. A substantial body of research suggests that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.''[47]

The legislative history supports inclusion of students who did not complete a program in the proposed accountability framework. As discussed previously, Congress specifically considered expert advice that students who took out Federal loans for the purpose of training programs, including students who do not complete the programs, would be able to repay those loans, as defaults by those students would burden taxpayers in the same way as defaults by students who completed the program.

The pCDR, consequently, is foremost a measure that assesses whether a program presents a ''poor financial risk to the taxpayer.'' 76 FR 34392. In light of congressional intent reflected in the legislative history, a program that presents a poor financial risk for taxpayers cannot be considered a program that prepares students for gainful employment.

Despite the distinctive purposes of the D/E rates and pCDR measures, the measures supplement and complement one another. The scope of the pCDR measure is broader than the D/E rates measure as pCDR also takes into account the outcomes of borrowers who did not complete the program. Accordingly, the pCDR measure supplements the D/E rates in those cases in which D/E rates cannot be calculated

[45] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[46] Id.

[47] Gross, J. P., Cekic, O., Hossler, D., and Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

because no or very few students who enrolled in a program actually completed the program. By including an accountability metric that reflects the outcomes of students who do not complete the program, institutions would have incentive to address any high dropout and ''churn'' issues or face the loss of eligibility.

Likewise, the D/E rates measure complements the pCDR measure. Specifically, the pCDR measure does not take into account the many students who may be struggling to repay their loans, such as those receiving economic hardship deferments or who are in an income-driven repayment plan. These students may see their loans grow, rather than shrink, because their incomes are low and their debts are high. While the pCDR measure may not identify programs whose former students are in such circumstances, the D/E rates measure would take into account those students who are struggling with their debt burden despite having completed their programs.

Although we have proposed the pCDR measure to assess the outcomes of all students who attend a program, both students who complete the program and those who do not, we invite comment as to whether the D/E rates measure should also consider the outcomes of students who do not complete the program, in addition to those who do. We ask commenters to provide information, studies, and data to support their comments.

D/E Rates

The proposed regulations would include the same two debt-to-earnings measures as the 2011 Prior Rule. Under the proposed regulations, the first D/E rate, the discretionary income rate, measures the proportion of annual discretionary income—the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States—that students who complete the program are devoting to annual debt payments. The Department also proposes a second rate, the annual earnings rate, which measures the proportion of annual earnings that students who complete the program are devoting to annual debt payments. A program would pass the D/E rates measure by meeting the standards of either of the two metrics, the discretionary income rate or the annual earnings rate. For an explanation of the methodology that would be used to calculate the D/E rates, see ''§ 668.404 Calculating D/E rates.''

The proposed passing thresholds for the discretionary income rate and the annual earnings rate are based upon mortgage industry practices and expert recommendations. The passing threshold for the discretionary income rate is set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz, which the Department previously considered in connection with the 2011 Prior Rule.[48] Specifically, Baum and Schwartz proposed benchmarks for manageable debt levels at 20 percent of discretionary income. Such benchmarks would ensure that low income borrowers have no repayment obligations and that no borrower would ever have repayment obligations that exceeded 20 percent of their income, a level they found to be unreasonable under virtually all circumstances.[49] The passing threshold of 8 percent for the annual earnings rate used in the proposed regulations has been a fairly common mortgage-underwriting standard, as many lenders typically recommend that all non-mortgage loan installments not exceed 8 percent of the borrower's pretax income.[50] Studies of student debt have accepted the 8 percent standard and some State agencies have established guidelines based on this limit. Eight percent represents the difference between the typical ratios used by lenders for the limit of total debt service payments to pretax income, 36 percent, and housing payments to pretax income, 28 percent.[51]

In the 2011 Prior Rule, the passing thresholds for the debt-to-earnings ratios were based on the same expert recommendations and industry practice, but were increased by 50 percent to 30 percent for the discretionary income rate and 12 percent for the annual earnings rate to identify the lowest-performing GE programs and to build in a tolerance. 76 FR 34400.

Upon further consideration of this issue and analysis of the GE Data, we believe that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a ''tolerance'' into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries for a zone rather than as the passing thresholds. For the following reasons, adopting this approach is consistent with the Department's objectives in this rulemaking of identifying poorly performing programs, and providing institutions time, particularly in the initial years of the proposed regulations, to improve their programs.

First, the proposed regulations would still identify the lowest performing programs, those with a discretionary income rate greater than 30 percent and an annual earnings rate greater than 12 percent, by categorizing them as failing. Whereas the 2011 Prior Rule provided that a program would be ineligible if it had failing rates for three out of any four consecutive years, under the proposed regulations, a GE program that fails the D/E rates measure in two out of any three consecutive years would become ineligible. This reflects the Department's view in the prior rulemaking, as well as here, that any program with D/E rates above a 30 percent discretionary income rate or a 12 percent annual earnings rate is producing very poor outcomes for its students and should, in order to minimize the program's negative impact on students, be given only limited time before it loses its eligibility.

Because of the previous rulemaking and the release of the 2011 GE informational rates in June 2012, we believe many institutions have had relevant information for a sufficient amount of time to assess their programs and make improvements, particularly by reducing costs. As discussed in more detail below, the proposed four-year transition period would take into consideration these improvements. Even where institutions have not taken action, or in cases where programs were not included in the 2011 GE informational rates, the transition period would still account for any immediate reductions in costs that institutions make in response to the proposed regulations. For a more detailed explanation of the transition period, see ''§ 668.404 Calculating D/E rates.'' Accordingly, less time to ineligibility for failing programs is merited in comparison to the 2011 Prior Rule.

Second, we propose setting the passing thresholds at 20 percent for the discretionary income rate and 8 percent for the annual earnings rate, which are what experts and industry practice deem to be the outside limit of

[48] Baum, S., and Schwartz, S. (2006). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt. See also S. Baum, ''Gainful Employment,'' posting to The Chronicle of Higher Education, *http://chronicle.com/blogs/innovations/gainful-employment/26770*, in which Baum described the 2006 study:

This paper traced the history of the long-time rule of thumb that students who had to pay more than 8% of their incomes for student loans might face difficulties and looked for better guidelines. It concluded that manageable payment-to-income ratios increase with incomes, but that no former student should have to pay more than 20% of their discretionary income for all student loans from all sources.

[49] Id.

[50] Id. at 2–3.

[51] Id.

acceptable debt burden. As stated above, Baum and Schwarz concluded that the ratio of discretionary income to debt should never exceed 17 to 20 percent.[52] Similarly, the 8 percent threshold for the annual earnings rate is based on the credit underwriting industry's judgment of the outside limit of all non-mortgage debt. Although not among the very worst performers, programs with D/E rates exceeding the 20 percent and 8 percent thresholds still exhibit poor outcomes and unacceptable debt levels. Eventual ineligibility for these programs is appropriate if they do not make improvements that will be reflected in their D/E rates.

Our analysis of the 2012 GE informational rates indicates that the stricter thresholds would more effectively identify poorly performing programs. The average earnings of students who completed programs evaluated by the Department with a discretionary income rate or an annual earnings rate in between the passing thresholds of the proposed regulations and the 2011 Prior Rule, 20–30 percent and 8–12 percent, respectively, is under $18,000.[53] Under the thresholds of the 2011 Prior Rule, a zone program would pass the D/E rates measure, even though its graduates could be devoting up to almost $2,200, or 12 percent, of their $18,000 in annual earnings toward student loan payments. We believe it would be very difficult for an individual earning $18,000 to manage that level of debt. That 25 percent of borrowers from zone programs evaluated by the Department default on their Federal student loans within the first three years of entering repayment lends support to this conclusion.[54] In comparison, the average default rate of programs evaluated by the Department that would pass the D/E rates measure under the proposed regulations is 19 percent.[55] These results indicate that students who complete zone programs have very different outcomes than students who complete passing programs. These programs, accordingly, should not be treated the same.

Third, because programs in the zone are not among the very worst, they have a greater potential to raise their performance to passing levels than programs with poorer outcomes. We believe they should be afforded an opportunity to do so. For this reason, the proposed regulations include a four-year zone and allow for a transition period to allow zone programs more time than failing programs to improve before being made ineligible. Because institutions have the ability to impact the debt that their students accumulate by lowering tuition and fees, which the transitional D/E rates calculations would take into account, we believe it is possible for zone programs to improve. If institutions do not make improvements to these programs, they would be made ineligible just as failing programs, because, as deemed by experts and industry practice and supported by our own data analysis, both groups of programs are leaving their students with unacceptable debt burdens in comparison to their incomes.

As discussed under ''§ 668.404 Calculating D/E rates,'' the proposed regulations would allow for a transition period for the first four years after the final regulations become effective. During the transition period, an alternative D/E rates calculation would be made so that institutions could benefit from any immediate reductions in cost they make. During these four years, the transition period and zone together would allow institutions to make improvements to their programs in order to become passing. Institutions that lower tuition and fees sufficiently at the outset of the transition period could move failing programs into the zone in order to avoid ineligibility. These institutions would then have additional transition and zone years to continue to improve their programs and make them passing. During this period, the Department would also provide to institutions their results under the regular D/E rates calculation so that they could measure the amount of cost reduction they would need to make in order for their programs to pass once the transition period concludes.

After the conclusion of the transition period, the overall accountability and transparency framework of the proposed regulations, including the zone, should motivate continuous improvement by institutions. If institutions begin reducing costs and improving quality at the start of the transition period, and sustain those efforts after the transition period, a program that falls in the zone in the future would benefit from the four-year time period because consistent improvements would be reflected in the program's D/E rates on an ongoing basis.

Fourth, a four-year zone provides a buffer to account for statistical imprecision due to random year-to-year variations, virtually eliminating the possibility that a program would mistakenly be found ineligible on the basis of D/E rates for students who completed the program in any one year. As demonstrated below by the Department's analysis of the 2012 GE informational rates, given the extreme unlikelihood that an unrepresentative population of students who completed the program could occur in four out of four consecutive years, that is, that a program's D/E rates exceed the 8 percent and 20 percent thresholds four years in a row when in fact its D/E rates are on average less than 8 percent and 20 percent for a typical year, there is no need to build in a tolerance by adjusting the thresholds at the expense of holding all poorly performing programs accountable as was done in the 2011 Prior Rule because the zone provides that tolerance. In other words, we believe the zone accounts for statistical imprecision while still holding all poorly performing programs accountable over time.

The findings of our statistical analysis are discussed in the following paragraphs. For demonstrative purposes, the probabilities provided below are for the annual earnings rate because our analysis indicates that, of programs that would pass the D/E rates, the substantial majority would pass this measure. Our analysis assumes that the observed annual earnings rates of passing programs reasonably approximate the true distribution of passing annual earnings rates. Note also that, although we have proposed an ''n-size'' of 30 in the proposed regulations, we have also invited comment on an n-size of 10. See ''§ 668.404 Calculating D/E rates.'' Accordingly, our analysis assessed the statistical precision of the measure using both an n-size of 30 and an n-size of 10.

If the minimum number of students completing a program (''n-size'') necessary to calculate the program's D/E rates is set at 30, as is the case in the proposed regulations, the expected or average probability that a passing program would be mischaracterized as a zone program in a single year is no more than 2.7 percent. Because this is an average across all programs with passing D/E rates, it is important to note that the probability is lower the farther a program is from the passing threshold and higher for programs with D/E rates closer to the passing threshold. At an n-size of 10, the probability that a passing program would be mischaracterized as a zone program in a single year would be no more than 6.7 percent.

Because no program would be found ineligible after just a single year, it is important to look at the statistical precision analysis across multiple years. These probabilities drop significantly for both an n-size of 30 and 10 when

[52] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[53] 2012 GE informational rates.

[54] Id.

[55] Id.

looking across the four years that a program could be in the zone before becoming ineligible. The average probability of a passing program becoming ineligible as a result of being mischaracterized as a zone program for four consecutive years at an n-size of 30 is close to 0 percent. At an n-size of 10, the average probability is no more than 1.4 percent.

Setting the failing D/E rates thresholds at 30 percent for the discretionary income rate and 12 percent for the annual earnings rate also virtually eliminates the probability of a passing program losing eligibility because of being mischaracterized as failing at either n-size.

The probability of a passing program being mischaracterized as a failing program in a single year at an n-size of 30 is close to 0 percent. At an n-size of 10, the probability is no more than 0.7 percent. Although we know that these are the upper limits of the probabilities of a passing program being mischaracterized as failing, it is likely that the probabilities are lower when taken across the two years of failures required for a program to become ineligible. We are unable to provide more precise probabilities for the scenario of failing two out three years due to limitations in our data.[56]

Other aspects of the D/E rates measure in the proposed regulations also reduce the probability of a program becoming a failing or ineligible program in error. As a general matter, both the debt and earnings components of the discretionary income rate and annual earnings rate calculations are calculated as means or medians, which, as measures of central tendency, account for outliers. And as stated previously, both passing thresholds are set at the very outside limits of the recommendations from which they are drawn, resulting in a ''built-in'' buffer.

Although we propose to use the same D/E rates measure for the purpose of determining program eligibility as in the 2011 Prior Rule but with stricter passing thresholds and a zone category, we seek comment on whether the passing thresholds used in the 2011 Prior Rule—12 percent for the annual earnings rate and 30 percent for the discretionary income rate—should be adopted instead. We strongly urge commenters to provide supporting data or studies that the Department can use in evaluating regulatory alternatives.

pCDR

To assess the repayment performance of former students, we propose to use a different method than the loan repayment rate measure in the 2011 Prior Rule: the percentage of those students who default within a defined period, which we refer to as the program cohort default rate or pCDR.

In the 2011 Prior Rule, to assess repayment performance, the Department used the loan repayment rate measure in § 668.7(b), which measured the extent to which students who borrowed to enroll in a GE program were repaying their loans. In proposing the loan repayment rate measure, the Department explained that the measure was designed to protect the taxpayer as well as the borrower from exposure to default: ''This concern—protecting the taxpayer—motivates the repayment rate measure, which indicates the taxpayer's exposure to delayed repayment *or default.*'' 75 FR 43622 (emphasis added). The Department adopted in § 668.7(a)(2) and (b) of the 2011 Prior Rule a minimum threshold of 35 percent as the percentage of loan amount borrowed by former students that those borrowers had actually repaid, through the recent fiscal year, at a rate that reduced the ''outstanding balance'' owed. That threshold was adopted to identify ''the approximately one-quarter of programs where 65 percent of the former students attempting to repay their loans were nonetheless seeing their loan balances grow.'' 73 FR 34395.

In *APSCU* v. *Duncan,* the court found that the Department had not provided a ''reasoned explanation'' for the 35 percent threshold other than that it would identify the worst-performing quartile, *APSCU* v. *Duncan,* 870 F.Supp.2d at 154, and vacated that portion of the regulations. Nevertheless, we continue to consider loan repayment performance of a GE program's former students to be relevant evidence of whether a program meets the gainful employment requirement. Unlike with the debt-to-earnings rates, however, the Department has found no expert studies or industry practice that would provide the kind of factual support for identifying a particular loan repayment rate as an appropriate threshold for determining whether a program prepares students for gainful employment, nor has it found alternative support or arguments in support of a threshold.

Instead, we seek to measure the loan repayment performance based on the proposed pCDR accountability metric, which is modeled after the cohort default rate metric that is currently used to determine institutional eligibility to participate in title IV, HEA programs (institutional CDR or iCDR). Specifically, we propose to use pCDR as a measure, independent of the D/E rates measure, to determine the continuing title IV, HEA eligibility of a GE program. To determine whether a program is failing, the Department would use the same threshold as is used to disqualify institutions from the title IV, HEA programs. 20 U.S.C. 1085(m). A program would be failing the pCDR measure if it had a pCDR of 30 percent or greater.

Because the HEA sets the standard for when an institution loses eligibility under the iCDR provisions, we consider that congressional determination—three consecutive fiscal years of an iCDR of 30 percent or greater—to provide compelling support for use of the identical standard to assess the eligibility of a GE program. Because every institution is the sum of its programs, the iCDR is simply the aggregate outcome of the default performance of students from all of its programs.

The legislative history of the HEA provisions that impose the iCDR eligibility test do not appear to discuss the rationale for any of the specific threshold rates Congress chose to use between 1990 (30 percent) and the present (also 30 percent). The legislative history does show, however, that Congress has closely attended to calibrating the iCDR test and its effect on institutions, as evidenced by numerous and regular amendments. These amendments made significant changes to the iCDR rule over the years: they changed the rates themselves, exempted various classes of institutions from the test, expanded and refined the grounds on which institutions could appeal a loss of eligibility, denied eligibility for Pell Grants to those institutions that lost eligibility on CDR grounds, and, most recently, expanded the period during which defaults were held against the institution from the two-year period adopted in 1990 to three years.[57] This history amply

[56] We are unable to provide more precise probabilities for the scenario of a program that fails the D/E rates measure in two out of three years. Because some students are common to consecutive two-year cohort periods for the D/E rates calculations, we cannot rely on the assumption that each year's D/E rates are statistically independent from the previous and subsequent year's D/E rates. Without the assumption of independence between years, there is no widely accepted method for calculating the probability of a program failing the D/E rates measure in two out of three years.

[57] The earliest legislation to use cohort default rate was Public Law 101–239, section 2003(a), Dec. 19, 1989, 103 Stat 2106, 2120, which made an institution with a single year CDR of 30 percent or more ineligible for Supplemental Loans for Students, a FFELP loan authorized under section 428A as in effect at the time, and added subsection (m) to section 435 of the HEA to define the term cohort default rate. This followed the Department's June 5, 1989, adoption of regulations that made an

Continued

demonstrates that the current iCDR rate, which is incorporated into the proposed regulations at the program level, reflects Congress's experiences and careful deliberation over the years.

Thus, we consider it reasonable to rely on the 30 percent standard adopted by Congress. We have found no analytical criticism of the 30 percent standard. Given the unique characteristics of the Federal student loan program, such as the lack of any creditworthiness test, we propose to rely on the well-established standard deliberated and adopted by Congress.

Moreover, this standard has been applied on a program-level basis for many years, as there are a number of institutions offering only one eligible program that are evaluated on whether that one program's default rate is meeting the 30 percent threshold established by Congress. In other words, in those cases, the iCDR measure is effectively already used as a program-level CDR measure.

In connection with the negotiated rulemaking process for the 2011 Prior Rule, several commenters suggested that the Department use institutional CDR as a measure of whether a program prepares students for gainful employment. The Department declined to do so, stating that ''an *institution's* average [cohort default rate] does not measure the effect of any individual program.'' 76 FR 34386, 34387 (June 11, 2011) (emphasis added). The *institutional* CDR ''may mask an underperforming program . . . [and] may therefore be a misleading measure of an *individual program's* success in providing students with sufficient income to pay off educational loan debt.'' 76 FR 34411 (emphasis added). Notably, these arguments apply only to the use of iCDR to measure whether individual programs produce excessive debt burdens. The Department did not consider applying the iCDR methodology to assess the default performance of individual programs, as we now propose. Further, at that time, the Department's proposal already included a metric to measure loan repayment performance—the loan repayment rate.

We continue to believe that iCDR itself is not a useful measure in determining whether a program prepares students for gainful employment in a recognized occupation (except for institutions offering only one eligible program). Although a passing iCDR indicates that an institution is, on average, across programs, producing an acceptable number of students that are able to pay their loans, iCDR does not measure individual GE program performance and, therefore, does not provide the information that would be most useful to prospective students and their families considering a particular program. For students who find themselves in a GE program that is leaving its students with unmanageable debt, the fact that an institution has other programs that are producing better student outcomes is of limited utility. When applied at the program level, however, we believe a cohort default rate is a valuable measure of GE program performance. We also expect the implementation of pCDR as a GE measure would have a similar effect on the cohort default rates at a program level as did iCDR on the institutional level. 76 FR 34484. That is, when iCDR was introduced there was an initial elimination of the worst-performing programs followed by a new equilibrium in which programs complied with the minimum standards in the regulations. Id.

Proposed new subpart R would establish the procedures and methodology that would be applied to determine a GE program's pCDR. Subpart R is virtually identical to subpart N of part 668, which establishes the procedures and methodology used to determine iCDR. We have drafted proposed subpart R to follow the text and procedures in subpart N in order to assist institutions already familiar with the iCDR process to understand the pCDR procedures and methodology. Provisions of subpart N that are not relevant to pCDR determinations or are not adopted for pCDR purposes have been reserved in subpart R.

The major difference between iCDR and our proposed use of pCDR is that, in the proposed regulations, we would adopt only the statutory CDR threshold for loss of eligibility (rates of 30 percent or greater for three consecutive fiscal years), and would not adopt the additional regulatory provision under which an institution loses eligibility if it has an iCDR greater than 40 percent in a single fiscal year. This is consistent with our overall approach to allow institutions time to improve their programs so that a program would not lose eligibility after only a single year of failure to meet a GE measure.

For the pCDR measure, we propose no counterpart to the zone or the transition period used for the D/E rates measure. There are no equivalent provisions in the iCDR framework. However, we note that because institutions have been subject to the iCDR standards for many years, we do not believe that there is a similar need for a zone or a transition period in connection with the pCDR measure.

Under the proposed regulations, we would replicate the iCDR determination process for the purpose of determining pCDR. Thus, the same procedures and methodology used in calculating cohort default rates for institutions under section 435 of the HEA, 20 U.S.C. 1085, and Department regulations would largely apply to the calculation of pCDR. For example, the proposed regulations would mirror regulations contained in subpart R that address the calculation of cohort default rates for institutions with few borrowers entering repayment, § 668.202(a)(2) (calculation of rate when fewer than 30 borrowers enter repayment in a fiscal year).

The proposed regulations would also provide an institution with the same challenges and appeals for the pCDR determination as are provided for the iCDR determination. We believe that institutions are familiar with these challenges and appeals and can readily use them in connection with pCDR determinations.

We propose to exclude from subpart R provisions of 34 CFR part 668, subpart N, that address matters that are not necessary components of the rate determination process itself, such as § 668.204(c)(1)(iii) (affecting administrative capability of the institution under § 668.16(m)), or do not readily apply to program-level rates, such as § 668.203 (calculation of CDR

institution with a single-year CDR of 40 percent or greater subject to termination of eligibility. 34 CFR 668.15 (1990), 54 FR 24114 (June 5, 1989). The three-year CDR test structure was adopted shortly thereafter by Pub. L. 101–508, section 3004, Nov. 5, 1990, 104 Stat. 1388–26, which amended section 435(a) of the HEA to adopt the three-year CDR test in effect ever since; to set the CDR rate thresholds at 35 percent for FY 1991 and 1992, and 30 percent for FY 1993 and subsequent fiscal years; and to exempt until 1994 historically black colleges and universities and tribally controlled colleges and universities, as identified by the Tribally Controlled Community College Assistance Act and the Navajo Community College Act from the cohort default rate thresholds. 20 U.S.C. 1085(a)(2)(B), (C). (This exemption was extended several times and ultimately ended in 1999.) Congress revised the CDR thresholds in 1992 amendments, reducing the threshold to 25 percent for fiscal years beginning in 1994. Pub. L. 102–325, section 427, 106 Stat 448, July 23, 1992. Congress substantially revised the appeal options in 1993 to allow challenges to loss of eligibility based on improper servicing, Pub. L. 103–208, section 2(c)(55), Dec. 20, 1993, 107 Stat 2457. Appeal options were further expanded in 1998 to permit appeals based on ''mitigating circumstances,'' including low borrowing and high placement rates for GE programs, and disqualifying from Pell Grant eligibility those institutions that fail the CDR test. Pub. L. 105–244, sections 401, 429, Oct. 7, 1998, 112 Stat. 1704 to 1709. Most recently, Congress extended the period during which defaults would be assessed from the two-year period under prior law to a three fiscal year period and changed the CDR threshold back to 30 percent for fiscal years beginning in 2012, the first year in which the three-year period would apply. Pub. L. 110–315, section 436, 102 Stat 3258.

for institutions or locations that undergo a change in ownership).

We have considered each provision of subpart N to determine its applicability to pCDR and believe that a cohort default rate, calculated under the specific procedures and methodology adopted from iCDR, is a valuable and reasonable metric at the program level for the reasons explained above.

During the negotiation sessions, several non-Federal negotiators suggested that pCDR would be an inadequate measure of whether a program prepares students for gainful employment. These negotiators believed that the iCDR methodology does not capture the extent to which borrowers facing an excessive debt burden can, by various deferments and forbearances, temporarily avoid the adverse consequence of that debt burden, only to default after the three-year period during which the CDR tracks defaults. They were concerned that institutions would encourage students to enter forbearance or deferment in order to evade the consequences of the pCDR measure and urged the Department to modify the existing iCDR methodology to disregard these non-payors when calculating pCDR.

We acknowledge that cohort default rates do not take into account students who are receiving deferments or forbearances, or who may be paying much less or even nothing as a result of repaying under an income-driven repayment plan, but we are not inclined to make a change that would cause the proposed pCDR requirements to differ so significantly from the institutional CDR requirements. Although we are concerned about the manipulation of cohort default rates through the deferments, forbearances, and income-driven repayment plans identified by some negotiators, we believe that pCDR should be consistent with iCDR to avoid conflicting results. For example, if we accepted the negotiators' proposal to adopt, but modify, the iCDR provisions for purposes of pCDR to address the concern presented, an institution with only one program could be determined to be an eligible institution with respect to its one program under iCDR, but that program could be determined to be ineligible under the proposed pCDR provision. The Department wishes to avoid such contrary consequences.

During the negotiations, we encouraged the negotiators to submit proposals for alternative methods of assessing loan repayment and the corresponding thresholds, together with the kind of evidence or analysis that the Department would need to pursue a different approach to assessing repayment. Negotiators responded to this request with proposals that included using completion rates, placement rates, and repayment rates as alternative eligibility measures. However, we received no proposals with a level of support sufficient for rulemaking. We believe section 435 of the HEA, 20 U.S.C. 1085, provides such support for the pCDR measure, and explain above why application of the cohort default rate at a program level is reasonable.

Negotiators also provided responses on a proposal the Department made at the second negotiation session to evaluate loan repayment performance based on whether the program's loan portfolio was negatively amortized. As we explained at the third session, we were unable to draw conclusions from the data available at the time on the negative amortization proposal. Accordingly, we have not pursued this proposal further.

Other negotiators strongly objected to the proposal not to adopt, for the purpose of pCDR as an eligibility measure, the iCDR regulatory provision that results in the termination of an institution's eligibility after one fiscal year iCDR of greater than 40 percent. 34 CFR 668.206(a)(1). The negotiators were concerned that a program that may be one of the worst performers would remain eligible for perhaps two more years, harming more students in the interim. However, as explained earlier, we propose to adopt an accountability framework that does not result in ineligibility based on just one year of poor performance. Adopting a provision that would make a program ineligible after one year of failure would not be consistent with that intention. For a program that fails the pCDR measure, an institution can make efforts to assist subsequent cohorts of borrowers entering repayment with managing their debt burdens to lower the rates of default and, over the long term, can reduce debt burden altogether by lowering costs.

Some negotiators questioned whether the iCDR methodology would effectively address situations in which a program has a small number of borrowers, and whether such lesser numbers might result in volatility of rates. We responded, and repeat here, that the iCDR process, as established by statute and as refined by regulation, explicitly addresses the manner in which rates are calculated for institutions with a small number of borrowers entering repayment, in ways that mitigate volatility that may arise from small numbers. Indeed, section 435(m)(3) of the HEA, 20 U.S.C. 1085(m)(3), explicitly provides that when fewer than 30 borrowers enter repayment in a fiscal year, the iCDR of that institution for that year is based on those students who entered repayment in that fiscal year and the preceding two fiscal years. § 668.202(d)(2). Proposed § 668.502(d)(2) would adopt the same rule. In addition, § 668.216 provides that an institution does not lose eligibility regardless of its iCDR if the total number of students entering repayment for the three-year period is fewer than 30. We include the same exception for pCDR in proposed § 668.516. Years of experience under these regulations have produced no evidence of volatility of institutional CDRs, and we see no basis for concern that the same rules applied to pCDR would pose such a risk.

Negotiators who expressed concern about the burden posed for programs with low rates of borrowing also objected to adopting for pCDR the same ''participation rate'' challenge available for iCDR. Under this participation rate challenge and appeal option in § 668.214, an institution subject to a loss of eligibility could avoid that loss by demonstrating that the percentage of students who borrow is sufficiently low that, when that percentage of students is multiplied by the iCDR for any of the three years for which its iCDR was 30 percent or greater, the product is less than 0.0625. An institution can assert this claim at two points in the process: First, under § 668.204(c)(1)(ii), when the draft iCDR that would constitute the third-year rate of 30 percent or greater is issued, and, second, under § 668.214, when that third-year iCDR is issued as the official iCDR. The negotiator contended that the Department should allow an institution to challenge a pCDR based on a participation rate challenge or appeal when the first pCDR of 30 percent or greater is issued, and not require the institution to wait until the third such rate is issued. For the reasons we have already stated, we believe there should be consistency between the iCDR and pCDR calculations.

We seek comment on whether there are other measures we should consider that would further the Department's stated policy goals. We restate our interest in ensuring the viability of the regulations through measures and thresholds that rest on a solid and well-reasoned basis and request that commenters submit supporting rationale, studies, and data for their proposals. We invite comment, however, on whether it may be possible to accomplish the intended goals of the GE measures without establishing a two-metric eligibility framework or whether there are other measures that should be considered.

Rates Not Calculated

If the minimum number of required students for the D/E rates to be calculated is not met or if SSA does not provide earnings information for the calculation of a program's D/E rates, the D/E rates would not be calculated and the program would not receive rates for the award year. We believe it is logical to disregard a year for which the D/E rates are not calculated for the purpose of determining eligibility under the D/E rates (as explained previously, pCDR would always be calculated). For example, if a program failed the D/E rates measure in year 1, did not receive rates in year 2, passed the D/E rates measure in year 3, and failed the D/E rates measure in year 4, that program would be deemed ineligible after year 4 because it failed the D/E rates measure in two out of three consecutive years for which D/E rates were calculated. This approach would avoid simply allowing a program to pass the D/E rates measure when an insufficient number of students complete the program.

In contrast, under the 2011 Prior Rule, a program would be deemed to have ''satisfied'' the debt measures if one of the debt measures could not be calculated. Since the 2011 Prior Rule provided that a program would satisfy the debt measures if it passed either of the debt-to-earnings ratios or the loan repayment rate, it would not have been appropriate to evaluate a program without results on all of the measures. That is not the case in the proposed regulations, as the D/E rates and pCDR measures would operate as independent measures.

We seek comment on the appropriate number of consecutive ''no rate'' years under the proposed regulations after which a program's zone or failing results should reset. As proposed, a program would become ineligible after failing the D/E rates measure in two out of any three consecutive years for which D/E rates are calculated. However, we seek comment as to whether this should apply where a significant period of time has passed between results. For example, as proposed, a program that failed the D/E rates measure for award year 2014–2015, and had no D/E rates calculated for the next five award years (2015–2016 through 2019–2020), would lose eligibility if it failed the D/E rates measure for 2021–2022. This pattern may indicate that the program was and remains a failing program, with the intervening years showing no evidence of successful outcomes. On the other hand, if the program had actually failed the D/E rates measure in two consecutive award years (e.g., 2014–2015 and 2015–2016), that program could potentially regain eligibility in 2020 (three years after the date on which the program lost eligibility).

Section 668.404 Calculating D/E rates

Current Regulations: Under section 668.7(c) of the 2011 Prior Rule, two debt-to-earnings ratios, the annual earnings rate and the discretionary income rate, would be calculated each fiscal year for GE programs using the following formulas:

$$\text{Discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{Annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

Both ratios would be calculated based on the debt and earnings outcomes of students who completed the program during an applicable cohort period. These students would include both those who received title IV, HEA program funds and those who did not.

For both ratios, the annual loan payment would be calculated by determining the median loan debt of students completing the program during the applicable cohort period and amortizing that median debt amount over a 10-, 15-, or 20-year repayment period depending on the credential level of the program, using the interest rate on Federal Direct Unsubsidized Loans at the time of the calculation. Loan debt would include FFEL and Direct Loans (except PLUS Loans made to parents or Direct Unsubsidized loans that were converted from TEACH Grants), private education loans, and institutional loans that a student received for attendance in the program. In cases where students completed multiple programs at the same institution, all loan debt would be attributed to the highest credentialed program that the student completed. Also excluded from the calculations would be students whose title IV, HEA loans were in military deferment, whose title IV, HEA loans were discharged, or being considered for discharge, because of disability, who were enrolled at an institution of higher education for any amount of time in the same calendar year that earnings are measured for the D/E rates, or who died. Loan debt incurred by the student for enrollment in a GE program at another institution would generally not be included. However, the Secretary could choose to include this debt if the institution and the other institution were under common ownership or control, as determined under 34 CFR 600.31. The loan debt associated with a student would be capped at an amount equivalent to the program's tuition and fees if tuition and fees information was provided by the institution, as such reporting would be optional, and if the amount of tuition and fees was less than the student's loan debt.

The discretionary income rate denominator would be the higher of the SSA-provided mean or median earnings minus 150 percent of the Poverty Guideline for a single person residing in the continental United States as published by the U.S. Department of Health and Human Services. The denominator of the annual earnings rate would be the higher of the mean or median earnings of the students for the most currently available calendar year, as obtained from SSA or another Federal agency.

The 2011 Prior Rule would require at least 30 students to have completed the program during an applicable cohort period for the debt-to-earnings ratios to be calculated. If, after applying the exclusions, 30 or more students completed the program during the two-year period comprised of the third and fourth fiscal years prior to the fiscal year for which the calculations are made (referred to in the 2011 Prior Rule as the ''2YP''), then the applicable cohort period would be the 2YP. If fewer than 30 students completed the program during the 2YP, then a four-year period comprised of the third, fourth, fifth, and sixth fiscal years prior to the fiscal year for which the calculations are made (referred to in the 2011 Prior Rule as the ''4YP'') would be evaluated. If, after applying the exclusions, fewer than 30 students completed the program during the 4YP, ratios would not be calculated and the program would be considered to satisfy the debt measures. Ratios would also not be calculated if SSA did not provide the mean and median earnings for the program or the median loan debt of the program is zero. In both cases, the program would be considered to satisfy the debt measures.

Section 668.7(k) of the 2011 Prior Rule would have set, in the first year that programs could become ineligible, for each institutional category (public, private non-profit, proprietary), a cap on the number of ineligible programs, such that the number of ineligible programs would not account for more than 5 percent of the total number of students who completed GE programs in that institutional category. Further, for the first three years that the 2011 Prior Rule would be effective, for programs failing the debt-to-earnings ratios, institutions could recalculate and appeal their results under the ratios using earnings data from the Bureau of Labor Statistics (BLS) to replace SSA earnings data. See ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances*'' for more detail on the BLS data-based appeal under the 2011 Prior Rule.

Proposed Regulations: Under proposed § 668.404(a) the Department would calculate the same two debt-to-earnings ratios for GE programs as in the 2011 Prior Rule: a discretionary income rate and an annual earnings rate (referred to in the 2011 Prior Rule as the ''earnings rate''). Unlike the 2011 Prior Rule, under which D/E rates are calculated on a fiscal year basis, the proposed regulations would calculate the D/E rates on an award year basis. An award year begins on July 1 and ends on June 30 of the following year whereas a fiscal year begins on October 1 and ends on September 30 of the following year. Both D/E rates would be calculated at the program level based on the debt and earnings outcomes of students who completed the program during an ''applicable cohort period'' as discussed in more detail below. Unlike the 2011 Prior Rule, the D/E rates would be based only on the outcomes of students receiving title IV, HEA program funds. But, as with the 2011 Prior Rule, students receiving title IV, HEA program funds would include students who received title IV, HEA program loans and those who received only Pell grants or other grants but no loans. See ''§ 668.401 Scope and purpose'' for a more detailed discussion of the definition of ''student'' in the proposed regulations.

Exclusions

A student would be excluded from the D/E rates calculations for a GE program if (1) one or more of the student's title IV loans were in a military-related deferment at any time during the same calendar year that earnings are measured for the D/E rates, (2) one or more of the student's title IV loans are under consideration by the Department, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61 (Perkins), 682.402 (FFEL), or 685.212 (Direct Loans), (3) the student was enrolled in another eligible program at the same institution or at another institution during the same calendar year that earnings are measured for the D/E rates, (4) if the program is an undergraduate program, the student subsequently completed a higher credentialed undergraduate GE program at the same institution, or, if the program is a post-baccalaureate, graduate certificate, or graduate degree GE program, the student subsequently completed a higher credentialed graduate GE program at the same institution, or (5) the student died. These exclusions are the same as those in the 2011 Prior Rule with the addition of an exclusion for students completing a higher credentialed GE program at the same institution.

Applicable Cohort Period and Minimum Number of Students Completing the Program

As stated previously, the calculations for both D/E rates would be based on the debt and earnings outcomes of students who completed a program during an applicable cohort period. As with the 2011 Prior Rule, for D/E rates to be calculated for a program, a minimum of 30 students would need to have completed the program, after applying the exclusions, during the applicable cohort period. If 30 or more students completed the program during the third and fourth award years prior to the award year for which the D/E rates are calculated, then the applicable cohort period would be that ''two-year cohort period.'' ''Two-year cohort period'' is a defined term in proposed § 668.402. If at least 30 students did not complete the program during the two-year cohort period, then the applicable cohort period would be expanded to include the previous two years, the fifth and sixth award years prior to the award year for which the D/E rates are being calculated, and rates would be calculated if 30 or more students completed the program during that ''four-year cohort period'' after applying the exclusions. ''Four-year cohort period'' is a defined term in proposed § 668.402. If, after applying the exclusions, 30 or more students did not complete a program over the two-year cohort period, or the expanded four-year cohort period, then D/E rates would not be calculated for the program. As an example, for the D/E rates calculations for the 2014–2015 award year, the two-year cohort period would be award years 2010–2011 and 2011–2012 and the four-year cohort period would be award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012.

The two- and four-year cohort periods as described would apply to all programs except for medical and dental programs whose students are required to complete an internship or residency after completion of the program. For medical and dental programs, the two-year cohort period would be the sixth and seventh award years prior to the award year for which the D/E rates are calculated. The four-year cohort period would be the sixth, seventh, eighth, and ninth award years prior to the award year for which D/E rates are calculated.

The 2011 Prior Rule applied the same two-year and four-year cohort periods for the debt-to-earnings ratios calculations, but, as discussed, the 2YP and 4YP would be measured in fiscal years rather than award years. Unlike the 2011 Prior Rule, a program would not satisfy the D/E rates measure if rates could not be calculated because there was not a sufficient number of students who completed a program. Rather, the eligibility of the program would not be affected.

Formulas for Calculating the D/E Rates

Each award year, D/E rates would be calculated for each GE program that meets the minimum size of 30 students completing the program for the two-year or four-year cohort period. In calculating the D/E rates, the Secretary would use the same formulas as under the 2011 Prior Rule:

$$\text{discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

Annual Loan Payment

The annual loan payment for each formula would be calculated as follows.

First, the loan debt that each student in the applicable cohort period accumulated for attendance in the GE program would be determined based on information in the Department's NSLDS and information reported by the institution under proposed § 668.411. Under proposed § 668.404(d), loan debt would include all title IV loans (excluding Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants), private education loans as defined in 34 CFR 601.2, and institutional student loans. Unlike the 2011 Prior Rule, under the proposed regulations, loan debt would include Perkins Loans. In comparison to the 2011 Prior Rule, the proposed regulations clarify that institutional loan debt would include any outstanding debt as a result of credit extended to the student by, or on behalf of, the institution (e.g., institutional financing or payment plans) that the student would be obligated to repay after completing the program.

As discussed in more detail under ''§ 668.411 Reporting requirements for GE programs,'' the credential levels under the proposed regulations would differ from the credential levels of the 2011 Prior Rule. The 2011 Prior Rule had one credential level for undergraduate certificates. The proposed regulations would break out undergraduate certificates into three credential levels based upon the length of the program. Further, the proposed regulations would add a graduate credential and clarify that postgraduate certificates would be included in the post-baccalaureate certificate credential level.

All of the loan debt incurred by the student for attendance in any undergraduate GE program at the same institution would be attributed to the highest credentialed undergraduate GE program subsequently completed by the student at the institution. Similarly, all of the loan debt incurred by the student for attendance in any post-baccalaureate or graduate GE program at the institution would be attributed to the highest credentialed graduate degree GE program completed by the student at the institution. As defined in proposed § 668.402, the undergraduate credential levels are less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree. The graduate credential levels are post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree.

The 2011 Prior Rule included a similar debt attribution scheme, but would not have differentiated between undergraduate and graduate programs. Debt would simply have been rolled up to the highest credentialed GE program that the student completed at the same institution regardless of whether the highest credentialed program was an undergraduate program or graduate program. As under the 2011 Prior Rule, the Department would have the discretion to include in the loan debt attribution all loan debt incurred by the student for attending GE programs at another institution if the institution and the other institution are under common ownership or control, as determined under 34 CFR 600.31.

Under proposed § 668.404(b)(1)(ii), an adjustment to the amount of each student's loan debt would be made if the student's loan debt exceeds the total amount of the tuition and fees assessed to the student for his or her entire enrollment in the program plus the total amount of the allowances for books, supplies, and equipment included in the student's title IV cost of attendance, pursuant to section 472 of the HEA, 20 U.S.C. 1087ll, or a higher amount if assessed to the student by the institution. The amount used for each student's loan debt in the D/E rates calculations would be the lower of the total amount of the student's loan debt or the total amount of the student's tuition and fees and books, supplies, and equipment. In comparison to the 2011 Prior Rule, the proposed regulations add books, supplies, and equipment to the limitation of loan debt to tuition and fees.

Second, the median loan debt of the students in the applicable cohort period would be determined using the loan debt information previously described.

Third, as under the 2011 Prior Rule, the median loan debt would be amortized over a 10-, 15-, or 20-year repayment period depending on the credential level of the program. A 10-year repayment period would be used for programs that lead to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate. Fifteen years would be used for programs that lead to a bachelor's degree or to a master's degree. Twenty years would be used for programs that lead to a doctoral or first-professional degree.

The interest rate used to amortize the median loan debt would be the average annual interest rate on Federal Direct Unsubsidized Loans during the six years prior to the end of the applicable cohort period. These six years would include the applicable cohort period. For undergraduate programs, the interest rate on Federal Direct Unsubsidized Undergraduate Loans would be applied. For graduate programs, the interest rate on Federal Direct Unsubsidized Graduate Loans would be applied. The interest rate that would be used under the proposed regulations differs from the 2011 Prior Rule. Under the 2011 Prior Rule, median loan debt would be amortized using the then-current interest rate on Federal Direct Unsubsidized Loans, regardless of the credential level of the program.

Discretionary Income

For the denominator of the discretionary income rate, discretionary income would be calculated by subtracting 150 percent of the Poverty Guideline for a single person residing in the continental United States as published by HHS from the higher of the mean or median annual earnings. The proposed regulations and the 2011 Prior Rule use the same calculation for discretionary income.

Annual Earnings

Under proposed § 668.404(c), as under the 2011 Prior Rule, the Department would obtain from SSA or another Federal agency the most currently available mean and median annual earnings for students who completed the program during the applicable cohort period. As an example, the D/E rates calculations for the 2014–2015 award year would be based on the loan debt of students completing a program in the 2010–2011 and 2011–2012 award years, if the applicable cohort period for that program was the two-year cohort period, and the earnings of those former students for the 2014 calendar year. Annual earnings include earnings reported by employers to SSA and earnings reported to SSA by self-employed individuals. The higher of the mean or median annual earnings would be used as the denominator of the annual earnings rate.

Transition Period

Under proposed § 668.404(g), for a failing or zone program, in the first four years that the regulations are in effect, for example, award years 2014–2015, 2015–2016, 2016–2017, and 2017–2018, the Department would calculate transitional D/E rates using the median loan debt of students who completed the program during the most recently completed award year instead of the median loan debt of students who completed during the applicable cohort period. The earnings component of the calculations would still use the most currently available earnings of the students who completed the program during the applicable cohort period. For example, for the 2014–2015 award year, the denominator of both standard D/E rates calculations would use the higher of the mean or median calendar year 2014 earnings of students who completed a program during the 2010–2011 and 2011–2012 award years (the two-year cohort period) if 30 or more students completed the program during the two-year cohort period. The standard D/E rates would use as the numerator an annual loan payment calculated based on the debt of those same former students. However, the transitional D/E rates would use the same earnings information as the standard D/E rates, but the annual loan payment amount would be calculated based on the debt of students who completed the program during the 2014–2015 award year. The lower of the standard D/E rates or transitional D/E rates would be used to assess the program. Although the 2011 Prior Rule did not include a transition period, it would have capped the number of ineligible programs in the first year that programs could become ineligible, and, additionally, in the first three years that the 2011 Prior Rule would be effective, would have allowed for an alternate earnings appeal based on BLS earnings data.

Reasons: The methodology that would be used to calculate the D/E rates under the proposed regulations is substantially similar to that of the 2011 Prior Rule. We discuss our reasoning regarding these proposals, particularly any differences from the 2011 Prior Rule, by subject area.

Minimum Number of Students Completing the GE Program

As under the 2011 Prior Rule, the proposed regulations would establish a minimum threshold number of students who completed a program, or ''n-size,'' for D/E rates to be calculated for that program. Both the 2011 Prior Rule and the proposed regulations require a minimum n-size of 30 students completing the program. However, some GE programs are relatively small in terms of the number of students enrolled and, perhaps more critically, in the number of students who complete the program. In many cases, these may be the very programs whose performance should be measured, as low completion rates may be an indication of poor quality. As a result, we considered, and presented during the negotiations, a lower n-size of 10.

We estimate that in 2010, there were roughly 50,000 total GE programs in existence and about 4 million students receiving title IV, HEA program funds enrolled in those programs. At an n-size of 30, we estimate, based on our analysis of the 2012 GE informational rates, that approximately 5,539 of those programs would have received D/E rates. Those programs cover just above 60 percent of the total enrollment of students who received title IV, HEA program funds in GE programs in 2010. At an n-size of 10, approximately 11,050 GE programs would have received D/E rates, representing about 75 percent of the total enrollment of students who received title IV, HEA program funds in GE programs.

The non-Federal negotiators raised several issues with the proposal to use a lower n-size of 10. First, some of the negotiators questioned whether the D/E rates calculations using an n-size of 10 would be statistically valid. See ''§ 668.403 Gainful employment framework'' for a discussion of the Department's tolerance analysis of the D/E rates and thresholds. Further, they were concerned that reducing the minimum n-size to 10 could make it too easy to identify particular individuals, putting student privacy at risk. These negotiators noted that other entities, which they did not identify, requiring these types of calculations use a minimum n-size of 30 to address these two concerns.

Other non-Federal negotiators supported the Department's proposal to reduce the minimum n-size from 30 to 10 students completing the program. They argued that the lower number would allow the Department to calculate D/E rates for more GE programs, which would decrease the risk that GE programs that serve students poorly are not held accountable. They argued that some GE programs have very low numbers of students who complete the program, not because these programs enroll small numbers of students, but because they do not provide adequate support or are of low quality, and, as a result, relatively few students who enroll actually complete the program. They argued that these poorly performing programs may never be held accountable under the D/E rates measure because they would not have a sufficient number of students who completed the program for the D/E rates to be calculated. These negotiators further argued that other proposed changes from the 2011 Prior Rule, such as only including students receiving title IV, HEA program funds and disaggregating the undergraduate certificate credential into three categories, as discussed in ''§ 668.411 Reporting requirements for GE programs,'' would make it less likely that many programs would have 30 students who completed the program during the cohort period. For these reasons, these negotiators believed that the Secretary should calculate D/E rates for any GE program where at least 10 students completed the program during the applicable cohort period.

We acknowledge the limitations of using 30 students. However, to be consistent with our regulations governing cohort default rate at the institutional level, § 668.216, and the proposed pCDR, § 668.516, we propose to retain the minimum n-size of 30 students who complete the program as we did in the 2011 Prior Rule. However, we invite comment on whether the minimum n-size should be set at 10. We encourage commenters to submit relevant data and analysis to support their views.

Amortization

As under the 2011 Prior Rule, the proposed regulations would use three different amortization periods, based on the credential level of the program, for determining a program's annual loan payment amount. At the negotiations, the Department presented an amortization schedule that would apply a single 10-year amortization period, regardless of credential level. However, in the proposed regulations, we have retained the 10-, 15-, and 20-year schedule. This schedule would mirror the loan repayment options available under the HEA, which are available to borrowers based on the amount of their loan debt, and account for the fact that borrowers who were enrolled in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enrolled in lower-credentialed programs and, as a result, are more likely to be in a repayment plan that would allow for a longer repayment period.

Our data show that a substantial majority of borrowers entering repayment in 2012, regardless of credential level, are in the standard repayment option of 10 years. Graduate students are in this plan at a lower rate, 63 percent, than students who attended two-year and four-year institutions, who are in 10-year repayment at rates between 80 and 90 percent.

We analyzed data on the repayment behavior of borrowers across all sectors who entered repayment earlier, between 1980 and 2011. Adjusting for inflation, in 2011 dollars, average loan sizes have increased only moderately over the past 15 years. From 1999, when the majority of borrowers repaid their loans within 10 years, to 2009, average loan size has increased by about 6 percent (in 2011 dollars).

We further analyzed the repayment patterns of the subset of borrowers within this group who entered repayment between 1993 and 2002. Overall, about 54 percent of these borrowers had repaid their loans in full within 10 years upon entering repayment, about 65 percent had repaid their loans within 12 years, about 74 percent within 15 years, and, for the 1993 cohort, 83 percent within 20 years.[58]

Within this same 1993–2002 subset, repayment periods differed somewhat among credential levels. The percentage of graduate students who repaid their loans within 10 years lagged slightly behind the rate among undergraduates at two-year and four-year institutions. Within 10 years of entering repayment, about 58 percent of undergraduates at two-year institutions, 54 percent of undergraduates at four-year institutions, and 47 percent of graduate students had fully repaid their loans. Within 15 years of entering repayment, about 74 percent of undergraduates at two-year institutions, 76 percent of undergraduates at four-year institutions, and 72 percent of graduate students had fully repaid their loans.

For more recent cohorts, repayment behavior may depart from historical trends. For example, of borrowers who entered repayment in 2002, 55 percent of undergraduates at two-year institutions, 44 percent of undergraduates at four-year institutions, and 31 percent of graduate students had repaid their loans within 10 years.[59]

Although some negotiators supported the continuation of the amortization schedule from the 2011 Prior Rule, others were concerned that the 15- and 20-year time periods are too long, would allow for excessive tuition charges, and are not likely to reflect the actual time to repayment for most borrowers. We invite comments on the proposed amortization provision as well as on a 10-year amortization period for all credential levels and a 20-year amortization period for all credential levels. We encourage commenters to submit relevant data and analysis to support their views.

Loan Debt

As under the 2011 Prior Rule, in calculating a student's loan debt, the Department would include title IV, HEA program loans and private education loans that the student borrowed for enrollment in the GE program. The amount of a student's loan debt would also include any outstanding debt as a result of credit extended to the student by, or on behalf of, the institution (e.g., institutional financing or payment plans) that the student is obligated to repay after completing the program. Including both private loans and institutional loans in addition to Federal loan debt would provide the most complete picture of the indebtedness a student has incurred to enroll in a GE program.

In comparison to the 2011 Prior Rule, the proposed regulations would add Perkins Loans to the title IV, HEA program loans that would be considered as a part of a student's loan debt. We have done this because some GE programs accept Perkins Loans in addition to FFEL and Direct Loans.

Calculation of D/E Rates

There are a number of differences in the D/E rates calculation procedures between the 2011 Prior Rule and the proposed regulations:

- Measuring the D/E rates on an award year basis, rather than on a fiscal year basis.
- Using an average interest rate over the approximate period of attendance instead of the current interest rate to calculate the annual loan payment.
- Including books, equipment, and supplies as part of the charges, in addition to tuition and fees, in determining the amount of a student's loan debt that will be considered in calculating the annual loan payment for a program.
- Separating undergraduate and graduate programs in attributing loan debt to the highest credentialed program completed at an institution.
- Excluding from a program's D/E rates calculations students who subsequently completed a higher credentialed GE program.

The reasons for these changes are discussed in turn below. Further, although the D/E rates calculation under the proposed regulations, as under the 2011 Prior Rule, would apply the higher of the mean or median annual earnings, we invite comment on whether the calculation should use only the mean annual earnings or only the median annual earnings instead.

Award Year

We propose to use award year rather than fiscal year for the purpose of calculating a GE program's D/E rates in order to better align the calculations with institutional reporting and recordkeeping, which are by award year. Using an award year for calculation of the D/E rates would help to simplify the reporting process under the proposed regulations for institutions. It is important to note that award years, like fiscal years, span 12 months.

Interest Rate

We propose using the average interest rate over a six-year period going back from the end of the applicable cohort period to address two issues. First, as opposed to using the current interest rate, as was provided in the 2011 Prior Rule, using the average of the interest rates in effect during the six years prior to the end of the applicable cohort period better aligns the D/E rates calculations with the actual interest rate on the loans taken out by individual students who completed the program during the cohort period. As demonstrated by the following table, regardless of credential level, over 90 percent of title IV loans entering

[58] In comparison, the average percentage of borrowers who repaid their loans within 20 years for the cohort of borrowers that entered repayment between 1988 and 1993 was 81 percent.

[59] Department of Education analysis of NSLDS data.

repayment in 2012 were originated within the six years prior to 2012.

DISTRIBUTION BY LOAN ORIGINATION YEAR FOR TITLE IV LOANS (NON-CONSOLIDATED) ENTERING REPAYMENT IN 2012

IHE type & sector	Number of years prior to year loan entered repayment (2012)						
	0	1	2	3	4	5	6 or more
2yr or less public	11.67%	38.64	23.3	11.27	6.49	3.97	4.66
2yr or less private	7.8	47.57	27.57	9.04	3.5	2.15	2.37
2yr or less for-profit	7.74	57.67	27.64	4.89	1.17	0.41	0.5
4yr public	5.41	21.81	21.25	15.6	17.01	9.92	9
4yr private	4.86	19.9	21.36	16.96	19.25	9.34	8.33
4yr for-profit	8.03	36.07	27.37	15.12	7.41	3.54	2.46

Source: *NSLDS.*

Second, the use of an average rate helps minimize year-to-year fluctuations in the interest rate that would be applied to the D/E rates calculations and therefore would lead to more predictability for institutions. An analysis of the data provided to the negotiating committee shows that the number of programs that have D/E rates that are passing, in the zone, or failing changes materially as the interest rate changes:

INTEREST RATE VARIATIONS FOR DEBT TO EARNINGS ON 2012 GE INFORMATIONAL SAMPLE [60]

	3%	4%	5%	6%	7%	8%	9%
Passing Programs	4,555	4,441	4,304	4,185	4,033	3,919	3,795
Zone Programs	670	728	807	855	948	986	1,033
Failing Programs	314	370	428	499	558	634	711

For example, roughly twice as many programs in the informational sample would fail the D/E rates measure at an 8 percent interest rate in comparison to a 3 percent interest rate.

We seek comment on the proposed method for determining the interest rate for the D/E rates calculations, and further invite proposals on other methods to set the interest rate. Specifically, we invite comment on whether rates should be averaged over a time period other than six years, varying based on the length of the program, or whether a weighted average of the actual interest rates associated with the loans included in the median loan debt calculation should be used. We encourage commenters to submit relevant data and analysis to support their views.

Books, Equipment, and Supplies

As under the 2011 Prior Rule, we propose to cap loan debt for the D/E rates calculations at the total costs assessed to each student for enrollment in a GE program because institutions can exercise control over this portion of the amount that a student may borrow. Students may borrow up to the lower of the cost of attendance or annual and aggregate loan limits imposed under parts B and D of the HEA. Cost of attendance is comprised of costs assessed by institutions for the program, tuition, fees, books, supplies, and equipment and, additionally, costs that students incur that are not related to the program, such as living expenses and other indirect costs.

Initially, the Department did not propose a cap. Many of the institutional negotiators, however, argued in favor of this cap because, under the HEA, institutions may not generally limit the amount an otherwise eligible student may borrow up to the cost of attendance or annual and aggregate loan limits under the HEA. These negotiators noted that students often borrow to cover costs other than those directly related to the program, such as for living expenses, over which institutions have little, if any, control. They argued that institutions have no ability to prevent a student from borrowing the maximum amount permissible, even if the cost of the program is much lower. These negotiators suggested that institutions should not be held accountable for those portions of student debt that are unrelated to the cost of the program.

Some of the committee members suggested including in the loan cap calculation not only the amount of tuition and fees assessed the student, but also the total cost of books, supplies, and equipment that a student would incur in completing the program. The negotiators reasoned that, like tuition and fees, an institution controlled these costs, either directly by providing the books, supplies, and equipment to a student or indirectly by requiring the student to purchase the materials. We agree and propose that, in the determination of a borrower's loan debt, we would use the lower of:

- The amount of the student's loan debt attributed to enrollment in the program; and
- The total of the student's assessed tuition and fees, and the student's allowance for books, supplies, and equipment included in the cost of attendance disclosed under proposed § 668.412, or the actual amount charged each student in any sale of books, supplies, and equipment, if higher.

We invite comment on the inclusion of books, supplies, and equipment in the tuition and fees cap.

Attributing Loan Debt

Under the 2011 Prior Rule, all loan debt incurred by a student for enrollment in GE programs at an institution would be attributed to the highest credentialed GE program completed by the student, based on the

[60] • Sample includes only two-year cohort period programs (programs eligible for D/E rates only under the four-year cohort period are not included).
• Interest rates are the same for graduate and undergraduate programs.
• Program n-size of 30.
• Calculations are based on annual loan payments under the amortization scheme with a 10-year period for undergraduate certificate, associate's degree, and post-baccalaureate certificate programs, a 15-year period for bachelor's and master's degree programs, and a 20-year period for doctoral and first professional degree programs.

presumption that a student's earnings stem from the highest credentialed program completed. Although we maintain the same presumption in the proposed regulations, we propose to modify the attribution rule by differentiating between undergraduate and graduate programs to account for a lack of equity that the 2011 Prior Rule would create between an institution that offers only graduate programs and one that offers lower credentialed programs in addition to graduate programs. To illustrate, we offer the following example under the 2011 Prior Rule: A student completed a bachelor's degree GE program at Institution A and subsequently enrolled in and completed a graduate GE program at the same institution. In this scenario, if the student completed the graduate program, all of the student's loan debt, both the amount incurred for the lower credentialed program and for the graduate degree program, would be attributed to the graduate degree program and no debt would be attributed to the lower credentialed program.

However, for a similarly situated student who completed the same bachelor's degree GE program at Institution A, but then enrolled in and completed a graduate GE program at another institution that offers only graduate programs, Institution B, the results would be different. For Institution B, only the loan debt incurred by the student for enrolling in the graduate GE program at Institution B would be attributed to that graduate degree program. Institution B would not be held accountable for the debt incurred by the student at Institution A. Unlike at Institution B, Institution A could have students who stay at the institution after completing their undergraduate program to pursue graduate study. The D/E rates calculations for graduate programs at Institution A could include more debt, possibly far more debt, than would the rates for the same program offered by Institution B. The graduate GE programs at Institution A are at a disadvantage simply because the institution offers both undergraduate and graduate programs. This scenario could deter institutions that offer both undergraduate and graduate programs from encouraging their undergraduate students to pursue further study out of concern that they will enroll in graduate programs at that same institution and cause those programs to have worse outcomes under the D/E rates measure than if the institution only enrolled students who completed their undergraduate degrees at other institutions.

To address this issue, we propose that (1) any loan debt incurred by a student at an institution for enrollment in undergraduate GE programs be attributed to the highest credentialed undergraduate program completed by the student, and (2) any loan debt incurred for enrollment in graduate GE programs at an institution be attributed to the highest credentialed graduate GE program completed by the student.

We do not believe that the same distinction should apply with respect to lower credentialed undergraduate programs and higher credentialed undergraduate programs. The academic credits earned in an associate degree program, for example, are necessary for and would be applied toward the credits required to complete a bachelor's degree program. It is reasonable then to attribute the debt associated with all of the undergraduate academic credit earned by the student to the highest undergraduate credential subsequently completed by the student. This reasoning does not apply to the relationship between undergraduate and graduate programs. Although a bachelor's degree might be a prerequisite to pursue graduate study, the undergraduate academic credits would not be applied toward the academic requirements of the graduate program. We invite comment on this change from the 2011 Prior Rule.

In attributing loan debt, we propose to exclude any loan debt incurred by the student for enrollment in programs at another institution. However, the Secretary may include loan debt incurred by the student for enrollment in GE programs at other institutions if the institution and the other institutions are under common ownership or control. The 2011 Prior Rule included the same provision. As we noted at that time, although we generally would not include loan debt from other institutions students previously attended, entities with ownership or control of more than one institution offering similar programs might have an incentive to shift students between those institutions to shield some portion of the loan debt from the D/E rates calculations. 76 FR 34417. Including the provision that the Secretary may choose to include that loan debt should serve to discourage institutions from making these kinds of changes.

Several of the negotiators expressed concerns with this proposal and, in particular, the provision that provides the Secretary with discretion to include the loan debt incurred at an institution under common ownership or control. These negotiators indicated that the Secretary should always include this loan debt. The Department could not implement such a provision, however, because we do not categorize institutions by ownership or control. Further, because this provision is included to ensure that institutions do not manipulate their D/E rates, it should only be applied in cases where there is evidence of such behavior. In those cases, the Secretary would have the discretion to make adjustments. A negotiator also suggested that the proposed regulations outline the criteria the Secretary would use when determining whether to include the loan debt incurred at an institution under common ownership or control. We invite comment on whether such criteria should be included in the proposed regulations, what those criteria should be, and how to implement those criteria.

Exclusions

Under the proposed regulations, we would exclude from the D/E rates calculations the same categories of students that we would exclude under the 2011 Prior Rule. Although the text of the 2011 Prior Rule did not specifically state the exclusion for students who completed a higher credentialed GE program at the same institution at which they previously completed a lower credentialed GE program, the exclusion is reflected in our discussion of attributions and exclusions in the 2011 Prior Rule. See 76 FR 34417.

We believe the approach we adopted in the 2011 Prior Rule continues to be sound policy. With respect to students whose loans are in deferment or have been discharged, the reasons for which these students' loans are in deferment or have been discharged (i.e., military service, total and permanent disability, death) are not related to whether a program prepares students for gainful employment. However, we invite comment on, for the exclusion based on military-related loan deferment, whether the proposed regulations should require that the loans are in deferment for a minimum number of days out of the year for the exclusion to apply.

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

To clarify our policy from the 2011 Prior Rule, we are including in the proposed regulations an exclusion from the D/E rates calculations for students who have completed a higher credentialed GE program after completing a lower credentialed GE program. We would do this to avoid a student being counted twice since, under the attribution rules, the debt incurred in the lower credentialed program would be attributed to the debt incurred in the higher credentialed program pursuant to proposed § 668.404(d)(2).

Transition Period

Section 668.7(k) of the 2011 Prior Rule provides for, in the first year in which programs could become ineligible, for each institutional category (public, private non-profit, proprietary), a cap on the number of programs that would lose eligibility. Within each category, programs with failing debt measures would be ranked by repayment rate and would lose eligibility based on their ranking until the number of programs made ineligible accounted for 5 percent of the total number of students who completed programs in that institutional category. The cap was set for each institutional category so that no one sector would bear more than 5 percent of the initial impact of the regulations and to lessen the impact on small entities. Specifically, in connection with the 2011 Prior Rule, we said, ''the delayed effective date and initial cap on the regulations' effect will provide time for small entities to adapt to the regulations.'' 76 FR 34386, 34509 (June 13, 2011).

The proposed regulations do not include a similar cap on the number of GE programs that could lose title IV, HEA program eligibility. As discussed in ''§ 668.403 Gainful employment framework,'' we believe that programs that do not pass the D/E rates measure but are not among the worst performers should be given time, opportunity, and incentive to improve. But, if these programs do not improve—if their performance remains below the proposed D/E rates thresholds—they should become ineligible for participation in the title IV, HEA loan programs.

The proposed regulations also do not include the availability of an alternate earnings appeal in the first three years using BLS data as the 2011 Prior Rule did. For our reasoning, see ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances.*''

Some negotiators representing institutions expressed concern that immediate efforts by institutions to improve programs and reduce debt at the time the proposed regulations go into effect would not be reflected in the first few years of D/E rates calculations as the calculation takes into account the outcomes of students who completed the program several years in the past. To allow for that improvement, the proposed regulations provide for an alternative calculation of a GE program's D/E rates during a four-year transition period. In summary, during the transition period, if a GE program's draft D/E rates are failing or in the zone, the Secretary would calculate transitional draft D/E rates using the median loan debt of the students who completed the program during the most recently completed award year, rather than the median loan debt of the students who completed the program during the applicable cohort period. Because the transitional calculation would apply the loan debt of students completing a program after the proposed regulations go into effect, immediate reductions in tuition and fees and other adjustments by an institution in order to decrease debt of current students would be reflected in the results of a program's transitional D/E rates. Whereas the cap under the 2011 Prior Rule afforded institutions an opportunity to avoid a loss of eligibility without doing anything to improve their programs, the transition period in the proposed regulations provides institutions an opportunity to avoid ineligibility and, at the same time, improve student outcomes.

We invite comment on the proposed transition period, including whether the transition calculation should apply to all programs or, as in the proposed regulations, only to programs whose draft D/E rates are in the zone or are failing. Additionally, we invite comments on whether to include in the final regulations a cap on program ineligibility in the first year programs could become ineligible as was included in the 2011 Prior Rule.

Section 668.405 Issuing and Challenging D/E Rates

Current Regulations: Section 668.7(e) of the 2011 Prior Rule establishes the process by which the Secretary would provide an institution notice of the GE program's students whose debts and earnings would be considered to determine the program's debt-to-earnings ratios. Under this process, the Secretary would provide the institution with a list of those students, and the institution would have an opportunity to correct that list during a 30-day correction period. Under the 2011 Prior Rule, if the Secretary accepted as accurate the information provided by the institution to support a correction, the updated information would be used to create a final list of students that the Secretary submits to SSA in order to obtain the earnings information needed to calculate the debt-to-earnings ratios.

The 2011 Prior Rule provided that the Department would provide the final list of students to SSA, which, pursuant to a data-sharing arrangement with the Department, would obtain the individual earnings data for all of the students on the list, and then calculate and provide to the Department the mean and median earnings data for the students on the list. To preserve the privacy of students' individual earnings information, SSA would only provide the Department with the aggregate earnings information for a list of students if SSA is able to ''match'' at least 10 students on the list with its own earnings data.

Because SSA does not disclose any individual earnings data that would enable the Secretary to assess a challenge to an individual student's reported earnings, the Secretary would not consider, under § 668.7(e) of the 2011 Prior Rule, any challenge to the accuracy of the mean or median annual earnings data that the Secretary obtains from SSA to calculate the GE program's debt-to-earnings ratios. Thus, under the 2011 Prior Rule, an institution's opportunity to challenge the information needed to determine the aggregate earnings information used in calculating the draft debt-to-earnings ratios is limited to a review of the list that would be sent to SSA. The institution would only be permitted to review and propose corrections to the list of students prior to the Department providing the final list to SSA.

Under the 2011 Prior Rule, the Department would:

- Based on the information submitted by institutions under § 668.6 of the 2011 Prior Rule, create a list of the students who completed the program during the applicable 2YP or 4YP (§ 668.7(e)(1));
- Provide the list of students to the institution and consider any changes to the list that the institution proposed within 30 days of being provided the list (§ 668.7(e)(1));
- Obtain from SSA or another Federal agency the mean and median annual earnings of the students on the list (§ 668.7(e)(1)(iii));

• If SSA is unable to match certain students on the list, exclude from the calculation of the median loan debt for failing programs the same number of students with the highest loan debts as the number of students whose earnings SSA did not match (§ 668.7(e)(3)(ii));

• Calculate draft debt-to-earnings ratios for the program using the higher of the mean and median earnings provided by SSA (§ 668.7(e)(1)(iii));

• Provide the draft debt-to-earnings ratios to the institution along with the individual student loan data on which the ratios were based, and consider any challenges to the individual student loan data used to calculate the ratios submitted by the institution within 45 days after the Secretary notifies the institution of the draft debt-to-earnings ratios (§ 668.7(e)(2)); and

• Issue final debt-to-earnings ratios (§ 668.7(f)).

Under the 2011 Prior Rule, an institution would have the opportunity to appeal the determination of a program's final debt-to-earnings ratios in certain circumstances. The appeals process under the 2011 Prior Rule and the Department's related proposed regulations are discussed under ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances.*''

Proposed Regulations: Proposed § 668.405 would adopt the procedures for issuing and challenging debt-to-earnings ratios included in the 2011 Prior Rule, but provide additional detail with respect to the procedures involved.

As in the 2011 Prior Rule, under proposed § 668.405, the Secretary would provide an institution the data on which the D/E rates for a GE program would be based and an opportunity to correct the data before the Secretary would issue draft D/E rates for the program. Specifically, under the proposed process, the Secretary would:

• Based on the information submitted by institutions under proposed § 668.411, create a list of the students who completed the program during the applicable cohort period, and indicate which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion (§ 668.405(b)(1));

• Provide the list of students to the institution and consider any changes to the list that the institution proposes within 45 days of receiving the list (§§ 668.405(b)(2); 668.405(c));

• Obtain from SSA or another Federal agency the mean and median annual earnings of the students on the final list (§ 668.405(d));

• If SSA is unable to match certain students on the list, exclude from 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 did not match (§ 668.405(e)(2));

• Calculate draft D/E rates for the program using the higher of the mean or median annual earnings provided by SSA (§ 668.405(e)(1));

• Provide the draft D/E rates to the institution along with the individual student loan data on which the rates were based, and consider any challenges to the individual student loan data used to calculate the rates submitted by the institution within 45 days after the Secretary notifies the institution of the draft D/E rates (§ 668.405(f)); and

• Issue final D/E rates (§ 668.405(g)).

Each of these steps was included in § 668.7(e) and (f) of the 2011 Prior Rule with several changes as noted in the following discussion.

In calculating the draft D/E rates under proposed § 668.405, the Secretary would first create the list of students who completed a GE program during the applicable cohort period from data previously reported by the institution. Although not specifically included in the 2011 Prior Rule, we have provided in the proposed regulations that the Secretary would indicate on the list the students the Secretary would exclude from the list (and the reason for the exclusion) under proposed § 668.404(e). Although this departs from the regulatory language in the 2011 Prior Rule, it is consistent with the operating procedure the Department used to implement the regulations. We believe it would be helpful to provide this clarity in the proposed regulations.

Students who may be excluded under proposed § 668.404(e) are those students whose status during the award year is such that including their earnings would tend to distort the assessment of the program's D/E rates (e.g., students in military deferment status or students who are enrolled in another eligible educational program at any time during the calendar year for which earnings are obtained). The Secretary would also notify the institution of the applicable cohort period that the Department would use to compile the final list.

