

# AACS' Proposed Re-draft of the Department's 8/29/2013 Gainful Employment Discussion Draft

## Subpart Q – Gainful Employment (GE) Programs

§668.401 Scope and purpose. *This subpart applies to an educational program offered by an eligible institution that is intended to prepare students for gainful employment in a recognized occupation, and establishes the rules and procedures under which –*

*(1) The Secretary determines whether the program prepares students for gainful employment, and the conditions under which the program remains eligible for title IV, HEA program funds;*

*(2) An institution reports and discloses information about the program.*

## §668.402 Definitions.

*The following definitions apply to this subpart.*

### Classification of instructional program or CIP:

*A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Educational Statistics (NCES).*

### Debt-to-earnings rates (D/E rates):

*The percentage of a GE program's annual loan payment compared to the earnings of the students who completed that program, as determined under §668.404. For purposes of this subpart, there are two D/E rates: a discretionary income rate and an annual earnings rate, which are calculated as specified under §668.404.*

### Discretionary income:

*The difference between the higher of the mean or median annual loan earnings and 150 percent of the Poverty Guideline for a single person in the continental United States. 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> or successor site.*

## **Concerns & Recommendations**

The language provided is inconsistent with the actual calculation methodology which bases the income using the higher of either mean or median annual earnings as defined in §668.404 .

For continuity and consistency, AACS recommends revisions to the definition as provided.

### Gainful employment 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.*

~~*(a) The Secretary determines whether an institution accurately assigns a CIP code for a GE program based on the classifications and program codes established by NCES; and*~~

*(b) The credential levels for identifying a GE program 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.*

## **Concerns & Recommendations**

This key definition once again ties back to the corresponding statutory authority of the HEA.

Title I, 101(b) = §668.8(c)(3)

Title I, 102(b)(1)(A) & (c)(1)(A) = §668.8(d)

At its core definition:

- defines the programs which are subject to the gainful employment regulation;
- establishes new authority of the Secretary to scrutinize the CIP code designations – potentially limiting or denying previously established crosswalks between the program and CIP designation(s) presented by the school, corresponding CIP/SOC crosswalks used by the U.S. Department of Labor; and
- establishes credential levels to be used for the purpose of classifying gainful employment programs.

AACS fails to see the need for these two new additions and view them as overly burdensome and unnecessary new regulation.

The Secretary and the Department, along with the rest of the members of the TRIAD, already have the responsibility to review and verify the CIP codes and corresponding CIP/SOC crosswalks, so the first addition is redundant.

The second addition of the new program types is unnecessary and likely to cause additional confusion given yet another classification of programs. If these new classifications are to be maintained AACS would like to work with the Department to further refine them to better reflect the type of programs and lengths provided by our portion of the higher education community.

Normal time:

*Has the same meaning as the term “normal time” in 34 CFR 668.41.*

## **Concerns & Recommendations**

The definition as prescribed, under 34 CFR §668.41 reads as follows:

*Normal time* is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

AACS is concerned with the use of this definition in relation to the disclosure requirements and the calculation of completion rates under §668.409 and 668.410(f). The majority of our concerns on this issue are included under the later section.

*Student: A regular student, as defined in 34 CFR §600.2, who ~~received~~ "applied for" title IV, HEA program funds and completed the program during the award year.*

## **Concerns & Recommendations**

The definition as prescribed under 34 CFR §600.2 reads as follows:

*Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.*

The original GE language included only those students who "completed" the programs. The language without this clarification is problematic because:

- This opens up inclusion of students who are still enrolled. The reference below shows no other criteria other than "enrolled or accepted for enrollment". While there is reference in §668.404(d)(1) for "...any debt owed to the institution by the student upon the student's completion of the program;", further clarification in this definition would be helpful and solidly define exactly who is included in the calculations.
- The "completed" criteria reduced the cohort by the students who did not complete and included only those academic levels that were completed (i.e. if they enrolled in a higher credential level and didn't complete it, only the debt for the completed portion of their enrollment was used). This may or may not work to the school's advantage. The non-completer is more likely to have a lesser-paying job yet their debt may be close to if not the same as the completers.

A possible solution would be to ask for the "completers" to be the only students included in the calculations as proposed above – which includes both modification of the cohort (i.e. students who applied for student financial assistance as well as those who completed).

