



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

June 30, 2015

GEN-15-12

Subject: Regulatory Requirements Related to Gainful Employment Programs

Summary: This letter provides an overview of the regulatory provisions that apply to educational programs that are required to prepare students for gainful employment in a recognized occupation.

Dear Colleague:

On October 31, 2014, the Secretary published final regulations in the *Federal Register* (79 FR 64890) that apply to educational programs that are eligible to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (the HEA), because these programs “prepare students for gainful employment in a recognized occupation.” Under sections 101 and 102 of the HEA, to be Title IV eligible, an educational program must either lead to a degree awarded by a public or nonprofit institution or prepare students for gainful employment in a recognized occupation. Thus, virtually all nondegree programs (e.g., certificate programs, diploma programs) at public and nonprofit institutions and virtually all programs at for-profit institutions are gainful employment programs (GE programs) and are subject to the provisions of the regulations in subpart Q of part 668 of the Student Assistance General Provisions regulations (GE regulations).¹

In general, the GE regulations, as well as certain changes made by the final regulations to 34 CFR 600.2, 600.10, 600.20, 600.21, and 668.14, establish conditions that must be met for a GE program to be a Title IV eligible program. Institutions must certify that a GE program meets acceptable state and accreditation requirements, and the programs must meet specified debt-to-earnings measures. The GE regulations also require institutions to report related data to the Department of Education (Department) and to provide disclosures to the institution’s students and prospective students.

Below we list the major provisions of the GE regulations and then provide more detailed summaries. Note, that this letter provides only an overview of the GE requirements. Detailed information is provided in the final regulations.

¹ See Gainful Employment Electronic Announcement #53, posted to IFAP on May 20, 2015, for more information on which educational programs are GE programs, including the limited exceptions to the degree and gainful employment requirements.

Summary of the Significant Requirements in the GE Regulations

The GE regulations –

- Define a student as an individual who receives Title IV, HEA program funds and enrolls in the GE program.
- Require institutions to report information about students who enrolled in each of the institutions' GE programs to enable the Department to calculate the program's debt-to-earnings (D/E) rates and other program outcome measures that institutions may be required to disclose.
- Establish a D/E rates measure to determine whether a GE program prepares students for gainful employment in a recognized occupation. The D/E rates measure is based on the typical loan debt and earnings of students who previously completed the program. Two D/E rates are calculated, one based on annual earnings and one based on discretionary income.
- Require institutions to disclose to current and prospective students information about the institutions' GE programs through a disclosure template to be developed by the Department.
- Require institutions to establish the eligibility of a GE program by certifying, among other things, that the program is included in the institution's accreditation and satisfies any applicable state licensing and certification requirements for the occupations for which the program prepares students to enter.

With the exception of the disclosure requirements in 34 CFR 668.412, all of the provisions in the GE regulations are effective July 1, 2015. The new disclosure requirements are effective January 1, 2017. Until that date, institutions must comply with the disclosure requirements of the GE regulations that were published on October 29, 2010, at 34 CFR 668.6(b). We will issue additional guidance on the new disclosure requirements closer to the January 2017 effective date.

Reporting Requirements

The Department needs student-specific information from institutions to calculate the D/E rates and to calculate other information that institutions may be required to disclose. Therefore, under 34 CFR 668.411, institutions must report specific information for each student who received Title IV funds for enrollment in a GE program during an award year. The reporting includes information about each student's enrollment in the GE program and the amounts of private or institutional loans and other financing received by the student for that enrollment, as well as the

amount that was assessed the student for tuition and fees and for books, supplies, and equipment.²

In cases where a student was enrolled in and received Title IV aid for more than one GE program, the student is to be reported separately for each program. If a student was enrolled in the same GE program over more than one award year, the student is reported separately for each award year. And, if a student withdrew from a GE program and then subsequently reenrolled in the same GE program, the student is reported separately for each enrollment, even if those enrollments were in the same award year.

While the D/E rates calculation includes only those students who received Title IV aid and who completed the GE program during the applicable cohort period, institutions must report information for all students who received Title IV aid and were enrolled in the GE program during the award year, including those who did not complete the program. This is because the reported information is used by the Department not only for the purpose of calculating the D/E rates, but also for calculating some of the information institutions may be required to disclose beginning in 2017 (e.g., completion rates, withdrawal rates, repayment rates, median loan debt, median earnings, and program cohort default rates).

