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Subpart Q - Gainful Employment (GE) Programs

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§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--

- (1) The Secretary determines that the program is eligible for title IV, HEA program funds;
- (2) An institution reports information about the program to the Secretary; and
- (3) An institution discloses information about the program to students and prospective students.

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§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, a CIP family of related programs shares the first two digits of a CIP code, and programs that are substantially similar to one another share the first four digits of a CIP code.

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 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, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree.

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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.

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: Collectively, the D/E rates, the program cohort default rate, and the GE program's loan portfolio repayment performance as described in this subpart.

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

Loan portfolio repayment performance: The measure of whether a GE program's loan portfolio is negatively amortized, as calculated under §668.409.

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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.

Student: A regular student, as defined in 34 CFR 600.2, who received title IV, HEA program funds for attending a GE program at an eligible institution.

Two-year period: The period covering two consecutive award years that are--

(a) 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 period is award years 2010-2011 and 2011-2012; or

(b) 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 period is award years 2007-2008 and 2008-2009. For this purpose, a required medical

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or dental internship or residency is a supervised training program that--

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

(2) 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

(3) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

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§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 application and certification requirements in §§668.415 and 668.416; and

(2) Is not an ineligible program under the provisions for the D/E rates described in paragraph (b)(1), the provisions for the pCDR described in paragraph (b)(2), or because of the repayment performance of its loan portfolio as described in paragraph (b)(3).

(b) GE measures. (1) Debt-to-earnings 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 §§668.404-668.406.

(2) Program cohort default rate. For each fiscal year and for each eligible GE program offered by an institution, the Secretary calculates the pCDR as described in §668.407.

(3) Loan portfolio repayment performance. For each award year and for each eligible GE program offered by an institution, the Secretary determines whether the FFEL and Direct Loan

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portfolio of the program is negatively amortized, using the procedures in §668.409.

(c) Outcomes of GE measures.

(1) D/E rates.

(i) A GE program is "passing" the D/E rates 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 if--

(A) Its discretionary income rate is greater than 30 percent or the income for the denominator of the rate is negative or zero; and

(B) Its annual earnings rate is greater than 12 percent or the denominator is zero.

(iii) A GE program is in the "zone" for the purpose of the D/E rates if it is not passing 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, a GE program is ineligible if it--

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(A) Is failing the D/E rates in two out of any three consecutive award years for which the program's D/E rates are calculated; or

(B) Is not passing the D/E rates in one out of any four consecutive award years for which the program's D/E rates are calculated.

(2) pCDR.

(i) A GE program is "passing" pCDR if its pCDR for the most recent fiscal year for which pCDR is calculated is less than 30 percent.

(ii) A GE program is "failing" pCDR if its pCDR for the most recent fiscal year for which pCDR is calculated is greater than or equal to 30 percent unless the GE program is ineligible under paragraph (c)(2)(iii)(A).

(iii) For the purpose of pCDR, a GE program is ineligible if--

(A) Its pCDR for the most recent fiscal year for which pCDR is calculated is greater than 40 percent; or

(B) It fails pCDR for three consecutive fiscal years for which pCDR is calculated.

(3) Loan portfolio repayment performance.

(i) A GE program's loan portfolio repayment performance is "passing" if its loan portfolio for the most recent award year

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for which the loan portfolio repayment performance is determined is not negatively amortized.

(ii) A GE program's loan portfolio repayment performance is "failing" if its loan portfolio for the most recent award year for which the loan portfolio repayment performance is determined is negatively amortized.

(iii) For the purpose of loan portfolio repayment performance, a GE program is ineligible if it fails in two out of any three consecutive award years for which the loan portfolio repayment performance is measured.

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§668.404 Calculating D/E rates.

(a) General. 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 x 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 program by--

(1) Determining the median loan debt of the students who completed the program during the two-year period, based on the loan debt incurred by each student as determined under paragraph (d) of this section; and

(2) Amortizing the median loan debt over a 10-year repayment period using the lowest annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students during the four years prior to the start of the two-year period.

(c) Annual earnings. (1) The Secretary obtains from the Social Security Administration (SSA), under §668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the two-year period and who are not excluded under paragraph (e); and

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(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 the amount of FFEL and Direct Loans that the student borrowed for attendance in the GE program (PLUS Loans made to parents of dependent students or Direct Unsubsidized Loans that were converted from TEACH Grants are not included), any private education loans reported by the institution, and any debt originating from the institution, such as from institutional financing or payment plans, that the student is obligated to repay upon the student's completion of the program regardless of who holds the debt;

(2) Attributes all of the loan debt incurred by the student for attendance in any GE program at the institution to the highest credentialed GE program completed by the student at the institution; and

(3) Excludes any loan debt incurred by the student for attendance in programs at other institutions. However, the Secretary may include loan debt incurred by the student for attending 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.