### 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 §§668.403 and 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 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 borrower may be licensed by a State and board certified for professional practice or service; "or*

*(c) For a program whose students are required to complete a State and/or board administered licensure examination prior to becoming eligible to enter the profession and become gainfully employed, the fifth and sixth 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 2008-2009 and 2009-2010.*

## **Concerns & Recommendations**

The proposed regulations provide for Medical and Dental internship/residency cohort earnings calculations based upon the 6<sup>th</sup> and 7<sup>th</sup> prior award years for students who must complete longer programs prior to gaining the credential/license and eligibility/access to the workforce.

Given the clear distinction/recognition that a portion of this exemption is based upon required credentialing which must be obtained (licensure) in order to legally enter the workforce, AACCS request similar dispensation for students entering the cosmetology profession – where licensure is also a requirement to enter the workforce.

AACCS therefore proposes the addition of a new subpart "(c)" establishing earnings calculations for students in cosmetology programs based upon the 5<sup>th</sup> and 6<sup>th</sup> prior award years as detailed above.

### §668.403 Gainful employment program framework.

*The Secretary determines whether a GE program provides training that prepares a student for gainful employment in a recognized occupation pursuant to this section.*

*(a) Debt-to-earnings rates. For each award year, the Secretary, pursuant to §668.404, calculates two D/E rates, one rate based on discretionary income (the discretionary income rate) and the other rate based on annual earnings (the annual earnings rate), for each GE program offered by an institution. Based on the GE program's D/E rates, the Secretary determines that the GE program is a ~~passing program~~, failing program, ~~zone program~~, or ineligible program as defined in paragraphs ~~(b) through (e)~~ "(b) and (c)" of this section.*

~~*(b) Passing program. A GE program for which the—  
(1) Discretionary income rate is equal to or less than 20 percent; or  
(2) Annual earnings rate is equal to or less than eight percent.*~~

~~*(e) Failing "(b) Failing" program. A GE program for which the--  
(1) Discretionary income rate is greater than 30 percent; and  
(2) Annual earnings rate is greater than 12 percent.*~~

~~*(d) Zone program. A GE program that is not a passing program and for which the--  
(1) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or  
(2) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.*~~

~~*(e) "(c)" Ineligible program. A GE program that--  
(1) Is a failing program in two out of any three consecutive award years for which D/E rates are calculated; or*~~

(2) *Is not a passing program in any of four consecutive award years for which D/E rates are calculated.*

## **Concerns & Recommendations**

AACS opposes the new pass, fail, and zone methodology proposed by the Department and the assertions that a passing or successful program is one which achieves D/E rates of eight percent of annual earnings or twenty-percent of discretionary earnings.

Further, AACS joins with others in the higher education community who noted additional problems with the Department's proposal including but not limited to:

- the retroactive nature of the timeframes used to determine eligibility under the two-year period;
- the complexity and problems associated with the pass, fail, and zone model;
- the inclusion of student borrowing beyond that which is applied to tuition, fees, and related academic costs – and the inability to prohibit borrowing well beyond what is necessary;
- concerns about the adverse impact on institutions with low numbers of borrowers and those institutions with low costs;
- concerns with the effect of Administration and Department proposals promoting IBR and Pay As You Earn as the primary repayment option for students – resulting in programs landing and remaining in the zone based upon decisions outside of the institutions control;
- the reduction of the period of time before an institution's program is determined to be ineligible from three out of any four years to two out of any three years; and
- the inclusion of ineligibility based upon four consecutive years within the zone – while never actually failing.

AACS is particularly concerned with the Department's assertion that in order to achieve compliance that an institution has two viable options:

1. Improve Earnings; or
2. Lower Cost/Reducing Borrowing.

We believe that many of the negotiators in the first session gave concrete examples of how impractical, if not impossible, significant incremental change would be and the implications for the programs (i.e. ineligibility) without modification.

AACS urges the Department to take these vitally important concerns into consideration and to significantly modify their initial proposal – to include both those detailed in the redline to the proposed rule, as well as the concerns noted in bulleted form above.