Institutions must report, no later than July 31, 2015, information from the 2008-2009 award year through the 2013-2014 award year.³ Following this initial reporting, institutions must report GE data annually by October 1 following the end of the award year (e.g., October 1, 2015, for the 2014-2015 award year), unless the Secretary establishes a different reporting date.

Calculation of D/E Rates

Cohort Periods

Under 34 CFR 668.404, we calculate D/E rates using the debt and earnings of students who completed the GE program during a specified cohort period. Depending on the number of students who completed the program (see next paragraph), the cohort period will either be two years or four years. The two-year cohort consists of the students who completed the program during the third and fourth award years prior to the award year for which we calculate the D/E rates. The four-year cohort consists of the students who completed the program during the third, fourth, fifth, and sixth award years prior to the award year for which we calculate the D/E rates. For example, for the D/E rates calculations for the 2014-2015 award year, the two-year cohort

² Please refer to the *NSLDS Gainful Employment User's Guide* for information on the specific data items that must be reported for each student for each award year. The User's Guide also provides technical information on reporting options that are available to institutions. Also refer to the *Frequently Asked Questions* section on the GE information page on the Information for Financial Aid Professionals website at www.ifap.ed.gov.

³ For certain medical and dental GE programs, institutions will also report for the 2007-2008 award year. The determination of cohorts, as discussed later in this letter, is modified for such programs.

period will be award years 2010-2011 and 2011-2012 and the four-year cohort period will be award years 2008-2009, 2009-2010, 2010-2011, and 2011-2012. We remove from the two-year cohort period or the four-year cohort period, students who qualify for an exclusion under 34 CFR 668.404(e).

Size of the Cohort

For D/E rates to be calculated for an award year, at least 30 students who received Title IV aid must have completed the program during the applicable cohort period. The two-year cohort will be used if 30 or more students (net of any excluded students) completed the program during that period. If fewer than 30 students completed the program during the two-year cohort period, the four-year cohort period will be used. If fewer than 30 students completed the program during the four-year cohort period, D/E rates will not be calculated for the GE program.

D/E Rates

For the purpose of the D/E rates measure, we calculate separately a *discretionary income rate* and an *annual earnings rate*:

Discretionary Income Rate

Discretionary income rate = annual loan payment divided by the higher of the mean or median annual earnings of the students included in the applicable cohort less 1.5 times the HHS Poverty Guideline.

Annual Earnings Rate

Annual earnings rate = annual loan payment divided by the higher of the mean or median annual earnings of the students included in the applicable cohort.

Annual Loan Payment

The annual loan payment is calculated by determining the median loan debt of students who completed the GE program during the applicable cohort period and amortizing that loan debt. Median loan debt includes the amount of Title IV loans that the student borrowed for enrollment in the GE program and private education loans and the total amount outstanding, as of the date the student completed the program, on any other credit (including unpaid charges) extended by or on behalf of the institution that the student is obligated to repay. However, under 34 CFR 668.404(b)(1)(i), a student's loan debt is capped at the lesser of the total amount of the student's tuition and fees, books and supplies, and equipment; or the amount of debt the student incurred for enrollment in the program.

Under 34 CFR 668.404(b)(2)(i), a GE program's median loan debt is amortized:

- 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;

- Over a 15-year repayment period for a program that leads to a bachelor's or master's degree; or
- Over a 20-year repayment period for a program that leads to a doctoral or first-professional degree.

Under 34 CFR 668.404(b)(2)(ii), we calculate the annual loan payment using the average interest rate over a three-year or six-year period, depending on the length of the program. For programs two years or less in length, the average interest rate is calculated over a three-year period. A six-year period is used for programs more than two years in length. The average rate used for undergraduate programs is based on the statutory interest rate on Federal Direct Unsubsidized Loans applicable to undergraduate students for the three- or six-year period. The average rate used for graduate programs is based on the statutory interest rate on Federal Direct Unsubsidized Loans applicable to graduate students for the three- or six-year period.

Annual Earnings

Under 34 CFR 668.404(c), we calculate the annual earnings of students who completed a GE program using earnings information obtained from the Social Security Administration (SSA), pursuant to the process in 34 CFR 668.405 and described below.

First, for each award year, using information reported by the institution under 34 CFR 668.411, we create a list of students who received Title IV aid and completed the GE program during the cohort period, including an indication of whether a student will be excluded under 34 CFR 668.404(e), and submits the list to the institution for its review. The institution may make corrections to the information on the list. It may also challenge the exclusion or inclusion of students. Upon review of any corrections or challenges, we provide the institution with a final list that will be submitted to SSA.