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(e) Exclusions. The Secretary excludes a student from the D/E rate calculations if the Secretary determines that--

(1) One or more of the student's FFEL loans or Direct Loans were in a military-related deferment status for at least 60 consecutive days during the calendar year for which the Secretary obtains earnings information under paragraph (c);

(2) One or more of the student's FFEL loans or Direct 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 682.402 and 685.212;

(3) The student was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (c);

(4) The student completed a higher credentialed GE program at the institution subsequent to completing the program; or

(5) The student died.

(f) D/E rates not calculated. The Secretary does not calculate D/E rates for a GE program if--

(1) Fewer than 10 students completed the program during the two-year period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c).

(g) Transition period.

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(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)-(f) for award years 2014-2015, 2015-2016, 2016-2017, or 2017-2018 the Secretary calculates transitional draft D/E rates for the program by using--

(A) The median loan debt of the students who completed the program during the most recently completed award year; and

(B) The earnings used to calculate the draft D/E rates under paragraph (c).

(2) For the award years listed in paragraph (g)(1) of this section, 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)-(f) 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.

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§668.405 Issuing and challenging D/E rates.

(a) Overview. For each award year beginning with award year 2014-2015, 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 two-year period and providing it to the institution, under 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 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 it to the institution, as described 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 it to the institution, as provided in paragraph (g) of this section; and

(7) If the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated, allowing the institution to appeal the final D/E

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rates by submitting an alternate earnings data survey, 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 two-year period from the data provided by the institution under §668.412; and

(ii) Removing any student who is excluded under §668.404(e).

(2) The Secretary provides the list to the institution.

(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 30 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 provided for a student on the list.

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(3) After the 30-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.

(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.

(d) Obtaining earnings data. The Secretary submits the final list to SSA. For purposes of this section, SSA returns to the Secretary--

(1) The mean and median 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 the highest loan debts as the number of students whose

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earnings SSA did not match. For example, if SSA is unable to match three students, the Secretary does not include the three highest loan debts in the calculation of the median loan debt.

(3)(i) The Secretary notifies the institution of the draft D/E rates for a GE program and provides the mean and median earnings obtained from SSA and the individual student loan information used to calculate the rates, including the loan debt 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), that the information is inaccurate. 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 GE 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

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format and process determined by the Secretary, demonstrating that the median loan debt calculated by the Secretary is inaccurate.

(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 a draft D/E rate is based for a GE 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

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paragraph (f) of this section, a GE 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 §668.411(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, challenges, and appeals.
An institution must ensure that any material that it submits to make any correction or challenge under this section, or an appeal under §668.406, is complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.

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§668.406 Alternate earnings appeals for D/E rates.

(a) General. If a GE program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated, an institution may appeal its most recent final D/E rate by proving that the difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings derived from an institutional survey conducted in accordance with the requirements in paragraph (b) of this section is sufficient to warrant revision to the final D/E rates.

(b) Survey requirements. To appeal a final D/E rate under this section, an institution must--

(1) Conduct a survey of earnings information from students who completed the program during the applicable two-year period by following the instructions contained in an NCES-developed Earnings Survey Form issued by the Secretary in a notice published in the Federal Register. The institution may include in the survey earnings information obtained from students who completed the program in the applicable two-year period who did not receive title IV, HEA program funds in addition to students who completed the program in the applicable two-year period who received title IV, HEA program funds;

(2) Certify that the survey was conducted in accordance with the requirements of the NCES Earnings Survey Form; and

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(3) 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 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.

(c) Alternate earnings appeal procedure.

(1) 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 §668.411, the institution must--

(i) Notify the Secretary of its intent to use survey earnings data no earlier than the date that the Secretary provides the institution with its draft D/E rates, pursuant to §668.405(f), but no later than three business days after the date the Secretary issues the notice of determination, pursuant to §668.405(g), informing the institution of its final D/E rates under §668.411(a); and

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(ii) Submit the survey of earnings and all supporting documentation as provided for under paragraph (b) of this section no later than 60 days after the date the Secretary issues the notice of determination.

(2) An institution that timely submits an alternate earnings appeal that meets the requirements of this section is not subject to the provisions of §668.411(c)-(e) 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 reflect that they are under appeal.

(3)(i) If the Secretary determines that the institution's appeal submission is not sufficient to warrant revising the final D/E rates under §668.411(a), the Secretary notifies the institution of the reasons for the decision, and the D/E rates under §668.411(a) remain the final D/E rates for the program for the award year; or

(ii) If the Secretary determines that the institution's appeal submission is sufficient to warrant revising the final D/E rates, the Secretary recalculates the D/E rates and notifies the institution that the recalculated D/E rates are the final D/E rates for the program for the award year under §668.411(a). 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 rates.

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§668.407 Calculating pCDR.

(a) General. For each fiscal year, the Secretary determines the pCDR of a GE program using the same methodology the Secretary uses to calculate the institutional cohort default rate (CDR) under subpart N of this part.

(b) References in subpart N. In applying the procedures and standards in subpart N to calculate pCDR, the Secretary considers each reference to the "institution" to apply separately to the institution with respect to each of the GE programs at the institution, and considers each provision that describes an action, determination, or consequence that applies to "you" as stating an action, determination, or consequence to apply to the institution separately with respect to each of the GE programs at the institution.