Similar to the 2011 Prior Rule, the institution would have the opportunity to propose corrections to the list. However, instead of the 30-day period provided under the 2011 Prior Rule, the institution would have 45 days from receiving the student list from the Secretary to submit its corrections. The institution may seek to correct any data included on the list regarding an individual student. An institution might inform the Department that, although it previously reported that a student completed a GE program, its report was incorrect and the student did not in fact complete the program. The institution may also request correction of other details regarding the listed students, such as whether a student had in fact enrolled in the program, whether a student completed the program during the applicable cohort period, whether a student should be excluded on the basis indicated on the list, and the credential level offered by the program that the student completed. The proposed regulations, in § 668.405(c)(3), like the 2011 Prior Rule, require the institution to identify at this point in the process any corrections it wishes to make to the student-specific data on the list. This precludes an institution from renewing later in the process an unsuccessful challenge to student-specific data with respect to a student included on the final list on which the draft D/E rates are based. An institution also would not be permitted to assert in response to the draft D/E rates final list a challenge to the student-specific data of an individual on that final list. If an institution contends that an individual student should be removed from the list because the student did not complete the program, did not complete the program during the applicable cohort period, or was not enrolled in the program, and the Secretary accepts the proposed correction and removes the student from the list, the institution retains the right to challenge other student-specific data regarding that student if the student is later included in a proposed list for a different award year. If the institution contends only that the student should be removed from the list and raises no other correction, and the Secretary rejects the proposed correction, the institution may not later seek to correct other elements of student-specific data for that student.

If the institution proposes a correction to the list, the Secretary would notify the institution whether a proposed correction is accepted. The Secretary would use any accepted correction to create the final list of students. We believe that requiring any corrections to student-specific data to be raised at this point, in response to the proposed list of students, rather than again in response to the draft D/E rates, produces a more efficient process. To facilitate this process, the proposed regulations expand the period for asserting such corrections from 30 days to 45 days.

As under the 2011 Prior Rule, after finalizing the list of students, the Secretary would submit the list to SSA or another Federal agency. The Secretary would obtain from SSA the mean and median earnings, in aggregate form, of those students on the list whom SSA has matched to its earnings data. The Secretary would calculate draft D/E rates using the higher of the mean or median earnings reported by SSA.

Consistent with the 2011 Prior Rule, the list provided by the Department to SSA would include the student's full name, date of birth, and Social Security Number. SSA only provides earnings data if at least 10 of the students on the Department's list for the GE program can be matched with its own earnings data. If SSA identifies a minimum of 10 matches, SSA would then identify the annual earnings for the students whose data it matched, using SSA's procedures for identifying an individual, and would provide to the Secretary for that group only the aggregate data for the students on the list. SSA would also advise the Secretary of the number, but not the identity, of students whom it could not match successfully against its records of earnings.

In turn, the Secretary would use the number of SSA non-matches to exclude from the calculation of the median loan debt (and therefore annual loan payment) the same number of students as the SSA non-matches, starting with the student with the largest loan debt on the list. This process, the same as that used in the 2011 Prior Rule, would treat the non-matches as originating from the students with the highest loan debt and eliminate those loan amounts from the calculation. The debts of the remaining students would then be used to calculate the annual loan payment used in the numerator for the D/E rates. We note, however, that under the 2011 Prior Rule, this process was only applied to programs that failed the debt-to-earnings ratios.

Upon calculation of the draft D/E rates, the Secretary would notify the institution of the GE program's draft D/E rates and provide the student loan information on each individual student loan on which the rates were based. The Secretary would also indicate the number of loans that were removed based upon the number of students in the program whose earnings could not be obtained from SSA.

Under proposed § 668.405(f), the institution would then have the opportunity, within 45 days of notice of the draft D/E rates, to challenge the accuracy of the rates. Specifically, as under the 2011 Prior Rule, the institution at this point would be permitted to challenge only the loan data used to calculate the debt component of the draft D/E rates and the accuracy of the actual calculation of the rates from that data and the reported aggregate earnings. The Secretary would notify the institution whether a proposed challenge is accepted and, if so, would use any corrected loan data to recalculate the GE program's draft D/E rates. For an award year's D/E rates calculation, an institution would be permitted one challenge to the accuracy of the loan debt information that the Secretary used to calculate that award year's median loan debt for the program; we note that no such limitation was included in the 2011 Prior Rule. This would not preclude an institution from challenging the inclusion of a student who appears on a different list for a different cohort or for a different program.

Although the 2011 Prior Rule did not specify a timeframe by which the Secretary would issue a final determination, under proposed § 668.405(g), the rates would become final 45 days after the date the draft D/E rates are provided to the institution or after resolution of a timely challenge to the draft D/E rates. The Secretary would notify the institution of the final rates by issuing the notice of determination described in proposed § 668.409. That notice would also explain the specific consequences triggered by those rates, if any, for the GE program. D/E rates, once final, would become public information.

There are three additional details about the proposed corrections and challenge processes worth noting. Although not specified in the 2011 Prior Rule, the proposed regulations clarify that the institution would bear the burden of proof to show that the list of students, or that the loan debt information used to calculate the median loan debt for the program, is incorrect. The institution would be required to ensure that any material it submits to make a correction or challenge is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions that the Secretary provides to the institution with the notice of draft D/E rates. In addition, the proposed regulations would provide that an institution that does not timely challenge the draft D/E rates during the 45-day period waives any objection to those rates.

As under the 2011 Prior Rule, an institution's opportunity to challenge the GE program earnings information obtained from SSA would be limited to offering corrections to the list of students to be provided to SSA. The Secretary would not consider, under the proposed regulations, any challenge to the aggregate earnings information used to calculate the draft D/E rates for the GE program. Although challenges to the SSA earnings data would not be permitted as part of the D/E rates calculation process, institutions would have the opportunity to appeal the determination of a program's final D/E rates using earnings data from other sources. That appeals process is discussed under "§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances.*"

The proposed regulations, like the 2011 Prior Rule, provide that a program's D/E rates would be based on the debt and earnings of those students who completed the program in the two-year cohort period, so long as that number is equal to or greater than 30. However, if there are fewer than 30 students who completed the program in the two-year cohort period, the Secretary would calculate the program's D/E rates using the debt and earnings of the students who completed the program in the four-year cohort period.

Specifically, consistent with our treatment of programs with small numbers in § 668.7(d)(2)(i)(A) of the 2011 Prior Rule, we note that, for some GE programs that initially have 30 or more students who completed the program on the list of students for the two-year cohort period being evaluated, the number could fall to fewer than 30 upon correction by the institution before the list is finalized for submission to SSA. In those situations, the group of students on which the D/E rates calculations are based would be expanded from those included in the two-year cohort period to those included in the four-year cohort period. Again, if the total number of students in the applicable cohort period is fewer than 30, the Department would not calculate D/E rates.

To make the corrections process more efficient when there is a possibility that a four-year cohort period may be needed to calculate D/E rates, we would provide both a two-year cohort period list and a separate list–-one that would name those additional students who completed the program during the two years prior to that—to the institution and explain that both lists would be used to determine a program's D/E rates if the two-year cohort period list did not, after correction by the school, identify at least 30 students who completed the program.

Reasons: In the interest of fairness and due process, the proposed regulations are intended to provide institutions with an adequate opportunity to correct the list that would be submitted to SSA and to challenge the loan data on which the draft D/E rates are calculated. In that regard, the proposed regulations retain much of the content of the 2011 Prior Rule, but provide more detail to give institutions greater clarity as to the process for issuing draft D/E rates and the corrections and challenges permitted in connection with that process.

The proposed regulations continue to base the draft D/E rates on the aggregate SSA earnings information for students who completed the program in the applicable cohort period. We believe that SSA earnings information is reliable. The information is reported by individuals and entities, and maintained, monitored, and preserved by SSA, within a strict, legal framework. The individual earnings data are required by Federal law to be reported to SSA, the data are maintained by SSA in compliance with congressionally mandated security and privacy restrictions, and the data are released to the Department only in conformance with congressionally mandated information quality requirements. 76 FR 34423.

Specifically, employers are required by section 3102 of the Internal Revenue Code to withhold from earnings and to remit to the Internal Revenue Service (IRS) employment taxes, and to report through Form W–2 the earnings on which the withholdings were based. 20 CFR 404.114. SSA maintains earnings information in its Master Earnings File (MEF). A detailed description of the process SSA uses to obtain data from employers and maintain that data in the MEF can be found at *www.ssa.gov/policy/docs/ssb/v69n3/v69n3p29.html*. Furthermore, SSA's data are subject to verification, correction, and adjustment. SSA compares the earnings information it receives from employers through Forms W–2 against earnings reports sent by the employer to the IRS through Forms 941, 943, or 944 or Schedule H (Form 1040). SSA routinely performs a reconciliation of the data it receives with the data received by the IRS. See 20 CFR 404.114(d); see *www.ssa.gov/employer/recon/recon.htm* for an explanation of the process. Only after SSA performs these reconciliations does it release earnings data. Moreover, before SSA will provide data matching for another agency, the sources of the data are required to report any corrections and SSA will make any adjustments to the individual earnings data after the end of the respective calendar year.

Appeals of the earnings data obtained from SSA and used in the calculation of the draft D/E rates are limited, however, not just because of the reliability of the data. As the Department noted in the 2011 Prior Rule, there appears to be ''no authority that would require or even allow the Department to question the quality, objectivity, utility, and integrity of SSA's information under the provisions of the Information Quality Act [Pub. L. 106–554, section 515, 44 U.S.C. 3516, note] or otherwise.'' 76 FR 34424. Also, as explained in connection with the 2011 Prior Rule, we would not consider challenges to the accuracy of the earnings data received from SSA because SSA provides the Department with only the mean and median earnings and the number of non-matches for a program. That is, SSA does not disclose students' individual earnings data that would enable the Secretary to assess a challenge to reported earnings. Therefore, an institution's opportunity to challenge a program's earnings information obtained from SSA would be limited to offering corrections to the list of students who completed the program to be provided to SSA. The Secretary would not consider, under the 2011 Prior Rule and the proposed regulations, any challenge to the program's earnings used to calculate the draft D/E rates.

We would, however, provide an adequate opportunity for an institution to correct any inaccuracies in the list of students to be submitted to SSA to obtain the aggregate earnings data, and also to challenge the loan debt of the students who completed the program in the applicable cohort period that is used to calculate the rates, along with the Department's actual computation of the D/E rates. In addition, and as explained further in ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances,''* we recognize that this process must provide an institution an adequate opportunity to present and have considered rebuttal evidence of the earnings data, and the alternate earnings appeal process provides that opportunity.

Non-Federal negotiators asked the Department a number of questions about the usefulness of SSA earnings data given the possibility of non-matches between the students who completed a GE program during the applicable cohort period and available earnings information.[61] We do not believe this possibility would affect in any significant way the accuracy of the calculations, because we believe that non-matches would be infrequent. For instance, for the 2011 GE informational rates calculated under the 2011 Prior Rule and released in June 2012, for students who completed GE programs in fiscal year 2007 and 2008, the match rate was approximately 98 percent. And, with the proposed change to include in the calculation only students who received title IV, HEA program funds, that match rate is likely to be higher since all students who received title IV, HEA program funds have gone through an SSA matching protocol before being determined eligible to receive title IV, HEA program funds. Accordingly, we believe that the process proposed in § 668.405 would result in useful and reliable data that the Secretary could then use to calculate a GE program's D/E rates.

Although we fully expect to rely on SSA data, the proposed regulations would also allow the Department, as an alternative, to obtain earnings information from other Federal agencies. We have included this provision to ensure that the Department can implement the proposed regulations even if unforeseen circumstances arise that preclude obtaining earnings information from SSA.

One of the non-Federal negotiators proposed that, in the event there are non-matches, the Secretary remove a corresponding number of loan debts that reflect an average loan debt for the students on the list, rather than a corresponding number of the highest loan debts from the D/E rates calculation. Because SSA only identifies the number of students in a program for whom no match was established and does not identify those individuals specifically, the Department would not know the actual loan debts for a student whose earnings were not matched by SSA. By using that number of non-matches to remove the students with the highest loan debts from the D/E rates, consistent with the 2011 Prior Rule, we are proposing the most conservative approach to avoid overstating the mean and median loan debt for a program for the calculation of the draft D/E rates. Given that there is a 98 percent match rate, we do not expect that removing the highest loan debts in these circumstances will distort the resulting D/E rates.

We note that the 2011 Prior Rule provided that the Department would remove the highest loan debts in situations where SSA was not able to match students and earnings for failing programs only. We think the better approach is to apply this rule for all GE programs being evaluated, whether they have failing, zone, or passing rates, to

[61] The Department has had years of experience with matching student data received on FAFSAs with SSA data, and stated that it expected the incidence of non-matches under the 2011 Prior Rule would be less than 2 percent of all students for whom it sought earnings data from SSA. 76 FR 34401. Actual experience with matches already conducted has been consistent with that expectation.

ensure fairness and consistency in the calculations across all programs.

Although the 2011 Prior Rule specified that an institution would have 30 days to submit corrections to the list of students, to ensure that institutions have sufficient time to review the lists and submit their corrections, we are proposing that an institution have a period of 45 days in which to submit its corrections to the list of students provided by the Secretary.

Additionally, proposed § 668.405 would clarify several items that were not included in the 2011 Prior Rule, providing for clearer and more transparent corrections and challenge processes. The proposed regulations would provide that the Department would identify, on the initial list of students provided to the institution, those students the Department would exclude under § 668.404(e) and the reasons for the exclusion. This would permit the institution to confirm that the students the Department proposes to exclude should in fact be excluded from the list submitted to SSA.

The proposed regulations would also provide that the burden of proof with respect to a correction or challenge lies with the institution. This burden is routinely required by regulations governing challenges to institutional CDRs, on which this challenge process is modeled. 34 CFR 668.204(a)(4), 668.208(c)(1), (f)(2).[62]

Section 668.405 would clarify the submission requirements that institutions must meet for a proposed correction to the list of students or challenge to draft D/E rates. Outlining these conditions in the regulations would ensure that institutions have notice of the requirements that apply to their correction and challenge submissions.

And, finally, in order to provide for finality to the challenge process, and to ensure the timely issuance of final D/E rates, we have proposed that an institution that does not timely challenge the draft D/E rates within 45 days of receiving the rates waives any objection to those rates and that an institution may submit only one challenge to the loan debt information the Secretary uses to calculate the draft D/E rates. As we have stated previously, the limitation on one challenge does not preclude an institution from challenging the inclusion of a student on another list or in another cohort.

[62] The same requirements have been applied for many years to the calculation of CDRs under prior standards. See, e.g., 34 CFR 668.185(a)(4), 668.187(e)(1), 668.189(c), and 668.189(f)(1) (2001).

Section 668.406 D/E Rates Alternate Earnings Appeals and Showings of Mitigating Circumstances

Current Regulations: Under § 668.7(g) of the 2011 Prior Rule, an institution would have the opportunity to appeal a GE program's failing debt-to-earnings ratios by submitting alternate evidence of earnings of students in the applicable cohort period. Institutions could obtain such evidence from State earnings data or BLS data (for a limited time period only) or could conduct a survey of the GE program's former students in accordance with standards developed by the National Center for Education Statistics (NCES). Through the appeal, an institution could demonstrate that, using the alternate earnings data obtained through one of the permitted methods, the GE program meets a passing debt-to-earnings standard based on the alternate earnings data. Section 668.7(g) of the 2011 Prior Rule also specifies procedures an institution must follow, including deadlines an institution must meet, when making an alternate earnings appeal.

Under the 2011 Prior Rule, a program's debt-to-earnings ratios are calculated based on the outcomes of all of the individuals who completed the program, rather than only the students who received title IV, HEA funds.

Proposed Regulations:

Alternate Earnings Appeals

As under the 2011 Prior Rule, under the proposed regulations, an institution would be permitted to make an alternate earnings appeal of final D/E rates that are failing. The proposed regulations would also permit an institution to submit an appeal any year the final D/E rates are in the zone. If the institution fails to submit a timely appeal, the GE program's rates for that year become final.

In submitting an alternate earnings appeal under the proposed regulations, an institution would seek to demonstrate that the earnings of students who completed the GE program in the applicable cohort period are sufficient to pass the D/E rates measure. Unlike under the 2011 Prior Rule, the institution would base its appeal only on alternate earnings evidence from a State earnings database or an earnings survey conducted in accordance with requirements established by NCES, and not on earnings information from BLS.

Under proposed § 668.406(a)(3), for the purpose of an alternate earnings appeals based on a survey, the Secretary would publish in the **Federal Register** an Earnings Survey Form developed by NCES. The Earnings Survey Form would be a model field-tested sample survey that could be used by an institution in accordance with the survey standards that the institution would be required to meet to guarantee the validity and reliability of the results. The survey standards would be developed by NCES specifically for the alternate earnings survey appeal, would include such items as a required response rate or subsequent nonresponse bias analysis, and could differ slightly from the general NCES standards utilized under the 2011 Prior Rule. Although use of the sample survey would not be required, and the Earnings Survey Form would be provided by NCES as a service to the institutions, the institutions would be required to adhere to the survey standards outlined in the form.

Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements of the NCES Earnings Survey Form, and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the standards outlined in the NCES Earnings Survey Form. As with other attestations institutions are required to submit to the Department, the proposed regulations would require that the attestation meet the standards contained in the GAO's Government Auditing Standards promulgated by the Comptroller General of the United States (available at *www.gao.gov/yellowbook/overview*), and with procedures for attestations contained in guides developed by and available from the Department's Office of Inspector General.

The proposed regulations provide that the survey must include all of the students who received title IV, HEA program funds and who completed the program during the applicable cohort period.

The second alternate earnings appeal method described in the proposed regulations would allow an institution to make an appeal based on State earnings data obtained from one or more State-sponsored data systems. Section 668.7(g)(2) of the 2011 Prior Rule allowed institutions to appeal their debt-to-earnings ratios by submitting alternate earnings evidence derived from State-sponsored data systems, such as State longitudinal data systems and State workforce agency systems. Under proposed § 668.406(a)(4), for alternate earnings appeals based on earnings information in State data systems, as under the 2011 Prior Rule, institutions would only be permitted to use this alternative if the institution was able to demonstrate that it had obtained alternate earnings data for a minimum number of students. Under the 2011 Prior Rule, an institution must obtain the data for more than 50 percent, and more than 30, of the students who completed the GE program during the applicable cohort periods, without regard to whether they had received title IV, HEA program funds. Under the proposed regulations, in obtaining earnings data, the institution would be required to submit to the administrator of the State-sponsored system a list of the students who received title IV, HEA program funds and who completed the GE program during the applicable cohort period.

Under this method, the institution would be required to demonstrate that matches were obtained for more than 50 percent of all of the students on the list submitted to the State administrator and that the number of matched students is 30 or more.

Under proposed § 668.406(a)(5), to pursue an alternate earnings appeal, the institution would notify the Secretary of its intent to submit an appeal no earlier than the date the Secretary provides the institution with the GE program's draft D/E rates and no later than three business days after the Secretary issues the program's final D/E rates, as compared to the 2011 Prior Rule, which provided an institution 14 days after receiving the final rates to submit the notice of intent to appeal. The institution would then be required to submit all supporting documentation for the appeal no later than 60 days after the Secretary issues the final D/E rates.

In making any alternate earnings appeal, the institution would be subject to the conditions for corrections, challenges, and appeals under proposed § 668.405(h), relating to requirements such as the format and completeness of the evidence provided to support the appeal.

If an institution timely files an alternate earnings appeal, during the appeal process, it would not be subject to any of the requirements that would otherwise be triggered by the final D/E rates as provided in proposed § 668.403, regarding eligibility, and proposed § 668.410, regarding the student warning.

Under the proposed regulations, if the appealed final D/E rates were made public, they would be noted as under appeal, and the rates would be revised, if needed, based on the Secretary's decision on the appeal. If the Secretary determines that the institution's appeal is not sufficient to warrant revising the final D/E rates, the Secretary would notify the institution and the D/E rates under § 668.409(a) would remain the final D/E rates for the program for the award year. If the Secretary determines that the appeal is sufficient to warrant revising the final D/E rates, the Secretary would recalculate the rates and notify the institution that the recalculated D/E rates are the final D/E rates for the program.

Showing of Mitigating Circumstances

The proposed regulations would also provide that, if a program is failing or in the zone under the D/E rates measure, the institution may demonstrate mitigating circumstances by showing that less than 50 percent of all individuals, both those who received title IV, HEA program funds and those who did not, who completed the program during the applicable cohort period incurred any loan debt (as defined in proposed § 668.404(d)(1)) for enrollment in the program. If the institution is able to make such a demonstration, the program would be deemed to pass the D/E rates measure. However, the final D/E rates identified in the notice of determination that were based solely on the students who completed the program and received title IV, HEA program funds would remain the program's final D/E rates and would be annotated to reflect that the institution's showing of mitigating circumstances was accepted and that the program was deemed to be passing.

To make a showing of mitigating circumstances, an institution would calculate the program's ''borrowing rate'' by:

Step 1. Determining the number of individuals, including students who did not receive title IV, HEA program funds, who completed the program during the applicable cohort period;

Step 2. Of all of the individuals described in Step 1, determining the number who incurred loan debt for enrollment in the program; and

Step 3. Dividing the number in Step 2 by the number in Step 1.

If the borrowing rate for the program is less than 50 percent, the program would be deemed to pass the D/E rates measure.

When making a showing of mitigating circumstances, the institution would have to submit a certification signed by its chief executive officer identifying the borrowing rate and attesting to its accuracy, as well as any other supporting documentation requested by the Secretary.

Reasons: Proposed § 668.406 would clarify the submission requirements that institutions must meet for an alternate earnings appeal or a showing of mitigating circumstances. Outlining these conditions in the regulations would ensure that institutions have notice of the requirements that apply to their appeal submissions and showings of mitigating circumstances.

Alternate Earnings Appeal

As under the 2011 Prior Rule, institutions would not be permitted to challenge the accuracy of the earnings data provided by SSA and used in the calculation of draft D/E rates because the Department receives the data from SSA in an aggregate form and, therefore, lacks the information required to assess any such appeal. Therefore, as in the 2011 Prior Rule, we are proposing to permit institutions to appeal their D/E rates, which are based on SSA earnings data, by demonstrating that the difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings from an institutional survey or State-sponsored databases warrants revision of the final D/E rates. Consistent with the 2011 Prior Rule, an institution could appeal a GE program's final D/E rates in any year in which the program is failing the D/E rates. However, to account for the addition of the zone, the proposed regulations would also permit an institution to make an appeal in any year in which the program's final D/E rates are in the zone for that year. Because a program's continued performance in the zone can ultimately lead to an ineligibility determination, we believe due process warrants allowing appeals for both failing and zone final D/E rates.

The two primary differences between proposed § 668.406 and the 2011 Prior Rule, with respect to alternate earnings appeals, is that we would consider only the alternate earnings of students who received title IV, HEA program funds for enrollment in the program and we have limited the bases for alternate earnings appeals to surveys conducted in accordance with an NCES Earnings Survey Form and data collected from one or more State-approved databases. First, we consider only the alternate earnings of students who received title IV, HEA program funds because, to align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment in GE programs, we have defined ''student'' for the purpose of subpart Q to be an individual who receives title IV, HEA program funds for enrollment in the applicable program. See ''§ 668.401 Scope and purpose'' for a complete discussion of the definition of ''student.'' Second, unlike in the 2011 Prior Rule, we would not permit an alternate earnings appeal that relies on BLS data because the average earnings reported by BLS for an occupation are not based on the specific earnings of the individuals who completed the GE program at the institution, and therefore would not provide useful information about whether the institution's GE program prepared students for gainful employment in that occupation.

With respect to the use of an earnings survey, the 2011 Prior Rule specified that any earnings survey must be conducted in accordance with NCES standards. NCES is the primary Federal entity responsible for collecting and analyzing data related to education in the United States and other nations. NCES fulfills a congressional mandate to collect, collate, analyze, and report complete statistics on the condition of American education; conduct and publish reports; and review and report on education activities internationally. As a part of fulfilling its mandate, NCES has developed an extensive Statistical Standards Program that consults and advises on methodological and statistical aspects involved in the design, collection, and analysis of data collections. Through this program, NCES has established statistical standards and guidelines to provide high-quality, reliable, useful, and informative statistical information to public policy decision makers and to the public and ensure that field work and reporting standards are met. The NCES standards and guidelines provide clear direction regarding how data should be collected in NCES surveys and the limits of acceptable applications and use. We continue to believe that complying with the NCES standards when conducting the alternate earnings survey is necessary in order to ensure the results of the survey are valid and reliable.

However, as the NCES standards were developed to guide the work of NCES itself, we believe it is important to develop standards specific to the alternate earnings survey. As such, we have proposed that NCES would develop the Earnings Survey Form and publish in the **Federal Register.** The form would have two components. The first component would be standards developed by NCES specific to the alternate earnings survey, which could differ from the existing NCES standards. The second component would be a model alternate earnings survey that NCES would develop for use by institutions. As stated previously, complying with the standards set forth in the Earnings Survey Form would be required for any institution choosing to conduct an alternate earnings survey. However, use of the model survey would be voluntary and it would only be provided by NCES in order to reduce the cost, burden, and implementation timeline of the institutions when conducting the survey.

In addition to the alternate earnings survey, we would permit an alternate earnings appeal using State earnings data. We propose this option in order to provide institutions with an alternative form of appeal as we recognize that some institutions may already have, or could subsequently implement, processes and procedures to access State earnings data. Additionally, we recognize that some institutions may have challenges meeting the requirements of the Earnings Survey Form. However, we are concerned about several limitations of State earnings data. First, not all States have longitudinal data systems that contain earnings data, and, in States that do have such systems, not all institutions have access to them. There are circumstances where an institution may be able to access earnings data directly from a State workforce agency that maintains the earnings data as opposed to accessing it through the State longitudinal data system. However, State or Federal law or regulation, or both, may generally prohibit or significantly complicate the sharing of needed data between the institution and the State agency. Third, some students who complete a GE program can be expected to obtain employment in different States. In order for an alternate earnings appeal based on State data to be comprehensive, an institution may not only have to access its own State's earnings records, but also the records of other States likely to employ the GE program's graduates. Fourth, State earnings databases are typically maintained to support a State's own unemployment insurance program. For example, for any given State, not all employers may be liable for unemployment insurance contributions and not all workers may accrue unemployment insurance benefit rights, in which case those employers or those workers may not be included in the database, and those coverage determinations will vary by State.

For these reasons, we invite comment on whether we should permit the use of data from State databases for alternate earnings appeals. It is important to note that the Department would only accept an alternate earnings appeal using a State data system if the submission contains matches for more than 50 percent of all students on the list submitted to the State administrator and that number of matched students is 30 or more. As in the 2011 Prior Rule, this is to ensure there is a large enough sample for the data to be representative of the GE program as a whole.

We believe that there are more significant and definitive shortcomings associated with the use of BLS data for this purpose. As we said in the 2011 Prior Rule:

The Department has several concerns about using BLS data to calculate the debt-to-earnings ratios. First, as a national earnings metric that includes untrained, poorly-trained and well-trained employees, BLS earnings data do not distinguish between excellent and low-performing programs offering similar credentials.

Second, BLS earnings data do not relate directly to a program—the data relate to a Standard Occupational Classification (SOC) code or a family of SOC codes stemming from the education and training provided by the program. An institution may identify the SOC codes by using the BLS CIP-to-SOC crosswalk that lists the various SOC codes associated with a program, or the institution could identify through its placement or employment records the SOC codes for which program completers find employment.

In either case, the BLS data may not reflect the academic content of the program, particularly for degree programs. Assuming the SOC codes can be properly identified, the institution could then attempt to associate the SOC codes to BLS earnings data. BLS provides earnings data at various percentiles (10, 25, 50, 75, and 90), but the percentile earnings do not relate in any way to the educational level or experience of the persons employed in the SOC code.

So, it would be difficult for an institution to determine the appropriate earnings, particularly for students who complete programs with the same CIP code but at different credential levels. For example, there is no difference in earnings in the SOC codes associated with a certificate program and an associate degree program with the same CIP code. Moreover, because BLS percentiles simply reflect the distribution of earnings of those employed in a SOC code, selecting the appropriate percentile is somewhat arbitrary.

For example, the 10th percentile does not reflect entry-level earnings any more than the 50th percentile reflects earnings of persons employed for 10 years. Even if the institution could reasonably associate the earnings for each SOC code to a program, the earnings vary, sometimes significantly, between the associated SOC codes, so the earnings would need to be averaged or somehow weighted to derive an amount that could be used in the denominator for the debt-to-earnings ratios.

Finally, and perhaps most significantly, BLS earnings do not directly reflect the earnings of the students who complete a program at an institution. Instead, BLS earnings reflect the earnings of workers in a particular occupation, without any relationship to what educational institutions those workers attended. While it is reasonable to use proxy earnings like those available from BLS for research or consumer information purposes, we believe a direct measure of program performance must be used in determining whether a program remains eligible for title IV, HEA funds. The earnings data we obtain from SSA will reflect the actual earnings of program without the ambiguity and complexity inherent with attempting to use BLS data for a purpose outside of its intended scope. 76 FR 34386, 34421

Recognizing these shortcomings, in the 2011 Prior Rule, the Department permitted the use of BLS data as a source of earnings information only for challenges to debt-to-earnings ratios calculated in the first three years of the Department's implementation of § 668.7(g). This was done to address the concerns of institutions that they would be receiving earnings information for the first time on students who had already completed the program, at a point in time at which they could not implement improvements to the program that would affect the student debt burdens. See 76 FR 34423. In order to confirm the accuracy of the data used in a BLS-based alternate earnings appeal, § 668.7(g) of the 2011 Prior Rule also required an institution to submit, at the Department's request, extensive documentation, including employment and placement records.

We believe that the reasons for previously permitting the use of BLS data, despite its shortcomings, no longer apply. Most institutions have now had experience with SSA data on their students' earnings through the 2011 GE informational rates; thus, many programs are no longer in the situation where they would be receiving earnings data for the first time under the proposed regulations. In addition, the proposed regulations provide for a four-year transition period (for example, in award years 2014–2015, 2015–2016, 2016–2017, and 2017–2018), during which the Department would provide the institution an opportunity to have its program's D/E rates calculated using more recent loan debt data. By doing so, the proposed regulations would allow an institution to immediately benefit from changes it makes to the GE program that reduce student debt.

Given the shortcomings of the BLS data in producing a reliable assessment of student outcomes for a particular GE program, the fact that many programs had access to earnings data under the 2011 Prior Rule, and our proposal to include a four-year transition period, we are not including in the proposed regulations a provision permitting the use of BLS data for alternate earnings appeals.

The procedures an institution would be required to follow in making an alternate earnings appeal under the proposed regulations are largely similar to those in the 2011 Prior Rule. Under the 2011 Prior Rule, an institution was required to notify the Secretary of its intent to use alternate earnings no later than 14 days after the institution received its final debt measures. We intend to provide an institution with adequate time to pursue an alternate earnings appeal, while ensuring that the Department can disclose as soon as possible to the public the program's final rates, with appropriate notice that the institution intends to appeal the rates. We are therefore proposing in the regulations that an institution must notify the Secretary of its intent to appeal no later than three business days after the date the Secretary issues the notice of determination with the final D/E rates. The institution must indicate its intent to appeal no earlier than the date the Secretary provides the institution with its draft D/E rates. However, as explained more fully below, the notice deadlines do not limit the time available to an institution to actually conduct the survey. As with the 2011 Prior Rule, the institution would have 60 days after it receives the notice of determination to submit all supporting documentation in support of its appeal. In the interest of providing finality in the alternate appeals process, we would provide that an institution waives its right to appeal failing or zone final D/E rates if it does not submit a timely appeal.

The non-Federal negotiators raised questions about our initial plan during the negotiated rulemaking process to rely solely on earnings surveys conducted in accordance with NCES standards. Specifically, some non-Federal negotiators expressed concern that, given the proposed deadlines in § 668.406 and the effort required to complete a reliable survey under NCES standards, the survey option would not be a viable appeal mechanism. In particular, some of the negotiators raised concerns that smaller institutions would not have the resources necessary to properly conduct the survey.

We note that an institution would be able to begin its survey at any point in time and need not wait for issuance of draft D/E rates to plan and conduct the survey. The proposed regulations simply propose deadlines by which the institution must notify the Department that it will be submitting an appeal and by which it must submit the actual survey results.

To put these deadlines in context, under the proposed regulations, as an example, assume that the first award year for which D/E rates could be issued is award year 2014–2015. Those rates would be based on the outcomes of students who completed a GE program in award years 2010–2011 and 2011–2012 for a two-year cohort period, and 2008–2009, 2009–2010, 2010–2011, and 2011–2012 for a four-year cohort period. SSA would provide to the Department data on the students' earnings for calendar year 2014 approximately 13 months after the end of calendar year 2014, in early 2016. Those earnings data would be used to calculate the D/E rates for award year 2014–2015, and draft rates would be issued shortly after the final earnings data are obtained from SSA. Under our anticipated timeline, an institution that receives draft D/E rates that are in the zone or failing for award year 2014–2015 would receive those draft rates early in 2016. The draft D/E rates for the following year—award year 2015–2016—would be issued in early calendar year 2017. An institution that wished to conduct a survey to support a potential alternate earnings appeal of its D/E rates for award year 2015–2016—the earliest date by which rates that could render the program ineligible would be issued—would base its appeal on student earnings during calendar year 2015 for rates calculated on a two-year cohort period. Students who completed the GE program would know by early 2016 how much they earned, and could be surveyed, as early as the beginning of 2016—more than a full year before the Department would issue final D/E rates for award year 2015–2016, the rates for which the institution would use the survey results. We believe the proposed regulations provide more than adequate time to permit an institution to conduct and present an alternate earnings appeal and that to permit more time would unnecessarily increase the risk that more students would invest their time and money, and their limited eligibility for title IV, HEA program funds, in a failing GE program.

In response to concerns voiced by some negotiators that the rigor of NCES survey standards would make it prohibitively difficult and expensive for some institutions to conduct an alternate earnings appeal based on survey data, we made two modifications to the alternate earnings appeal process that are reflected in the proposed regulations. First, we have provided that NCES would prepare an Earnings Survey Form, which would contain a model survey that institutions could elect to use. The availability of an already developed model survey would reduce the expense for institutions as they would not need to develop their own survey. Moreover, we have proposed that the form would outline the standards that must be followed even if an institution chose to use a different form. In addition to making a survey-based alternate earnings appeal more accessible, we added to the proposed regulations the option to use earnings data obtained from State-sponsored databases, so that institutions would have more avenues of appeal.

We invite comment on whether the proposed regulations should permit institutions to expand the applicable cohort surveyed under circumstances in which the size of the applicable cohort may make it difficult for the institution to satisfy the survey standards or meet the matching requirements proposed in connection with appeals based on State-sponsored database earnings information. We also invite comment on how we might improve the alternate earnings appeals process so that it is less data intensive, but nonetheless is based on accurate earnings information.

At least one negotiator suggested that, if an institution elects to make an alternate earnings appeal, it should be required to post an appeal bond and should remain subject to at least some of the requirements in proposed § 668.410 otherwise triggered by the final D/E rates, such as the student warning, until the resolution of the appeal. We do not typically require institutions that appeal a limitation or termination proposed on other title IV, HEA program performance grounds to comply with the limitation or post a bond pending resolution of an appeal. For the purpose of the proposed regulations, we do not believe it would be necessary to impose these restrictions before an institution has had its alternate earnings appeal considered and received a decision on the merits of that appeal.

In discussing the procedures for calculating D/E rates under the proposed regulations, some negotiators expressed concern over including only the earnings of students who receive title IV, HEA program funds. As explained in ''§ 668.401 Scope and purpose,'' our focus in the proposed regulations is on students who receive title IV, HEA program funds for enrollment in a GE program. However, we invite comment as to whether institutions should be permitted to include the earnings information of individuals who did not receive title IV, HEA program funds for enrollment in the program, and on what basis. That is, how would D/E rates based on the earnings of individuals who did not receive title IV, HEA program funds demonstrate that the program satisfies the gainful employment requirement for students who did receive title IV, HEA program funds? We also invite comment as to whether, if the earnings information of individuals who did not receive title IV, HEA program funds were included, a successful appeal should result in published recalculated D/E rates for a program, and whether the program should be deemed as passing under the D/E rates measure or if the program should not receive an official result, but also not be subject to any sanctions based on that year's D/E rates.

Showings of Mitigating Circumstances

Several negotiators argued that low-cost, and consequently low-risk, programs where borrowing is largely unnecessary should not be subject to the D/E rates measure because the measure would not accurately reflect the level of borrowing by individuals enrolled in the program and the low cost of the program. The negotiators claimed that, for many low-cost programs, students receiving title IV, HEA program funds constitute only a small, unrepresentative portion of the students in terms of borrowing behavior. They argued that, for these programs, the percentage of students who receive title IV, HEA program funds and incur debt to enroll in the program is significantly greater than the percentage of all students who incur debt to enroll in the program. According to the negotiators, a program in which a majority of students have no debt is unlikely to produce graduates whose educational debts would be excessive because the tuition and costs are likely to be modest and require little borrowing, and therefore would not place the Federal investment in the program at significant risk. To more adequately account for low-cost, low-risk programs, the negotiators suggested that a GE program should pass the D/E rates measure if (1) the median loan debt of all individuals who complete the program in the applicable cohort period (both individuals who received, and who did not receive, title IV, HEA program funds) is zero, or (2) the program has a borrowing rate of less than 50 percent.

Under the proposed regulations, the loan debt component of the D/E rates measure would be calculated as a median, so that a program would have an annual loan payment of $0, and, consequently, passing D/E rates of 0, if less than half of the students who receive title IV, HEA program funds and complete the program during the applicable cohort period are borrowers.

However, because the D/E rates measure assesses only the outcomes of students receiving title IV, HEA program funds, it might not in all cases fully recognize the benefit of programs that present low risk to students and taxpayers. Under the proposed regulations, the D/E rates measure would attribute a student's loan debt to a program, up to the amount of tuition, fees, and equipment and supplies, even though the student could have obtained the loan only to pay for living expenses. As a result, the D/E rates measure might not fully reflect the impact of low costs in reducing the overall debt burden of a program's students. Therefore, in order to fully assess the benefit of programs that do not place students at risk of unaffordable debts, the proposed regulations would permit an institution to demonstrate that a program with D/E rates that are failing or in the zone should be deemed to be passing the D/E rates measure because less than 50 percent of all individuals who completed the program, both those who received title IV, HEA program funds, and those who did not, did not have to assume any debt to enroll in the program. The less than 50 percent standard is appropriate because a borrowing rate of less than 50 percent would mean that the median loan debt of the program is zero.

On the other hand, we recognize that in all cases a program with a borrowing rate of less than 50 percent may not, in fact, be low risk. For example, the majority of students could have alternative resources to pay the program costs, such as employers, State grant programs, or military benefits, or the program could still have a significant number of students who received title IV, HEA program loans for enrollment in the program.

We request specific comment on whether a program that demonstrates a borrowing rate of less than 50 percent should be deemed to be passing the D/

E rates measure and whether and how it may be appropriate to take into account students who do not receive title IV, HEA program funds to make that determination. We also invite comment as to whether the program should receive an official result, and whether the program should be subject to any sanctions on the basis of that year's D/E rates.

In addition, we invite comment on the method that should be used to ensure that borrowing rate showings are based on reliable evidence. Current regulations require an institution to create and maintain for audit and program review purposes records needed to verify data that appear in any report it uses to participate in a title IV, HEA program. 34 CFR 668.24(c)(1)(vi). A borrowing rate showing is a report that an institution would use to participate in title IV, HEA programs, and the institution would, thus, be required to maintain a complete list identifying all individuals included in its borrower rate calculations, as well as records evidencing those individuals' enrollment in the program and the dates on which they completed the program. We seek comment on whether the institution should also be required to submit as part of the showing a modified list of these individuals that would fully identify the students who received title IV, HEA program funds, but provide the list of students who did not receive title IV, HEA program funds in deidentified form, as is now commonly done in program review reports. Such deidentified list would show no more than the individuals' initials and last four digits of the social security number or another numeric identifier.

Finally, we invite alternative proposals to assess whether a program leads to low rates of borrowing.

Section 668.407 Calculating pCDR

Section 668.408 Issuing and Challenging pCDR

Subpart R

Current Regulations: None.

Proposed Regulations: Under proposed §§ 668.407 and 668.408, the Department would use pCDR as a second accountability metric, independent of the D/E rates measure, to determine whether a program remains eligible for title IV, HEA program funds. For a complete discussion of our proposed use of, and standards associated with, the pCDR measure for the purpose of determining a GE program's eligibility for title IV, HEA program funds, see ''§ 668.403 Gainful employment framework.''

Section 435(m) of the HEA provides that an institutional cohort default rate (iCDR) is the percentage of an institution's FFEL and Direct Loan borrowers who entered repayment in a given Federal fiscal year and who defaulted by the end of the second fiscal year following the year in which the borrowers entered repayment, referred to as the CDR monitoring period. 20 U.S.C. 1085(m). Subpart N of part 668 of the regulations currently implements, and typically tracks, the iCDR provisions of section 435(a) and (m) of the HEA, 20 U.S.C. 1085(a) and (m).

Proposed §§ 668.407 and 668.408 provide that the Secretary would generally determine a GE program's pCDR using the same methodologies and procedures used to calculate iCDRs pursuant to section 435(m) of the HEA. 20 U.S.C. 1085(m). These methodologies and procedures are set forth in detail in proposed subpart R of part 668. The proposed pCDR regulations in subpart R would generally mirror the structure of the iCDR regulations in subpart N. Because institutions are familiar with subpart N, proposed subpart R would adopt the text and section designations used in subpart N, with minor changes to reflect the application of the iCDR process to pCDR determinations. Because some provisions in subpart N that are applicable to institutions would not be relevant at the program level, these sections or parts of subpart N have been omitted and reserved in subpart R.

In calculating a GE program's pCDR, the Secretary would consider the students who received a FFEL or Direct Loan for enrollment in the GE program and who entered repayment on those loans during a relevant Federal fiscal year and determine the number of those students who defaulted on those loans in that fiscal year or by the end of the following two fiscal years—the CDR monitoring period. The pCDR measure would use the same fiscal year for establishing the cohort of students and the same CDR monitoring period for determining how many students in the cohort defaulted as is used for iCDR calculations. However, the pCDR measure would be based on a different measurement period and different cohort of students than the proposed D/E rates. Under proposed § 668.404, D/E rates are calculated for a cohort of students who received title IV, HEA program funds, including Federal loans, Federal Pell Grants, and other title IV, HEA program funds, and who completed the program during an applicable cohort period. In contrast, the pCDR measure, like iCDR, would include students who received FFEL and Direct Loans and who entered repayment on those loans during the relevant fiscal year, whether or not they completed the program. FFEL and Direct Loan borrowers generally enter repayment after a six-month grace period that begins when the borrower ceases enrollment on at least a half-time basis. 34 CFR 682.200, 682.209(a)(3) (FFEL Loans); § 685.207(b)(2), (c)(2) (Direct Loans).

A GE program's pCDR would be based on students who (1) enrolled in the GE program, whether or not they completed the program, (2) received one or more FFEL or Direct Loans for enrollment in the program, and (3) entered repayment on one or more of those loans during the fiscal year that precedes by 3 years the year in which the rate is calculated. If 2016, for example, is the first year that pCDRs for GE programs are released under the proposed regulations, the pCDRs would be for the fiscal year 2013 cohort. To calculate the program's pCDR, the Secretary would determine the number of borrowers who entered repayment on their FFEL or Direct Loans between October 1, 2012, and September 30, 2013. The Secretary would then determine how many of those students defaulted by September 30, 2015.

A FFEL Loan would be considered to be in default if a guaranty agency paid a default claim to the FFEL lender on the loan. § 668.502(c)(1)(i). A Direct Loan would be considered to be in default if a borrower failed to make a required installment payment for 360 days. § 668.502(c)(1)(ii). These pCDR provisions would be identical to the corresponding iCDR provisions in § 668.202(c).

Under the proposed regulations, each year, the Secretary would calculate a draft pCDR for each GE program by: (1) Identifying, from information reported by the institution under proposed § 668.411 and from information in NSLDS, a cohort of borrowers who received FFEL or Direct Loans for enrollment in the GE program and who entered repayment during the fiscal year and (2) determining the percentage of those borrowers who defaulted within the pCDR monitoring period. § 668.502(a). If fewer than 30 borrowers entered repayment in the fiscal year, the cohort of borrowers would include, in addition to the borrowers who entered repayment in the fiscal year, borrowers who entered repayment in the two preceding fiscal years. In that case, the program's draft pCDR would be based on the total cohort from the three years. § 668.502(d)(2).

As set forth in proposed § 668.504, the Department would notify an institution of a program's draft pCDR and provide a report listing the students included in the cohort and the loan details that were used in the calculations. The report would allow the institution an opportunity to challenge the information used to calculate the draft pCDR. The pCDR challenge process mirrors the iCDR process, as follows. The institution would have 45 days to submit an ''incorrect data challenge'' to the accuracy of the data used to calculate the draft pCDR. For most FFEL loans, the institution would send its incorrect data challenge to the relevant guaranty agency. For Direct Loans and for FFEL loans held by the Department, the institution would send its incorrect data challenge to the Department's loan servicer from whose records the data were obtained. The guaranty agency or Departmental servicer would be required to respond to the institution's challenge. The Department would review the challenge and response and either accept the challenge and recalculate the program's pCDR, or reject the challenge and notify the institution of the rejection.

If a GE program's draft pCDR is 30 percent or greater for the third fiscal year following two consecutive years for which the official pCDR was 30 percent or greater, the institution would be able to submit a ''participation rate index'' challenge to the draft pCDR for that third year. This challenge rests on the position that the number of students who borrow title IV, HEA program loans for enrollment in the GE program constitutes a small percentage of the program's students. Specifically, if the program's pCDR multiplied by the percentage of title IV, HEA program loan borrowers among all regular students (including students who did not receive title IV, HEA program funds) enrolled in the program is less than 0.0625, the program would not be subject to a loss of title IV, HEA program eligibility on account of a third consecutive year's pCDR of 30 percent or greater. § 668.504(c).

After resolution of a participation rate index challenge or after the date by which such a challenge would have to be made, the Department would issue an official pCDR. Unlike the procedures for issuance of iCDRs, we would not provide this notification electronically.

The institution could request to have the official pCDR adjusted on several grounds, or could appeal the official pCDR, if that pCDR would be the third consecutive year's pCDR of 30 percent or greater. § 668.508. Each of these appeals and requests for adjustment is available to institutions under the iCDR provisions. § 668.208. Most appeals and adjustment options are available for appeals and requests for adjustment of any iCDR. However, iCDR regulations limit the availability of some appeals to those rates that would result in loss of institutional eligibility, and the proposed regulations would similarly allow some appeals only for a pCDR that would subject the GE program to a loss of eligibility under proposed § 668.403, as a result of the third consecutive year's pCDR of 30 percent or greater.

First, the institution would have two possible ways to request an adjustment to the data used to calculate any official pCDR:

- Uncorrected data adjustment: A correction approved as a result of an ''incorrect data challenge'' that was previously approved is not reflected in the official pCDR, § 668.509; and
- New data adjustment: New data used in the calculation of the official pCDR differs from data previously provided to the institution with the program's draft pCDR, and it is inaccurate, § 668.510.

Second, the institution would be able to request that any pCDR be recalculated through two types of appeals:

- Erroneous data appeal: The pCDR should be recalculated because the data previously challenged or newly added are incorrect, § 668.511; and
- Loan servicing appeal: The pCDR should be recalculated because the servicer failed to perform certain due diligence activities before the loan defaulted, § 668.512.

Third, the institution would be able to avoid a loss of program eligibility under proposed § 668.403 through a successful appeal of a pCDR that would have resulted in loss of eligibility on any of the following four grounds:

- Economically disadvantaged appeal: Of all the students enrolled in the program on at least a half-time basis (including those who did not receive title IV, HEA program funds), (a) two-thirds were either eligible to receive at least half the maximum Pell Grant or had a family income below the HHS poverty guideline standard for that family size, and (b) of these students, at least 70 percent timely completed the degree program, transferred to a higher credentialed program, were still enrolled, or entered military service, or, for non-degree programs, at least 44 percent within a year had obtained employment in the occupation for which the program was offered or entered military service, § 668.513;
- Participation rate index appeal: Similar to the participation rate index challenge previously described for draft pCDR, except it would be submitted after official pCDRs have been calculated, § 668.514;
- Average rates appeal: Two or more of the pCDRs on which loss of eligibility would be based had been calculated as an average rate under § 668.502(d)(2)(i) because fewer than 30 borrowers entered repayment in the fiscal year, and the rates for any two of those ''averaged rate'' years would pass the pCDR measure if calculated based only on the borrowers who entered repayment in each of those two fiscal years, § 668.515; and
- Thirty-or-fewer borrowers appeal: The total number of borrowers who comprise the pCDR cohorts for the three years at issue was 30 or fewer, § 668.516.

Reasons: Our reasons for proposing § 668.407, § 668.408, and subpart R of part 668, and the use of pCDR as a new and independent GE measure, are described in ''§ 668.403 Gainful employment framework.'' We also discuss there our reasons for proposing adoption of the iCDR calculation, appeal, and challenge procedures for the pCDR measure. The proposed consequences associated with a GE program's pCDR, and our related reasoning, are described in ''§ 668.403 Gainful employment framework'' and ''§ 668.410 Consequences of GE measures.''

We propose to adopt the challenges, adjustments, and appeals for pCDR that are currently available for iCDR and, in several instances, that are based on provisions of the HEA itself. Two of those options—participation rate index challenges and appeals, and economically disadvantaged appeals—include consideration of individuals who did not receive title IV, HEA program funds. We invite comment as to whether we should modify those provisions for pCDR to include only those students who receive title IV, HEA program funds.

Section 668.409 Final Determination of GE Measures

Current Regulations: Section 668.7(f) of the 2011 Prior Rule provides that the Secretary would notify an institution of any draft results of the debt measures for its GE programs that are not challenged, challenged unsuccessfully, or recalculated after a successful challenge. These results would be the final debt measures for the program.

The Secretary would notify an institution if it were to become ineligible. If an institution submits an alternate earnings appeal of a program's final debt-to-earnings ratios and it is denied, the Secretary would also separately notify the institution and provide reasons for the denial.

Proposed Regulations: Proposed § 668.409 provides that the Secretary would issue a separate notice of determination for the D/E rates measure and for the pCDR measure for each GE program at an institution. In comparison, under the 2011 Prior Rule, information regarding all of the debt measures would be provided in a single notice instead of separately for each metric.

The notice of determination for the D/E rates measure would be issued for each award year that D/E rates are calculated for a program, after the period for the D/E rates challenge process under § 668.405 has passed, or any challenges are resolved. The notice would include a program's final D/E rates, the effective date of the determination, and whether, based on the program's final D/E rates:

- The program is passing, failing, or in the zone as determined under proposed § 668.403;
- The program is ineligible as determined under proposed § 668.403 and, if so, the consequences as provided under proposed § 668.410;
- The program could become ineligible based on its final D/E rates for the next award year;
- The institution must provide warnings about the program to students and prospective students as provided under proposed § 668.410; and
- For a program that is failing or in the zone under the D/E rates measure, instructions on how it may make an alternate earnings appeal or make a showing of mitigating circumstances under proposed § 668.406.

The notice of determination for the pCDR measure would be issued each year, after the period for the pCDR appeals and adjustment process under proposed § 668.408 and subpart R has passed, or any appeals or requests for adjustment are resolved. The notice would include the program's official pCDR, the effective date of the determination, and whether, based on the program's official pCDR:

- The program is passing or failing as determined under proposed § 668.403;
- The program is ineligible as determined under proposed § 668.403 and, if so, the consequences as provided under proposed § 668.410;
- The institution must provide warnings about the program to students and prospective students as provided under proposed § 668.410; and,
- For a program that has failed the pCDR two consecutive years or three consecutive years, instructions on how it may appeal or seek an adjustment to its official pCDR under proposed § 668.508.

If an institution were to pursue an alternate earnings appeal of a program's final D/E rates, or a showing of mitigating circumstances, under proposed § 668.406, or an appeal or request for adjustment with respect to a program's official pCDR under proposed § 668.508, a subsequent notice would be issued with the Department's determination. If the appeal or adjustment is successful, the notice would provide the recalculated final D/E rates or official pCDR along with information regarding the program's status. If the showing of mitigating circumstances is successful, the institution would be notified. If an appeal, showing, or adjustment is denied, the notice would provide the reasons for the denial. The notice of determination, or subsequent notice after any appeals, showings, or adjustments are resolved, would constitute the final decision of the Secretary and would not be subject to further administrative review.

The notice under the 2011 Prior Rule, although similar, would provide less information than the notice under the proposed regulations. Specifically, the Prior Rule's notice would not include an effective date, categorize a program as one that satisfies or is failing the debt measures, provide information on any consequences, or notify an institution that a program is ineligible, although an institution would be notified separately of a program's ineligibility. Also, in contrast to the proposed regulations, the notice under the 2011 Prior Rule would not provide instructions on appealing or seeking adjustments to the results of a GE measure. If an appeal was denied, an institution would be notified separately with the reasons for the denial.

Reasons: As in § 668.7(f) of the 2011 Prior Rule, proposed § 668.409 would establish an administrative process to determine, and notify an institution of, a program's final GE measures. Separate notices of determination would be issued for the D/E rates and pCDR measures because the calculation of the D/E rates and pCDR will likely occur at different times during the year.

In comparison to the 2011 Prior Rule, the notice of determination under proposed § 668.409 would provide more detailed information in a single notice for each metric so that an institution could better and more easily understand the results of its GE measures under the proposed regulations, when they would be effective, whether the results are final determinations or could be appealed or adjusted or could be the subject of a showing of mitigating circumstances, the consequences of the results, and any actions an institution would be required to take and by what date. With respect to adjustments, appeals, and showings of mitigating circumstances, the notification would include instructions to help ensure that institutions have a clear understanding of the process.

Section 668.410 Consequences of GE Measures

Current Regulations: Under § 668.7(j) and (l) of the 2011 Prior Rule, an institution would be subject to one or more restrictions with respect to a failing program, a program that was made ineligible under the 2011 Prior Rule, or a program that was voluntarily discontinued at the time it was failing.

Debt Warnings

For a failing program, an institution would be required to provide currently enrolled and prospective students with debt warnings that would vary in urgency based on whether the program failed the GE measures for a single fiscal year (''first year warning'') or for two consecutive or two out of the three most recent fiscal years (''second year warning''). The warnings would be required to be prepared in plain language and in an easy-to-understand format. Further, to the extent practicable, institutions would be required to provide alternatives to English language warnings for those students for whom English is not their first language.

In the first-year warning, an institution would be required to explain the debt measures, show the amount by which the program failed to meet the standards, and describe how the institution plans to improve the program's performance under the debt measures. The institution would be required to deliver the first-year warning orally or in writing directly to students in accordance with procedures established by the institution. ''Directly to students'' would include communicating with the student in-person, telephonically, as a part of a group presentation, or by email to the student's email address. In the case of an oral warning, the institution would be required to document how the information was provided, any materials used, and that the student was present.

In the stronger second-year warning, an institution would be required to include the same information as the first-year warning and, additionally, a clear and conspicuous statement that a student who enrolls or continues in the program should expect to have difficulty repaying his or her student loans, an explanation of the actions the institution plans to take in response to the second failure, if the institution plans to discontinue the program, the timeline and options available to students, the risks associated with enrolling or continuing in the program, including the potential consequences of ineligibility and options available to students in such an event, and resources available to students, including *www.collegenavigator.gov*, to research other educational options and compare program costs. An institution would be required to provide the second-year warning in writing and display the required information on the program's main Web page and in all promotional materials. An institution would have the option to include the second-year warning in the required disclosures under the 2011 Current Rule. The second-year warnings would have to be provided until the program meets one of the debt measures for two out of the three most recent fiscal years.

For students enrolled in a failing program, an institution would be required to provide the relevant debt warning as soon as administratively feasible but no later than 30 days from the date that the Secretary notifies the institution that the program failed the debt measures. With respect to prospective students, an institution would be required to provide the relevant warning at the time the student first contacts the institution requesting information about a failing program. If the prospective student intends to use title IV, HEA program funds for attendance in the program, an institution would be prohibited from enrolling the prospective student in the program until three days after providing the debt warning, and, if more than 30 days pass from when the debt warning was first provided and the date the student seeks to enroll in the program, the institution would be required to provide the debt warning again and wait three days from that date before enrolling the student.

Ineligibility for Title IV, HEA Program Funds

Except as provided in § 668.26(d) of the 2011 Prior Rule, an institution would be prohibited from disbursing title IV, HEA program funds to students enrolled in a program that becomes ineligible as a result of failing to meet the minimum standards for three out of the four most recent fiscal years.

Period of Ineligibility

A program that becomes ineligible under the 2011 Prior Rule, or a failing program that is voluntarily discontinued, would remain ineligible until the institution reestablishes the eligibility of that program.

For an ineligible program, or a program that is substantially similar to an ineligible program, an institution would not be able to reestablish eligibility until the end of three fiscal years after the fiscal year in which the program is made ineligible. A program would be substantially similar to an ineligible program if it has the same credential level and first four digits of the CIP code.

For a voluntarily discontinued failing program, an institution would not be able to reestablish eligibility until the end of two fiscal years after the fiscal year in which the program is discontinued if it is discontinued at any time after the program is determined to be failing but no later than 90 days after the date that the Secretary notifies the institution that it would be required to provide a second-year debt warning with respect to the program. If the program is voluntarily discontinued more than 90 days after the date that the Secretary notifies the institution that it would be required to provide a second-year debt warning, an institution would not be able to reestablish eligibility until three fiscal years after the fiscal year in which the program is discontinued. A failing program would be deemed as voluntarily discontinued on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility.

Proposed Regulations: Although the proposed regulations and the 2011 Prior Rule provide for similar consequences, the circumstances under which they would be imposed and their specific requirements differ in many respects.

Student Warning

Under proposed § 668.410(a), within 30 days of receiving a notice of determination under § 668.409 stating that a GE program could become ineligible based on its final D/E rates for the next award year or based on its next official pCDR, an institution would be required to provide a written warning directly to each student enrolled in the program and include the student warning on the program's disclosure template under proposed § 668.412. The following statement would be required to be included in the student warning:

''You may not be able to use federal student grants or loans to pay for this institution's program next year because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that you are able to find gainful employment in a recognized occupation and are not burdened by loan debt you may not be able to repay. A program that doesn't meet these standards may lose the ability to provide students with access to federal financial aid to pay for the program.''

The proposed regulations would permit the Secretary to modify the statement or establish an alternative statement in a notice published in the **Federal Register,** after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the Paperwork Reduction Act of 1995 (PRA). Before finalizing the statement and the manner in which it would be presented, the Department would conduct consumer testing to ensure that the content of the statement advances the goals of the warning, the language is understandable for the intended audience, the manner of delivery is effective, and the warning is, on the whole, useful for consumers.

As a part of the student warning, the institution would also be required to describe the options available to enrolled students to continue their education at the institution, or at another institution, in the event the program loses its eligibility for title IV, HEA program funds and inform students as to whether or not, if the program becomes ineligible, it would:

- Allow the student to transfer to another program at the institution;
- Continue to provide instruction in the program to allow the student to complete the program; and
- Refund the tuition, fees, and other required charges paid by, or on behalf of, the student for enrolling in the program.

The proposed regulations would require that the warning be given directly to the student, meaning that the warning must be hand-delivered to the student individually or as part of a group presentation, or must be sent to the primary email address used by the institution for communicating with the student. Further, as under the 2011 Prior Rule, to the extent practicable, institutions would be required to provide the warnings in alternative languages to students whose first language is not English.

Proposed § 668.410(a)(2) would require the institution to provide this same warning to a prospective student at the time the prospective student first contacts, or is contacted by, the institution about a GE program. Further, the institution would not be able to enroll, register, or enter into a financial commitment with the prospective student for the program until:

- Three business days after the warning was first provided; or

• If more than 30 days pass from the date the warning is first provided, three business days after the institution provides another warning.

Ineligibility for Title IV, HEA Program Funds

If a program loses title IV, HEA eligibility, under proposed § 668.410(b)(1), except for the limited disbursements permitted under 34 CFR 668.26(d), an institution would be prohibited from disbursing title IV, HEA program funds to students enrolled in the program.

Period of Ineligibility

For an ineligible program, voluntarily discontinued failing or zone program, or program that is substantially similar to an ineligible program or voluntarily discontinued failing or zone program, an institution would not be able to reestablish title IV, HEA program eligibility under § 668.414 for three calendar years. In the case of an ineligible program, this three-year period would begin on the date specified in the notice of determination, under § 668.409, that the program is ineligible. For a voluntarily discontinued program, the three-year period would begin on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility.

Reasons: We have two overarching goals for the proposed regulations: (1) To establish an accountability framework for GE programs and (2) to increase the transparency of GE program student outcomes. To achieve these goals, we have proposed accountability metrics—D/E rates and pCDR—that we believe are reasonable and valuable measures of a program's student outcomes. In proposed § 668.410, we propose consequences that would be imposed on institutions based on the results of their GE programs under the accountability metrics that serve both our accountability goal and our transparency goal.

The proposed regulations would largely adopt the consequences set forth in the 2011 Prior Rule. They differ from the 2011 Prior Rule in the timing and content of the language for the student warning and in the period of time before which ineligible programs can reestablish title IV, HEA program eligibility. From a policy perspective, the significant differences are largely attributable to our desire, consistent with our transparency goals, to streamline the student warning process so that the message is more accessible to students and prospective students, to facilitate institutional compliance by reducing administrative burden, and to motivate continuous improvement by institutions with respect to their GE programs or face termination of program eligibility for title IV, HEA program funds.

Student Warning

The accountability framework of the proposed regulations reflects our belief that, particularly in the initial years of the proposed regulations, institutions should be given time and incentive to improve those programs that are not among the very worst, but still have outcomes that do not meet minimum acceptable levels of performance. We recognize, however, that some of these programs may not improve, or improve sufficiently, and may consequently lose eligibility for title IV, HEA program funds. A program's loss of eligibility could make it impossible for some students to complete that GE program. Given the adverse effects on students that may arise from a program's loss of title IV, HEA program eligibility, we believe that students should be warned if a program could lose eligibility based on its next result under one or both of the GE measures. Such warnings would inform decisions of currently enrolled students with respect to their continuing financial investment in the program, and would enable prospective students to make informed decisions when choosing among similar programs offered at one institution, or at several institutions.

The proposed student warning differs from the 2011 Prior Rules in that there would only be one type of warning instead of two, and the warning would only be required when a GE program could become ineligible based on its final D/E rates or official pCDR for the next year instead of after a first failure. Additionally, the proposed student warning focuses more narrowly than the warnings under the 2011 Prior Rule on the information that prospective and enrolled students urgently need to have in considering whether to begin or continue enrollment in a program facing the possible loss of eligibility.

The proposed regulations include the text that institutions would use for the student warning in order to standardize the warning and ensure that the necessary information is conveyed to students. This particular language was chosen because we believe it would be simple and easy to comprehend for students. However, we intend to conduct consumer testing to better understand how different groups of students would receive and process this information, and may modify our proposed language based on the results of that testing. As proposed, the warning would alert both prospective and enrolled students that a GE program may lose eligibility for title IV, HEA program funds and explain the implications of ineligibility. In addition, for enrolled students, the warning would indicate the options that would be available to continue their education at the institution or at another institution, if the program lost its title IV, HEA program eligibility.

We believe this simplified warning and statement of options provides more useful information than what was required by the 2011 Prior Rule. The statement that a program may lose the ability to provide students with access to title IV, HEA program funds is critical for students so that they can use that information to decide whether and when to enroll in a similar, passing program at another institution or in a passing program at the same institution. Requiring that the warning be provided directly to a student is intended to make it more likely that the student will benefit from the information. Further, requiring that at least three days must pass before the institution could enroll a prospective student would provide a ''cooling-off period'' for the student to consider the information contained in the warning without direct pressure from the institution, and also provide the student with time to consider alternatives to the program either at the same institution or at another institution.

The negotiators representing students, legal aid organizations, and State Attorneys General generally urged the Department to revise the draft regulations to make the student warning more understandable and more widely available. They believed that institutions should begin providing the student warning earlier than in the year before the GE program could become ineligible, recommending that students should also receive this information in any year in which a GE program is identified as a zone program. They argued that as soon as it is available, students should have any information that indicates that a program for which they are spending significant time and money, including title IV, HEA program funds, may not ultimately be a good investment. Similarly, some negotiators proposed that a less stringent warning be required for a zone program that is not at risk of losing eligibility in the following year, and suggested that the Department issue an alert instead of a warning when a program first enters the zone, with the alert or warning becoming stronger as the program moves closer to becoming ineligible.

Additionally, the negotiators were concerned that bad actors would undermine the value of the student warning by hiding the information or downplaying the message of the warning. They suggested that the Department require institutions to post the warning in classrooms where the GE program is offered, in the financial aid office, and in other places where students would likely see it.

With respect to the language of the student warning, the negotiators representing consumer advocates raised concerns that specifying language to be included in the student warning would limit the Department's ability to alter the required text to make it more meaningful based on experience. They urged the Department to commit to use focus groups to test and refine the language and format of the warning to ensure that students, including those with limited English proficiency or lower literacy levels, would understand the content and implications.

Lastly, negotiators representing consumer advocates urged the Department to require an institution to provide the warning to a prospective student at the time that the student first contacts, or is contacted by, the institution about the GE program and before a student signs an enrollment agreement or otherwise makes a financial commitment for the program. They noted that in many cases, an institution will contact a prospective student before the student requests information from the school. For example, some institutions contact a prospective student visiting the Web site for a particular GE program via a live chat. The negotiators stated that it was important to capture this type of contact in the regulations in order to prevent schools from convincing a student to commit to the program before giving them the required warning. Along these same lines, these negotiators argued that it is critical for prospective students to receive the warning before they sign an enrollment agreement, as opposed to at the time they sign, because once a student has committed to signing, the warning would have little to no effect.

Although the other negotiators generally agreed that it is important to warn students when a program is close to losing eligibility for title IV, HEA program funds, some raised concerns about the Department's approach. With regard to the proposal that institutions would have to describe any options available to students to continue their education at another institution in the event that the program loses eligibility for title IV, HEA program funds, one of the negotiators noted that it is not always possible for a student to transfer to another institution. The negotiator pointed out that, particularly in rural areas, there may not be another institution within close proximity to the student that is offering a similar GE program. Additionally, the negotiator noted that, even if there were another institution nearby that was offering a similar program, there is no guarantee that the institution would allow the student to transfer into the program.

Another negotiator noted that the warning could be problematic for institutions in which the typical program length is one and a half academic years. The negotiator raised concerns that in those cases, a warning telling students that they may not be able to use Federal student grants or loans to pay for the program could be misleading because students enrolled in the program could complete the program before it lost eligibility. The negotiator argued that providing the warning to enrolled students in these cases could cause students to leave the program unnecessarily when they could have completed and achieved their academic goals. Similarly, some of the negotiators were concerned about having to provide the warning to prospective students who would not be affected by a program's loss of title IV, HEA program eligibility, such as foreign students. They recommended adding language specifying that the warning must only be provided to a student who could be affected by a program's loss of eligibility before they are likely to complete the program.

We have considered the concerns raised during the negotiations about the student warning, and we have taken into account many of the suggestions and concerns in the proposed regulations. Although we understand the position that students should receive a warning or, at a minimum, a lower-level alert when a GE program is in the zone, we believe that it is important, particularly in the initial years of the rule, to give institutions a period of time to improve, without restrictions, those programs that are either in the zone or not at risk of losing eligibility under the GE measures in the following year. Similarly, in future years, sufficient time should be allowed without restrictions to determine whether a program's poor results are atypical or whether they reflect a true decrease in its value. Accordingly, we would limit instances where a warning would be required to potential losses of eligibility under the D/E rates or the pCDR measure in the following year. We believe that using one warning instead of the two different warnings provided in the 2011 Prior Rule would reduce the complexity of this requirement, facilitating institutional compliance so that it is more likely that students receive this valuable information when they need it most.

The proposed regulatory language is also intended to alleviate concerns that institutions may try to downplay the warnings. First, we have added language clarifying that providing a written warning ''directly'' to enrolled students means hand-delivering the warning to a student individually or as part of a group presentation, or sending the warning to the primary email address used by the institution for communicating with the student about the program. We believe that this addition would make it clearer to institutions what they are required to do and better ensure that students receive the important message intended to be conveyed by the warning. We invite comment on methods to make it even more likely that students would receive the warning but at the same time would not create overly burdensome requirements for institutions.

Second, we have added proposed language clarifying that the warnings must be given to a prospective student when the student first contacts the institution or is contacted by the institution with respect to a GE program and requiring institutions to provide the warning before a student enrolls, and not at the time of enrollment, to prevent an institution from manipulating students into committing to enroll before it provided the required warning. An institution should maintain records that showed the warning was provided prior to a student enrolling at an institution. § 668.24(a)(3).

We note, also, that under proposed § 668.412(b)(2), within 30 days of receiving notice from the Secretary that the student warning is required for a GE program, an institution would be required to update the program's disclosure template to include the warning. We believe that incorporating the student warning into the disclosure template, which has a set format and standard text and which must be provided via a prominent, readily accessible, clear, conspicuous, and direct link from the program's Web site would limit manipulation of the warning text or presentation to prospective students. For a prospective student, we would also require the institution to obtain the student's signature on a written disclosure, as this would ensure that the student reviews the information in the warning before making a financial commitment to the institution.

In the proposed regulations, we have added that we would conduct consumer testing to ensure that the content of the statement advances the goals of the warning, the language is understandable for the intended audience, the manner of delivery is effective, and the warning is, on the whole, useful for consumers—that is, it clearly communicates to students the risks associated with enrolling or continuing enrollment in a program that could soon become ineligible. The proposed regulations would allow the Secretary to improve the warning language by publishing a notice in the **Federal Register** with any changes to the text, after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the PRA.

With regard to the concern expressed by some negotiators that students may not realistically have the option to transfer to a similar GE program at another institution, the proposed regulations would not mandate that institutions take affirmative steps to secure transfers for its students but, rather, would require that institutions tell students whether or not transfer options are available at the same institution or another institution. In response to the concerns of the negotiator who noted that in some cases the warning would discourage students in short-term programs from completing their programs, we believe that the potential timing for the loss of eligibility would still be important information for those students to be aware of. Further, we note that some programs may be short enough, or an enrolled student may have already completed enough of the program, that the potential loss of the program's title IV, HEA program eligibility in the following year would not be a concern.

In addition, we understand institutional concerns about providing the warning to prospective students who are categorically ineligible for title IV, HEA program funds. Institutions would be responsible for ensuring that any prospective student who could get title IV, HEA program funds receives the warning, but institutions would not be required to provide the warning to specific groups of prospective students whom they know would not be eligible for title IV, HEA program funds for enrolling in that program, such as foreign students.

Program Eligibility Restrictions

As stated, our proposed accountability framework is designed to provide an opportunity and strong incentive, particularly in the initial years of the proposed regulations, for institutions to improve poorly performing programs before loss of title IV, HEA program eligibility occurs. At the same time students, prospective students, and their families and the public, taxpayers, and the Government must be protected. There is no greater incentive to improve than the potential loss of eligibility. But, for programs that do not improve, the eventual loss of eligibility protects students by preventing them from enrolling in programs that have consistently produced poor student outcomes.