SSA calculates and returns to the Department the mean and median annual earnings of students for whom it was able to match earnings data for the GE "earnings year," which is two calendar years preceding the year in which the D/E rates are calculated.⁴ For example, for the D/E rates that will be calculated in 2016 for the 2014-2015 award year, the SSA earnings year will be calendar year 2014. Under 34 CFR 668.404(c)(2), in calculating a program's D/E rates, we use the higher of the SSA-reported mean or median earnings. SSA does not provide the Department any individual earnings data or the identity of any students who were or were not matched because it is prohibited by law from doing so.

Exclusions

Under 34 CFR 668.404(e), a student is excluded from the D/E rates calculation if:

⁴ SSA has earnings information reported by employers for their employees and for self-employed persons who are required to report earnings to SSA.

- 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 earnings information was obtained from SSA;
- One or more of the student's Title IV loans have been approved, or are under consideration, for a total and permanent disability discharge by the Secretary;
- The student was enrolled in any other Title IV eligible program (at the institution or another institution) during the calendar year for which SSA earnings are obtained;
- For undergraduate GE programs, the student completed a higher-credentialed undergraduate GE program at the same institution (see discussion that follows about students who complete more than one GE program at an institution);
- For graduate GE programs, the student completed a higher-credentialed graduate GE program at the same institution (see discussion that follows about students who complete more than one GE program at an institution); or
- The student is dead.

Students may sometimes complete more than one GE program at different credential levels. For example, a student might enroll in a one-year certificate program and, subsequent to completing that program, enroll in and complete an associate degree program at the same institution. To account for this, under 34 CFR 668.404(d)(2), we attribute the loan debt from the lower-credentialed program to the higher-credentialed program completed by the student. This "rolling-up" of loan debt only happens if both programs are undergraduate programs or both are graduate programs.

Draft D/E Rates

After calculating a GE program's D/E rates, under 34 CFR 668.405(e), we send draft rates to the institution, along with the source data used to calculate the annual loan payment amount. The draft rates are released only to the institution and are not public.

Transition Period Calculation

Under 34 CFR 668.404(g), there is a transition period during which we calculate alternate D/E rates. Those calculations will use the same SSA earnings information, but will use the loan debt of the most recent one-year cohort of students who completed the program to calculate the annual loan payment. This will allow an institution to improve a program's performance under the D/E rates measure in the initial years after the regulations take effect by lowering tuition or lowering the debt of its students. For example, an institution might reduce tuition and fees for the more recent cohort such that there would be a lower annual loan payment amount for the transitional D/E rates calculations.

During a GE program's transition period, if the program is failing or in the zone (as described in the Outcomes under the D/E Rates Measure section of this letter) under the D/E rates measure based on its draft D/E rates, we will calculate transitional draft D/E rates using the median loan debt of students who completed the program in the most recently completed award year, not the median loan debt for the applicable two-year or four-year cohort period. Final D/E rates for the GE program will be the lower of the draft or transitional draft D/E rates.

For a GE program of one year or less in length, the transition period is the first five award years for which we calculate D/E rates. For programs between one and two years in length, the transition period is the first six award years for which we calculate D/E rates. And, for programs longer than two years in length, the transition period is the first seven award years for which we calculate D/E rates. Each of the years for which we issue any D/E rates is counted toward the transition period whether or not we issued D/E rates for a specific GE program for a given year.

Initial D/E Rates Calculation

We will first calculate D/E rates in 2016 for the 2014-2015 award year, using earnings from the 2014 calendar year and the median loan debt of students who completed the GE program in the two-year cohort period consisting of the 2010-2011 and 2011-2012 award years. Where the four-year cohort period is applicable, we will calculate D/E rates using the 2008-2009, 2009-2010, 2010-2011, and 2011-2012 award years. For transitional D/E rates, we will use the median debt of students who completed the program in the 2014-2015 award year.

Challenges to Draft D/E Rates

Under 34 CFR 668.405(f), an institution may challenge the accuracy of information we used to calculate a GE program's median loan debt up to 45 days after the institution is notified of the program's draft D/E rates. The challenge, submitted in a Departmentally-approved format that will be described in a subsequent Electronic Announcement, must include satisfactory evidence that all or some of the information used to calculate the program's median loan debt is incorrect. We will notify the institution of whether the challenge is accepted or the reasons why the challenge is not accepted. After the 45-day period and after adjusting for any accepted challenges, the GE program's draft D/E rates will constitute its final D/E rates under 34 CFR 668.405(g).

