

**2010/2011 Final Rules on Debt Measures and Reporting and Disclosure Requirements for Gainful Employment Programs (redlined to remove references to the repayment rate and the reporting requirements for non-T4 students that were not upheld in the District Court litigation, APSCU v. Duncan, Civil Action 11-1314)**

**668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.**

(a) *Reporting requirements.* [ED Note: Per Court decision, non-Title IV students would not be included in the reporting requirements] (1) In accordance with procedures established by the Secretary an institution must report information that includes—

(i) For each student who enrolled in a program under § 668.8(c)(3) or (d) during an award year—

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

(B) If the student began attending a program during the award year, the name and the Classification of Instructional Program (CIP) code of that program; and

(C) If the student completed a program during the award year—

(1) The name and CIP code of that program, and the date the student completed the program;

(2) The amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution upon completing the program; and

(3) Whether the student matriculated to a higher credentialed program at the institution or if available, evidence that the student transferred to a higher credentialed program at another institution; and

(ii) For each program, by name and CIP code, offered by the institution under § 668.8(c)(3) or (d), the total number of students that are enrolled in the program at the end of each award year and identifying information for those students.

(2)(i) An institution must report the information required under paragraph (a)(1) of this section—

(A) No later than October 1, 2011 for information from the 2006-07 award year to the extent that the information is available;

(B) No later than October 1, 2011 for information from the 2007-08 through 2009-10 award years; and

(C) No earlier than September 30, but no later than the date established by the Secretary through a notice published in the Federal Register, for information from the most recently completed award year.

(ii) For any award year, if an institution is unable to provide all or some of the information required under paragraph (a)(1) of this section, the institution must provide an explanation of why the missing information is not available.

(b) *Disclosures.* (1) For each program offered by an institution under this section, the institution must provide prospective students with—

(i) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O\*NET or its successor site. If the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O\*NET crosswalk at <http://online.onetcenter.org/crosswalk/> is more than ten, the institution may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program;

(ii) The on-time graduation rate for students completing the program, as provided under paragraph (c) of this section;

(iii) The tuition and fees it charges a student for completing the program within normal time as defined in § 668.41(a), the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institutions makes available under § 668.43(a);

(iv) The placement rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) when that rate is available. In the meantime, beginning on July 1, 2011, if the institution is required by its accrediting agency or State to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the accrediting agency or State methodology to calculate a placement rate for the program and disclose that rate; and

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) For each program, the institution must—

(i) Include the information required under paragraph (b)(1) of this section in promotional materials it makes available to prospective students and post this information on its Web site;

(ii) Prominently provide the information required under paragraph (b)(1) of this section in a simple and meaningful manner on the home page of its program Web site, and provide a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information;

(iii) Display the information required under paragraph (b)(1) of this section on the institution's Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information; and

(iv) Use the disclosure form issued by the Secretary to provide the information in paragraph (b)(1), and other information, when that form is available.

(c) *On-time completion rate.* An institution calculates an on-time completion rate for each program subject to this section by—

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under § 668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100. Show citation box

(Approved by the Office of Management and Budget under control number 1845-NEW1)

(Authority: [20 U.S.C 1001](#)(b), 1002(b) and (c))

**§ 668.7 Gainful employment in a recognized occupation.**

(a) *Gainful employment.* (1) *Minimum standards.* A program is considered to provide training that leads to gainful employment in a recognized occupation if—

~~(i) As determined under paragraph (b) of this section, the program's annual loan repayment rate is at least 35 percent;~~

(ii) As determined under paragraph (c) of this section, the program's annual loan payment is less than or equal to—

(A) 30 percent of discretionary income (discretionary income threshold); or

(B) 12 percent of annual earnings (actual earnings threshold); or

(iii) The data needed to determine whether a program satisfies the minimum standards are not available to the Secretary.