### §668.404 Calculating D/E rates.

(a) *General. Except as provided in paragraph (f) of this section for D/E rates that are not calculated 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 determines the annual loan payment for a program by--  
(1) Determining "the lower of the mean" or median loan debt of the students who completed the program during the two-year period, based on –

(i) the loan debt incurred by each student as determined under paragraph (d) of this section; "or  
(ii) If tuition and fee information is provided by the institution, the total amount of the tuition and fees the institution charged the student for enrollment in the highest credentialed program attended by the student at that institution;" and

(2) Amortizing ~~the median~~ loan debt ~~over a 10-year repayment period~~ as defined in (b)(1) of this section using the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary calculates the D/E rates *and based on –*

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

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

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

## Concerns & Recommendations

AACS is frustrated that the Department did not include important distinctions contained in the prior proposal which more accurately reflect the actual portion of the title IV funds attributable to program costs and the

Under the new proposal:

- There is no cap on the loan debt – which is a major concern. Without the limit, which was included in the prior regulation, this would require the inclusion of funds the borrower chooses to take for living expenses and other non-academically related costs.
- Language is missing that would reduce the loan debt, even if by a small amount, that was originally in the definition "...lower of the mean or median loan debt ..."
- A major concern for longer programs or programs with higher debt that would qualify for standard repayment schedules longer than 10 years. The 15- and 20-year repayment schedules were included in the original language and have been eliminated herein. This will disqualify many longer programs from eligibility.

AACS urges the Department to revert back to prior, more sensible, regulatory proposals in these areas as outlined above.

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

(2) *The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.*

*(d) Loan debt. In determining the loan debt for a student, the Secretary--*

*(1) Includes FFEL loans and Direct loans that the student received for attendance in the GE program (except for PLUS Loans made to parents of dependent students or Direct Unsubsidized Loans that were converted from TEACH Grants), any private education loans, and any debt owed to the institution by the student upon the student's completion of the program;*

*(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 "with the same CIP codes" 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.*

### **Concerns & Recommendations**

AACS is concerned with the open nature of the language for the Secretary to include loan debt from other institutions under common ownership or control needs to be further clarified to limit any broad and extreme interpretation beyond a similar course of study – and would therefore propose the modification detailed above.

*(e) Exclusions. For the award year the Secretary calculates the D/E rates for a GE program, the Secretary excludes a student from the rate calculations if the Secretary determines that—*

*(1) One or more of the student's loans were in a military-related deferment status for at least 60 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 either 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~~ "30" 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.*

### **Concerns & Recommendations**

AACS believes that exclusions for students enrolled on at least a half-time basis for at least thirty days – vs. the proposed sixty days – is a more reasonable timeframe and will be more equitable to all institutions of higher education and students.

*(f) 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;*

- (2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section; or
- (3) The annual or discretionary earnings are zero or less.

#### §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 by--
  - (1) Creating a list of the students from the applicable two-year period, as explained in paragraph (b) of this section;
  - (2) Allowing an institution to correct the information about the students on the list, as explained in paragraph (c) of this section;
  - (3) Obtaining from SSA the mean and median annual earnings of the students on the list, as explained in paragraph (d) of this section;
  - (4) Calculating draft D/E rates, as explained 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 explained in paragraph (f) of this section;
  - (6) Calculating final D/E rates, as explained in paragraph (g) of this section; and
  - (7) For a failing program, allowing the institution to appeal the final D/E rates by submitting an alternate earnings data survey, as explained in §668.406.

### **Concerns & Recommendations**

The regulation does not identify the time frame for the SSA data that will define annual earnings. Of course, it has to be a calendar year, since their data is only calendar year data. The first cohort will be completers from the academic years 2010-2011 and 2011-2012. For completers at the end of this cohort, the time from graduation, through licensure and then finding a job may mean that they will not have a full calendar year of employment in 2013.

#### *(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 §668.410; and
  - (ii) Removing any student who is excluded under §668.404(e).
- (2) 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. The institution bears the burden of proof that the list is incorrect.