As in the 2011 Prior Rule, the proposed regulations would establish a period of time before an ineligible or voluntarily discontinued program could regain eligibility. However, unlike in the 2011 Prior Rule where the length of the waiting period varied depending on whether the program was made ineligible or if it was voluntarily discontinued, and when it was discontinued, the proposed regulations would use a single, three-year waiting period without regard to whether a program became ineligible or was voluntarily discontinued.

Although the negotiators generally did not raise concerns about the three-year waiting period, one of the negotiators believed that an institution that voluntarily discontinues a program should always have to abide by the three-year waiting period before seeking to reestablish the eligibility of the program, regardless of whether the program was failing, passing, or in the zone. We believe that it is more appropriate to impose this period of ineligibility only on programs determined to be failing or in the zone because there could be legitimate reasons for discontinuing a passing program, and, further, we do not wish to impose restrictions on an institution where a program is meeting the standards of the accountability metrics.

During the negotiated rulemaking sessions members of the negotiated rulemaking committee raised proposals to create borrower relief provisions for students in programs that fail the GE measures and to place additional restrictions on those program. The Department had proposed, for a program that does not pass the GE measures and is in jeopardy of losing its eligibility for title IV, HEA program funds, in addition to the student warning requirement, limits on the number of students eligible for title IV, HEA program funds who could be enrolled in the program. In response to the negotiators' concerns, the Department also proposed, in those circumstances, to require institutions to make arrangements to reduce student debt. We have not included these additional consequences in the proposed regulations.

We have not included enrollment limits in the proposed regulations as we believe that providing warnings to students and prospective students about potentially ineligible programs, along with the information that would be available through the required disclosures, provide meaningful protections and will sufficiently enable students and their families to make informed decisions about their educational investment. However, we invite comment on whether enrollment limits should be imposed on programs that could become ineligible and how those limits could be practically implemented.

We developed our debt reduction proposal in response to suggestions from negotiators representing consumer advocates and students. These negotiators argued that, while a failing or zone program would be allowed several years to pass the GE measures before becoming ineligible, students would continue to borrow to attend a program that the Department, based on the proposed regulations, may not reasonably expect would lead to gainful employment. Moreover, in the event a program lost eligibility under the GE measures, enrolled students would still be responsible for the debt they accumulated despite the fact they could not complete a program identified by the Department as failing the performance metrics.

To address this, the negotiators argued that the Department should provide loan discharges under section 437(c) of the HEA to students who borrowed for attending a program that loses eligibility under the GE measures. They contended that these borrowers would also have claims against the institution for enrolling them in a program that was offered as an eligible program, but that in fact did not meet the eligibility requirements proposed in the regulations. They observed that Federal regulations implementing section 455(h) of the HEA, 20 U.S.C. 1087e(h), allow a Direct Loan borrower to assert, as a defense to loan repayment, any claim that the borrower has against the institution, and that this existing regulation would apply to the case of a program that did not meet the standards of the proposed regulations. 34 CFR 685.206(c).[63] These negotiators

[63] In response to these objections, we noted that the Department had already expressly interpreted section 437(c) of the HEA in controlling regulations

further urged the Department to formally adopt, as a defense to loan repayment, a program's failure to pass the GE measures, whether or not the program eventually lost eligibility. Additionally, the negotiators suggested a variety of other remedies, including requiring institutions to refund tuition paid for a program that loses eligibility, requiring institutions to post a surety bond or letter of credit when a program receives a zone or failing result in order to provide for relief in the event that the program later becomes ineligible, and requiring all institutions intending to offer a GE program to contribute to a ''common pool'' fund to be administered by the Department that would be used to provide debt relief to students affected by a program's loss of eligibility.

One of the non-Federal negotiators submitted a proposal that would allow a program that did not pass the GE measures to remain eligible if the institution implemented a debt reduction plan that would reduce borrowing to levels that would meet the GE measures.

In response, at the second and third negotiating sessions, we drew on the negotiator proposals and presented regulatory provisions that would have required an institution with a program that could lose eligibility the following year to make sufficient funds available to enable the Department, if the program became ineligible, to reduce the debt burden of students who attended the program during that year. The amount of funds would have been approximately the amount needed to reduce the debt burden of students to the level necessary for the program to pass the GE measures. If the program were to lose eligibility, the Department would use the funds provided by the institution to pay down the loans of students who were enrolled at that time or who attended the program during the following year. We also included provisions that would allow an institution, during the transition period, to avoid these requirements by offering to every enrolled student for the duration of their program, and every student who subsequently enrolled while the program's eligibility remained in jeopardy, institutional grants in the amounts necessary to reduce loan debt to a level that would result in the program passing the GE measures. If an institution took advantage of this option, a program that would otherwise lose eligibility would avoid that consequence during the transition period.

Negotiators voiced numerous concerns about the proposed borrower relief provisions. These included whether the proposals would be sufficient to compensate students for enrolling in an ineligible program, what cohort of students would receive relief, the extent of the relief to be provided, how any monetary amounts would be calculated, and costs that would be incurred by institutions in providing relief. The nature of these discussions made clear that these are very complex issues that warrant further exploration. Accordingly, we are not including proposed language regarding borrower relief in the regulations and request comment on these issues, including other options that the Department could consider to address borrower relief concerns.

In addition to the specific concerns discussed about the proposed consequences, some of the negotiators raised general concerns about how these consequences would be implemented. In particular, some institutional representatives on the negotiating committee were concerned that having separate notices of determination for the D/E rates measure and for the pCDR measure, indicating different start dates for the various consequences, would be difficult for institutions to track and implement. In this regard, the Department has in place an annual process to determine CDRs for institutions, and the additional steps needed to determine a pCDR for a GE program would be built into that existing framework and timelines. We believe that this approach, as opposed to establishing an alternative process, would minimize the additional burden for institutions. There is no functional need to synchronize the calculation of the D/E rates and the pCDR as the information used for each measure is distinct and tied to different cohorts of students and different time periods.

Section 668.411 Reporting Requirements for GE Programs

Current Regulations: Under § 668.6(a) of the 2011 Prior Rule, an institution would be required to annually submit to the Department information about each student, regardless of whether the student received title IV, HEA program funds, who enrolled in a program that prepares students for gainful employment in a recognized occupation during an award year. Institutions would report, in addition to student identifiers (name, Social Security Number, and date of birth), the name, CIP code, and credential level of the program in which the student is enrolled, the date the student began enrollment in the program, the student's enrollment dates during the award year, and the student's attendance status at the end of the award year (i.e., completed, withdrew, or still enrolled). If the student completed the program during the award year, the institution would also report the date the student completed the program, amounts the student received from private educational loans and institutional financing, and whether the student matriculated to a higher credentialed program at the institution or any available evidence that the student transferred to a higher credentialed program at another institution.

Additionally, under the 2011 Prior Rule, for each gainful employment program, institutions would be required to report, by name and CIP code, the total number of students enrolled in the program at the end of each award year and identifying information for those students. In regard to the definition of CIP code, § 600.10(c)(2)(ii) of the 2011 Prior Rule refers, with respect to an additional education program, to programs with a CIP code under the taxonomy of instructional program classifications and descriptions developed by NCES. Section 668.7(a)(2) of the 2011 Prior Rule also specifies the credential levels for a program.

Finally, under the 2011 Prior Rule, an institution would be required to provide an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

Proposed Regulations: Under proposed § 668.411, institutions would report, for each award year, information about each student who was enrolled in a GE program and received title IV, HEA program funds for enrolling in that program.

Specifically, under the proposed regulations, the required reporting would include:

• Information needed to confirm the identity of the student, such as the student's name, Social Security Number, and date of birth and the institution;

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

• Whether the GE program is a medical or dental program whose students are required to complete an internship or residency;

• The date the student first enrolled in the GE program;

to provide no relief for a claim that the loan was arranged for enrollment in an institution that was ineligible, or that the institution arranged the loan for enrollment in an ''ineligible program.'' 34 CFR 682.402(e); 59 FR 22470 (April 29, 1994), 59 FR 2490 (Jan. 14, 1994).

• The student's attendance dates and attendance status in the GE program during the award year; and

• The student's enrollment status (i.e., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program.

Further, if the student completed or withdrew from the GE program during the award year, the institution would report:

• The date the student completed or withdrew from the program;

• The total amount the student received from private education loans for enrollment in the program that the institution is, or should reasonably be, aware of;

• The total amount of institutional debt incurred for enrollment in the program that the student owes any party after completing or withdrawing from the program;

• The total amount of tuition and fees assessed the student for the student's entire enrollment in the GE program; and

• The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance, pursuant to section 472 of the HEA, for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution.

Finally, as in the 2011 Prior Rule, the proposed regulations would require an institution to provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

No later than July 31 of the year the regulations take effect, institutions would be required to report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31. For all subsequent award years, institutions would report not later than October 1 following the end of the award year, unless the Secretary establishes a later date in a notice published in the **Federal Register.** The proposed regulations would give the Secretary the authority to, through a notice published in the **Federal Register,** specify a reporting deadline later than October 1, as well as the authority to identify additional reporting items, after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the PRA.

For example, if these regulations become effective on July 1, 2015, institutions must report information for the 2008–2009 through the 2013–2014 award years no later than July 31, 2015. For medical and dental programs, the institution must also include information from the 2007–2008 award year.

Under this example, unless the Secretary establishes a later date by notice in the **Federal Register,** institutions must report information for the 2014–2015 award year by October 1, 2015, and continue to report each subsequent award year by October 1 following the end of the award year on June 30.

We note that the terms ''CIP code'' and ''credential level,'' which are defined in proposed § 668.402, are first substantively used in proposed § 668.411 and are therefore explained here. The proposed regulations contain similar definitions as the 2011 Prior Rule; however, we have included separate definitions of both of these terms in § 668.402. In our proposed definition of CIP code, we refer, as we did in the 2011 Prior Rule, to a taxonomy of instructional program classifications and descriptions as developed by NCES. In the definition of ''credential level,'' we are identifying more specific credential levels than we did in the 2011 Prior Rule and have broken some of those levels into sub-categories. Thus, the undergraduate credential levels would be: less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree; and the graduate credential levels would be post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Reasons: Certain student-specific information is necessary for the Department to implement the provisions of proposed subpart Q, specifically to calculate the D/E rates and the pCDR for GE programs under the accountability framework. This information is also needed to calculate the completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings disclosures under proposed § 668.412. As discussed in ''§ 668.401 Scope and purpose,'' the proposed reporting requirements are designed, in part, to facilitate the accountability of institutions for, and the transparency of, GE program student outcomes by: ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about GE programs to inform student and prospective student decision-making; help the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and allow institutions to see which programs produce exceptional results for students so that those programs may be emulated.

Unlike in the 2011 Prior Rule, under the proposed regulations, institutions would not report information on students who did not receive title IV, HEA program funds for enrollment in the GE program. To align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment in GE programs, we have defined ''student'' for the purpose of subpart Q to be an individual who receives title IV, HEA program funds for enrollment in the applicable program. See ''§ 668.401 Scope and purpose'' for a complete discussion of the definition of ''student.'' The proposed regulations also differ from the 2011 Prior Rule in that the proposed regulations add the reporting of information necessary to implement provisions of proposed subpart Q that were not in the 2011 Prior Rule and, conversely, do not include requirements that were relevant to provisions in the 2011 Prior Rule that are not in the proposed regulations.

To enable the Secretary to calculate a program's GE measures and the relevant disclosures, an institution would be required to provide information to identify itself, the student, and the GE program in which the student was enrolled during the award year.

The proposed regulations would require institutions to report the length of the program. Under § 668.6 in the 2011 Current Rule, an institution is required to make several disclosures that are tied closely to the definition of ''normal time,'' namely, the tuition and fees it charges a student for completing the program within normal time, as well as the percentage of students who completed the program within normal time (the on-time graduation rate). ''Normal time'' is defined in § 668.41(a) as ''the amount of time necessary for a student to complete all requirements for a degree or certificate, according to the institution's catalog.''

In the proposed regulations, particularly in the reporting and disclosure requirements in §§ 668.411 and 668.412, we refer to the ''length of the program'' instead of to the ''normal time'' of the program. The ''length of the program'' would be defined as the amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program. The institution would report this information under § 668.411 and disclose the information under § 668.412(a)(3).

Although the substance of the definitions of ''normal time'' and ''length of the program'' is similar, we believe that the change in terminology is necessary to promote uniformity in the reporting requirements between the proposed regulations and the Moving Ahead for Progress in the 21st Century Act (MAP–21) that amended the HEA. MAP–21 limits a borrower's receipt of Direct Subsidized Loans to ''a period equal to 150 percent of the published length of the educational program in which the student is enrolled.'' Accordingly, the Department must collect the published length of the program to determine the borrower's maximum eligibility for such loans. Consistent with guidance issued by the Department for § 668.6(b) and in the preamble to the Interim Final Regulations establishing 34 CFR 685.200(f), published May 16, 2013, in the **Federal Register** (78 FR 28953), the length of the program that an institution must report is the amount of time that it takes full-time students to complete the program. This must be reported and disclosed in terms of calendar time—weeks, months, or years. We also believe that requiring this disclosure along with credential level disclosures would provide greater transparency about whether the length of the program is appropriate in light of the credential to be attained. Although the Department makes this type of assessment under § 668.14(a)(26), we request comment on other ways the Department could ensure that program lengths identified by institutions in their program participation agreements are appropriate given the credential level for the program.

In § 668.402 of the proposed regulations, we would establish separate definitions for ''CIP code'' and ''credential level.'' The proposed definition of ''CIP code'' largely mirrors the definition in the 2011 Prior Rule but would add specificity about the elements that make up a CIP code. We think this specificity would be helpful to institutions in identifying programs for the purpose of the reporting requirements.

In the proposed definition of ''credential level,'' we would also identify more specific credential levels than we did in the 2011 Prior Rule. The proposed definition includes a listing of the credential levels for use in the definition of a GE program. Specifically, we propose three different credential levels for undergraduate certificate programs, whereas the 2011 Prior Rule had only one. This breakdown of undergraduate certificate programs is necessary to properly identify the program for the purpose of both calculations of a program's D/E rates and pCDR and disclosures. For example, a one-year or shorter GE program offered by an institution under a specific CIP code is significantly different, in terms of student debt, costs, completion, etc., than a two-year program offered by the institution under the same CIP code. In addition, the proposed regulations would add a credential level for graduate certificate programs because of the interest rate provision in proposed § 668.403(b)(2), which uses a different interest rate for graduate programs. Reporting whether the program is a medical or dental program that includes an internship or residency is necessary because the proposed regulations in § 668.404 would use a different two-year cohort period—the sixth and seventh award years prior to the award year—in calculating the D/E rates for those programs. See ''§ 668.404 Calculating D/E rates'' for a discussion of why these programs would be evaluated differently.

The dates of a student's attendance in the GE program and the student's attendance status (i.e., completed, withdrawn, or still enrolled) and enrollment status (i.e., full-time, three-quarter-time, half-time, and less than half-time) would be needed by the Department to attribute the correct amount of a student's title IV, HEA program loans that would be used in the calculation of a program's D/E rates. These items would also be needed to identify:

- The program's former students for inclusion on the list submitted to SSA to determine the program's mean and median annual earnings for the purpose of the D/E rates calculation; and
- The borrowers who would be considered in the calculation of the program's pCDR, completion rate, withdrawal rate, loan repayment rate, median loan debt, and median earnings.

We would require the amount of each student's private education loans and institutional debt, along with the student's title IV, HEA program loan debt, to determine the debt portion of the D/E rates. During the negotiations, several of the non-Federal negotiators recommended that, in addition to FFEL and Direct Loans, the D/E rates take into account Federal Perkins Loans that were received by students for enrollment in a GE program. At that time, the Department noted that institutions would have to report Federal Perkins Loan amounts, as NSLDS did not have the necessary detail to correctly attribute Perkins Loans to a GE program. However, we have now determined that the necessary information is available without requiring any additional Perkins Loan reporting by institutions.

We would also require institutions to report the cost of tuition and fees and the cost of books, supplies, and equipment to calculate the D/E rates because, as provided under proposed § 668.404, in determining a GE program's median loan amount, each student's loan debt would be capped at the total of those two amounts. See ''§ 668.404 Calculating D/E rates'' for a discussion of why this cap is included in the calculation.

One non-Federal negotiator asked why institutions would not be required to report the SOC codes for the occupations that a program prepares students to enter. We responded that the institutional reporting under this section of the proposed regulations is at the student level and not on a program level. We also note that under the proposed disclosure requirements in § 668.412, institutions would disclose the occupations that the program prepares students to enter and this disclosure would include SOC codes.

Several of the negotiators, particularly those representing postsecondary institutions, asserted that the proposed reporting would be overly burdensome. We understand this concern and will continue to consider ways to reduce reporting burden. To that end we invite comment on how that may be accomplished. Nonetheless, we believe that the benefits to students and to taxpayers stemming from the reporting requirements under proposed subpart Q, which allow implementation of the proposed accountability and transparency frameworks, far outweigh any additional institutional burden. Further, we note that the information reported enables the Department to calculate each program's GE measures and disclosure items, which we believe is more efficient, much less burdensome, and results in greater accuracy than requiring institutions to perform these calculations, though we welcome comment on the advantages of having institutions perform these calculations.

We propose to retain the provision from the 2011 Prior Rule requiring an institution to provide the Secretary with an explanation of why it has failed to comply with any of the reporting requirements. Because the Department would use the reported information to calculate the GE measures and the institutional disclosures, it is essential for the Secretary to have information about why an institution may not be able to report the information.

One negotiator argued that the combination of the reporting requirements of the proposed GE regulations and the reporting requirements resulting from the regulations promulgated on May 16, 2013, to implement the 150% Direct Subsidized Loan limit under section 455(q) of the HEA would result in the creation of a student unit records system in a form that is prohibited by section 134 of the HEA. That is not the case. Section 134(b) of the HEA allows the continued operation of a database necessary to implement title IV, HEA programs if that database was in operation prior to the enactment of section 134(b) of the HEA on August 14, 2008. 20 U.S.C. 1015c(b). Although NSLDS is a student unit database, it is one that is explicitly permitted under section 134(b) because it has been in operation prior to August 14, 2008, and it is necessary for the Secretary to properly administer the title IV, HEA programs.

Section 668.412 Disclosure Requirements for GE Programs

Disclosures

Current Regulations: Section 668.6(b) of the 2011 Current Rule requires an institution, for each program that prepares students for gainful employment in a recognized occupation, to disclose information about:

(1) the occupations that the program prepares students to enter, along with links to occupational profiles on O*NET;

(2) the on-time graduation rate for students completing the program;

(3) the cost of tuition and fees, books and supplies, and room and board, and a link to other cost information;

(4) the placement rate for students completing the program, as determined under a methodology to be developed by NCES when it becomes available, and, in the meantime, if required by the institution's accreditor or State, a program-level placement rate using the methodology required by the accreditor or State; and

(5) the median loan debt incurred by students who completed the program, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans.

Proposed Regulations: Although the proposed regulations would replace § 668.6(b) of the 2011 Current Rule, they would retain many of the same concepts. The proposed changes would expand the amount of information that the Department may require to be disclosed and increase the Department's flexibility to tailor the disclosures in a way that would be most useful to students and minimize burden to institutions.

Under the proposed regulations, the disclosure items would include, but would not be limited to:

(1) the primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to the corresponding occupational profiles on O*Net;

(2) the GE program's completion and withdrawal rates for full-time and less-than-full-time students;

(3) the length of the program in calendar time (i.e., weeks, months, years);

(4) the number of clock or credit hours, as applicable, in the program;

(5) the total number of individuals enrolled in the program during the most recently completed award year;

(6) the loan repayment rate for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period: all students who enrolled in the program, students who completed the program, or students who withdrew from the program;

(7) the total cost of tuition and fees, and the total cost of books, supplies, and equipment that students would incur for completing the program within the length of the program;

(8) the placement rate for the program, if the institution is required to calculate a placement rate by its accrediting agency or State;

(9) of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program;

(10) as provided by the Secretary, the median loan debt incurred by any or all of the following groups: students who completed the program during the most recently completed award year, students who withdrew from the program during the most recently completed award year, or both those groups of students;

(11) as provided by the Secretary, the median earnings of any one or all of the following groups: students who completed the program during the applicable cohort period used to calculate the most recent D/E rates for the program, students who were in withdrawn status at the end of the applicable cohort period used to calculate the most recent D/E rates for the program, or both students who completed the program during the applicable cohort period used to calculate the most recent D/E rates and students who were in withdrawn status at the end of that applicable cohort period;

(12) the most recent pCDR as calculated by the Secretary under proposed § 668.407;

(13) the most recent annual earnings rate as calculated by the Secretary under proposed § 668.404;

(14) if applicable, whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the institution is located and in any other State included in the institution's Metropolitan Statistical Area (according to OMB guidelines);

(15) if applicable, the programmatic accreditation required for an individual to obtain employment in the occupation for which the program prepares a student; and

(16) a link to the College Navigator Web site.

From year to year, in a notice published in the **Federal Register**, the Department would identify which of the disclosure items institutions must include on their disclosure templates; where applicable, whether the disclosures should be disaggregated to reflect students who completed the program, students who did not complete the program, or both students who completed and those who did not complete the program; and any other information that must be disclosed. If the Secretary were to require disclosure of completion rates, withdrawal rates, loan repayment rates, median loan debt, or median earnings, the Secretary would calculate the required information for each GE program based on information reported by the institution to the Secretary under proposed § 668.411 and provide the required disclosure to the institution to disclose.

The principal differences from the 2011 Prior Rule are that: the proposed disclosures for all items, except for the number and percentages of the number of individuals who incurred debt for enrollment in the GE program and completed or withdrew from the program, would be made only for students who received title IV, HEA program funds; the proposed disclosures could be required for all students enrolled in a program or disaggregated by whether or not they completed the program so as to provide students with the information necessary to make more informed choices; and the Department would have more flexibility to change the required disclosures from year to year to reflect new evidence about what information is most helpful to students.

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

In particular, the proposed disclosures would provide prospective and enrolled students the information they need to make informed decisions about their educational investment, including where to spend their limited title IV, HEA program funds and use their limited title IV, HEA program eligibility. Prospective students trying to make decisions about whether to enroll in a GE program would find it useful to have easy access to information about the jobs that the program is designed to prepare them to enter, the likelihood that they will complete the program, the financial and time commitment they will have to make, their likely debt burden and ability to repay their loans, their likely earnings, and whether completing the program will provide them the requisite coursework, experience, and accreditation to obtain employment in the jobs associated with the program.

The proposed disclosures would also provide valuable information to enrolled students considering their ongoing educational investment and post-completion prospects. For example, we believe that disclosure of completion rates for full-time and less-than-full-time students would inform prospective and enrolled students as to how long it may take them to earn the credential offered by the GE program. Similarly, we believe that requiring institutions to disclose pCDRs, annual earnings rates, and loan repayment rates would help prospective and enrolled students to better understand how well students who have attended the program before them have been able to manage their loan debt, which could influence their decisions about how much money they should borrow to enroll in the program. For a discussion about the pCDR and annual earnings rates and why we believe they are valuable measures of student outcomes, please see the discussion under ''§ 668.403 Gainful employment framework.'' We address the loan repayment rate briefly in this section and more extensively under ''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.''

Additionally, to the extent that an institution does not systematically gather or calculate some of this information, particularly with respect to the completion, withdrawal, and repayment rates, median loan debt, and median earnings, the Secretary's calculation of this information for institutions could aid them in targeting their efforts and resources toward ongoing improvement in those areas where their programs are not performing well.

Disclosure Items, Generally

Disclosures Regarding Students Receiving Title IV, HEA Program Funds

Unlike in the 2011 Prior Rule, to align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment, the proposed disclosures would be made only with regard to students who received title IV, HEA program funds for enrollment in the GE program, with the exception of the disclosure of the number and percentage of individuals who incurred debt for enrollment in the GE program. See ''§ 668.401 Scope and purpose'' for a complete discussion of our proposed definition of ''student.''

Many of the non-Federal negotiators strongly disagreed with this approach, raising numerous concerns. First, several negotiators argued that excluding students who do not receive title IV, HEA program funds greatly reduces the usefulness of the information. In particular, they noted that the disclosures would not reflect the outcomes of all of the students enrolled in the program. They believed that providing data on all students enrolled in the program would provide a more complete picture of the program that would be meaningful to a broader spectrum of students, regardless of whether those students rely on Federal student assistance to enroll in the program.

Second, the negotiators raised concerns that some programs would have too few students who received title IV, HEA program funds to disclose the required information without jeopardizing student privacy. For instance, in cases where only a small number of students who received title IV, HEA program funds completed the program in a prior award year, the Department might not require the program's completion rate to be disclosed to protect the privacy of those students. The negotiators believed that limiting the disclosures to only those students receiving title IV, HEA program funds would increase the likelihood that information would be withheld in the disclosures, particularly given the proposed definition of credential level, which breaks out credential level to a greater degree than does the 2011 Current Rule.

To address this issue, several negotiators proposed different approaches. Some of the negotiators urged the Department to broaden the definition of ''student'' for purposes of the reporting and disclosure requirements to include all students enrolled in a GE program during an award year. These negotiators believed that the Department could collect data on all students enrolled in a GE program to prepare the aggregate information institutions would disclose in the template without storing any information in the student database about the individual students in the program who did not receive title IV, HEA program funds.

Several negotiators proposed that, as an alternative, institutions, rather than the Secretary, calculate and disclose the completion and withdrawal rates for all students enrolled in the program so that the Secretary would not have to collect information about students who do not receive title IV, HEA program funds. Other negotiators, however, argued strongly that the Department should calculate these rates in order to ensure the integrity of the data and to reduce burden on institutions.

One negotiator proposed broadening the scope of the disclosures and reporting to require that all students who have filed a FAFSA be included, regardless of whether those students subsequently received title IV, HEA program funds. The negotiator argued that this approach would permit the Department to retain that information in its student database so that the program's disclosures would more accurately portray the students in a GE program while arguably acting in alignment with *APSCU* v. *Duncan.* We discuss this proposal in ''§ 668.401 Scope and purpose.''

Although we understand the negotiators' concerns, we believe that, for several reasons, the best approach is to include in the GE measures and all of the disclosures, except one, only students who received title IV, HEA program funds to enroll in the GE program.

First, this approach aligns with the court's interpretation of relevant law in *APSCU* v. *Duncan* because the Secretary would not add to the student database any information about the students enrolled in the GE program who did not receive title IV, HEA program funds.

Second, as the primary purpose of the proposed regulations is to evaluate whether a program should continue to be eligible for title IV, HEA program funds, we believe that, by limiting the GE measures and all but one of the disclosures to include only students who receive title IV, HEA program funds, the public, taxpayers, and the Government can effectively evaluate how the GE program is performing with respect to the students who received the Federal benefit. We also believe that disclosure of information that reflects solely the outcomes of students who received Federal dollars would be more relevant to similarly situated prospective students. Prospective students who intend to borrow for enrollment in a GE program would know specifically how students in similar economic circumstances fared in the program.

Third, the Secretary seeks to reduce the regulatory burden on institutions by performing the calculations of the completion, withdrawal, and repayment rates. In the interest of reducing institutions' regulatory burden, the Department also would calculate median loan debt using the data reported by the institutions. In addition to reducing institutional burden, this approach would ensure that students benefit from reliable data. Although we propose that the Department, rather than institutions, would calculate the rates required for disclosure, we invite specific comment on this question.

There is one set of disclosures that we believe institutions should calculate. Although the Department's calculations of median loan debt would be based only on the loan debt of students who completed the program, we are proposing that institutions be required to disclose the percentage of students who incurred loan debt to enroll in the program and who either completed the program during the most recently completed award year or withdrew from the program during the most recently completed award year. We believe this information would be particularly useful to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. Specifically, it would provide information about the number of students who are incurring loans, whether under the title IV, HEA programs or not, to enroll in a GE program and the extent to which those students complete or withdraw from the program.

We also note that, for small programs for which complete data are not available because of applicable privacy laws, institutions must still disclose several items, including the primary occupations the program prepares students to enter, the length of the program, the number of students enrolled in the most recently completed award year, the program costs, the link to the Department's College Navigator Web site, and licensure and programmatic accreditation information.

Program Comparability and Utility

Although several negotiators, in particular the representatives for consumers, students, and State Attorneys General, argued strongly for robust disclosures for GE programs, other negotiators argued that the proposed disclosures would not be meaningful to students because of a lack of comparability across institutions and because of the amount of information to be provided. Another negotiator contended that a proprietary institution offering a high-performing degree program would be required to make the disclosures, whereas a public institution offering a low-performing degree program in the same field would not fall under the proposed regulations and consequently would not be subject to the disclosure requirements. These negotiators, who primarily represented proprietary institutions, argued that these types of scenarios demonstrate that requiring disclosures only for GE programs instead of for all programs undermines the value of the information for consumers and unfairly burdens institutions offering GE programs.

Several negotiators also warned that requiring so many disclosures carries the risk of overwhelming consumers with information to the point that the disclosures cease to influence behavior. Some of these negotiators recommended limiting the information to be disclosed to program completion rates and the earnings and debt levels of students completing the program. They argued that providing fewer, but still valuable, data points would serve consumers effectively while reducing burden on institutions. Additionally, one negotiator noted that the current conversation in the higher education community surrounding accountability is in flux, arguing that the items that we believe will be useful to students today might not be the most useful tomorrow.

We share the concerns raised by the negotiators that the disclosure information must be as comparable and meaningful as possible. However, we are using this rulemaking process to propose regulations specifically for programs that are required under the HEA to prepare students for gainful employment in recognized occupations. Given this specific focus, the Department is not establishing new disclosure requirements for non-GE programs through the proposed regulations. However, we believe that the proposed disclosures would still be valuable because they would provide comparable information across GE programs.

To address the concern about overwhelming consumers with too much information, the proposed regulations would allow the Secretary to identify from a number of possible disclosures which items must be disclosed for a particular award year through a notice published in the **Federal Register**. This would allow the Department to conduct consumer testing to ensure that the disclosures advance the goals of the transparency framework, the language is understandable for the intended audience, the manner of delivery is effective, and the disclosures are, on the whole, useful for consumers and to modify the required disclosures based on the results of the consumer testing and experience. In addition, we invite comment as to which disclosures might be most useful to students, prospective students, and their families.

Individual Disclosure Items

In general, requiring institutions to disclose information regarding their GE programs is consistent with the provisions of section 487(a)(8) of the HEA, which requires institutions to provide prospective students with recent graduation, employment, and State licensing information related to the jobs for which the institution provides training. The negotiators raised a variety of concerns, however, about the adequacy of individual disclosure elements, while others had suggestions for additional required disclosures.

Placement Rate

Some negotiators, particularly those representing consumer advocates, State Attorneys General, and students, strongly urged the Department to develop a national placement rate methodology for the purpose of the placement rate disclosure. They believed that placement information is critical to prospective students making a decision about where to enroll, and they argued that it is important to have a uniform methodology to allow for useful comparisons across programs. Further, these negotiators recommended standardizing the placement rate methodology to prevent an institution from manipulating or misrepresenting the program's placement rate, and they proposed parameters for how soon after graduation an individual must be employed, how long an individual must be employed in a job, and what types of jobs (i.e., in-field or out-of-field) an individual must hold, in each case for the job to be counted.

Some of the negotiators proposed an alternative approach, suggesting that the Department could develop a national placement rate methodology to function as the default methodology unless another entity, such as an accrediting agency or State, requires a more stringent methodology. They argued that this would be less burdensome for institutions that would have to calculate multiple rates, while still providing meaningful information. In particular, they noted that, because States and accrediting agencies vary widely in their methodologies, having a default methodology would protect consumers in situations where a non-Federal entity uses a weak placement rate methodology or does not require a placement rate.

Although we agree that comparable placement rate information would be valuable for prospective students, limitations in available data preclude the development of a national placement rate methodology that is consistent across all GE programs. The Department's NCES convened a technical review panel (TRP) in 2011 to develop a national placement rate methodology. The TRP determined that a single job placement rate methodology could not be developed without further study because of limitations in data systems and available data. The TRP suggested requiring greater transparency about how rates are currently calculated as an interim step for institutions disclosing these rates. See ''Report and Suggestions from IPEDS Technical Review Panel #34: Calculating Job Placement Rates'' at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/ipeds-summary91013.pdf* for a full discussion of the TRP's findings.

Accordingly, we propose to require an institution to disclose placement rates for its GE programs, if it is required to do so by its State or accrediting agency, using the methodology required by the State or accrediting agency. This approach would provide consumers with valuable information because such requirements are in place for many programs using the methodologies that the respective agencies have determined are appropriate for those programs.

In accordance with the TRP's recommendations to foster as much transparency as possible regarding how placement rates have been calculated, the gainful employment disclosure template that institutions must currently use to make disclosures under § 668.6(b) of the 2011 Current Rule requires an institution to provide information about the methodology (or methodologies, if an institution must calculate a rate for more than one entity) that it used. Specifically, the template requires institutions to explain which students were included in the calculation, whether or not the jobs in which the students were placed were related to the student's field of study, the positions that students were hired for, how long after graduation students were hired and for how long they were employed before they would be included in the calculation, and how students were tracked.

We would continue to include in the proposed disclosure template a field in which institutions would disclose their placement rate methodology. We request comment, however, on the best way to handle cases where an institution must calculate more than one placement rate to satisfy the requirements of multiple entities, e.g., multiple States or multiple accreditors. The current template allows institutions to disclose placement rate information for up to one State and up to one accrediting agency, though the template also provides institutions with a way to disclose additional calculated rates. We invite comment on whether the Department should modify the template to allow institutions to include placement rate information required by additional entities.

Median Loan Debt

Several of the negotiators raised concerns about our proposal to require the disclosure of median loan debt. First, some of the negotiators believed that the Department should require institutions to disclose the mean, instead of the median, loan debt, arguing that consumers are more familiar with means than medians and that the mean would be more valuable. Another negotiator suggested that if the Department uses the higher of the mean or median loan debt in the D/E rates calculation, then institutions should have to disclose both the median and the mean.

Second, a number of the negotiators were concerned that the median loan debt information would be artificially high because it would only take into account students who received title IV, HEA program funds. In addition to these concerns, some of the negotiators requested clarification as to which students would be included in the various possible median loan debt calculations and what types of loan debt would be included.

We agree that it is important that consumers have clear, meaningful information about loan debt. However, we disagree that it would necessarily be more helpful to use the mean, as both mean and median are measures of central tendency. We also do not believe that it would be helpful to consumers to provide both the mean and the median. In designing the disclosure template, the Department would explain what a median is in plain language to help consumers understand the information, and we would use consumer testing to determine the most effective wording in this regard.

With respect to concerns that considering only the loan debt of students receiving title IV, HEA program funds would provide insufficient information to consumers about the amount of loan debt students in a GE program incur, particularly at low-cost institutions with few borrowers, we believe that these concerns may be overstated and are outweighed by the benefits of reducing institutional burden and ensuring that accurate loan information is disclosed. First, our analysis indicates that, of students who borrow for enrollment in GE programs, most receive title IV, HEA loans.[64] Many of these students may also be receiving private and institutional loans in addition to their title IV, HEA loans, but we believe that the percentage of students who borrow exclusively from private or institutional lenders is relatively small. Second, calculating the loan debt as a median would likely mitigate any distortion in the disclosure that could result from not including private or institutional borrowers who do not receive title IV, HEA program funds.

Unlike the median loan debt calculation for the D/E rates, the median loan debt determination for the disclosures would not include students who had no debt or who received only title IV, HEA program grants but no loans. We believe that this approach would result in a more useful disclosure for consumers. For students who must

[64] U.S. Department of Education, 2012 National Post-Secondary Student Aid Study (NPSAS: 12).

borrow to attend a program, it would be more informative to know how much debt other students who borrowed had to take on. Including students who do not have debt would distort the disclosure. In comparison, because the D/E rates are a measure of the overall performance of a program and not of particular individuals, it is appropriate to take into account the debt of all students, even those with zero debt.

The median loan debt calculation for disclosure purposes could include the median loan debt of students who completed the program in the most recently completed award year, withdrew from the program during the most recently completed award year, or both. We note that these are different cohorts of students than the cohorts of students used in the calculation of the D/E rates. The D/E rates consider the median loan debt only of students who completed the program during the two- or four-year cohort period. For the proposed disclosure item, the median loan debt would be for only those students who completed or withdrew from the program during the most recently completed award year. Using the most recently completed award year would ensure that students are receiving the most current information possible, as opposed to information that is several years old.

The 2011 Current Rule considers only the loan debt incurred by students who completed the program. We continue to believe that this is valuable information. However, we also believe that it is significant for prospective students to know how much loan debt was incurred by students who did not complete the program because those former students are still responsible for repaying their loans even if they do not earn a credential, so we have proposed that as a possible disclosure item.

Again, the Secretary would publish a notice in the **Federal Register** specifying for which of these groups of students the median loan debt must be disclosed. The proposed regulations would provide the Secretary flexibility to determine, based on consumer testing and experience, the information that would be most valuable to prospective students.

State Licensure

Several negotiators, particularly those representing consumer advocates, State Attorneys General, and student representatives, argued that it is critical for prospective students to know the extent to which a program qualifies students who completed the GE program for State licensure in a given field. The negotiators and commenters during the public hearings in spring 2013 provided examples of cases where students were misled to believe that if they completed a particular GE program, they would be eligible to sit for State licensing exams or otherwise would have met the educational prerequisites to obtain a license in a particular State, when, in fact, they were not able to sit for the exam or otherwise obtain a license. Along these lines, negotiators and others have noted cases where students were misled to believe that they would be able to obtain a position in their field of study upon completion but later learned that the program didn't have the proper programmatic accreditation to allow them to sit for a licensing exam needed to practice in the field or to obtain a certification generally preferred by employers. For example, in the physical therapy field, students typically must graduate from a program accredited by the Commission on Accreditation in Physical Therapy Education in order to sit for a licensing exam (see *www.capteonline.org* for more information). As another example, although licensure requirements for dental assistants vary by State, most States require attendance at a program accredited by the Commission on Dental Accreditation in order to be eligible for licensure (see *www.danb.org* for more information).

Although other negotiators generally supported the proposal to require disclosure of this information, several, particularly those from institutions with locations in multiple States and those in areas where students often cross State lines to attend school and for employment, were concerned about the burden associated with providing these disclosures for every State. Further, some of the negotiators questioned the feasibility and enforceability of requiring institutions to determine which programmatic accreditation is generally necessary to obtain employment in a particular field and to then disclose that information to prospective students. Other negotiators pointed out that students can also substitute work experience for the program accreditation requirement, and this makes it harder to determine when program accreditation would be considered a requirement for a GE program.

We agree that information about licensure and programmatic accreditation is critical information for prospective students. Students dedicate months and years, as well as a significant amount of money—often using up their eligibility for Federal Pell and Federal Direct subsidized loans—to enroll in GE programs. Enrolling in a program that does not have the necessary accreditation or meet licensure requirements can have grave consequences for students' ability to find jobs and repay their loans after graduation. Accordingly, we have proposed that institutions must disclose whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the institution is located. Institutions with locations in multiple States must make this disclosure for every State in which they are located. To address concerns about situations where students regularly cross State lines for employment outside of the State in which the institution is located, we have proposed that institutions must disclose whether the program meets the licensure requirements for each of the States in the institution's Metropolitan Statistical Area (MSA), as published by OMB. We believe that this is a reasonable approach, as ''the general concept behind an MSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.'' [65] This concept seems appropriate for this context because it focuses on economic and employment mobility. More information about MSAs is available at *www.census.gov/population/metro/*. We specifically invite comment on whether a better measure can be used to identify when GE programs offered at institutions near State borders would be required to meet requirements established by adjacent States.

Additionally, we propose to require institutions to disclose the programmatic accreditation needed for an individual to obtain employment in the occupation identified by the institution. Similar to the licensure examples provided above, if a program does not have the proper accreditation, graduates of a program would be unable to seek employment in their occupations. It is therefore important that institutions perform due diligence to determine when programmatic accreditation would be needed and to inform prospective students of whether the program meets this requirement.

Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings Calculations

Several negotiators raised questions and concerns about how the completion, withdrawal, and repayment rates, median loan debt, and median earnings would be calculated. Please see

[65] *www.census.gov/population/metro/about/*.

''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings'' for additional discussion of these items.

Other Possible Disclosures

A few negotiators suggested additional items that institutions should have to disclose to prospective students, such as the amount of money that the institution spent on marketing and recruitment for the program, the employment rate, and the percentage of students enrolled in an income-based repayment plan. We have not proposed to add these disclosures because, first, we believe the proposed disclosures better address whether a GE program, in fact, meets the gainful employment requirement. Second, we are mindful both that we do not want to overwhelm students with disclosures and that, under the proposed regulations, the Secretary has the flexibility to modify the disclosures if it is determined, for example, through consumer testing, that such disclosures would be valuable to prospective or current students within the context of the proposed regulations.

Timing, Format, and Method of Disclosure

Current Regulations: Section 668.6(b)(2) of the 2011 Current Rule requires institutions to include the disclosures for each GE program in promotional materials made available to prospective students and to post the disclosure information on their Web sites. Specifically, institutions must prominently provide the information in a simple and meaningful manner on the home page of each GE program Web site, and they must include a prominent and direct link to the disclosures from any Web site containing general, academic, or admissions information about the program.

Proposed Regulations: Under proposed § 668.412(a), institutions would use a template provided by the Secretary to disclose the items identified in a notice published in the **Federal Register**.

Under proposed § 668.412(b), institutions would be required to update at least annually the information contained in the disclosure template, and the deadline and procedures for doing so would be specified by the Secretary. Additionally, institutions would have 30 days from the date that they receive notice from the Secretary that they must provide the student warning for a GE program (see ''§ 668.410 Consequences of GE measures'') to update their disclosure templates to include the warning for both enrolled and prospective students.

Under proposed § 668.412(c), institutions would be required to provide a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for each GE program on any Web page containing academic, cost, financial aid, or admissions information about that program. In this regard, the proposed regulations would provide the Secretary authority, beyond the remedies already available for noncompliance with title IV, HEA regulations, to require an institution to modify its Web page to ensure that the link to a GE program's disclosure template satisfies the requirement that the link be easy to find. Additionally, institutions would have the option to publish separate disclosure templates for each location or format of a GE program if doing so would result in clearer information for students. Institutions choosing to publish separate disclosure templates would have to ensure that each disclosure template clearly identifies the applicable location or format of the GE program to which the template refers.

Under proposed § 668.412(d), in addition to publishing their disclosures on their institutional Web sites, institutions would generally have to include the disclosure information in all promotional materials made available to prospective students identifying or promoting a GE program. The promotional materials must display the disclosure template in a prominent manner. Promotional materials would include materials such as, but not limited to, institutional catalogs, invitations, flyers, billboards, advertisements, and social media. The regulations would, however, allow institutions to include the Web address or direct link to the disclosure template where space or airtime constraints, such as with a 30-second radio advertisement, would preclude the full disclosure of the required information. Institutions that provide a Web address or URL in these cases would have to identify that URL or link as ''Important Information about the educational debt, earnings, and completion rates of students who attended this program'' or as specified by the Secretary in a notice published in the **Federal Register.** Institutions would be responsible for ensuring that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

Finally, proposed § 668.411(e) would require institutions to provide, as a separate document, a copy of the disclosure template to any prospective student. Specifically, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution would be required to obtain written confirmation from the prospective student that the prospective student received a copy of the disclosure template. These disclosures need not be made to foreign students, however, as they are not eligible to receive title IV, HEA program funds.

Reasons: As with the 2011 Current Rule, the proposed regulations include requirements relating to the timing, format, and method of disclosure that are designed to increase the likelihood that prospective and enrolled students receive and review the disclosures. These requirements are intended to provide students with readily accessible, understandable, and timely information about GE programs to inform their educational and financial choices while at the same time minimizing burden on institutions.

Updating and Distributing Disclosures

Several of the negotiators raised concerns about the timing of the disclosures and about ensuring that the disclosures could be easily found on an institution's Web site and in its promotional materials. With respect to the timing of the disclosures, the negotiators representing consumer advocates, State Attorneys General, and students urged the Department to require institutions to update their disclosures annually with the most current information and to add the student warning, if required under proposed § 668.410, as soon as possible, so that students can take that information into account when deciding where to enroll or whether to continue enrollment in the program. These negotiators also warned of the high-pressure tactics that predatory institutions might use to coerce prospective students to enroll, arguing that students need to have this information before they actually enroll in a program.

Some of the negotiators also raised concerns that some schools would try to hide their disclosures by burying them in large amounts of material or otherwise trying to draw a student's attention away from them. To address this issue, the negotiators proposed requiring institutions to provide the disclosures both in writing and orally and prohibiting institutions from using language to undermine, denigrate, or otherwise diminish the content of the disclosures. Other negotiators, particularly those representing institutions, challenged the feasibility of making oral disclosures to each student for every program of every program length. They argued that this would add significant burden for schools. In particular, they noted that this would be difficult for institutions that might not communicate in person with all of their students, such as those that offer distance education programs. In response, some of the negotiators asserted that the burden would be justified when students are taking on significant amounts of debt, and others suggested using video or other means such as entrance counseling to reach all students.

In the same vein, several of the negotiators urged the Department to ensure that Web links to the disclosures be prominent, clear, and conspicuous to ensure that prospective students would find and understand the information. They recommended that the link to the disclosure template be placed next to ''trigger terms'' like the program name and in a way that students would not have to scroll down a Web site to find it. Other negotiators, particularly those from institutions with multiple locations, raised concerns about being overly prescriptive about how and where an institution must include the links to the disclosures. These negotiators noted that institutions need flexibility to provide the information in the way that is best suited for their programs.

We share the negotiators' general concerns about ensuring that the required disclosures are provided to students in a timely and meaningful way, and we are proposing several provisions to address these concerns. First, we have proposed that institutions would have to update their disclosures annually in accordance with procedures and timelines established by the Secretary. Under the 2011 Current Rule, institutions updated their disclosures by January 31 in 2013 and 2014, and the Secretary provided institutions approximately two months to make those changes. We anticipate that under the proposed regulations, we would again require institutions to update their disclosures with information from the most recently completed award year annually in January. We note that because each award year ends on June 30, institutions would have several months to gather the necessary information to update their disclosures. We have also proposed that institutions would have to update their disclosure templates to include the student warning within 30 days of the date institutions receive final GE measures that trigger the requirement to provide the warning. We believe that this provides institutions sufficient time to update their disclosures while still ensuring that students have this critical information promptly.

Second, to address concerns about high-pressure enrollment tactics, we are proposing that an institution must make these disclosures to a prospective student before the student makes a financial commitment to the institution, for example, by signing an enrollment agreement or otherwise completing registration. Further, we are proposing that an institution would have to provide the disclosure template as a stand-alone document and would have to obtain written confirmation from the prospective student that the student received the disclosure template. In response to concerns raised by some negotiators, we note that institutions can accept electronic means of written confirmation, and we would provide additional guidance to institutions in this regard. We believe that these provisions would increase the likelihood that prospective students will have the time to read and digest the disclosures without facing undue pressure to enroll immediately.

Third, we have used terms like ''direct,'' ''prominent,'' and ''clear and conspicuous'' to highlight the fact that students should be able to reach the disclosures with a minimum number of clicks from the program home page and that the link should be placed on the Web site in a way that is obvious, eye-catching, and otherwise not difficult to find. The Federal Trade Commission (FTC) published guidance in 2013 on making disclosure information easy to find. In particular, the FTC recommends placing a hyperlink to a disclosure as close as possible to the relevant information it qualifies and to make it noticeable, to label the hyperlink appropriately to convey the importance, relevance, and nature of the information it leads to, and to repeat the hyperlink as needed on lengthy Web sites or when consumers have multiple routes through a Web site. (See the FTC's 2013 guidance at: *www.business.ftc.gov/sites/default/files/pdf/bus41-dot-com-disclosures-information-about-online-advertising.pdf.*) We would expect to provide similar guidance to facilitate compliance with these proposed requirements.

Finally, the proposed regulations provide institutions the flexibility to develop their disclosure templates, hyperlink pathways, and promotional materials in ways best suited for their programs. For example, we have proposed that institutions offering a GE program in more than one location or format would have the option to create separate disclosure templates for each location or format in order to provide clearer disclosures. We note, however, that institutions developing multiple templates for a GE program would have to ensure that these separate disclosure templates are clearly identified and labeled so that viewers would not be confused or misled by the information. Similarly, we have not specified a maximum number of ''clicks'' from the program home page or other Web pages related specifically to the program to the disclosure template in order to allow institutions to design reasonable hyperlink pathways.

For example, it would be acceptable for institutions with multiple locations of a program to include a pass-through page from the program's home page to the actual disclosure templates where a student would identify the specific campus for which the student would like the disclosure information. In order to promote compliance, however, we propose that the Department may require an institution to modify its Web page if the link for the disclosure template is not prominent, readily accessible, clear, conspicuous, and direct. This would allow the Department to work with schools to improve their disclosures without engaging in a lengthy and potentially adversarial program review.

Additionally, we have given institutions flexibility as far as how to incorporate the disclosures into their promotional materials. The proposed regulations require that institutions include the disclosure template or, where including the disclosure template is not feasible, a link to the template, in all promotional materials about the GE program made available to prospective students, including in materials like course catalogs, information session invitations, flyers, billboards, and advertisements. In including their disclosures, or a link to the disclosures, institutions would be required to identify the link as ''Important information about the educational debt, earnings, and completion rates of students who attended this program.''

We invite comment on the optimal format and placement of the disclosure template by the institution, recognizing the variations among institutions in Web site organization, the information conveyed, and how the enrollment process is conducted.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, and Median Earnings

Current Regulations: Section 668.6(c) of the 2011 Current Rule provides that institutions must calculate the on-time graduation rate for students completing the program. Because the 2011 Current Rule specifies that the institution will calculate the on-time graduation rate, the rule did not provide a process by which an institution would issue or challenge the rate.

The 2011 Current Rule does not require institutions to disclose withdrawal rates, repayment rates, or median earnings; however, it does require institutions to calculate and disclose the GE program's median loan debt. Under the 2011 Prior Rule, a loan repayment rate was used not as a disclosure item but, together with debt-to-earnings ratios, to determine the eligibility of a GE program for title IV, HEA program funds. See ''§ 668.403 Gainful employment framework'' for a discussion of the loan repayment rate under the 2011 Prior Rule.

Calculating Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings

Proposed Regulations: As discussed in connection with proposed §§ 668.411 and 668.412, under the proposed regulations, an institution could be required to disclose completion, withdrawal, and repayment rates, median loan debt, and median earnings for a GE program. Using the procedures proposed in § 668.413, and based on the information that institutions would report under proposed § 668.411, the Department would calculate the rates, median loan debt, and median earnings, and provide them to institutions for disclosure. The proposed regulations would provide an opportunity for institutions to challenge the Secretary's completion, withdrawal, and repayment rates and median loan debt and median earnings determinations, as discussed under ''Issuing and Challenging Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings.''

Completion Rates

Under proposed § 668.413(b)(1), the Secretary would calculate four completion rates for a GE program—two based on students whose enrollment status is full-time on the first day of the student's enrollment in the program, and two more based on students whose enrollment status is less-than-full-time on the first day of the student's enrollment in the program.

For the two completion rates based on full-time students in the enrollment cohort, we would determine the percentage of students who completed the program within 100 percent of the length of the program and the percentage of students who completed the program within 150 percent of the length of the program. For the two completion rates based on less-than-full-time students in the enrollment cohort, we would determine the percentage of students who completed the program within 200 percent of the length of the program and within 300 percent of the length of the program.

Withdrawal Rates

Under proposed § 668.413(b)(2), the Secretary would calculate two withdrawal rates for the program. One rate would be the percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program. The second rate would be the percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program. The enrollment cohort would be comprised of the students receiving title IV, HEA program funds who enrolled in the program at any time during the relevant award year.

Repayment Rates

Under proposed § 668.413(b)(3), the Secretary would calculate a borrower-based loan repayment rate for borrowers with FFEL or Direct Loans for enrollment in a GE program by adding together the ''number of borrowers paid in full'' to the ''number of borrowers in active repayment'' and dividing the sum by the ''number of borrowers entering repayment.''

Number of borrowers entering repayment are those who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the GE program.

Number of borrowers paid in full would be, of the borrowers entering repayment, those who have fully repaid all of their FFEL or Direct Loans received for enrollment in the GE program. For instances where a loan was consolidated with one or more other loans, the consolidation would not result in the consolidated loans being viewed as paid in full. The repayment status of the consolidation loan would instead be used for the repayment rate calculation, as discussed more fully below.

Number of borrowers in active repayment would be those borrowers entering repayment who, based on a comparison of the outstanding balance of each loan at the beginning and end of the most recently completed award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL loans or Direct Loans received for enrollment in the GE program (or consolidation loans that include FFEL or Direct Loans taken out for enrollment in the GE program).

In the calculation, a borrower who defaulted on a loan taken out for enrollment in the GE program would not be included in the number of borrowers in active repayment even if the loan has subsequently been paid in full or met the definition of active repayment. That borrower would, however, be included in the number of borrowers entering repayment.

The Secretary would exclude from the repayment rate calculation those borrowers who:

- Have one or more FFEL or Direct Loans in a military-related deferment status at any time during the most recently completed award year;
- Have one or more FFEL or Direct Loans under consideration, or approved, for a discharge on the basis of the borrower's total and permanent disability;
- Were enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or
- Have died.

The proposed regulations would also provide that the Secretary may modify the loan repayment rate formula to calculate a repayment rate for only those borrowers who completed the program or for only those borrowers who withdrew from the program.

Median Loan Debt

Under proposed § 668.413(b)(4), (b)(5,) and (b)(6), the Secretary would determine and provide to institutions the median loan debt of a GE program for students who completed the program, students who withdrew from the program, and for both students who completed and students who withdrew from the program during the most recently completed award year. In calculating the median loan debt, the Secretary would include only the GE program's former students who received title IV, HEA program funds for enrollment in the program. And, unlike the median loan debt used in the calculation of D/E rates, where students who do not have title IV loans would be included, the median loan debt used for disclosure would be based only on students who received title IV, HEA program loans, but would include all debt, including private loans, incurred by those students related to enrollment in the program.

The median loan debt would be calculated using each student's incurred debt, as described in proposed § 668.404(d)(1), that is title IV loans, private educational loan debt, and debt from institutional financing.

Median Earnings

Under proposed § 668.413(b)(7)-(b)(12), the Secretary would determine and provide to institutions the median earnings of a GE program for students who completed the program, students who withdrew from the program, and for both students who completed and students who withdrew from the program during the applicable cohort period.

For students who completed a program, the Secretary would determine median earnings using generally the same process as the one used to calculate the D/E rates for a GE program in proposed § 668.405. Specifically, the Secretary would:

- Create a list from Department records of the students who completed the program during the applicable cohort period (§ 668.413(b)(8)(ii)(A)(*1*));
- Indicate which students would be removed from the list and the specific reason for their exclusion (§§ 668.413(b)(8)(ii)(A)(*2*); 668.413(b)(11));
- Provide the list of students to the institution and consider any changes to the list proposed by the institution (§§ 668.413(b)(8)(ii)(B); 668.413(b)(8)(iii));
- Obtain from SSA or another Federal agency the median annual earnings of the students on the list (§ 668.413(b)(8)(iv)); and
- Notify the institution of the median annual earnings of the students who completed the program (§ 668.413(c)(3)).

As with the process used to calculate D/E rates, in providing the list of students who completed the program, the Secretary would state which cohort period was used to select the students. Depending on the number of students who completed the program in the two-year cohort period the proposed regulations would use one of two different cohorts to determine a program's median earnings. Specifically, if 30 or more students completed the program in the two-year cohort period, the median earnings for the program would be calculated based on the earnings of those students. But if fewer than 30 students completed the program during the two-year cohort period, the median earnings for the program would be calculated based on the earnings of the students who completed the program in the four-year cohort period.

Under proposed § 668.413(b)(9), for students who withdrew from a GE program, the Secretary would follow a similar process. Under proposed § 668.413(b)(9), the Secretary would:

- Create a list from Department records of the students who were enrolled in the program but withdrew from the program during the applicable cohort period (§ 668.413(b)(9)(ii)(A)(*1*));
- Indicate which students would be removed from the list and the specific reason for their exclusion (§§ 668.413(b)(9)(ii)(A)(*2*); 668.413(b)(11));
- Provide the list of students to the institution and consider changes to the list proposed by the institution (§§ 668.413(b)(9)(ii)(B); 668.413(b)(9)(iii));
- Obtain from SSA or another Federal agency the median annual earnings of the students on the list (§ 668.413(b)(9)(iv)); and
- Notify the institution of the median annual earnings for the students who did not complete the program (§ 668.413(c)(3)).

The Secretary would use a similar process, as outlined previously for calculating the median earnings of students who completed the program, to determine the applicable cohort period for the purpose of creating the list of students who withdrew from the program and determining their median earnings.

To determine the median earnings of the combined group of students who completed the program and who withdrew from the program, the Secretary would follow the same process, but would create a combined list of students who completed the program and students who withdrew from the program and use that list as the basis for the calculation (§ 668.413(b)(10)).

Reasons: The proposed regulations describe how the Secretary would calculate a program's completion, withdrawal, and repayment rates, median loan debt, and median earnings and provide the results to the institutions. In the interest of fairness and due process, institutions would have an opportunity to correct the information the Secretary uses to calculate the completion, withdrawal, and repayment rates, median loan debt, and median earnings. The corrections procedures in proposed § 668.413 mirror the related procedures in § 668.405 for calculation of the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a more detailed description of those procedures and our reasons for proposing them.

Completion Rate

The 2011 Current Rule provides for an institution to calculate the on-time graduation rate for its GE programs. In contrast, we are proposing that the Secretary would calculate completion rates for an institution's GE programs that reflect the extent to which students completed the program within 100 percent and 150 percent of the length of the program.

The proposed regulations address concerns raised by commenters during the public hearings and by some of the non-Federal negotiators during the negotiated rulemaking about whether institutions or the Secretary would be in the better position to calculate completion rates.

A number of non-Federal negotiators recommended that we follow the approach in the 2011 Current Rule and provide that institutions, rather than the Secretary, should calculate the completion rate. They noted that, if the Secretary were to calculate the completion rate, (1) institutions would be required to report additional information under proposed § 668.411 and (2) the calculation would be limited to students receiving title IV, HEA program funds, in alignment with *APSCU* v. *Duncan.* See ''§ 668.401 Scope and purpose'' for a general discussion of our focus on students who receive title IV, HEA program funds and ''§ 668.412 Disclosure requirements for GE programs'' for a discussion of the various considerations regarding the group of students (i.e., students receiving title IV, HEA program funds or all students) on which disclosures are proposed to be based. Many of the non-Federal negotiators believed that there would be more value for prospective students if the completion rates included all students who enrolled in the program and not just those who received title IV, HEA program funds. In addition, the negotiators were concerned that if the Secretary were to calculate completion rates, in order to provide an appropriate due process, the Secretary would have to provide institutions with an opportunity to challenge the calculation, potentially delaying the inclusion of the rates on the disclosure template.

Other negotiators strongly favored having the Secretary calculate the completion rates to better ensure the integrity of the information and to lessen the burden on institutions. After consideration of the various negotiator suggestions, we believe that the benefits of (1) ensuring that all completion rates are calculated consistently and accurately across institutions and across programs; (2) reducing the burden on institutions to calculate multiple rates; and (3) providing the Department the opportunity to gather and analyze completion information for all GE programs outweigh any drawbacks associated with limiting the coverage of these disclosures to students who received title IV, HEA program funds. Nonetheless, we invite comment on the question of whether the Secretary or institutions should calculate completion rates for the respective groups of students.

Committee members urged the Department to modify the completion rate calculation to show the percentage of all students who completed the program, rather than just the percentage of students who completed the program on time, as is set forth in the 2011 Current Rule. Negotiators argued that this change would provide for more meaningful information for prospective students. In addition, some of the negotiators raised concerns that a single completion rate indicating the extent to which full-time students completed a program on time would not adequately reflect the experience of part-time students, many of whom withdraw and re-enroll multiple times before completing a program. In this regard, some of the negotiators noted that students often change their enrollment status during the term, and they discussed how to include in the completion rate students who began a program as full-time students but then switched to less-than-full-time status. To address this concern, the negotiators suggested fixing a student's enrollment status at a certain point, such as on the first day of class or on a census date. The negotiators also noted that, given the proposal to narrow the definition of ''student'' to include only students who received title IV, HEA program funds, a completion rate for only full-time students could dramatically reduce the completion rate for a particular GE program. Lastly, while several negotiators urged the Department to include additional completion rates for part-time students, others argued that having four rates would overwhelm students and prospective students and ultimately would not provide meaningful information.

To address these concerns, we are proposing that the Secretary would, using data reported by an institution, calculate and provide to the institution for disclosure up to four different completion rates for each of its GE programs when the Secretary identifies those completion rates as required disclosures for a particular award year. In calculating these rates, the Secretary would use a ''snapshot'' of a student's enrollment status (i.e., full-time, less-than-full-time) on the first day of the student's enrollment in the program. Although this would not reflect changes in a student's enrollment status during the student's entire enrollment, we believe, and some committee members agreed, that this is a reasonable way to establish cohorts for this purpose, as it generally reflects the intent of the student at the beginning of his or her enrollment in the program.

To ensure that enrolled and prospective students have information about the percentage of students who reach completion, rather than just the percentage of students completing the program on time as is the case with the 2011 Current Rule, and, additionally, how long students are taking to complete the program, the calculations for full-time students would be based on the number of full-time students who completed the program within 100 percent of the length of the program, and the number of full-time students who completed the program within 150 percent of the length of the program. Similarly, with respect to less-than-full-time students, the calculations would be based on the number of less-than-full-time students who completed the program within 200 percent of the length of the program, and the number of less-than-full-time students who completed the program within 300 percent of the length of the program.

We believe that calculating completion rates using these four variations would adequately capture the experience of full-time and part-time students, and that this information would be beneficial to both enrolled and prospective students, as well as to institutions as they work to improve outcomes for students. However, we are mindful of the concerns raised by some of the committee members that multiple completion rates might be confusing. We invite comment on how the completion rate calculations could be simplified but still provide meaningful information to prospective students.

Withdrawal Rate

The 2011 Current Rule does not require disclosure of a GE program's withdrawal rates. However, we believe this information can be very valuable to students, as discussed in ''§ 668.412 Disclosure requirements for GE programs.''

As with completion rates, committee members disagreed as to whether the withdrawal rate should be calculated by the institution or the Department and, related to that, whether the calculation should include only students who received title IV, HEA program funds or all individuals who enrolled in and withdrew from the program, whether or not they received title IV, HEA program funds. As with completion rates, we concluded that the benefits of ensuring consistent and accurate calculations, reducing burden on institutions, and providing an opportunity for the Department to obtain data outweigh concerns about limiting the disclosure to those students who received title IV, HEA program funds. As with completion rates, however, we seek specific comment on the question.

The negotiators had two other suggestions concerning the withdrawal rate. First, some recommended extending the period of time over which the rate is calculated to mirror the proposed extended completion rate periods. Second, some of the negotiators suggested replacing the withdrawal rate with an attrition rate to reflect the turnover of students who enroll in a program.

We propose that there be two withdrawal rate calculations. One would consider the percentage of students in the enrollment cohort who withdrew from the program at any time during the length of the program, beginning upon the student's original enrollment in the program, within 100 percent of the length of the program. The second rate would be the percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program. We think this second variation of the rate would provide valuable information to students about when students withdraw from their programs. As with other items on the disclosure template, we would conduct consumer testing to assess how best to present these variations of withdrawal rate.

We agree that an attrition rate would provide useful information; however, we believe that prospective students would better understand a withdrawal rate. That is, it would be more intuitive for consumers looking at a GE program's disclosures to understand that the withdrawal rate reflects how many students began the program but dropped out before completing the program. Additionally, we think these rates would be useful to prospective students to assess whether an institution may have a ''churn'' problem, where many students are enrolling, but are dropping out. Making a ''churn'' problem more visible to prospective students may also encourage institutions to target efforts and resources to improve student outcomes.

Finally, some negotiators requested clarification about how official and unofficial student withdrawals would factor into the withdrawal rate calculation. Operationally, the Secretary would include in the withdrawal rate calculation any student that the institution reported as withdrawn under proposed § 668.411. Institutions must report as withdrawn any student who officially withdrew or otherwise met the return of title IV, HEA program funds withdrawal provisions under § 668.22, which include unofficial withdrawals.

Repayment Rate

We propose to use as a disclosure item a ''borrower-based'' repayment rate for title IV, HEA program loans that reflects whether students entering repayment during the applicable cohort period were able to pay down, by at least one dollar, the outstanding balance on the Federal loans they took for enrolling in the GE program. Reducing the outstanding balance would demonstrate that the GE program's former students had sufficient resources to pay down at least the amount of accruing interest on their title IV, HEA program loans taken for enrollment in that program.

For reasons we have already discussed, we do not propose to use the loan repayment rate as an accountability metric in the proposed regulations as we did in the 2011 Prior Rule. Nor do we propose the same calculation of the repayment rate that was in the 2011 Prior Rule, which was calculated as a ''dollar-based'' rate. A dollar-based rate measures the percentage of loan amounts that are being repaid; a borrower-based rate measures the percentage of students who are making payments on their loans. Of the two, we believe a borrower-based repayment rate is easier to understand and consequently would be more useful to prospective students trying to gain insight into whether they would be able to repay loans they take out for enrolling in the program and where to invest their limited eligibility for title IV, HEA program funds. We believe the repayment rate disclosure would also help enrolled students as they make continuing financial decisions. In particular, it might encourage an enrolled student to reconsider the amount they plan to take out in loans in subsequent years. Additionally, we think this rate would be useful to institutions to assess whether students who are taking out Federal loans are having a difficult time repaying them and, if so, to target efforts and resources to provide more effective loan counseling to students.

Some of the negotiators recommended indicating on the disclosure template that the proposed loan repayment rate does not include any private education loans or institutional debt that a borrower may have incurred in addition to their Federal loans. Under the proposed regulations, the loan repayment rate would include FFEL and Direct Loans (including Graduate PLUS loans, and consolidation loans that include a FFEL or Direct Loan received for enrollment in the GE program). The loan repayment rate would not include Parent PLUS Loans, Perkins Loans, private education loans, or institutional debt. Although we believe that the calculation would be an accurate reflection of the repayment performance of a GE program's former students, we will use focus groups and consumer testing to determine the best way to explain to users of the disclosure template which types of loans are included in the repayment rate and which are not.

Other negotiators representing institutions argued that some borrowers in an income-driven repayment plan (i.e., Income Based Repayment, Income Contingent Repayment, Pay As You Earn) who make their scheduled payments are actively repaying their loans, even if those payments do not reduce the principal year-end balance, and should be counted in the numerator of the repayment rate as being in active repayment. Although the Department has made income-driven repayment plans available to borrowers to assist them in managing their debt, and borrowers may well be meeting their obligations under their repayment plans, these plans by their nature are available only to borrowers whose loan debt in relation to their income places them in a ''partial financial hardship''—information that we believe the rate should reflect. Specifically, the income-driven repayment plans result in considerably extended repayment, add interest cost to the borrower, and allow cancellation of amounts not paid at potential cost to taxpayers, the Government, and the borrower. Treating such borrowers as in active repayment for the purpose of the repayment rate disclosed to consumers would not provide meaningful information about a GE program's student outcomes and, worse, may give prospective students unrealistic expectations about the likely outcomes of their investment in such a program. For that reason, we believe that students who are unable to make sufficient loan payments scheduled during a year to reduce the outstanding principal loan balance owed on their loans (principal and accrued interest) at the end of the year by at least one dollar, including students making payments under an income-driven repayment plan, should not be included in the number of borrowers in active repayment.

Several commenters recommended that the borrowers excluded under the proposed D/E rates calculations—such as students in military deferment status or students who are enrolled in another eligible educational program—be excluded from the loan repayment rate calculation, noting that the same logic would apply. We agree and propose that the same exclusions would apply except for the exclusion in proposed § 668.404(e) for students who completed a higher credentialed program because that exclusion is not relevant to repayment rates. See ''§ 668.404 Calculating D/E rates'' for a discussion of these exclusions.

Median Loan Debt

Under the 2011 Current Rule, institutions calculate and disclose the median loan debt incurred by students who completed the program, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans. We believe the better approach, instead of each institution calculating three median loan debt amounts for each of its GE programs, is for the Secretary to calculate the median loan debt amounts and provide them to the institution for disclosure.

In addition to reducing burden on institutions and ensuring accuracy of the results, this approach is consistent with our broader approach of basing disclosure information on students who received title IV, HEA program funds, rather than all individuals enrolled in the GE program.

Although we understand the negotiators' concerns, we believe that disclosure information that reflects solely the outcomes of students who received Federal dollars would be more relevant to similarly situated prospective students who likely will also receive title IV, HEA program funds. Prospective students who will need to borrow from the title IV, HEA programs for enrollment in a GE program would know specifically how students in similar economic circumstances have fared in that program. See ''§ 668.401 Scope and purpose'' and ''§ 668.412 Disclosure requirements for GE programs'' for a complete discussion of our reasons for proposing that the GE measures calculations and disclosures be based on information on only title IV, HEA program funds recipients. We also note, as described in ''§ 668.412 Disclosure requirements for GE programs,'' that we may require institutions to disclose information about the individuals enrolled in the program during the most recently completed award year, specifically, the percentage of those students who incurred debt for enrollment in the program.

Median Earnings

The 2011 Current Rule does not provide for the calculation of median earnings as a disclosure item. However, we believe that a median earnings disclosure would allow students to better understand their likely financial outcomes if they enroll in a GE program and either complete the program or withdraw from the program. For the purpose of this disclosure, median earnings for students who completed the program would already be obtained from SSA for the purpose of calculating the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a discussion of the process that the Secretary would use to determine the median earnings of students who complete a GE program. A similar process would be used for students who withdrew from the program, and for both students who completed and students who withdrew from the program. We have repeated the process in proposed § 668.413 to make it easier for readers to understand the section without having to refer back to previous sections in proposed subpart Q.

Issuing and Challenging Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings

Proposed Regulations: Under the proposed regulations, the Department would determine and issue the completion, withdrawal, and repayment rates, median loan debt, and median earnings for each GE program, for disclosure by the institution. We also propose to give institutions an opportunity to challenge the information used by the Department in its calculation of these rates and determination of median loan debt.

Under proposed § 668.413(c), the Secretary would notify institutions of the draft completion, withdrawal, and repayment rates calculated under § 668.413(b) and the information that the Secretary used to calculate those rates. The Secretary would also notify institutions of the median loan debt and median earnings for the applicable cohort period of the students who completed each program, the students who withdrew from each program, or both the students who completed and the students who withdrew from each program.

Under proposed § 668.413(d)(1), an institution would be permitted to challenge the draft completion, withdrawal, and repayment rates and draft median loan debt amounts provided by the Secretary. The proposed procedures would mirror the procedures used for challenges to a GE program's draft D/E rates. Specifically, the institution would have 45 days after the Secretary notifies the institution of its draft completion, withdrawal, and repayment rates and the median loan debt to challenge the accuracy of the information that the Secretary used to calculate those rates and the median loan debt by providing evidence demonstrating that the information was incorrect. If an institution does not challenge the draft completion, withdrawal, or repayment rates, or median loan debt, those draft rates and median loan debt would become the final rates and median loan debt under proposed § 668.413(e). Following any challenge to the rates and median loan debt, the Secretary would issue a notice of determination under proposed § 668.413(e) indicating whether the challenge was accepted and the final rate or rates and the median loan debt, which the institution would be required to disclose if specified by the Secretary. Under proposed § 668.413(e), the Secretary could also publish the final rates and median loan debt. As with the determinations of the D/E rates, an institution could challenge the Secretary's calculations only once for an award year and an institution that does not timely challenge the rates or median loan debt would waive any objections to those rates or median loan debt as stated in the notice from the Secretary.