(2) *General.* For the purposes of this section—

(i)(A) A *program* refers to an educational program offered by an institution under § 668.8(c)(3) or (d) that is identified by a combination of the institution's six-digit OPEID number, the program's six-digit CIP code as assigned by an institution or determined by the Secretary, and credential level;

(B) The Secretary determines whether an institution accurately assigns a CIP code for a program based on the classifications and program codes established by the National Center for Education Statistics (NCES); and

(C) The credential levels for identifying a program are undergraduate certificate, associate's degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree;

(ii) *Debt measures* refers ~~collectively~~ to the ~~loan repayment rate and~~ debt-to-earnings ratios described in paragraphs ~~(b) and~~ (c) of this section;

(iii) A *fiscal year* (FY) is the 12-month period starting October 1 and ending September 30 that is designated by the calendar year in which it ends; for example FY 2013 is from October 1, 2012 to September 30, 2013. That designation also represents the FY for which the Secretary calculates the debt measures;

(iv) A *two-year period* is the period covering two consecutive FYs that occur on—

(A)(1) The third and fourth FYs (2YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009; or

~~(2) For FYs 2012, 2013, and 2014, the first and second FYs (2YP-A) prior to the most recently completed FY for which the loan repayment rate is calculated under paragraph (b) of this section. For example, if the most recently completed FY is 2012, the 2YP-A is FYs 2010 and 2011; or~~

(B) For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, the sixth and seventh FYs (2YP-R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP-R is FYs 2005 and 2006. For this purpose, a required medical 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 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 borrower may be licensed by the State and board certified for professional practice or service;

(v) A *four-year period* is the period covering four consecutive FYs that occur on—

(A) The third, fourth, fifth, and sixth FYs (4YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2017, the 4YP is FYs 2011, 2012, 2013, and 2014; or

(B) For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, the sixth, seventh, eighth, and ninth FYs (4YP-R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2017, the 4YP-R is FYs 2008, 2009, 2010, and 2011. For this purpose, a required medical 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 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 borrower may be licensed by the State and board certified for professional practice or service; and

(vi) *Discretionary income* is the difference between the mean or median annual earnings and 150 percent of the most current Poverty Guideline for a single person in the continental U.S. The Poverty Guidelines are published annually by the U.S. Department of Health and Human Services (HHS) and are available at <http://aspe.hhs.gov/poverty>.

~~(b) *Loan repayment rate.* For the most recently completed FY, the Secretary calculates the loan repayment rate for a program using the following ratio:~~

$$\frac{\text{OOPB of LPF plus OOPB of PML}}{\text{OOPB}}$$

~~(1) *Original Outstanding Principal Balance (OOPB).* (i) The OOPB is the amount of the outstanding balance, including capitalized interest, on FFEL or Direct Loans owed by students for attendance in the program on the date those loans first entered repayment.~~

~~(ii) The OOPB includes FFEL and Direct Loans that first entered repayment during the 2YP, the 2YP-A, the 2YP-R, the 4YP, or the 4YP-R. The OOPB does not include PLUS loans made to parent borrowers or TEACH Grant-related unsubsidized loans.~~

~~(iii) For consolidation loans, the OOPB is the OOPB of the FFEL and Direct Loans attributable to a borrower's attendance in the program.~~

~~(iv) For FYs 2012, 2013, and 2014, the Secretary calculates two loan repayment rates for a program, one with the 2YP and the other with the 2YP-A, so long as the 2YP-A represents more than 30 borrowers whose loans entered repayment. Provided that both loan repayment rates are calculated, the Secretary determines whether the program meets the minimum standard under paragraph (a)(1)(i) of this section by using the higher of the 2YP rate or the 2YP-A rate.~~

~~(2) *Loans Paid in Full (LPF).* (i) LPF are loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default and that have been paid in full by a borrower. A loan that is paid through a Federal Consolidation loan, a Direct Consolidation loan, or under another refinancing process provided for under the HEA, is not counted as paid in full for this purpose until the consolidation loan or other financial instrument is paid in full by the borrower.~~

~~(ii) The OOPB of LPF in the numerator of the ratio is the total amount of OOPB for these loans.~~

~~(3) *Payments Made Loans (PML).* (i) PML are loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default, where—~~

~~(A)(I) Payments made by a borrower during the most recently completed FY reduce the outstanding balance of a loan, including the outstanding balance of a Federal Consolidation Loan or Direct Consolidation Loan, to an amount that is less than the outstanding balance of the loan~~