#### *(c) Institutional corrections to the list. (1) The Secretary provides the institution with the list. No later than 30 days after the date the Secretary provides the list, the institution may--*

- (i) Provide evidence showing that a student should be included on or removed from the list; or
  - (ii) Correct or update the identity information, such as name, social security number, or date of birth, provided for a student on the list.
- (2) After the 30-day period expires, the institution may no longer seek to correct the list of students or revise the identity information of those students.
  - (3) 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. In response, SSA submits 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 submitted by SSA to calculate draft D/E rates for a GE program.*

(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 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.*

(f) *Institutional challenges to draft D/E rates.*

(1)(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 on the list.*

(ii) *The draft D/E rates and the data described in paragraphs (b) through (f) of this section are not considered public information.*

(2) *The Secretary presumes that the loan debt information is correct unless the institution provides evidence 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.*

(3) *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 by submitting evidence showing that the median loan debt calculated by the Secretary is inaccurate.*

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

(i) *Any objections to the mean or median annual earnings that SSA submitted to the Secretary;*

(ii) *More than one challenge to the draft D/E rates for a GE program for an award year; or*

(iii) *Any challenge that is not timely submitted.*

(5) *The Secretary considers any evidence provided by an institution challenging the "mean or" median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.*

(6) *If the data from an accepted challenge change the "mean or" median loan debt of the program, the Secretary recalculates the program's draft D/E rates.*

(7) *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) *Upon expiration of the 45 day period and subject to resolution of any challenge under paragraph (f) of this section, a GE program's draft D/E rates (including those determined pursuant to §668.408) constitute 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 §668.407(a).*

(3) *After the Secretary provides the notice of determination, the Secretary may publish the final D/E rates.*

*(h) Conditions for corrections, challenges, and appeals.*

*An institution must ensure that any material that it submits to make any correction, challenge, or appeal 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.*

#### §668.406 Alternate earnings appeals.

*(a) General. An institution may appeal a final D/E rate that would render a GE program a failing program 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 in the form, and conducted in accordance with the standards described in paragraph (b)(2) of this section is sufficient to warrant revision to the final D/E rate.*

*(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 in accordance with the NCES standards referenced in paragraph (b)(2) of this section;*

*(2) Certify that the survey was conducted in accordance with the methodology established by NCES and available at <http://nces.ed.gov>; and*

*(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 methodology established by NCES. The attestation must be conducted in accordance with the general, fieldwork, 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.*

*(c) Alternate earnings appeal procedure.*

*(1) In accordance with procedures established by the Secretary and provided in the notice of draft D/E rates and the notice of determination, 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 but no later than 3 business days after the date the Secretary issues the notice of determination informing the institution of its final D/E rates under §668.407(a); and*

*(ii) Submit all supporting documentation outlined in paragraph (b) of this section related to recalculating the D/E rates using the survey earnings data no later than ~~60~~ "180" 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 §668.407 while the Secretary considers the challenge. If the Secretary has published final D/E rates under §668.405(g), the program's final 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 §668.407(a), the Secretary notifies the institution of the reasons for the decision, and the D/E rates under §668.407(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 under §668.407(a), 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. 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.

## Concerns & Recommendations

The proposed method to allow schools to use "alternative" earnings data is very problematic. It requires that each institution conduct its own survey and that the survey be of its completers from the applicable two-year cohort.

With respect to a school-conducted survey, given the necessary rigor for the survey it seems that any small school would find the cost prohibitive. In addition, if the idea is that the data is really "alternative" then why is the sample limited to the same cohort? Presumably, the reason to have an "alternative" is to avoid unfairly penalizing a school that has cohort data that is not representative of the job sector that the program prepares the student for. If so, the cohort for the survey should be newer entrants into the jobs with the SOC codes associated with the program.

AACS opposes the limited appeals rights provided under the proposed regulation, the unrealistic expectations associated with the sole option provided, and are very concerned that under this new proposed regulation institutions would no longer have the ability to appeal the student earnings information based upon a list of alternative options – including Bureau of Labor Statistics data and the use of alternative means of tracking employment through job placement verification.

AACS urges the Department to reconsider alternative means of providing alternative earnings information.

### §668.407 Final determination and consequences of D/E rates.

(a) *Notice of determination.* For each year for which the Secretary calculates D/E rates for a GE program, the Secretary issues a notice of determination informing an institution of the following:

(1) The final D/E rates for the program as determined under §668.405 and, if applicable, §668.406.

(2) The final decision of the Secretary as to whether the program is a ~~passing~~, failing, ~~zone~~, or ineligible program, and the consequences of that classification.

(3) Instructions for appealing a final D/E rate that renders the program a failing program, pursuant to §668.406.

(4) If the program is classified as an ineligible program, the consequences of that ineligibility, as explained in paragraph (d)(1) of this section.