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§668.408 Issuing and challenging pCDR.

(a) General. For each fiscal year, the Secretary notifies the institution of the pCDR for a GE program determined under §668.407. The institution may challenge or appeal the pCDR under the procedures in subpart N of this part.

(b) References in subpart N. In applying the procedures in subpart N to this section, the Secretary considers each reference to the "institution" to apply separately to each of the GE programs at the institution, and considers each provision that describes an action, determination, or consequence to apply to "you" as stating an action, determination, or consequence to apply separately to each of the GE programs at the institution.

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§668.409 Determining loan portfolio repayment performance.

(a) General. For each award year, the Secretary determines whether the loan portfolio of a GE program is negatively amortized by--

(1) Determining the outstanding principal balance of the portfolio at the beginning of the most recently completed award year. The beginning outstanding principal balance includes any unpaid interest that has been capitalized;

(2) Determining the outstanding principal balance of the GE program's loan portfolio at the end of the most recently completed award year; and

(3) Comparing the beginning and ending outstanding principal balances of the GE program's loan portfolio. If the ending outstanding principal balance is greater than the beginning outstanding principal balance, the portfolio is negatively amortized.

(b) Loan portfolio. For the purposes of this section, the loan portfolio of a GE program is comprised of the FFEL and Direct Loans for students who were enrolled in the GE program and who entered repayment on those loans during the two-year period.

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(c) Exclusions. The Secretary excludes a student from the loan portfolio repayment performance calculations if the Secretary determines that--

(1) One or more of the student's FFEL loans or Direct Loans were in a military-related deferment status for at least 60 consecutive days 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 FFEL loans or Direct 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 682.402 and 685.212;

(3) The student was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(4) The student completed a higher credentialed GE program at the institution subsequent to completing the program; or

(5) The student died.

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§668.410 Issuing and challenging loan portfolio performance determinations.

(a) Overview. For each award year beginning with award year 2014-2015, the Secretary determines the loan portfolio performance for a GE program at an institution by--

(1) Creating a list of the students who were enrolled in the GE program and entered repayment during the applicable two-year period and providing it to the institution, under 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) Making an initial determination of the loan portfolio's performance and notifying the institution, as provided in paragraph (d) of this section;

(4) Allowing the institution to challenge the beginning and ending outstanding principal balances of the GE program's loan portfolio used to make the initial determination of the loan portfolio's performance, as provided in paragraph (e) of this section; and

(5) Making a final determination of the loan portfolio's repayment performance and notifying the institution, as provided in paragraph (f) of this section.

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(b) Creating the list of students. (1) The Secretary selects the students to be included on the list by--

(i) Identifying the students who were enrolled in the GE program and entered repayment during the applicable two-year period from the data provided by the institution under §668.412; and

(ii) Removing any student who is excluded under §668.409(c).

(2) The Secretary provides the list to the institution.

(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 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 30 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 §668.409(c); or

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

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(3) After the 30-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.

(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.

(d) Initial determination of loan portfolio performance.

(1) The Secretary makes an initial determination of the GE program's loan portfolio performance, as provided in §668.409.

(2) The Secretary notifies the institution of the initial determination of the GE program's loan portfolio performance and provides the beginning and ending outstanding principal balances used to make the determination.

(3) The initial determination of loan portfolio performance and the data described in paragraphs (b) through (d) of this section are not considered public information.

(e) Institutional challenges to initial determination of loan portfolio performance.

(1) The Secretary presumes that the beginning and ending outstanding principal balances used to make the initial determination of the GE program's loan portfolio repayment performance under §668.409 are correct unless the institution provides, as provided in paragraph

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(e)(2), that the information is inaccurate. The institution bears the burden of proof to show that the outstanding principal balance 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 initial determination of loan portfolio performance for a GE program, the institution may challenge the accuracy of the beginning and ending outstanding principal balances that the Secretary used to make the initial determination for the program under §668.409 by submitting evidence, in a format and process determined by the Secretary, demonstrating that the outstanding principal balances are inaccurate.

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

(ii) More than one challenge to the student-specific data on which an initial determination of a GE program's loan portfolio performance is based 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 beginning or ending outstanding principal balances, or both, and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.

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(5) If the information from an accepted challenge changes the beginning or ending principal balances, or both, of the program, the Secretary revises the determination of the GE program's loan portfolio repayment performance.

(6) An institution that does not timely challenge the initial determination of a GE program's loan portfolio repayment performance waives any objection to that determination.

(f) Final determination of loan portfolio performance.

(1) After expiration of the 45-day period and subject to resolution of any challenge under paragraph (e) of this section, a GE program's initial determination of loan portfolio performance constitute its final determination of loan portfolio performance.

(2) The Secretary informs the institution of the final determination of loan portfolio performance for each of its GE programs by issuing the notice of determination described in §668.411(a).

(3) After the Secretary provides the notice of determination to the institution, the Secretary may publish the final determination of loan portfolio performance for the GE program.

(g) Conditions for corrections, challenges, and appeals.