Proposed § 668.413(d)(2) specifies that the Secretary would not consider any challenges to the median earnings, and proposed § 668.413(e)(2) specifies that the median earnings of a program calculated by the Secretary constitute the final median earnings for the program. After notifying an institution of its final median earnings for a GE program, the Secretary would be able to publish those earnings.

Finally, proposed § 668.413(f) would require that any material that an institution submits to the Secretary to make corrections or challenges under this section must be complete, timely, accurate, and in a format acceptable to the Secretary. Further, any challenges under this section would have to conform to the instructions provided to the institution with the notice of draft rates and median loan debt under § 668.413(c).

Reasons: The proposed regulations are intended to provide institutions, in the interest of fairness and due process, with an adequate opportunity to challenge the completion, withdrawal, and repayment rates and median loan debt determined by the Department. The proposed regulations would also establish a clear administrative process to determine when a program's completion, withdrawal, and repayment rates, median loan debt, and median earnings information are final and, therefore, required to be disclosed. The correction and challenge procedures in proposed § 668.413 mirror the related procedures in § 668.405 for calculation of the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a more detailed description of those procedures and our reasons for proposing them.

Section 668.414 Certification Requirements for GE Programs

Current Regulations:

Certification Requirements

Under § 668.14, to participate in the title IV, HEA programs, an institution must enter into a program participation agreement (PPA) with the Secretary in which it agrees to comply with provisions governing the title IV, HEA programs. With respect to a GE program offered by the institution, the institution agrees in the PPA that there is a reasonable relationship between the length of the program and the entry-level requirements for the recognized occupation for which the program prepares students. Under § 668.14(b)(26), the Secretary considers the relationship between the program length and entry-level requirements to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours that a State or Federal agency establishes for the program training. If the number of clock hours in the program exceeds 50 percent of that minimum, then the institution must provide an explanation that is acceptable to the Department of why the extra hours are justified. The institution must also be able to establish the need for the training for students to obtain employment in the recognized occupation for which the program prepares students.

Program Application Requirements

Under 34 CFR 600.20(d) of the 2011 Prior Rule, an institution would establish the title IV, HEA program eligibility of a new GE program through a notice and application process. Under that process, the institution would notify the Department at least 90 days before it intended to provide title IV, HEA program funds to students in the program, and would provide information regarding the market need for the program, an explanation of how the program was reviewed by or developed in conjunction with State or recognized oversight entities, and other information about the program.

In reviewing an application, the Secretary would consider—

- The institution's demonstrated financial responsibility and administrative capability in operating its existing programs.
- Whether the additional educational program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.
- Whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations.
- Whether the process and determination by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation is sufficient.

If the Department did not notify the institution at least 30 days prior to the start of the program, the program would be approved by default and the institution could disburse title IV, HEA program funds to eligible students enrolled in the program. However, if the Department notified the institution at least 30 days before the date the program was supposed to begin that additional information was needed, the institution would be required to provide the information and address any concerns identified by the Department before the program would be approved.

If the Secretary denied an application from an institution to offer a new program, the denial would be based on the considerations listed above, and the Secretary would explain the basis for the denial and permit the institution to respond and request reconsideration.

Proposed Regulations: Under proposed § 668.414, we would require an institution to assess its GE programs to determine whether they meet the following minimum standards (referred to as the ''certification requirements''):

(1) Each eligible GE program it offers is 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;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or by any State within the institution's MSA; and

(3) For the State in which the institution is located and in all other States within the institution's MSA, each eligible program it offers satisfies the licensure or certification requirements of those States so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.

Transitional Certification

Under proposed § 668.414(a), an institution would provide to the Department no later than December 31 of the year in which these regulations take effect, a ''transitional certification'' signed by its most senior executive officer affirming that each of its eligible GE programs then offered by the institution satisfies the certification requirements. The Secretary would accept the certification as an addendum to the institution's program participation agreement (PPA). An institution would not provide the transitional certification if, between July 1 and December 31 of the year in which these regulations take effect, it makes the certification in its PPA.

PPA Certification Requirements

Under § 668.414(b) of the proposed regulations, as a condition of its continued participation in the title IV, HEA programs, an institution would certify in its PPA with the Secretary under 34 CFR 668.14 that each of its then-eligible GE programs satisfies the certification requirements.

Establishing Eligibility and Disbursing Funds

Under proposed § 668.414(c), an institution would establish the eligibility of a GE program by updating the list of eligible programs maintained by the Department to include that program, as provided under proposed 34 CFR 600.21(a)(11)(i). In accordance with the procedures for institutional notifications under 34 CFR 600.20 and 600.21, an institution that participates in the title IV, HEA programs would update the information maintained by the Department to reflect changes at the institutional level and the program level since the institution last signed a PPA. Proposed § 600.21(a)(11)(i) would expand the existing obligation to update by requiring an institution to report any changes it makes, or that otherwise occur, for a GE program. An institution would report, for example, a change in the name or credential level of an eligible GE program it currently offers, or the addition of a GE program. When an institution updates its list of eligible programs maintained by the Department to add a GE program under proposed § 668.414(c), the institution would affirm that the program satisfies the certification requirements. Except for a program that is still subject to a three-year loss of eligibility under proposed § 668.410(b)(2), after the institution updates its list of eligible programs to include the GE program, the institution may begin to disburse title IV, HEA program funds to students enrolled in the program.

Reasons: As part of the accountability framework of the proposed regulations, we propose that an institution must certify through its PPA that its GE programs meet applicable accreditation and State and Federal licensing requirements—the certification requirements. Through the certification requirements, institutions would be required to assess whether their programs meet widely accepted minimum standards to be eligible for participation in the title IV, HEA programs. Although the 2011 Prior Rule did not include certification requirements, we believe that students who complete a program that does not meet these standards would have a difficult time obtaining, or be unable to obtain, employment in the occupation for which they received training and, consequently, would likely struggle to repay the debt they incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes and are appropriate conditions that programs must satisfy to qualify for title IV, HEA program funds as they squarely address the debt repayment concerns underlying the gainful employment eligibility provisions of the HEA.

The certification requirements, designed as an independent pillar of the accountability framework, would work together with the metrics-based standards. The certification requirements would provide a basic initial assessment of a program's title IV, HEA eligibility. For programs existing as of the effective date of the proposed regulations, the transitional certification, if applicable, and the certification through the existing PPA process would establish a program's baseline eligibility as a gainful employment program under the HEA. Thereafter, if an institution seeks to establish or reestablish a program's eligibility, it would do so, first, through the institutional notification procedures under 34 CFR 600.20 and 600.21 and, subsequently, as part of its established PPA process. Once sufficient data are available to assess program performance using the GE measures, the accountability metrics would be the principal method for assessing a program's continuing eligibility for title IV, HEA program funds.

The negotiators disagreed on what kind of standards and what kind of process, if any, the Department should use to establish eligibility for programs existing as of the effective date of the proposed regulations and for programs that an institution subsequently seeks to newly establish or reestablish.

Certification Standards

Some negotiators and members of the public who attended the negotiated rulemaking meetings raised significant concerns about students who have been harmed by enrolling in programs that purported to train the students to work in certain occupations but that did not meet all governmental requirements or accrediting standards necessary for the students to get the jobs associated with their training. The negotiators explained that there are cases where programs lack programmatic accreditation, leaving students who complete the program unable to work in a particular occupation without meeting alternative standards such as having years of experience working in lesser-skilled and lower-paying jobs in that field.

In view of the negotiators' concerns, we believe it is reasonable to require an institution to certify that each GE program it offers meets any applicable State or Federal licensing and accrediting requirements for the occupations for which the program purports to prepare students to enter.

Some of the negotiators argued that the basis for making any initial title IV, HEA program eligibility assessment—whether for existing programs or new programs—should be more comprehensive. For example, with respect to new programs, some of the negotiators proposed that the assessment should also include, among other things, consideration of the market need for the program, projected tuition and fees, projected instructional expenses, projected income for students who complete the program, the projected attrition rate, and the projected debt-to-earnings ratios for students. Under the negotiator proposals, projections of market need, starting income, and performance under debt measures would be obtained through employer surveys and State databases. Those negotiators suggested that an eligibility determination for existing programs would consider similar matters, but rely on actual data rather than projections.

Although we agree that many of the considerations the negotiators proposed are relevant to whether a program would prepare students for gainful employment, and note that market need was a factor included in the 2011 Prior Rule, we believe that the most critical measure of title IV, HEA program eligibility—and the measure supported by the legislative history—is whether students will be able to pay back the educational debt they incur to enroll in the occupational training. We believe that this measure is best made using actual student outcomes as calculated by the Department using the proposed accountability metrics. Accordingly, we believe that a more limited inquiry upon implementation of the proposed regulations and when an institution seeks to newly establish the eligibility of a program in order to ensure that basic requirements are met is sufficient to support the more detailed assessment of continuing eligibility that would be made using the accountability metrics. Further, we believe that there is less burden on institutions, and a better investment of Department resources, if the program's eligibility is thoroughly assessed through one, rather than multiple processes, and by using actual student outcomes instead of projections that may not be reliable. This approach also takes into consideration that institutions will be providing disclosures about these programs and their outcomes separately from the eligibility determinations, with students benefitting from both.

Certification Process

In this regard, we have proposed that, both for programs existing at the effective date of the proposed regulations and for programs that an institution seeks to newly establish or reestablish, the certifications would be incorporated into the PPA recertification process, as it is a streamlined, administrative process with which institutions are already familiar. This approach is consistent with section 487(a)(21) of the HEA, which establishes requirements for an institution's PPA, provides that an institution must meet the requirements established by the Secretary and accrediting agencies or associations, and requires an institution to provide evidence to the Secretary that the institution has the authority to operate within a State.

We expect that using an existing process for these certifications would lessen institutional burden and facilitate compliance. Because institutional schedules vary with respect to the PPA process, we have proposed that institutions that are not scheduled for recertification of their PPA within six months of the effective date of the proposed regulations make a transitional certification for then-existing programs. The six-month period, coupled with the period of time from when the final regulations are published before they go into effect on July 1 would provide time for the Department to establish and publicize the procedures that institutions would follow to submit the certifications, as well as provide time for institutions to ensure their GE programs are in compliance with the certification requirements and submit the required certifications. Given that the certification would affirm compliance with a statutory condition for eligibility for receipt of title IV, HEA program funds, we expect that institutions would undertake the self-assessment in good faith and based on appropriate due diligence.

Although we have proposed that institutions make the same basic certifications and generally follow the same process with respect to both programs existing as of the effective date of the proposed regulations and programs that an institution subsequently seeks to newly establish or reestablish, some negotiators suggested that new programs may warrant a closer review by the Department. That is, although negotiators recognized that it might be overly burdensome on the Department to conduct a full review of all existing programs, some believed the Department is obligated, once the proposed regulations are in effect, to make an up-front, substantive eligibility determination for new programs, and that such review would be necessary to prevent institutions from establishing inadequate programs for limited time periods and avoiding altogether any substantive review under the GE measures.

The negotiators expressed differing views on the extent to which the Department should require institutions to apply to add new GE programs and the information the Department would require institutions to provide in those applications. Students, consumer advocates, and State Attorneys General urged the Department to develop a robust new program approval process, arguing that institutions should have to demonstrate for each new GE program that the projected ratio between their planned tuition and fees and the estimated earnings of students who complete the program would meet the GE measures. They argued that institutions should have to provide documentation of how they determined the expected earnings of graduates of the program and the market viability of the program. Such documentation would include information from likely employers stating that the program would prepare students for positions in demand in the field and indicating likely entry-level or expected salaries. Further, they argued that institutions should have to demonstrate in their applications that the new GE program would meet any applicable required, or generally preferred, programmatic accreditation and State licensure requirements and would adequately provide for any necessary experiential placements, because otherwise the students who complete the program would be unable to obtain gainful employment.

Negotiators from institutions and accrediting agencies generally argued for a meaningful application process that would limit the burden on institutions as much as possible. They suggested targeting the application requirements to programs with demonstrated difficulty passing the GE measures, or otherwise narrowing the scope of institutions and programs that would have to apply in order to establish title IV, HEA program eligibility for a new GE program. Several parties recommended that the Department should avoid duplicating processes already in place with States and accrediting agencies, particularly in States or in fields that already have rigorous approval processes. These negotiators suggested approaches such as exempting institutions from the approval process if they could demonstrate that they go through a more stringent process for another entity, and allowing institutions to submit information that they assemble for other non-Departmental approval processes with annotations indicating which sections would address the GE requirements. The negotiators also raised concerns that an approval process would limit institutions' flexibility to quickly add new GE programs in response to changing demands in the field or industry. Overall, these negotiators believed that any application process should have clear and objective standards that an institution must meet for a GE program to be approved.

After considering widely varying options regarding which new programs would require Department approval and the content of the institution's application for approval, we are not proposing separate approval requirements for new programs. At this time, we believe that the accountability metrics are the best measures of whether a program prepares students for gainful employment, as we are concerned that a more rigorous approval process would require an undue amount of time and resources from both the Department and institutions that would be better spent on program improvements. For these reasons, instead of establishing the eligibility of a GE program under an application process, an institution would update its list of eligible programs maintained by the Department to include that program. We view this list of eligible programs as an extension of the institution's PPA because the list defines the nature and scope of the institution's eligibility and certification to participate in the title IV, HEA programs under 34 CFR 600.20(e). In updating its list of eligible programs to include that program, the institution would be certifying that the program satisfies the certification requirements, and, accordingly, the Department would recognize that program as an eligible program within the scope of the institution's participation. Under the proposed regulations, an institution could not update its list of eligible programs to include a GE program that is subject to the three-year loss of eligibility provision under proposed § 668.410(b)(2) until the three-year period expired.

Section 668.415 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 668.415 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: For the reasons described in ''§ 668.401 Scope and purpose,'' through the proposed regulations we intend to:

- Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation;
- Establish measures that would distinguish programs that provide quality, affordable education and training to their students from those programs that leave students with unaffordable levels of loan debt in relation to their earnings; and
- Establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that accurate and comparable information is disseminated to students, prospective students, and their families, to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential; the public, taxpayers, and the Government, to help them better safeguard the Federal investment in these programs; and institutions, to provide them meaningful information that they could use to improve student outcomes in these programs.

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

Section 600.2 Definitions; Section 600.10 Date, Extent, Duration, and Consequence of Eligibility; Section 600.20 Notice and Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification; Section 600.21 Updating Application Information; Section 668.6 Reporting and Disclosure Requirements for Programs That Prepare Students for Gainful Employment in a Recognized Occupation; Section 668.7 Gainful Employment in a Recognized Occupation; Section 668.8 Eligible Program; Section 668.14 Program Participation Agreement

Current Regulations: The current regulations establish requirements for institutions to apply to participate in the title IV, HEA programs; to continue participating beyond the expiration date of an institution's program participation agreement; or to continue participating when new approval is required due to a change of ownership that results in a change of control. The current regulations also include requirements for an institution to provide timely notice to the Secretary when expanding its participation in title IV, HEA programs by adding new educational programs or locations. Similarly, the current regulations include requirements to identify when an institution must first obtain approval for a new educational program or location before disbursing title IV, HEA program funds to students enrolled in the program or attending the new location. Section 600.10(c) of the 2011 Prior Rule established new notice and application requirements for institutions proposing to add new GE programs. We discuss those specific regulations and our proposed changes to them in ''§ 668.414 Certification requirements for GE programs.'' Sections 668.6 and 668.7 are parts of the 2011 Final Rules.

Proposed Regulations: We propose to make a number of technical and conforming changes to the current regulations, including sections of the 2011 Current Rule, and to the regulations from the 2011 Prior Rule.

- The definition in § 600.2 of ''recognized occupation'' would be removed and replaced with a slightly modified definition.
- Section 600.10(c) would be revised to refer to proposed subpart Q to identify the conditions when time restrictions would exist that prohibit an institution from establishing or reestablishing the eligibility of a GE program.
- Proposed § 600.10(c)(1)–(3) would incorporate the provisions of the proposed regulations into existing new program approval requirements. We would also revise some of the language concerning the need for institutions that are provisionally certified, and institutions offering direct assessment programs, to obtain approval for new programs without changing the applicable requirements.
- We propose to revise § 600.20(c)(1) to clarify that the circumstances when an institution must apply to expand its eligibility include the addition of new programs and new locations.
- Section 600.21(a)(11) would be revised to require an institution to update the list of programs identified in its most recent program participation application when a GE program is established, is voluntarily discontinued, loses eligibility, or has other changes to the program's name, CIP code, or credential level.
- Sections 668.6 and 668.7 would be removed and reserved.
- Section 668.8 would be amended to replace the reference to § 668.6 in paragraph (d)(2)(iii) and (d)(3)(ii) with a reference to proposed subpart Q.
- Section 668.14(a)(26) would clarify that a GE program offered by an institution is required to prepare students for gainful employment in a recognized occupation.
- Section 668.14(a)(26) would be revised to include a reference to the GE program certification requirements of proposed § 668.414.
- The authority citations in §§ 600.2, 600.10, 600.20, and 600.21 would be revised.

Reasons: The proposed changes to the authority citations are technical in nature. The other changes would be made to ensure consistency and conformity between the proposed regulations and existing eligibility and related requirements for title IV, HEA programs, and to reflect the court's decision in *APSCU* v. *Duncan.*

The definition of ''recognized occupation'' in § 600.2 would be restated to clarify that this provision would be in effect under the proposed regulations.

The proposed changes to § 600.10(c) would make the existing regulation text consistent and in conformity with the proposed regulations. Proposed § 600.10(c)(2) would provide that except as provided in § 600.20(c), an eligible institution does not have to obtain the approval of the Secretary to establish the eligibility of any program not previously described in proposed § 600.10(c)(1).

The proposed change to § 600.20(c)(1) to add a reference to new programs is a technical change, as the current regulations refer only to additions of locations in § 600.20(c)(1), whereas § 600.20(c)(1)(v) provides that the Secretary can advise an institution by letter that it must apply for approval of new programs, as well as additional locations, under § 600.10(c). Adding the reference to new programs in § 600.20(c)(1) would make that language consistent with the range of actions that are described in § 600.20(c)(1)(i)–(v).

The revisions to § 600.21(a)(11) would require an institution to update the list of programs it offers that was provided in its last recertification application to the Department to include any new GE programs it offers, to account for any changes in the status of its GE programs, and to track any significant change in the items the Department uses to track GE programs, such as a program's name, CIP code, or credential level.

Sections 668.6 and 668.7, which were a part of the 2011 Final Rules, would be removed and reserved because they were either vacated or vacated in part by the court decision in *APSCU* v. *Duncan,* and would be replaced by the proposed regulations.

Section 668.8(d)(2)(iii) and (d)(3)(ii) would be amended to replace § 668.6 as the reference to the requirements for GE programs with a reference to proposed subpart Q, which would contain the requirements for GE programs under the proposed regulations.

Section 668.14(a)(26) would be amended to change the description of GE programs as having a stated objective to prepare students for gainful employment in a recognized occupation to instead say that a GE program offered by an institution is required to prepare students for gainful employment in a recognized occupation. With this revision, this section would more closely track the relevant statutory language in the HEA and would be consistent with the proposed requirements for GE programs in subpart Q.

Section 668.14(a)(26) would be revised to include a reference to the GE program certifications in proposed § 668.414.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is economically significant as it is estimated to have an annual effect on the economy of more than $100 million. Therefore, this proposed action is subject to review by OMB under section 3(f) of Executive Order 12866.

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 upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from implementing statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Under the heading *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

A detailed analysis, including our Initial Regulatory Flexibility Analysis, is found in Appendix A to this document.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.410 Consequences of GE measures.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Sections 668.405, 668.406, 668.408, 668.410, 668.411, 668.412, 668.413, 668.414, 668.504, 668.509, 668.510, 668.511, 668.512, 668.513, and 668.514 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, related forms, and Information Collections Requests (ICRs) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Section 668.405 Issuing and Challenging D/E Rates

Requirements: Under the proposed regulations, the Secretary would create a list of students who completed a GE program during the applicable cohort period from data reported by the institution. The list would indicate whether the list is of students who completed the program in the two-year cohort period or in the four-year cohort period, and it would also indicate which of the students on the list would be excluded from the D/E rates calculations under proposed § 668.404(e), for one of the following reasons: A military deferment, a loan discharge for total and permanent disability, enrollment on at least a half-time basis, completing a higher undergraduate or graduate credentialed program, or death.

The institution would then have the opportunity, within 45 days of receiving the student list from the Secretary, to propose corrections to the list. After receiving the institution's proposed corrections, the Secretary would notify the institution whether a proposed correction is accepted and would use any corrected information to create the final list.

Burden Calculation: We have estimated that the 2010–2011 and the 2011–2012 total number of students enrolled in GE programs is projected to be 6,436,806 (the 2010–2011 total of 3,341,856 GE students plus the 2011–2012 total of 3,094,950 GE students).

We estimate that 89 percent of the total enrollment in GE programs would be at for-profit institutions, 2 percent would be at private non-profit institutions, and 9 percent would be at public institutions. As indicated in connection with the 2011 Final Rules (75 FR 66933), we estimate that 16 percent of students enrolled in GE programs would complete their course of study. Therefore, we estimate that there would be 916,601 students who complete their programs at for-profit institutions (6,436,806 students times 89 percent of total enrollment at for-profit institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take for-profit institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 155,822 hours (916,601 students times .17 hours) under OMB 1845—NEW1.

We estimate that there would be 20,598 students who complete their programs at private non-profit institutions (6,436,806 students times 2 percent of total enrollment at private non-profit institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take private non-profit institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 3,502 hours (20,598 students times .17 hours) under OMB 1845—NEW1.

We estimate that there would be 92,690 students who complete their programs at public institutions (6,436,806 students times 9 percent of the total enrollment at public institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take public institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 15,757 hours (92,690 students times .17 hours) under OMB 1845—NEW1.

Collectively, the total number of students who complete their programs and who would be included on the lists that would be provided to institutions is a projected 1,029,889 students, thus increasing burden by 175,081 hours under OMB Control Number 1845—NEW1.

Requirements: Under the proposed regulations at § 668.405(f), after finalizing the list of students, the Secretary would obtain from SSA the mean and median earnings, in aggregate form, of those students on the list whom SSA has matched to its earnings data for the most recently completed calendar year for which SSA has validated earnings information. SSA would provide the Secretary no individual data on these students; rather, SSA would advise the Secretary of the number of students it could not, for any reason, match against its records of earnings. In the D/E rates calculation, the Secretary would exclude from the loan debts of the students on the list the same number of loan debts as SSA non-matches, starting with the highest loan debt. The remaining debts would then be used to calculate the mean and median earnings for the listed students. The Secretary would calculate draft D/E rates using the higher of the mean or median annual earnings reported by SSA under proposed § 668.405(e), notify the institution of the GE program's draft D/E rates, and provide the institution with the individual loan data on which the rates were calculated.

Under the proposed regulations at § 668.405(f), the institution would have the opportunity, within 45 days of the Secretary's notice of the draft D/E rates, to challenge, under procedures established by the Secretary, the accuracy of the rates. The institution would be permitted only to challenge the loan data used to calculate the draft D/E rates. Because SSA does not disclose data that would enable the Secretary to assess a challenge to reported earnings, the Secretary would not consider any challenge to the earnings used to calculate the draft D/E rates. The Secretary would notify the institution whether a proposed challenge is accepted and use any corrected information from the challenge to recalculate the GE program's draft D/E rates.

Burden Calculation: There are 9,986 programs that would be evaluated under the proposed regulations. Our analysis estimates that of those 9,986 programs, with respect to the D/E rates measure, 7,604 programs would be passing, 929 programs would be in the zone, and 1,453 programs would fail.

We estimate that the number of students at for-profit institutions who complete programs that are in the zone would be 52,395 (327,468 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at for-profit institutions would be 135,118 (844,488 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 187,513 students (52,395 students plus 135,118 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 46,878 hours (187,513 students times .25 hours) in OMB Control Number 1845—NEW1.

We estimate that the number of students at private non-profit institutions who complete programs that are in the zone would be 369 (2,308 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at private non-profit institutions would be 868 (5,423 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 1,237 students (369 students plus 868 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 309 hours (1,237 students times .25 hours) in OMB Control Number 1845—NEW1.

We estimate that the number of students at public institutions who complete programs that are in the zone would be 100 (628 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at public institutions would be 2,109 (13,178 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 2,209 students (100 students plus 2,109 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 552 hours (2,209 students times .25 hours) in OMB Control Number 1845—NEW1.

Collectively, the burden for institutions to examine loan records and to determine whether to make a draft D/E rates challenge would increase burden by 47,739 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.405 would be 222,820 hours under OMB Control Number 1845—NEW1.

Section 668.406 D/E Rates Alternate Earnings Appeals and Showings of Mitigating Circumstances

Alternate Earnings Appeals

Requirements: The proposed regulations would provide an opportunity for an institution to submit to the Secretary an alternate earnings appeal if, using data obtained from SSA, the Secretary determined that the program was a failing or in the zone under the D/E rates measure. In submitting an alternate earnings appeal, the institution would seek to demonstrate that the earnings of students who completed the GE program in the applicable cohort period are sufficient to pass the D/E rates measure. The institution would base its appeal on alternate earnings evidence from either a survey conducted in accordance with requirements established by NCES or from State-sponsored data systems. In either instance, the alternate earnings data would be from the same calendar year for which the Secretary obtained earnings data from SSA for use in the D/E rates calculations. An appeal could only be filed once for a GE program's award year's D/E rates.

An institution with a GE program that is failing or in the zone that wishes to submit alternate earnings appeal information must notify the Secretary of its intent to do so no earlier than the date that the Secretary provides the institution with its draft D/E rates and no later than three business days after the date the Secretary issues the notice of determination of the program's D/E rates. No later than 60 days after the date the Secretary issues the notice of determination, the institution must submit its appeal information under procedures established by the Secretary. The appeal must include all supporting documentation related to recalculating the D/E rates using alternate earnings data.

Survey: If an institution wishes to submit an appeal by providing survey results data, it would include in the universe of students that would be subject to survey sampling all of the program's former students who completed the program during the applicable cohort period and who received title IV, HEA program funds.

The Secretary would publish in the **Federal Register** an Earnings Survey Form developed by NCES. The Earnings Survey Form would be a model field-tested sample survey that may be used by an institution in accordance with the survey standards, such as a required response rate or subsequent non-response bias analysis that the institution must meet to guarantee the validity and reliability of the results. Although use of the sample survey would not be required and the Earnings Survey Form would be provided by NCES only as a service to institutions, an institution that chooses not to use the Earnings Survey Form would be required to conduct its survey in accordance with the published NCES standards.

Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements of the NCES Earnings Survey Form and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the standards in the NCES Earnings Survey Form. The attestation would be conducted in accordance with the attestation standards contained in the GAO's Government Auditing Standards promulgated by the Comptroller General of the United States and with procedures for attestations contained in guides developed by and available from the Department's Office of Inspector General.

Burden Calculation: We estimate that for-profit institutions would have 1,364 gainful employment programs in the zone and that 910 programs would be failing for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that for-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 227 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 22,700 hours (227 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

We estimate that private-non-profit institutions would have 12 gainful employment programs in the zone and that 34 programs would be failing for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that private non-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 5 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 500 hours (5 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

We estimate that public institutions would have 7 gainful employment programs in the zone and that 55 programs would be failing for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that public institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 6 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 600 hours (6 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

Collectively, the projected burden associated with conducting an alternative earnings survey would increase burden by 23,800 hours under OMB Control Number 1845—NEW2.

State data systems: An institution that wishes to submit an appeal by providing State data would include in the list it submits to the State or States all of the students who were included on the list sent by the Secretary to the SSA under proposed § 668.405(d). That is, the institution must include the program's former students who received title IV, HEA program funds, who completed the program during the applicable cohort period, and who were not excluded under proposed § 668.404(e). The earnings information obtained from the State or States would have to match 50 percent of the total number of students included on the institution's list, and the number matched would have to be 30 or more.

Burden Calculation: We estimate that there would be 1,364 failing GE programs at for-profit institutions and 910 programs in the zone, for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in approximately 227 appeals.

We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) (FERPA) between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 4,540 hours (227 state system appeals times 20 hours under OMB Control Number 1845—NEW2.

We estimate that there would be 34 failing GE programs at private non-profit institutions and 12 programs in the zone, for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in 5 appeals.

We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore burden would increase by 100 hours (5 state system appeals times 20 hours) under OMB Control Number 1845—NEW2.

We estimate that there would be 55 failing GE programs at public institutions and 7 programs in the zone, for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases institutions would obtain earnings data from a State-sponsored system, resulting in approximately 6 appeals. We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 120 hours (6 state system appeals times 20 hours) under OMB Control Number 1845—NEW2.

Showings of Mitigating Circumstances

Requirements: If a GE program is failing or in the zone under the D/E rates measure, an institution may avoid or mitigate the consequences that the Secretary may otherwise impose under § 668.410 by making a successful showing of mitigating circumstances with respect to the program's most recent final D/E rates issued by the Secretary. The institution may make a showing of mitigating circumstances if less than 50 percent of all the individuals who completed the program during the applicable cohort period, including those who received and those who did not receive title IV, HEA program funds, incurred loan debt (as defined in § 668.404(d)) for enrollment in the program. If such mitigating circumstances are shown, the program would be deemed to pass the D/E rates measure for that year. In submitting the showing of mitigating circumstances, the chief executive officer of the institution would have to affirm the accuracy of the data used to calculate the borrowing rate. Additionally, the institution would be required to maintain those data for program review or audit purposes.

To make a showing of mitigating circumstances for a program with D/E rates that are failing or in the zone, an institution would calculate the program's ''borrowing rate'' by:

Step 1. Determining the number of individuals, including individuals who did not receive title IV, HEA program funds, who completed the program during the applicable cohort period;

Step 2. Of all of the individuals in Step 1, determining the number who incurred loan debt for enrollment in the program; and

Step 3. Dividing the number in Step 2 by the number in Step 1.

If the borrowing rate for the program is less than 50 percent, the program would be deemed to pass the D/E rates measure for that year. In submitting the showing of mitigating circumstances, the chief executive officer of the institution would have to affirm the accuracy of the data used to calculate the borrowing rate. In addition, the institution would be required to maintain those data for program review or audit purposes.

Burden Calculation: We estimate that 2 percent of the total 2,274 programs at for-profit institutions (910 zone programs plus 1,364 failing programs), or 45 programs at for-profit institutions, would make a showing of mitigating circumstances based on a borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 225 hours (45 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

We estimate that 5 percent of the total 46 programs at private non-profit institutions (12 zone programs plus 34 failing programs), or 2 programs at private non-profit institutions, would make a showing of mitigating circumstances based on borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 10 hours (2 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

We estimate that 50 percent of the total 62 programs at public institutions (7 zone programs plus 55 failing programs), or 31 programs at public institutions, would make a showing of mitigating circumstances based on a borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 155 hours (45 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

Collectively, burden would increase by 5,150 hours under OMB Control Number 1845—NEW2.

Requirements: Under the proposed regulations, to pursue an alternate earnings appeal or to make a showing of mitigating circumstances, the institution must notify the Secretary of its intent to submit an appeal or make a showing no later than three business days after the Secretary issues the final D/E rates. This notification must be made no earlier than the date the Secretary provides the institution with draft D/E rates and no later than three business days after the Secretary issues the final D/E rates.

Burden Calculation: We estimated above that for-profit institutions would have annually 227 alternate earnings survey appeals, 227 State-sponsored data system appeals, and 45 showings of mitigating circumstances for a total of 499 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 125 hours (499 submissions times 0.25 hours) under OMB Control 1845—NEW2.

We estimated above that private non-profit institutions would have annually 5 alternate earnings survey appeals, 5 State-sponsored data system appeals, and 2 showings of mitigating circumstances for a total of 12 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 3 hours (12 submissions times 0.25 hours) under OMB Control 1845—NEW2.

We estimated above that public institutions would have annually 6 alternate earnings survey appeals, 6 State-sponsored data system appeals, and 31 showings of mitigating circumstances for a total of 43 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 11 hours (43 submissions times 0.25 hours) under OMB Control 1845—NEW2.

Collectively, the projected burden associated with completing and submitting a notice of intent would increase burden by 139 hours under OMB Control Number 1845—NEW2.

The total increase in burden for § 668.406 would be 29,089 hours under OMB Control Number 1845—NEW2.

Section 668.408 Issuing and Challenging pCDR

The burden associated with issuing and challenging pCDR is located in Subpart R as indicated below.

Section 668.410 Consequences of GE Measures

Requirements: Under proposed § 668.410(a), if we notify an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year, within 30 days the institution would have to provide a written warning directly to each student enrolled in the program. To the extent practicable, an institution would have to provide this warning in other languages for enrolled students for whom English is not their first language.

In the warning, an institution would be required to describe the options available to the student to continue his or her education in the event that the program loses its eligibility for title IV, HEA program funds. Specifically, the warning would inform the student of whether the institution will allow the student to transfer to another program at the institution; continue to provide instruction in the program to allow the student to complete the program; or refund the tuition, fees, and other required charges paid by, or on behalf of, the student for attending the program.

Under proposed § 668.410(a)(1), an affected institution must provide a written warning (a) by hand-delivering it individually, (b) through a group presentation, or (c) via email.

Burden Calculation: We estimate that the written warnings would be hand-delivered to 10 percent of the affected students, delivered through a group presentation to another 10 percent of the affected students, and delivered through the student's primary email address used by the institution to the remaining 80 percent.

Based upon 2009–2010 reported data, 2,703,851 students were enrolled at for-profit institutions. Of that number, we estimate that 327,468 students were enrolled in zone programs and 844,488 students were enrolled in failing programs at for-profit institutions. Thus, the total number of warnings would have to be provided to 1,171,956 students enrolled in GE programs at for-profit institutions.

Of the 1,171,956 projected number of warnings to be provided to enrolled students at for-profit institutions, we estimate that 117,196 students (1,171,956 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 19,923 hours (117,196 students times 0.17 hours) under OMB Control Number 1845—NEW1.

Of the 1,171,956 projected warnings to be provided to enrolled students at for-profit institutions, we estimate that 117,196 students (1,171,956 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 38,675 hours (117,196 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 1,171,956 projected warnings to be provided to enrolled students at for-profit institutions, we estimate that 937,564 students (1,171,956 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 15,939 hours (937,564 students times 0.017 hours) under OMB Control Number 1845—NEW1.

Based upon 2009–2010 reported data, 57,700 students were enrolled at private non-profit institutions. Of that number of students, we estimate that 2,308 students would be enrolled in zone programs and 5,423 students would be enrolled in failing programs at private non-profit institutions. Thus, the total number of warnings would have to be provided to 7,731 students (2,308 students plus 5,423 students) enrolled in GE programs at private non-profit institutions.

Of the 7,731 projected number of warnings to be provided to enrolled students at non-profit institutions, we estimate that 773 students (7,731 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 131 hours (773 students times 0.17 hours) under OMB Control Number 1845—NEW1.

Of the 7,731 projected warnings to be provided to enrolled students at non-profit institutions, we estimate that 773 students (7,731 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 255 hours (773 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 7,731 projected warnings to be provided to enrolled students at non-profit institutions, we estimate that 6,185 students (7,731 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 105 hours (6,185 students times 0.017 hours) under OMB Control Number 1845y—NEW1.

Based upon 2009–2010 reported data, 276,234 students were enrolled at public institutions. Of that number of students, we estimate that 628 students would be enrolled in zone programs and 13,178 students would be enrolled in failing programs at public institutions. Thus, the total number of warnings would have to be provided to 13,806 students (628 students plus 13,178 students) enrolled in GE programs at public institutions.

Of the 13,806 projected number of warnings to be provided to enrolled students at public institutions, we estimate that 1,381 students (13,806 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 235 hours (13,806 students times 0.17 hours) under OMB Control Number 1845—NEW1.

Of the 13,806 projected warnings to be provided to enrolled students at public institutions, we estimate that 1,381 students (13,806 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 456 hours (1,381 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 13,806 projected warnings to be provided to enrolled students at public institutions, we estimate that 11,044 students (13,806 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 188 hours (11,044 students times 0.017 hours) under OMB Control Number 1845—NEW1.

Collectively, providing the warnings would increase burden by 75,907 hours under OMB Control Number 1845—NEW1.

Students would also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it would take each student 0.17 hours (10 minutes) to read the warning and ask any questions.

Burden would increase by 199,233 hours (1,171,956 students times 0.17 hours) for the students who would receive warnings from for-profit institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Burden would increase by 1,314 hours (7,731 students times 0.17 hours) for the students who would receive warnings from private non-profit institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Burden would increase by 2,347 hours (13,806 students times 0.17 hours) for the students who would receive warnings from public institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Collectively, students reading the warning would increase burden by 202,894 hours under OMB Control Number 1845—NEW1.

Requirements: Under proposed § 668.410(a)(2), institutions must provide a written warning about a possible loss of eligibility for title IV, HEA program funds directly to prospective students prior to their signing an enrollment agreement, registering, or making any financial commitment to the institution. To the extent practicable, an institution would have to provide this warning in other languages for enrolled students for whom English is not their first language.

Burden Calculation: Most institutions would have to contact, or be contacted by, a larger number of prospective students to yield institutions' desired net enrollments. The magnitude of this activity would be different depending on the type and control of the institution, as detailed below.

We estimate that the number of prospective students that must contact or be contacted by for-profit institutions as a result of a failed program would be 6 times the number of expected enrollments. As noted above, we estimate that 1,171,956 students (327,468 students enrolled in zone programs plus 844,488 students enrolled in failing programs) would be enrolled in failing or zone programs at for-profit institutions. Therefore, for-profit institutions would be required to provide 7,031,736 warnings (1,171,956 times 6), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 703,174 hours (7,031,736 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

We estimate that the number of prospective students that must contact or be contacted by private non-profit institutions as a result of a failed program or zone program would be 1.8 times the number of expected enrollments. As noted above, we estimate that 7,731 students (2,308 students enrolled in zone programs plus 5,423 students enrolled in failing programs) would be enrolled in failing programs or zone programs at private non-profit institutions. Therefore, private non-profit institutions would be required to provide 13,916 warnings (7,731 students times 1.8), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 1,392 hours (13,916 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

We estimate that the number of prospective students that must contact or be contacted by public institutions as a result of a failed program or zone program would be 1.5 times the number of expected enrollments. As noted above we estimate that 13,806 students (628 students enrolled in zone programs plus 13,178 students enrolled in failing programs) would be enrolled in failing programs and zone programs at public institutions. Therefore, public institutions would be required to provide 20,709 warnings (13,806 students times 1.5), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 2,071 hours (20,709 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 706,637 hours under OMB Control Number 1845—NEW1.

The prospective students would also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it would take each student 0.08 hours (5 minutes) to read the warning and ask any questions.

Burden would increase by 562,539 hours (7,031,736 times 0.08 hours) for the prospective students who would receive warnings from for-profit institutions, under OMB Control Number 1845—NEW1.

Burden would increase by 1,113 hours (13,916 times 0.08 hours) for the prospective students who would receive warnings from private non-profit institutions, under OMB Control Number 1845—NEW1.

Burden would increase by 1,657 hours (20,709 times 0.08 hours) for the prospective students who would receive warnings from public institutions, under OMB Control Number 1845—NEW1.

Collectively, prospective students reading the warning would increase burden by 565,309 hours under OMB Control Number 1845—NEW1.

Requirements: Under proposed § 668.410(a)(2)(ii)(B), if more than 30 days have passed from the date the initial warning is provided, the prospective student must be provided an additional warning and may not enroll until three days later. We estimate that half of the number of prospective students would not enroll within 30 days of the initial warning and therefore would require a second warning.

Burden Calculation: We estimate that 50 percent of students enrolling in a failing program do so more than 30 days after receiving the initial prospective student warning. Burden would increase by 281,269 hours for the 3,515,868 (7,031,736 prospective students times 50 percent times .08 hours) students for whom for-profit institutions would provide subsequent warnings.

Burden would increase by 557 hours for the 6,958 (13,916 prospective students times 50 percent times .08 hours) students for whom private non-profit institutions would provide subsequent warnings.

Burden would increase by 828 hours for the 10,355 (20,709 prospective students times 50 percent times .08 hours) students for whom public institutions would provide subsequent warnings.

Collectively, subsequent warning notices would increase burden by 282,654 hours under OMB Control Number 1845—NEW1.

Similarly, it would take the recipients of subsequent warnings time to read the second warning. Burden would increase by 281,269 hours for the 3,515,868 (7,031,736 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from for-profit institutions, OMB Control Number 1845—NEW1.

Burden would increase by 557 hours for the 6,958 (13,916 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from private non-profit institutions.

Burden would increase by 828 hours for the 10,355 (20,709 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from public institutions.

Collectively, burden to students to read the subsequent warnings would increase by 282,654 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.410 would be 2,116,055 hours under OMB Control Number 1845—NEW1

Section 668.411 Reporting Requirements for GE Programs

Requirements: Under the proposed regulations in § 668.411, institutions would report, for each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program: (1) Information needed to identify the student and the institution the student attended; (2) the name, CIP code, credential level, and length of the GE program; (3) whether the GE program is a medical or dental program whose students are required to complete an internship or residency; (4) the date the student began initial attendance in the GE program; (5) the student's attendance dates and attendance status in the GE program during the award year; and (6) the student's enrollment status as of the first day of the student's enrollment in the GE program.

Further, if the student completed or withdrew from the GE program during the award year, the institution would report: (1) The date the student completed or withdrew; (2) the total amount the student received from private education loans for attendance in the GE program that the institution is, or should reasonably be, aware of; (3) the total amount of institutional debt the student owes any party after completing or withdrawing from the GE program; and (4) the amount for tuition and fees and books, supplies, and equipment included in the student's cost of attendance for each award year in which the student was enrolled in the GE program, or a higher amount if assessed by the institution to the student.

No later than July 31 of the year the regulations take effect, institutions would be required to report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31. For all subsequent award years, institutions would report not later than October 1 following the end of the award year, unless the Secretary establishes a later date in a notice published in the **Federal Register**. The proposed regulations would give the Secretary the flexibility to identify additional reporting items, or to specify a reporting deadline later than October 1, in a notice published in the **Federal Register**.

Finally, the proposed regulations would require institutions to provide the Secretary with an explanation of why any missing information is not available.

Burden Calculation: There are 2,526 for-profit institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 15,156 hours (2,526 institutions times 6 hours).

There are 318 private non-profit institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 1,908 hours (318 institutions times 6 hours).

There are 1,117 public institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 6,702 hours (1,117 institutions times 6 hours).

Collectively, burden to develop systems for reporting would increase by 23,766 hours (under OMB Control Number 1845—NEW1.

Requirements: Proposed § 668.411(b) requires that, by no later than July 31 of the year the regulations take effect, institutions report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31.

Burden Calculation: According to our analysis of previously reported GE program enrollment data, there were 2,703,851 students enrolled in GE programs offered by for-profit institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at for-profit institutions for 2008–2009 was 2,219,280. Going forward, we estimate that enrollment in GE programs at for-profit institutions for 2010–2011 was 2,951,154, for 2011–2012 enrollment was 2,669,084, for 2012–2013 enrollment was 2,426,249, and for 2013–2014 enrollment would be 2,227,230. This results in a total of 15,196,848.

We estimate that on average, the reporting of GE program information by for-profit institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most for-profit institutions, reporting would be an automated process. Therefore, GE reporting by for-profit institutions would increase burden by 455,905 hours (15,196,848 students times .03 hours) in OMB Control Number 1845—NEW1.

According to our analysis of previously reported GE program enrollment data, there were 57,700 students enrolled in GE programs offered by private non-profit institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at private non-profit institutions for 2008–2009 was 49,316. Going forward, we estimate that enrollment in GE programs at private non-profit institutions for 2010–2011 was 67,509, for 2011–2012 was 73,585, for 2012–2013 was 70,641, and for 2013–2014 would be 65,697. This results in a total of 384,448.

We estimate that on average, the reporting of GE program information by private non-profit institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most private non-profit institutions, reporting would be an automated process. Therefore, GE reporting by private non-profit institutions would increase burden by 11,533 hours (384,448 students times .03 hours) in OMB Control Number 1845—NEW1.

According to our analysis of previously reported GE program enrollment data, there were 276,234 students enrolled in GE programs offered by public institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at public institutions for 2008–2009 was 236,097. Going forward, we estimate that enrollment in GE programs at public institutions for 2010–2011 was 323,194, for 2011–2012 was 352,281, for 2012–2013 was 338,190, and for 2013–2014 would be 314,517. This results in a total of 1,840,513.

We estimate that on average, the reporting of GE program information by public institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most public institutions, reporting would be an automated process. Therefore, GE reporting by public institutions would increase burden by 55,215 hours (1,840,513 students times .03 hours) in OMB Control Number 1845—NEW1.

Collectively, we estimate that burden upon institutions to meet the initial reporting requirements under proposed § 668.411 would increase burden by 522,653 hours in OMB Control Number 1845—NEW1.

The total increase in burden for § 668.411 would be 546,419 hours under OMB Control Number 1845—NEW1.

Section 668.412 Disclosure Requirements for GE Programs

Requirements: The proposed § 668.412 would expand the number of items that we may require an institution to disclose and increase the Department's flexibility to tailor the disclosure in a way that would be most useful to students and minimize burden to institutions.

These disclosure items could include:

(1) The primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to the corresponding occupational profiles on O*Net;

(2) the GE program's completion and withdrawal rates;

(3) the length of the program;

(4) the number of clock or credit hours, as applicable, in the program;

(5) the total number of students enrolled in the program during the most recently completed award year;

(6) the loan repayment rate for any one or all of the following groups: All students who attended the program, students who completed the program, or students who withdrew from the program;

(7) the total cost of tuition and fees, books, supplies, and equipment that students would incur for completing the program within the length of the program;

(8) the placement rate for the program, if the institution is required to calculate a placement rate by its accrediting agency or State;

(9) of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program;

(10) as provided by the Secretary, the median loan debt incurred by any or all of the following groups: Students who completed the program during the most recently completed award year, students who withdrew from the program during the most recently completed award year, or both those groups of students;

(11) the median earnings of any one or all of the following groups: Students who completed the program during the two-year period used to calculate the most recent D/E rates for the program, students who were in withdrawn status at the end of the two-year period used to calculate the most recent D/E rates for the program, or all of the students who completed during the two-year period used to calculate the most recent D/E rates and students who were in withdrawn status at the end of that two-year period;

(12) the pCDR for the most recently completed fiscal year;

(13) the most recent annual earnings rate as calculated by the Secretary under proposed § 668.404;

(14) if applicable, whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the program is offered and in any other State included in the institution's Metropolitan Statistical Area (MSA) (according to the OMB guidelines);

(15) if applicable, the programmatic accreditation required by the applicable State, or States, for an individual to obtain employment in the occupation for which the program prepares a student; and

(16) a link to the College Navigator Web site.

The Secretary would conduct consumer testing to determine how to make the disclosures as meaningful as possible. After we have the results of the consumer testing, each year the Secretary would identify which of these items institutions must include in their disclosures, along with any other information that must be included, and publish those requirements in a notice in the **Federal Register**.

Institutions must update their GE program disclosure information annually. They must make it available in their promotional materials and make it available on any Web page containing academic, cost, financial aid, or admissions information about a GE program.

Burden Calculation: We estimate that of the 37,589 GE programs that reported enrollments in the past, 12,250 programs would be offered by for-profit institutions. We estimate that, annually, the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information to also contain the disclosure information about the program would, on average, increase burden by an additional 1 hour per program. Therefore, burden would increase by 5 hours per program for a total of 61,250 hours of increased burden in OMB Control Number 1845—NEW1 (12,250 programs times 5 hours per program).

We estimate that of the 37,589 GE programs that reported enrollments in the past, 2,343 programs would be offered by private non-profit institutions. We estimate that, annually, the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information about the program to also contain the disclosure information would, on average, increase burden by an additional 1 hour per program. Therefore, burden would increase by 5 hours per program for a total of 11,715 hours of increased burden in OMB Control Number 1845—NEW1 (2,343 programs times 5 hours per program).

We estimate that of the 37,589 GE programs that reported enrollments in the past, 22,996 programs would be offered by public institutions. We estimate that the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information about the program to also contain the disclosure information would, on average, increase burden by an additional 1 hour per program. Therefore, on average, burden would increase by 5 hours per program for a total of 114,980 hours of increased burden in OMB Control Number 1845—NEW1 (22,996 programs times 5 hours per program).

Collectively, we estimate that burden would increase by 187,945 hours in OMB Control Number 1845—NEW1.

Under proposed § 668.412(e), an institution must provide, as a separate document, a copy of the disclosure information to a prospective student. Before a prospective student signs an enrollment agreement, completes registration at, or makes a financial commitment to the institution, the institution must obtain written confirmation from the prospective student that he or she received the copy of the disclosure information.

We estimate that the enrollment in the 12,250 GE programs offered by for-profit institutions for 2013–2014 is 2,227,230. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield institutions' desired net enrollments.

We estimate that the number of prospective students that must contact or be contacted by for-profit institutions as a result of a failed program would be 6 times the number of expected enrollment. As noted above, we estimate that 13,363,380 (2,227,230 students for 2013–2014 times 6) students would be enrolled in GE programs at for-profit institutions. Therefore, for-profit institutions would be required to provide 13,363,380 disclosures to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by for-profit institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 1,737,239 hours for for-profit institutions (13,363,380 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 1,069,070 hours for prospective students at for-profit institutions (13,363,380 prospective students times 0.08 hours) under OMB Control Number 184—NEW1.

We estimate that the enrollment in the 2,343 GE programs offered by private non-profit institutions for 2013–2014 is 65,697. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield their enrollments.

We estimate that the number of prospective students that must contact or be contacted by private non-profit institutions as a result of a failed program would be 1.8 times the number of expected enrollment. As noted above we estimate that 65,697 students would be enrolled in GE programs at private non-profit institutions. Therefore, private non-profit institutions would be required to provide 118,255 disclosures (65,697 times 1.8) to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by private-non-profit institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 15,373 hours for private non-profit institutions (118,255 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 9,460 hours for prospective students at private non-profit institutions (118,255 prospective students times 0.08 hours) under OMB Control Number 184—NEW1.

We estimate that the enrollment in the 22,996 GE programs offered by public institutions for 2013–2014 is 314,517. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield their enrollments.

We estimate that the number of prospective students that must contact or be contacted by public institutions as a result of a failed program would be 1.5

times the number of expected enrollment. As noted above we estimate that 314,517 students would be enrolled in GE programs at public institutions. Therefore, public institutions would be required to provide 471,776 disclosures (314,517 times 1.5) to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by public institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 61,331 hours for public institutions (471,776 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 37,742 hours for prospective students at public institutions (471,776 prospective students times 0.08 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 2,930,215 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.412 would be 3,118,160 hours under OMB Control Number 1845—NEW1.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, and Median Earnings

Requirements: As discussed in connection with proposed § 668.412, an institution would be required to disclose, among other information, completion and withdrawal rates, repayment rates, and median loan debt and median earnings for a GE program. Using the procedures proposed in § 668.413 and based partially on the information that an institution would report under proposed § 668.411, the Secretary would calculate and make available to the institution for disclosure: Completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings for a GE program.

An institution would have an opportunity to correct the list of students who completed a GE program and the list of students who withdrew from a GE program prior to the Secretary sending the lists to SSA for earnings information.

For the median earnings calculation under proposed § 668.413(b)(8), (b)(9), and (b)(10), after the Secretary provides a list of the relevant students (those who completed and those who withdrew) to the institution, the institution may provide evidence showing that a student should be included on the list or removed from the list as a result of meeting the definitions of an exclusion under proposed § 668.413(b)(11). The institution may also correct or update a student's identity information or attendance information on the listing.

Burden Calculation: For the 12,250 for-profit institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 49,000 hours (12,250 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

For the 2,343 private non-profit institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 9,372 hours (2,343 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

For the 22,996 private public institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 91,984 hours (22,996 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

Collectively, burden would increase by 150,356 hours under OMB Control Number 1845—NEW1.

Under proposed § 668.413(d)(1), an institution may challenge the Secretary's calculation of the draft completion rates, withdrawal rates, repayment rates, and median loan debt.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 12,250 GE programs at for-profit institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 245,000 hours (12,250 programs times 20 hours for five lists) under OMB Control Number 1845—NEW1.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 2,343 GE programs at private non-profit institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 46,860 hours (2,343 programs times 20 hours for five lists) under OMB Control Number 1845—NEW1.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 22,996 GE programs at public institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 459,920 hours (22,996 times 20 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 751,780 under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.413 would be 902,136 under OMB Control Number 1845—NEW1

Section 668.414 Certification Requirements for GE Programs

Requirements: Under proposed § 668.414(a) each institution participating in the title IV, HEA programs would be required to provide a ''transitional certification'' to supplement its current program participation agreement (PPA). The transitional certification would be submitted no later than December 31 of the year in which the proposed regulations take effect. The transitional certification would be signed by the institution's most senior executive officer and apply to all of the institution's GE programs eligible for title IV, HEA program funds. Under proposed § 668.414(d), the certification would provide that each GE program meets certain requirements (PPA certification requirements), specifically that each GE program is:

- Approved by a recognized accrediting agency, is included in the institution's accreditation, or is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;
- Programmatically accredited, if required by a Federal governmental entity in the State in which the institution is located or by any State within the institution's MSA; and
- Satisfies licensure or certification requirements in the State where the institution is located and in all other States within the institution's MSA so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in the occupation that the program prepares students to enter.

Under proposed § 668.414(b) an institution would be required to certify each time it executes a new PPA that any GE programs it offers meet the PPA certification requirements.

Burden Calculation: We estimate that it would take the 2,526 for-profit institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 1,263 hours under OMB Control Number 1845—NEW1 (2,526 institutions times 0.5 hours).

We estimate that it would take the 318 private non-profit institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 159 hours under OMB Control Number 1845—NEW1 (318 institutions times 0.5 hours).

We estimate that it would take the 1,117 public institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 559 hours under OMB Control Number 1845—NEW1 (1,117 institutions times 0.5 hours).

The total increase in burden for § 668.414 would be 1,981 hours under OMB Control Number 1845—NEW1.

Subpart R—Program Cohort Default Rates

Requirements: Under proposed subpart R, the Secretary would calculate a GE program's cohort default rate using a structure that would generally mirror the structure of the institutional cohort default rate (iCDR) regulations in subpart N of part 668 of the regulations. Thus, depending on the pCDR of a program, an institution would have the opportunity to submit a challenge, request an adjustment, or appeal the pCDR. Detailed information about each of these opportunities and our burden assessments follow. Common to all requests for challenges, adjustments, or appeals is that institutions would receive a loan record detail report (LRDR) provided by the Department.

Burden Calculation: As noted in the preamble discussion in ''§ 668.408 Issuing and Challenging pCDR,'' the proposed pCDR regulations in subpart R would generally mirror the structure of the institutional cohort default rate (iCDR) regulations in subpart N of part 668 of the regulations. However, because subpart R is specific to GE programs the consequences of a GE program's pCDR are different than are for iCDRs under the iCDR regulations in subpart N. For this reason (pCDR not the same as iCDR) the burden assessments that follow recognize that institutions will have the option of submitting challenges, requests for adjustments, and certain appeals for all of their GE programs in every year for which we calculate a pCDR, but will in all likelihood exercise those rights only in those instances in which we calculate a failing (or close to failing) pCDR rate for the second or third consecutive year. For purposes of our burden assessments, we consider a close to failing pCDR to be one that is between 20 percent and 29.9 percent.

Of the 6,815 GE programs that we estimate would be evaluated for pCDR, we estimate that 943 programs would be failing programs (pCDR of 30 percent or more) and therefore have the highest likelihood of having pCDR challenges, adjustments, or appeals. In addition, we considered that half of the 1,840 GE programs with a pCDR rate of 20 percent to 29.9 percent would also make challenges, request adjustments, or submit appeals, adding another 920 programs to the 943 that failed for a total of 1,863 programs. We estimate that 92 percent of the 1,863 would be GE programs at for-profit institutions, 3 percent would be GE programs at private non-profit institutions, and 5 percent would be GE programs at public institutions.

We used an analysis of the FY 2011 institutional CDR data to estimate the percentage of the possible 1,863 programs where a challenge, adjustment request, or appeal may be submitted. Those percentages varied by the type of challenge, adjustment, or appeal, as indicated in each of the regulatory sections that follow and are used to project the distribution of pCDR challenges, adjustments, and appeals.

Section 668.504 Draft Cohort Program Default Rates and Your Ability To Challenge Before Official Program Cohort Default Rates Are Issued

Requirements:

Incorrect Data Challenges: Under proposed 668.504(b), the institution may challenge the accuracy of the data included on the LRDR by sending an incorrect data challenge to the relevant data manager(s) within 45 days of receipt of the LRDR from the Department. The challenge would include a description of the information in the LRDR that the institution believes is incorrect along with supporting documentation.

Burden Calculation: Based upon FY 2011 submissions, there were 353 institutional CDR challenges for incorrect data of a total of 510 challenges, requests for adjustments, and appeals, a 69 percent submission rate. Therefore 69 percent of the projected 1,863 challenges, adjustments, and appeals, or 1,285, are projected to be challenges for incorrect data.

Based on data provided earlier, we estimate that out of the likely 1,285 submissions, 1,182 (92 percent) would be from for-profit institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 1,182 programs and to gather and prepare incorrect data challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 4,728 hours.

Based on data provided earlier, we estimate that out of the likely 1,285 submissions, 39 (3 percent) would be from private non-profit institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 39 programs and to gather and prepare the challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 156 hours.

Based on data provided earlier, we estimate that, out of the likely 1,285 submissions, 64 (5 percent) would be from public institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 64 programs and to gather and prepare the challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 256 hours.

Collectively, this would increase burden by 5,140 hours under OMB Control Number NEW3.

Participation Rate Index Challenges: Under proposed 668.504(c), institutions may challenge a program's anticipated loss of title IV, HEA program eligibility, if the institution's participation rate would be equal to or less than 0.0625 for any of the three pCDR fiscal years that where the pCDR is 30 percent or greater. A participation rate index challenge (and a participation rate index appeal for final rates, discussed below) could be submitted if the number of students who received title IV, HEA program loans during a one-year period was only a small percentage of those who were eligible to borrow.

Burden Calculation: Based upon FY 2011 submissions, there were 2 participation rate index challenges of the total 510 challenges, requests for adjustments, and appeals 0.4 percent. Therefore we project that there will be 4 participation rate challenges (0.4 percent of the projected 943 challenges, adjustments, and appeals). Note that we use 943 and not 1,863 because that number includes 920 programs with rates between 20.0 percent and 29.9 percent and only programs subject to loss of eligibility can submit a participation rate index challenge. Further, based upon GE program distribution percentages, we project that all 4 participation rate index challenges would be from for-profit institutions. Therefore, all of the estimated burden below would be to for-profit institutions and none to private non-profit or public institutions.

On average, we estimate that gathering and submitting the information for each participation rate challenge would take 2.0 hours per submission. Therefore, burden would increase by 8 hours (4 participation rate index challenges times 2 hours per submission) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.504 would be 5,148 hours under OMB Control Number 1845—NEW3.

Section 668.509 Uncorrected Data Adjustments

Requirements: An institution may request an uncorrected data adjustment for the most recent cohort of borrowers used to calculate a GE program's most recent official pCDR, if in response to the institution's incorrect data challenge, a data manager agreed to change data but the changes were not reflected in the official pCDR.

Burden Calculation: Based upon FY 2011 submissions, there were 116 uncorrected data adjustments of the total 510 challenges, requests for adjustments, and appeals. Therefore, 23 percent of the projected 943 challenges, adjustments, and appeals (based on possible loss of eligibility) or 217 are projected to be uncorrected data adjustments. We estimate that the average institutional staff time needed is 1 hour for list review and 0.5 hours for documentation submission, for a total of 1.5 hours.

We estimate that 200 (92 percent) of the 217 projected uncorrected data adjustments will be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 300 hours (200 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

We estimate that 6 (3 percent) of the 217 projected uncorrected data adjustments would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 9 hours (6 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

We estimate that 11 (5 percent) of the 217 projected uncorrected data adjustments would be from public institutions. Therefore, burden would increase at public institutions by 17 hours (11 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.509 would be 326 hours under OMB Control Number 1845—NEW3.

Section 668.510 New Data Adjustments

Requirements: An institution could request a new data adjustment for the most recent cohort of borrowers used to calculate the most recent official pCDR for a GE program, if a comparison of the LRDR for the draft rates and the LRDR for the official rates show that data have been newly included, excluded, or otherwise changed and the errors are confirmed by the data manager.

Burden Calculation: Based upon FY 2011 submissions, there were 12 new data adjustments of the total 510 challenges, requests for adjustments, and appeals. Therefore, 2 percent of the projected 943 challenges, adjustments, and appeals (based on possible sanction) or 19 are projected to be new data adjustments. We estimate that the average institutional staff time needed is 3 hours for list review and 1 hour for documentation submission, for a total of 4 hours.

We estimate that 17 (92 percent) of the 19 projected new data adjustments would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 68 hours (17 adjustments times 4 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (3 percent) of the 19 projected new data adjustments would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 4 hours (1 adjustment times 4 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (5 percent) of the 19 projected new data adjustments would be from public institutions. Therefore, burden would increase at public institutions by 4 hours under (1 adjustment times 4 hours) OMB Control Number 1845—NEW3.

The total increase in burden for § 668.510 would be 76 hours under OMB Control Number 1845—NEW3.

Section 668.511 Erroneous Data Appeals

Requirements: An institution could appeal the calculation of a pCDR upon which a sanction under § 668.410 would be based. The institution could do so if it disputes the accuracy of data that was previously challenged under § 668.504(b) (challenge for incorrect data); if a comparison of the LRDR that we provided for the draft rate and the official rate shows that data have been newly included, excluded, or otherwise changed; or if the institution disputes the accuracy of that data. The institution must send a request for verification of data to the applicable data manager(s) within 15 days of receipt of the notice of sanction or provisional certification, and it must include a description of the incorrect information and all supporting documentation.

Burden Calculation: Based upon the fact that in FY 2011 there were no institutional CDR erroneous data appeals, we have no basis to establish erroneous data appeals burden for pCDRs.

Section 668.512 Loan Servicing Appeals

Requirements: An institution could appeal the calculation of a pCDR on the basis of improper loan servicing or collection only if the borrower did not make a payment on the loan and the institution can prove that the servicer failed to perform required loan servicing or collections activities.

Burden Calculation: Based upon FY 2011 submissions, there were 19 loan servicing appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore, 4 percent or 38 of the projected 943 challenges, adjustments, and appeals are projected to be loan servicing appeals. We estimate that, on average, to gather, analyze, and submit the necessary documentation, each appeal would take 3 hours.

We estimate that 35 (92 percent) of the 38 projected loan servicing appeals would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 105 hours (35 servicing appeals times 3 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (3 percent) of the 38 projected loan servicing appeals would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 3 hours (1 servicing appeal times 3 hours) under OMB Control Number 1845—NEW3.

We estimate that 2 (5 percent) of the 38 projected loan servicing appeals would be from public institutions. Therefore, burden would increase at public institutions by 6 hours (2 servicing appeals times 3 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.512 would be 114 hours under OMB Control Number 1845—NEW3.

Section 668.513 Economically Disadvantaged Appeals

Requirements: An institution could appeal a notice of a sanction under § 668.410 or a notice of a second successive official pCDR that is equal to or greater than 30 percent if an independent auditor certifies that the low income rate for the GE program is two-thirds or more and the program is a degree program with a completion rate of 70 percent or more or, if the program is not a degree program, its placement rate is 44 percent or more.

Burden Calculation: Based upon FY 2011 submissions, there were 6 economically disadvantaged appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore 9 (1 percent) of the projected 943 challenges, adjustments, and appeals are projected to be economically disadvantaged appeals. We estimate that preparing and submitting an economically disadvantaged appeal would take an institution 5 hours for each program.

We estimate that 8 (92 percent) of the 9 projected economically disadvantaged appeals would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 40 hours (8 programs times 5 hours) under OMB Control Number 1845—NEW3.

We do not project any economically disadvantaged appeals from the private non-profit institutions.

We estimate that 1 (5 percent) of the 9 projected economically disadvantaged appeals would be from public institutions. Therefore, burden would increase at public institutions by 5 hours (1 program times 5 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.513 would be 45 hours under OMB Control Number 1845—NEW3.

Section 668.514 Participation Rate Index Appeals

Requirements: An institution could appeal a notice of a program's loss of title IV, HEA program eligibility under § 668.410 based upon two pCDRs of 30 percent or greater if the participation rate index for that GE program is equal to or less than 0.0625 for any of those three program cohort's fiscal years. A participation rate index appeal (and a participation rate index challenge for draft rates, discussed above) could be submitted if the number of students who received title IV, HEA program loans during a one-year period was only a small percentage of those who were eligible to borrow.

Burden Calculation: Based upon FY 2011 submissions, there were 2 participation rate index appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore 0.4 percent of the projected 943 challenges, adjustments, and appeals or 4 are projected to be participation rate index appeals. On average, we estimate that gathering and submitting the information for each appeal would take 2 hours per submission.

We estimate that all 4 projected participation rate index appeals would be from for-profit institutions. Therefore, the total increase in burden for § 668.514 would be 8 hours (4 participation rate index appeals times 2 hours) under OMB Control Number 1845—NEW3.

Section 668.515 Average Rates Appeals

Requirements: Before notifying the institution of the official pCDR for a GE program, we would make an initial determination about whether the GE program qualifies for an average rates appeal. An average rates appeal would be allowed if the number of borrowers who entered repayment in the cohort period is less than 30. In such cases, the program's pCDR is calculated based on the total of the program's former students who entered repayment in the cohort year and in the two previous cohort years.

If we determine that the GE program qualifies, we would notify the institution of that determination at the same time that we notify the institution of the official pCDR. A GE program would not be subject to a sanction under § 668.410 if we determine that the GE program meets the requirements for an average rates appeal.

If the institution disagrees with our initial determination, that is, the institution wants the program to be made ineligible or subject to sanction and not be granted the appeal, the institution would send the Department notification. No institutions have ever rejected our provision of this appeal. Therefore, there is no burden associated with average rates appeals.

Section 668.516 Thirty-or-fewer Borrowers Appeals

Requirements: An institution could appeal a notice of sanction of a GE program under § 668.410 if the total number of borrowers who comprise the pCDR cohorts for the three years at issue was 30 or fewer borrowers.

Before notifying the institution of the official pCDR, we would make an initial determination about whether the GE program qualifies for a thirty-or-fewer borrowers appeal. A GE program would not become subject to a sanction under § 668.410 if we determine that the GE program meets the requirements for a thirty-or-fewer borrowers appeal. If we determine that the program qualifies, we would notify the institution of that determination at the same time that we notify the institution of the official pCDR. If the institution disagrees with our initial determination, that is, the institution wants the program to be subject to sanction and not granted the appeal, the institution would send the Department notification. No institution has ever rejected our provision of this appeal; therefore there is no burden associated with this appeal.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $209,859,517, as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

Collection of Information

Regulatory section	Information collection	OMB control No. and estimated burden [change in burden]	Estimated costs
668.405—Issuing and challenging D/E rates.	The proposed regulations would provide institutions an opportunity to correct information about students who have completed their programs and who are on the list provided by the Department to the institution.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 222,820 hours.	$8,144,071
668.406—D/E rates alternate earnings appeals and showings of mitigating circumstances.	The proposed regulations would allow institutions to make an alternate earnings appeal to the D/E rates, or a showing of mitigating circumstances, when the final D/E rates are failing or in the zone under the D/E rates measure.	OMB 1845—NEW2 This would be a new collection. We estimate that the burden would increase by 29,089 hours.	1,063,203
668.410—Consequences of GE measures.	The proposed regulations would provide that for any year the Secretary notifies the institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year the institution must provide written warnings.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden for institutions would increase by 1,065,198 hours. We estimate that the burden would increase for individuals by 1,050,857 hours.	56,061,956
668.411—Reporting requirement for GE programs.	The proposed regulations would require information the institution must report to the Department about students in GE programs.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 546,419 hours.	19,971,614
668.412—Disclosure requirement for GE programs.	The proposed regulations would require certain information about GE programs to be disclosed by institutions to enrolled and prospective students.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden for institutions would increase by 2,001,898 hours. We estimate that the burden for individuals would increase by 1,116,272 hours.	91,364,240
668.413—Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.	The proposed regulations allow institutions to challenge the rates and median earnings calculated by the Department.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 902,136 hours.	32,973,071
668.414—Certification and application requirement for GE programs.	The proposed regulations would add a requirement that institutions certify that GE programs it offers are approved or accredited by an accrediting agency or the State.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 1,981 hours.	72,406
668.504—Draft program cohort default rates and challenges.	The proposed regulations would allow an institution to challenge the draft program cohort default rates.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 5,148 hours.	188,159
668.509—Uncorrected data adjustments.	The proposed regulations would allow institutions to request a data adjustment when agreed-upon data changes were not reflected in the official program cohort default rate.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 326 hours.	11,915
668.510—New data adjustments	The proposed regulations would allow an institution to request a new data adjustment if a comparison of the draft and final LRDR show that data have been included, excluded, or otherwise changed and the errors are confirmed by the data manager.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 76 hours.	2,778
668.511—Erroneous data appeals ..	The proposed regulations allow an institution to appeal the program cohort default rate calculation when the accuracy was previously challenged on the basis of incorrect data.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 0 hours.	0

Regulatory section	Information collection	OMB control No. and estimated burden [change in burden]	Estimated costs
668.512—Loan Servicing Appeals ..	The proposed regulations allow an institution to appeal on the basis of improper loan servicing or collection where the institution can prove that the servicer failed to perform required servicing or collections activities.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 114 hours.	4,167
668.513—Economically disadvantaged appeals.	The proposed regulations would allow institutions to appeal a notice of ineligibility based upon an auditors certification that the GE program has a low income rate, a high completion rate, and a placement rate of 44 percent or more.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 45 hours.	1,645
668.514—Participation rate index appeals.	The proposed regulations would allow institutions to appeal loss of eligibility if the participation rate was less than 0.0625 percent for any of the three most recent program cohort default rates.	OMB 1845—NEW3 We estimate that the burden would increase by 8 hours.	292

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845—NEW1	6,907,571	+ 6,907,571
1845—NEW2	29,089	29,0890
1845—NEW3	5,717	5,717
Total	6,942,377	= 6,942,377

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069A LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/Smart; 84.379 TEACH Grant Program; 84.069B Grants for Access and Persistence Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: March 14, 2014.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:

■ A. Revising the definition of "Recognized occupation."

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.2 Definitions.