(5) Whether the program, if classified as a ~~zone-or~~ failing program for the subsequent award year, would be classified as an ineligible program.

(6) Whether the institution is required to provide student warnings under paragraph (c) of this section.

(7) Whether the program is subject to the enrollment limits in paragraph (d)(3) of this section.

(b) *Effective date of Secretary's decision.* The Secretary's decision is effective five business days after the date the Secretary issues the notice of determination, unless an institution timely files a notice of intent to submit an alternate earnings appeal for a failing program under §668.406(c)(1)(i) and timely submits the appeal under §668.406(c)(1)(ii).

(c) *Student warnings.* For any award year in which the Secretary notifies an institution that a GE program could become ineligible based on its final D/E rates for the subsequent award year, the institution--

(1) Must provide a written warning directly to each enrolled student participating in a program of sufficient length to potentially be at risk of loss of tile IV eligibility no later than 30 days after the date of the notice. The warning must--

(i) State that: "you may not be able to use title IV funds (Federal grants or student loans) to pay for the cost of attending the program after this year because recent graduates of the program are carrying levels of debt in comparison to their earnings that do not meet the U.S. Department of Education's standards" or any alternative warning language specified by the Secretary in a notice published in the Federal Register; and

(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. The warning must explain whether 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 all or part of the program;

(C) Refund the tuition, fees, and other required charges paid by, or on behalf of, the student for attending the program;

(D) Facilitate a transfer that would enable the student to complete his or her program at another institution; and

(E) Offer any other options to the student to continue his or her education; and

(2) For each prospective student--

(i) At the time the student first contacts the institution, must provide a written warning directly to the student —stating: "you may not be able to use title IV funds (Federal grants or student loans) to pay for the cost of attending the program after this year because recent graduates of the program are carrying levels of debt in comparison to their earnings that do not meet the U.S. Department of Education's standards" or any alternative language specified by the Secretary in a notice published in the Federal Register; and

(ii) May not enroll the student earlier than--

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

(B) If more than 30 days pass from the date the warning is first provided to the student, three business days after the institution provides another warning as required by paragraph (c)(2)(i) of this section.

## **Concerns & Recommendations**

AACS is very concerned that the proposed revisions would require some institutions with programs that are deemed as failing to present information through the required warning which is inaccurate, confusing students and potentially driving students at no risk of loss of student financial assistance to withdrawal from a program unnecessarily.

AACS urges the Department to revise the proposed warning criteria and notice so that it only requires notification to students truly at risk of loss of title IV eligibility.

*(d) Restrictions. (1) Ineligible program. Except as provided in §668.26(d), an institution may no longer 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 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 or became ineligible. A program is substantially similar if it has the same first four digits of the CIP code as that of the discontinued or ineligible program.*

*(3) Enrollment limit. For the 12-month period beginning the month after the Secretary notifies an institution that a GE program is a failing program, the total number of students (receiving title IV, HEA program funds) that the institution may enroll in the program may not exceed the number of students (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. 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.*

#### §668.408 Transition period.

*(a) If a GE program would be a failing ~~or zone~~ program based on draft D/E rates calculated in accordance with §668.404 for award years 2014-2015, 2015-2016, or 2016-2017, the Secretary calculates transitional draft D/E rates for the program by using--*

*(1) The lower of the mean or median loan debt of the students who completed the program during the most recently completed award year; and*

*(2) The earnings used to calculate the original draft D/E rates.*

*(b) For the award years listed in paragraph (a) 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 §668.405 or the transitional draft D/E rates calculated under this section.*

*(c) The institution may correct the list of students or challenge the transitional draft D/E rates under the procedures in §668.405 and may appeal the final D/E rates under §668.406.*

## **Concerns & Recommendations**

During the first session the Department attempted to explain their view that this transitional period was intended to assist institutions in complying with the regulation and would provide a worthwhile alternative based upon different data sets.

Following the Department's presentation, a very detailed discussion led by the for-profit institutional representatives ensued. This conversation clearly illustrated the inability of an institution (any institution) to be able to make changes before the regulations are published. This would enable them to effect a change in the D/E rates for the first year and possibly even the first two years regardless of the calculation methodology used.

Given this exchange during the first session, AACS respectfully requests the Department to re-evaluate the transitional period and work with the community on an alternative proposal, perhaps even the suggested notion that the first year might yet again be "informational" rates or other proposals suggesting a hold-harmless for the first year or two.