~~at the beginning of that FY. The outstanding balance of a loan includes any unpaid accrued interest that has not been capitalized; or~~

~~(2) If the program is a post-baccalaureate certificate, master's degree, doctoral degree, or first-professional degree program, the total outstanding balance of a Federal or Direct Consolidation Loan at the end of the most recently completed FY is less than or equal to the total outstanding balance of the consolidation loan at the beginning of the FY. The outstanding balance of the consolidation loan includes any unpaid accrued interest that has not been capitalized;~~

~~(B) A borrower is in the process of qualifying for Public Service Loan Forgiveness under 34 CFR 685.219(c) and submits an employment certification to the Secretary that demonstrates the borrower is engaged in qualifying employment and the borrower made qualifying payments on the loan during the most recently completed FY; or~~

~~(C)(1) Except as provided under paragraph (b)(3)(i)(C)(2) of this section, a borrower in the income-based repayment plan (IBR), income-contingent repayment plan (ICR), or any other repayment plan makes scheduled payments on the loan during the most recently completed FY for an amount that is equal to or less than the interest that accrues on the loan during the FY. The Secretary limits the dollar amount of these interest-only or negative amortization loans in the numerator of the ratio to no more than 3 percent of the total amount of OOPB in the denominator of the ratio, based on available data on a program's borrowers who are making scheduled payments under these repayment plans.~~

~~(2) Until the Secretary determines that there is sufficiently complete data on which of the program's borrowers have scheduled payments that are equal to or less than accruing interest, the Secretary will include in the numerator 3 percent of the OOPB in the denominator.~~

~~(3) Notwithstanding paragraph (b)(3)(i)(C)(1) of this section, with regard to applying the percent limitation on the dollar amount of the interest-only or negative amortization loans, the Secretary may adjust the limitation by publishing a notice in the Federal Register. The adjusted limitation may not be lower than the percent limitation specified in paragraph (b)(3)(i)(C)(1) of this section or higher than the estimated percentage of all outstanding Federal student loan dollars that are interest-only or negative amortization loans.~~

~~(ii) The OOPB of PML in the numerator of the ratio is the total amount of OOPB for the loans described in paragraph (b)(3)(i) of this section.~~

~~(4) Exclusions. For the most recently completed FY, the OOPB of the following loans is excluded from both the numerator and the denominator of the ratio:~~

~~(i) Loans that were in an in-school deferment status during any part of the FY.~~

~~(ii) Loans that were in a military-related deferment status during any part of the FY.~~

~~(iii) Loans that were discharged as a result of the death of the borrower under 34 CFR 682.402(b) or 34 CFR 685.212(a).~~

~~(iv) Loans that were assigned or transferred to the Secretary that are being considered for discharge as a result of the total and permanent disability of the borrower, or were discharged by the Secretary on that basis under 34 CFR 682.402(c) or 34 CFR 685.212(b).~~

(c) *Debt-to-earnings ratios.* (1) *General.* For each FY, the Secretary calculates the debt-to-earnings ratios using the following formulas:

(i) Discretionary income rate = Annual loan payment/(Mean or Median Annual Earnings – (1.5 × Poverty Guideline)).

(ii) Earnings rate = Annual loan payment/Mean or Median Annual Earnings.

(2) *Annual loan payment.* The Secretary determines the annual loan payment for a program by—

(i) Calculating the median loan debt of the program by—

(A) For each student who completed the program during the 2YP, the 2YP-R, the 4YP, or the 4YP-R, determining the lesser of—

(1) The amount of loan debt the student incurred, as determined under paragraph (c)(4) of this section; or

(2) If tuition and fee information is provided by the institution, the total amount of tuition and fees the institution charged the student for enrollment in all programs at the institution; and

(B) Using the lower amount obtained under paragraph (c)(2)(i)(A) of this section for each student in the calculation of the median loan debt for the program; and

(ii) Using the median loan debt for the program and the current annual interest rate on Federal Direct Unsubsidized Loans to calculate the annual loan payment based on—

(A) A 10-year repayment schedule for a program that leads to an undergraduate or post-baccalaureate certificate or to an associate's degree;

(B) A 15-year repayment schedule for a program that leads to a bachelor's or master's degree; or

(C) A 20-year repayment schedule for a program that leads to a doctoral or first-professional degree.