* * * * *

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at

www.onetonline.org or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1071, *et seq.,* 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

■ 3. Section 600.10 is amended by:
■ A. Revising paragraphs (c)(1), (c)(2), and (c)(3)(i).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 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) 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 668.414;

(ii) 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; and

(iii) 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.

(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)(i), (ii), or (iii) of this section.

(3) * * *

(i) Fails to obtain the Secretary's approval for an educational program identified in paragraph (c)(1) of this section; or

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1141)

■ 4. Section 600.20 is amended by:
■ A. Revising the introductory text of paragraph (c)(1).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

* * * * *

(c) * * *

(1) Add an educational program or a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1099c)

■ 5. Section 600.21 is amended by:
■ A. Adding paragraph (a)(11).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) For any gainful employment program under 34 CFR part 668, subpart Q, for which the institution—

(i) Establishes the eligibility or reestablishes the eligibility of a new program;

(ii) Discontinues the program's eligibility under 34 CFR 668.410;

(iii) Ceases to provide the program for at least 12 consecutive months;

(iv) Loses program eligibility under § 600.40; or

(v) Changes the program's name, CIP code, as defined in 34 CFR 668.402, or credential level.

* * * * *

(Authority: 20 U.S.C. 1094, 1099b)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 6. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§ 668.6 [Removed and Reserved]

■ 7. Remove and reserve section 668.6.

§ 668.7 [Removed and Reserved]

■ 8. Remove and reserve section 668.7.

§ 668.8 [Amended]

■ 9. Section 668.8 is amended by:
■ A. In paragraph (d)(2)(iii), removing the reference to "§ 668.6" and adding, in its place, a reference to "subpart Q of this part".
■ B. In paragraph (d)(3)(iii), removing the reference to "§ 668.6" and adding, in its place, a reference to "subpart Q of this part".
■ 10. Section 668.14 is amended by revising paragraph (a)(26) to read as follows:

§ 668.14 Program participation agreement.

(a) * * *

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in § 668.414.

* * * * *

■ 11. Add subpart Q to read as follows:

Subpart Q—Gainful Employment (GE) Programs

Subpart Q—Gainful Employment (GE) Programs

§ 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—

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

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

(c) An institution discloses information about the program to students and prospective students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.402 Definitions.

The following definitions apply to this subpart.

Annual earnings rate. The percentage of a GE program's annual loan payment compared to the annual earnings of the students who completed the program, as calculated under § 668.404.

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). The CIP code for a program is six digits. For the purpose of this subpart, programs that are ''substantially similar'' to one another share the first four digits of a CIP code.

Cohort period. The two-year cohort period or the four-year cohort period during which those students who complete a program are identified in order to assess their loan debt and earnings for the purpose of calculating the D/E rates for the program for an award year.

Credential level. The level of the academic credential awarded by an institution to students who would complete the program. For purposes of this subpart, the undergraduate credential levels are: Less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree; and the graduate credential levels are post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Debt-to-earnings rates (D/E rates). The discretionary income rate and annual earnings rate as calculated under § 668.404.

Discretionary income rate. The percentage of a GE program's annual loan payment compared to the discretionary income of the students who completed the program, as calculated under § 668.404.

Four-year cohort period. The cohort period covering four consecutive award years that are—

(1) The third, fourth, fifth, and sixth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2005–2006, 2006–2007, 2007–2008, and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

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

(ii) 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

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

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

GE measures. The debt-to-earnings rates and the program cohort default rate as described in this subpart.

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

Metropolitan Statistical Area (MSA). The Metropolitan Statistical Area as published by the U.S. Office of Management and Budget and available at *www.census.gov/population/metro/* or its successor site.

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.

Program cohort default rate (pCDR). The percentage of a GE program's students who defaulted on their loans, as calculated under § 668.407.

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or indirectly through advertising about enrolling in a GE program.

Student. An individual who received title IV, HEA program funds for enrolling in the applicable GE program.

Title IV loan. A loan authorized under the Federal Perkins Loan Program (Perkins Loan), the Federal Family Education Loan Program (FFEL Loan), or the William D. Ford Direct Loan Program (Direct Loan).

Two-year cohort period. The cohort period covering two consecutive award years that are—

(1) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2010–2011 and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2007–2008 and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

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

(ii) 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

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.403 Gainful employment program 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 provisions for the D/E rates measure described in paragraph (b)(1) or the provisions for the pCDR measure described in paragraph (b)(2) of this section.

(b) *GE measures.* (1) *Debt-to-earnings rates (D/E rates).* For each award year and for each eligible GE program offered by an institution, the Secretary calculates two D/E rates, the discretionary income rate and the annual earnings rate, using the procedures in §§ 668.404 through 668.406.

(2) *Program cohort default rate (pCDR).* For each fiscal year and for each eligible GE program offered by an institution, the Secretary calculates the pCDR using the procedures in § 668.407.

(c) *Outcomes of GE measures.* (1) *D/E rates.* (i) A GE program is ''passing'' the D/E rates measure if—

(A) Its discretionary income rate is less than or equal to 20 percent; or

(B) Its annual earnings rate is less than or equal to eight percent.

(ii) A GE program is ''failing'' the D/E rates measure if—

(A) Its discretionary income rate is greater than 30 percent or the income for the denominator (discretionary earnings) of the rate is negative or zero; and

(B) Its annual earnings rate is greater than 12 percent or the denominator (annual earnings) of the rate is zero.

(iii) A GE program is ''in the zone'' for the purpose of the D/E rates measure if it is not a passing GE program and its—

(A) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or

(B) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.

(iv) For the purpose of the D/E rates measure, a GE program becomes ineligible if the program—

(A) Is failing the D/E rates measure in two out of any three consecutive award years for which the program's D/E rates are calculated; or

(B) Is failing the D/E rates measure or is in the zone for four consecutive award years for which the program's D/E rates are calculated.

(2) *pCDR.* (i) A GE program is ''passing'' the pCDR measure if its pCDR for the most recent fiscal year is less than 30 percent.

(ii) A GE program is ''failing'' the pCDR measure if its pCDR for the most recent fiscal year is 30 percent or greater.

(iii) For the purpose of the pCDR measure, a GE program is ineligible if it fails the pCDR measure for three consecutive fiscal years.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.404 Calculating D/E rates.

(a) *General.* Except as provided in paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a GE program as follows:

(1) Discretionary income rate = annual loan payment/(the higher of the mean or median annual earnings—(1.5 × Poverty Guideline)).

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

(b) *Annual loan payment.* The Secretary calculates the annual loan payment for a GE program by—

(1) Determining the median loan debt of the students who completed the program during the applicable cohort period, based on the lesser of—

(i) The loan debt incurred by each student as determined under paragraph (d) of this section; and

(ii) The total amount of tuition and fees the institution assessed each student for enrollment in the program and the total amount for books, equipment, and supplies, as reported in § 668.411(a)(1)(iv) and (v).

(2) Amortizing the median loan debt—

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

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

(C) Over a 20-year repayment period for a program that leads to a doctoral or first-professional degree;

(ii) Using an annual interest rate that is the average of the statutorily determined annual interest rate on Federal Direct Unsubsidized Loans made during the six-year period prior to the end of the applicable cohort period, which includes the applicable cohort period, where—

(A) For a program that leads to an undergraduate certificate, an associate degree, a bachelor's degree, or a post-baccalaureate certificate, the average interest rate is based on the rate of a Federal Direct Unsubsidized Loan made to an undergraduate student; and

(B) For a program that leads to a master's degree, a graduate certificate, or a doctoral or first-professional degree, the average interest rate is based on the rate of a Federal Direct Unsubsidized Loan made to a graduate student.

Note to paragraph (b)(2)(ii): For example, if the two-year cohort period is award years 2010–2011 and 2011–2012, the interest rate would be the average of the interest rates for the years from 2006–2007 through 2011–2012.

(c) *Annual earnings.* (1) The Secretary obtains from the Social Security Administration (SSA) or another Federal agency, under § 668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the applicable cohort period and who are not excluded under paragraph (e) of this section; and

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

(d) *Loan debt.* In determining the loan debt for a student, the Secretary—

(1) Includes—

(i) The amount of title IV loans that the student borrowed for enrollment in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included);

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that were required to be reported by the institution under § 668.411; and

(iii) Any credit extended by or on behalf of the institution for enrollment in the GE program that the student is obligated to repay after the student's completion of the program, regardless of who holds the debt, even if that obligation is excluded from the definition of ''private education loan,'' in 34 CFR 601.2;

(2) Attributes all of the loan debt incurred by the student for enrollment in any—

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE 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 draft D/E rates under this section;

(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 draft D/E rates under this section; and

(iii) Post-baccalaureate GE program, graduate certificate GE program, or graduate degree GE program at the institution to the highest credentialed graduate degree 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 draft D/E rates under this section; and

(3) Excludes any loan debt incurred by the student for enrollment in programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrolling in GE programs at other institutions if the institution and the other institutions are

under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans 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) 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;

(3) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(4) For undergraduate GE 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 draft D/E rates under this section;

(5) For post-baccalaureate, graduate certificate, or graduate degree GE programs, the student completed a higher credentialed graduate GE 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 draft D/E rates under this section; or

(6) The student died.

(f) *D/E rates not calculated.* The Secretary does not calculate D/E rates for a GE program if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year cohort period and fewer than 30 students completed the program during the four-year cohort period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section.

(g) *Transition period.* (1) If a GE program would be failing or in the zone based on its draft D/E rates calculated in accordance with paragraphs (a) through (f) of this section for any of the first four award years for which the Secretary calculates D/E rates, the Secretary calculates transitional draft D/E rates for the program by using—

(i) The median loan debt of the students who completed the program during the most recently completed award year prior to the calculation of the D/E rates; and

(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.

(2) For the award years listed in paragraph (g)(1), the Secretary determines the final D/E rates for the program by using the lower of the draft D/E rates calculated under paragraphs (a) through (f) of this section or the transitional draft D/E rates calculated under this paragraph (g).

(3) The institution may challenge the transitional draft D/E rates under the procedures in § 668.405 and may appeal the transitional final D/E rates under § 668.406.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.405 Issuing and challenging D/E rates.

(a) *Overview.* For each award year, the Secretary determines the D/E rates for a GE program at an institution by—

(1) Creating a list of the students who completed the program during the applicable cohort period and providing the list to the institution, as provided in paragraph (b) of this section;

(2) Allowing the institution to correct the information about the students on the list, as provided in paragraph (c) of this section;

(3) Obtaining from SSA or another Federal agency the mean and median annual earnings of the students on the list, as provided in paragraph (d) of this section;

(4) Calculating draft D/E rates and providing them to the institution, as provided in paragraph (e) of this section;

(5) Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates, as provided in paragraph (f) of this section;

(6) Calculating final D/E rates and providing them to the institution, as provided in paragraph (g) of this section; and

(7) Allowing the institution to appeal the final D/E rates as provided in § 668.406.

(b) *Creating the list of students.* (1) The Secretary selects the students to be included on the list by—

(i) Identifying the students who completed the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(ii) Indicating which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion.

(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 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 list to the institution, the institution may—

(i) Provide evidence showing that a student should be included on or removed from the list pursuant to § 668.404(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 list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the D/E rates for the program.

(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 list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the final list.

(d) *Obtaining earnings data.* The Secretary submits the final list to SSA or another Federal agency. For purposes of this section, SSA returns to the Secretary—

(1) The mean and median annual earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that SSA could not match.

(e) *Calculating draft D/E rates.* (1) The Secretary uses the higher of the mean or median annual earnings provided by SSA to calculate draft D/E rates for a GE program, as provided in § 668.404.

(2) If SSA reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match. For example, if SSA is unable to match three students out of 100 students, the Secretary orders by

amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

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

(ii) The draft D/E rates and the data described in paragraphs (b) through (e) of this section are not considered public information.

(f) *Institutional challenges 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 § 668.404 is correct unless the institution provides evidence, 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 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 § 668.404 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 SSA provided to the Secretary;

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

(iii) Any challenge that is not timely submitted.

(4) 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.

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

(6) Except as provided under § 668.406, 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 GE programs by issuing the notice of determination described in § 668.409(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.

(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 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.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.406 D/E rates alternate earnings appeals and showings of mitigating circumstances.

(a) *Alternate earnings appeals.* (1) *General.* If a GE program is failing or in the zone under the D/E rates measure, 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.

(2) *Basis for appeals.* (i) The institution may use alternate earnings from an institutional survey conducted under paragraph (a)(3), or from a State-sponsored data system under paragraph (a)(4) of this section, to recalculate the program's final D/E rates and file an appeal if—

(A) For a program that was failing the D/E rates measure, the program's recalculated rates are passing or in the zone; or

(B) For a program that was in the zone for the purpose of the D/E rates measure, the program's recalculated rates are passing.

(ii) In recalculating the final D/E rates, the institution must—

(A) For the numerator, use the annual loan payment used in the calculation of the final D/E rates; and

(B) For the denominator, use the higher of the mean or median alternate earnings. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from SSA to calculate the final D/E rates under § 668.404.

(3) *Survey requirements for appeals.* An institution must—

(i) In accordance with the standards included on an Earning Survey Form developed by NCES, conduct a survey, to obtain annual earnings information, of all the students (as defined in § 668.402) who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404. The Secretary will publish in the **Federal Register** the Earnings Survey Form that will include a field-tested sample survey as well as the survey standards. An institution is not required to use the Earnings Survey Form but must adhere to the survey standards included in the form in conducting a survey under this section.

(ii) Submit to the Secretary as part of its appeal—

(A) 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;

(B) An examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the requirements set forth in the NCES Earnings Survey Form. The attestation must be conducted in accordance with the attestation standards contained in the Government Accountability Office's Government Auditing Standards promulgated by the Comptroller General of the United States (available at *www.gao.gov/yellowbook/overview* or its successor site), and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General; and

(C) Supporting documentation requested by the Secretary.

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

(i) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students (as defined in § 668.402) who completed the GE program in the applicable cohort period to the administrator of each State-sponsored data system used for the appeal;

(ii) Demonstrate that annual earnings data were obtained for more than 50 percent of the students on the list, and that the number of students for whom earnings data were obtained is 30 or more; and

(iii) Submit as part of its appeal—

(A) 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

(B) Supporting documentation requested by the Secretary.

(5) *Appeals procedure.* (i) 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 § 668.405 and the notice of determination under § 668.409, the institution must—

(A) 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 § 668.405(f), but no later than three business days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(B) 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.

(ii) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates under appeal while the Secretary considers the appeal. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that they are under appeal.

(iii) An institution that does not submit a timely appeal waives its right to appeal the GE program's failing or zone D/E rates for the relevant award year.

(6) *Appeals determinations.* (i) *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 § 668.409(a) remain the final D/E rates for the program for the award year.

(ii) *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 § 668.410. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will be updated to reflect the new final D/E rates.

(b) *Showings of mitigating circumstances.* (1) *General.* If a GE program is failing or in the zone under the D/E rates measure, an institution may avoid or mitigate the consequences that the Secretary may otherwise impose under § 668.410 by making a successful showing of mitigating circumstances with respect to the program's most recent final D/E rates issued by the Secretary.

(2) *Basis for showing.* The institution may make a showing of mitigating circumstances if less than 50 percent of all the individuals who completed the program during the applicable cohort period, including those who received and those who did not receive title IV, HEA program funds, incurred loan debt (as defined in § 668.404(d)) for enrollment in the program, referred to in this section as the ''borrowing rate.''

(3) *Showing requirements.* An institution must—

(i) Calculate the borrowing rate by—

(A) Identifying the individuals (including those who received title IV, HEA program funds and those who did not) who were enrolled in the program on at least a half-time basis at any time during the applicable cohort period, and who completed the program during the applicable cohort period;

(B) Determining which of the individuals identified under paragraph (b)(3)(i)(A) of this section incurred loan debt (as defined in § 668.404(d)) for enrollment in the program; and

(C) Dividing the number of individuals who incurred loan debt under paragraph (b)(3)(i)(B) by the total number of individuals identified under paragraph (b)(3)(i)(A) of this section; and

(ii) Submit as part of its showing—

(A) A certification signed by its chief executive officer identifying the borrowing rate and attesting to its accuracy; and

(B) Supporting documentation requested by the Secretary.

(4) *Showing procedure.* (i) For any showing under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.405 and the notice of determination under § 668.409, the institution must—

(A) Notify the Secretary of its intent to make a showing of mitigating circumstances no earlier than the date that the Secretary provides the institution the draft D/E rates under § 668.405(f), but no later than three business days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(B) Submit its borrowing rate calculations, all certifications, and specified supporting documentation related to the showing no later than 60 days after the date the Secretary issues the notice of determination.

(ii) An institution that timely submits a showing of mitigating circumstances that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates for the year in which the showing is made while the Secretary considers the showing. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that the institution has filed to make a showing of mitigating circumstances.

(iii) An institution that does not make a timely showing of mitigating circumstances for a GE program waives its right to make such a showing for the relevant award year in any subsequent determination with respect to the GE program.

(5) *Showing determinations.* (i) *Showings denied.* If the Secretary denies a showing of mitigating circumstances, the Secretary notifies the institution of the reasons for denying the showing, and the program's final D/E rates previously issued in the notice of determination under § 668.409(a) remain the final D/E rates for the program for the award year.

(ii) *Showings accepted.* If the Secretary accepts the showing of mitigating circumstances, the Secretary notifies the institution that the showing is accepted and that the program is deemed to have passed the D/E rates measure for the relevant year. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will remain the same, but will be annotated to indicate that the program's showing of mitigating circumstances was accepted.

(c) *Conditions for alternate earnings appeals and showings of mitigating circumstances.* An institution must ensure that any material that it submits to make any appeal or showing of mitigating circumstances 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.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.407 Calculating pCDR.

For each fiscal year, the Secretary calculates the pCDR of a GE program using the same methodology the Secretary uses to calculate the institutional cohort default rate (institutional CDR) pursuant to section 435(a) of the HEA. The methodology and the procedures used for calculating pCDR are set forth in subpart R of this part.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.408 Issuing and challenging pCDR.

For each fiscal year, the Secretary notifies the institution of the pCDR for the program determined under subpart R of this part. The institution may challenge or appeal the pCDR under the procedures for challenges and appeals set forth in subpart R of this part.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.409 Final determination of GE measures.

(a) *Notice of determination.* For each award year for the D/E rates measure and fiscal year for the pCDR measure for which the Secretary calculates a GE measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) For the D/E rates—

(i) The final rates for the program as determined under § 668.404, § 668.405, and, if applicable, § 668.406;

(ii) The final determination by the Secretary of whether the program is passing, failing, in the zone, or ineligible, as described in § 668.403, and the consequences of that determination;

(iii) 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;

(iv) Whether the institution is required to provide the student warning under § 668.410(a); and

(v) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal or make a showing of mitigating circumstances pursuant to § 668.406.

(2) For the pCDR—

(i) The official pCDR for the program as determined under § 668.505 or, if changed by adjustment or appeal, as determined under § 668.508(e)(3);

(ii) The instructions for requesting adjustment to or appealing an official pCDR as provided in § 668.508;

(iii) The final determination of the Secretary of whether the program is passing, failing, or ineligible, as described in § 668.403, and the consequences of that determination; and

(iv) Whether the institution is required to provide the student warning under § 668.410(a).

(b) *Effective date of Secretary's final determination.* The Secretary's determination as to a GE measure is effective on the date that is specified in the notice of determination. The determination, including, as applicable, the determination with respect to an appeal or showing of mitigating circumstances under § 668.406, constitutes the final decision of the Secretary with respect to that GE measure and the Secretary provides for no further appeal of that determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.410 Consequences of GE measures.

(a) *Student warning.* For any year for which the Secretary notifies an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year, the institution—

(1) Must provide a written warning directly to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.409. ''Directly'' means by hand-delivering the warning to the student individually or as part of a group presentation, or sending the warning to the primary email address used by the institution for communicating with the student about the program. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the **Federal Register**, the warning must—

(i) State that: ''You may not be able to use federal student grants or loans to pay for this institution's program next year because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that you are able to find gainful employment in a recognized occupation, and are not burdened by loan debt you may not be able to repay. A program that doesn't meet these standards may lose the ability to provide students with access to federal financial aid to pay for the program.

(ii) Describe the options available to the student to continue his or her education at the institution, or at another institution, in the event that the program loses its eligibility for title IV, HEA program funds; and

(iii) Indicate whether or not the institution will—

(A) Allow the student to transfer to another program at the institution;

(B) Continue to provide instruction in the program to allow the student to complete the program; and

(C) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, the student for enrollment in the program.

(2) For each prospective student—

(i) At the time the prospective student first contacts, or is contacted by, the institution about the GE program, must provide a written warning directly to the student. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the **Federal Register**, the warning must state: ''You may not be able to use federal student grants or loans to pay for this institution's program in the future because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that students are able to find gainful employment in a recognized occupation and are not burdened by debt they struggle to repay. A program in violation of these standards may lose the ability to provide students with access to federal financial aid to pay for the program.''; and

(ii) May not enroll, register, or enter into a financial commitment with the prospective student in the program earlier than—

(A) Three business days after the warning was first provided to the prospective student; or

(B) If more than 30 days have passed from the date the warning is first provided to the prospective student, three business days after the institution provides another warning as required by paragraph (a)(2)(i) of this section.

(3) To the extent practicable, must provide alternatives to English-language warnings for those students and prospective students for whom English is not their first language.

(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 or zone program that it discontinued voluntarily, reestablish the eligibility of an ineligible program, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date on which the program became ineligible or the institution discontinued the failing or zone program.

(3) *Restoring eligibility.* An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.414(b). For this purpose, an institution voluntarily discontinues a failing or zone program on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility of that program.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.411 Reporting requirements for GE programs.

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

(1) For each student enrolled in a GE 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 program;

(iii) Whether the 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 program;

(v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the 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 program;

(2) If the student completed or withdrew from the GE program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.404(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.404(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; and

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution; and

(3) As described in a notice published by the Secretary in the **Federal Register**, any other information the Secretary requires the institution to report.

(b)(1) An institution must report the information required under paragraph (a) of this section no later than—

(i) July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes a later date 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 in paragraph (a) of this section to the extent required, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.412 Disclosure requirements for GE programs.

(a) *Disclosure template.* An institution must use the disclosure template provided by the Secretary to disclose information about each of its GE programs to enrolled and prospective students. The Secretary will conduct consumer testing to determine how to make the disclosure template as meaningful as possible. The Secretary identifies the information that must be included in the template in a notice published in the **Federal Register**. That information may include, but is not limited to:

(1) The primary occupations (by name and SOC code) that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site.

(2) As calculated by the Secretary under § 668.413, the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.

(3) The length of the program in calendar time (i.e., weeks, months, years).

(4) The number of clock or credit hours, as applicable, in the program.

(5) The total number of individuals enrolled in the program during the most recently completed award year.

(6) As calculated by the Secretary under § 668.413, the loan repayment rate for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period:

(i) All students who enrolled in the program.

(ii) Students who completed the program.

(iii) Students who withdrew from the program.

(7) The total cost of tuition and fees, and the total cost of books, supplies, and equipment that a student would incur for completing the program within the length of the program.

(8) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate.

(9) Of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program.

(10) As calculated by the Secretary, the median loan debt as determined under § 668.404(d) of any one or all of the following groups of title IV, HEA loan program borrowers:

(i) Those students who completed the program during the most recently completed award year.

(ii) Those students who withdrew from the program during the most recently completed award year.

(iii) All of the students described in paragraphs (a)(10)(i) and (ii) of this section.

(11) As provided by the Secretary, the median earnings of any one or all of the following groups of students:

(i) Students who completed the program during the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(ii) Students who were in withdrawn status at the end of the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(iii) All of the students described in paragraph (a)(11)(i) and (ii) of this section.

(12) As calculated by the Secretary under § 668.407, the most recent pCDR.

(13) As calculated by the Secretary under § 668.404, the most recent annual earnings rate.

(14) With respect to the occupations for which the program prepares students as disclosed by the institution under paragraph (a)(1) of this section, whether completion of the program satisfies any applicable educational prerequisites for professional licensure in the State in which the institution is located and in any other State included in the institution's Metropolitan Statistical Area.

(15) If applicable, whether the program holds the programmatic accreditation necessary for an individual to obtain employment in the occupation for which the program prepares the student.

(16) A link to the U.S. Department of Education's College Navigator Web site, or its successor site.

(b) *Disclosure updates.* (1) In accordance with procedures and timelines established by the Secretary, the institution must update at least annually the information contained in the disclosure template with the most recent data available for each of its GE programs.

(2) Within 30 days of receiving notice from the Secretary that the institution must provide a student warning for the program under § 668.410(a), the institution must update the disclosure template to include the warning for both enrolled and prospective students.

(c) *Web link to disclosure information.* (1) On any Web page containing academic, cost, financial aid, or admissions information about a GE program, the institution must provide a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated, differing lengths) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures under paragraph (a). An institution that chooses to publish separate disclosure templates for each location or format must ensure that each disclosure template clearly identifies the applicable location or format.

(3) In addition to other actions the Secretary may take, the Secretary may require the institution to modify its Web page if the link for the disclosure template is not prominent, readily accessible, clear, conspicuous, and direct.

(d) *Promotional materials.* (1) All promotional materials that an institution makes available to prospective students that identify a GE program by name or otherwise promote the program must include—

(i) The disclosure template in a prominent manner; or

(ii) Where space or airtime constraints would preclude the inclusion of the disclosure template, the Web address (URL) of, or the direct link to, the disclosure template, provided that the institution identifies the URL or link as ''Important Information about the educational debt, earnings, and completion rates of students who attended this program'' or as otherwise specified by the Secretary in a notice published in the **Federal Register**.

(2) Promotional materials include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.

(3) The institution must ensure that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

(e) *Direct distribution to prospective students.* (1) An institution must provide, as a separate document, a copy of the disclosure template to a prospective student.

(2) Before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution must obtain written confirmation from the prospective student that the prospective student received a copy of the disclosure template.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.

(a) *General.* Under the procedures in this section, the Secretary determines the completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings an institution must disclose under § 668.412 for each of its GE programs, notifies the institution of that information, and provides the institution an opportunity to challenge the calculations.

(b) *Calculating completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.*

(1) *Completion rates.* The Secretary calculates the completion rates of a GE program. For the purpose of this calculation, the ''enrollment cohort'' is comprised of the students who enrolled in the program at any time during the relevant award year. The Secretary calculates completion rates as follows:

(i) For students whose enrollment status is full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 100\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 150\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

(ii) For students whose enrollment status is less than full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 200\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 300\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

(2) *Withdrawal rate.* The Secretary calculates two withdrawal rates of a GE program. For the purpose of this calculation, the ''enrollment cohort'' is comprised of the students receiving title IV, HEA program funds who enrolled in the program at any time during the relevant award year. The Secretary calculates withdrawal rates as follows:

(i) The percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program;

(ii) The percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program.

(3) *Loan repayment rate.* For an award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(3)(vi) of this section who enrolled in a GE program as follows:

$$\frac{\text{Number of borrowers paid in full plus number of borrowers in active repayment}}{\text{Number of borrowers entering repayment}}$$

(i) *Number of borrowers entering repayment.* The total number of borrowers who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the program.

(ii) *Number of borrowers paid in full.* Of the number of borrowers entering repayment, the number who have fully repaid all FFEL or Direct Loans received for enrollment in the program.

(iii) *Number of borrowers in active repayment.* Of the number of borrowers entering repayment, the number who, during the most recently completed award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the program, including consolidation loans that include a FFEL or Direct Loan received for enrollment in the program, by comparing the outstanding balance of each loan at the beginning and end of the award year.

(iv) *Loan defaults.* A borrower who defaulted on a FFEL or Direct Loan is not included in the numerator of the loan repayment rate formula even if that loan has been paid in full or meets the definition of being in active repayment.

(v) *Repayment rates for borrowers who completed or withdrew.* The Secretary may modify the formula in this paragraph to calculate repayment rates for only those borrowers who completed the program or for only those borrowers who withdrew from the program.

(vi) *Exclusions.* For the award year the Secretary calculates the loan repayment rate for a program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that—

(A) One or more of the borrower's FFEL or Direct loans were in a military-related deferment status at any time during the most recently completed award year;

(B) One or more of the borrower's FFEL or Direct loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the borrower's total and permanent disability, under 34 CFR 682.402 or 685.212;

(C) The borrower was enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or

(D) The borrower died.

(4) *Median loan debt for students who completed the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(i), who completed the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(5) *Median loan debt for students who withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(ii), who enrolled in a GE program and who withdrew from the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(6) *Median loan debt for students who completed and withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(iii) who enrolled in a GE program and who completed the GE program during the award year and those students who withdrew from the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(7) *Median earnings.* The Secretary calculates the median earnings of a GE program as described in paragraphs (b)(8) through (b)(12) of this section.

(8) *Median earnings for students who completed the GE program.* (i) The Secretary determines the median earnings for the students who completed the GE program during the applicable cohort period by—

(A) Creating a list of the students who completed the program during the applicable cohort period and providing it to the institution, as provided in paragraph (b)(8)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(8)(iii) of this section;

(C) Obtaining from SSA or another Federal agency the median annual earnings of the students on the list, as provided in paragraph (b)(8)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program and completed the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

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

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information provided for a student on the list.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the median earnings for students who completed the program.

(D) 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 list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the list.

(iv) *Obtaining earnings data.* The Secretary submits the final list to SSA. For purposes of this section, SSA returns to the Secretary—

(A) The median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(9) *Median earnings for students who withdrew from the program.* (i) The Secretary determines the median earnings for the students who withdrew from the program during the applicable cohort period by—

(A) Creating a list of the students who were enrolled in the program but withdrew from the program during the applicable cohort period and providing it to the institution, as provided in paragraph (b)(9)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(9)(iii) of this section;

(C) Obtaining from SSA or another Federal agency the median annual earnings of the students on the list, as provided in paragraph (b)(9)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program but withdrew from the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

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

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary, in a format and process determined by the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information provided for a student on the list.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the median earnings for students who withdrew from the program.

(D) 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 list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the list.

(iv) *Obtaining earnings data.* The Secretary submits the final list to SSA. For purposes of this section SSA returns to the Secretary—

(A) The median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(10) *Median earnings for students who completed and withdrew from the program.* The Secretary calculates the median earnings for both the students who completed the program during the applicable cohort period and students who withdrew from the program during the applicable cohort period in accordance with paragraphs (b)(8) and (b)(9) of this section.

(11) *Exclusions from median earnings calculations.* The Secretary excludes a student from the calculation of the median earnings of a GE program if the Secretary determines that—

(i) 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 this section;

(ii) 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;

(iii) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under this section; or

(iv) The student died.

(12) *Median earnings not calculated.* The Secretary does not calculate the median earnings for a GE program if SSA does not provide the median earnings for the program.

(c) *Notification to institutions.* The Secretary notifies the institution of the—

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1) through (b)(3) of this section and the information the Secretary used to calculate those rates.

(2) Median loan debt of the students who completed the program, as described in paragraph (b)(4), the students who withdrew from the program, as described in paragraph (b)(5), and both the students who completed and withdrew from the program, as described in paragraph (b)(6) of this section, in each case during the applicable cohort period.

(3) Median earnings of the students who completed the program, as described in paragraph (b)(8), the students who withdrew from the program, as described in paragraph (b)(9), or both the students who completed the program and the students who withdrew from the program, as described in paragraph (b)(10) of this section, in each case during the applicable cohort period.

(d) *Challenges to completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.* (1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) No later than 45 days after the Secretary notifies an institution of a GE program's draft completion rate, withdrawal rate, repayment rate, and median loan debt, the institution may challenge the accuracy of the information that the Secretary used to calculate the draft rates and the draft median loan debt by submitting, in a form prescribed by the Secretary, evidence satisfactory to the Secretary demonstrating that the information was incorrect.

(ii) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate the rates and the median loan debt and notifies the institution whether the challenge is accepted or the reasons the challenge is not accepted. If the Secretary accepts the challenge, the Secretary uses the corrected data to calculate the rates or median loan debt.

(iii) An institution may challenge the Secretary's calculation of the completion rates, withdrawal rates, repayment rates, and median loan debt only once for an award year. An institution that does not timely challenge the rates or median loan debt waives any objection to the rates or median loan debt as stated in the notice.

(2) *Median earnings.* The Secretary does not consider any challenges to the median earnings calculated under this section.

(e) *Final rates, median loan debt, and median earnings.* (1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a program's draft completion rate, withdrawal rate, repayment rate, and median loan debt constitute the final rates and median loan debt for that program.

(ii) The Secretary informs the institution of the final completion rate, withdrawal rate, repayment rate, and median loan debt for each of its GE programs by issuing a notice of determination.

(iii) After the Secretary provides the notice of determination, the Secretary may publish the final completion rate, withdrawal rate, repayment rate, and median loan debt.

(2) *Median earnings.* The median earnings of a program calculated by the Secretary under this section constitute the final median earnings for that program. After the Secretary provides the institution with the notice in paragraph (c) of this section, the Secretary may publish the final median earnings for the program.

(f) *Conditions for challenges.* An institution must ensure that any material that it submits to make any corrections or challenge under this section is complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and, with respect to challenges under paragraph (d)(1) of this section, consistent with any instructions provided to the institution with the notice of its draft completion, withdrawal, and repayment rates and median loan debt.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.414 Certification requirements for GE programs.

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

(2) If an institution makes the certification in its PPA pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *PPA certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its PPA with the Secretary under § 668.14 that each of its currently eligible GE programs meets the requirements of paragraph (d) of this section.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes the eligibility for title IV, HEA program funds 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 to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a substantially similar program, that was subject to the three-year loss of eligibility under § 668.410(b)(2), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies, at the time and in the form specified in this section, that:

(1) 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;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or by any State within the institution's MSA; and

(3) For the State in which the institution is located and in all other States within the institution's MSA, each eligible program it offers satisfies the licensure or certification requirements of those States so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.415 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.

(Authority: 20 U.S.C. 1001, 1002, 1088)

■ 12. Add subpart R to read as follows:

Subpart R—Program Cohort Default Rate

Sec.

Subpart R—Program Cohort Default Rate

§ 668.500 Purpose of this subpart.

General. The program cohort default rate is a measure we use to determine the eligibility of a GE program under subpart Q of this part. This subpart describes how program cohort default rates are calculated, some of the consequences of program cohort default rates, and how you may request changes to your program cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft program cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official program cohort default rate is published.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.501 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your program cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.502(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, ''days'' means calendar days.

(d) *Default.* A borrower is considered to be in default for program cohort default rate purposes under the rules in § 668.502(c).

(e) *Draft program cohort default rate.* Your draft program cohort default rate is a rate we issue, for your review, before we issue your official program cohort default rate. A draft program cohort default rate is used only for the purposes described in § 668.504.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207, as applicable.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *GE program.* An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level, as defined in § 668.402.

(i) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official program cohort default rate.

(j) *Official program cohort default rate.* Your official program cohort default rate is the program cohort default rate that we publish for you under § 668.505.

(k) *We.* We are the Department, the Secretary, or the Secretary's designee.

(l) *You.* You are an institution. We consider each reference to ''you'' to apply separately to the institution with respect to each of its GE programs.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.502 Calculating and applying program cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your program cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your GE program's cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your program cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your program cohort default rate.

(4) Fourth, we apply your program cohort default rate to your program at all of your locations—

(i) As you exist on the date you receive the notice of your official program cohort default rate; and

(ii) From the date on which you receive the notice of your official program cohort default rate until you receive our notice that the program cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford Loan, Federal SLS Loan, Direct Subsidized Loan, or Direct Unsubsidized Loan that they received to enroll in the GE program, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying program cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default on a FFELP loan unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days;

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) *Calculate the program cohort default rate.* Except as provided in § 668.503, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c), by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that program cohort and in the two most recent prior program cohorts who are in default, as determined for each program cohort under paragraph (c) of this section, by the total number of borrowers in that program cohort and the two most recent prior program cohorts, as determined for each program cohort under paragraph (b).

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.503 Determining program cohort default rates for GE programs at institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, the program cohort default rate of a GE program you offer is determined under this section.

(2) In determining program cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your GE program's eligibility to participate in title IV, HEA programs under § 668.506 or § 668.507.

(4) If the program cohort default rate of a program offered by another institution is applicable to you under this section with respect to a program you offer, you may challenge, request an adjustment, or submit an appeal for the program cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.504 and 668.508.

(b) *Acquisition or merger of institutions.* If you offer a GE program and your institution acquires, or was created by the merger of, one or more institutions that participated independently in the title IV, HEA programs immediately before the acquisition or merger and that offered the same GE program, as identified by its 6-digit CIP code and credential level—

(1) Those program cohort default rates published for a GE program offered by any of these institutions before the date of the acquisition or merger are attributed to the GE program after the merger or acquisition; and

(2) Beginning with the first program cohort default rate published after the date of the acquisition or merger, the program cohort default rates for that GE program are determined by including in the calculation under § 668.502 the borrowers who were enrolled in that GE program from each institution that offered that program and that was involved in the acquisition or merger.

(c) [Reserved]

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The program cohort default rates published for a GE program before the date of the change for your former parent institution are also applicable to that GE program when you offer that program;

(2) Beginning with the first program cohort default rate published after the date of the change, the program cohort default rates for a GE program for the next three fiscal years are determined by including the applicable borrowers who were enrolled in the GE program from your institution and from your former parent institution (including all of its locations) in the calculation under § 668.502; and

(3) [Reserved].

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.504 Draft program cohort default rates and your ability to challenge before official program cohort default rates are issued.

(a) *General.* (1) We notify you of the draft program cohort default rate of a GE program before the official program cohort default rate of the GE program is calculated. Our notice includes the loan record detail report for the draft program cohort default rate.

(2) Regardless of the number of borrowers included in the program cohort, the draft program cohort default rate of a GE program is always calculated using data for that fiscal year alone, using the method described in § 668.502(d)(1).

(3) The draft program cohort default rate of a GE program and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in materials that we provide to you. If your challenge does not comply with these requirements, we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your program cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.509, or in an erroneous data appeal, under § 668.511.

(c) *Participation rate index challenges.* (1)(i) [Reserved]

(ii) You may challenge an anticipated loss of eligibility based on three consecutive program cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three program cohorts' fiscal years.

(iii) [Reserved]

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.514(b), except that—

(i) The draft program cohort default rate is considered to be your most recent program cohort default rate; and

(ii) If the program cohort used to calculate the draft program cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft program cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.502(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft program cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official program cohort default rate is published.

(5) A GE program does not lose eligibility under § 668.506 if we determine that your participation rate index challenge is meritorious, and the GE program will not lose eligibility under § 668.506 when the next official program cohort default rate for the GE program is published. A successful challenge that is based on the draft program cohort default rate does not excuse the program from loss of eligibility on any other ground. However, if a successful challenge under paragraph (c)(1)(ii) of this section is based on a prior, official program cohort default rate for the GE program, and not on the draft program cohort default rate for the program, we also excuse the GE program from any subsequent loss of eligibility under § 668.506 that would be based on that official program cohort default rate.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.505 Notice of the official program cohort default rate of a GE program.

(a) We notify you of the official cohort default rate of a GE program after we calculate it. After we send our notice to you, we publish a list of program cohort default rates for all institutions.

(b) If one or more borrowers who were enrolled in a GE program entered repayment in the fiscal year for which the rate is calculated, or the GE program is subject to loss of eligibility under § 668.506, or if we believe you will have an official program cohort default rate for a GE program calculated as an average rate, you will receive a loan record detail report as part of your notification package for that program.

(c) You have five business days, from the date of our notification, as posted on the Department's Web site, to report any problem with receipt of the notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the date of the notification package that is posted on the Department's Web site.

(e) If you timely report a problem with receipt of your notification package under paragraph (c) of this section and the Department agrees that the problem was not caused by you, the Department will extend the challenge, appeal, and adjustment deadlines and timeframes to account for a re-notification package.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.506 Consequences of program cohort default rates on the GE program's eligibility to participate in the title IV, HEA programs.

(a) *End of participation.* (1) A GE program loses eligibility as provided in § 668.403(c)(2).

(2) [Reserved]

(b) *Length of period of ineligibility.* A GE program that loses eligibility under this section continues to be ineligible as provided in § 668.410(b).

(c) [Reserved]

(d) [Reserved]

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while a request for adjustment or appeal, as listed in § 668.508(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility of a GE program that is continued under this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify the GE program for continued eligibility under § 668.508. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) The GE program does not lose eligibility if we determine that your request for adjustment or appeal for the GE program meets all requirements of this subpart.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to have the GE program participate in the Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of the requests for adjustment or appeals qualify the program for continued eligibility—

(1) For any Direct Loan Program loan that you originated and disbursed for borrowers in the GE program more than 30 days after you received the notice of program cohort default rate for that GE program, we estimate the costs of those loans;

(2) We exclude from this estimate any amount attributable to funds that you disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) [Reserved]

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.507 Preventing evasion of the consequences of program cohort default rates.

In calculating the program cohort default rate of a GE program, the Secretary may include loan debt incurred by the borrower for enrolling in GE 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.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.508 General requirements for adjusting official program cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* A GE program does not lose eligibility under § 668.506 if—

(1) We recalculate the program cohort default rate for a program, and it is below the percentage threshold for loss of eligibility under § 668.506 as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.509;

(ii) A new data adjustment submitted under this section and § 668.510;

(iii) An erroneous data appeal submitted under this section and § 668.511; or

(iv) A loan servicing appeal submitted under this section and § 668.512; or

(2) The GE program meets the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.513;

(ii) A participation rate index appeal submitted under this section and § 668.514;

(iii) An average rates appeal submitted under this section and § 668.515; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.516.

(b) *Limitations on your ability to dispute a program cohort default rate.* (1) You may not dispute the calculation of a program cohort default rate except as described in this subpart.

(2) You may not request an adjustment, or appeal a program cohort default rate, under § 668.509, § 668.510, § 668.511, or § 668.512, more than once.

(3) You may not request an adjustment, or appeal a program cohort default rate, under § 668.509, § 668.510, § 668.511, or § 668.512, if the GE program previously lost eligibility under § 668.506 based entirely or partially on that program cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in materials that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.509 or § 668.510, or an appeal, under § 668.511 or § 668.512—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a sanction under § 668.410 or file an economically disadvantaged appeal under § 668.513(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, before we notify you of your next official program cohort default rate.

(5) You may not seek judicial review of our determination of a program cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that program cohort default rate.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.509 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for a GE program's most recent cohort of borrowers, used to calculate the most recent official program cohort default rate, if in response to your challenge under § 668.504(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official program cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your program cohort default rate, based on the corrected data, and correct the rate that is publicly released if we determine that—

(1) In response to your challenge under § 668.504(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official program cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.510 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for the most recent program cohort of borrowers, used to calculate the most recent official program cohort default rate for a GE program, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.511(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and make corrections to the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.511 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.508(b), you may appeal the calculation of a program cohort default rate upon which loss of eligibility under § 668.506 is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.504(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.510(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.512 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.508(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) The most recent program cohort default rate for a GE program; or

(2) Any program cohort default rate upon which a loss of eligibility under § 668.506 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the responsible party failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a FFELP loan held by us or for a Direct Loan Program loan, document that skip tracing was performed if the applicable servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official program cohort default rate notice, you must request it within 15 days after you receive the notice of your official program cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the program cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your program cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.510(b)(6)(i) or § 668.511(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the program cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the program cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your program cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the program cohort default rate for the GE program, and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.513 Economically disadvantaged appeals.

(a) *General.* As provided in this section you may appeal, for a GE program, a loss of eligibility under § 668.506.

(b) *Eligibility.* You may appeal under this section if an independent auditor's opinion certifies that the low income rate, as defined in paragraph (c) of this section, for the GE program is two-thirds or more and—

(1) The program is an associate, baccalaureate, graduate, or professional degree, and its completion rate, as defined in paragraph (d) of this section, is 70 percent or more; or

(2) The program is not an associate, baccalaureate, graduate, or professional degree, and the placement rate, as defined in paragraph (e) of this section, for the program is 44 percent or more.

(c) *Low income rate.* (1) The low income rate for a GE program is the percentage of students enrolled in the program, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guideline for the size of the student's family unit.

(2) The students who are used to determine the low income rate for a GE program include only students who were enrolled on at least a half-time basis in the GE program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the program cohort's fiscal year.

(d) *Completion rate.* (1) For purposes of this subpart, the completion rate for a GE program is the percentage of students enrolled in the program, as described in paragraph (d)(2) of this section, who—

(i) Completed the GE program in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine the completion rate for a GE program include only regular students who were—

(i) Initially enrolled on a full-time basis in the GE program; and

(ii) Originally scheduled to complete the GE program during the same 12-month period used to calculate the low income rate for the GE program.

(e) *Placement rate.* (1) Except as provided in paragraph (e)(2), for purposes of this subpart the placement rate for a GE program is the percentage of students enrolled in the program, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for employment in which the GE program was offered, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in the occupation for which the GE program was offered, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance in the GE program.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine the placement rate of a GE program include only former students who—

(i) Were initially enrolled in the GE program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete the GE program during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the GE program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of the placement rate of a GE program if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(f) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a GE program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the GE program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the GE program if the student remained at that level of enrollment throughout the program.

(g) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of loss of eligibility under § 668.506 you must send us your management's written assertion, as described in the Program Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (h) of this section.

(h) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) *Determination.* The GE program does not lose eligibility under § 668.506 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal for the GE program; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.514 Participation rate index appeals.

(a) *Eligibility.*

(1) [Reserved]

(2) You may appeal a loss of eligibility under § 668.506 based on three consecutive program cohort default rates of 30 percent or greater, if the participation rate index for that GE program is equal to or less than 0.0625 for any of those three program cohorts' fiscal years.

(b) *Calculating the participation rate index for a GE program.* (1) Except as provided in paragraph (b)(2) of this section, the participation rate index for a GE program for a fiscal year is determined by multiplying the program cohort default rate for the GE program for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to enroll in that GE program during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the program cohort's fiscal year, by

(ii) The number of regular students who were enrolled in that GE program on at least a half-time basis during any part of the same 12-month period.

(2) If your program cohort default rate for a fiscal year is calculated as an average rate under § 668.502(d)(2), you may calculate the participation rate index for the GE program for that fiscal year using either that average rate or the program cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.502(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive notice of loss of eligibility of the GE program.

(d) *Determination.* (1) The GE program does not lose eligibility under § 668.506 if we determine that you meet the requirements for a participation rate index appeal for that GE program.

(2) If we determine that the participation rate index for a GE program for a fiscal year is equal to or less than 0.0625 under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.506 that would be based on the official program cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.515 Average rates appeals.

(a) *Eligibility.*

(1) [Reserved]

(2) You may appeal a loss of eligibility under § 668.506 based on three program cohort default rates of 30 percent or greater, if at least two of those program cohort default rates—

(i) Are calculated as average rates under § 668.502(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in § 668.502(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of the official program cohort default rate for a GE program, we make an initial determination about whether the GE program qualifies for an average rates appeal. If we determine that the GE program qualifies, we notify you of that determination at the same time that we notify you of the official program cohort default rate for that program.

(2) If you disagree with our initial determination, you must send us your average rates appeal for that GE program, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* The GE program does not lose eligibility under § 668.506 if we determine that the GE program meets the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.516 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.506 if 30 or fewer borrowers, in total, are included in the three most recent cohorts of borrowers used to calculate the program cohort default rates for that GE program.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of the official program cohort default rate for a GE program, we make an initial determination about whether the GE program qualifies for a thirty-or-fewer borrowers appeal. If we determine that the program qualifies, we notify you of that determination at the same time that we notify you of the official program cohort default rate for that GE program.

(2) If you disagree with our initial determination, you must send us the thirty-or-fewer borrowers appeal for that GE program, including all supporting documentation, within 30 days after you receive the notice of loss of eligibility of that GE program.

(c) *Determination.* The GE program does not lose eligibility under § 668.506 if we determine that the GE program meets the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.517 [Reserved]

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

This regulatory impact analysis is divided into eight sections.

In ''Need for Regulatory Action,'' we discuss the problems of high debt and relatively poor earnings impacting students who enroll in gainful employment programs (''GE programs''). We also provide an overview of the Department's efforts to address these problems by establishing an institutional accountability framework for GE programs and increasing transparency about student outcomes in GE programs for the benefit of students, prospective students, and their families, the public, taxpayers, the Government, and institutions of higher education.

In ''Analysis of the Proposed Regulations,'' we present the impact of the proposed regulations on GE programs and students for a single year.

The ''Discussion of Costs, Benefits, and Transfers'' section considers the costs and benefits of the proposed regulations and the implications of the Department's impact estimates for students, institutions, the Federal Government, and State and local governments. There would be two primary benefits of the proposed regulations. Because the proposed regulations would establish an accountability framework that assesses program performance, we would expect students, prospective students, taxpayers, and the Federal Government to receive a better return on money spent on education. The proposed regulations would also establish a transparency framework designed to improve market information that would assist students, prospective students, and their families in making critical decisions about their educational investment and in understanding potential outcomes of that investment. The public, taxpayers, the Government, and institutions would also gain relevant and useful information about GE programs, allowing them to better evaluate their investment in these programs. Institutions would largely bear the costs of the proposed regulations, which would fall into three categories: paperwork costs associated with institutions complying with the regulations, costs that could be incurred by institutions if they attempt to improve their GE programs, and costs due to changing student enrollment. In addition, if programs that provided education of some value to students shut down as a result of the proposed regulations, then the foregone value of that service would be another potential cost to society.

We also consider the distribution of effects on institutions associated with the proposed regulations. For institutions, the distributional impact of the proposed regulations would be mixed. Institutions with programs that are in the zone or failing under the GE measures and programs that eventually lose eligibility could see lower revenues, primarily revenues derived from title IV, HEA program funds, and, depending upon the expenses associated with improving a failing or zone program, potentially reduced margins from that program. On the other hand, institutions with programs that pass the proposed regulations would likely experience growing enrollments and revenues and would benefit from the additional market information that would permit these institutions to demonstrate, and consumers to understand, the value of their GE programs. The net gain from the student aid and other revenue that results from student transfers to better performing programs would depend on the instructional expense that transfers with them.

Under ''Net Budget Impacts,'' we present our estimate that the proposed regulations would save the Federal Government between $75 million and $110 million annually depending on certain assumptions. The largest factor in these savings would result from reduced expenditures on Pell Grants, as some Pell Grant-eligible students may elect not to pursue postsecondary educational opportunities if the program they would have attended fails the GE measures or is in the zone.

We also provide a ''Sensitivity Analysis'' to demonstrate how alternative student and program response assumptions would impact our budget estimates.

In ''Return on Investment,'' we present an illustrative example of how the proposed regulations could impact student earnings.

In ''Regulatory Alternatives Considered,'' we describe the other approaches the Department considered for key features of the proposed regulations, including components of the GE measures and possible alternative GE measures. Many of these alternative approaches were discussed by the negotiated rulemaking committee.

Finally, in ''Initial Regulatory Flexibility Analysis,'' we consider issues relevant to small businesses and non-profit institutions.

Need for Regulatory Action

Background

The proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings or resulting in students defaulting on their title IV, HEA program loans.

Through this regulatory action, the Department seeks to establish: (1) an accountability framework for GE programs that will define what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that would increase the quality and availability of information about the outcomes of students enrolled in GE programs.

The accountability framework is designed to define what it means to prepare students for gainful employment by establishing measures that would assess whether programs provide quality education and training that lead to earnings that will allow students to pay back their student loan debts.

The transparency framework is designed to establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that information is disseminated to students, prospective students, and their families that is accurate and comparable to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Further, this information would provide the public, taxpayers, and the Government with relevant information to better understand the outcomes of the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to improve student outcomes in these programs.

Outcomes, Practices, and Literature Review

GE programs include non-degree programs, including diploma and certificate programs, at public and private non-profit institutions such as community colleges and nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level. Common GE programs provide training for occupations in fields such as cosmetology, business administration, medical assisting, dental assisting, nursing, and massage therapy.

We estimate that there are approximately 50,000 [66] GE programs offered at postsecondary institutions around the country, with an enrollment of approximately 4 million [67] students receiving title IV, HEA program funds. About 60 percent of these programs are at public institutions, 10 percent at private non-profit institutions, and 30 percent at for-profit institutions.

For fiscal year 2010, 37,589 GE programs with an enrollment of 3,985,329 students receiving title IV, HEA program funds reported program information to the Department.[68] The Federal investment in students attending these programs is significant. In FY 2010, students attending GE programs received approximately $9.7 billion in Federal student aid grants and approximately $26 billion in Federal student aid loans.

Table 1 provides, by 2-digit CIP code, the number of GE programs for which institutions reported program information to the Department in FY 2010. Table 2 provides the enrollment of students receiving title IV, HEA program funds in GE programs, by 2-digit CIP code, for which institutions reported program information to the Department.

[66] Based on reporting in NSLDS, IPEDS, and other information provided by institutions.

[67] Id.

[68] NSLDS.

Table 1: FY 2010 GE Program Count

		Public		Private		Proprietary							
2-Digit CIP Code	2-Digit CIP Name	Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	4,735	291	404	274	2,493	1,078	155	16	87	18	11	9,562
52	Business Management and Administrative Services	3,401	117	127	166	474	649	376	30	119	23	1	5,483
12	Personal and Miscellaneous Services	1,059	1	47	3	2,354	127	28	0	3	0	17	3,639
47	Mechanics and Repairs	2,254	2	54	0	266	84	0	0	0	0	0	2,660
11	Computer and Information Sciences	1,613	51	52	38	292	342	219	7	39	5	0	2,658
15	Engineering Related Technologies	1,689	11	42	6	143	145	23	1	1	0	0	2,061
50	Visual and Performing Arts	583	28	53	72	107	238	275	0	38	1	0	1,395
13	Education	389	298	29	389	52	19	57	22	78	30	1	1,364
43	Protective Services	869	11	15	21	55	189	112	6	23	3	0	1,304
48	Precision Production Trades	1,047	0	22	0	41	13	0	0	0	0	0	1,123
46	Construction Trades	956	0	24	0	98	26	2	0	0	0	0	1,106
22	Law and Legal Services	312	5	40	19	118	197	40	5	2	1	10	749
19	Home Economics	667	15	12	8	15	11	13	2	2	1	0	746

1	Agricultural Business and Production	502	2	5	0	7	1	1	0	0	0	0	518
10	Telecommunications Technologies	378	0	4	1	31	42	55	0	3	0	0	514
44	Public Administration and Services	146	41	7	21	0	8	11	2	16	6	0	258
9	Communications	131	15	10	22	19	15	37	0	5	0	0	254
49	Transportation and Material Moving Workers	170	0	5	2	28	7	6	1	2	0	0	221
31	Parks, Recreation, Leisure, and Fitness Studies	106	5	7	2	36	21	15	2	2	0	0	196
24	Liberal Arts and Sciences, General Studies and Humanities	130	1	4	4	2	22	17	1	4	1	0	186
30	Multi-interdisciplinary Studies	60	52	12	30	5	2	15	2	3	0	0	181
45	Social Sciences and History	79	48	4	22	1	4	18	0	3	0	0	179
42	Psychology	9	29	4	55	0	3	16	6	27	21	0	170
14	Engineering	39	44	1	14	4	6	15	1	8	0	0	132
16	Foreign Languages and Literature	105	11	2	8	1	0	5	0	0	0	0	132
23	English Language and Literature/Letters	53	24	10	7	7	2	10	0	3	0	0	116
39	Theological Studies and Religious Vocations	1	0	45	43	0	2	9	0	5	2	0	107
26	Biological and Biomedical Sciences	35	30	1	13	1	2	10	0	0	0	0	92
3	Conservation and Renewable Natural Resources	62	4	2	4	1	0	8	1	2	0	0	84
41	Science Technologies	70	1	0	0	2	5	0	0	0	0	0	78
4	Architecture and Related Programs	39	6	1	6	1	0	3	0	2	0	1	59
5	Area, Cultural, Ethnic, and Gender Studies	20	24	3	7	0	0	1	0	0	0	0	55

25	Library Studies	22	11	0	7	0	0	1	0	0	0	0	41
40	Physical Sciences	12	11	0	5	1	0	2	0	0	0	0	31
54	History	2	6	0	2	0	2	6	3	4	0	0	25
27	Mathematics and Statistics	4	14	3	1	0	1	1	0	0	0	0	24
38	Philosophy and Religious Studies	0	3	7	4	0	0	4	0	2	1	0	21
32	Basic Skills	10	1	1	0	3	0	0	0	0	0	0	15
34	Health-related Knowledge and Skills	6	0	2	1	4	0	0	0	0	0	0	13
36	Leisure and Recreational Activities	5	1	3	0	0	0	2	0	1	0	0	12
28	Reserve Officer Training Corps	1	0	0	0	2	1	1	1	0	0	0	6
60	Residency Programs	0	5	0	1	0	0	0	0	0	0	0	6
21	Technology/Education Industrial Arts	0	1	0	1	0	1	1	0	0	0	0	4
29	Military Technologies	0	0	0	0	1	2	1	0	0	0	0	4
33	Citizenship Activities	2	1	0	0	0	0	0	0	0	0	0	3
37	Personal Awareness and Self Improvement	1	0	0	0	0	0	0	0	0	0	0	1
53	High School/Secondary Diplomas and Certificates	1	0	0	0	0	0	0	0	0	0	0	1
Total		21,775	1,221	1,064	1,279	6,665	3,267	1,571	109	484	113	41	37,589

Table 2: FY 2010 Title IV Enrollment in GE Programs

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	277,010	2,475	35,356	3,130	445,923	306,061	94,512	735	41,885	5,035	9,116	1,221,238
52	Business Management and Administrative Services	129,593	1,690	3,904	2,180	16,174	231,033	308,843	2,184	109,180	15,357	0	820,138
12	Personal and Miscellaneous Services	44,669	0	3,169	6	198,590	34,860	5,857	0	15	0	568	287,734
43	Protective Services	57,765	152	841	171	3,209	115,239	85,657	90	8,098	1,014	0	272,236
11	Computer and Information Sciences	36,207	385	1,252	436	14,659	100,225	88,824	222	6,089	771	0	249,070
47	Mechanics and Repairs	67,155	6	3,878	0	79,074	15,040	0	0	0	0	0	165,153
13	Education	13,697	6,376	1,124	6,932	1,838	21,473	29,290	1,616	58,768	21,659	4	162,777
50	Visual and Performing Arts	14,935	153	1,104	548	6,573	36,354	66,897	0	3,166	13	0	129,743
15	Engineering Related Technologies	25,641	36	1,479	17	21,879	48,954	11,964	14	695	0	0	110,679
42	Psychology	1,021	711	10	1,071	0	463	36,866	218	18,666	12,990	0	72,016
22	Law and Legal Services	10,629	235	768	875	5,047	31,550	7,948	213	724	591	5,742	64,322
30	Multi-interdisciplinary Studies	1,448	507	57	209	74	32,287	23,772	117	2,076	0	0	60,547
19	Home Economics	50,594	133	946	78	785	999	2,846	85	1,442	446	0	58,354
44	Public Administration and Services	5,624	458	147	233	0	18,642	18,865	35	10,339	3,955	0	58,298

46	Construction Trades	21,776	0	1,988	0	13,271	2,529	51	0	0	0	0	39,615
48	Precision Production Trades	29,078	0	1,356	0	6,566	972	0	0	0	0	0	37,972
10	Telecommunications Technologies	9,587	0	105	2	3,730	4,841	12,737	0	490	0	0	31,492
24	Liberal Arts and Sciences, General Studies and Humanities	14,539	1	10	435	14	9,178	1,318	97	138	174	0	25,904
45	Social Sciences and History	741	381	76	391	89	61	14,869	0	740	0	0	17,348
23	English Language and Literature/Letters	8,436	156	1,142	21	2,059	3,668	1,476	0	119	0	0	17,077
9	Communications	3,684	85	63	112	2,046	873	8,424	0	277	0	0	15,564
49	Transportation and Material Moving Workers	4,109	0	725	22	7,518	436	430	3	146	0	0	13,389
31	Parks, Recreation, Leisure, and Fitness Studies	2,445	824	165	3	2,073	3,271	3,263	19	645	0	0	12,708
14	Engineering	980	385	7	289	46	149	5,241	1	174	0	0	7,272
1	Agricultural Business and Production	6,562	12	116	0	236	2	42	0	0	0	0	6,970
54	History	9	28	0	2	0	140	2,473	44	1,629	0	0	4,325
4	Architecture and Related Programs	2,718	114	1	89	2	0	114	0	97	0	532	3,667
3	Conservation and Renewable Natural Resources	1,253	5	5	52	7	0	2,075	6	258	0	0	3,661
16	Foreign Languages and Literature	2,574	48	4	47	27	0	30	0	0	0	0	2,730
38	Philosophy and Religious Studies	0	6	64	5	0	0	2,146	0	411	2	0	2,634
41	Science Technologies	1,602	3	0	0	169	422	0	0	0	0	0	2,196
26	Biological and Biomedical Sciences	482	282	1	45	71	107	719	0	0	0	0	1,707

39	Theological Studies and Religious Vocations	1	0	780	361	0	54	341	0	73	3	0	1,613
34	Health-related Knowledge and Skills	103	0	27	1	1,320	0	0	0	0	0	0	1,451
21	Technology/Education Industrial Arts	0	4	0	2	0	761	305	0	0	0	0	1,072
25	Library Studies	575	130	0	177	0	0	1	0	0	0	0	883
32	Basic Skills	176	1	10	0	366	0	0	0	0	0	0	553
5	Area, Cultural, Ethnic, and Gender Studies	133	140	14	17	0	0	1	0	0	0	0	305
36	Leisure and Recreational Activities	171	1	15	0	0	0	114	0	4	0	0	305
28	Reserve Officer Training Corps	5	0	0	0	11	17	139	10	0	0	0	182
40	Physical Sciences	70	34	0	36	0	0	17	0	0	0	0	157
27	Mathematics and Statistics	32	77	5	2	0	28	12	0	0	0	0	156
29	Military Technologies	0	0	0	0	12	62	4	0	0	0	0	78
60	Residency Programs	0	14	0	9	0	0	0	0	0	0	0	23
33	Citizenship Activities	6	1	0	0	0	0	0	0	0	0	0	7
37	Personal Awareness and Self Improvement	7	0	0	0	0	0	0	0	0	0	0	7
53	High School/Secondary Diplomas and Certificates	1	0	0	0	0	0	0	0	0	0	0	1
Total		847,843	16,049	60,714	18,006	833,458	1,020,751	838,483	5,709	266,344	62,010	15,962	3,985,329

Table 3 provides the percentage of students receiving title IV, HEA program funds in GE programs who fall within the following demographic categories: Pell grant recipients; received zero estimated family contribution (EFC) as indicated by their Free Application for Federal Student Aid (FAFSA); married; over the age of 24; veteran; and female.

Table 3: Characteristics of Students Enrolled in GE Programs (FY 2010) [69]

Sector	Institution type	Credential level	Percent Pell Recipient	Percent zero estimated family contribution	Percent married	Percent above 24 in age	Percent of veteran	Percen t female
Public		All	70.5%	41.5%	30.1%	66.2%	3.7%	70.1%
	< 2 year	Certificate	67.5%	37.3%	39.3%	72.0%	3.6%	83.7%
	2-3 year	Certificate	71.1%	43.2%	28.9%	65.2%	3.7%	69.6%
	4+ year	Certificate	63.6%	33.2%	30.3%	63.6%	4.3%	67.5%
		Post-Bacc Certificate	n/a	15.4%	47.0%	94.3%	4.0%	65.0%
Private		All	67.8%	40.8%	31.2%	63.6%	3.4%	67.0%
	< 2 year	Certificate	81.4%	52.1%	31.9%	63.3%	3.0%	53.9%
		Post-Bacc Certificate	n/a	33.3%	66.7%	100.0%	0.0%	66.7%
	2-3 year	Certificate	56.8%	38.6%	31.5%	64.2%	3.9%	71.0%
		Post-Bacc Certificate	n/a	26.7%	6.7%	93.3%	0.0%	86.7%
	4+ year	Certificate	69.1%	47.6%	28.6%	53.6%	2.6%	68.4%
		Post-Bacc Certificate	n/a	17.4%	37.3%	89.1%	5.1%	68.3%

	All		63.7%	34.1%	36.6%	68.8%	10.5%	64.1%
For-Profit	< 2 year	Certificate	75.6%	47.0%	27.1%	55.5%	2.9%	74.1%
		Associate's	96.0%	80.6%	34.3%	50.3%	2.3%	57.5%
		1st Professional Degree	n/a	51.3%	31.7%	56.2%	0.0%	94.7%
	2-3 year	Certificate	74.9%	43.4%	27.8%	53.9%	4.7%	65.4%
		Associate's	74.2%	44.4%	24.2%	54.0%	5.0%	62.9%
		Post-Bacc Certificate	n/a	16.8%	44.4%	86.0%	2.8%	79.2%
	4+ year	Certificate	72.1%	45.3%	33.6%	61.3%	4.6%	76.5%
		Associate's	60.0%	35.6%	38.9%	66.7%	11.8%	63.2%
		Bachelor's	55.3%	27.0%	39.4%	75.2%	14.7%	59.5%
		Post-Bacc Certificate	n/a	15.5%	43.7%	97.9%	8.0%	75.5%
		Master's	n/a	19.0%	48.3%	94.5%	14.0%	66.0%
		Doctoral	n/a	16.5%	48.9%	97.9%	14.6%	66.9%
		1st Professional Degree	n/a	27.1%	32.7%	80.9%	10.9%	52.4%
All	All		64.9%	34.7%	36.1%	68.5%	10.0%	64.5%

[69] Pell grant recipient percentages based on students at undergraduate GE programs who entered repayment on title IV, HEA program loans between October 1, 2007 and September 30, 2009 and received a Pell grant for attendance at the institution between July 1, 2004 to June 30, 2009. Graduate programs not included in calculation of Pell recipient percentages. Other percentages based on students at GE programs who entered repayment on title IV, HEA program loans between October 1, 2007 and September 30, 2009 and had a demographic record in NSLDS in 2008. Sector and credential averages generated by weighting program results by FY 2010 enrollment.

Research has consistently demonstrated the significant benefits of postsecondary education. Among them are private pecuniary benefits [70] and social benefits, such as higher wages.[71] Even though the costs of postsecondary education have risen, there is substantial evidence that financial returns to students have increased commensurately.[72] Although evidence of the returns on GE programs in particular is sparse, the limited information that exists shows substantial variation in returns depending on the occupation that the program provides training for, including negative returns for some types of programs.[73]

Our analysis, described in more detail in ''Analysis of the Proposed Regulations,'' reveals that low earnings and high rates of student loan default are common in many GE programs. For example, 27 percent of the 5,539 GE programs evaluated with earnings data produced graduates with average annual earnings below those of a full-time worker earning no more than the Federal minimum wage ($15,080).[74] [75] Sixty-four percent of the 5,539 GE programs evaluated with earnings data produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school diploma ($24,492).[76] [77] Approximately 24 percent of former student borrowers who attended programs with below high school dropout earnings defaulted on their Federal student loans within the first three years of entering repayment. [78]

In light of the low earnings and high rates of default of some GE programs, the Department is concerned that all students at these programs may not be making optimal borrowing decisions. While many students appear to borrow less than might be optimal, either because they are risk averse or lack access to credit,[79] the outcomes described above indicate that overborrowing may be a significant problem for at least some students.

Over the past three decades, student loan debt has grown rapidly as increases in college costs have outstripped increases in family income,[80] State and local postsecondary education funding has flattened,[81] and relatively expensive for-profit institutions have proliferated.[82] Student loan debt now stands at over $904 billion nationally and rose by 41 percent, or $264 billion, between 2008 and 2012, a period when other forms of consumer debt were flat or declining.[83] Since 2003, the percentage of 25-year-olds with student debt has nearly doubled, increasing from 25 percent to 43 percent.[84] Young people with student debt also owe more; the average student loan balance among 25-year-olds with debt has increased from $10,649 in 2003 to $20,326 in 2012.[85] The increases in the percentage of young people with student debt and in average student debt loan balances have coincided with sluggish growth in State tax appropriations for higher education.[86] While State funding for public institutions has stagnated, Federal student aid has increased dramatically. From 2000–2001 to 2010–2011, Federal Pell Grant expenditures more than tripled, while Stafford Loan volumes more than doubled.[87]

Evidence suggests that student borrowing is not too high across the board.[88] Rather, overborrowing results from specific and limited conditions. Although students may have access to information on *average* rates of return, they may not understand how their own abilities, choice of major, or choice of institution may affect the expected value of the investment they make in their education.[89] Further, overborrowing may result because students do not understand the true cost of loans, because they overestimate their chance of graduating, or because they overestimate the earnings associated with the completion of their program of study.[90] For example, among a nationally representative sample of first-time bachelor degree-seeking students, only 52 percent of those who expected to complete a BA degree did so within six years of beginning their studies, and of these students, those who borrowed incurred an average debt of $14,457.[91]

Inefficiently high borrowing can cause substantial harm to borrowers. There is some suggestive evidence that high levels of student debt decrease the long-term probability of marriage.[92] For those who do not complete a degree, greater amounts of student debt may raise the probability of bankruptcy.[93] There is also evidence that it increases the probability of being credit constrained, particularly if students underestimate the probability of dropping out.[94] Student debt has been found to be associated with reduced home ownership rates.[95] And, excessively high student debt may make it more difficult for borrowers to meet new mortgage underwriting standards, tightened in response to the recent recession and financial crisis.[96]

---

[70] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much—Or Not Enough? *Journal of Economic Perspectives,* 26(1), 165–192.

[71] Moretti, E. (2004). Estimating the Social Return to Higher Education: Evidence from Longitudinal and Repeated Cross-Sectional Data. *Journal of Econometrics,* 121(1), 175–212.

[72] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much—Or Not Enough? *Journal of Economic Perspectives,* 26(1), 165–192.

[73] Lang, K., and Weinstein, R. (2013). ''The Wage Effects of Not-for-Profit and For-Profit Certifications: Better Data, Somewhat Different Results.'' NBER Working Paper #19135, Cambridge, MA.

[74] At the Federal minimum wage of $7.25 per hour (*www.dol.gov/whd/minimumwage.htm*), an individual working 40 hours per week for 52 weeks per year would have annual earnings of $15,080.

[75] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 30 percent of for-profit programs and 13 percent of public non-profit programs produced graduates with average annual earnings below a Federal minimum wage worker.

[76] Based on a weekly wage of $471 (*http://www.bls.gov/emp/ep_chart_001.htm*) for 52 weeks.

[77] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 72 percent of for-profit programs and 32 percent of public non-profit programs produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school degree.

[78] 2012 GE informational rates. Percent of defaulters calculated based on pCDR data for programs with mean or median earnings below high school dropout.

[79] Dunlop, E. ''What Do Student Loans Actually Buy You? The Effect of Stafford Loan Access on Community College Students,'' Working Paper (2013).

[80] Martin, A., and Andrew L., ''A Generation Hobbled by the Soaring Cost of College,'' New York Times, May 12, 2012.

[81] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[82] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[83] Federal Reserve Bank of New York (2012, November). *Quarterly Report on Household Debt and Credit.* Retrieved from *www.newyorkfed.org/research/nationaleconomy/householdcredit/DistrictReport_Q32012.pdf.*

[84] Brown, M., and Sydnee C. (2013). Young Student Loan Borrowers Retreat from Housing and Auto Markets. *Liberty Street Economics,* retrieved from: *http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html.*

[85] Id.

[86] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[87] Id.