AACS looks forward to working with the Department, the negotiators, and the higher education community on a more equitable transitional evaluation structure/model.

§668.409 Reporting requirements for GE programs.

*(a) Every award year, 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, credential level, and normal time of the program;*

*(iii) Whether the program is a medical or dental program whose students are required to complete an internship or residency;*

*(iv) Whether the program requires students to complete a State and/or board administered licensure examination prior to becoming eligible to enter the profession and become gainfully employed;*

*~~(iv)~~ "(v)" The date the student began initial attendance in the program; and*

*~~(v)~~ "(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;*

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

*(iii) The total amount of debt arising from institutional financing plans the student owes the institution 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 requested by the Secretary to carry out the provisions of this subpart.*

*(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 2011-2012 through 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 different 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.

## Concerns & Recommendations

Subsection (a)(1)(v) is not clear. The requested data is fluid and will vary day to day. Without a “snapshot” date, this data cannot be provided. Also, for students that have changes in enrollment status during a year, what needs to be reported? In general, the regulations fail to account for the fact that students move in and out of school and in some cases do so repeatedly. The information reporting requirements and cohort definitions need to account for this so that individual students with multiple enrollment periods and statuses are not double counted.

Subsection (a)(2) has the same issue identified above. Let’s say that a student withdraws during an applicable award year, but then re-enrolls and is active at the end of that award year. As the regulation is drafted, the school would need to report this student as a withdrawal and report on their debt. The student would count (negatively) in the data that the school will report on completion etc. Such a student needs to be excluded from the reporting for that year altogether.

Section 668.409(a)(3). In this section and in several others in the draft proposal, the department gives itself broad authority to create additional requirements outside of the rulemaking process. This seems like overreaching on its part. The other sections are 668.410(a) and 668.410(a)(10).

Section 668.409(a)(5). What this provision requires is difficult to determine because of the different meaning of “institution” at the state and federal level. Here’s an example. The state of Maryland considers each of our locations as a separate “institution” for all state purposes. Maryland has placement reporting and defines the relevant cohort and also has strict documentation requirements that must be met for each student the institution claims to have placed. From a DOE perspective, the Maryland locations are not “institutions” but additional locations. The institution (at the OPEID level) must calculate a different placement rate under the NACCAS rules. So is it permissible for the Maryland locations to disclose the NACCAS rate? Must they also disclose the Maryland rate? If so, how does the school explain the difference, which could be significant? Moreover, if both rates must be disclosed it becomes virtually impossible to meet the “one click” requirement on an institutional (federal definition) or multi-institutional website.

Section 668.409(a)(6). As drafted the regulation purports to only require the median loan debt of **one of** completers, withdrawals, or both. I doubt the department really means that. If they mean that all three must be disclosed that they need to provide guidance on how to account for students that fall in both categories (some will) and restarts that are would otherwise be withdrawn students.

Section 668.409(a)(7). The draft does not specify where this data will come from. For the other provisions they make this clear.

§668.410 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 identifies the information that must be included in the template in a notice published in the Federal Register. That information may include, but is not limited to:

(1) The primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to occupational profiles on O\*NET ([www.onetonline.org](http://www.onetonline.org)) or its successor site.

(2) The GE program's completion rates as calculated by the Secretary under paragraph (f) of this section.

(3) As calculated by the Secretary under paragraph (g) of this section, 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.

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

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

"based upon either:

(i) as required by its accrediting agency or State to calculate a placement rate; or

(ii) if not required by such entities to calculate such a rate, based upon a calculation methodology prescribed by the Secretary."

(6) As calculated by the institution, the lower of the mean or median loan debt, including all of the loans described in §668.404(d)(1), incurred by any one 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)(6)(i) and (ii) of this section.

(7) The "mean and" median earnings, of any one of the following groups of students:

(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.

(iii) All of the students described in paragraph (a)(7)(i) and (ii) of this section.

(8) A link to the U.S. Department of Education's College Navigator Web site at <http://nces.ed.gov/collegenavigator/>, or its successor site; and

(9) If applicable, whether the program, with respect to the occupations for which the program prepares the student as disclosed by the institution under paragraph (a)(1) of this section, satisfies the educational prerequisites for professional licensure in the State in which the program is offered.