An institution must ensure that any material that it submits to make any correction or challenge under this section is complete,

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timely, accurate, and in a format acceptable to the Secretary as described in this subpart and consistent with any instructions provided to the institution with the notice of initial determination of loan portfolio performance.

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§668.411 Final determination and consequences of GE measures.

(a) Notice of determination. For each award or fiscal year in which the Secretary calculates a GE measure for a GE program, the Secretary issues a notice of determination informing an 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 rate for the next award year for which D/E rates are calculated;

(iv) Whether the institution is required to provide student warnings under paragraph (c); whether the program is subject to the enrollment limits in paragraph (d)(3); and whether the institution must satisfy the requirements for borrower relief for students under paragraph (e); and

(v) If the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are

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calculated, instructions for appealing a final D/E rate, pursuant to §668.406.

(2) For the pCDR--

(i) The final pCDR for the program as determined under §668.407 and §668.408;

(ii) 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

(iii) Whether the institution is required to provide student warnings under paragraph (c); whether the program is subject to the enrollment limits in paragraph (d)(3); and whether the institution must satisfy the requirements for borrower relief for students under paragraph (e).

(3) For the loan portfolio performance--

(i) Whether the loan portfolio is negatively amortized, as determined under §§668.409 and 668.410;

(ii) 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

(iii) Whether the institution is required to provide student warnings under paragraph (c); whether the program is subject to the enrollment limits in paragraph (d)(3); and whether the institution must satisfy the requirements for borrower relief for students under paragraph (e).

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(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 under §668.406, constitutes the final decision of the Secretary with respect to that GE measure and the Secretary provides no further appeal of that determination.

(c) Student warnings. 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 for which the GE measures are calculated, the institution--

(1) For each enrolled student, must provide a written warning directly to each student enrolled in the program no later than 30 days after the date of the notice of determination. The warning must--

(i) State that: "You may not be able to use federal student grants or loans to pay for this program after [insert date] next year because this program is in danger of losing its eligibility under U.S. Department of Education gainful employment rules. That means recent graduates are not earning enough compared to how much they took out in student loans," or because the program fails other standards established by the

Comment [A1]: Also require a warning to enrolled students in programs that enter the "zone" that the program did not pass one or more of the gainful employment standards.

~~U.S. Department of Education. The Department set these standards to help ensure that students are able to find gainful employment and not burdened by debt they struggle to repay. Programs in violation of these standards risk losing access to federal funds~~ or any alternative warning language specified by the Secretary in a notice published in the Federal Register;

Comment [A2]: Do we need this? What does this refer to? What other standards are there that would trigger ineligibility but students' ability to repay debt?

Comment [A3]: Check against Zauderer.

Comment [A4]: Require student testing as well as publishing.

OR USE THIS LANGUAGE IN LIEU OF THE ABOVE LANGUAGE:

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"You may not be able to use federal student grants or loans to pay for this program after [insert date].

WHY WOULDN'T I BE ABLE TO USE STUDENT LOANS AND GRANTS?

[Recent graduates are not earning enough to pay their student loans off in the regular 10 year payment period.]
or [The program fails certain standards.] The U.S. Department of Education set these standards to help ensure students can find gainful employment and not be burdened by debt they struggle to repay.

WHAT ARE MY OPTIONS?

We will not know until [insert date] if loans and grants will still be available after [insert date]. You can [cannot] transfer to [indicate program] or [any other program offered by [school].] You can [cannot] continue and complete this program. [Or:] As of [date] we will no longer offer this program.

CAN I GET A REFUND?

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We will not give a refund. [or] We will refund all school charges if you decide by [insert by which students must request refund], that you do not to continue with 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 by, or on behalf of, the student for attending the program.

(2) For each prospective student--

(i) At the time the prospective student first contacts the institution about the GE program and at the time the student signs an enrollment agreement or otherwise commits to enroll in the GE program, must provide a written warning directly to the student stating: "You may not be able to use federal student grants or loans to pay for this program next year because recent graduates are not earning enough compared to how much they took

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out in student loans, or because the program fails other 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 and not burdened by debt they struggle to repay. Programs in violation of these standards risk losing access to federal funds” or any alternative language specified by the Secretary in a notice published in the Federal Register; and

(ii) May not enroll the prospective student in the GE program earlier than--

(A) Three business days after the warning was first provided to the prospective student; or

(B) If more than 30 days pass 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 (c)(2)(i) of this section.

(d) 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 voluntarily discontinued, reestablish the eligibility of an ineligible program, or establish the eligibility of a program

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that is substantially similar to the discontinued or ineligible program, until the end of the third award year following the award year the program was discontinued became ineligible.

(3) Enrollment limit. For the 12-month period beginning on the first day of the month after 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 for which the GE measure is calculated, except for a GE program that could become ineligible as a result of being determined to be in the zone for the next award year for which D/E rates are calculated, the total number of students eligible for title IV, HEA program funds enrolled in the program may not exceed the number of students, less any noncompleters,—receiving title IV, HEA program funds who were enrolled in the program during the previous 12 months.