[88] Avery, C., and Turner S. Student Loans: Do College Students Borrow Too Much Or Not Enough? *The Journal of Economic Perspectives* 26, no. 1 (2012): 189.

[89] Id. at 165–192.

[90] Id.

[91] Id.

[92] Gicheva, D. ''In Debt and Alone? Examining the Causal Link between Student Loans and Marriage.'' Working Paper (2013).

[93] Gicheva, D., and U. N. C. Greensboro. ''The Effects of Student Loans on Long-Term Household Financial Stability.'' Working Paper (2014).

[94] Id.

[95] Shand, J. M. (2007). ''The Impact of Early-Life Debt on the Homeownership Rates of Young Households: An Empirical Investigation.'' Federal Deposit Insurance Corporation Center for Financial Research.

[96] Brown, M., and Sydnee C. (2013). Young Student Loan Borrowers Retreat from Housing and

Continued

There is ample evidence that students are having difficulty repaying their loans. The national two-year cohort default rate on Stafford loans has increased from 5.2 percent in 2006 to 10 percent in 2011.[97] As of 2012, approximately 6 million borrowers were in default on Federal loans, owing $76 billion.[98]

There is a wide array of literature on the determinants of default, which include both student and institutional characteristics. A substantial body of research suggests that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.'' [99] In a study of outcomes 10 years after graduation for students receiving BS/BA degrees in 1993, Lochner and Monge-Naranjo found that both student debt and post-school income levels are significant predictors of repayment and nonpayment, although the estimated effects were modest.[100] In another study, Belfield examined the determinants of Federal loan repayment status of a more recent cohort of borrowers and found that loan balances had only a trivial influence on default rates.[101] However, Belfield found substantial differences between students who attended for-profit and those who attended public institutions. Even when controlling for student characteristics, measures of college quality, and college practices, students at for-profit institutions, especially two-year colleges, borrow more and have lower repayment rates than students at public institutions.[102] In two recent studies, Hillman and Deming, Goldin, and Katz also found that students who attend for-profit colleges have higher rates of default than comparable students who attend public colleges.[103] [104]

The causes of excessive debt, high default rates, and low earnings of students at GE programs include aggressive or deceptive marketing practices, a lack of transparency regarding program outcomes, excessive costs, low completion rates, deficient quality, and a failure to satisfy requirements needed for students to obtain higher paying jobs in a field such as licensing, work experience, and programmatic accreditation.

As we noted in connection with the 2011 Prior Rule, the outcomes of students who attend for-profit educational institutions are of particular concern. 76 FR 34386. The for-profit sector has experienced tremendous growth over the past 15 years, fueled in large part by Federal student aid funding.[105] The share of total enrollment of for-profit institutions eligible for title IV, HEA program funds has increased from about 4 percent in 2000 to nearly 11 percent in 2009,[106] while the share of Federal student financial aid going to students at for-profit institutions has doubled to nearly 25 percent over the same time period.[107]

The for-profit sector serves older students, women, Black students, Hispanic students, and students with low incomes at disproportionately high rates.[108] Single parents, students with a certificate of high school equivalency, and students with lower family incomes are more commonly found at for-profit institutions than community colleges.[109]

For-profit institutions develop curriculum and teaching practices that can be replicated at multiple locations and at convenient times, and offer highly structured programs to help ensure timely completion.[110] For-profit institutions ''are attuned to the marketplace and are quick to open new schools, hire faculty, and add programs in growing fields and localities.'' [111]

At least some research suggests that for-profit institutions respond to demand that public institutions are unable to handle because of budget shortfalls. Recent evidence from California suggests that for-profit institutions are increasingly absorbing students from budget constrained public institutions.[112] Conversely, increased taxpayer support for local community colleges results in higher enrollments in those institutions and a decrease in enrollments in for-profit schools in the first few years after a bond passage.[113]

For-profit institutions may also be able to respond more quickly to increases in demand for postsecondary education. Research by Deming, Goldin and Katz found that ''[c]hange[s] in for-profit college enrollments are more positively correlated with changes in State college-age populations than are changes in public-sector college enrollments.'' [114]

Although research indicates that the for-profit sector has some positive features, there is growing evidence of troubling outcomes and practices at many institutions. For-profit institutions typically charge higher tuitions than do public postsecondary institutions. 76 FR 34386. Average tuition and fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions.[115] Attending a two-year for-profit institution costs a student four times as much as attending a community college.[116]

''Unlike other sectors, grant aid has not risen with tuition in the for-profit sector, leading to steep increases in the net price that students pay.'' [117] Not surprisingly, ''student borrowing in the for-profit sector has risen dramatically to meet the rising net prices.'' [118] Students at for-profit institutions are more likely to receive Federal student financial aid and have higher average

Auto Markets. *Liberty Street Economics,* retrieved from: *http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html*.

[97] U.S. Department of Education (2014). 2-year official national student loan default rates. *Federal Student Aid.* Retrieved from *http://www2.ed.gov/offices/OSFAP/defaultmanagement/defaultrates.html*.

[98] Martin, A., ''Debt Collectors Cashing In on Student Loans,'' New York Times, September 8, 2012.

[99] Gross, J. P., Cekic, O., Hossler, D., & Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

[100] Lochner, L., and Monge-Naranjo, A. (2014). ''Default and Repayment Among Baccalaureate Degree Earners.'' NBER Working Paper No. w19882.

[101] Belfield, C. R. (2013). ''Student Loans and Repayment Rates: The Role of For-Profit Colleges.'' *Research in Higher Education,* 54(1): 1–29.

[102] Id.

[103] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[104] Hillman, N. W. ''College on Credit: A Multilevel Analysis of Student Loan Default.'' *The Review of Higher Education* 37.2 (2014): 169–195. *Project MUSE.* Web. 12 Mar. 2014.

[105] Id.

[106] Id.

[107] Id.

[108] Id.

[109] Id.

[110] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[111] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[112] Keller, J. (2011, January 13). Facing new cuts, California's colleges are shrinking their enrollments. *Chronicle of Higher Education.* Retrieved from *http://chronicle.com/article/Facing-New-Cuts-Californias/125945/*.

[113] Cellini, Stephanie Riegg. (2009). Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market. *American Economic Journal: Economic Policy,* 1(2): 1–30.

[114] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[115] IPEDS First-Look (July 2013), table 2. Average costs (in constant 2012–13 dollars) associated with attendance for full-time, first-time degree/certificate-seeking undergraduates at Title IV institutions operating on an academic year calendar system, and percentage change, by level of institution, type of cost, and other selected characteristics: United States, academic years 2010–11 and 2012–13.

[116] Id.

[117] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript.

[118] Id.

student debt than students in public and not-for-profit institutions.[119] 76 FR 34386.

In 2011–2012, 86 percent of students who earned certificates from for-profit institutions took out student loans compared to 35 percent of certificate recipients from public two-year institutions.[120] Of those who borrowed, the median loan amount borrowed of for-profit certificate recipients was $11,000 as opposed to $8,000 for certificate recipients from public two-year institutions.[121] Eighty-eight percent of associate degree graduates from for-profit institutions took out student loans, while only 40 percent of associate degree recipients from public two-year institutions took out student loans.[122] Of those who borrowed, for-profit associate degree recipients had a median loan amount borrowed of $23,590 in comparison to $10,000 for students who received their degrees from public two-year institutions.[123]

''While increasing in every sector in recent years, student loan default rates have consistently been highest among students in the for-profit college sector.'' [124] [125] Approximately 22 percent of borrowers who attended for-profit institutions default on their Federal student loans within the first three years of entering repayment as compared to about 13 percent of borrowers who attended public institutions.[126] Two other estimates produced by the Department for purposes other than determining eligibility for title IV, HEA program funds yield even higher default rates for for-profit students. First, estimates of ''cumulative lifetime default rates,'' based on the number of loans, rather than borrowers, yield a default rate of about 31 percent for cohorts graduating between 2005 and 2009.[127] Second, based on estimates used in the President's budget, which use dollars, rather than loans or borrowers, to estimate defaults, lifetime defaults are around 48 percent for two-year for-profit students.[128]

Although more expensive, there is growing evidence that many for-profit programs may not prepare students as well as comparable programs at public institutions. 75 FR 43618. A 2011 GAO report reviewed results of licensing exams for 10 occupations that are, by enrollment, among the largest fields of study and found that that for 9 out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[129] Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[130] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of thirty prominent for-profit institutions found that almost 23 percent of revenues were spent on marketing and recruiting but only 17 percent on instruction.[131] A review of useable data provided by some of the institutions that were investigated showed that they employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff.[132]

Lower rates of completion in many four-year for-profit institutions are also a cause for concern. 76 FR 34409. The six-year graduation rate of first-time undergraduate students who began at a four-year degree-granting institution in 2003–2004 was 34 percent at for-profit institutions in comparison to 65 percent at public institutions. However, for first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year graduation rate was 40 percent at for-profit institutions in comparison to 35 percent at public institutions.[133]

The higher costs of for-profit institutions and consequently greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether for-profit programs lead to earnings that justify the investment made by students. See 75 FR 43617. As we stated in connection with the 2011 Prior Rule, this ''value proposition'' is what ''distinguishes programs 'that lead to gainful employment in a recognized occupation.' '' 76 FR 34386.

''While research is still emerging on returns to for-profit colleges, recent studies indicate that for-profit students generate earnings gains that are lower than those of students in other sectors.'' [134] ''Among associate's degree students, estimates of returns to for-profit attendance are generally in the range of 2 to 8 percent per year of education, compared to upwards of 9 percent in the public sector.'' [135] Analysis of data collected on the outcomes of 2003–2004 first-time beginning postsecondary students as a part of the Beginning Postsecondary Students Longitudinal Study shows that students who attend for-profit institutions are more likely to be idle, not working or in school, six years after starting their programs of study in comparison to students who attend other types of institutions.[136] Further, for-profit students no longer enrolled in school six years after beginning postsecondary education have lower earnings at the six-year mark than students who attend other types of institutions.[137] Some studies, however, fail to find significant differences between the returns to students on educational programs at for-profit institutions and other sectors.[138]

Overall, these outcomes are troubling for two reasons. First, some students will have earnings that will not support the debt they incurred to enroll in these GE programs. Second, because students are limited under the HEA in the amounts of Federal grants and loans they may receive to support their education, their options to move to higher-quality and affordable programs are constrained as they may no longer

[119] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[120] National Postsecondary Student Aid Study 2012.

[121] Id.

[122] Id.

[123] Id.

[124] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[125] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[126] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2010, U.S. Department of Education, available at *www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans*.

[127] Cellini S.R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. *http://www.upjohn.org/stuloanconf/Cellini_Darolia.pdf.*

[128] Id.

[129] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[130] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[131] Id.

[132] Id.

[133] U.S. Department of Education, National Center for Education Statistics (NCES), 2003–04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09) (cumulative certificate, associate's degree, and bachelor's degree attainment at any institution).

[134] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[135] Cellini S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. *http://www.upjohn.org/stuloanconf/Cellini_Darolia.pdf*.

[136] Deming, D., Goldin, C., and Katz, L. The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, *Journal of Economic Perspectives,* vol. 26, no. 1, Winter 2012.

[137] Id.

[138] Lang, K., and Weinstein R. (2013). ''The Wage Effects of Not-for-Profit and For-Profit Certifications: Better Data, Somewhat Different Results.'' NBER Working Paper.

have access to sufficient student aid. Specifically, Federal law sets lifetime limits on the amount of grant and subsidized loan assistance students may receive: Federal Pell Grants may be received only for the equivalent of 12 semesters of full-time attendance, and Federal subsidized loans may be received for no longer than 150 percent of the published program length.[139] These limitations make it even more critical that students' initial choices in GE programs prepare them for employment that provides adequate earnings and do not result in excessive debt.

We also remain concerned that students seeking to enroll in these programs do not have access to reliable information that will enable them to compare programs in order to make informed decisions about where to invest their time and limited educational funding. As we noted in the 2011 Prior Rule, the GAO and other investigators have found evidence of high-pressure and deceptive recruiting practices at some for-profit institutions. See 76 FR 34386. In 2010, the GAO released the results of undercover testing at 15 for-profit colleges across several States.[140] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[141] The Senate HELP Committee investigation of the for-profit education sector also found evidence that many of the most prominent for-profit institutions engage in aggressive sales practices and provide misleading information to prospective students.[142] Recruiters described ''boiler room''-like sales and marketing tactics and internal institutional documents showed that recruiters are taught to identify and manipulate emotional vulnerabilities and target non-traditional students.[143]

There has been growth in the number of *qui tam* lawsuits brought by private parties alleging wrongdoing at for-profit institutions, such as overstating job placement rates. Moreover, a growing number of State and other Federal law enforcement authorities have launched investigations into whether for-profit institutions are using aggressive or even deceptive marketing and recruiting practices. Several State Attorneys General have sued for-profit institutions to stop these fraudulent marketing practices which include manipulations of job placement rates. On August 19, 2013, the New York State Attorney General announced a $10.25 million settlement with Career Education Corporation (CEC), a private for-profit education company, after its investigation revealed that CEC significantly inflated its graduates' job placement rates in disclosures made to students, accreditors, and the State.[144] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[145] The Commonwealth of Kentucky has filed lawsuits against several private for-profit institutions, including National College of Kentucky, Inc., for misrepresenting job placement rates, and Daymar College, Inc., for misleading students about financial aid and overcharging for textbooks.[146] And most recently, early this year, a group of 13 State Attorneys General issued Civil Investigatory Demands to Corinthian Colleges, Inc., Education Management Co., ITT Educational Services, Inc., and CEC, seeking information about job placement rate data and marketing and recruitment practices. The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

Further, the Consumer Financial Protection Bureau issued Civil Investigatory Demands to Corinthian Colleges, Inc. and ITT Educational Services, Inc. in November, 2013, demanding information about their marketing, advertising, and lending policies.[147] The Securities and Exchange Commission also subpoenaed records from Corinthian Colleges, Inc. on June 6, 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[148] These inquiries supplement the Department's existing monitoring and compliance efforts to protect against such abuses.

The 2012 Senate HELP Committee report also found extensive evidence of aggressive and deceptive recruiting practices, excessive tuition, and regulatory evasion and manipulation by for-profit colleges in their efforts to enroll service members, veterans, and their families. The report described veterans being viewed as ''dollar signs in uniform.'' [149] The Los Angeles Times reported that recruiters from for-profit colleges have been known to recruit at Wounded Warriors centers and at veterans hospitals, where injured soldiers are pressured into enrolling through promises of free education and more.[150] Some for-profit colleges take advantage of service members and veterans returning home without jobs through a number of improper practices, including by offering post-9/11 GI Bill benefits that are intended for living expenses as ''free money.'' [151] Many veterans enroll in online courses simply to gain access to the monthly GI Bill benefits even if they have no intention of completing the coursework.[152] In addition, some institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing adequate support and counseling, engaged in misleading recruiting practices onsite at military installations, and failed to accurately disclose information regarding the graduation rates of veterans.[153] In June 2012, an investigation in 20 States, led by the Commonwealth of Kentucky's

[139] See section 401(c)(5) of the HEA, 20 U.S.C. 1070a(c)(5), for Pell Grant limitation; see section 455(q) of the HEA, 20 U.S.C. 1087e(q), for the 150 percent limitation.

[140] For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices (GAO–10–948T), GAO, August 4, 2010 (reissued November 30, 2010).

[141] Id.

[142] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[143] Id.

[144] ''A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement with For-Profit Education Company That Inflated Job Placement Rates to Attract Students,'' press release, Aug. 19, 2013. Available at: *www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit*.

[145] ''Attorneys General Take Aim at For-Profit Colleges' Institutional Loan Programs,'' The Chronicle of Higher Education, March 20, 2012. Available at: *http://chronicle.com/article/Attorneys-General-Take-Aim-at/131254/*.

[146] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits*.

[147] ''For Profit Colleges Face New Wave of State Investigations, Bloomberg, Jan. 29, 2014. Available at: *www.bloomberg.com/news/2014–01–29/for-profit-colleges-face-new-wave-of-coordinated-state-probes.html*.

[148] ''Corinthian Colleges Crumbles 14% on SEC probe,'' Fox Business, June 11, 2013. Available at: *www.foxbusiness.com/government/2013/06/11/corinthian-colleges-crumbles-14-on-sec-probe/*.

[149] ''Dollar Signs In Uniform,'' Los Angeles Times, Nov. 12, 2012. Available at: *http://articles.latimes.com/2012/nov/12/opinion/la-oe-shakely-veterans-college-profit-20121112*; citing ''Harkin Report,'' S. Prt. 112–37, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, July 30, 2012.

[150] Id.

[151] Id.

[152] Id.

[153] ''We Can't Wait: President Obama Takes Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and their Families,'' White House Press Release, April 26, 2012. Available at: *www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading*.

Attorney General, resulted in a $2.5 million settlement with QuinStreet, Inc. and the closure of GIBill.com, a Web site that appeared as if it was an official site of the U.S. Department of Veterans Affairs, but was in reality a for-profit portal that steered veterans to 15 colleges, almost all for-profit institutions, including Kaplan University, the University of Phoenix, Strayer University, DeVry University, and Westwood College.[154]

Basis of Regulatory Approach

The components of the proposed accountability framework that a program must satisfy to meet the gainful employment requirement are rooted in the legislative history of the predecessors to the statutory provisions of sections 101(b)(1), 102(b), 102(c), and 481(b) of the HEA that require institutions to establish the title IV, HEA program eligibility of GE programs. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

The legislative history of the statute preceding the HEA that first permitted students to obtain federally financed loans to enroll in programs that prepared them for gainful employment in recognized occupations demonstrates the conviction that the training offered by these programs should equip students to earn enough to repay their loans. *APSCU* v. *Duncan,* 870 F.Supp.2d at 139; see also 76 FR 34392. Allowing these students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. 76 FR 34392. Specifically, the Senate Report accompanying the initial legislation (the National Vocational Student Loan Insurance Act (NVSLIA), Pub. L. 89–287) quotes extensively from testimony provided by University of Iowa professor Dr. Kenneth B. Hoyt, who testified on behalf of the American Personnel and Guidance Association. On this point, the Senate Report sets out Dr. Hoyt's questions and conclusions:

Would these students be in a position to repay loans following their training? * * *

If loans were made to these kinds of students, is it likely that they could repay them following training? Would loan funds pay dividends in terms of benefits accruing from the training students received? It would seem that any discussion concerning this bill must address itself to these questions. * * *

We are currently completing a second-year followup of these students and expect these reported earnings to be even higher this year. *It seems evident that, in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.* * * * I have found no reason to believe that such funds are not needed, *that their availability would be unjustified in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk.*

Sen. Rep. No. 758, 89th Cong., First Sess. (1965) at 3745, 3748–49 (emphasis added).

Notably, both debt burden to the borrower and financial risk to taxpayers and the Government were clearly considered in authorizing federally backed student lending. Under the loan insurance program enacted in the NVSLIA, the specific potential loss to taxpayers of concern was the need to pay default claims to banks and other lenders if the borrowers defaulted on the loans. After its passage, the NVSLIA was merged into the HEA, which in title IV, part B, has both a direct Federal loan insurance component and a Federal reinsurance component, under which the Federal Government reimburses State and private non-profit loan guaranty agencies upon their payment of default claims. 20 U.S.C. 1071(a)(1). Under either HEA component, taxpayers and the Government assume the direct financial risk of default. 20 U.S.C. 1078(c) (Federal reinsurance for default claim payments), 20 U.S.C. 1080 (Federal insurance for default claims).

Not only did Congress consider expert assurances that vocational training would enable graduates to earn wages that would not pose a ''poor financial risk'' of default, but an expert observed that this conclusion rested on evidence that ''included both those who completed and those who failed to complete the training.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 139, *citing* H.R. Rep. No. 89–308, at 4 (1965), and S. Rep. No. 89–308, at 7, 1965 U.S.C.C.A.N. 3742, 3748.

The concerns regarding excessive student debt reflected in the legislative history of the gainful employment eligibility provisions of the HEA are as relevant now as they were then. Excessive student debt affects students and the country in three significant ways: Payment burdens on the borrower; the cost of the loan subsidies to taxpayers; and the negative consequences of default (which affect borrowers and taxpayers).

The first consideration is payment burdens on the borrower. As we said previously in connection with the 2011 Prior Rule and restate here, loan payments that outweigh the benefits of the education and training for GE programs that purport to lead to jobs and good wages are an inefficient use of the borrower's resources. See 75 FR 43621.

The second consideration is taxpayer subsidies. Borrowers who have low incomes but high debt may reduce their payments through income-driven repayment plans. These plans can either be at little or no cost to taxpayers or, through loan cancellation, can cost taxpayers as much as the full amount of the loan with interest. 75 FR 43622. Deferments and repayment options are important protections for borrowers because, although postsecondary education generally brings higher earnings, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance. However, as we explained in connection with the 2011 Prior Rule, these repayment options should not mean that institutions should increase the level of risk to the individual student or taxpayers through high-cost, low-value programs. See id.

The third consideration is default. The Federal Government covers the cost of defaults on Federal student loans. These costs can be significant to taxpayers. Id. We continue to assert as we did in connection with the 2011 Prior Rule and restate here, loan defaults harm students and their families. Id. Their credit rating is damaged, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. And, increasingly, employers consider credit records in their hiring decisions. 75 FR 43622. In addition, former students who default on Federal loans cannot receive additional title IV, HEA program funds for postsecondary education. Id.; see also section 484(a)(3) of the HEA, 20 U.S.C. 1091(a)(3).

In accordance with the legislative intent behind the gainful employment eligibility provisions now found in sections 101, 102, and 481 of the HEA and the significant policy concerns they reflect, we propose to use the certification requirements to establish a program's eligibility and, to assess continuing eligibility, the metrics-based standards that measure whether students will be able to pay back the educational debt they incur to enroll in the occupational training programs that

[154] ''$2.5M Settlement over 'GIBill.com','' Inside Higher Ed, June 28, 2012. Available at: *www.insidehighered.com/news/2012/06/28/attorneys-general-announce-settlement-profit-college-marketer.*

are the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

Proposed Regulatory Framework

As stated previously, the Department's goals in the proposed regulations are twofold: to establish an accountability framework for GE programs, and to increase the transparency of student outcomes of GE programs.

As part of the accountability framework, to determine whether a program provides training that prepares students for gainful employment as required by the HEA, we propose procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. To establish a program's eligibility, an institution would be required to certify that each of its GE programs meets all applicable accreditation and licensure requirements necessary for a student to obtain employment in the occupation for which the program provides training. This certification would be incorporated into the institution's program participation agreement.

To assess the continuing eligibility of a GE program, we propose to use two measures—the D/E rates measure, which compares the debt incurred by students completing the program against their earnings, and the pCDR measure, which examines the rate at which borrowers who previously enrolled in the program default on their FFEL or Direct Loans. The proposed regulations would establish minimum thresholds for the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently of each other, as they are designed to achieve complementary objectives, capturing two ways a program could fail to meet the gainful employment requirement.

In addition to the accountability framework, the proposed regulations include institutional reporting and disclosure requirements designed to increase the transparency of student outcomes for GE programs. Institutions would be required to report information that is necessary to implement aspects of the proposed regulations that support the Department's two goals of accountability and transparency. This would include information needed to calculate the D/E rates and the pCDR, as well as some of the specific required disclosures. The proposed disclosure requirements would operate independently of the proposed eligibility requirements and ensure that relevant information regarding GE programs is made available to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. The disclosure requirements would provide for accountability and transparency throughout the admissions and enrollment process so that students, prospective students, and their families can make informed decisions. Specifically, institutions would be required to make information regarding such items as cost of attendance, completion, debt, earnings, and student loan repayment available in a meaningful and easily accessible format.

Together, the certification requirements, accountability metrics, and disclosure requirements are designed to make improved and standardized market information about GE programs available for better decision making by students, prospective students, and their families, the public, taxpayers, and the Government, and institutions and lead to a more competitive marketplace that encourages improvement; improve the quality of programs and lead to reduced costs and student debt; eliminate poor performing programs; result in a better return on educational investment for students, prospective students, and their families, as well as for taxpayers and the Federal Government; and, for institutions with high-performing programs, lead to growth in enrollments and revenues resulting from transparent market information that would permit those institutions to demonstrate to consumers the value of their GE programs.

The D/E Rates and pCDR

As previously stated, as part of the accountability framework, we propose two complementary yet independent measures—the D/E rates measure and the pCDR measure—that would be used to determine whether a GE program remains eligible for title IV, HEA program funds. The debt-to-earnings measures under both the 2011 Prior Rule and the proposed regulations assess the debt burden incurred by students who completed a GE program in relation to their earnings. The pCDR measure, like the loan repayment rate in the 2011 Prior Rule, would assess the extent to which a program's borrowers are paying back their loans, whether or not they completed the program, by measuring the GE program's title IV, HEA loan default rate.

The D/E rates measure would evaluate the amount of debt students who completed a GE program incurred to enroll in that program in comparison to those same students' discretionary and annual earnings after completing the program. The proposed regulations would establish the standards by which the program would be assessed to determine, for each year rates are calculated, whether it passes or fails the D/E rates measure or is ''in the zone.'' Under the proposed regulations, to pass the D/E rates measure, the GE program must have a discretionary income rate less than or equal to 20 percent or an annual earnings rate less than or equal to 8 percent. The proposed regulations would also establish a zone for GE programs that have a discretionary income rate between 20 percent and 30 percent or an annual earnings rate between 8 percent and 12 percent. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent would fail the D/E rates measure. Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds if it fails the D/E rates measure for two out of three consecutive years, or has a combination of D/E rates measures that are in the zone or failing for four consecutive years. We propose the D/E rates measure and the thresholds to assess whether a GE program has prepared students to earn enough to repay their loans, to better safeguard the Federal investment in the program.

To allow institutions an opportunity to improve, the proposed regulations include a transition period for the first four years after the final regulations become effective. During the transition period, an alternative D/E rates calculation would be made so that institutions could benefit from any immediate reductions in cost they make. During these four years, the transition period and zone together would allow institutions to make improvements to their programs in order to become passing.

In addition to the D/E rates measure, the proposed regulations would establish a pCDR measure. The pCDR measure would evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program. Under the proposed regulations, a program would lose eligibility if its GE program has a pCDR of 30 percent or greater for three consecutive fiscal years. We propose the pCDR measure and the thresholds to identify those programs that may pass, or may not be evaluated by, the D/E rates measure, but whose students incur debt they cannot repay and ultimately default on their loans. Unlike the D/E rates measure, the pCDR measure would include students who did not complete their programs and therefore would assess programs with low completion rates that, regardless of the earnings of students who complete the program, leave a significant number of students without credentials and with unmanageable debt.

Both the D/E rates measure and pCDR measure assess program outcomes that, consistent with legislative intent, indicate whether a program is preparing students for gainful employment. Although the measures supplement and complement one another, each focuses on separate and distinct expectations upon which Congress relied in enacting legislation that make these programs eligible for title IV, HEA program funds based on the condition that they provide training that prepares students for gainful employment. Consequently, we believe the measures should operate independently.

The D/E rates and pCDR measures are designed to reflect and account for the three primary reasons that a program may fail to prepare students for gainful employment where former students are unable to earn wages adequate to manage their educational debt: (1) A program does not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) a program provides training for an occupation for which low wages do not justify program costs, and (3) the program is experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default.

The D/E rates measure assesses the outcomes of only those students who complete the program. The calculation includes former students who received title IV, HEA program funds and took on educational debt and those who did not. And, for those students who have debt, the D/E rates take into account private loans and institutional financing in addition to title IV, HEA program loans.

The D/E rates measure primarily assesses whether the loan funds obtained by students ''pay dividends in terms of benefits accruing from the training students received,'' and whether such training has indeed equipped students to earn enough to repay their loans such that they are not unduly burdened. H.R. Rep. No. 89–308, at 4 (1956); S. Rep. No. 89–758, at 7 (1965). A 2002 survey found that a majority of borrowers felt burdened by their student loan payments and reported that they would borrow ''much less'' or a ''little less'' to finance their higher education if they were to enroll again in an educational program. An analysis of the 2002 survey combined borrowers' responses to questions about student loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' debt-to-income ratios; in other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[155]

As a result, the D/E rates measure identifies programs that fail to adequately provide students with the occupational skills needed to obtain employment or that train students for occupations with low wages. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.

In contrast to the D/E rates measure, pCDR measures the extent to which a program's former students are paying back their Direct and FFEL loans regardless of their earnings, if any. In comparison to the D/E rates measure, the pCDR measure applies to those programs that have relatively high enrollments but no or few completions such that students are left with debt they cannot repay. As stated previously, research indicates that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.''[156]

The legislative history supports inclusion of students who did not complete a program in the proposed accountability framework. As discussed, Congress specifically considered expert advice that students who took out Federal loans for the purpose of training programs, including students who do not complete the programs, would be able to repay those loans, as defaults by those students would burden taxpayers in the same way as defaults by students who completed the program.

The pCDR, consequently, is foremost a measure that assesses whether a program presents a ''poor financial risk to the taxpayer.'' 76 FR 34392. In light of congressional intent reflected in the legislative history, a program that presents a poor financial risk for taxpayers cannot be considered a program that prepares students for gainful employment.

Despite the distinctive purposes of the D/E rates and pCDR measures, the measures supplement and complement one another. The scope of the pCDR measure is broader than the D/E rates measure as the pCDR measure also takes into account the outcomes of borrowers who did not complete the program. Accordingly, the pCDR measure supplements the D/E rates measure in those cases in which D/E rates cannot be calculated because no or very few students who enrolled in a program actually completed the program. By including an accountability metric that reflects the outcomes of students who do not complete the program, institutions would have incentive to address any high dropout and ''churn'' issues or face the loss of eligibility.

Likewise, the D/E rates measure complements the pCDR measure. Specifically, the pCDR measure does not take into account the many students who may be struggling to repay their loans, such as those receiving economic hardship deferments or who are in an income-driven repayment plan. These students may see their loans grow, rather than shrink, because their incomes are low and their debts are high. While the pCDR measure may not identify programs whose former students are in such circumstances, the D/E rates measure would take into account those students who are struggling with their debt burden despite having completed their programs.

Analysis of the Proposed Regulations

Data and Methodology for Analysis of the Proposed Regulations

Data

After the effective date of the 2011 Final Rules on July 1, 2011, the Department received, pursuant to the reporting requirements of the 2011 Final Rules, information from institutions on their GE programs for award years 2006–2007 through 2010–2011 (GE Data). The GE Data is stored in the National Student Loan Database System (NSLDS), maintained by the Department's Office of Federal Student Aid (FSA). The GE Data originally included information on students who received title IV, HEA program funds, as well as students who did not. After the decisions in *APSCU* v. *Duncan,* the Department removed from NSLDS and destroyed the data on students who did not receive title IV, HEA program funds.

Using the GE Data, student loan information also stored in NSLDS, and earnings information obtained from SSA, the Department calculated (1) 2012 GE informational D/E rates and (2) 2012 GE informational pCDR for GE programs. As discussed in the ''Background'' section of the preamble to this NPRM, the 2012 GE informational D/E rates and 2012 GE

[155] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[156] Gross, J. P., Cekic, O., Hossler, D., and Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

informational pCDR are referred to as the ''2012 GE informational rates.'' The 2012 GE informational rates are stored in a data file maintained by the Department that is accessible on its Web site.[157]

The 2012 GE informational D/E rates were calculated by program and are based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2007, and September 30, 2009 (the ''08/09 2012 D/E rates cohort''). The annual loan payment component of the debt-to-earnings formulas for the 2012 GE informational D/E rates was calculated for each program using student loan information from the GE Data and from NSLDS. For the annual earnings figures that were used in the debt-to-earnings calculations, the Department obtained from SSA the 2011 annual earnings, by program, of the 08/09 2012 D/E rates cohort. The 2012 GE informational D/E rates were calculated using the following criteria:

- N-size: 30
- Amortization schedule: 10 years for certificate and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional programs
- Interest rate: 5.42 percent

The 2012 GE informational rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The 2012 GE informational pCDR were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2008, and September 30, 2009 (the ''09 2012 pCDR cohort'') on FFEL or Direct Loans for enrollment in a GE program. The 2012 GE informational pCDR calculations were made using student loan information for the 09 2012 pCDR cohort from the GE Data and NSLDS.

Unless otherwise specified, in accordance with the proposed regulations, the Department analyzed the 2012 GE informational D/E rates, and program level debt and earnings, only for those programs with 30 or more students who completed the program during an applicable cohort period—that is, those programs that met the minimum ''n-size—in this case between October 1, 2007, and September 30, 2009, as previously described. Of the 37,589 GE programs for which institutions reported program information to the Department in FY 2010, 5,539 met the minimum n-size of 30 for the 2012 GE informational D/E rates calculations.

The proposed regulations regarding pCDR do not include similar n-size requirements because various challenges and appeals are available for programs that have less than 30 borrowers included in the calculation. For the purpose of this regulatory impact analysis, however, we analyzed the 2012 GE informational pCDR only for those programs with an n-size of 30 or more borrowers who entered repayment on FFEL or Direct Loans for attendance in the program during an applicable cohort period. The applicable cohort period for the 2012 GE informational pCDR is October 1, 2008, to September 30, 2009, unless fewer than 30 students entered repayment during that year, in which case the calculation includes students who entered repayment in the previous two years. Of the 37,589 GE programs for which institutions reported program information to the Department in FY 2010, 6,815 met the minimum n-size of 30 borrowers for the 2012 GE informational pCDR calculations. In total, we estimate that 7,934 programs out of the 37,589 programs, representing 73 percent of students receiving title IV, HEA program funds in FY 2010, would be evaluated under the GE measures because they would receive D/E rates and pCDR, D/E rates only, or pCDR only.

For the purposes of this regulatory impact analysis, we analyzed the impact of the proposed regulations on GE programs by the following criteria:

- *Enrollment:* Number of students receiving title IV, HEA program funds for attendance in a program. In order to estimate enrollment, we used the FY 2010 enrollment of students receiving title IV, HEA programs funds.
- *6-digit classification of instructional program (''CIP'') code:* 6-digit CIP codes are categories of program type defined by the Department's National Center for Education Statistics. The first two digits of each 6-digit CIP code represent the corresponding 2-digit CIP code, which provides a higher-level categorization of program categories.
- *Sector:* Public non-profit, private non-profit, for-profit designation for each OPEID (institution) using NSLDS sector data as of November 2013.
- *Institution type:* Less than 2 years, 2 years, and 4 years or more designation for each OPEID using NSLDS sector data as of November 2013.
- *Credential level:* Certificate, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first professional degree.

We examined the number of programs that would, under the proposed regulations, ''pass,'' ''fail,'' or fall in the ''zone'' based on the 2012 GE informational D/E rates. Similarly, we examined the number of programs that would, under the proposed regulations, ''pass'' or ''fail'' based on the 2012 GE informational pCDR.

Methodology

The estimated effects of the proposed regulations described in ''Analysis of the Proposed Regulations'' are based on the 2012 GE informational rates sample. The methodologies used for the informational data calculations depart slightly in some areas from the provisions in the proposed regulations as described in the following methodological notes related to the rates calculated for this regulatory impact analysis.

D/E rates calculations

$$\text{discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

[157] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html.*

• Both the annual earnings and discretionary income rates were calculated by program for students receiving title IV, HEA program funds who completed the program between October 1, 2007, and September 30, 2009, defined above as the 08/09 2012 D/E rates cohort.

• D/E rates were not calculated for programs with fewer than 10 students in the 08/09 2012 D/E rates cohort. Unless otherwise indicated, analysis of programs under the D/E rates measure in this regulatory impact analysis includes only programs with 30 or more students in the 08/09 2012 D/E rates cohort to reflect the D/E rates measure minimum n-size requirements in the proposed regulations.

• The SSA provided, at the program level, the 2011 calendar year mean and median annual earnings of the 08/09 2012 D/E rates cohort. Annual earnings include wages, salaries, tips, and self-employment income. The higher of the mean or median annual earnings was used as the annual earnings component of the annual earnings rate and discretionary income rate calculations.

• The annual loan payment was calculated by determining the median loan debt for the 08/09 2012 D/E rates cohort and amortizing that median debt amount over a 10-year period for undergraduate certificate, associate degree, and post-baccalaureate certificate programs, a 15-year period for bachelor's and master's degree programs, and a 20-year period for doctoral and first professional degree programs using an annual interest rate of 5.42 percent, which represents the average undergraduate and graduate unsubsidized interest rate on Federal Direct Unsubsidized Loans for the six years prior to the end of the applicable cohort period.

• Loan debt includes both FFEL and Direct Loans (except PLUS Loans made to parents or Direct Unsubsidized loans that were converted from TEACH Grants), private loans, and institutional loans that a student received for attendance in the GE program.

• In cases where students completed multiple GE programs at the same institution, all loan debt was attributed to the highest credentialed program that the students completed and the student was not included in the calculation of rates for the lower credentialed programs.

• In calculating median loan debt, the loan debt associated with a student was capped at an amount equivalent to the program's tuition and fees if: (1) tuition and fees information was provided by the institution, and (2) the amount of tuition and fees was less than the student's loan debt. This tuition and fees cap applied to approximately 15 percent of student records for the 08/09 2012 D/E rates cohort.

• For the discretionary earnings rate calculations, the Poverty Guideline is the Federal poverty guideline for an individual person in the continental United States as issued by the U.S. Department of Health and Human Services. We used the 2013 Guideline of $11,490 to conduct our analysis.

• Excluded from the calculations are students whose loans were in military deferment or who were enrolled at an institution of higher education for any amount of time in the calendar year for which earnings were retrieved or whose loans were discharged because of disability or death.

• The annual loan payment was truncated rather than rounded, with no digits after the decimal place.

• The annual earnings rate and discretionary income rate are truncated two digits after the decimal place.

pCDR calculations

$$\text{pCDR} = \frac{\text{borrowers whose loans are in default}}{\text{borrowers whose loans entered repayment}}$$

• The pCDR was calculated by program for students who entered repayment between October 1, 2008, and September 30, 2009, defined previously as the 09 2012 pCDR cohort, on FFEL or Direct Loans received for attendance in the GE program.

• *Borrowers whose loans entered repayment* represents the number of students, by program, in the 09 2012 pCDR cohort.

• *Borrowers whose loans are in default* represents the number of students, by program, in the 09 2012 pCDR cohort who defaulted on their FFEL or Direct Loans at any time within the first three fiscal years of repayment. For the 09 2012 pCDR cohort, this was the period between October 1, 2008, and September 30, 2011.

• For programs with fewer than 30 students in the 09 2012 pCDR cohort:

○ *Borrowers whose loans entered repayment* also includes students who entered repayment between October 1, 2006, to September 30, 2007 (2007 pCDR Cohort) and October 1, 2007, to September 30, 2008 (2008 pCDR Cohort) on FFEL or Direct Loans received for enrollment in the GE program; and

○ *Borrowers whose loans are in default* also includes the number of students, by program, in the 2007 and 2008 pCDR Cohorts who defaulted on their FFEL or Direct Loans at any time within the first three fiscal years of repayment. For the 2007 pCDR Cohort, this was the period between October 1, 2006, and September 30, 2009. For the 2008 pCDR Cohort, this was the period between October 1, 2007, and September 30, 2010.

• pCDR were not calculated for programs with less than 30 total combined students in the 2007 and 2008 pCDR Cohorts and 09 2012 pCDR cohort.

• The pCDRs are truncated to two digits after the decimal point.

Analysis of Impact of Student Demographics

In connection with the 2011 Final Rules and the public hearings and meetings of the negotiating committee for the current gainful employment negotiated rulemaking, we received comments that the results of programs under the proposed GE measures is driven in large part by the demographic characteristics of the students attending the programs rather than characteristics of the programs themselves. For the current rulemaking, we conducted an analysis to examine the contribution of demographic factors, including the program's estimated concentration of Pell Grant recipients and estimated concentration of minority students (black, American Indian, or Hispanic), to program performance under the proposed GE measures. Students qualify for Pell Grants based on a number of factors, with household income being a primary factor, making the share of students enrolled in a program who receive Pell Grants an indicator of the socioeconomic status of students in a program.

To examine the extent to which student demographic factors explain program performance under the proposed regulations, we developed two regression models using the 2012 GE informational rates. In the first regression the dependent variable was the program's annual earnings rate. In the second regression, the dependent variable was the program's cohort default rate.

Two explanatory variables measured at the program-level were used for the annual earnings rate regression analysis. The first variable was the percentage of students enrolled in the program who were Pell eligible. The second variable was the percentage of students who were enrolled in the program and had minority status (black, American Indian, or Hispanic). The annual earnings rate regression analysis showed that the percentage of Pell Grant recipients and the percentage of students with minority status account for less than 2 percent of the variation in annual earnings rates.

The pCDR regression analysis used the same program-level percentage of Pell eligible students variable used in the annual earnings rate regression analysis. Since program-level race/ethnicity data that include both students who completed the program and those who did not are not available, institution-level minority race/ethnicity data were used as a proxy. The pCDR regression analysis showed that the percentage of Pell Grant recipients and the percentage of students with minority status accounted for less than 20 percent of the variation in pCDR.

These results suggest that performance on the GE measures under the proposed regulations is not substantially the result of Pell status or race and ethnicity.

The Department further looked at explanatory factors for both the annual earnings rate and pCDR by adding the following variables to the regressions: sector (public, private non-profit, or for-profit) and institution type (< 2-year, 2–3 year, ≥ 4-year), as well as additional demographic characteristics including percentage of title IV recipients that were female, above the age of 24, and had a zero estimated family contribution. The Department found that by including these additional variables, 36 percent of the variance in the annual earnings rate could be explained and 33 percent of the variance in pCDR could be explained.

Analysis of the 2012 GE Informational Rates

The 2012 GE informational rates include only programs from the FY 2010 reporting that meet the minimum n-size criteria. Of the 37,589 GE programs in the FY 2010 reporting with total enrollment of 3,985,329 students receiving title IV, HEA program funds, 7,934 programs, representing 2,914,376 students receiving title IV, HEA program funds, were evaluated in the 2012 GE informational rates.

Table 4 provides, by 2-digit CIP code, the number of programs in the 2012 GE informational rates sample. Table 5 provides, by 2-digit CIP code, the number of 2012 GE informational rate programs as a percentage of all GE programs for which institutions reported program information to the Department in FY 2010. Table 6 provides, by 2-digit CIP code, the title IV enrollment of programs in the 2012 GE informational rates sample. Table 7 provides, by 2-digit CIP code, title IV enrollment of programs in the 2012 GE informational rates sample as a percentage of all title IV enrollment in GE programs for which institutions reported program information to the Department in FY 2010.

Table 4: 2012 GE Informational Rates Program Count by 2-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	850	4	146	25	1,506	582	51	7	41	7	3	3,222
52	Business Management and Administrative Services	86	3	18	7	148	346	186	11	59	14	1	879
12	Personal and Miscellaneous Services	103	0	13	0	954	79	18	0	0	0	3	1,170
47	Mechanics and Repairs	93	0	16	0	169	56	0	0	0	0	0	334
11	Computer and Information Sciences	8	0	8	1	81	185	125	1	17	2	0	428
15	Engineering Related Technologies	14	0	10	0	74	73	10	0	1	0	0	182
50	Visual and Performing Arts	4	0	6	3	40	165	174	0	14	0	0	406
13	Education	11	20	9	27	7	7	9	5	44	19	0	158
43	Protective Services	99	0	2	0	18	114	53	1	13	2	0	302
48	Precision Production Trades	40	0	5	0	22	8	0	0	0	0	0	75
46	Construction Trades	63	0	10	0	53	13	0	0	0	0	0	139
22	Law and Legal Services	14	1	4	6	46	116	17	1	1	1	6	213
19	Home Economics	26	0	6	0	7	2	2	0	2	1	0	46

1	Agricultural Business and Production	3	0	1	0	4	0	1	0	0	0	0	9
10	Telecommunications Technologies	1	0	1	0	16	29	34	0	1	0	0	82
44	Public Administration and Services	4	2	1	1	0	3	3	0	7	5	0	26
9	Communications	0	0	0	0	8	5	21	0	1	0	0	35
49	Transportation and Material Moving Workers	30	0	3	0	19	2	0	0	0	0	0	54
31	Parks, Recreation, Leisure, and Fitness Studies	1	1	0	0	7	12	3	0	2	0	0	26
24	Liberal Arts and Sciences, General Studies and Humanities	13	0	0	1	0	6	1	0	1	1	0	23
30	Multi-interdisciplinary Studies	2	2	0	0	0	2	4	1	1	0	0	12
45	Social Sciences and History	1	0	1	1	1	2	5	0	1	0	0	12
42	Psychology	0	1	0	3	0	2	9	2	17	15	0	49
14	Engineering	0	1	0	1	0	3	3	0	1	0	0	9
16	Foreign Languages and Literature	1	0	0	0	0	0	0	0	0	0	0	1
23	English Language and Literature/Letters	0	0	5	0	4	1	1	0	0	0	0	11
39	Theological Studies and Religious Vocations	0	0	2	0	0	0	0	0	0	0	0	2
26	Biological and Biomedical Sciences	1	0	0	0	1	0	2	0	0	0	0	4
3	Conservation and Renewable Natural Resources	0	0	0	0	0	0	2	0	0	0	0	2
41	Science Technologies	2	0	0	0	1	1	0	0	0	0	0	4

4	Architecture and Related Programs	0	0	0	1	0	0	0	0	1	0	1	3
5	Area, Cultural, Ethnic, and Gender Studies	1	0	0	0	0	0	0	0	0	0	0	1
25	Library Studies	0	0	0	1	0	0	0	0	0	0	0	1
40	Physical Sciences	1	0	0	0	0	0	0	0	0	0	0	1
54	History	0	0	0	0	0	0	1	0	2	0	0	3
27	Mathematics and Statistics	0	0	0	0	0	0	0	0	0	0	0	0
38	Philosophy and Religious Studies	0	0	0	0	0	0	2	0	0	0	0	2
32	Basic Skills	0	0	0	0	2	0	0	0	0	0	0	2
34	Health-related Knowledge and Skills	0	0	0	0	4	0	0	0	0	0	0	4
36	Leisure and Recreational Activities	0	0	0	0	0	0	0	0	0	0	0	0
28	Reserve Officer Training Corps	0	0	0	0	0	0	0	0	0	0	0	0
60	Residency Programs	0	0	0	0	0	0	0	0	0	0	0	0
21	Technology/Education Industrial Arts	0	0	0	0	0	1	1	0	0	0	0	2
29	Military Technologies	0	0	0	0	0	0	0	0	0	0	0	0
33	Citizenship Activities	0	0	0	0	0	0	0	0	0	0	0	0
37	Personal Awareness and Self Improvement	0	0	0	0	0	0	0	0	0	0	0	0
53	High School/Secondary Diplomas and Certificates	0	0	0	0	0	0	0	0	0	0	0	0
Total		1,472	35	267	78	3,192	1,815	738	29	227	67	14	7,934

Table 5: 2012 GE Informational Rates Programs as a Percentage of All Programs in FY 2010 Reporting

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	18.0%	1.4%	36.1%	9.1%	60.4%	54.0%	32.9%	43.8%	47.1%	38.9%	27.3%	33.7%
52	Business Management and Administrative Services	2.5%	2.6%	14.2%	4.2%	31.2%	53.3%	49.5%	36.7%	49.6%	60.9%	100.0%	16.0%
12	Personal and Miscellaneous Services	9.7%	0.0%	27.7%	0.0%	40.5%	62.2%	64.3%	-	0.0%	-	17.6%	32.2%
47	Mechanics and Repairs	4.1%	0.0%	29.6%	-	63.5%	66.7%	-	-	-	-	-	12.6%
11	Computer and Information Sciences	0.5%	0.0%	15.4%	2.6%	27.7%	54.1%	57.1%	14.3%	43.6%	40.0%	-	16.1%
15	Engineering Related Technologies	0.8%	0.0%	23.8%	0.0%	51.7%	50.3%	43.5%	0.0%	100.0%	-	-	8.8%
50	Visual and Performing Arts	0.7%	0.0%	11.3%	4.2%	37.4%	69.3%	63.3%	-	36.8%	0.0%	-	29.1%
13	Education	2.8%	6.7%	31.0%	6.9%	13.5%	36.8%	15.8%	22.7%	56.4%	63.3%	0.0%	11.6%
43	Protective Services	11.4%	0.0%	13.3%	0.0%	32.7%	60.3%	47.3%	16.7%	56.5%	66.7%	-	23.2%
48	Precision Production Trades	3.8%	-	22.7%	-	53.7%	61.5%	-	-	-	-	-	6.7%
46	Construction Trades	6.6%	-	41.7%	-	54.1%	50.0%	0.0%	-	-	-	-	12.6%
22	Law and Legal Services	4.5%	20.0%	10.0%	31.6%	39.0%	58.9%	42.5%	20.0%	50.0%	100.0%	60.0%	28.4%
19	Home Economics	3.9%	0.0%	50.0%	0.0%	46.7%	18.2%	15.4%	0.0%	100.0%	100.0%	-	6.2%
1	Agricultural Business and Production	0.6%	0.0%	20.0%	-	57.1%	0.0%	100.0%	-	-	-	-	1.7%

10	Telecommunications Technologies	0.3%	-	25.0%	0.0%	51.6%	69.0%	61.8%	-	33.3%	-	-	16.0%
44	Public Administration and Services	2.7%	4.9%	14.3%	4.8%	-	37.5%	27.3%	0.0%	43.8%	83.3%	-	10.1%
9	Communications	0.0%	0.0%	0.0%	0.0%	42.1%	33.3%	56.8%	-	20.0%	-	-	13.8%
49	Transportation and Material Moving Workers	17.6%	-	60.0%	0.0%	67.9%	28.6%	0.0%	0.0%	0.0%	-	-	24.4%
31	Parks, Recreation, Leisure, and Fitness Studies	0.9%	20.0%	0.0%	0.0%	19.4%	57.1%	20.0%	0.0%	100.0%	-	-	13.3%
24	Liberal Arts and Sciences, General Studies and Humanities	10.0%	0.0%	0.0%	25.0%	0.0%	27.3%	5.9%	0.0%	25.0%	100.0%	-	12.4%
30	Multi-interdisciplinary Studies	3.3%	3.8%	0.0%	0.0%	0.0%	100.0%	26.7%	50.0%	33.3%	-	-	6.6%
45	Social Sciences and History	1.3%	0.0%	25.0%	4.5%	100.0%	50.0%	27.8%	-	33.3%	-	-	6.7%
42	Psychology	0.0%	3.4%	0.0%	5.5%	-	66.7%	56.3%	33.3%	63.0%	71.4%	-	28.8%
14	Engineering	0.0%	2.3%	0.0%	7.1%	0.0%	50.0%	20.0%	0.0%	12.5%	-	-	6.8%
16	Foreign Languages and Literature	1.0%	0.0%	0.0%	0.0%	0.0%	-	0.0%	-	-	-	-	0.8%
23	English Language and Literature/Letters	0.0%	0.0%	50.0%	0.0%	57.1%	50.0%	10.0%	-	0.0%	-	-	9.5%
39	Theological Studies and Religious Vocations	0.0%	-	4.4%	0.0%	-	0.0%	0.0%	-	0.0%	0.0%	-	1.9%
26	Biological and Biomedical Sciences	2.9%	0.0%	0.0%	0.0%	100.0%	0.0%	20.0%	-	-	-	-	4.3%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	0.0%	0.0%	0.0%	-	25.0%	0.0%	0.0%	-	-	2.4%
41	Science Technologies	2.9%	0.0%	-	-	50.0%	20.0%	-	-	-	-	-	5.1%
4	Architecture and Related Programs	0.0%	0.0%	0.0%	16.7%	0.0%	-	0.0%	-	50.0%	-	100.0%	5.1%

5	Area, Cultural, Ethnic, and Gender Studies	5.0%	0.0%	0.0%	0.0%	-	-	0.0%	-	-	-	-	1.8%
25	Library Studies	0.0%	0.0%	-	14.3%	-	-	0.0%	-	-	-	-	2.4%
40	Physical Sciences	8.3%	0.0%	-	0.0%	0.0%	-	0.0%	-	-	-	-	3.2%
54	History	0.0%	0.0%	-	0.0%	-	0.0%	16.7%	0.0%	50.0%	-	-	12.0%
27	Mathematics and Statistics	0.0%	0.0%	0.0%	0.0%	-	0.0%	0.0%	-	-	-	-	0.0%
38	Philosophy and Religious Studies	-	0.0%	0.0%	0.0%	-	-	50.0%	-	0.0%	0.0%	-	9.5%
32	Basic Skills	0.0%	0.0%	0.0%	-	66.7%	-	-	-	-	-	-	13.3%
34	Health-related Knowledge and Skills	0.0%	-	0.0%	0.0%	100.0%	-	-	-	-	-	-	30.8%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	-	-	-	0.0%	-	0.0%	-	-	0.0%
28	Reserve Officer Training Corps	0.0%	-	-	-	0.0%	0.0%	0.0%	0.0%	-	-	-	0.0%
60	Residency Programs	-	0.0%	-	0.0%	-	-	-	-	-	-	-	0.0%
21	Technology/Education Industrial Arts	-	0.0%	-	0.0%	-	100.0%	100.0%	-	-	-	-	50.0%
29	Military Technologies	-	-	-	-	0.0%	0.0%	0.0%	-	-	-	-	0.0%
33	Citizenship Activities	0.0%	0.0%	-	-	-	-	-	-	-	-	-	0.0%
37	Personal Awareness and Self Improvement	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
Total		6.8%	2.9%	25.1%	6.1%	47.9%	55.6%	47.0%	26.6%	46.9%	59.3%	34.1%	21.1%

Table 6: 2012 GE Informational Rates Title IV Enrollment by 2-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	113,626	140	28,436	1,161	384,202	270,444	79,668	557	35,857	4,345	1,386	919,822
52	Business Management and Administrative Services	12,074	191	2,669	822	11,584	219,135	293,649	1,923	103,118	11,962	0	657,127
12	Personal and Miscellaneous Services	11,200	0	1,925	0	158,795	31,955	5,464	0	0	0	312	209,651
43	Protective Services	13,870	0	336	0	1,137	102,779	72,397	30	6,965	950	0	198,464
11	Computer and Information Sciences	1,391	0	641	190	7,771	91,363	77,521	66	5,090	543	0	184,576
47	Mechanics and Repairs	6,429	0	2,734	0	72,646	13,332	0	0	0	0	0	95,141
13	Education	2,751	1,681	916	2,987	809	18,400	27,096	1,276	53,746	17,574	0	127,236
50	Visual and Performing Arts	185	0	677	86	5,228	33,401	58,754	0	2,426	0	0	100,757
15	Engineering Related Technologies	886	0	991	0	18,529	45,810	11,739	0	695	0	0	78,650
42	Psychology	0	275	0	157	0	415	34,267	152	15,573	11,544	0	62,383
22	Law and Legal Services	1,818	156	227	657	3,463	23,383	7,241	113	642	591	5,291	43,582
30	Multi-interdisciplinary Studies	516	198	0	0	0	32,287	21,532	38	1,791	0	0	56,362
19	Home Economics	8,086	0	829	0	488	503	483	0	1,442	446	0	12,277
44	Public Administration and Services	509	153	64	16	0	15,839	15,629	0	8,299	3,802	0	44,311
46	Construction Trades	3,484	0	1,778	0	10,572	1,567	0	0	0	0	0	17,401

48	Precision Production Trades	2,858	0	1,165	0	5,042	907	0	0	0	0	0	9,972
10	Telecommunications Technologies	435	0	52	0	3,004	3,322	9,613	0	472	0	0	16,898
24	Liberal Arts and Sciences, General Studies and Humanities	9,201	0	0	384	0	7,817	34	0	18	174	0	17,628
45	Social Sciences and History	0	0	66	101	89	55	12,959	0	487	0	0	13,757
23	English Language and Literature/Letters	0	0	1,101	0	1,992	3,667	400	0	0	0	0	7,160
9	Communications	0	0	0	0	1,896	585	5,814	0	180	0	0	8,475
49	Transportation and Material Moving Workers	1,529	0	586	0	7,459	294	0	0	0	0	0	9,868
31	Parks, Recreation, Leisure, and Fitness Studies	34	815	0	0	534	2,827	2,776	0	645	0	0	7,631
14	Engineering	0	45	0	164	0	101	5,002	0	31	0	0	5,343
1	Agricultural Business and Production	158	0	94	0	205	0	42	0	0	0	0	499
54	History	0	0	0	0	0	0	648	0	1,293	0	0	1,941
4	Architecture and Related Programs	0	0	0	37	0	0	0	0	93	0	532	662
3	Conservation and Renewable Natural Resources	0	0	0	0	0	0	1,068	0	0	0	0	1,068
16	Foreign Languages and Literature	71	0	0	0	0	0	0	0	0	0	0	71
38	Philosophy and Religious Studies	0	0	0	0	0	0	1,846	0	0	0	0	1,846
41	Science Technologies	192	0	0	0	128	125	0	0	0	0	0	445
26	Biological and Biomedical Sciences	74	0	0	0	71	0	398	0	0	0	0	543

39	Theological Studies and Religious Vocations	0	0	167	0	0	0	0	0	0	0	0	167
34	Health-related Knowledge and Skills	0	0	0	0	1,320	0	0	0	0	0	0	1,320
21	Technology/Education Industrial Arts	0	0	0	0	0	761	305	0	0	0	0	1,066
25	Library Studies	0	0	0	89	0	0	0	0	0	0	0	89
32	Basic Skills	0	0	0	0	131	0	0	0	0	0	0	131
5	Area, Cultural, Ethnic, and Gender Studies	28	0	0	0	0	0	0	0	0	0	0	28
36	Leisure and Recreational Activities	0	0	0	0	0	0	0	0	0	0	0	0
28	Reserve Officer Training Corps	0	0	0	0	0	0	0	0	0	0	0	0
40	Physical Sciences	28	0	0	0	0	0	0	0	0	0	0	28
27	Mathematics and Statistics	0	0	0	0	0	0	0	0	0	0	0	0
29	Military Technologies	0	0	0	0	0	0	0	0	0	0	0	0
60	Residency Programs	0	0	0	0	0	0	0	0	0	0	0	0
33	Citizenship Activities	0	0	0	0	0	0	0	0	0	0	0	0
37	Personal Awareness and Self Improvement	0	0	0	0	0	0	0	0	0	0	0	0
53	High School/Secondary Diplomas and Certificates	0	0	0	0	0	0	0	0	0	0	0	0
Total		191,433	3,654	45,454	6,851	697,095	921,074	746,345	4,155	238,863	51,931	7,521	2,914,376

Table 7: 2012 GE Informational Rates Title IV Enrollment as a Percentage of All Title IV Enrollment in FY 2010 Reporting

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	41.0%	5.7%	80.4%	37.1%	86.2%	88.4%	84.3%	75.8%	85.6%	86.3%	15.2%	75.3%
52	Business Management and Administrative Services	9.3%	11.3%	68.4%	37.7%	71.6%	94.9%	95.1%	88.0%	94.4%	77.9%	-	80.1%
12	Personal and Miscellaneous Services	25.1%	-	60.7%	0.0%	80.0%	91.7%	93.3%	-	0.0%	-	54.9%	72.9%
43	Protective Services	24.0%	0.0%	40.0%	0.0%	35.4%	89.2%	84.5%	33.3%	86.0%	93.7%	-	72.9%
11	Computer and Information Sciences	3.8%	0.0%	51.2%	43.6%	53.0%	91.2%	87.3%	29.7%	83.6%	70.4%	-	74.1%
47	Mechanics and Repairs	9.6%	0.0%	70.5%	-	91.9%	88.6%	-	-	-	-	-	57.6%
13	Education	20.1%	26.4%	81.5%	43.1%	44.0%	85.7%	92.5%	79.0%	91.5%	81.1%	0.0%	78.2%
50	Visual and Performing Arts	1.2%	0.0%	61.3%	15.7%	79.5%	91.9%	87.8%	-	76.6%	0.0%	-	77.7%
15	Engineering Related Technologies	3.5%	0.0%	67.0%	0.0%	84.7%	93.6%	98.1%	0.0%	100.0%	-	-	71.1%
42	Psychology	0.0%	38.7%	0.0%	14.7%	-	89.6%	93.0%	69.7%	83.4%	88.9%	-	86.6%
22	Law and Legal Services	17.1%	66.4%	29.6%	75.1%	68.6%	74.1%	91.1%	53.1%	88.7%	100.0%	92.1%	67.8%
30	Multi-interdisciplinary Studies	35.6%	39.1%	0.0%	0.0%	0.0%	100.0%	90.6%	32.5%	86.3%	-	-	93.1%
19	Home Economics	16.0%	0.0%	87.6%	0.0%	62.2%	50.4%	17.0%	0.0%	100.0%	100.0%	-	21.0%

44	Public Administration and Services	9.1%	33.4%	43.5%	6.9%	-	85.0%	82.8%	0.0%	80.3%	96.1%	-	76.0%
46	Construction Trades	16.0%	-	89.4%	-	79.7%	62.0%	0.0%	-	-	-	-	43.9%
48	Precision Production Trades	9.8%	-	85.9%	-	76.8%	93.3%	-	-	-	-	-	26.3%
10	Telecommunications Technologies	4.5%	-	49.5%	0.0%	80.5%	68.6%	75.5%	-	96.3%	-	-	53.7%
24	Liberal Arts and Sciences, General Studies and Humanities	63.3%	0.0%	0.0%	88.3%	0.0%	85.2%	2.6%	0.0%	13.0%	100.0%	-	68.1%
45	Social Sciences and History	0.0%	0.0%	86.8%	25.8%	100.0%	90.2%	87.2%	-	65.8%	-	-	79.3%
23	English Language and Literature/Letters	0.0%	0.0%	96.4%	0.0%	96.7%	100.0%	27.1%	-	0.0%	-	-	41.9%
9	Communications	0.0%	0.0%	0.0%	0.0%	92.7%	67.0%	69.0%	-	65.0%	-	-	54.5%
49	Transportation and Material Moving Workers	37.2%	-	80.8%	0.0%	99.2%	67.4%	0.0%	0.0%	0.0%	-	-	73.7%
31	Parks, Recreation, Leisure, and Fitness Studies	1.4%	98.9%	0.0%	0.0%	25.8%	86.4%	85.1%	0.0%	100.0%	-	-	60.0%
14	Engineering	0.0%	11.7%	0.0%	56.7%	0.0%	67.8%	95.4%	0.0%	17.8%	-	-	73.5%
1	Agricultural Business and Production	2.4%	0.0%	81.0%	-	86.9%	0.0%	100.0%	-	-	-	-	7.2%
54	History	0.0%	0.0%	-	0.0%	-	0.0%	26.2%	0.0%	79.4%	-	-	44.9%
4	Architecture and Related Programs	0.0%	0.0%	0.0%	41.6%	0.0%	-	0.0%	-	95.9%	-	100.0%	18.1%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	0.0%	0.0%	0.0%	-	51.5%	0.0%	0.0%	-	-	29.2%
16	Foreign Languages and Literature	2.8%	0.0%	0.0%	0.0%	0.0%	-	0.0%	-	-	-	-	2.6%
38	Philosophy and Religious Studies	-	0.0%	0.0%	0.0%	-	-	86.0%	-	0.0%	0.0%	-	70.1%
41	Science Technologies	12.0%	0.0%	-	-	75.7%	29.6%	-	-	-	-	-	20.3%
26	Biological and Biomedical Sciences	15.4%	0.0%	0.0%	0.0%	100.0%	0.0%	55.4%	-	-	-	-	31.8%

39	Theological Studies and Religious Vocations	0.0%	-	21.4%	0.0%	-	0.0%	0.0%	-	0.0%	0.0%	-	10.4%
34	Health-related Knowledge and Skills	0.0%	-	0.0%	0.0%	100.0%	-	-	-	-	-	-	91.0%
21	Technology/Education Industrial Arts	-	0.0%	-	0.0%	-	100.0%	100.0%	-	-	-	-	99.4%
25	Library Studies	0.0%	0.0%	-	50.3%	-	-	0.0%	-	-	-	-	10.1%
32	Basic Skills	0.0%	0.0%	0.0%	-	35.8%	-	-	-	-	-	-	23.7%
5	Area, Cultural, Ethnic, and Gender Studies	21.1%	0.0%	0.0%	0.0%	-	-	0.0%	-	-	-	-	9.2%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	-	-	-	0.0%	-	0.0%	-	-	0.0%
28	Reserve Officer Training Corps	0.0%	-	-	-	0.0%	0.0%	0.0%	0.0%	-	-	-	0.0%
40	Physical Sciences	40.0%	0.0%	-	0.0%	-	-	0.0%	-	-	-	-	17.8%
27	Mathematics and Statistics	0.0%	0.0%	0.0%	0.0%	-	0.0%	0.0%	-	-	-	-	0.0%
29	Military Technologies	-	-	-	-	0.0%	0.0%	0.0%	-	-	-	-	0.0%
60	Residency Programs	-	0.0%	-	0.0%	-	-	-	-	-	-	-	0.0%
33	Citizenship Activities	0.0%	0.0%	-	-	-	-	-	-	-	-	-	0.0%
37	Personal Awareness and Self Improvement	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
Total		22.6%	22.8%	74.9%	38.0%	83.6%	90.2%	89.0%	72.8%	89.7%	83.7%	47.1%	73.1%

Table 8 provides the number of 2012 informational rate programs that would be evaluated under the proposed regulations under the D/E rates measure or the pCDR measure after application of the exclusions and n-size requirements as explained in the "Methodology" portion of this section.

Table 8: Count and Title IV Enrollment of Programs in 2012 GE Informational Rates Sample

Sector	IHE Type	Number of Programs	Enrollment	Number of Programs Evaluated for D/E	Enrollment for Programs Evaluated for D/E	Number of programs evaluated for pCDR	Enrollment for programs evaluated for pCDR	Number of programs evaluated for pCDR or D/E	Enrollment for programs evaluated for pCDR or D/E
Public	Total	22,996	863,892	1,093	142,400	902	121,650	1,507	195,087
	< 2 year	1,380	25,083	157	11,439	119	9,489	179	12,203
	2-3 year	18,791	779,997	824	119,615	701	104,399	1,178	169,275
	4-year	2,825	58,812	112	11,346	82	7,762	150	13,609
Private	Total	2,343	78,720	253	45,696	262	40,039	345	52,305
	< 2 year	134	11,560	49	9,609	33	5,655	54	9,796
	2-3 year	257	14,671	74	10,324	67	8,894	87	10,969
	4-year	1,952	52,489	130	25,763	162	25,490	204	31,540
For-profit	Total	12,250	3,042,717	4,193	2,333,187	5,651	2,583,388	6,082	2,666,984
	< 2 year	2,885	280,463	1,109	216,870	1,034	196,833	1,284	225,007
	2-3 year	4,557	621,810	1,677	471,406	2,220	485,513	2,346	518,687
	4-year	4,808	2,140,444	1,407	1,644,911	2,397	1,901,042	2,452	1,923,290
Overall Total		37,589	3,985,329	5,539	2,521,283	6,815	2,745,077	7,934	2,914,376

Table 9 shows the 2012 GE informational rate programs that are passing, in the zone, or failing under the proposed GE measures.

Table 9: 2012 GE Informational Rates Program Results

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs
Public		Total	1,507	1,453	1	53	195,087	182,165	221	12,701
	< 2 year	Certificate	179	175	0	4	12,203	12,007	0	196
	2-3 year	Certificate	1,178	1,132	0	46	169,275	156,966	0	12,309
	4-year	Certificate	115	111	1	3	9,955	9,538	221	196
		Post-Bacc Certificate	35	35	0	0	3,654	3,654	0	0
Private		Total	345	312	4	29	52,305	45,658	1,810	4,837
	< 2 year	Certificate	54	45	1	8	9,796	8,172	396	1,228
	2-3 year	Certificate	86	81	2	3	10,952	9,374	1,304	274
		Post-Bacc Certificate	1	1	0	0	17	17	0	0
	4-year	Certificate	127	109	1	17	24,706	21,381	110	3,215
		Post-Bacc Certificate	77	76	0	1	6,834	6,714	0	120
For-Profit		Total	6,082	4,204	660	1,218	2,666,984	1,541,550	298,209	827,225
	< 2 year	Certificate	1,275	974	123	178	224,500	147,951	33,001	43,548
		Associate's	5	3	1	1	195	142	0	53
		1st Professional Degree	4	3	0	1	312	312	0	0
	2-3 year	Certificate	1,505	1,061	157	287	379,498	244,903	50,777	83,818
		Associate's	839	533	128	178	139,033	67,925	26,832	44,276
		Post-Bacc Certificate	2	2	0	0	156	156	0	0

		Certificate	412	282	54	76	93,097	54,361	27,100	11,636
		Associate's	971	532	132	307	781,846	153,818	88,872	539,156
		Bachelor's	738	504	57	177	746,345	578,666	66,749	100,930
	4-year	Post-Bacc Certificate	27	27	0	0	3,999	3,999	0	0
		Master's	227	214	3	10	238,863	235,201	1,240	2,422
		Doctoral	67	65	2	0	51,931	51,009	922	0
		1st Professional Degree	10	4	3	3	7,209	3,107	2,716	1,386
Overall Total			7,934	5,969	665	1,300	2,914,376	1,769,373	300,240	844,763

Tables 9a and 9b show by program count and title IV enrollment respectively, for programs in the 2012 GE informational rate programs that fail, results disaggregated by the metric that causes failure.