(3) *Annual earnings.* The Secretary obtains from the Social Security Administration (SSA), or another Federal agency, the most currently available mean and median annual earnings of the students who completed the program during the 2YP, the 2YP-R, the 4YP, or the 4YP-R. The

Secretary calculates the debt-to-earnings ratios using the higher of the mean or median annual earnings.

(4) *Loan debt.* In determining the loan debt for a student, the Secretary—

(i) Includes FFEL and Direct loans (except for parent PLUS or TEACH Grant-related loans) owed by the student for attendance in a program, and as reported under § 668.6(a)(1)(i)(C)(2), any private education loans or debt obligations arising from institutional financing plans;

(ii) Attributes all the loan debt incurred by the student for attendance in programs at the institution to the highest credentialed program subsequently completed by the student at the institution; and

(iii) Does not include 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 other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with [34 CFR 600.31](#).

(5) *Exclusions.* For the FY the Secretary calculates the debt-to-earnings ratios for a program, a student in the applicable two- or four-year period that completed the program is excluded from the ratio calculations if the Secretary determines that—

(i) One or more of the student's loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c)(3) of this section;

(ii) The student died;

(iii) One or more of the student's loans were assigned or transferred to the Secretary and are being considered for discharge as a result of the total and permanent disability of the student, or were discharged by the Secretary on that basis under [34 CFR 682.402\(c\)](#) or [34 CFR 685.212\(b\)](#); or

(iv) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c)(3) of this section.

(d) *Small numbers.* (1) The Secretary calculates the debt measures for a program with a small number of borrowers or completers by using the 4YP or the 4YP-R, as applicable, if—

~~(i) For the loan repayment rate, the corresponding 2YP or the 2YP-R represents 30 or fewer borrowers whose loans entered repayment after any of those loans are excluded under paragraph (b)(4) of this section; or~~

(ii) For the debt-to-earnings ratios, the corresponding 2YP or the 2YP-R represents 30 or fewer students who completed the program after any of those students are excluded under paragraph (c)(5) of this section.

(2) In lieu of the minimum standards in paragraph (a)(1) of this section, the program satisfies the debt measures if—

(i)(A) The 4YP or the 4YP-R represents, after any exclusions under paragraph (b)(4) or (c)(5) of this section, ~~30 or fewer borrowers whose loans entered repayment or~~ 30 or fewer students who completed the program; or

(B) SSA did not provide the mean and median earnings for the program as provided under paragraph (c)(3) of this section; or

(ii) The median loan debt calculated under paragraph (c)(2)(i) of this section is zero.

(e) *Draft debt measures and data corrections.* For each FY beginning with FY 2012, the Secretary issues draft results of the debt measures for each program offered by an institution. As provided under this paragraph, the institution may correct the data used to calculate the draft results before the Secretary issues final debt measures under paragraph (f) of this section.

(1) *Pre-draft corrections process for the debt-to-earnings ratios.* (i) Before issuing the draft results of the debt-to-earnings ratios for a program, the Secretary provides to an institution a list of the students who will be included in the applicable two- or four-year period for calculating the ratios. No later than 30 days after the date the Secretary provides the list to the institution, in accordance with procedures established by the Secretary, the institution may—

(A) Provide evidence showing that a student should be included on or removed from the list; or

(B) Correct or update the identity information provided for a student on the list, such as name, social security number, or date of birth.

(ii) After the 30 day correction period, the institution may no longer challenge whether students should be included on the list or update the identity information of those students.

(iii) If the information provided by the institution under paragraph (e)(1)(i) of this section is accurate, the updated information is used to create a final list of students that the Secretary submits to SSA. The Secretary calculates the draft debt-to-earnings ratios based on the mean and median earnings provided by SSA for the students on the final list.

(iv) An institution may not challenge the accuracy of the mean or median annual earnings the Secretary obtained from SSA to calculate the draft debt-to-earnings ratios for the program.

