

OPPORTUNITY TO IMPROVE PROGRAM PERFORMANCE

A. Informational Rates

Proposal: The Department Should Issue One Complete Set Of Informational Rates To Provide Institutions The Opportunity To Assess How Their Programs Are Performing Under The New Metrics Before The Rule Takes Effect.

We believe the Department has placed institutions in a difficult situation by requiring them to *anticipate* the proposed Rule's impact *before* the metrics are finalized and published. We believe that most institutions impacted by the GE Rule – public, non-profit or, for-profit – may not fully and adequately understand the proposed regulation or its impact on their institution.¹ Institutions should be given the opportunity to understand and assess the finalized metrics before they can determine what steps they need to take to improve program performance.

We respectfully request that the Department issue one year of informational rates so institutions can see and understand their data and ensure they have an opportunity to improve program performance. These should be issued in draft form, without an appeal process, before leading to “final” informational rates.

We believe the Department might also benefit from this opportunity to develop and refine the data systems used for this regulation, since there have been so many questions about the accuracy of the Department's data released on August 30, 2013. For example, these “informational rates” do not identify the OPEID Number of the reported programs, and institutions cannot make use of the data if they cannot identify their programs. In addition, the Department's report on its methodology for these most recent informational rates noted that the Department could not obtain SSA matches for about 4,000 of the 6,000 programs that were reported to SSA, a substantial omission.

Last, it is also important to note that even though the GE Rule has been discussed for several years, and the Department has released other “trial” or “informational” rates, these other rates have always been fragmentary. The Department has never completed one entire cycle of issuing draft rates so that institutions can understand the effects on their programs and students and have the opportunity to test the accuracy of the data.

¹ Some institutions have been working to reduce student debt based on the 2011 proposed Rule which included 12% and 30% debt to earnings ratios.

Our suggested changes to the text of the regulation are presented in red below:

NEW Section 668.408-A Informational Rates

(a) The Department will publish one complete set of informational rates following the regulation’s effective date. The publication shall identify all covered institutions and programs by OPEID and CIP code.

(b) Institutions shall have the opportunity to challenge, but not appeal, such informational rates under the procedures at Section 668.405.

(c) The informational rates shall not have any legal effect, and no consequences or requirements as described in Section 668.407 shall be imposed based on such informational rates.

B. Transition Period

Proposal: The Transition Period Should Be Revised To Provide Institutions A Reasonable Opportunity To Improve Program Performance.

One of the Department’s stated goals for the GE Regulation is to give institutions the opportunity to improve program performance. However, as currently drafted, the rates calculated during the transition period rely on historical data, which will not offer institutions the appropriate opportunity to make changes necessary to improve performance before they are penalized.

The chart below was circulated at the recent Negotiated Rulemaking session in September as an explanation of the transition period set forth in Section 668.408 of the proposed Rule.

| | | | | |
|--------------------------------------|-------------------|-------------------|-------------------|-------------------|
| | 2014-2015 | 2015-2016 | 2016-2017 | 2017-2018 |
| Most Recently Completed Award Year | 7/1/14 to 6/30/15 | 7/1/15 to 6/30/16 | 7/1/16 to 6/30/17 | 7/1/17 to 6/30/18 |
| | | | | |
| 2YP (normal cohort) | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 |
| | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
| SSA Earnings Year (Jan. 1 - Dec. 31) | 2014 | 2015 | 2016 | 2017 |

According to the chart, assuming that the Department requires six months to calculate and distribute D/E rates, institutions would receive their first set of D/E rates for the 2014-15 award year in January 2016. The chart above also demonstrates that

these rates would pertain to students who completed the program in 2010-11 and 2011-12.

The proposed transition period does not provide an opportunity to improve.

We appreciate the Department’s efforts to add a transition period offering a chance to improve. However, even under the transition period’s provision permitting substitution of debt for “the most recently completed award year,” institutions will still be judged on retroactive data for students who graduated **at least six months** before institutions received their D/E rates. ***In short, no matter what debt reduction measures institutions take upon receipt of their D/E rates, they will not be able to improve performance in time to avoid the harsh penalties associated with program failure.*** Institutions can’t change the past; they only can affect the future.

In support of the Department’s goal to give institutions the opportunity to apply corrective measures, we propose that after one year of informational rates, ***the transition period should be equal in length to the program length, and that all consequences under Section 668.407 are suspended during that time.*** This permits the institution the opportunity to have an impact on an entire graduating class. The suggested transition period lengths would therefore be as follows:

| Credential Level | Transition Period Length |
|----------------------------|---------------------------------|
| Certificate Programs | One year ² |
| Associate Degree Programs | Two years |
| Bachelor’s Degree Programs | Four years |
| Master’s Degree Programs | Two years |

Graduating the transition period by credential level allows institutions an appropriate time to improve their programs. For example, if an institution receives notice that an associate degree program has a failing D/E rate in January 2016, the debt reduction strategies they adopt for the incoming freshman class in September would now have the potential to show positive results by the end of the two year period, without penalty. ***In contrast, the regulation as currently drafted provides no such opportunity.***

If a program still has failing ratios at the end of the credential-specific transition period, it is fair and reasonable for penalties to be applied. During the transition period, it is also reasonable for the Department to require institutions with failing programs to submit formal Debt Reduction Plans, and show progress.

² For a two year certificate, the transition period would be two years.

Our suggested changes to the text of the regulation are presented in red below:

NEW Section 668.408-B Transition Period

(a) The length of a program's transition period shall be equivalent to the number of years it takes to complete the program in normal time.

~~(a)~~ *(b) If a GE program would be a failing or zone program based on draft D/E rates calculated in accordance with §668.404 during a program's transition period, 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 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)~~ *(c) During a program's transition period ~~For the award years listed in paragraph (a) if 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. If a program fails during the transition period, the Secretary may require the institution to submit a formal Debt Reduction Plan.*

~~(c)~~ *(d) 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.*

~~(d)~~ *(e) All consequences under §668.407 are suspended during a program's transition period.*