Table 9a: 2012 GE Informational Rates Program Results - Failing Programs Disaggregated (Program Count)

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Programs Failing D/E	Programs Failing pCDR	Programs Failing Both D/E and PCDR
Public		Total	1,507	1,453	1	53	1	52	0
	< 2 year	Certificate	179	175	0	4	0	4	0
	2-3 year	Certificate	1,178	1,132	0	46	0	46	0
	4-year	Certificate	115	111	1	3	1	2	0
		Post-Bacc Certificate	35	35	0	0	0	0	0
Private		Total	345	312	4	29	3	26	0
	< 2 year	Certificate	54	45	1	8	0	8	0
	2-3 year	Certificate	86	81	2	3	0	3	0
		Post-Bacc Certificate	1	1	0	0	0	0	0
	4-year	Certificate	127	109	1	17	2	15	0
		Post-Bacc Certificate	77	76	0	1	1	0	0
For-Profit		Total	6,082	4,204	660	1,218	447	865	94
	< 2 year	Certificate	1,275	974	123	178	28	158	8
		Associate's	5	3	1	1	0	1	0
		1st Professional Degree	4	3	0	1	0	1	0
	2-3 year	Certificate	1,505	1,061	157	287	37	258	8
		Associate's	839	533	128	178	63	132	17
		Post-Bacc Certificate	2	2	0	0	0	0	0

	4-year	Certificate	412	282	54	76	19	61	4
		Associate's	971	532	132	307	144	212	49
		Bachelor's	738	504	57	177	143	42	8
		Post-Bacc Certificate	27	27	0	0	0	0	0
		Master's	227	214	3	10	10	0	0
		Doctoral	67	65	2	0	0	0	0
		1st Professional Degree	10	4	3	3	3	0	0
Overall Total			7,934	5,969	665	1,300	451	943	94

Table 9b: 2012 GE Informational Rates Program Results - Failing Programs Disaggregated (Title IV Enrollment)

Sector	IHE Type	Credential Level	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs	Enrollment in Programs Failing D/E	Enrollment in Programs Failing pCDR	Enrollment in Programs that Fail Both Metrics
Public	Total		195,087	182,165	221	12,701	46	12,655	0
	< 2 year	Certificate	12,203	12,007	0	196	0	196	0
	2-3 year	Certificate	169,275	156,966	0	12,309	0	12,309	0
	4-year	Certificate	9,955	9,538	221	196	46	150	0
		Post-Bacc Certificate	3,654	3,654	0	0	0	0	0
Private	Total		52,305	45,658	1,810	4,837	1,115	3,722	0

	< 2 year	Certificate	9,796	8,172	396	1,228	0	1,228	0
	2-3 year	Certificate	10,952	9,374	1,304	274	0	274	0
		Post-Bacc Certificate	17	17	0	0	0	0	0
	4-year	Certificate	24,706	21,381	110	3,215	995	2,220	0
		Post-Bacc Certificate	6,834	6,714	0	120	120	0	0
	Total		2,666,984	1,541,550	298,209	827,225	357,982	661,920	192,677
For-Profit	< 2 year	Certificate	224,500	147,951	33,001	43,548	6,147	39,386	1,985
		Associate's	195	142	0	53	0	53	0
		1st Professional Degree	312	312	0	0	0	0	0
	2-3 year	Certificate	379,498	244,903	50,777	83,818	8,145	79,344	3,671
		Associate's	139,033	67,925	26,832	44,276	26,320	26,849	8,893
		Post-Bacc Certificate	156	156	0	0	0	0	0
	4-year	Certificate	93,097	54,361	27,100	11,636	4,752	7,379	495
		Associate's	781,846	153,818	88,872	539,156	236,593	472,517	169,954
		Bachelor's	746,345	578,666	66,749	100,930	72,217	36,392	7,679
		Post-Bacc Certificate	3,999	3,999	0	0	0	0	0
		Master's	238,863	235,201	1,240	2,422	2,422	0	0
		Doctoral	51,931	51,009	922	0	0	0	0
		1st Professional Degree	7,209	3,107	2,716	1,386	1,386	0	0
Overall Total			2,914,376	1,769,373	300,240	844,763	359,143	678,297	192,677

Table 10 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings and pCDR of programs in the 2012 GE informational rates sample.

Table 10: Average Annual Loan Payment, Earnings, and pCDR of 2012 GE Informational Rates Sample

Credential Level	Status	Metric	All	Public	Private	For-Profit
01-UNDERGRADUATE CERTIFICATE	Pass	Annual Loan Payment	$789	$320	$662	$900
		Earnings	$20,613	$31,672	$20,027	$18,267
		Default Rate	17	12	14	18
	Zone	Annual Loan Payment	$1,360	$2,571	$1,420	$1,358
		Earnings	$14,615	$23,577	$16,392	$14,571
		Default Rate	21	8	13	21
	Fail	Annual Loan Payment	$1,222	$376	$619	$1,248
		Earnings	$15,792	$17,875	$13,885	$15,831
		Default Rate	34	35	36	34
	All	Annual Loan Payment	$923	$323	$688	$1,028
		Earnings	$19,153	$31,501	$19,333	$17,309
		Default Rate	21	13	16	22
02-ASSOCIATES DEGREE	Pass	Annual Loan Payment	$1,629			$1,629
		Earnings	$31,778			$31,778
		Default Rate	17			17
	Zone	Annual Loan Payment	$2,095			$2,095
		Earnings	$21,628			$21,628
		Default Rate	20			20
	Fail	Annual Loan Payment	$3,042			$3,042
		Earnings	$25,741			$25,741
		Default Rate	35			35
	All	Annual Loan Payment	$2,400			$2,400
		Earnings	$26,847			$26,847
		Default Rate	28			28
03-BACHELORS DEGREE	Pass	Annual Loan Payment	$2,431			$2,431
		Earnings	$50,734			$50,734
		Default Rate	19			19
	Zone	Annual Loan Payment	$3,080			$3,080
		Earnings	$29,443			$29,443

		Default Rate	20			20
	Fail	Annual Loan Payment	$4,241			$4,241
		Earnings	$24,661			$24,661
		Default Rate	24			24
	All	Annual Loan Payment	$2,790			$2,790
		Earnings	$44,613			$44,613
		Default Rate	19			19
04-POST BACCALAUREATE CERTIFICATE	Pass	Annual Loan Payment	$787	$594	$947	$560
		Earnings	$67,799	$67,489	$69,378	$63,091
		Default Rate	3	2	3	5
	Fail	Annual Loan Payment	$2,659		$2,659	
		Earnings	$19,845		$19,845	
		Default Rate	3		3	
	All	Annual Loan Payment	$795	$594	$961	$560
		Earnings	$67,574	$67,489	$68,966	$63,091
		Default Rate	3	2	3	5
05-MASTERS DEGREE	Pass	Annual Loan Payment	$1,890			$1,890
		Earnings	$58,842			$58,842
		Default Rate	6			6
	Zone	Annual Loan Payment	$3,761			$3,761
		Earnings	$32,113			$32,113
		Default Rate	5			5
	Fail	Annual Loan Payment	$5,250			$5,250
		Earnings	$25,112			$25,112
		Default Rate	4			4
	All	Annual Loan Payment	$1,923			$1,923
		Earnings	$58,492			$58,492
		Default Rate	6			6
06-DOCTORAL DEGREE	Pass	Annual Loan Payment	$3,347			$3,347
		Earnings	$80,749			$80,749
		Default Rate	6			6
	Zone	Annual Loan Payment	$6,280			$6,280
		Earnings	$40,785			$40,785

		Default Rate	1			1
	All	Annual Loan Payment	$3,470			$3,470
		Earnings	$79,071			$79,071
		Default Rate	6			6
07-FIRST PROFESSIONAL DEGREE	Pass	Annual Loan Payment	$1,327			$1,327
		Earnings	$64,481			$64,481
		Default Rate	7			7
	Zone	Annual Loan Payment	$6,717			$6,717
		Earnings	$47,700			$47,700
		Default Rate	1			1
	Fail	Annual Loan Payment	$13,119			$13,119
		Earnings	$53,915			$53,915
		Default Rate	3			3
	All	Annual Loan Payment	$6,445			$6,445
		Earnings	$54,534			$54,534
		Default Rate	3			3

Table 11 shows the results of programs under the D/E rates measure in the 2012 GE informational rates sample.

Table 11: 2012 GE Informational Rates Program Results - D/E rates measure

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs
Public		Total	1,093	1,090	2	1	142,400	142,077	277	46
	< 2 year	Certificate	157	157	0	0	11,439	11,439	0	0
	2-3 year	Certificate	824	823	1	0	119,615	119,559	56	0
	4-year	Certificate	86	84	1	1	8,102	7,835	221	46
		Post-Bacc Certificate	26	26	0	0	3,244	3,244	0	0
Private		Total	253	245	5	3	45,696	42,643	1,938	1,115
	< 2 year	Certificate	49	48	1	0	9,609	9,213	396	0
	2-3 year	Certificate	73	70	3	0	10,307	8,875	1,432	0
		Post-Bacc Certificate	1	1	0	0	17	17	0	0
	4-year	Certificate	91	88	1	2	20,666	19,561	110	995
		Post-Bacc Certificate	39	38	0	1	5,097	4,977	0	120
For-Profit		Total	4,193	2,921	825	447	2,333,187	1,530,701	444,504	357,982
	< 2 year	Certificate	1,100	919	153	28	216,363	166,144	44,072	6,147
		Associate's	5	4	1	0	195	195	0	0
		1st Professional Degree	4	4	0	0	312	312	0	0

	2-3 year	Certificate	1,223	969	217	37	365,500	287,014	70,341	8,145
		Associate's	452	236	153	63	105,750	46,826	32,604	26,320
		Post-Bacc Certificate	2	2	0	0	156	156	0	0
	4-year	Certificate	267	180	68	19	84,610	49,881	29,977	4,752
		Associate's	514	206	164	144	669,030	246,138	186,299	236,593
		Bachelor's	407	203	61	143	618,330	469,780	76,333	72,217
		Post-Bacc Certificate	8	8	0	0	1,950	1,950	0	0
		Master's	171	158	3	10	226,106	222,444	1,240	2,422
		Doctoral	30	28	2	0	37,676	36,754	922	0
		1st Professional Degree	10	4	3	3	7,209	3,107	2,716	1,386
Overall Total			5,539	4,256	832	451	2,521,283	1,715,421	446,719	359,143

Table 12 disaggregate results under the D/E rates measure for the two debt-to-earnings rates, the annual earnings rate and the dicretionary income rate.

Table 12: 2012 GE Informational Rates Program Results - D/E rates measure, disaggregated by annual earnings rate and discretionary income rate

Sector	IHE Type	Credential Level	Total	Pass D/E	Pass ADTE & DDTE	Pass ADTE & Zone DDTE	Pass DDTE & Zone ADTE	Pass ADTE & Fail DDTE	Pass DDTE & Fail ADTE	Zone D/E	Zone ADTE & DDTE	zone ADTE & fail DDTE	Zone DDTE & Fail ADTE	Fail (both ADTE & DDTE)
Public		Total	1,093	1,090	1,050	2	0	38	0	2	0	2	0	1
	< 2 year	Certificate	157	157	148	1	0	8	0	0	0	0	0	0
	2-3 year	Certificate	824	823	794	1	0	28	0	1	0	1	0	0
	4-year	Certificate	86	84	82	0	0	2	0	1	0	1	0	1
		Post-Bacc Certificate	26	26	26	0	0	0	0	0	0	0	0	0
Private		Total	253	245	178	7	1	59	0	5	1	4	0	3
	< 2 year	Certificate	49	48	29	0	0	19	0	1	1	0	0	0
	2-3 year	Certificate	73	70	50	1	0	19	0	3	0	3	0	0
		Post-Bacc Certificate	1	1	0	1	0	0	0	0	0	0	0	0
	4-year	Certificate	91	88	61	5	1	21	0	1	0	1	0	2
		Post-Bacc Certificate	39	38	38	0	0	0	0	0	0	0	0	1
For-Profit		Total	4193	2,921	1,191	180	71	1,479	0	825	92	712	21	447
	< 2 year	Certificate	1100	919	252	40	0	627	0	153	1	152	0	28
		Associate's	5	4	0	0	0	4	0	1	0	1	0	0
		1st Professional Degree	4	4	1	0	0	3	0	0	0	0	0	0
	2-3	Certificate	1223	969	271	63	16	619	0	217	8	209	0	37

	year	Associate's	452	236	135	16	9	76	0	153	15	136	2	63
		Post-Bacc Certificate	2	2	2	0	0	0	0	0	0	0	0	0
	4-year	Certificate	267	180	52	18	0	110	0	68	2	66	0	19
		Associate's	514	206	116	38	13	39	0	164	31	128	5	144
		Bachelor's	407	203	174	4	24	1	0	61	33	20	8	143
		Post-Bacc Certificate	8	8	8	0	0	0	0	0	0	0	0	0
		Master's	171	158	152	1	5	0	0	3	2	0	1	10
		Doctoral	30	28	26	0	2	0	0	2	0	0	2	0
		1st Professional Degree	10	4	2	0	2	0	0	3	0	0	3	3
Overall Total			5,539	4,256	2,419	189	72	1,576	0	832	93	718	21	451

Table 13 shows the results of programs under the pCDR measure in the 2012 GE informational rates sample.

Table 13: 2012 GE informational Rates Program Results - pCDR measure

Sector	IHE Type	Credential Level	Programs	Passing Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Failing Programs
Public	Total		902	850	52	121,650	108,995	12,655
	< 2 year	Certificate	119	115	4	9,489	9,293	196
	2-3 year	Certificate	701	655	46	104,399	92,090	12,309
	4-year	Certificate	60	58	2	5,055	4,905	150
		Post-Bacc Certificate	22	22	0	2,707	2,707	0
Private	Total		262	236	26	40,039	36,317	3,722
	< 2 year	Certificate	33	25	8	5,655	4,427	1,228
	2-3 year	Certificate	66	63	3	8,877	8,603	274
		Post-Bacc Certificate	1	1	0	17	17	0
	4-year	Certificate	94	79	15	19,263	17,043	2,220
		Post-Bacc Certificate	68	68	0	6,227	6,227	0
For-Profit	Total		5,651	4,786	865	2,583,388	1,921,468	661,920
	< 2 year	Certificate	1,027	869	158	196,484	157,098	39,386
		Associate's	4	3	1	87	34	53
		1st Professional Degree	3	2	1	262	262	0

	2-3 year	Certificate	1,386	1,128	258	349,369	270,025	79,344
		Associate's	832	700	132	135,988	109,139	26,849
		Post-Bacc Certificate	2	2	0	156	156	0
	4-year	Certificate	398	337	61	90,875	83,496	7,379
		Associate's	958	746	212	774,875	302,358	472,517
		Bachelor's	721	679	42	737,414	701,022	36,392
		Post-Bacc Certificate	26	26	0	3,960	3,960	0
		Master's	218	218	0	235,113	235,113	0
		Doctoral	67	67	0	51,931	51,931	0
		1st Professional Degree	9	9	0	6,874	6,874	0
Overall Total			6,815	5,872	943	2,745,077	2,066,780	678,297

Table 14 provides program and FY 2010 title IV enrollment counts for the 20 most frequent CIP-credential level combinations in the 2012 GE informational rates. In addition, Table 14 provides the percentage of programs and enrollment that each CIP-credential level combination represents of all programs in the 2012 GE informational rates sample.

Table 14: 20 Most Common Types of Programs in 2012 GE Informational Rates Sample (Program Count)

* combines CIP codes 513901 and 511613[158]

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Programs	% of all programs	t4 students	% of all t4 students	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	667	8.4%	120,803	4.1%	12.1%	7.1%	0.9%	0.6%	87.0%	92.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	571	7.2%	86,950	3.0%	80.9%	62.3%	4.4%	4.1%	14.7%	33.6%
MEDICAL/CLINICAL ASSISTANT.	Certificate	407	5.1%	185,471	6.4%	15.2%	5.4%	3.4%	3.7%	81.3%	90.8%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	271	3.4%	35,045	1.2%	4.1%	1.2%	2.6%	2.1%	93.4%	96.7%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	153	1.9%	27,311	0.9%	7.2%	4.9%	7.2%	10.6%	85.6%	84.5%
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
DENTAL ASSISTING/ASSISTANT.	Certificate	145	1.8%	21,757	0.7%	25.5%	10.7%	1.4%	0.9%	73.1%	88.5%
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	136	1.7%	7,372	0.3%	1.5%	1.0%	0.0%	0.0%	98.5%	99.0%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	112	1.4%	21,224	0.7%	12.5%	5.4%	6.3%	7.9%	81.3%	86.7%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	88	1.1%	16,027	0.5%	14.8%	8.5%	3.4%	2.9%	81.8%	88.6%
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	87	1.1%	20,381	0.7%	1.1%	0.9%	6.9%	6.0%	92.0%	93.2%
LEGAL ASSISTANT/PARALEGAL.	Associate's	79	1.0%	19,962	0.7%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	77	1.0%	8,335	0.3%	27.3%	16.2%	5.2%	5.1%	67.5%	78.7%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	73	0.9%	10,538	0.4%	8.2%	5.0%	1.4%	1.8%	90.4%	93.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	71	0.9%	35,071	1.2%	39.4%	7.1%	8.5%	4.2%	52.1%	88.7%
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	68	0.9%	10,755	0.4%	98.5%	99.6%	0.0%	0.0%	1.5%	0.4%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	66	0.8%	13,484	0.5%	30.3%	9.2%	6.1%	3.8%	63.6%	86.9%
BARBERING/BARBER.	Certificate	65	0.8%	10,378	0.4%	6.2%	5.0%	1.5%	3.8%	92.3%	91.2%

[158] CIP codes 513901 and 511613 were combined to conform with changes to CIP code 51163 in 2010. See http://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cip=51.3901.

Table 15 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings and pCDR for the 20 most frequent CIP-credential-level combinations in the 2012 informational rates.

Table 15: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Programs in 2012 GE Informational Rates Sample (Program Count)[159]

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors			Public			Private			For-profit		
		Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	$804	$12,276	17.4%	$137	$12,796	20.0%	$358	$12,281	17.8%	$845	$12,246	17.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	$922	$33,835	12.9%	$490	$34,939	11.3%	$990	$28,110	15.5%	$1,753	$32,365	14.7%
MEDICAL/CLINICAL ASSISTANT.	Certificate	$1,009	$15,344	24.6%	$271	$20,370	13.4%	$928	$14,400	15.1%	$1,029	$15,277	25.2%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	$939	$16,122	21.3%	$307	$18,750	11.7%	$959	$18,879	15.4%	$944	$16,060	21.5%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	$922	$17,073	21.3%	$357	$23,052	14.1%	$832	$15,058	17.6%	$945	$17,123	21.9%
MEDICAL/CLINICAL ASSISTANT.	Associate's	$1,827	$19,234	22.5%							$1,827	$19,234	22.5%
DENTAL ASSISTING/ASSISTANT.	Certificate	$911	$17,211	19.8%	$418	$23,173	9.2%	$1,081	$16,332	10.7%	$952	$16,705	21.3%
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	$606	$16,539	10.9%	$208	$19,233	4.7%				$610	$16,511	11.0%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	$1,050	$17,080	20.1%	$249	$25,452	11.2%	$1,119	$16,645	9.9%	$1,073	$16,807	21.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	$1,700	$27,025	27.5%							$1,700	$27,025	27.5%

[159] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	$878	$12,693	24.7%	$323	$18,941	14.4%	$140	$8,600	32.4%	$916	$12,669	25.4%
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	$1,020	$17,784	19.4%	$0	$16,300		$386	$8,876	24.3%	$1,054	$18,181	19.3%
LEGAL ASSISTANT/PARALEGAL.	Associate's	$2,283	$22,796	23.2%							$2,283	$22,796	23.2%
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	$1,235	$24,218	17.4%	$417	$29,797	11.3%	$760	$23,533	13.1%	$1,354	$23,583	18.5%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	$926	$13,736	24.1%	$112	$14,973	18.6%	$628	$14,010	27.1%	$953	$13,698	24.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	$1,235	$23,660	21.6%	$503	$25,824	19.9%	$698	$20,208	23.6%	$1,275	$23,671	21.7%
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	$95	$42,174	12.7%	$95	$42,557	12.7%				$27	$5,627	
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	$1,057	$21,608	27.7%	$410	$24,889	14.4%	$713	$23,702	20.7%	$1,143	$21,146	29.3%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	$2,489	$49,821	19.6%							$2,489	$49,821	19.6%
BARBERING/BARBER.	Certificate	$335	$7,722	31.5%	$355	$7,413	42.7%	$0	$7,128		$343	$7,742	30.9%

Table 16 provides the 20 CIP-credential level combinations with the highest FY 2010 title IV enrollment in the 2012 GE informational rates sample. In addition, Table 16 provides the percentage of programs and enrollment that each CIP-credential level combination represents out of all programs and enrollment and out of each CIP-credential level combination in the 2012 GE informational rates sample.

Table 16: 20 Most Common Types of Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Programs	% of all programs	t4 students	% of all t4 students	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred
MEDICAL/CLINICAL ASSISTANT.	Certificate	407	5.1%	185,471	6.4%	15.2%	5.4%	3.4%	3.7%	81.3%	90.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	667	8.4%	120,803	4.1%	12.1%	7.1%	0.9%	0.6%	87.0%	92.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	571	7.2%	86,950	3.0%	80.9%	62.3%	4.4%	4.1%	14.7%	33.6%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	29	0.4%	77,744	2.7%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	7	0.1%	59,274	2.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	18	0.2%	38,622	1.3%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	19	0.2%	35,484	1.2%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	71	0.9%	35,071	1.2%	39.4%	7.1%	8.5%	4.2%	52.1%	88.7%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	271	3.4%	35,045	1.2%	4.1%	1.2%	2.6%	2.1%	93.4%	96.7%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	36	0.5%	33,465	1.1%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	18	0.2%	32,535	1.1%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	4	0.1%	28,498	1.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	153	1.9%	27,311	0.9%	7.2%	4.9%	7.2%	10.6%	85.6%	84.5%
BEHAVIORAL SCIENCES.	Associate's	1	0.0%	27,090	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	19	0.2%	26,968	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	25	0.3%	26,768	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
PSYCHOLOGY, GENERAL.	Bachelor's	8	0.1%	26,580	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

Table 17 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential level combinations in the 2012 GE informational rates sample with the highest FY 2010 title IV enrollment.

Table 17: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[160]

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors			Public			Private			For-profit		
		Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate
MEDICAL/CLINICAL ASSISTANT.	Certificate	$1,009	$15,344	24.6%	$271	$20,370	13.4%	$928	$14,400	15.1%	$1,029	$15,277	25.2%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	$2,489	$49,821	19.6%							$2,489	$49,821	19.6%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	$804	$12,276	17.4%	$137	$12,796	20.0%	$358	$12,281	17.8%	$845	$12,246	17.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	$922	$33,835	12.9%	$490	$34,939	11.3%	$990	$28,110	15.5%	$1,753	$32,365	14.7%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	$1,997	$63,823	7.0%							$1,997	$63,823	7.0%
MEDICAL/CLINICAL ASSISTANT.	Associate's	$1,827	$19,234	22.5%							$1,827	$19,234	22.5%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	$1,700	$27,025	27.5%							$1,700	$27,025	27.5%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	$1,910	$38,413	33.7%							$1,910	$38,413	33.7%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	$3,095	$38,362	25.1%							$3,095	$38,362	25.1%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	$1,954	$22,065	34.2%							$1,954	$22,065	34.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS	Certificate	$1,235	$23,660	21.6%	$503	$25,824	19.9%	$698	$20,208	23.6%	$1,275	$23,671	21.7%

160 Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

TECHNOLOGY/TECHNICIAN.													
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	$939	$16,122	21.3%	$307	$18,750	11.7%	$959	$18,879	15.4%	$944	$16,060	21.5%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	$3,772	$28,759	30.8%							$3,772	$28,759	30.8%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	$2,412	$24,471	33.6%							$2,412	$24,471	33.6%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	$2,077	$30,857	43.9%							$2,077	$30,857	43.9%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	$922	$17,073	21.3%	$357	$23,052	14.1%	$832	$15,058	17.6%	$945	$17,123	21.9%
BEHAVIORAL SCIENCES.	Associate's	$2,335	$18,781	38.0%							$2,335	$18,781	38.0%
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	$2,879	$33,470	25.4%							$2,879	$33,470	25.4%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	$2,640	$20,653	32.2%							$2,640	$20,653	32.2%
PSYCHOLOGY, GENERAL.	Bachelor's	$1,497	$29,013	21.3%							$1,497	$29,013	21.3%

Table 18 shows the 20 most frequent CIP-credential level combinations in the for-profit sector in the 2012 GE informational rates sample.

Table 18: 20 Most Common Types of For-Profit Programs in the 2012 GE Informational Rates Sample (Program Count)[161]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% Of All Programs	t4 students	% Of All T4 Students	% All Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	For-Profit Avg Earnings	Avg Default Rate
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	580	7.3%	111,456	3.8%	87.0%	92.3%	845	12,246	17
MEDICAL/CLINICAL ASSISTANT.	Certificate	331	4.2%	168,460	5.8%	81.3%	90.8%	1,029	15,277	25
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	253	3.2%	33,871	1.2%	93.4%	96.7%	944	16,060	21
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	100.0%	100.0%	1,827	19,234	22
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	134	1.7%	7,295	0.3%	98.5%	99.0%	610	16,511	11
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	131	1.7%	23,074	0.8%	85.6%	84.5%	945	17,123	22
DENTAL ASSISTING/ASSISTANT.	Certificate	106	1.3%	19,245	0.7%	73.1%	88.5%	952	16,705	21
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	100.0%	100.0%	1,700	27,025	28
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	91	1.1%	18,402	0.6%	81.3%	86.7%	1,073	16,807	22
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	84	1.1%	29,231	1.0%	14.7%	33.6%	1,753	32,365	15
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	80	1.0%	18,985	0.7%	92.0%	93.2%	1,054	18,181	19
LEGAL ASSISTANT/PARALEGAL.	Associate's	79	1.0%	19,962	0.7%	100.0%	100.0%	2,283	22,796	23

[161] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	72	0.9%	14,196	0.5%	81.8%	88.6%	916	12,669	25
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	100.0%	100.0%	2,489	49,821	20
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	66	0.8%	9,818	0.3%	90.4%	93.2%	953	13,698	24
BARBERING/BARBER.	Certificate	60	0.8%	9,469	0.3%	92.3%	91.2%	343	7,742	31
GRAPHIC DESIGN.	Associate's	54	0.7%	13,280	0.5%	100.0%	100.0%	2,390	20,506	25
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	52	0.7%	6,560	0.2%	67.5%	78.7%	1,354	23,583	19
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	47	0.6%	24,507	0.8%	100.0%	100.0%	1,921	22,333	29
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	44	0.6%	26,550	0.9%	100.0%	100.0%	2,010	27,335	27

Table 19 shows the 20 CIP-credential level combinations with the highest title IV enrollment in the for-profit sector in the 2012 GE informational rates sample.

Table 19: 20 Most Common Types of For-Profit Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[162]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% Of All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Avg Default Rate
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	100.0%	100.0%	2,489	49,821	20
MEDICAL/CLINICAL ASSISTANT.	Certificate	331	4.2%	168,460	5.8%	81.3%	90.8%	1,029	15,277	25
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	580	7.3%	111,456	3.8%	87.0%	92.3%	845	12,246	17
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	29	0.4%	77,744	2.7%	100.0%	100.0%	1,997	63,823	7
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	100.0%	100.0%	1,827	19,234	22
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	100.0%	100.0%	1,700	27,025	28
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	7	0.1%	59,274	2.0%	100.0%	100.0%	1,910	38,413	34
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	18	0.2%	38,622	1.3%	100.0%	100.0%	3,095	38,362	25
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	19	0.2%	35,484	1.2%	100.0%	100.0%	1,954	22,065	34
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	253	3.2%	33,871	1.2%	93.4%	96.7%	944	16,060	21
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	36	0.5%	33,465	1.1%	100.0%	100.0%	3,772	28,759	31
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	18	0.2%	32,535	1.1%	100.0%	100.0%	2,412	24,471	34

[162] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	37	0.5%	31,111	1.1%	52.1%	88.7%	1,275	23,671	22
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	84	1.1%	29,231	1.0%	14.7%	33.6%	1,753	32,365	15
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	4	0.1%	28,498	1.0%	100.0%	100.0%	2,077	30,857	44
BEHAVIORAL SCIENCES.	Associate's	1	0.0%	27,090	0.9%	100.0%	100.0%	2,335	18,781	38
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	19	0.2%	26,968	0.9%	100.0%	100.0%	2,879	33,470	25
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	25	0.3%	26,768	0.9%	100.0%	100.0%	2,640	20,653	32
PSYCHOLOGY, GENERAL.	Bachelor's	8	0.1%	26,580	0.9%	100.0%	100.0%	1,497	29,013	21
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	44	0.6%	26,550	0.9%	100.0%	100.0%	2,010	27,335	27

Table 20 shows the 20 most frequent CIP-credential level combinations in the public sector in the 2012 GE informational rates sample.

Table 20: 20 Most Common Types of Public Sector Programs in the 2012 GE Informational Rates Sample (Program Count)[163]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Default Rate
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	462	5.8%	54,174	1.9%	80.9%	62.3%	490	34,939	11
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	81	1.0%	8,615	0.3%	12.1%	7.1%	137	12,796	20
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	67	0.8%	10,708	0.4%	98.5%	99.6%	95	42,557	13
MEDICAL/CLINICAL ASSISTANT.	Certificate	62	0.8%	10,059	0.3%	15.2%	5.4%	271	20,370	13
DENTAL ASSISTING/ASSISTANT.	Certificate	37	0.5%	2,322	0.1%	25.5%	10.7%	418	23,173	9
EMERGENCY MEDICAL TECHNOLOGY/TECHNICIAN (EMT PARAMEDIC).	Certificate	34	0.4%	2,474	0.1%	69.4%	40.7%	74	42,218	8
WELDING TECHNOLOGY/WELDER.	Certificate	33	0.4%	2,553	0.1%	63.5%	32.2%	336	24,631	22
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	28	0.4%	2,496	0.1%	39.4%	7.1%	503	25,824	20
TRUCK AND BUS DRIVER/COMMERCIAL VEHICLE OPERATION.	Certificate	26	0.3%	1,301	0.0%	63.4%	15.7%	183	25,615	22
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	21	0.3%	1,354	0.0%	27.3%	16.2%	417	29,797	11
ELECTRICIAN.	Certificate	20	0.3%	1,337	0.0%	31.3%	11.8%	713	31,729	10
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	20	0.3%	1,245	0.0%	30.3%	9.2%	410	24,889	14

163 Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

ADMINISTRATIVE ASSISTANT AND SECRETARIAL SCIENCE, GENERAL.	Certificate	19	0.2%	3,762	0.1%	33.3%	64.0%	107	15,103	18
CARPENTRY/CARPENTER.	Certificate	15	0.2%	928	0.0%	88.2%	73.9%	543	26,238	18
AUTOBODY/COLLISION AND REPAIR TECHNOLOGY/TECHNICIAN.	Certificate	14	0.2%	810	0.0%	53.8%	12.5%	764	26,412	21
BUSINESS OPERATIONS SUPPORT AND SECRETARIAL SERVICES, OTHER.	Certificate	14	0.2%	1,120	0.0%	70.0%	84.9%	0	12,489	
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	14	0.2%	1,148	0.0%	12.5%	5.4%	249	25,452	11
MENTAL AND SOCIAL HEALTH SERVICES AND ALLIED PROFESSIONS, OTHER.	Certificate	14	0.2%	1,769	0.1%	100.0%	100.0%	0	24,684	14
NURSING ASSISTANT/AIDE AND PATIENT CARE ASSISTANT/AIDE.	Certificate	14	0.2%	3,109	0.1%	66.7%	58.4%	10	16,341	12
CHILD CARE PROVIDER/ASSISTANT.	Certificate	13	0.2%	6,574	0.2%	65.0%	90.8%	11	16,672	17
LINEWORKER.	Certificate	13	0.2%	562	0.0%	100.0%	100.0%	534	43,854	6
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	13	0.2%	1,363	0.0%	14.8%	8.5%	323	18,941	14
REGISTERED NURSING/REGISTERED NURSE.	Certificate	13	0.2%	12,666	0.4%	34.2%	75.6%	227	62,579	14

Table 21 shows the 20 CIP-credential level combinations with the highest title IV enrollment in the public sector in the 2012 GE informational rates sample.

Table 21: 20 Most Common Types of Public Sector Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Default Rate
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	462	5.8%	54,174	1.9%	80.9%	62.3%	490	34,939	11
REGISTERED NURSING/REGISTERED NURSE.	Certificate	13	0.2%	12,666	0.4%	34.2%	75.6%	227	62,579	14
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	67	0.8%	10,708	0.4%	98.5%	99.6%	95	42,557	13
MEDICAL/CLINICAL ASSISTANT.	Certificate	62	0.8%	10,059	0.3%	15.2%	5.4%	271	20,370	13
LIBERAL ARTS AND SCIENCES/LIBERAL STUDIES.	Certificate	10	0.1%	8,640	0.3%	100.0%	100.0%	0	15,635	21
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	81	1.0%	8,615	0.3%	12.1%	7.1%	137	12,796	20
CHILD CARE PROVIDER/ASSISTANT.	Certificate	13	0.2%	6,574	0.2%	65.0%	90.8%	11	16,672	17
ADMINISTRATIVE ASSISTANT AND SECRETARIAL SCIENCE, GENERAL.	Certificate	19	0.2%	3,762	0.1%	33.3%	64.0%	107	15,103	18
NURSING ASSISTANT/AIDE AND PATIENT CARE ASSISTANT/AIDE.	Certificate	14	0.2%	3,109	0.1%	66.7%	58.4%	10	16,341	12
HEALTH PROFESSIONS AND RELATED CLINICAL SCIENCES, OTHER.	Certificate	8	0.1%	3,009	0.1%	66.7%	76.3%	0	19,972	25
WELDING TECHNOLOGY/WELDER.	Certificate	33	0.4%	2,553	0.1%	63.5%	32.2%	336	24,631	22
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	28	0.4%	2,496	0.1%	39.4%	7.1%	503	25,824	20
EMERGENCY MEDICAL TECHNOLOGY/TECHNICIAN (EMT PARAMEDIC).	Certificate	34	0.4%	2,474	0.1%	69.4%	40.7%	74	42,218	8
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Certificate	9	0.1%	2,436	0.1%	47.4%	84.4%	106	26,059	19
DENTAL ASSISTING/ASSISTANT.	Certificate	37	0.5%	2,322	0.1%	25.5%	10.7%	418	23,173	9
ALLIED HEALTH DIAGNOSTIC, INTERVENTION, AND TREATMENT PROFESSIONS, OTHER.	Certificate	7	0.1%	1,993	0.1%	87.5%	94.1%	0	25,168	16
HEALTH/MEDICAL PREPARATORY PROGRAMS, OTHER.	Certificate	2	0.0%	1,961	0.1%	100.0%	100.0%	0	25,643	11

MENTAL AND SOCIAL HEALTH SERVICES AND ALLIED PROFESSIONS, OTHER.	Certificate	14	0.2%	1,769	0.1%	100.0%	100.0%	0	24,684	14
LEGAL ASSISTANT/PARALEGAL.	Certificate	11	0.1%	1,630	0.1%	28.9%	46.1%	65	35,712	7
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Certificate	8	0.1%	1,429	0.0%	22.2%	43.1%	73	19,944	8

Table 22 provides the 2012 GE informational rate program and enrollment counts for the CIP-credential level combinations with the most programs that are failing or in the zone under the proposed GE measures.

Table 22: 20 Most Common Types of Zone or Failing Programs in the 2012 GE Informational Rates Sample (Program Count)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Zone/Fail Programs	% Zone/Fail programs in CIP-cred	Zone/Fail t4 students	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	194	29.1%	45,937	38.0%	1.5%	0.9%	0.1%	0.3%	27.4%	36.8%
MEDICAL/CLINICAL ASSISTANT.	Certificate	121	29.7%	82,219	44.3%	0.0%	0.0%	0.7%	1.0%	29.0%	43.3%
MEDICAL/CLINICAL ASSISTANT.	Associate's	73	48.3%	54,931	73.7%	0.0%	0.0%	0.0%	0.0%	48.3%	73.7%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	64	23.6%	8,229	23.5%	0.0%	0.0%	0.4%	0.3%	23.2%	23.2%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	39	42.4%	40,068	54.1%	0.0%	0.0%	0.0%	0.0%	42.4%	54.1%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	36	23.5%	8,278	30.3%	0.7%	1.1%	1.3%	0.0%	21.6%	29.1%
CULINARY ARTS/CHEF TRAINING.	Associate's	32	88.9%	24,514	96.6%	0.0%	0.0%	0.0%	0.0%	88.9%	96.6%
GRAPHIC DESIGN.	Associate's	32	59.3%	11,358	85.5%	0.0%	0.0%	0.0%	0.0%	59.3%	85.5%
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	31	66.0%	21,117	86.2%	0.0%	0.0%	0.0%	0.0%	66.0%	86.2%
LEGAL ASSISTANT/PARALEGAL.	Associate's	31	39.2%	12,524	62.7%	0.0%	0.0%	0.0%	0.0%	39.2%	62.7%
INTERIOR DESIGN.	Bachelor's	26	74.3%	8,632	92.8%	0.0%	0.0%	0.0%	0.0%	74.3%	92.8%
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	26	29.5%	6,276	39.2%	1.1%	0.9%	1.1%	0.4%	27.3%	37.8%
BARBERING/BARBER.	Certificate	25	38.5%	4,306	41.5%	3.1%	1.3%	0.0%	0.0%	35.4%	40.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS	Certificate	23	32.4%	6,807	19.4%	7.0%	1.1%	2.8%	0.9%	22.5%	17.3%

TECHNOLOGY/TECHNICIAN.											
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	22	30.1%	3,300	31.3%	0.0%	0.0%	0.0%	0.0%	30.1%	31.3%
DENTAL ASSISTING/ASSISTANT.	Certificate	20	13.8%	4,160	19.1%	0.0%	0.0%	0.0%	0.0%	13.8%	19.1%
GRAPHIC DESIGN.	Bachelor's	20	62.5%	12,131	88.0%	0.0%	0.0%	0.0%	0.0%	62.5%	88.0%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	20	30.3%	6,504	48.2%	1.5%	0.3%	1.5%	0.2%	27.3%	47.7%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	20	17.9%	6,522	30.7%	0.0%	0.0%	0.0%	0.0%	17.9%	30.7%
ELECTRICIAN.	Certificate	19	29.7%	5,453	48.0%	0.0%	0.0%	0.0%	0.0%	29.7%	48.0%

Table 23 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential-level combinations with the most frequent zone or failing programs in the 2012 GE informational rates sample.

Table 23: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Zone or Failing Programs in the 2012 GE Informational Rates Sample (Program Count)[164]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Sector	Annual loan payment			Earnings			Default rate		
			Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	Public	114		363	12,826		12,500	16		30
		Private	239	1,287		12,200	12,912		18	17	
		For-Profit	639	1,191	1,279	12,435	12,057	11,507	15	16	28
MEDICAL/CLINICAL ASSISTANT.	Certificate	Public	271			20,370			13		
		Private	867	1,099	1,486	14,647	13,686	12,266	15	12	22
		For-Profit	932	1,247	1,088	16,259	13,570	14,389	21	25	33
MEDICAL/CLINICAL ASSISTANT.	Associate's	Public									
		Private									
		For-Profit	1,332	1,842	2,341	20,311	19,571	17,603	18	20	30
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	Public	307			18,750			12		
		Private	916	1,145		20,003	14,098		15	15	
		For-Profit	857	1,209	1,142	17,081	13,203	13,463	19	23	34
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	Public									
		Private									

[164] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

		For-Profit	1,497	2,196	1,723	27,027	24,289	27,781	23	17	33
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	Public	374		0	23,035		23,411	12		30
		Private	832		800	15,020		17,435	16		35
		For-Profit	948	1,329	849	17,808	13,861	15,437	19	24	34
CULINARY ARTS/CHEF TRAINING.	Associate's	Public									
		Private									
		For-Profit	2,288	2,197	4,368	25,784	22,980	22,259	15	22	27
GRAPHIC DESIGN.	Associate's	Public									
		Private									
		For-Profit	1,650	2,089	3,152	21,697	20,535	19,633	19	17	30
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	Public									
		Private									
		For-Profit	1,450	1,998	1,972	24,091	20,887	22,794	19	22	33
LEGAL ASSISTANT/PARALEGAL.	Associate's	Public									
		Private									
		For-Profit	1,844	2,505	2,528	24,588	23,214	20,264	20	23	27
INTERIOR DESIGN.	Bachelor's	Public									
		Private									
		For-Profit	2,678	2,774	4,077	25,277	26,111	25,075	13	15	14
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	Public	323			18,941			13		34
		Private	0		736	7,550		13,051	24		43
		For-Profit	601	1,388	1,276	11,790	13,856	13,808	21	28	32
BARBERING/BARBER.	Certificate	Public	114		1,375	8,227		3,979	30		49
		Private	0			7,128					
		For-Profit	87	842	944	7,342	8,209	8,726	18	19	37

AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	Public	509		422	25,656		28,084	16		34
		Private	719		522	20,997		13,807	20		38
		For-Profit	1,241		1,457	24,567		18,817	18		37
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	Public	112			14,973			19		
		Private	628			14,010			27		
		For-Profit	894	1,092	1,143	14,289	11,406	12,429	23	23	30
DENTAL ASSISTING/ASSISTANT.	Certificate	Public	418			23,173			9		
		Private	1,081			16,332			11		
		For-Profit	927	1,268	972	17,051	14,382	15,528	19	18	34
GRAPHIC DESIGN.	Bachelor's	Public									
		Private									
		For-Profit	2,959	2,783	3,932	32,888	27,277	26,636	12	18	21
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	Public	381		771	24,820		25,735	13		39
		Private	733		454	23,631		24,627	18		36
		For-Profit	961	2,151	1,188	21,070	21,808	21,106	22	27	38
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	Public	249			25,452			11		
		Private	1,119			16,645			10		
		For-Profit	997	1,333	1,012	17,710	15,076	14,290	20	21	36
ELECTRICIAN.	Certificate	Public	713			31,729			10		
		Private	352			14,056			23		
		For-Profit	849	2,009	1,332	19,005	21,614	21,131	22	21	38

Table 24 provides the 20 CIP-credential level combinations with the highest FY 2010 title IV enrollment in zone and failing programs in the 2012 GE informational rates sample.

Table 24: 20 Most Common Types of Zone and Failing Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Zone/Fail Programs	% Zone/Fail programs in CIP-cred	Zone/Fail t4 students	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred
MEDICAL/CLINICAL ASSISTANT.	Certificate	121	29.7%	82,219	44.3%	0.0%	0.0%	0.7%	1.0%	29.0%	43.3%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	2	28.6%	58,526	98.7%	0.0%	0.0%	0.0%	0.0%	28.6%	98.7%
MEDICAL/CLINICAL ASSISTANT.	Associate's	73	48.3%	54,931	73.7%	0.0%	0.0%	0.0%	0.0%	48.3%	73.7%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	194	29.1%	45,937	38.0%	1.5%	0.9%	0.1%	0.3%	27.4%	36.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	39	42.4%	40,068	54.1%	0.0%	0.0%	0.0%	0.0%	42.4%	54.1%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	7	36.8%	32,202	90.8%	0.0%	0.0%	0.0%	0.0%	36.8%	90.8%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	5	27.8%	28,615	88.0%	0.0%	0.0%	0.0%	0.0%	27.8%	88.0%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	3	75.0%	28,301	99.3%	0.0%	0.0%	0.0%	0.0%	75.0%	99.3%
BEHAVIORAL SCIENCES.	Associate's	1	100.0%	27,090	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	10	27.8%	26,759	80.0%	0.0%	0.0%	0.0%	0.0%	27.8%	80.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	15	60.0%	24,858	92.9%	0.0%	0.0%	0.0%	0.0%	60.0%	92.9%
CULINARY ARTS/CHEF TRAINING.	Associate's	32	88.9%	24,514	96.6%	0.0%	0.0%	0.0%	0.0%	88.9%	96.6%
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING	Associate's	5	31.3%	23,540	95.8%	0.0%	0.0%	0.0%	0.0%	31.3%	95.8%

TECHNOLOGY/TECHNICIAN.											
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	31	66.0%	21,117	86.2%	0.0%	0.0%	0.0%	0.0%	66.0%	86.2%
BEHAVIORAL SCIENCES.	Bachelor's	1	50.0%	18,853	97.5%	0.0%	0.0%	0.0%	0.0%	50.0%	97.5%
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	12	27.3%	18,491	69.6%	0.0%	0.0%	0.0%	0.0%	27.3%	69.6%
TEACHER ASSISTANT/AIDE.	Associate's	1	100.0%	16,025	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
HUMAN SERVICES, GENERAL.	Associate's	2	66.7%	15,790	99.7%	0.0%	0.0%	0.0%	0.0%	66.7%	99.7%
HUMAN SERVICES, GENERAL.	Bachelor's	1	50.0%	14,385	98.8%	0.0%	0.0%	0.0%	0.0%	50.0%	98.8%
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Associate's	6	85.7%	14,355	100.0%	0.0%	0.0%	0.0%	0.0%	85.7%	100.0%

Table 25 provides weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential level combinations in the 2012 GE informational rates sample with the highest FY 2010 title IV enrollment in zone and failing programs.

Table 25: Average Annual Loan Payment, Earnings, and pCDR of 20 Most Common Types of Zone and Failing Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[165]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Sector	Annual loan payment			Earnings			Default rate		
			Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail
MEDICAL/CLINICAL ASSISTANT.	Certificate	Public	271			20,370			13		
		Private	867	1,099	1,486	14,647	13,686	12,266	15	12	22
		For-profit	932	1,247	1,088	16,259	13,570	14,389	21	25	33
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	Public									
		Private									
		For-profit	1,985		1,901	37,966		38,465	13		36
MEDICAL/CLINICAL ASSISTANT.	Associate's	Public									
		Private									
		For-profit	1,332	1,842	2,341	20,311	19,571	17,603	18	20	30
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	Public	114		363	12,826		12,500	16		30
		Private	239	1,287		12,200	12,912		18	17	
		For-profit	639	1,191	1,279	12,435	12,057	11,507	15	16	28
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	Public									
		Private									
		For-profit	1,497	2,196	1,723	27,027	24,289	27,781	23	17	33

[165] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	Public									
		Private									
		For-profit	1,388	1,459	2,156	19,303	15,431	23,357	15	14	36
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	Public									
		Private									
		For-profit	1,591	2,840	2,625	20,861	27,632	17,430	18	23	45
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	Public									
		Private									
		For-profit	2,113		2,076	27,653		31,022	21		44
BEHAVIORAL SCIENCES.	Associate's	Public									
		Private									
		For-profit			2,335			18,781			38
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	Public									
		Private									
		For-profit	2,314	2,947	4,101	32,290	31,065	27,949	24	25	33
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	Public									
		Private									
		For-profit	1,781	1,877	2,989	24,074	21,126	20,085	24	21	34
CULINARY ARTS/CHEF TRAINING.	Associate's	Public									
		Private									
		For-profit	2,288	2,197	4,368	25,784	22,980	22,259	15	22	27
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING	Associate's	Public									
		Private									

TECHNOLOGY/TECHNICIAN.		For-profit	1,664	1,962	4,154	32,337	20,906	30,896	18	14	38
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	Public									
		Private									
		For-profit	1,450	1,998	1,972	24,091	20,887	22,794	19	22	33
BEHAVIORAL SCIENCES.	Bachelor's	Public									
		Private									
		For-profit	2,128	2,657		43,331	29,449		7	25	
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	Public									
		Private									
		For-profit	1,853	2,302	2,074	25,462	25,281	28,369	19	8	32
TEACHER ASSISTANT/AIDE.	Associate's	Public									
		Private									
		For-profit			2,170			14,637			40
HUMAN SERVICES, GENERAL.	Associate's	Public									
		Private									
		For-profit			2,248			22,588	24		42
HUMAN SERVICES, GENERAL.	Bachelor's	Public									
		Private									
		For-profit	2,005	2,974		32,935	31,245		26	19	
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Associate's	Public									
		Private									
		For-profit	2,365	3,160	4,241	33,819	26,678	28,249	17	26	37

Table 26 provides the percentage of institutions (entities with unique OPEID numbers) in the 2012 GE informational rates sample with all passing programs and the percentage of all institutions that have at least one zone or failing program.

Tables 22 through 25 demonstrate that, in many cases, for the most common for-profit program types that would fail or fall in the zone under the proposed regulations, some for-profit institutions are offering the same exact program but with better outcomes for students. These programs are resulting in less debt, higher earnings, and lower default rates.

Table 26: Program Results by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-prof		
Total OPEIDs	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program
2,420	70%	30%	726	94%	6%	173	88%	12%	1,521	56%	44%

Table 27 provides the concentration of zone and failing programs at institutions in the 2012 GE informational rates sample.

Table 27: Concentration of Zone and Failing Programs by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-prof		
Total OPEIDs	Total fail & zone programs	% OPEIDs responsible for 90% fail & zone programs	Total	Total fail & zone programs	%public OPEIDs responsible for 90% public fail & zone programs	Total	Total fail & zone programs	% private OPEIDs responsible for 90% private fail & zone programs	Total	Total fail & zone programs	% for-profit OPEIDs responsible for 90% for-profit fail & zone programs
2,420	1,965	22%	726	54	5%	173	33	10%	1,521	1,878	32%

Table 28 provides the concentration of title IV enrollment in zone and failing programs at institutions in the 2012 GE informational rates sample.

Table 28: Concentration of Title IV Enrollment in Zone and Failing Programs by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-profit		
Total T4 Students	Total t4 students in fail & zone programs	% OPEIDs responsible for 90% of t4 students in fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% public OPEIDs responsible for 90% of t4 students in public fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% private OPEIDs responsible for 90% of t4 students in private fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% for-profit OPEIDs responsible for 90% of t4 students in for-profit fail & zone programs
2,914,376	1,145,003	8%	195,087	12,922	3%	52,305	6,647	6%	2,666,984	1,125,434	11%

Table 29 provides earnings information for programs in the 2012 GE informational rates sample.

TABLE 29—PROGRAMS IN THE 2012 GE INFORMATIONAL RATES SAMPLE BY EARNINGS LEVEL

Earnings level	All sectors				Public		Private		For-profit	
	Programs	% of all D/E n30 programs with earnings data	t4 students	% of all t4 students in D/E n30 programs with earnings data	Programs	t4 students	Programs	t4 students	Programs	t4 students
Less than Poverty Guidelines for 1 person ($11,490)	631	11.4	115,581	4.6	60	6,108	63	11,086	508	98,387
Less than Federal min wage ($15,080)	1,492	26.9	351,581	13.9	137	16,223	95	20,037	1,260	315,321
Less than 150% of Poverty Guidelines for 1 person ($17,235)	2,090	37.7	540,381	21.4	189	29,069	118	25,105	1,783	486,207

Discussion of Costs, Benefits, and Transfers

Assumptions and Methodology for Costs, Benefits, and Transfers and Net Budget Impacts

Assumptions

We made assumptions in three areas in order to estimate the impact of the proposed regulations on the title IV, HEA programs:

1. Program performance under the proposed regulations;
2. Student behavior in response to program performance; and
3. Growth rates of enrollment in GE programs.

Program Performance Assumptions

Given a program's results under the D/E rates and pCDR measures in any year—passing, in the zone, or failing, or not evaluated because the program did not meet the minimum n-size requirements—we developed assumptions for the likelihood that, in the subsequent year, the program's results would place it in any of the following six categories:

1. Passing (program would have to pass both the D/E rates and pCDR measures);
2. In the zone (program would be in the zone under the D/E rates and pass pCDR);
3. Failing for the first time (program would be failing under either or both the D/E rates and pCDR measures);
4. Failing for the second time (program would be failing for the second time under the pCDR measure; a second failure under the D/E rates measure would make the program ineligible);
5. Ineligible under either or both measures (a program could become ineligible in one of three ways: (a) by failing the D/E rates measure for two consecutive years or two out of three consecutive years, (b) by being in the zone for four consecutive years, or (c) by failing pCDR for three consecutive years); and
6. Not evaluated because the program failed to meet the minimum n-size requirements for both the D/E rates and pCDR measures.

The likelihood of each of the year 1-year 2 combinations (e.g., a program could fail in year 1 but pass in year 2) are guided by our observations of the GE programs in our data set for which we were able to calculate D/E rates or pCDR for two consecutive years. For the D/E rates, the first year's results are based on the outcomes of students who completed GE programs in FYs 2007 and 2008, and the second year's results are based on the outcomes of students who completed GE programs in FYs 2008 and 2009. In order to maximize the number of programs in the two-year comparative analysis, we applied a minimum n-size of 10 for the D/E rates. For pCDR, the first year's results are based on the outcomes of students who entered repayment in FY 2008, and the second year's results are based on the outcomes of students who entered repayment in 2009. Table 30 shows the changes in results from year one to year two for the programs for which we could calculate two years of D/E rates or pCDR.

Table 30: Observed Two-Year Program Results

Year 1 result	Year 2 result	% w/ year 2 combined result
Pass	Pass	77%
	Zone	8%
	Fail	8%
	Not Evaluated	7%
Zone	Pass	29%
	Zone	37%
	Fail	30%
	Not Evaluated	4%
Fail	Pass	27%
	Zone	16%
	Fail	57%
	Not Evaluated	0%
Not evaluated	Pass	9%
	Zone	1%
	Fail	1%
	Not Evaluated	89%

The observed changes in the two-year program results from our data set informed, but did not define, our assumptions for year-to-year program results because they are based on years in which there were no regulations regarding GE programs. Our assumptions for year-to-year program results are provided in Table 31.

For year 1 to year 2, the assumed changes are identical to the observed two-year program results. We made one exception to this for programs that failed in two consecutive years because the assumptions must account for the difference in results for a program that failed the D/E rates measure twice, ineligibility, and one that failed the pCDR measure, a second fail. For this combination, fail in year 1 and fail in year 2, we used two data points to determine the percentage of programs that are assumed to be ineligible and the percentage of programs that are assumed to have a second fail. First, we observed in the two-year results that of the programs that fail in year 1, 57 percent fail in year 2. Second, we found that, of all failing programs in the year 2 data set regardless of whether they had a year 1 result, 50 percent (49 percent rounded) failed the D/E rates. We used this to assume that of the 57 percent of year 1 failures that failed in year 2 in our two-year results, half, or 29 percent (28.5 percent rounded) would fail the D/E rates measure for a second consecutive year and therefore become ineligible. The other half, 29 percent (28.5 percent rounded), were assumed to receive a second consecutive pCDR failure, which would place these programs in the second fail category in our assumptions in Table 31. We maintained this even split for each year of our assumptions. After year 1 to year 2, assume some first fail programs may fall into the not evaluated category in subsequent years because program enrollments and completions may fluctuate from year-to-year causing some programs to fall below the minimum n-size requirements for the GE measures.

For the other categories of year 1-year 2 program results, after year 1 to year 2, the assumed changes between program results are guided by the observed two-year results but are adjusted slightly to reflect assumed improved program performance in response to the proposed regulations. So, each year, we assume a modest increase in the percentage of programs that improve from failing to zone or passing and from zone to passing. But, for year 4 to year 5, as provided under the proposed regulations, we assume that some percentage of zone programs would become ineligible.

Because we were only able to determine two years of program results from our data set, we did not have observed results for the second fail category. For the first year that second fail programs would exist, year 2, we assumed that a relatively large percentage of programs would become ineligible in the subsequent year. After that, as with the other categories, we assumed improved program performance from year to year and gradually decreased the percentage of second fail programs that would become ineligible.

Table 31: Assumed Year-to-Year Program Results

Result	Result in Subsequent Year					
Year 1	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	77%	8%	8%	0%	0%	7%
Zone	29%	37%	30%	0%	0%	4%
First Fail	27%	16%	0%	29%	29%	0%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 2	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	79%	7%	7%	0%	0%	7%
Zone	31%	36%	28%	0%	0%	5%
First Fail	28%	18%	0%	26%	26%	2%
Second Fail	20%	20%	0%	0%	55%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 3	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	81%	6%	6%	0%	0%	7%
Zone	35%	35%	25%	0%	0%	5%
First Fail	31%	21%	0%	23%	23%	2%
Second Fail	23%	22%	0%	0%	50%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 4	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	83%	5%	5%	0%	0%	7%
Zone	38%	23%	21%	0%	13%	5%
First Fail	35%	25%	0%	19%	19%	2%
Second Fail	27%	25%	0%	0%	43%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 5 and after	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	85%	4%	4%	0%	0%	7%
Zone	43%	24%	16%	0%	12%	5%
First Fail	40%	30%	0%	14%	14%	2%
Second Fail	30%	30%	0%	0%	35%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%

Student Response Assumptions

Depending on the results that a program receives—passing, in the zone, failing in the first year, failing in the second year, ineligible—we developed assumptions for the likelihood that a student would transfer to a passing program, transfer to a zone program, remain in the program, or drop out. These assumptions were developed for two scenarios. The first scenario assumes that students would have a ''low reaction'' to program results. The second assumes that students would have a ''high reaction'' to program results. Our assumptions regarding student responses to program results are provided in Table 32. These student response rates are based on our best judgment and are presented to facilitate comment on the estimated impacts of the proposed regulations.

Table 32: Assumed Student Response to Program Results

Response of title IV students	Rate of student response	
	Low Reaction Scenario	High Reaction Scenario
Program receives zone result		
Transfers to passing program	30%	45%
Remains in program	67%	47%
Drops out	3%	8%
Program fails for first time		
Transfers to passing program	20%	30%
Transfers to zone program	15%	33%
Remains in program	60%	25%
Drops out	5%	12%
Program fails for second time		
Transfers to passing program	30%	35%
Transfers to zone program	22%	30%
Remains in program	40%	20%
Drops out	8%	15%
Programs becomes ineligible		
Transfers to passing program	35%	40%
Transfers to zone program	30%	30%
Remains in program	25%	10%
Drops out	10%	15%

Enrollment Growth Rate Assumptions

We estimated, for each fiscal year, the rate of growth or decline in enrollment of students in GE programs receiving title IV, HEA program funds. This estimate is based on the Department's President's Budget (PB) 2015 loan projections by institution type and, for for-profit institutions, level. The budget estimates for growth do not specify credential level, so we based our enrollment estimates for programs at public and private non-profit institutions on the estimates for 2-year or less institutions because the budget estimates for 4-year institutions would be driven to a greater extent by degree programs not subject to the proposed regulations. The 2-year or less category is the closest approximation of GE programs available in the budget projections, and so we applied these projections to public and private non-profit institutions. For private for-profit institutions, the estimates are split into rates for 2-year or less and 4-year private for-profit institutions. For the PB 2015 estimates, the Department had data through September 2013, so the estimates for 2010–2011 through 2012–2013 are based on actual data showing a decline in Stafford subsidized loans for 2-year public and private non-profit institutions, 2-year or less private for-profit institutions, and 4-year for-profit institutions. Our data also included the first quarter of the 2013–2014 award year. The first quarter generally represents about 50 percent of the loans in a given year, which was the basis for our estimate that enrollment will decline in the 2013–2014 and 2014–2015 award years. For subsequent years, we assumed a reversion to long-run historical averages for the relevant institutional categories.

Table 33: Assumed Enrollment Growth Rates of Title IV Students in GE Programs

Sector	2010-16	2017	2018	2019	2020	2021	2022	2023
Public and Private Nonprofit	-6.00%	3%	3%	3%	3%	3%	3%	3%
For-Profit 4-year	-33%	2%	2%	2%	2%	2%	2%	2%
For-Profit 2-year or less	-32%	3%	3%	3%	3%	3%	3%	3%

Estimates based on U.S. Department of Education Budget Service PB 2015 assumptions for growth in title IV, HEA program loans

Methodology for Net Budget Impacts

To calculate the net budget impacts estimate, we developed a simple model based on the assumptions previously described for the estimated yearly rate of enrollment change of students receiving title IV, HEA program funds in GE programs, program results, and student response to program results.

We estimated the enrollment of students receiving title IV, HEA programs funds for FYs 2016–2024 by applying the enrollment growth assumptions to the enrollment of students receiving title IV, HEA program funds for FY 2010 that we determined based on data received from institutions through reporting under the 2011 Prior Rule. We then assumed that the program results—passing, zone, failing, and not evaluated—for 2016 would be identical to those under the 2012 GE informational rates but applied a minimum n-size of 15 for the D/E rates calculations. In order to ensure as accurate an estimate as possible, the distribution for the budget estimate is based on a D/E rates n-size of 15 because we assume these programs would have 30 students who completed the program over a 4-year period and may be subject to the proposed regulations. It is important to note that the results provided in the ''Analysis of the Proposed Regulations'' section are based on a minimum n-size of 30 for the D/E rates measure. The estimated 2016 enrollment and program results were used to establish an initial 2016 distribution of students by program result. Table 34 provides the estimated initial 2016 distribution of programs and title IV enrollment by program result.

Table 34: Estimated 2016 Program Results (Program Count and Title IV Enrollment

	Programs		FY 2010 Enrollment		Estimated FY 2016 Enrollment	
Result	#	%	#	%	#	%
Pass	7,604	76%	1,844,292	61%	1,324,757	62%
Zone	929	9%	330,409	11%	223,359	10%
Fail	1,453	15%	863,089	28%	585,047	27%
Total	**9,986**		**3,037,790**		**2,133,163**	

The estimated change in enrollment from 2016 to 2017 was then applied to this distribution of students. We then estimated student behavior in response to these results based on our student reaction assumptions to create the distribution of students at the beginning of the subsequent year, 2017, before the programs receive a second determination of their GE measures. Next, we applied our assumed change in year-to-year program results to the initial 2016 program results to create a new distribution of programs, and corresponding enrollment, to which ineligibility was added as a result since the second year of results is the first time that programs could become ineligible. We repeated this cycle for each subsequent year to 2024. The student response to program performance is assumed to be constant for each cycle while the year-to-year program transitions assume some institutional learning and improved ability to meet the GE measures over time as reflected in the reduced percentage of failing programs that become ineligible and increased percentage of programs that pass the GE measures in later years.

This process produced a yearly estimate for the number of students receiving title IV, HEA program funds who will choose to enroll in a better-performing program, remain in a zone, failing, or ineligible program, or will choose to drop out of postsecondary education altogether after their program receives a zone or failing result or becomes ineligible. The estimated net savings for the title IV, HEA programs results from students who drop out of postsecondary education in the year after the program that they are enrolled in receives rates that are zone or failing or who remain at a program that becomes ineligible for title IV, HEA program funds. We assume no budget impact on title IV, HEA programs from students who transfer from programs that are failing or in the zone to better-performing programs as the students' eligibility for title IV, HEA program funds carries with them across programs. To estimate the yearly Pell Grant and loan volume that would be removed from the system based on the low reaction and high reaction scenarios, we multiplied the number who leave postsecondary education or who remain in ineligible programs by the average Pell grant amount and average loan amount for each type of title IV, HEA program loan, from NPSAS 2012, for students who received some type of title IV aid by sector and credential level. To determine the estimated subsidy cost of the reduced loan volume in the ''Net Budget Impacts'' section, the yearly loan volumes were multiplied by the PB 2015 subsidy rates for the relevant loan type.

Methodology for Costs, Benefits, and Transfers

The estimated number of students for each response category was used to quantify the costs and transfers in the ''Discussion of Costs, Benefits, and Transfers'' section of this analysis. We quantify a transfer of title IV, HEA program funds from programs that lose students to programs that gain students. We also quantify the transfer of instructional expenses as students shift programs as well as the cost associated with additional instructional expense to educate the students who transfer to better-performing programs. We calculated estimated costs and transfers for each year from 2017 to 2024.

In this analysis, student transfers could be of students who enrolled in a program and switch programs or prospective students who choose an alternative program to one they would have chosen in the absence of the proposed regulations. Based on our assumptions, the average number of yearly transfers between 2017 and 2024, rounded to the nearest thousand, would be 172,000 for the low reaction scenario and 233,000 for the high reaction scenario, respectively.

For both the low student reaction and high student reaction scenarios, we multiplied the estimated number of students receiving title IV, HEA program funds transferring from ineligible, failing, or zone programs each year by the average Pell Grant, Stafford subsidized loan, unsubsidized loan, PLUS loan, and GRAD PLUS loan, as determined by NPSAS 2012, to calculate the amounts of student aid that could shift with students each year. In order to annualize the amount of student aid transfers over the 2014–2024 budget window, we made two separate total net present value (NPV) calculations of each year's estimated amount of transfer in student aid, one calculation using a discount rate of 3 percent, and the other using a discount rate of 7 percent. These two discount rates are standards set by OMB for use in the Accounting Statement provided in Table 41. As provided in Table 41, the estimated range for the amount of student aid transfers annualized over the 2014–2024 budget window would be $1.4 billion (low reaction) to $2.0 billion (high reaction) at a 7 percent discount rate and $1.35 billion (low reaction) to $1.8 billion (high reaction) at a 3 percent discount rate.

As stated, we also quantify the transfer of instructional expenses as students shift programs as well as the cost associated with additional instructional expense to educate the students who transfer to better-performing programs. For the transfer of instructional expenses, we applied the $4,529 average for-profit instructional expense per enrollee for 2010–2011 from IPEDS to the estimated number of annual student transfers from 2017–2024. We estimate that the range of annualized transfers in instructional expenses would be $705 million (low reaction) to $962 million (high reaction) at a 7 percent discount rate and $660 million (low reaction) to $896 million (high reaction) at a 3 percent discount rate.

For the analysis of the additional cost of educating students at better-performing programs, we collected IPEDS data on instructional expenses for 2010–2011 and applied the expense per enrollee to each institution's programs and determined the average instructional expense per enrollee of passing, zone, and failing programs in the 2012 GE informational rates. We applied a difference of $1,212 for those who transfer from failing to passing programs and $924 for those who transfer from zone to passing programs to the estimated number of students who will transfer between 2017 and 2024. As provided in Table 41, we estimate that the range of the additional annualized cost of educating students at better-performing programs over the 2014–2024 budget window would be $173 million (low reaction) to $236 million (high reaction) at a 7 percent discount rate and $162 million (low reaction) to $230 million (high reaction) at a 3 percent discount rate.

Discussion of Costs, Benefits, and Transfers

The potential primary benefits of the proposed regulations are: (1) Improved and standardized market information about GE programs that would increase the transparency of student outcomes for better decision making by students, prospective students, and their families, the public, taxpayers, and the Government, and institutions and lead to a more competitive marketplace that encourages improvement; (2) improvement in the quality of programs and reduction in costs and student debt; (3) elimination of poor performing programs; (4) better return on educational investment for students, prospective students, and their families, as well as for taxpayers and the Federal Government; and (5) for institutions with high-performing programs, potential growth in enrollments and revenues resulting from the additional market information that would permit those institutions to demonstrate to consumers the value of their GE programs.

We have considered and determined the primary costs and benefits of the transparency framework and accountability framework for the following groups or entities that we expect to be affected by the proposed regulations:

- Students
- Institutions
- Federal, State, and local government

We discuss first the broad benefits that we would expect to result from improved market information. We then describe the impact of the proposed regulations—both the costs and the benefits—for each of students, institutions, and the Federal Government and State and local governments.

Improved Market Information

The proposed regulations would provide a standardized process and format for students, prospective students, and their families to obtain information about borrowing, earnings, completion, and the incidence of defaults among GE programs. This information would allow them to make educated decisions based on reliable information about a program's costs and the outcomes of former students. The proposed disclosures would provide prospective students with extensive, comparable, and reliable information that would assist them in avoiding overpaying and overborrowing for postsecondary credentials.

As explained in connection with the 2011 Prior Rule, the improved information that would be available as a result of the proposed regulations would also benefit institutions in addition to students, prospective students, and their families. 76 FR 34491. We continue to believe that debt, earnings, and default information would provide a clear indication to institutions about whether their students are successful in securing positions that allow them to repay their loans and avoid default. Id. This information would help institutions determine when it would be prudent to expand programs or whether certain programs should be improved or eliminated or offered at a reduced cost. Id. Additionally, institutions may be encouraged to better prepare students for jobs in well-paying and in-demand fields in order to meet the requirements of the GE measures. Id. This effect could create an incentive for institutions to provide higher-quality and more comprehensive training, so that they prepare students for jobs with better salaries and employment prospects. 76 FR 34492.

The information provided in the disclosures would also allow the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs, and would allow institutions to see which programs produce exceptional results for students so that those programs may be emulated.

Students

Students would benefit from lower tuition prices or improved program quality as institutions with failing or zone programs seek to comply with the proposed regulations. Lower tuition may also result in reduced educational debt for students. Efforts to improve programs by offering student services to increase persistence and completion, work with employers to ensure graduates have needed skills, improve academic quality, and help students with career planning could lead to better outcomes and higher earnings over time. Students who graduate with manageable debts and adequate earnings would be able to save for retirement or other goals, form families, or take out other debt for home ownership or business opportunities.

Students enrolled in programs that do not pass the proposed D/E rates measure or pCDR measure would be particularly affected by the proposed regulations. Based on the assumptions and methodology described previously in this section, we estimate that the FY 2010 enrollment of students who received title IV, HEA program funds in programs that would fail either GE measure or fall in the zone under the D/E rates measure is approximately 1.2 million. We estimate that, in 2016, approximately 2.9 million students receiving title IV, HEA funds would be enrolled in programs evaluated under the proposed regulations, of which approximately 585,000 would be in failing programs and 223,000 in zone programs, totaling 808,000. As programs become ineligible for title IV, HEA program funds, students enrolled in those programs (or prospective students who would have enrolled in them) would have to choose among other title IV, HEA programs (at the same or other institutions), or pay for the program without the use of title IV, HEA program funds if the institution continues to offer the program. Similarly, students enrolled in programs that receive a zone or failing result would face a similar choice as to whether to transfer to a higher-performing program or remain in the program. Students who transfer to programs at other postsecondary institutions to continue their education could face increased commuting costs, additional tuition and fees if their credits do not transfer, or other costs due to disruptions in their educational plans.

Some students may choose to drop out of postsecondary education if their program loses title IV, HEA program eligibility or if the program receives a zone or failing result. We estimate that, under the low and high reaction scenarios, 22,000 current or prospective students in the low reaction scenario, and 45,000 current or prospective students in the high reaction scenario, would not continue postsecondary education in the year after the first program results are released under the proposed regulations. Some of these students may eventually continue their postsecondary education, but others may not return.

The number of programs that could lose eligibility and the number of students who could transfer to another program or drop out of postsecondary education as a result of poor program performance raises a concern about the supply of GE programs available to students. In the short term, the supply of GE program enrollment capacity could be reduced, particularly in locations served by few providers, as programs become ineligible or institutions close programs that receive zone or failing results despite the opportunity to improve during the transition period. Over time, we expect existing or new postsecondary institutions to expand capacity among programs that meet the GE measures and to establish new programs, and that new and expanded programs would perform better than closed programs. Some students could also choose to enroll in programs at for-profit institutions outside of the Federal student aid system. Researchers estimate that 4,600 postsecondary institutions operate outside of the title IV, HEA programs, enrolling approximately 700,000 students, and that these institutions are ''long-lived, surviving and apparently thriving without access to title IV funds,'' and that they provide programs of comparable net price and quality to those operating inside the title IV, HEA system.[166]

Students would not only be affected by the results of the programs in which they are enrolled or plan to enroll in, but also by the proposed requirements that students read the disclosures and students warnings from institutions. We estimate that this would increase the paperwork burden on students by an estimated 2,167,129 hours in the initial year of reporting. The monetized cost of this additional burden on students, using wage data developed using Bureau of Labor Statistics data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $35,324,203 and is detailed more fully in *Paperwork Reduction Act of 1995*.

Institutions

For institutions, the impact of the proposed regulations would likely be mixed. As noted in connection with the 2011 Prior Rule, institutions with programs that do not pass, including programs that lose eligibility, are likely to see lower revenues and possibly reduced profit margins. 76 FR 34493. On the other hand, institutions with high-performing programs are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs. Id.

As the proposed regulations are implemented, institutions would inevitably incur costs as they make changes needed to comply with the new regulations. These costs could include but would not be limited to one or more of the following, as they relate to satisfying the requirements of the proposed regulations: (1) Training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new software or equipment, and (4) procurement of external services. Compliance costs may be administrative in nature or aimed at improving program outcomes under the GE measures. As discussed in connection with the 2011 Prior Rule, an institution could choose to spend more on curriculum development to better link a program's content to the needs of in-demand and well-paying jobs in the workforce. 76 FR 34492. Institutions could also allocate more funds toward other functions, such as hiring better faculty; providing training to existing faculty to improve program outcomes; tutoring or providing other support services to assist struggling students; providing career counseling to help students find jobs; or other areas where increased investment could yield improved performance on the GE measures. Id.