(4) Restoring eligibility. An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution reestablishes the eligibility of that program under §668.415. 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 the title IV, HEA program eligibility of that program.

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(e) Borrower relief. (1) For any year in 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 for which the GE measure is calculated, the Secretary requires the institution to provide for borrower relief for (a) students currently enrolled in, and borrowing to attend, the program, and (b) students previously enrolled in, and who borrowed to attend the program in the years during which the program failed or did not pass the gainful employment measures, upon which ineligibility was predicated.

(2) An institution provides for borrower relief under this paragraph by making available to the Department sufficient funds to pay the excess portion of the Federal GE program loans for currently enrolled students if the program becomes ineligible, by--

(i) Submitting a letter of credit (LOC) to the Department or modifying, to the extent required, an LOC previously submitted to the Department;

(ii) Entering into a borrower relief set-aside agreement with the Department as described in paragraph (e)(3); or

(iii) In the case of a public institution, ensuring that the obligation to provide borrower relief is backed by the full faith and credit of the State.

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(3) A borrower relief set-aside agreement is an agreement with the Secretary under which–

(i) The Secretary sets aside a portion of the Direct Loan program funds that the institution would otherwise request under 34 CFR 668.162 for the purpose of providing borrower relief;

(ii) The amount set aside is the amount the Secretary considers sufficient to accumulate the borrower relief amount from those funding requests likely to be made up to the projected date when new draft GE measures are released; and

(iii) The institution agrees to disburse the full amount of Direct Loan program funds awarded to students but to request Federal funds for that disbursement in the amount of the disbursement less the amount needed to accumulate the borrower relief.

(4) The excess portion of Federal GE program loans for each currently enrolled student is the amount needed to reduce the GE program's median loan debt to pass the applicable GE measure.

(5) If borrower relief is required under two or more GE measures, the amount required is the largest of the amounts determined under this paragraph (e).

(6) The Secretary provides the institution the data used to calculate the borrower relief amount.

(7) The institution may challenge the Secretary's determination of the borrower relief amount by providing:

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(i) Evidence satisfactory to the Secretary that--

(A) The Secretary inaccurately calculated the borrower relief amount; or

(B) The borrower relief amount should be reduced or eliminated because currently enrolled students are borrowing in smaller amounts than did the students included in the cohort of students on which the GE measure was based; and

(ii) An LOC or entering into and promptly implementing a set-aside agreement to provide borrower relief in an amount equal to the institution's proposed borrower relief amount pending the Secretary's final determination of the borrower relief amount under paragraph (e)(8).

(8) The Secretary considers the information provided by the institution in any challenge and issues a final determination to the institution of the borrower relief amount. The institution modifies any LOC provided, and the institution and the Department amend any set-aside agreement entered into, under paragraph (e)(7)(ii) to reflect the Secretary's final determination of the borrower relief amount.

(9) If the program ceases to be at risk of becoming ineligible in the next year, the Secretary releases the LOC for the purpose of this paragraph (e) or terminates the set-aside agreement, unless the LOC or set-aside agreement is required,

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with or without modification, to provide borrower relief arising from a GE measure in that next year.

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§668.412 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--

(i) Information needed to identify the student and the institution the student attended;

(ii) The name, CIP code, the six-digit SOC code, credential level, and length of the program;

(iii) The tuition and fees charged the student for the program;

(iv) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in §668.402;

(v) The date the student began initial attendance in the program; and

(vi) The student's attendance dates and enrollment status in the program during the award year;

(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;

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(ii) The total amount the student received from private education loans for attendance in the program; and

(iii) The total amount of institutional debt the student owes any party upon completing or withdrawing from the program; 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, 2015, for information from the 2010-2011, 2011-2012, 2012-2013, and the 2013-2014 award years; and

(ii) For the 2014-2015 award year and 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 is unable to provide all or some of the information in paragraph (a) of this section, the institution must provide the Secretary with an explanation of why the missing information is not available.

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§668.413 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 conducts consumer testing of a disclosure template and identifies the information that must be included in the template based on the results of such testing and publishes 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 GE program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site.

(2) The GE program's completion and withdrawal rates as calculated by the Secretary under §668.414.

(3) The length of the program.

(4) The total number of students enrolled during the most recently completed award year.

(5) As calculated by the Secretary under §668.414, the loan repayment rate for any one or all of the following groups of students who entered repayment during the two-year period:

- (i) All students who attended the program.
- (ii) Students who completed the program.
- (iii) Students who withdrew from the program.

Comment [A5]: So long as these are reported and DOE-approved SOC codes related to the reported and DOE-approved CIP codes.

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Comment [A6]: Highlighted disclosures should be included by the secretary on the template subject to student testing.

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(6) The total cost of tuition and fees, and the total cost of books and supplies that a student would incur for completing the program within the length of the program.

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

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(8) As calculated by the institution, the median loan debt, including all of the loans described in §668.404(d)(1), incurred by any one or all of the following groups of students:

(i) Students who completed the program during the most recently completed award year.

(ii) Students who withdrew from the program during the most recently completed award year.