(2) *Post-draft corrections process for the debt measures.* No later than 45 days after the Secretary issues the draft results of the debt-to-earnings ratios for a program ~~and no later than 45~~

~~days after the Secretary issues the draft results of the loan repayment rate for a program, respectively, in accordance with procedures established by the Secretary, an institution—~~

(i) May challenge the accuracy of the loan data for a borrower that was used to calculate the ~~draft loan repayment rate, or the~~ median loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios, by submitting evidence showing that ~~the borrower loan data or~~ the program median loan debt is inaccurate; and

~~(ii) May challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan repayment rate by—~~

~~(A) Submitting evidence showing that a borrower should be included on or removed from the list; or~~

~~(B) Correcting or updating the identity information provided for a borrower on the list, such as name, social security number, or date of birth.~~

(3) *Recalculated results.* (i) *Debt measures.* In general, if the information provided by an institution under paragraph (e)(2) of this section is accurate, the Secretary uses the corrected information to recalculate the debt measures for the program.

(ii) *Debt-to-earnings ratios.* For a failing program, if SSA is unable to include in its calculation of the mean and median earnings for the program one or more students on the list finalized under paragraph (e)(1)(iii) of this section, the Secretary adjusts the median loan debt by removing the highest loan debt associated with the number of students SSA is unable to include in its calculation. For example, if SSA is unable to include three students in its calculation, the Secretary removes the loan debt for the same number of students on the list that had the highest loan debt. The Secretary recalculates the debt-to-earnings ratios for the program based on the adjusted median loan debt.

(f) *Final debt measures.* The Secretary notifies an institution of any draft results that are not challenged, or are recalculated or unsuccessfully challenged under paragraph (e) of this section. These results become the final debt measures for the program.

(g) *Alternative earnings.* (1) *General.* An institution may demonstrate that a failing program, as defined under paragraph (h) of this section, would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program as determined under paragraph (c) of this section, and alternative earnings from: a State-sponsored data system; an institutional survey conducted in accordance with NCES standards; or, for FYs 2012, 2013, and 2014, the Bureau of Labor Statistics (BLS).

(2) *State data.* For final debt-to-earnings ratios calculated by the Secretary for FY 2012 and any subsequent FY, an institution may use State data to recalculate those ratios for a failing program only if the institution—

(i) Obtains earnings data from State-sponsored data systems for more than 50 percent of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and that number of students is more than 30;

(ii) Uses the actual, State-derived mean or median earnings of the students in the applicable two- or four-year period under paragraph (g)(2)(i) of this section; and

(iii) Demonstrates that it accurately used the actual State-derived data to recalculate the ratios.

(3) *Survey data.* For final debt-to-earnings ratios calculated by the Secretary for FY 2012 and any subsequent FY, an institution may use survey data to recalculate those ratios for a failing program only if the institution—

(i) Uses reported earnings obtained from an institutional survey conducted of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and the survey data is for more than 30 students. The institution may use the mean or median annual earnings derived from the survey data;

(ii) Submits a copy of the survey and certifies that it was conducted in accordance with the statistical standards and procedures established by NCES and available at <http://nces.ed.gov>; and

(iii) Submits an examination-level attestation by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the specified NCES standards and procedures. The attestation must be conducted in accordance with the general, field work, and reporting standards for attestation engagements contained in the GAO's Government Auditing Standards, and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General.

(4) *BLS data.* For the final debt-to-earnings ratios calculated by the Secretary for FYs 2012, 2013, and 2014, an institution may use BLS earnings data to recalculate those ratios for a failing program only if the institution—

(i) Identifies and provides documentation of the occupation by SOC code, or combination of SOC codes, in which more than 50 percent of the students in the 2YP or 4YP were placed or found employment, and that number of students is more than 30. The institution may use placement records it maintains to satisfy accrediting agency or State requirements if those records indicate the occupation in which the student was placed. Otherwise, the institution must submit employment records or other documentation showing the SOC code or codes in which the students typically found employment;

(ii) Uses the most current BLS earnings data for the identified SOC code to calculate the debt-to-earnings ratio. If more than one SOC code is identified under paragraph (g)(4)(i) of this section, the institution must calculate the weighted average earnings of those SOC codes based on BLS

employment data or institutional placement data. In either case, the institution must use BLS earnings at no higher than the 25th percentile; and

(iii) Submits, upon request, all the placement, employment, and other records maintained by the institution for the program under paragraph (g)(4)(i) of this section that the institution examined to determine whether those records identified the SOC codes for the students who were placed or found employment.