These costs are difficult to quantify as they would vary significantly by institution and ultimately depend on institutional behavior. Institutions where the majority of their programs are passing the proposed GE measures could be inclined to commit only minimal resources toward compliance activities associated with satisfying the requirements of the proposed regulations. Institutions with multiple failing or zone programs could decide to devote significant resources toward compliance activities, depending on their existing capacity levels. Small or single-program institutions with failing or zone programs could decide to commit a significant amount of resources to compliance activities as the suspension of the title IV, HEA program eligibility of one or more of their programs could have severe financial consequences or even lead to closure. However, regardless of performance, we expect that all institutions with GE programs would incur at least minor costs due to compliance-related activities.

Whatever the costs institutions devote to program changes to improve results to comply with the proposed regulations, institutions would incur costs associated with the reporting and disclosure requirements of the proposed regulations. This additional workload is discussed in more detail under *Paperwork Reduction Act of 1995.* As discussed in connection with the 2011 Prior Rule, additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. 76 FR 34493. In total, the proposed regulations are estimated to increase burden on institutions participating in the title IV, HEA programs by 4,775,248 hours in the first year of reporting as multiple years are reported at once. The monetized cost of this additional burden on institutions in the first year of reporting, using wage data developed using BLS data available at: *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $174,535,314. This cost was based on an hourly rate of $36.55. We would expect this amount to decrease in subsequent years to approximately $29 million.

As discussed in connection with the 2011 Prior Rule, institutions would possibly incur administrative costs from enrolling additional students who transfer to their GE programs in response to the disclosures and warnings for other GE programs. 76 FR 34492. Schools for which their required disclosure metrics reveal less than satisfactory outcomes for current or former students may experience revenue losses via enrollment decreases. We expect a strong response from prospective students who are notified that they may not be able to use title IV, HEA program funds in the future to attend a program they are considering. We also continue to project that some

[166] Goldin, C., and Cellini S. R. Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges. *American Economic Journal:* Economic Policy. Forthcoming.

students may withdraw or transfer completely from an institution while others may transfer into another program at the institution if possible. Id. Institutions with programs of different costs may also incur revenue losses if current or prospective students choose to transfer or enroll in a less expensive program at the same institution. Id. Although lower costs are a driving factor for many passing programs and the transfer of students to passing programs might result in lower revenue across the postsecondary system, students might also examine the disclosure data and elect to attend a program in a different sector, CIP code, or credential level that could result in the student paying more than he or she would have paid for the original program, potentially increasing institutional revenues. Id.

Expenses associated with educating students would also shift. Educating additional students requires a postsecondary education institution to incur additional costs—both fixed costs (for example, additional classroom space) and variable costs (such as hiring additional instructors). Id. As a result, there would be a shift of certain costs from institutions with zone and failing programs to institutions with passing programs. Id. We estimate that, on average over 2017–2024, approximately 172,000 current or prospective students in the low reaction scenario and 233,000 current or prospective students in the high reaction scenario would transfer programs annually. Applying the average instructional expense of $4,529 for for-profit institutions from IPEDS data for 2010–2011,[167] we estimate the annualized transfer of instructional expenses to be $705 million in the low reaction scenario to $962 million in the high reaction scenario at a 7 percent discount rate and $660 million in the low reaction scenario to $896 million in the high reaction scenario at a 3 percent discount rate.

Assuming institutions act rationally in determining program offerings and do not offer programs at a loss for an extended period, a reduction or increase in enrollment would result in some profit loss or gain to sending or receiving institutions. Further, some institutions could decide to lower their tuition prices in response to the proposed regulations in order to ensure the long-term viability of their programs but, in the process, would reduce their revenue levels.

[167] U.S. Department of Education, National Center for Education Statistics, Condition of Education 2010 table 416, available at *https://nces.ed.gov/programs/digest/d12/tables/dt12_416.asp*.

The proposed regulations may lead to increased enrollments and revenue for those institutions with passing programs. As the public gains more information about GE programs, individuals would be able to make informed market decisions and identify high-performing programs that match their interests. As noted in connection with the 2011 Prior Rule, the better and clearer information that would be available about GE programs would also benefit institutions with high-performing programs, which could use their performance on the GE measures to differentiate themselves from competitors. 76 FR 34492. The proposed regulations would allow an institution to demonstrate to prospective students that its programs lead to better wages, lower debt burdens, and a higher likelihood of ability to repay student loan debt than competitor offerings—easily understandable data that tell a clear story about student success. Id.

In the scenarios evaluated in ''Net Budget Impacts,'' we estimate that approximately 172,000 current or prospective students in the low reaction scenario and 233,000 current or prospective students in the high reaction scenario might transfer or elect to attend passing or zone programs annually instead of programs that fail the GE measures or become ineligible for title IV, HEA program funds. We estimate that approximately $1.4 billion in title IV, HEA Pell Grant aid and loan volume in the low reaction scenario and approximately $2.0 billion in the high reaction scenario at a 7 percent discount rate and $1.35 billion in title IV, HEA Pell Grant aid and loan volume in the low reaction scenario and approximately $1.8 billion in the high reaction scenario at a 3 percent discount rate would transfer between failing and ineligible programs to passing or zone programs on an annualized basis. These amounts reflect the anticipated high level of initial transfers as institutions adapt to the proposed regulations and failing and zone programs eventually lose eligibility for title IV, HEA program funds. We would expect the title IV, HEA program funds associated with student transfers related to the proposed regulations to decline in future years. These figures assume students would receive the same amount of title IV, HEA program funds at the new program as the program in which the student is currently enrolled.

As noted in the 2011 Prior Rule, when students transfer programs, the expense of providing instruction shifts with them along with revenues and aid amounts. 76 FR 34492. The added expense of educating students at better-performing programs is a cost, but, as we noted in the regulatory impact analysis of the 2011 Prior Rule, a cost associated with improved program quality. 76 FR 34492. To determine the added instructional costs resulting from student transfers, as described in ''*Methodology for Costs, Benefits, and Transfers,''* we applied the difference in instructional expenses per enrollee of $1,212 for those who transfer from failing to passing programs and $924 for those who transfer from zone to passing programs to the estimated number of students who will transfer from our net budget estimate. The additional cost of educating students who shift from low-performing programs to programs with better results would be approximately $173 million under the low reaction scenario and $236 million under the high reaction scenario at a 7 percent discount rate and $162 million under the low reaction scenario and $220 million under the high reaction scenario at a 3 percent discount rate on an annualized basis.

Federal Government

A primary benefit of the proposed regulations would be improved oversight and administration of the title IV, HEA programs. Additionally, as detailed in ''Net Budget Impacts,'' we anticipate some small savings in the title IV, HEA programs as some students who would have attended programs that fail the GE measures would elect not to pursue postsecondary education. Also, students enrolled in programs that become ineligible may choose to remain in those programs and forego Federal loans or Pell Grants or transfer to a for-profit institution that does not participate in the title IV, HEA programs. As provided in Tables 35 and 36, based on the assumed responses of these students, we estimate a total savings of $666 million to $973 million over the 2014–2024 loan cohorts in the low reaction and high reaction scenarios respectively. This represents our best estimate of the effect on title IV, HEA programs. We assume that most students who transfer out of failing or zone programs to programs with better results would still receive title IV, HEA program funds, and accordingly estimate that the response of these students would have little to no impact on the title IV, HEA programs budget.

State and Local Government

As noted in connection with the 2011 Prior Rule, if States choose to expand enrollment of passing programs, it is not necessarily the case that they will face marginal costs that are similar to their average cost or that they will only choose to expand through traditional brick-and-mortar institutions. 76 FR 34493. The Department continues to find that many States across the country are experimenting with innovative models that use different methods of instruction and content delivery that allow students to complete courses faster and at a lower cost. Id. Rather than adding additional buildings or campuses, States may instead opt to expand online education offerings or try innovative practices like awarding credit when students demonstrate they have mastered a competency. Id. Forecasting the extent to which future growth would occur in traditional settings versus online education or some other model is outside the scope of this analysis. Id.

We welcome comments on the effects of the proposed regulations on students, institutions, the Federal Government and State and local government, and other stakeholders. Any comments received will be considered in the development of the final regulations.

Net Budget Impacts

We do not expect these regulations to significantly affect Federal costs, as the vast majority of students are typically assumed to resume their education at another program in the event the program they are attending loses eligibility to participate in the title IV, HEA programs. As discussed in connection with the 2011 Prior Rule, scenarios presented in this regulatory impact analysis anticipate that some students would not pursue education if warned about debt burdens or if their program loses eligibility, so we have estimated potential Federal costs under the low reaction scenario and high reaction scenario. 76 FR 34495. We continue to project that estimated savings come from Federal loans and Pell Grants not taken by students who do not pursue an education in each scenario. *Id.* As provided in Tables 35 and 36, the estimated net impact on the Federal budget between the FY 2014 and FY 2024 loan cohorts is savings of $666 million in the low reaction scenario and $973 million in the high reaction scenario. 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. As discussed in connection with the 2011 Prior Rule, estimated reductions in Pell Grants are offset by increased subsidy costs from reduced unsubsidized and PLUS loan volumes. 76 FR 34495. As provided in Tables 35 and 36, the estimated reductions in Pell Grants of approximately $702 million in the low reaction scenario and $1.0 billion in the high reaction scenario would be offset by increased subsidy costs from reduced unsubsidized and PLUS loan volumes. We continue to believe that the potential savings represent our best estimate of the effect of the regulations on the Federal student aid programs, but student responsiveness to program performance, programs' efforts to improve performance, and potential increases in retention rates could offset the estimated savings. *Id.* Tables 35 and 36 present the net budget impact of the proposed regulations under the low reaction and high reaction scenarios. While Table 37 presents the approximate effect on the estimated initial 37,589 programs that would first be evaluated under the proposed regulations, it does not take into account the addition of new programs.

Table 35: Estimated Net Budget Impacts Summary - Low Reaction Scenario

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs									
Overall title IV enrollment	2,933,685	3,006,309	3,080,803	3,157,218	3,235,606	3,316,018	3,398,510	3,483,137	3,569,956
Model Not Evaluated	800,523	820,339	906,884	1,031,430	1,121,084	1,194,066	1,284,468	1,349,225	1,407,039
Enrolled in Programs Passing both metrics	1,324,757	1,546,124	1,663,664	1,714,237	1,769,535	1,833,119	1,894,853	1,928,329	1,958,080
Enrolled in DTE Zone Programs with non-failing CDR	223,359	243,285	277,998	232,054	197,221	161,464	129,139	119,666	118,899
Enrolled in Programs Failing for the First Time	585,047	359,718	125,970	125,039	105,252	86,758	68,310	67,204	67,494
Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	42,023	13,425	11,788	8,197	4,979	3,920	3,857
Enrolled in Ineligible Programs	N/A	-	26,264	14,312	9,087	12,990	3,847	2,896	2,762
Dropping Out/ Not Attending Non-Passing Programs	N/A	36,843	37,999	26,721	21,638	19,424	12,915	11,897	11,825

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		102,869,775	179,430,719	114,568,009	85,787,652	90,504,016	46,801,234	41,303,909	40,729,378
	Subsidized Loans		96,609,702	168,511,580	107,596,048	80,567,100	84,996,454	43,953,175	38,790,386	38,250,818
	Unsubsidized Loans		123,809,954	215,955,649	137,889,482	103,250,592	108,927,021	56,328,097	49,711,735	49,020,253
	PLUS Loans		17,456,266	30,448,111	19,441,373	14,557,552	15,357,885	7,941,835	7,008,978	6,911,484
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		102,869,775	179,430,719	114,568,009	85,787,652	90,504,016	46,801,234	41,303,909	40,729,378
	Subsidized loans		9,322,836	19,699,004	13,589,381	10,731,538	11,908,003	6,522,651	5,834,074	5,783,524
	Unsubsidized loans		(16,788,630)	(25,072,451)	(14,961,009)	(10,500,585)	(10,456,994)	(4,917,443)	(4,280,180)	(4,225,546)
	PLUS Loans		(4,776,034)	(7,605,938)	(4,560,946)	(3,368,617)	(3,466,275)	(1,727,349)	(1,521,649)	(1,467,999)
	Total		**90,627,947**	**166,451,334**	**108,635,435**	**82,649,987**	**88,488,751**	**46,679,093**	**41,336,153**	**40,819,357**

Table 36: Estimated Net Budget Impacts Summary - High Reaction Scenario

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs									
Overall title IV enrollment	2,933,685	3,006,309	3,080,803	3,157,218	3,235,606	3,316,018	3,398,510	3,483,137	3,569,956
Model Not Evaluated	800,523	820,339	970,928	1,096,383	1,190,704	1,267,518	1,352,007	1,414,172	1,470,962
Enrolled in Programs Passing both metrics	1,324,757	1,640,410	1,733,613	1,767,377	1,801,943	1,844,311	1,890,862	1,919,538	1,948,611
Enrolled in DTE Zone Programs with non-failing CDR	223,359	305,422	237,538	188,042	156,615	128,925	101,129	96,826	97,391
Enrolled in Programs Failing for the First Time	585,047	149,882	59,196	50,616	42,019	34,558	27,432	26,986	27,262
Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	8,755	3,154	2,386	1,636	992	787	774
Enrolled in Ineligible Programs	N/A	-	4,377	2,071	1,355	3,010	554	429	415
Dropping Out/ Not Attending Non-Passing Programs	N/A	90,255	66,396	49,575	40,584	36,060	25,534	24,399	24,539

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education								
Pell Grants	252,000,095	197,606,926	144,199,049	117,096,932	109,086,314	72,840,622	69,323,764	69,676,587
Subsidized Loans	236,664,793	185,581,635	135,423,910	109,971,075	102,447,937	68,407,953	65,105,112	65,436,464
Unsubsidized Loans	303,297,253	237,831,806	173,552,218	140,933,193	131,291,932	87,668,064	83,435,315	83,859,958
PLUS Loans	42,762,615	33,532,483	24,469,548	19,870,513	18,511,168	12,360,533	11,763,747	11,823,619
Estimated Net Budget Impact using PB 2015 Subsidy Rates								
Pell Grants	252,000,095	197,606,926	144,199,049	117,096,932	109,086,314	72,840,622	69,323,764	69,676,587
Subsidized loans	22,838,153	21,694,499	17,104,040	14,648,147	14,352,956	10,151,740	9,791,809	9,893,993
Unsubsidized loans	(41,127,107)	(27,612,273)	(18,830,416)	(14,332,906)	(12,604,025)	(7,653,422)	(7,183,781)	(7,228,728)
PLUS Loans	(11,699,852)	(8,376,414)	(5,740,556)	(4,598,037)	(4,177,971)	(2,688,416)	(2,553,910)	(2,511,337)
Total	**222,011,288**	**183,312,738**	**136,732,117**	**112,814,137**	**106,657,274**	**72,650,524**	**69,377,883**	**69,830,515**

Table 37: Estimated Effect of the Proposed Regulations on Programs

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Pass	7,487	8,944	10,201	11,411	12,599	13,725	14,435	14,918	15,255
Zone	988	1,482	1,708	1,779	1,586	1,504	1,434	1,433	1,446
First Fail	1,511	1,171	1,292	1,270	1,158	958	978	985	995
Second Fail	N/A	431	305	297	241	162	134	137	138
Ineligible	N/A	431	541	450	369	247	191	184	186
Not Evaluated	27,603	25,130	23,111	21,409	19,982	18,781	17,778	16,931	16,211
Total	37,589	37,589	37,158	36,617	35,936	35,377	34,950	34,587	34,231

The amounts presented represent our best estimate of the range of the net budget impact given certain assumptions about student and institutional responses to the proposed regulations and the data and results that will be generated when the proposed regulations take effect. Many factors could affect whether the net budget impact falls within the range established by the scenarios presented or outside of that range. For example, if students, including prospective students, react more strongly to the consumer disclosures or potential ineligibility of programs than anticipated in the scenarios, the impact on Pell Grants and loans affected could increase substantially. Similarly, if institutions react to the implementation of the proposed regulations by modifying their program offerings, enrollment strategies, or pricing, the estimated enrollments and aid amounts used in the scenarios above could be overstated.

As described in ''Analysis of the Proposed Regulations,'' the data available for analyzing the proposed regulations are subject to several limitations, among them the lack of performance information for certificate programs once disaggregated, the use of the old attribution rules that combined undergraduate and graduate debt at the same institutions, and the inability to predict the extent to which institutions would take advantage of the transition period to reduce the costs to students of failing and zone programs. Although these factors are not explicitly accounted for in the estimates, we expect that they would all operate to reduce the number of failing and zone programs and affected students.

Additionally, as previously stated, we do not estimate any significant budget impact from student transfers when a program they attended or planned to attend loses eligibility for title IV, HEA program funds or when a program's performance is disclosed. Although it is true that programs have varied costs across sector, CIP code, credential level, location, and other factors, the students' eligibility for title IV, HEA program funds carries with them across programs. It is possible that passing and zone programs that students choose to transfer to could have lower prices than the failing or ineligible programs, and the amount of title IV, HEA program funds to GE programs may be reduced as a result of those transfers. However, students or counselors may also use the disclosures and earnings information to choose a different field of study or credential level which could result in increased aid volume. In general, we anticipate that overall aid to students who transfer among GE programs or to non-GE programs will not change significantly, so no net budget impact was estimated for these students. However, an estimated economic impact from transfers as an amount of revenues and instructional expenses that could transfer from zone, failing, and ineligible programs to zone and passing programs that receive students was presented in ''Discussion of Costs, Benefits, and Transfers'' and in the Accounting Statement.

The effects previously described represent the estimated effects of the proposed regulations during the initial period of time after the proposed regulations take effect. We expect, as noted in connection with the 2011 Prior Rule, that the budget effects of the proposed regulations would decline over time as programs that could not comply are eliminated and institutions have more data about program performance under, and are more familiar with, the GE measures. 76 FR 34484. This is similar to the pattern observed when cohort default rates (CDR) were introduced in 1989 with an initial elimination of the worst-performing programs followed by a new equilibrium in which programs complied with the minimum standards in the regulations. Id. We do not expect the impact of the proposed regulations on program results to drop off as sharply as occurred with the introduction of institutional CDR. This is because the inclusion of multiple measures, the need to fail the D/E rates measure at least twice in three consecutive years or not pass in four years and the need to fail the pCDR measure for three consecutive years to be ineligible, the transition period, and the continued introduction of new programs will extend the effect of the proposed regulations on program results.

Alternate Enrollment Projections

In developing the estimated net budget impact, we also analyzed the effects of the proposed regulations based on NCES enrollment projections instead of the PB 2015 budget loan estimates. Although the primary estimate of the net budget impact and the estimates in the ''Discussion of Costs, Benefits, and Transfers'' section are based on the Department's budget projections, we are providing the results of the alternative NCES-based enrollment projections as additional information for commenters.

TABLE 38—ALTERNATE NCES ENROLLMENT GROWTH RATES

Sector	2010–16 (Percent)	2017 (Percent)	2018 (Percent)	2019 (Percent)	2020 (Percent)	2021 (Percent)	2022 (Percent)	2023 (Percent)
Public	7.00	1.50	1.60	1.50	1.30	0.90	1.20	1.20
Private	7.40	1.50	1.70	1.50	1.20	0.90	1.30	1.30

In conducting this analysis, all other assumptions about student and program response were held constant. The estimated NCES-based enrollment of students receiving title IV, HEA program funds in 2016 would be 4.3 million compared to 2.9 million in the primary estimate and the estimated savings for the net budget impact across loan cohorts 2014–2024 would be $988 million in the low reaction scenario to $1.4 billion in the high reaction scenario, compared to the primary estimate of $666 million and $973 million, respectively. Tables 39 and 40 present the estimated net budget impacts under the alternate NCES-based enrollment projections. We welcome comments on the estimates, data, and assumptions discussed in this regulatory impact analysis.

Table 39: Estimated Net Budget Impacts (NCES Enrollment Assumption) - Low Reaction Scenario

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs									
Overall title IV enrollment	4,276,789	4,340,693	4,412,644	4,478,297	4,533,648	4,575,946	4,634,444	4,693,690	4,753,695
Model Not Evaluated	1,015,313	1,030,484	1,175,998	1,366,255	1,484,798	1,560,674	1,674,682	1,748,547	1,809,751
Enrolled in Programs Passing both metrics	1,968,777	2,297,156	2,458,931	2,502,767	2,548,917	2,604,084	2,653,247	2,662,075	2,665,859
Enrolled in DTE Zone Programs with non-failing CDR	360,201	386,905	423,737	343,808	285,949	229,897	180,684	164,822	161,456
Enrolled in Programs Failing for the First Time	932,498	567,859	188,870	184,231	152,108	123,220	95,336	92,432	91,552
Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	65,703	19,936	17,203	11,733	7,003	5,419	5,254
Enrolled in Ineligible Programs	N/A	-	41,064	21,629	13,281	18,642	5,419	4,009	3,765
Dropping Out/ Not Attending Non-Passing Programs	N/A	58,289	58,340	39,670	31,392	27,696	18,072	16,386	16,059

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education									
Pell Grants		162,749,002	277,547,995	171,154,706	124,731,701	129,380,182	65,590,893	56,944,845	55,349,195
Subsidized Loans		152,845,018	260,657,993	160,739,197	117,141,234	121,506,835	61,599,402	53,479,503	51,980,955
Unsubsidized Loans		195,878,202	334,045,685	205,994,970	150,122,095	155,716,821	78,942,581	68,536,542	66,616,081
PLUS Loans		27,617,343	47,097,912	29,043,731	21,166,078	21,954,892	11,130,306	9,663,133	9,392,363
Estimated Net Budget Impact using PB 2015 Subsidy Rates									
Pell Grants		162,749,002	277,547,995	171,154,706	124,731,701	129,380,182	65,590,893	56,944,845	55,349,195
Subsidized loans		14,749,544	30,470,919	20,301,361	15,603,212	17,023,108	9,141,351	8,043,317	7,859,520
Unsubsidized loans		(26,561,084)	(38,782,704)	(22,350,454)	(15,267,417)	(14,948,815)	(6,891,687)	(5,900,996)	(5,742,306)
PLUS Loans		(7,556,105)	(11,765,058)	(6,813,659)	(4,897,831)	(4,955,219)	(2,420,842)	(2,097,866)	(1,994,938)
Total		**143,381,358**	**257,471,152**	**162,291,953**	**120,169,666**	**126,499,256**	**65,419,716**	**56,989,300**	**55,471,471**

Table 40: Estimated Net Budget Impacts (NCES Enrollment Assumption) - High Reaction Scenario

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs									
Overall title IV enrollment	4,276,789	4,340,693	4,412,644	4,478,297	4,533,648	4,575,946	4,634,444	4,693,690	4,753,695
Model Not Evaluated	1,015,313	1,030,484	1,276,358	1,465,227	1,588,534	1,668,185	1,772,033	1,840,753	1,899,133
Enrolled in Programs Passing both metrics	1,968,777	2,446,637	2,565,023	2,580,450	2,594,249	2,617,894	2,645,280	2,647,550	2,650,686
Enrolled in DTE Zone Programs with non-failing CDR	360,201	484,146	360,512	277,234	226,195	183,004	141,100	133,096	132,041
Enrolled in Programs Failing for the First Time	932,498	236,608	89,132	74,410	60,589	48,996	38,232	37,073	36,945
Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	13,688	4,704	3,474	2,337	1,392	1,087	1,054

	Enrolled in Ineligible Programs	N/A	-	6,844	3,116	1,976	4,304	779	593	565
	Dropping Out/ Not Attending Non-Passing Programs	N/A	142,818	101,086	73,155	58,632	51,226	35,628	33,540	33,271
Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		398,763,565	301,350,559	212,957,577	169,222,758	155,047,005	101,651,916	95,302,478	94,474,685
	Subsidized Loans		374,497,068	283,012,067	199,998,183	158,924,817	145,611,720	95,465,955	89,502,908	88,725,489
	Unsubsidized Loans		479,935,906	362,693,501	256,307,238	203,669,755	186,608,384	122,344,188	114,702,258	113,705,958
	PLUS Loans		67,667,328	51,137,037	36,137,379	28,715,893	26,310,369	17,249,604	16,172,150	16,031,679
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		398,763,565	301,350,559	212,957,577	169,222,758	155,047,005	101,651,916	95,302,478	94,474,685
	Subsidized loans		36,138,967	33,084,111	25,259,770	21,168,786	20,400,202	14,167,148	13,461,237	13,415,294
	Unsubsidized loans		(65,079,309)	(42,108,716)	(27,809,335)	(20,713,214)	(17,914,405)	(10,680,648)	(9,875,864)	(9,801,454)
	PLUS Loans		(18,513,781)	(12,774,032)	(8,477,829)	(6,644,858)	(5,938,250)	(3,751,789)	(3,510,974)	(3,405,129)
	Total		**351,309,443**	**279,551,923**	**201,930,183**	**163,033,472**	**151,594,551**	**101,386,628**	**95,376,877**	**94,683,396**

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 35, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of the proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of the proposed regulations. Expenditures are classified as transfers from the Federal Government to students receiving title IV, HEA program funds and from low-performing programs to higher-performing programs. Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another.

In order to generate the estimates presented, the Department made several assumptions about projected enrollments, aid amounts, programs covered by the proposed regulations, student reaction to program performance, and the likelihood of program results under the GE measures changing from year to year.

TABLE 41—ACCOUNTING STATEMENT

	Low reaction scenario		High reaction scenario	
Category	Benefits			
Improved market information and development of measures linking programs to labor market outcomes	Not Quantified		Not Quantified	
Better return on money spent on education	Not Quantified		Not Quantified	
Category	Costs			
Discount Rate	3%	7%	3%	7%
Additional expense of educating transfer students at passing programs	$162	$173	$220	$236
Cost of Compliance with Paperwork Burden	$54.8 (3%); $58.5 (7%)			
Category	Transfers			
Discount Rate	3%	7%	3%	7%
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$70	$75	$103	$110
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$1,353	$1,447	$1,837	$1,974
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$660	$705	$896	$962

Sensitivity Analysis

We have also prepared alternative accounting statements using varied student response and program performance assumptions to demonstrate the sensitivity of the estimated effects of the proposed regulations to these factors. The assumptions about institution and student reactions are critical to this analysis. We offer several scenarios to illuminate how varying these assumptions would affect the title IV, HEA programs and institutions offering GE programs. We attempt to offer extreme scenarios in order to bound the estimates of effects although we believe these extreme scenarios are unlikely to occur.

Alternative Program Performance Assumptions

In addition to the primary program response assumptions provided in Table 31, we created two additional program response scenarios, a negative program response assumption and a positive program response assumption.

Negative Program Response: In this extreme worst case scenario, we assumed institutions would have no success in improving programs over time so the program performance transition rates are held constant. Table 42 presents the program response for this assumption.

TABLE 42—NEGATIVE PROGRAM RESPONSE ASSUMPTION

Result	Result in subsequent year					
Evaluated Year	Pass	Zone	First fail	Second fail	Ineligible	Not evaluated
Pass	25%	50%	20%	0%	0%	5%
Zone	0%	20%	75%	0%	0%	5%
First Fail	0%	0%	0%	0%	100%	0%
Second Fail	0%	0%	0%	0%	100%	0%
Not Evaluated	0%	0%	15%	0%	0%	85%

Positive Program Response: In this best case scenario, we assume institutions would be highly successful in improving program performance and the rate of improvement would accelerate as institutions have more time to adjust to the proposed regulations. Table 43 presents the program response for this assumption.

Table 43: Positive Program Response Assumption

Result	Result in Subsequent Year					
Years 1-3	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	80%	15%	0%	0%	0%	5%
Zone	75%	20%	0%	0%	0%	5%
First Fail	50%	40%	0%	0%	0%	10%
Second Fail	50%	40%	0%	0%	0%	10%
Not Evaluated	15%	0%	0%	0%	0%	85%
Year 4 and later	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	85%	10%	0%	0%	0%	5%
Zone	85%	10%	0%	0%	0%	5%
First Fail	75%	20%	0%	0%	0%	10%
Second Fail	75%	20%	0%	0%	0%	10%
Not Evaluated	15%	0%	0%	0%	0%	85%

Alternative Student Response Assumptions

Zero Student Response: In this extreme scenario, we assume that students would have no reaction to program results, regardless of the outcome. As a result, there would be no student transfers or drop outs and associated costs or economic transfers in response to the proposed regulations. There would still be a net budget impact due to students remaining in ineligible programs for which they could no longer receive title IV, HEA program funds. We applied the zero student response scenario to the primary program response assumption described in ‘‘Discussion of Costs, Benefits, and Transfers,’’ the positive program response alternative assumption, and the negative program response alternative assumption. Under the primary program response assumption, the annualized net budget impact for the no student response scenario would be $157 million at a 3 percent discount rate and $167 million at a 7 percent discount rate. As no programs become ineligible under the positive program response assumption, the net budget impact would be $0 in that scenario. For the negative program response assumption, the annualized net budget impact would be $1 billion.

Student Response Only to Ineligibility: We assumed two scenarios where students would not react to warnings and disclosures, but might have some reaction when a program becomes ineligible for title IV, HEA program funds. The first scenario assumes 50 percent of students would drop out and 50 percent of students would transfer when faced with ineligibility. The second scenario evenly divides the responses between students who would drop out, transfer, and remain in the program. Table 44 presents the student response assumptions for these two scenarios. For transfers in both scenarios, 85 percent of students who transfer are assumed to transfer to passing programs and 15 percent to zone programs. This matches the split of enrollment in passing and zone programs as a percent of enrollment in evaluated programs that did not fail in the 2012 GE informational rates sample.

Table 44: Assumptions for Student Response Only to Ineligibility Scenarios

Response of students receiving title IV, HEA program funds	Rate of Student Response	
	No Reaction Until Ineligibility	
	34% Drop, 33% Transfer and 33% Remain	50% Drop,50% Transfer
Program receives zone result		
Transfers to passing program	33%	0%
Remains in program	33%	100%
Drops out	34%	0%
Program fails for first time		
Transfers to passing program	28%	0%
Transfers to zone program	5%	0%
Remains in program	33%	100%
Drops out	34%	0%
Program fails for second time		
Transfers to passing program	28%	0%
Transfers to zone program	5%	0%
Remains in program	33%	100%
Drops out	34%	0%
Programs becomes ineligible		
Transfers to passing program	28%	42.5%
Transfers to zone program	5%	7.5%
Remains in program	33%	0%
Drops out	34%	50%

The costs and transfers associated with the student response only to ineligibility scenarios are provided in Tables 45 and 46. Only the primary program and negative program response scenarios are provided as no programs reach ineligibility under the positive program assumption.

Table 45: Costs and Transfers Associated with Student Response Only to Ineligibility: 50 Percent Drop Out/50 Percent Transfer

	No Student Reaction Until Ineligibility; Then 50% Drop and 50% Transfer			
Estimates	**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	36,000		288,000	
Average Annual Student Dropouts over 2017-2024	36,000		288,000	
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$37	$39	$283	$286
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$81	$85	$633	$640
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$281	$297	$2,167	$2,194
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$137	$145	$1,057	$1,070

Table 46: Costs and Transfers Associated with Student Response Only to Ineligibility: 34 Percent Drop Out, 33 Percent Transfer, 33 Percent Remain

	No Student Reaction Until Ineligibility; Then 34% Drop, 33% Transfer and 33% Remain			
Estimates	**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	23,000		176,000	
Average Annual Student Dropouts over 2017-2024	24,000		181,000	
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$24	$25	$174	$177
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$107	$113	$789	$800
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$184	$195	$1,332	$1,354
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$90	$95	$649	$660

Strong Student Response to Program Results: We also assumed three scenarios in which students are highly responsive to program performance. The first scenario assumes 100 percent of students would drop out in response to any non-passing program result. The effect of this scenario is reflected in the transfer of title IV, HEA program funds from students at non-passing programs to the Federal Government as they drop out of postsecondary education. The second scenario assumes that 100 percent of students would transfer in response to any non-passing program result, with 85 percent of those who transfer assumed to transfer to passing programs and 15 percent to zone programs. The third scenario evenly divides the responses between students who will drop out, transfer, and remain in the program. Table 47 presents the student response assumptions for these three scenarios.

Table 47: Assumptions for Strong Student Response Scenarios

Response of students receiving title IV, HEA program funds	Rate of student response		
	Strong Student Reactions		
	100% Drop for any Non-Passing Result	100% Transfer for any Non-Passing Result	34% Drop, 33% Transfer and 33% Remain for any Non-Passing Result
Program receives zone result			
Transfers to passing program	0%	100%	33%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Program fails for first time			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Program fails for second time			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Programs becomes ineligible			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%

The costs and transfers associated with the strong student response scenarios are provided in Tables 48, 49, and 50.

Table 48: Costs and Transfers Associated with Strong Student Response: 100 Percent Drop Out Scenario

100% Drop for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024						
Average Annual Student Dropouts over 2017-2024	312,000		250,000		587,000	
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$0	$0	$0	$0	$0	$0
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$693	$739	$556	$603	$1,302	$1,374
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$0	$0	$0	$0	$0	$0
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$0	$0	$0	$0	$0	$0

Table 49: Costs and Transfers Associated with Strong Student Response: 100 Percent Transfer Scenario

100% Transfer for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	303,000		349,000		1,739,000	
Average Annual Student Dropouts over 2017-2024						
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$301	$324	$322	$347	$1,465	$1,493
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$0	$0	$0	$0	$0	$0
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$2,833	$3,021	$2,750	$2,956	$13,150	$13,385
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,381	$1,473	$1,341	$1,441	$6,411	$6,526

Table 50: Costs and Transfers Associated with Strong Student Response: 34 Percent Drop Out, 33 Percent Transfer, 33 Percent Remain Scenario

34% Drop, 33% Transfer, and 33% Remain for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	85,000		117,000		354,000	
Average Annual Student Dropouts over 2017-2024	110,000		121,000		364,000	
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$90	$98	$109	$118	$326	$339
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$244	$261	$281	$301	$925	$957
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$841	$904	$925	$997	$2,721	$2,833
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$410	$441	$451	$486	$1,327	$1,381

Return on Investment Analysis

Students who transfer to better-performing programs would be expected to experience higher earnings. However, some students that leave postsecondary education in response to their program's performance under the proposed regulations would lose the associated earnings gains. As an illustrative example, we estimated the change in the lifetime earnings associated with postsecondary education for the estimated number of students who would transfer and who would dropout because of the proposed regulations. We offer this example to underscore that increased earnings from postsecondary education is a necessary condition for students to pay back their student debt obligations.

Assumptions and Methodology

Our budget estimate generates a number of students who drop out in response to a non-passing program result and makes no assumption about their future education. For this analysis, we assume that they do not return to postsecondary education. Table 51 shows the estimated transfers and dropouts used for the analysis of the impact of the proposed regulations on earnings.

Table 51: Estimated Transfers and Dropouts for Return on Investment Analysis

High Reaction Scenario	2016	2017	2018	2019	2020	2021	2022	2023	2024
Fail to Zone	0	197,845	104,403	77,756	63,108	57,100	39,360	38,089	38,394
Fail to Pass	0	179,859	103,865	74,542	60,017	56,372	36,871	35,477	35,731
Zone to Pass	0	103,000	127,470	105,593	89,528	68,768	59,140	56,237	56,487
	2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Drop	0	71,944	43,735	30,803	24,668	23,834	15,020	14,402	14,497
Zone to Drop	0	18,311	22,661	18,772	15,916	12,225	10,514	9,998	10,042
Total Drops	**0**	**90,255**	**66,396**	**49,575**	**40,584**	**36,060**	**25,534**	**24,399**	**24,539**
Low Reaction Scenario	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Zone	0	89,929	86,122	55,818	43,701	41,786	24,432	22,433	22,309
Fail to Pass	0	119,906	110,277	71,785	56,648	53,254	31,889	29,396	29,257
Zone to Pass	0	68,666	85,914	78,911	68,740	53,587	46,884	43,537	43,250
	2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Drop	0	29,976	29,408	18,830	14,764	14,065	8,227	7,543	7,501
Zone to Drop	0	6,867	8,591	7,891	6,874	5,359	4,688	4,354	4,325
Total Drops	**0**	**36,843**	**37,999**	**26,721**	**21,638**	**19,424**	**12,915**	**11,897**	**11,825**

Based on these transfer and dropout assumptions, we calculated the net present value of total lifetime earnings based on the age-profile of earnings for a high school graduate assuming work between ages 24 and 64, as provided in Table 52, and valued each transfer category (fail to zone, fail to pass, zone to pass, fail to drop, and zone to drop) based on the difference in the net present value of lifetime earnings. The net present value was discounted for two rates, 3 percent and 7 percent, and we assumed a return on investment (in terms of the percentage improvement in earnings at every age), using the earnings of a worker with a high school degree as a baseline, of 2 percent for students who attend a failing program, 4 percent for a zone program, and 6 percent for a passing program. We calculated earnings differentials for both the low reaction and high reaction student response scenarios.

Table 52: Wage Profile of High School Workers

Age	Average Salary for HS Workers (CPS)	Fail (2% return)	Zone (4% return)	Pass (6% return)
24	$16,808	$336	$672	$1,008
25	$19,823	$396	$793	$1,189
26	$20,617	$412	$825	$1,237
27	$19,829	$397	$793	$1,190
28	$24,660	$493	$986	$1,480
29	$22,006	$440	$880	$1,320
30	$23,854	$477	$954	$1,431
31	$26,070	$521	$1,043	$1,564
32	$27,042	$541	$1,082	$1,623
33	$26,466	$529	$1,059	$1,588
34	$27,171	$543	$1,087	$1,630
35	$28,851	$577	$1,154	$1,731
36	$30,830	$617	$1,233	$1,850
37	$29,441	$589	$1,178	$1,766
38	$32,280	$646	$1,291	$1,937
39	$28,145	$563	$1,126	$1,689
40	$29,914	$598	$1,197	$1,795
41	$29,845	$597	$1,194	$1,791
42	$32,901	$658	$1,316	$1,974
43	$31,600	$632	$1,264	$1,896
44	$29,614	$592	$1,185	$1,777
45	$30,331	$607	$1,213	$1,820
46	$32,983	$660	$1,319	$1,979
47	$30,504	$610	$1,220	$1,830
48	$32,425	$649	$1,297	$1,946
49	$32,997	$660	$1,320	$1,980
50	$33,579	$672	$1,343	$2,015

51	$31,721	$634	$1,269	$1,903
52	$34,156	$683	$1,366	$2,049
53	$33,552	$671	$1,342	$2,013
54	$32,730	$655	$1,309	$1,964
55	$35,061	$701	$1,402	$2,104
56	$34,222	$684	$1,369	$2,053
57	$31,637	$633	$1,265	$1,898
58	$31,723	$634	$1,269	$1,903
59	$33,428	$669	$1,337	$2,006
60	$27,317	$546	$1,093	$1,639
61	$27,515	$550	$1,101	$1,651
62	$30,987	$620	$1,239	$1,859
63	$28,892	$578	$1,156	$1,734
64	$27,423	$548	$1,097	$1,645
PDV (3% discount rate):		$14 ,794	$29,587	$44,381
PDV (7% discount rate):		$7,305	$14,610	$21,915

Source: Analysis of CPS data

Earnings Differential Estimates

Our return on investment estimates are presented in Table 53. For students who dropout, we estimate a loss of earnings ranging from $2.8 billion and $6.9 billion in the high reaction scenario at 7 percent and 3 percent discounting, respectively, compared to $1.3 billion and $3.3 billion in the low reaction scenario at 7 percent and 3 percent discounting, respectively. For students who remain in postsecondary education and transfer to higher-performing programs, the lifetime gain in earnings ranges between $14.6 billion (7 percent) and $35.5 billion (3 percent) in the high reaction scenario and $11.1 billion (7 percent) and $27.1 billion (3 percent) in the low reaction scenario.

Table 53: Earnings Differential Analysis

	3% DISCOUNT RATE:			7% DISCOUNT RATE:		
High Reaction Scenario	**NPV of switch**		**2016-2026 NPV**	**NPV of switch**		**2016-2026 NPV**
Fail to Zone	$14,794		$8,893,568,138	$7,305		$3,694,289,179
Fail to Pass	$29,587		$16,792,727,610	$14,610		$6,973,249,265
Zone to Pass	$14,794		$9,778,392,031	$7,305		$3,945,222,735
Fail to Drop	-$14,794		-$3,437,997,414	-$7,305		-$1,427,315,398
Zone to Drop	-$29,587		-$3,476,761,611	-$14,610		-$1,402,745,861
Total Cost/Benefit			**$28,549,928,754**			**$11,782,699,920**
Low Reaction Scenario	**NPV of switch**		**2016-2026 NPV**	**NPV of switch**		**2016-2026 NPV**
Fail to Zone	$14,794		$5,521,786,224	$7,305		$2,284,886,349
Fail to Pass	$29,587		$14,369,008,445	$14,610		$5,946,969,853
Zone to Pass	$14,794		$7,199,997,645	$7,305		$2,890,047,931
Fail to Drop	-$14,794		-$1,861,102,532	-$7,305		-$770,113,015
Zone to Drop	-$29,587		-$1,439,999,529	-$14,610		-$578,009,586
Total Cost/Benefit			**$23,789,690,252**			**$9,773,781,532**

Regulatory Alternatives Considered

As part of the development of the proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing institutions, consumer advocates, students, financial aid administrators, accreditors, and State Attorneys General. The non-Federal negotiators submitted a variety of proposals relating to placement rates, student protections for failing programs, exemptions for programs with low borrowing or default rates, rigorous approval requirements for existing and new programs, as well as other proposals. Information about these proposals is available on the GE Web site at *http://www2.ed.gov/policy/*

highered/reg/hearulemaking/2012/gainfulemployment.html.

In addition to the proposals from the non-Federal negotiators and the public, the Department considered alternatives to the proposed regulations based on its own analysis. We considered both alternative provisions within the GE measures we have proposed, as well as alternatives to the GE measures themselves. Important alternatives that were considered are discussed below and Table 60 summarizes the estimated impacts of key alternatives considered for the calculation of the D/E rates. We welcome comments on the alternatives discussed and will consider any such feedback in the development of the final regulations.

Alternative Components of D/E Rates Measure

N-Size

For the purpose of calculating the D/E rates measure, we considered reducing the n-size for program evaluation to 10 students who completed a program in a two-year cohort period. As a result, 11,050 programs, or programs accounting for approximately 75 percent of the FY 2010 enrollment of students receiving title IV, HEA program funds, would be subject to evaluation on at least one GE measure, as opposed to 60 percent if we use a program n-size of 30. Although we believe an n-size of 10 students who complete the program would be reasonable for the D/E rates, we elected to retain the n-size of 30 for both GE measures, but to include those who completed over a four-year period if needed to achieve a 30-student cohort for a given program. Our data shows that, using the two-year cohort period, 5,539 programs have enough students who completed the program to satisfy an n-size of 30, with those students representing approximately 60 percent of students who received title IV, HEA program funds for enrolling in a program. Further, we estimate that, by using both a two-year cohort period and a four-year cohort period, we would include in the D/E rates measure calculation approximately 70 percent of students who received title IV, HEA program funds for enrolling in GE programs.

TABLE 54—EFFECT OF N-SIZE ON PROGRAMS EVALUATED UNDER THE D/E RATES MEASURE

Result	N=10		N=30	
	Programs	Enrollment	Programs	Enrollment
Pass	9,023	2,058,028	4,256	1,715,421
Zone	1,271	495,936	832	446,719
Fail	756	395,717	451	359,143
Total	11,050	2,949,681	5,539	2,521,283

Interest Rates

The interest rate used in the D/E rates calculations has a substantial effect on the performance of programs with respect to the D/E rates measure.

TABLE 55—INTEREST RATE IMPACT ON D/E RATES RESULTS (TOTAL 5,539 PROGRAMS)

Interest Rate	3%	4%	5%	6%	7%	8%	9%
Passing Programs	4,555	4,441	4,304	4,185	4,033	3,919	3,795
Zone Programs	670	728	807	855	948	986	1,033
Failing Programs	314	370	428	499	558	634	711

Note: 10–15–20 amortization, minimum program n-size of 30, 2008–2009 two-year cohort period.

The Department considered several options. Some non-Federal negotiators suggested using the actual rates on an individual borrower level, but we believe that would be unnecessarily complicated. Although the calculation of the D/E rates is based on a group of students who completed a program over a particular two- or four-year period, the date on which each of these students may have taken out a loan and, with it, the interest rate on that loan, varies. Averaging the interest rates over the six years prior to the end of the applicable cohort period is designed to approximate the interest rate that a large percentage of the students in the calculation received, even those students who attended four-year programs, and to mitigate any year-to-year fluctuations in the interest rates that would cloud the performance of programs under the D/E rates measure.

TABLE 56—OPTIONS FOR DETERMINING INTEREST RATE[168] FOR D/E RATES CALCULATION

		Four-year average			Three-year average			Two-year average		
2YP	2YPMED	UG (%)	GRAD (%)	MED (%)	UG (%)	GRAD (%)	MED (%)	UG (%)	GRAD (%)	MED (%)
08–09	05–06	6.43	6.43	4.04	6.80	6.80	4.03	6.80	6.80	4.34
11–12	08–09	6.80	6.80	6.43	6.80	6.80	6.80	6.80	6.80	6.80
12–13	09–10	6.80	6.80	6.80	6.80	6.80	6.80	6.80	6.80	6.80
13–14	10–11	6.07	6.45	6.80	5.82	6.34	6.80	5.33	6.11	6.80
14–15	11–12	5.61	6.38	6.80	5.21	6.24	6.80	4.42	5.97	6.80
15–16	12–13	5.26	6.42	6.80	4.75	6.29	6.80	5.19	6.73	6.80
16–17	13–14	4.99	6.53	6.45	5.37	6.90	6.34	5.57	7.09	6.11

Amortization Period

The proposed regulations apply the same 10-, 15-, 20-year amortization periods by credential level as under the 2011 Prior Rule. Accordingly, under the proposed regulations, in calculating the annual loan payment for the purpose of the D/E rates measure, we would use a 10-year amortization period for certificate and associate degree programs, a 15-year amortization period for baccalaureate and master's degree programs, and a 20-year amortization period for doctorate and first professional degree programs. We did consider several options and presented, as an alternative, a 10-year amortization period for all programs, which we believe is reasonable especially in light of the decision to evaluate graduate programs on graduate-level debt only. As discussed in ''§ 668.404 Calculating D/E rates'' in *Significant Proposed Regulations,* we looked at available data on the repayment plan selection of existing borrowers, the repayment patterns of older loan cohorts, and available amortization periods for different loan balances under consolidation loan repayment rules. Although the prevalence of the standard 10-year repayment plan and data related to older cohorts could support 10-year amortization for all credential levels, the Department retained the split amortization approach for the proposed regulations. Growth in loan balances, the introduction of plans with longer repayment periods than were available when those older cohorts were in repayment, and some differentiation in repayment periods by credential level in more recent cohorts contributed to this decision.

As expected, extending the amortization period would reduce the number of programs that fail the D/E rates measure. The greatest effect would be on graduate-level programs. As can be seen in Tables 57 and 58, when the 10-year and 20-year amortization periods are applied, the D/E rates measure failure rate across all sectors and credential levels changes from 9.0 percent (for 10-year amortization) to 2.8 percent (for 20-year amortization), but for first professional degrees, from 70 percent to 30 percent, and from 45.5 percent to 25.8 percent for bachelor's degrees.

[168] Projected interest rates from Budget Service used in calculations requiring interest rates for future award years.

TABLE 57—D/E RATES RESULTS BY SECTOR AND CREDENTIAL (5.42% INTEREST RATE, N-SIZE OF 30, 10-YEAR AMORTIZATION)

Sector & IHE type	Credential level	Programs	Pass	Zone	Fail	Pass%	Zone%	Fail %
		Public						
<2 year	Certificate	157	157	0	0	100.00	0.00	0.00
2-year	Certificate	824	823	1	0	99.88	0.12	0.00
4-year	Certificate	86	84	1	1	97.67	1.16	1.16
	Post-Bacc Certificate	26	26	0	0	100.00	0.00	0.00
		Private						
<2 year	Certificate	49	48	1	0	97.96	2.04	0.00
2-year	Certificate	73	70	3	0	95.89	4.11	0.00
	Post-Bacc Certificate	1	1	0	0	100.00	0.00	0.00
4-year	Certificate	91	88	1	2	96.70	1.10	2.20
	Post-Bacc Certificate	39	38	0	1	97.44	0.00	2.56
		For-Profit						
<2 year	Certificate	1,100	919	153	28	83.55	13.91	2.55
	Associate's	5	4	1	0	80.00	20.00	0.00
	1st Professional Degree	4	4	0	0	100.00	0.00	0.00
2-year	Certificate	1,223	969	217	37	79.23	17.74	3.03
	Associate's	452	236	153	63	52.21	33.85	13.94
	Post-Bacc Certificate	2	2	0	0	100.00	0.00	0.00
4-year	Certificate	267	180	68	19	67.42	25.47	7.12
	Associate's	514	206	164	144	40.08	31.91	28.02
	Bachelor's	407	175	47	185	43.00	11.55	45.45
	Post-Bacc Certificate	8	8	0	0	100.00	0.00	0.00
	Master's	171	153	6	12	89.47	3.51	7.02
	Doctoral	30	26	2	2	86.67	6.67	6.67
	1st Professional Degree	10	2	1	7	20.00	10.00	70.00
Total		5,539	4,219	819	501	76.17	14.79	9.04

Table 58: D/E Rates Results by Sector and Credential (5.42% Interest Rate, N-Size of 30, 20-Year Amortization

Sector & IHE Type	Credential Level	Programs	Pass	Zone	Fail	Pass%	Zone %	Fail %
Public								
<2 year	Certificate	157	157	0	0	100.00%	0.00%	0.00%
2-year	Certificate	824	824	0	0	100.00%	0.00%	0.00%
4-year	Certificate	86	86	0	0	100.00%	0.00%	0.00%
	Post-Bacc Certificate	26	26	0	0	100.00%	0.00%	0.00%
Private								
<2 year	Certificate	49	49	0	0	100.00%	0.00%	0.00%
2-year	Certificate	73	73	0	0	100.00%	0.00%	0.00%
	Post-Bacc Certificate	1	1	0	0	100.00%	0.00%	0.00%
4-year	Certificate	91	89	1	1	97.80%	1.10%	1.10%
	Post-Bacc Certificate	39	38	1	0	97.44%	2.56%	0.00%
For-Profit								
<2 year	Certificate	1,100	1,079	19	2	98.09%	1.73%	0.18%
	Associate's	5	5	0	0	100.00%	0.00%	0.00%
	1st Professional Degree	4	4	0	0	100.00%	0.00%	0.00%
2-year	Certificate	1,223	1,192	31	0	97.47%	2.53%	0.00%
	Associate's	452	398	44	10	88.05%	9.73%	2.21%
	Post-Bacc Certificate	2	2	0	0	100.00%	0.00%	0.00%
4-year	Certificate	267	250	16	1	93.63%	5.99%	0.37%
	Associate's	514	390	102	22	75.88%	19.84%	4.28%
	Bachelor's	407	230	72	105	56.51%	17.69%	25.80%
	Post-Bacc Certificate	8	8	0	0	100.00%	0.00%	0.00%
	Master's	171	159	4	8	92.98%	2.34%	4.68%
	Doctoral	30	28	2	0	93.33%	6.67%	0.00%
	1st Professional Degree	10	4	3	3	40.00%	30.00%	30.00%
Total		5,539	5,092	295	152	91.93%	5.33%	2.74%

D/E Rate Thresholds and the Zone

We also considered the related issues of the appropriate thresholds for the D/E rates measure and whether there should be a zone. The proposed regulations would establish stricter passing thresholds than the thresholds in the 2011 Prior Rule. The passing threshold for the discretionary income rate would be 20 percent instead of 30 percent, and the threshold for the annual earnings rate would be 8 percent instead of 12 percent. Additionally, the proposed regulations add a zone category for programs with a discretionary income rate greater than 20 percent but less than or equal to 30 percent or an annual earnings rate greater than 8 percent but less than or equal to 12 percent.

The proposed passing thresholds for the discretionary income rate and the annual earnings rate are based upon mortgage industry practices and expert recommendations. The passing threshold for the discretionary income rate is set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz, which the Department previously considered in connection with the 2011 Prior Rule.[169] Specifically, Baum and Schwartz concluded that the debt payment-to-discretionary income ratio should never exceed 17 to 20 percent, and that ''there are virtually no circumstances under which higher debt service ratios would be reasonable.''[170] The passing threshold of 8 percent for the annual earnings rate used in the proposed regulations has been a fairly common credit-underwriting standard. It is based on the recommendation made by many lenders that student and all other loan installments not exceed 8 percent of the borrower's pretax income so that the borrower has sufficient funds available to cover taxes, car payments, rent or mortgage payments, and household expenses. Indeed, other studies have also accepted the 8 percent standard, and some State agencies have established similar guidelines. These percentages are derived from home mortgage underwriting criteria where total household debt should not exceed 38 to 45 percent of pretax income, with 30 percent being available for housing-related debt.[171]

In the 2011 Prior Rule, the passing thresholds for the debt-to-earnings ratios were based on the same expert recommendations and industry practice, but were increased by 50 percent to 30 percent for the discretionary income rate and 12 percent for the annual earnings rate to identify the lowest-performing GE programs and to build in a tolerance. 76 FR 34400.

TABLE 59—D/E RATES MEASURE RESULTS FOR ALTERNATIVE THRESHOLDS

Result	12/30 no zone		8/20 w/zone	
	Programs	Enrollment	Programs	Enrollment
Pass	5,088	2,162,140	4,256	1,715,421
Zone	N/A	N/A	832	446,719
Fail	451	359,143	451	359,143
Total	5,539	2,521,283	5,539	2,521,283

Upon further consideration of this issue and analysis of the GE Data, we believe that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a ''tolerance'' into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries for a zone rather than as the passing thresholds.

Estimated Effects of the D/E Rates Alternatives

In order to consider the alternatives for calculation of the D/E rates and to provide information to potential commenters, we estimated the impacts of the alternatives. The results are summarized in Table 42 and are the equivalent of the annualized costs and transfers in the Accounting Statement for the proposed regulations. To evaluate the alternatives, the same data, methods, and assumptions were used as for the estimates for the proposed regulations as described in ''Methodology for Costs, Benefits, and Transfers'' and the ''Net Budget Impacts'' sections of this regulatory impact analysis. The alternatives considered would result in different estimated distributions of enrollment in passing, zone, and failing programs under the proposed regulations, leading to the results in Table 42.

TABLE 60—ESTIMATED EFFECTS OF D/E RATES ALTERNATIVES

Estimates	N=10, 10–15–20 Amortization			
	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		175,000		236,000
Average Annual Student Dropouts over 2017–2024		23,000		45,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$164	$176	$223	$240
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	71	76	104	112
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,373	1,468	1,864	2,002
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	670	716	909	976

[169] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[170] Id.

[171] Id.

Estimates	N=30, 10 Year Amortization for All Credentials			
	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		175,000		236,000
Average Annual Student Dropouts over 2017–2024		23,000		45,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$164	$176	$223	$240
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	71	76	104	112
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,375	1,472	1,865	2,006
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	670	718	910	978

Estimates	N=30, 20 Year Amortization for All Credentials			
	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		157,000		214,000
Average Annual Student Dropouts over 2017–2024		21,000		41,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$147	$156	$201	$215
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	64	68	94	100
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,227	1,302	1,675	1,785
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	598	635	817	870

Discretionary Income Rate

Instead of two debt-to-earnings ratios, the annual earnings rate and the discretionary income rate, we considered a simpler approach where only the discretionary income rate would be used as a metric. However, this would have led to any program with earnings below the discretionary income level failing the measure. Having a single discretionary income-based metric would essentially set a minimum earnings threshold for the proposed regulations, even if the debt for students completing the program was very low. Because of this, the Department retained the annual earnings rate metric of the 2011 Prior Rule. For programs with very low earnings but also very low debt, we believe that the transparency requirements are a more effective regulatory approach. With information about program outcomes available through the proposed disclosures, students would be able to make their own assessment of whether the potential earnings would meet their goals and expectations.

Pre-Post Earnings Comparison

The Department also considered an approach that would compare pre-program and post-program earnings to capture the near-term effect of the program. This approach had been suggested by commenters responding to the 2011 Prior Rule, especially for short-term programs, and has some merit conceptually. However, earnings immediately before enrollment may not be an accurate measure of an individual's baseline earning potential without the program. Pre-enrollment earnings are particularly unlikely to reflect earnings potential for dependent students, workers returning to school after becoming unemployed, or those using their training to switch fields. Moreover, such a measurement would not identify programs where large numbers of students are taking out debts they cannot afford to repay.

pCDR Thresholds

As described in ''§ 668.403 Gainful employment framework'' in *Significant Proposed Regulations,* we modeled pCDR on the cohort default rate metric that is currently used to determine institutional eligibility to participate in title IV, HEA programs. Thus, in addition to adopting the iCDR threshold under which an institution loses eligibility if it has three consecutive fiscal years of a pCDR of 30 percent or greater, we considered adopting the second threshold, which is that an institution loses eligibility if it has one year of an iCDR of 40 percent or greater. Of the 6,815 programs in the 2012 GE informational rates sample with pCDR data, 233 have a default rate of 40 percent or more. However, we do not believe that a measure that results in the loss of program eligibility after only a single year of failure is consistent with our overall approach to allow institutions time to improve their programs, particularly during the initial years of implementation of the regulations.

Negative Amortization

Another proposal the Department considered was a variation on a repayment metric that would compare the total amounts owed at the beginning and end of the calculation year for borrowers from a program who entered repayment in the two-year period, without regard to whether the borrower completed the program, to determine if borrower payments reduced that balance over the course of the calculation year. Different variations of this measure were considered, including a comparison of total balances and a comparison of principal balances only. The measure would have been an additional metric that would have accounted for the performance of students who did not complete the program.

Ultimately, the Department decided not to propose negative amortization as an eligibility metric in the proposed regulations because we were unable to draw clear conclusions from the data available.

Programs With Low Rates of Borrowing

Several negotiators argued that low-cost, and consequently low-risk, programs where borrowing is largely unnecessary should not be subject to the D/E rates measure because the measure would not accurately reflect the level of borrowing by individuals enrolled in the program and the low cost of the program. The negotiators claimed that, for many low-cost programs, students receiving title IV, HEA program funds constitute only a small, unrepresentative portion of the students in terms of borrowing behavior. They argued that, for these programs, the percentage of students who receive title IV, HEA program funds and incur debt to enroll in the program is significantly greater than the percentage of all students who incur debt to enroll in the program. According to the negotiators, a program in which a majority of students have no debt is unlikely to produce graduates whose educational debts would be excessive because the tuition and costs are likely to be modest and require little borrowing, and therefore would not place the Federal investment in the program at significant risk. To more adequately account for low-cost, low-risk programs, the negotiators suggested that a GE program should pass the D/E rates measure if (1) the median loan debt of all individuals who complete the program in the applicable cohort period (both individuals who received, and who did not receive, title IV, HEA program funds) is zero, or (2) the program has a borrowing rate of less than 50 percent.

A program with a borrowing rate of less than 50 percent may not, in fact, be low risk. For example, the majority of students could have alternative resources to pay the program costs, such as employers, State grant programs, or military benefits, or the program could still have a significant number of students who received title IV, HEA program loans for enrollment in the program. Accordingly, rather than adopting a broad approach that would apply to all programs and could commonly lead to inaccurate determinations as to whether a program is low risk to students and taxpayers, the proposed regulations reserve such an inquiry to situations where a program is failing or in the zone under the D/E rates measure. The proposed regulations would permit an institution to demonstrate that a program with D/E rates that are failing or in the zone should instead be deemed to be passing the D/E rates measure because less than 50 percent of all individuals who completed the program, both those who received title IV, HEA program funds, and those who did not, had to assume any debt to enroll in the program.

Enrollment Limits and Borrower Protections

During the negotiated rulemaking sessions members of the negotiated rulemaking committee raised proposals to create borrower relief provisions for students in programs that fail the GE measures and to place additional restrictions on those program. The Department had proposed, for a program that does not pass the GE measures and is in jeopardy of losing its eligibility for title IV, HEA program funds, in addition to the student warning requirement, limits on the number of students eligible for title IV, HEA program funds who could be enrolled in the program. In response to the negotiators' concerns, the Department also proposed, in those circumstances, to require institutions to make arrangements to reduce student debt. We have not included these additional consequences in the proposed regulations.

We have not included enrollment limits in the proposed regulations as we believe that providing warnings to students and prospective students about potentially ineligible programs, along with the information that would be available through the required disclosures, provide meaningful protections and will sufficiently enable students and their families to make informed decisions about their educational investment. However, we invite comment on whether enrollment limits should be imposed on programs that could become ineligible and how those limits could be practically implemented.

We developed our debt reduction proposal in response to suggestions from negotiators representing consumer advocates and students. These negotiators argued that, while a failing or zone program would be allowed several years to pass the GE measures before becoming ineligible, students would continue to borrow to attend a program that the Department, based on the proposed regulations, may not reasonably expect would lead to gainful employment. Moreover, in the event a program lost eligibility under the GE measures, enrolled students would still be responsible for the debt they accumulated despite the fact they could not complete a program identified by the Department as failing the performance metrics.

To address this, the negotiators argued that the Department should provide loan discharges under section 437(c) of the HEA to students who borrowed for attending a program that loses eligibility under the GE measures. They contended that these borrowers would also have claims against the institution for enrolling them in a program that was offered as an eligible program, but that in fact did not meet the eligibility requirements proposed in the regulations. They observed that Federal regulations implementing section 455(h) of the HEA, 20 U.S.C. 1087e(h), allow a Direct Loan borrower to assert, as a defense to loan repayment, any claim that the borrower has against the institution, and that this existing regulation would apply to the case of a program that did not meet the standards of the proposed regulations. 34 CFR 685.206(c).[172] These negotiators further urged the Department to formally adopt, as a defense to loan repayment, a program's failure to pass the GE measures, whether or not the program eventually lost eligibility. Additionally, the negotiators suggested a variety of other remedies, including requiring institutions to refund tuition paid for a program that loses eligibility, requiring institutions to post a surety bond or letter of credit when a program receives a zone or failing result in order to provide for relief in the event that the program later becomes ineligible, and requiring all institutions intending to offer a GE program to contribute to a ''common pool'' fund to be administered by the Department that would be used to provide debt relief to students affected by a program's loss of eligibility.

One of the non-Federal negotiators submitted a proposal that would allow a program that did not pass the GE

[172] In response to these objections, we noted that the Department had already expressly interpreted section 437(c) of the HEA in controlling regulations to provide no relief for a claim that the loan was arranged for enrollment in an institution that was ineligible, or that the institution arranged the loan for enrollment in an ''ineligible program.'' 34 CFR 682.402(e); 59 FR 22470 (April 29, 1994), 59 FR 2490 (Jan. 14, 1994).

measures to remain eligible if the institution implemented a debt reduction plan that would reduce borrowing to levels that would meet the GE measures.

In response, at the second and third negotiating sessions, we drew on the negotiator proposals and presented regulatory provisions that would have required an institution with a program that could lose eligibility the following year to make sufficient funds available to enable the Department, if the program became ineligible, to reduce the debt burden of students who attended the program during that year. The amount of funds would have been approximately the amount needed to reduce the debt burden of students to the level necessary for the program to pass the GE measures. If the program were to lose eligibility, the Department would use the funds provided by the institution to pay down the loans of students who were enrolled at that time or who attended the program during the following year. We also included provisions that would allow an institution, during the transition period, to avoid these requirements by offering to every enrolled student for the duration of their program, and every student who subsequently enrolled while the program's eligibility remained in jeopardy, institutional grants in the amounts necessary to reduce loan debt to a level that would result in the program passing the GE measures. If an institution took advantage of this option, a program that would otherwise lose eligibility would avoid that consequence during the transition period.

Negotiators voiced numerous concerns about the proposed borrower relief provisions. These included whether the proposals would be sufficient to compensate students for enrolling in an ineligible program, what cohort of students would receive relief, the extent of the relief to be provided, how any monetary amounts would be calculated, and costs that would be incurred by institutions in providing relief. The nature of these discussions made clear that these are very complex issues that warrant further exploration. Accordingly, we are not including proposed language regarding borrower relief in the regulations and request comment on these issues, including other options that the Department could consider to address borrower relief concerns.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small entities of the proposed regulations. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is creating through the proposed regulations a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the HEA, to be a reasonable relationship between the loan debt incurred by students in a training program and income earned from employment after the student completes the training. The proposed regulations also assess the default experience of students who borrowed title IV, HEA program funds to attend a program.

As described in this regulatory impact analysis, the trends in graduates' earnings, student loan debt, defaults, and repayment underscore the need for the Department to act. The gainful employment accountability framework takes into consideration the relationship between total student loan debt and earnings after completion of a postsecondary program and the default experience of students who borrow title IV, HEA program loans regardless of whether they complete a program.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

As discussed in connection with the 2011 Prior Rule, the proposed regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation. 76 FR 76 FR 34498. The HEA applies different criteria for determining the eligibility of programs and institutions for title IV, HEA program funds. Id. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that ''prepare students for gainful employment in a recognized occupation.'' Generally, the HEA does not require degree programs greater than one year in length at public and non-profit institutions to meet this gainful employment requirement in order to be eligible for title IV, HEA program funds. Id. This difference in eligibility is longstanding and has been retained through many amendments to the HEA. Id. As recently as the HEOA, Congress again adopted the distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions. Id.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Regulations Would Apply

The proposed regulations would apply to programs eligible for title IV, HEA program funds because they prepare students for gainful employment in a recognized occupation. The Department estimates that approximately 6,842 programs offered by small entities could be subject to the proposed regulations, of which 2,555 would be evaluated under at least one GE measure. As stated in connection with the 2011 Prior Rule, given that the category of small entities includes some private non-profit institutions regardless of revenues, a wide range of small entities would be covered by the proposed regulations. 76 FR 34498. This continues to be true today, and the entities may include institutions with multiple programs, a few of which are covered by the proposed regulations, to single-program institutions with well-established ties to a local employer base. Id. Many of the programs that would be subject to the proposed regulations are offered by for-profit institutions and public and private non-profit institutions with programs less than two years in length. Id.

The structure of the proposed regulations and the proposed n-size provisions reduce the effect of the proposed regulations on small entities but complicate the analysis. As discussed in connection with the 2011 Prior Rule, the proposed regulations provide for the evaluation of individual GE programs offered by postsecondary institutions, but these programs are administered by the institution, either at the branch level or on a system-wide basis. 76 FR 34498. Many institutions continue to have programs that would be considered small, but the classification for this analysis is at the institutional level, as a program that is determined ineligible under the proposed regulations could affect the institution's ability to operate. Id. Table 61 demonstrates that many small entities offer a limited number of GE programs and the number of small entities that would have at least 50 percent of their programs become failing or in the zone. With a high percentage of programs that are failing or in the zone, the loss of title IV, HEA program eligibility for any program would be more likely to cause the institution to shut down than would be the case for larger entities with multiple programs.

TABLE 61—DISTRIBUTION AND GE MEASURE PERFORMANCE OF SMALL ENTITIES BY NUMBER OF PROGRAMS

Number per small entity	Number of small entities	Number of small entities with more than 50% failing	Number of small entities with more than 50% zone or failing
1	737	95	95
2	232	31	31
3	74	5	5
4	47	4	4
5	22	3	3
6	20	7	7
7	8	2	2
8	4	0	0
9	4	0	0
10	2	0	0
11	1	0	0
12	1	0	0
15	1	0	0
22	1	0	0

While private non-profit institutions are classified as small entities, our estimates indicate that no more than 2 percent of programs at those institutions are likely to fail either of the GE measures, with an even smaller percentage likely to be found ineligible. As noted in connection with the 2011 Prior Rule, the governmental entities controlling public sector institutions are not expected to fall below the 50,000 threshold for small status under the Small Business Administration's Size Standards, but, even if they do, programs at public sector institutions are highly unlikely to fail the GE measures. 76 FR 34500. This continues to hold true; therefore, our analysis of the effects on small entities focuses on the for-profit sector. The percentage of programs subject to evaluation in the for-profit sector likely to fail the GE measures is 23.4 percent for four-year institutions, 19.8 percent for two-year institutions, and 14.0 percent for less-than-two-year institutions. When modeled using the small entities only, those percentages are 34.6 percent, 12.4 percent, and 10.7 percent, respectively.

Table 62: Performance on GE Measures by Programs at Small Entities

Sector	IHE Type	Program Count				t4 Enrollment			
		Total	Pass	Zone	Fail	Total	Pass	Zone	Fail
Priv	<2 yr	54	45	1	8	9796	8172	396	1228
	2-yr	87	82	2	3	10,969	9391	1304	274
	4-yr	204	185	1	18	31,540	28,095	110	3335
For-profit	<2 yr	894	705	93	96	113,641	80,172	18,667	14,802
	2-yr	696	538	72	86	61,077	43,064	9723	8290
	4-yr	110	66	6	38	9538	5998	466	3074
Total		**2045**	**1621**	**175**	**249**	**236,561**	**174,892**	**30,666**	**31,003**

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

Table 63 relates the estimated burden of each information collection requirement to the hours and costs estimated in *Paperwork Reduction Act of 1995.* This additional workload is discussed in more detail under *Paperwork Reduction Act of 1995.* Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 1,651,551 hours in the initial year of reporting. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $60,364,201. In subsequent years, this burden would be reduced as institutions would only be reporting for a single year and we would expect the annual cost to be approximately $10 million. This cost was based on an hourly rate of $36.55.

TABLE 63—PAPERWORK REDUCTION ACT

Provision	Reg section	OMB Control No.	Hours	Costs
Issuing and Challenging D/E Rates	668.405	OMB—NEW1	85,094	3,110,175
D/E Rates Appeals	668.406	OMB—NEW2	11,677	426,779
Consequences of GE Measures	668.41	OMB—NEW1	427,091	15,610,175
Reporting Requirements of GE Programs	668.411	OMB—NEW1	202,336	7,395,398
Disclosure Requirements for GE Programs	668.412	OMB—NEW1	748,282	27,349,710
Calculating, Issuing, and Challenging Completion, Withdrawal, and Repayment Rates.	668.413	OMB—NEW1	174,126	6,364,305
Certification and Application Requirement for GE Programs	668.414	OMB—NEW1	665	24,323
Draft Program Cohort Default Rates and Challenges	668.504	OMB—NEW3	2,055	75,115
Program CDR—Uncorrected Data Adjustments	668.509	OMB—NEW3	129	4,726
Program CDR—New Data Adjustments	668.51	OMB—NEW3	31	1,143
Program CDR-Erroneous Data Appeals	668.511	OMB—NEW3	0	0
Program CDR—Loan Servicing Appeals	668.512	OMB—NEW3	45	1,649
Program CDR—Economically Disadvantaged Appeals	668.513	OMB—NEW3	16	586
Program CDR—Participation Rate Index Appeals	668.514	OMB—NEW3	3	117
Total			1,651,551	60,364,201

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations, institutions are required to disclose data in a number of areas related to the proposed regulations.

Alternatives Considered

As previously described, we evaluated the proposed regulations for their effect on different types of institutions, including the small entities that comprise approximately 60 percent of institutions that would be subject to the proposed regulations. As discussed in ''Regulatory Alternatives Considered,'' several different approaches were analyzed, including the use of different interest rates and amortization periods, placement rates, pre- and post-program earnings comparison, and different n-size for programs to be evaluated. These alternatives are not specifically targeted at small entities, but the n-size provision may have a larger effect on programs at small entities.

[FR Doc. 2014–06000 Filed 3–24–14; 8:45 am]

BILLING CODE 4000–01–P