(iii) All of the students described in paragraph (a)(8)(i) and (ii) of this section.

(9) The median earnings of any one or all of the following groups of students:

Comment [A7]: Wouldn't the mean be more useful and informative?

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(i) Students who completed the program during the two-year period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(ii) Students who withdrew from the program during the two-year period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

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(iii) All of the students described in paragraph (a)(9)(i) and (ii) of this section.

(10) A link to the U.S. Department of Education's College Navigator Web site, or its successor site.

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(11) If applicable, with respect to the occupations for which the program prepares the student as disclosed by the institution under paragraph (a)(1) of this section, whether or not completion of the program satisfies the educational prerequisites for professional licensure in the State or States in which the program is offered.

Comment [A8]: If professional licensure is required to find employment in the field for which the program prepares students, then a program that does not satisfy the educational prereqs for such licensure cannot be eligible as a gainful employment program and receive title iv funds. Therefore the disclosure would not be moot.

(12) 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.

Comment [A9]: If programmatic accreditation is a prereq for employment, and the program is not programmatically accredited, then there is no reason for this disclosure because such a program will be not eligible as a gainful employment program and receive title iv funds.

(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 student warnings for the program under §668.411(c), the institution must update the disclosure template to include those warnings for both enrolled and prospective students.

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(c) Web link to disclosure information. (1) On any Web page containing general, academic, 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.

Comment [A10]: The link should be located immediately beneath the name of the program and primary to any other description of the program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated, different lengths) may publish a separate disclosure template for each location or format if it 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.

Comment [A11]: Each specific GE program, e.g. nursing assistant-20 month, nursing assistant-24 month, as well as each location where the program is offered, should have its own disclosure template.

(3) In addition to the other remedies available, ~~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 must include--

(i) The information on the disclosure template in a prominent manner; or

(ii) Where space or airtime constraints would preclude a full disclosure of the required information, the Web address

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(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 graduation rates of students who attended this program."

(2) Promotional materials include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on radio, television, 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. An institution must provide, ~~as~~ a separate document that contains only the disclosure template for the specific, relevant GE program, a copy of the disclosure template to a prospective student, as defined by 34 CFR 668.41, before signing an enrollment agreement, at the time the student enrolls in a GE program. The institution must obtain written confirmation that the student received a copy of the disclosure template. The institution must ensure that the contents of the disclosure template are orally provided to prospective students as well.

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§668.414 Calculating, issuing, and challenging completion, withdrawal, and repayment rates and median earnings.

(a) General. Under the procedures in this section, the Secretary determines the completion rates, withdrawal rates, repayment rates, and median earnings an institution must disclose under §668.413 for its GE programs, notifies the institution of that information, and provides the institution an opportunity to challenge the calculations.

(b) Calculating completion, withdrawal, and repayment rates and median earnings.

(1) Completion rate. The Secretary calculates the completion rate of a GE program as follows:

Number of students in the enrollment cohort who completed the
program within 100% of the length of the program

Number of students in the enrollment cohort

and

Number of students in the enrollment cohort who completed the
program within 150% of the length of the program

Number of students in the enrollment cohort

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The enrollment cohort is the number of students who began attending the program at any time during a particular award year.

(2) Withdrawal rate. The Secretary calculates the withdrawal rate of a GE program as follows:

$$\frac{\text{Number of students in the enrollment cohort who withdrew from the program within the length of the program}}{\text{Number of students in the enrollment cohort}}$$

The enrollment cohort is the number of students who began attending the program at any time during a particular award year.

(3) Loan repayment rate. For the most recently completed award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(3)(vi) who attended a GE program as follows:

$$\frac{\text{Number paid in full plus number in active repayment}}{\text{Number entering repayment}}$$

(i) Number entering repayment. The total number of borrowers who entered repayment during the two-year period on FFEL or Direct Loans received for attendance in the GE program.

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(ii) Number paid in full. Of the number of borrowers entering repayment, the number who have fully repaid FFEL or Direct Loans received for attendance in the GE program.

(iii) Number 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 principal balance of each of the borrower's FFEL or Direct Loans, including consolidation loans that include a FFEL or Direct Loan received for attendance in the GE program, by comparing the outstanding principal balance at the beginning and end of the award year. The outstanding principal balance of a loan includes any unpaid accrued interest that has been capitalized.

(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 in this paragraph.

(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 only those borrowers who withdrew from the program.

(vi) Exclusions. For the award year the Secretary calculates the loan repayment rate for a GE program, the

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Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that--

(A) One or more of the borrower's loans were in a military-related deferment status for at least 60 consecutive days during the most recently completed award year;

(B) One or more of the borrower's FFEL loans 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 and 685.212;

(C) The borrower was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the most recently completed award year; or

(D) The borrower died.

(4) Median earnings. The Secretary calculates the median earnings of a GE program as described in paragraphs (b)(5)-(b)(9).

(5) Median earnings for students completing the GE program. The Secretary calculates the median earnings for the students who completed the GE program during the two-year period in accordance with §668.405.