(5) *Alternative earnings process.* (i) In accordance with procedures established by the Secretary, the institution must—

(A) Notify the Secretary of its intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures under paragraph (f) of this section; and

(B) Submit all supporting documentation related to recalculating the debt-to-earnings ratios using alternative earnings no later than 60 days after the date the institution is notified of its final debt measures under paragraph (f) of this section.

(ii) Pending the Secretary's review of the institution's submission, the institution is not subject to the requirements arising from the program's failure to satisfy the debt measures, provided the submission was complete, timely, and accurate.

(iii)(A) If the Secretary denies the institution's submission, the Secretary notifies the institution of the reasons for the denial and the debt measures under paragraph (f) of this section become the final measures for the FY; or

(B) If the Secretary approves the institution's submission, the recalculated debt-to-earnings ratios become final for that FY.

(6) *Dissemination.* After the Secretary calculates the final debt measures, including the recalculated debt-to-earnings ratios under this section, and provides those debt measures to an institution—

(i) In accordance with § 668.6(b)(1)(v), the institution must disclose for each of its programs, the ~~final loan repayment rate under paragraph (b) of this section, and~~ final debt-to-earnings ratio under paragraph (c)(1)(ii) of this section; and

(ii) The Secretary may disseminate the final debt measures and information about, or related to, the debt measures to the public in any time, manner, and form, including publishing information that will allow the public to ascertain how well programs perform under the debt measures and other appropriate objective metrics.

(h) *Failing program.* Except for the small numbers provisions under paragraph (d) of this section, starting with the debt measures calculated for FY 2012, a program fails for a FY if its

final debt measures do not meet any of the minimum standards in paragraph (a)(1)~~(i) or~~ (ii) of this section.

(i) *Ineligible program.* Except as provided under paragraph (k) of this section, starting with the debt measures calculated for FY 2012, a failing program becomes ineligible if it does not meet any of the minimum standards in paragraph (a)(1) of this section for three out of the four most recent FYs. The Secretary notifies the institution that the program is ineligible on this basis, and the institution may no longer disburse title IV, HEA program funds to students enrolled in that program except as permitted using the procedures in § 668.26(d).

(j) *Debt warnings.* Whenever the Secretary notifies an institution under paragraph (h) of this section of a failing program, the institution must warn in a timely manner currently enrolled and prospective students of the consequences of that failure.

(1) *First year failure.* (i) For a failing program that does not meet the minimum standards in paragraph (a)(1) of this section for a single FY, the institution must provide to each enrolled and prospective student a warning prepared in plain language and presented in an easy to understand format that—

(A) Explains the debt measures and shows the amount by which the program did not meet the minimum standards; and

(B) Describes any actions the institution plans to take to improve the program's performance under the debt measures.

(ii) The warning must be delivered orally or in writing directly to the student in accordance with the procedures established by the institution. Delivering the debt warning directly to the student includes communicating with the student face-to-face or telephonically, communicating with the student along with other affected students as part of a group presentation, and sending the warning to the student's e-mail address.

(iii) If an institution opts to deliver the warning orally to a student, it must maintain documentation of how that information was provided, including any materials the institution used to deliver that warning and any documentation of the student's presence at the time of the warning.

(iv) An institution must continue to provide the debt warning until it is notified by the Secretary that the failing program now satisfies one of the minimum standards in paragraph (a)(1) of this section.

(2) *Second year failure.* (i) For a failing program that does not meet the minimum standards in paragraph (a)(1) of this section for two consecutive FYs or for two out of the three most recently completed FYs, the institution must provide the debt warning under paragraph (j)(1) of this section in writing in an easy to understand format and include in that warning—

(A) A plain language explanation of the actions the institution plans to take in response to the second failure. If the institution plans to discontinue the program, it must provide the timeline for doing so, and the options available to the student;

(B) A plain language explanation of the risks associated with enrolling or continuing in the program, including the potential consequences for, and options available to, the student if the program becomes ineligible for title IV, HEA program funds;

(C) A plain language explanation of the resources available, including <http://www.collegenavigator.gov>, that the student may use to research other educational options and compare program costs; and

(D) A clear and conspicuous statement that a student who enrolls or continues in the program should expect to have difficulty repaying his or her student loans.