Outcomes under the D/E Rates Measure

Under 34 CFR 668.403(c), a GE program passes 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 GE program fails 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 GE program with D/E rates that are neither passing nor failing is in the zone under the D/E rates measure. The zone provides a buffer to account for year-to-year variations.

Under 34 CFR 668.403(c)(4), a program becomes ineligible for Title IV program funds if it (1) fails the D/E rates measure for two of any three consecutive award years for which rates were

calculated for the program or (2) has a combination of zone and failing D/E rates for four consecutive award years for which rates were calculated for the program.

Under 34 CFR 668.409(a), we will send the institution a notice of determination of a GE program's final D/E rates indicating whether the program is passing, failing, in the zone, or ineligible, whether the program could become ineligible based on final D/E rates for the next award year, whether the institution is required to provide student warnings, and, if the program's final D/E rates are failing or in the zone, how the institution may make an alternative earnings appeal. The determination is effective on the date specified in the notice.

Appeals of Final D/E Rates

Under 34 CFR 668.406, if an institution's GE program is failing or in the zone, the institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates. The appeal would be based on alternate earnings of the students, rather than the SSA earnings for those students. The earnings must be from the same or comparable cohort period and from the same calendar year that we used to calculate the program's final D/E rates using SSA data. An institution may obtain alternate earnings data for its appeal from a survey of its graduates conducted by the institution or from a state-sponsored data system. When submitting its appeal, the institution must use the annual loan payment data that we used in calculating the program's final D/E rates and the higher of the mean or median alternate earnings.

Institutional Earnings Survey

Under 34 CFR 668.406(c), the Department's National Center for Education Statistics (NCES) will develop an earnings survey for use by institutions to survey their graduates, called the *Recent Graduates Employment and Earnings Survey* (RGEES), as well as required standards for administration of the survey. Both the standards and the survey will be published in the *Federal Register*. Although an institution is not required to use the RGEES, it must adhere to the survey standards if it chooses to submit an alternate earnings appeal based on a survey. NCES is developing a *Best Practice Guide* to provide institutions with explanations and examples of how to implement the standards.

The appeal must include a certification signed by the institution's chief executive officer attesting that the survey was conducted in accordance with the standards of the *RGEES* and that the mean or median earnings used to recalculate the D/E rates was accurately determined. The institution must also submit an examination-level attestation engagement report prepared by an independent public accountant or independent government auditor attesting that the survey was conducted in accordance with the requirements of the *RGEES*. We may also require additional supporting documentation.

State-Sponsored Data System

Under 34 CFR 668.406(d), in appealing a GE program's D/E rates based on alternate earnings from a state-sponsored data system, the institution must submit to the administrator of each state-sponsored data system used for the appeal a list of all students who received Title IV aid and

completed the program during the same cohort period that we used to calculate the GE program's final D/E rates. The institution must also demonstrate that annual earnings data were obtained for more than 50 percent of the students in the cohort period and that annual earnings data were obtained for 30 or more of the students in the cohort period. A certification signed by the institution's chief executive officer, attesting that the institution accurately used state-provided data to recalculate the D/E rates must accompany the appeal. We may also require additional supporting documentation.

Appeal Process

To initiate an appeal, an institution must submit notice of its intent to appeal no later than 14 days after we issue the notice of determination of the program's final D/E rates. The institution must submit its appeal, including its recalculated D/E rates, certifications, and any supporting documentation, no later than 60 days after we issue the notice of determination.

Provided a timely and complete appeal has been submitted, the institution is not subject to any consequences of the D/E rates measure (i.e., student warnings and loss of program eligibility) while we consider the appeal. If we deny the appeal we will notify the institution of the reasons for the denial and the program's final D/E rates in the notice of determination stand. If we grant the appeal we will notify the institution that we accept the recalculated D/E rates as the final D/E rates for the program.

Other Consequences of the D/E Rates Measure

Restrictions on Reestablishing Title IV Program Eligibility

Under 34 CFR 668.410(b), an institution may not 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 for three years following the date in the notice of determination.