(6) Median earnings for students who withdrew from the GE program. (i) The Secretary calculates the median earnings for

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the students who withdrew from the GE program during the two-year period by--

(A) Creating a list of the students who were enrolled in the program but withdrew during the two-year period and providing it to the institution, as provided in paragraph (b)(6)(ii);

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(6)(iii);

(C) Obtaining from SSA the median annual earnings of the students on the list, as provided in paragraph (b)(6)(iv); 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 during the two-year period from the data provided by the institution under §668.412; and

(2) Removing any student who is excluded under paragraph (b)(8).

(B) The Secretary provides the list to the institution.

(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

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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 30 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)(8); 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 30-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.

(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.

(iv) Obtaining earnings data. The Secretary submits the final list to SSA. For purposes of this section SSA returns to the Secretary--

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(1) 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

(2) The number, but not the identities, of students on the list that SSA could not match.

(7) Median earnings for students who completed and withdrew from the GE program. (i) The Secretary calculates the median earnings for both the students who completed the GE program during the two-year period and students who withdrew from the GE program during the two-year period by-

(A) Creating a list of both the students who completed the GE program during the two-year period and students who withdrew from the GE program during the two-year period and providing it to the institution, as provided in paragraph (b)(7)(ii);

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(7)(iii);

(C) Obtaining from SSA the mean and median annual earnings of the students on the list, as provided in paragraph (b)(7)(iv); and

(D) Notifying the institution of the mean and 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--

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(1) Identifying the students who were enrolled in the program and completed or withdrew during the two-year period from the data provided by the institution under §668.412; and

(2) Removing any student who is excluded under paragraph (b)(8).

(B) The Secretary provides the list to the institution.

(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 30 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)(8); 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 30-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.

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(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.

(iv) Obtaining earnings data. The Secretary submits the final list to SSA. For purposes of this section SSA returns to the Secretary--

(1) The mean and median 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.

(8) 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 FFEL or Direct Loans were in a military-related deferment status for at least 60 consecutive days during the calendar year for which the Secretary obtains earnings information under this section;

(ii) One or more of the student's FFEL or Direct 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 682.402 and 685.212;

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(iii) The student was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the calendar year for which the Secretary obtains earnings information under this section;

(v) The student died.

(9) Median earnings not calculated. The Secretary does not calculate the mean or median earnings for a GE program if SSA does not provide the mean and median earnings for the program.

(c) Notification to institution. The Secretary notifies the institution of the--

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1)-(b)(3) of this section and the information the Secretary used to calculate those rates.

(2) Median earnings of the students who completed the program, as described in paragraph (b)(5) of this section, the students who withdrew from the program, as described in paragraph (b)(6) of this section, or both the students who completed the GE program during the two-year period and students who withdrew from the GE program during the two-year period, as described in paragraph (b)(7) of this section.

(d) Challenges to rates and earnings. (1) Completion, withdrawal, and repayment rates.

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(i) No later than 45 days after the Secretary notifies an institution of the draft completion, withdrawal, and repayment rates, the institution may challenge the accuracy of the information that the Secretary used to calculate the draft rates by submitting, in a form prescribed by the Secretary, evidence satisfactory to the Secretary demonstrating that the information was inaccurate.

(ii) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate the rates 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.

(iii) An institution may challenge the Secretary's calculation of the completion, withdrawal, and repayment rates only once for an award year. An institution that does not timely challenge the rates waives any objection to the rates 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 and earnings. (1) Completion, withdrawal, and repayment rates.

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(i) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a GE program's draft completion, withdrawal, and repayments rates constitute the final rates for that program.

(ii) The Secretary informs the institution of the final completion, withdrawal, and repayment rates 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, withdrawal, and repayment rates.

(2) Median earnings. The median earnings of the GE 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 GE program.

(f) Conditions for challenges. An institution must ensure that any material that it submits to make any corrections or challenge provided in 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.

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§668.415 Application requirement for new GE programs.

Comment [A12]: Margaret Reiter will be providing suggested language for this section.

(a) An institution must apply to the Secretary to establish a new GE program if--

(1) The program has the same CIP code as, or is substantially similar to, a program that--

(i) Became ineligible under this subpart; or

(ii) Was a failing or zone program that the institution voluntarily discontinued or is replacing a currently failing or zone program;

(2) The institution does not currently offer an eligible program within the same CIP family; or

(3) The institution currently has, or had within the previous three years, a failing program under its GE measures within the same CIP family.

(b) For a new program requiring the approval of the Secretary under paragraph (a), an institution must submit a materially complete application to the Secretary in a format prescribed by the Secretary signed by the institution's most senior executive officer. The application must include the following information:

(1) The CIP code, credential level, and length of program of the program, and a description of how the institution determined the CIP code.

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(2) The primary occupations, by name and SOC code, that the program will prepare students to enter.

(3) The total cost of tuition and fees, and the total cost of books and supplies that a student would incur for completing the program.

(4) The date of the expected first day of instruction of the program as a title IV eligible program.

(5) The projected total enrollment for each of the first three years that the institution will offer the program.