(ii) An institution must continue to provide this warning to enrolled and prospective students until the program has met one of the minimum standards for two of the last three FYs.

(3) *Timely warnings.* An institution must provide the warnings described in this paragraph to—

(i) An enrolled student, as soon as administratively feasible but no later than 30 days after the date the Secretary notifies the institution that the program failed; and

(ii) A prospective student at the time the student first contacts the institution requesting information about the program. If the prospective student intends to use title IV, HEA program funds to attend the program—

(A) The institution may not enroll the student until three days after the debt warnings are first provided to the student under this paragraph; and

(B) If more than 30 days pass from the date the debt warnings are first provided to the student under this paragraph and the date the student seeks to enroll in the program, the institution must provide the debt warnings again and may not enroll the student until three days after the debt warnings are most recently provided to the student under this paragraph.

(4) *Web site and promotional materials.* For the second-year debt warning in paragraph (j)(2) of this section, an institution must prominently display the debt warning on the program home page of its Web site and include the debt warning in all promotional materials it makes available to prospective students. These debt warnings may be provided in conjunction with the disclosures required under § 668.6(b)(2).

(5) *Voluntarily discontinued failing program.* An institution that voluntarily discontinues a failing program under paragraph (l)(1) of this section, must notify enrolled students at the same time that it provides the written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility.

(6) *Alternative language.* To the extent practicable, the institution must provide alternatives to English-language warnings for those students for whom English is not their first language.

~~(k) *Transition year.* For programs that become ineligible under paragraph (i) of this section based on final debt measures for FYs 2012, 2013, and 2014, the Secretary caps the number of those ineligible programs by—~~

~~(1) *Sorting all programs by category of institution (public, private nonprofit, and proprietary) and then by loan repayment rate, from the lowest rate to the highest rate; and*~~

~~(2) *For each category of institution, beginning with the ineligible program with the lowest loan repayment rate, identifying the ineligible programs that account for a combined number of students who completed the programs during FY 2014 that do not exceed 5 percent of the total number of students who completed programs in that category. For example, the Secretary does not designate as ineligible a program, or two or more programs that have the same loan repayment rate, if the total number of students who completed that program or programs would exceed the 5 percent cap for an institutional category.*~~

(1) *Restrictions for ineligible and voluntarily discontinued failing programs.* (1) *General.* An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution reestablishes the eligibility of that program under the provisions in [34 CFR 600.20\(d\)](#). For this purpose, an institution voluntarily discontinues a failing program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.

(2) *Periods of ineligibility.* (i) *Voluntarily discontinued failing programs.* An institution may not seek under [34 CFR 600.20\(d\)](#) to reestablish the eligibility of a failing program that it voluntarily discontinued until—

(A) The end of the second FY following the FY the program was voluntarily discontinued if the institution voluntarily discontinued the program at any time after the program is determined to be a failing program, but no later than 90 days after the date the Secretary notified the institution that it must provide the second year debt warnings under paragraph (j)(2) of this section; or

(B) The end of the third FY following the FY the program was voluntarily discontinued if the institution voluntarily discontinued the program more than 90 days after the date the Secretary notified the institution that it must provide the second year debt warnings under paragraph (j)(2) of this section.

(ii) *Ineligible programs.* An institution may not seek under [34 CFR 600.20\(d\)](#) to reestablish the eligibility of an ineligible program, or to establish the eligibility of a program that is substantially similar to the ineligible program, until the end of the third FY following the FY the program became ineligible. A program is substantially similar to the ineligible program if it has the same credential level and the same first four digits of the CIP code as that of the ineligible program.

**DRAFT FOR DISCUSSION PURPOSES – 08/29/2013**

(Approved by the Office of Management and Budget under control number 1845-0109)

(Authority: [20 U.S.C. 1001](#)(b), 1002(b) and (c))