Required Student Warnings

If a GE program could become ineligible based on its final D/E rates calculated for the next award year, the institution must provide warnings to students and prospective students. The warnings must contain language at 34 CFR 668.410(a)(2)(i) or alternate language provided by the Department and refer students and prospective students to, and include a link for, the Department's College Navigator website for information about similar programs.

Warnings provided to students must:

- Describe the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer their credits to another program at the institution and which credits would transfer.

- Indicate whether, if the program loses Title IV eligibility, the institution will continue to provide instruction allowing students to complete the program or refund tuition and fees, and other required charges.
- Explain whether students could transfer credits earned in the program to another institution.

Enrolled Students: The institution must provide the warning in writing to each enrolled student no later than 30 days after the Department issues the notice of determination. The warning must be either hand-delivered to the student as a separate document or sent to the student using the student's primary email address with the warning as the only substantive content in the email. If email is used, the institution must receive an electronic or written acknowledgment that the student has received the email. The regulations do not allow an initial warning to be sent using regular U.S. Postal Service mail or commercial courier service. However, if the institution receives a response indicating that the email could not be delivered, it may send the warning using a different address or method of delivery, which could include U.S. Postal Service mail or commercial courier service. The institution must maintain records of its efforts to provide the required warnings.

Prospective Students: Requirements for delivering warnings to prospective students are similar to those for enrolled students, except that the warning must be provided when the prospective student initially contacts the institution about the program. Institutions may provide prospective students with a copy of the disclosure template that includes the warning or provide the warning orally to the student if the contact is by telephone. However, the institution may not actually enroll, register, or have the student enter into a financial commitment based solely on an oral warning. Accordingly, any student to whom a warning was provided orally must, prior to being enrolled, registered, or entering into a financial commitment with the institution, receive a written warning. The institution may not enroll, register, or enter into a financial commitment with a prospective student earlier than three business days after the institution first provides the written warning to the student or, if more than 30 days have elapsed since the date the warning was first provided, three business days after an additional written warning is provided.

Disclosure Template: In addition to providing warnings directly to students and to prospective students, within 30 days of receiving notice from the Department that a warning must be provided, the institution must update its disclosure template to include the student warning.

Certification Requirements for GE Programs

Transitional Certification for Existing Programs

By December 31, 2015, an institution must provide to the Department a certification, signed by the institution's most senior executive officer, that each of the institution's GE programs included on its Eligibility and Certification Approval Report (ECAR) meets the following requirements:

- The program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized state agency in lieu of accreditation.
- The program is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in a state in which the institution is located or in which the institution is otherwise required to obtain state approval under the state authorization regulations at 34 CFR 600.9.
- For the state in which the institution is physically located or in which the institution is otherwise required to obtain state approval under 34 CFR 600.9, the program satisfies applicable educational prerequisites for professional licensure or certification requirements in that state so that a student who completes the program and seeks employment in that state qualifies to take any licensure or certification examination needed for the student to practice or find employment in an occupation that the program prepares students to enter.
- For a program for which the institution seeks to establish eligibility to participate, the program is not substantially similar to a program offered by the institution that, in the prior three years, became ineligible due to the D/E rates measure, or was failing, or in the zone with respect to, the D/E rates measure and was voluntarily discontinued by the institution. The institution must include with its certification an explanation of how the new program is not substantially similar to any such ineligible or discontinued program.

This certification will become an addendum to the institution's program participation agreement (PPA).

Program Participation Agreement Certification

As a condition of its continued participation in the Title IV programs, an institution must certify in its PPA that each of its currently eligible GE programs included on its ECAR meets the requirements listed above under *Transitional Certification for Existing Programs*. An institution must update the certification within 10 days if there are any changes in the approvals for a program or other changes that make an existing certification inaccurate.

An institution that establishes a program's eligibility by updating the list of eligible programs on its ECAR is considered to have affirmed that the program satisfies the certification requirements listed above under *Transitional Certification for Existing Programs*. An institution may not include in its list: a program that became ineligible as a result of the D/E rates measure; a GE program that is a failing or zone program and that the institution voluntarily discontinued; or a program substantially similar to the ineligible or discontinued program until termination of the three-year ineligibility period.

We thank you for your cooperation in the implementation of the new Gainful Employment regulations. If you have questions about the content of this letter please direct them to: Gainfulemploymentregulations@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn B. Mahaffie", with a long horizontal line extending to the right.

Lynn Mahaffie
Deputy Assistant Secretary
for Policy, Planning, and Innovation
Office of Postsecondary Education