(6) The projected entry-level earnings of program completers as reported to the institution by likely employers.

(7) A narrative description of how the program was reviewed by, approved by, or developed in conjunction with an advisory committee, a government agency, businesses, or organizations that will likely employ completers of the program.

(8) Letters of recommendation for the program from at least three businesses or organizations that are likely to employ completers of the program signed by an executive officer of each business.

(9) Documentation that the program has been approved by the institution's accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized

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State agency for the approval of public postsecondary vocational education in lieu of accreditation.

(10) For each occupation that the program will prepare students to enter, whether the program meets applicable State requirements, specialized or programmatic accreditation requirements, and other requirements that completers of the program would have to satisfy to--

(i) Meet State licensure or certification requirements, if any, in the State in which the program is offered;

(ii) Meet the conditions or prerequisites for obtaining a certification required or preferred by employers in the State in which the program is offered; and

(iii) Otherwise obtain employment in the State in which the program is offered.

(11) If the program is intended to replace a program that is currently offered or was offered within the previous three years, a description of the changes the institution made to improve the program's performance under the requirements of this subpart.

(c) The Secretary approves the GE program if--

(1) The institution provides all the information required by paragraph (b);

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(2) There are no material or unresolved issues relating to the institution's administration of or participation in the title IV, HEA programs; and

(3) The institution has complied with the reporting and disclosure requirements in §§668.412 and 668.413, respectively for all of its GE programs.

(d) The Secretary notifies the institution if its application for the GE program is approved or denied. If the application is denied, the Secretary informs the institution of the reasons for the denial, and the institution may petition the Secretary to reconsider that denial.

(e) An institution may begin disbursing title IV, HEA program funds to students enrolled in a new GE program subject to this section on the date the Secretary approves the program under paragraph (d).

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§668.416 Certifications for GE programs.

(a) Program participation agreement certification. An institution must provide in its Program Participation Agreement under 34 CFR 668.14 a certification that for each of its existing GE programs--

(1) The program has been approved by the institution's accrediting agency, received programmatic accreditation if required, or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and

(2) The successful completion of the GE program will meet the requirements generally needed to secure employment in the recognized occupation for which the program prepares students, including the ability to apply to take or to take any examination required to receive a local, State, or Federal license, or a nongovernmental certification, required as a precondition for employment, or to perform certain specialized functions included in the program's training in the States in which the educational program is offered, or to meet additional conditions that the institution knows, or reasonably should

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know, must generally be met to secure employment in a recognized occupation for which the program prepares students.

(b) Transitional certification. On or before September 1, 2015, an institution must provide to the Department a certification signed by its most senior executive officer that all of its GE programs receiving title IV, HEA funds at that time meet the requirements of paragraph (a) of this section unless that certification is already included in the Program Participation Agreement for the institution.

Conforming Changes to Existing Regulations

(new language underlined)

§600.2 Definitions.

The following definitions apply to terms in this part:

* * *

Recognized occupation: An occupation that is--

(a) 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 and which are available at <http://online.onecenter.org> or its successor site; or

(b) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

§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 668, subpart Q, obtain the Secretary's approval as may be required under 34 CFR 668.415; and

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(ii) For a direct assessment program under 34 CFR 668.10, a comprehensive transition and postsecondary program under 34 CFR 668.232, or 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.

(2) 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) or (ii) of this section.

(3) An institution must repay to the Secretary all HEA program funds received by the institution for an educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program if the institution--

(i) Fails to obtain the Secretary's approval for an educational program identified in paragraph (c)(1) of this section; or

(ii) Incorrectly determines that an educational program that is not subject to approval under paragraph (c)(1) or (2) of this section is an eligible program for title IV, HEA program purposes.

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§600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding program eligibility or institutional eligibility and certification.

* * *

(c) The application and certification requirements for programs that are required to prepare students for gainful employment in a recognized occupation are in 34 CFR §§668.415 and 668.416.

* * *

§600.21 Updating application information.

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

* * *

(11) For any gainful employment program under 34 CFR part 668, subpart Q, for which the institution--

(i) Discontinues the program's eligibility under 34 CFR 668.411;

(ii) Ceases to provide the program for a reason other than a normal vacation period or natural disaster;

(iii) Loses program eligibility under §600.40; or

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(iv) Changes the program's name, and as defined in 34 CFR 668.402, CIP code, or credential level.

* * *

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower's duty to provide information. The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b) Changes in borrower information. (1) The borrower shall promptly notify the Secretary of any change of name, address,

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student status to less than half-time, employer, or employer's address; and

(2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) Borrower defenses. (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law except as provided in paragraph (c)(2) of this section. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR part 31.

(iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) A borrower may not assert as a defense to repayment of a Direct Loan a cause of action for which an element is that the school, a location of the school, or a program offered by the school did not or does not meet one or more requirements for the school, location, or program, as applicable, to be eligible to participate in a title IV, HEA program.

Comment [A13]: Per discussion today, is this going to be removed?

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(3) If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(4) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in §685.309(c) unless the school received actual notice of the claim during that period.