(10) As specified in a notice published by the Secretary in the Federal Register, any other information about the program that the Secretary requires the institution to disclose.

(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 for each of its GE programs.*

(2) *The institution must update the disclosure template within 30 days of receiving notice from the Secretary that the institution must provide student warnings for the program under §668.407(c) in order to notify enrolled and prospective students that the program has failed to meet U.S. Department of Education standards and that students enrolled or enrolling in the program may not qualify to receive title IV, HEA program funds for the duration of the entire program.*

(c) *Web link to disclosure information.* *On any Web page containing general, academic, or admissions information about a GE program, the institution must provide a prominent and direct link (~~one-click~~) to the disclosure template for that program.*

### **Concerns & Recommendations**

The one click rule will be a disaster. For schools with lots of locations and programs you will need to have one monster page with disclosures for lots of locations and programs on it. Students would be better served by a two-click rule for institutions with multiple locations and programs, so that a drop down box to help them identify the program and location they are interested in can be used.

AACS requests that the Department reconsider the proposal and work with the higher education community on a more clear and equitable disclosure requirement in this area.

(d) *Promotional materials.* (1) *All promotional materials about the GE program that an institution makes available to prospective students 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 (URL) of, or the direct link to, the disclosure template, provided that, the institution identifies the URL or link as “Important Federal Student Aid Information You Need to Know.”*

(2) *Promotional materials include, but are not limited to, an institution’s catalogs, invitations, flyers, billboards, and advertising on radio, television, the Internet, or social media account.*

(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 students.* *An institution must provide to each prospective student as a separate document, at the time the institution first provides the student information about the program and at the time the student enrolls in the program, a copy of the disclosure template.*

(f) *Completion rates.* *The Secretary calculates the completion rates of a GE program as follows:*

$$\frac{\text{Number of students in the enrollment cohort who completed the program within 100\% of normal time}}{\text{----- DIVIDED BY -----}}$$

*Number of students in the enrollment cohort*

*Number of students in the enrollment cohort who completed the program  
within 150% of normal time*

----- DIVIDED BY -----

*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.*

## **Concerns & Recommendations**

This a brand new completion rate definition. It does not have the 30-day withdrawal rule that is in IPEDS.

AACS suggests that the regulation should be revised to incorporate a consistent drop period. At a minimum, the cohort should exclude any student that drops during a free trial period. In other words, if the student gets all his or her tuition back, he or she should not hurt the completion rate. Otherwise, all the schools offering a free trial program will be adversely impacted by giving student a no risk method to experience the program and will need to evaluate whether it makes sense to continue a free trial program.

With regard to the payment rate, the broader authority of modifying the definition is of concern, and there is not definite assurance that change will be made to all institutions. The best option for schools would be to include just graduates, but there would be little to no benefit for including drops. Although it would benefit AACS to take this out entirely, in the very least we ask that the language in subsection (ii)(5) and (iii)(6), will be removed as written below.

*(g) Loan repayment rate. For the most recently completed award year, the Secretary calculates a loan repayment rate for borrowers who attended a GE program as follows:*

*Number paid in full plus number in active repayment*

----- DIVIDED BY -----

*Number entering repayment*

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

*(2) Number paid in full. Of the number of borrowers entering repayment, the number who have fully repaid loans received for attendance in the GE program.*

*(3) Number in active repayment. Of the number of borrowers entering repayment, the number who, during the most recently completed award year—*

*(i) Made loan payments sufficient to reduce by at least one dollar the outstanding principal balance of each loan, including consolidation loans that include a 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 not been capitalized; or*

*(ii) Made all loan payments required under an income-driven repayment plan.*

*(4) Loan defaults. A borrower who defaulted on a loan is not included in the numerator of the formula.*

*(5) Rates for borrowers who completed or withdrew. The Secretary may modify the formula in this paragraph to calculate repayment rates only for those borrowers who completed the program ~~or only those borrowers who withdrew from the program.~~*

*(6) Exclusions. For the award year the Secretary calculates the loan repayment rate for a GE program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that--*

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

*(ii) 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.*

*(6)(iii) The borrower was enrolled on at least a half-time basis for at least ~~60~~30 days in an eligible institution during the most recently completed award year; or*

*(iv) The borrower died.*