

Issue Paper 4
Session 2: February 5-8, 2018

Issue: Sanctions for Programs Based on D/E Rates

Statutory cites: 20 U.S.C. § 1221e-3; 20 U.S.C. § 3474; 20 U.S.C. § 1231a; 20 U.S.C. §§ 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A); 20 U.S.C. § 1088(b)

Regulatory cites: 34 CFR §§ 668.403, 668.409 (citation added in session 2), and 668.410

Summary of Changes:

We propose to eliminate the loss of eligibility to participate in title IV, HEA programs as a possible sanction under the D/E rates measure, as well as restrictions on starting new programs that are similar to low-performing programs. We propose that notifications would be provided to students and prospective students for any year an educational program is determined by the Secretary to be low performing. We propose to add a requirement to notify students/prospective students that the institution has made or is making changes to the program to improve its outcomes. We propose to remove a requirement that the institution receive acknowledgment from the student that they have received the notification. For prospective students, we propose that they receive the notification on first contact with the institution, but not again prior to enrollment.

§668.409 Final determination of the D/E rates ~~measure~~.

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

(1) The final D/E rates for the program as determined under ~~§§~~ § 668.404, ~~§ and~~ 668.405; ~~and, if applicable, §668.406;~~

(2) The final determination by the Secretary of whether the program is ~~passing, failing, in the zone, or ineligible,~~ acceptable or low-performing under the D/E rates measure, as described in §668.403, and the consequences of that determination;

~~(3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program;~~

~~(4) (3)~~ Whether the institution is required to provide ~~the student warning~~ a notification under §668.410(a); ~~and~~.

~~(5) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal pursuant to §668.406.~~

~~(b) Effective date of Secretary's final determination.~~ The Secretary's determination as to the D/E rates ~~measure~~ is effective on the date that is specified in the notice of determination. The determination, ~~including, as applicable, the determination with respect to an appeal under §668.406,~~ constitutes the final decision of the Secretary with respect to ~~the~~ D/E rates ~~measure~~ and the Secretary provides for no further appeal of that determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

~~§668.410—Consequences of Notification for low-performing programs .~~

~~(a) General. For any year in which an educational program is determined by the Secretary to be low performing under the D/E rates measure,~~ the institution must provide a notification to students and prospective students.

~~(a) Student warning—(1) Events requiring a warning to students and prospective students. The institution must provide a warning with respect to a GE program to students and to prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates measure for the next award year.~~

~~(2) (b) Content of warning notification.~~ Unless otherwise specified by the Secretary in a notice published in the *Federal Register*, ~~the~~ warning notification must ~~---~~

(i)1) State that: “This program has not ~~passed~~met standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and ~~their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.~~”; the reported earnings that were reported to the Internal Revenue Service. Similar programs offered at other institutions may have better outcomes under this measure. Please note, however, that this program measure could be affected if a significant number of students who completed our program graduates did not report all of their income, such as tip income, or were self-employed and had business expenses that reduced the earnings being reported.”;

(ii)2) Refer students and prospective students to (and include a link for) College Navigator, its successor site, or another similar Federal resource, for information about other similar programs; and

(iii)3) For warningsnotification provided to enrolled students—

(A)i) Describe the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds; and

(B)ii) Indicate whether or not the institution will—

~~(1) Continue~~ has made, or is making, changes to provide instruction in the educational program that are designed to allow students to complete the program; improve its outcomes, and provide details about those changes.

~~(2) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and~~

~~(C) Explain whether the students could transfer credits earned in the program to another institution.~~

~~(3) Consumer testing. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible.~~

~~(4) (c) Alternative languages.~~ - To the extent practicable, the institution must provide alternatives to the English-language student [warningnotification](#) for those students and prospective students for whom English is not their first language.

~~(5) (d) Delivery to students.~~ (1) An institution must provide the [warningnotification](#) required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under §668.409 by---

~~(A) i)~~ Hand-delivering the [warningnotification](#) as a separate document to the student individually or as part of a group presentation; or

~~(B) ii)~~ Sending the [warningnotification](#) to the primary email address used by the institution for communicating with the student about the program.

~~(ii) (2)~~ If the institution sends the [warningnotification](#) by email, the institution must---

~~(A) (i)~~ Ensure that the [warningnotification](#) is the only [substantive](#) content in the email;

~~(B) Receive electronic or other written acknowledgement from the student that the student has received the email;~~

~~(C) (ii)~~ Send the [warningnotification](#) using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

~~(D) (iii)~~ Maintain records of its efforts to provide the [warningsnotification](#) required by this section.

~~(e) Delivery to prospective students—(i) — (1) General.~~ An institution must provide any [warningnotification](#) required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

~~(A)i~~ Hand-delivering the [warningnotification](#) as a separate document to the prospective student or third party individually, or as part of a group presentation;

~~(B)ii~~ Sending the [warning notification](#) to the primary email address used by the institution for communicating with the prospective student or third party about the program;

~~(C)iii~~ Providing the prospective student or third party a copy of the disclosure template [as required by §668.412\(e\)](#) that includes the [student warningnotification](#) required by this section;

or

~~(D)iv~~ Providing the [warningnotification](#) orally to the student or third party if the contact is by telephone.

~~(ii) Special warning requirements before enrolling a prospective student. (A) Before an institution enrolls, registers, or enters into a financial commitment with a prospective student with respect to the program, the institution must provide any warning required under this section~~

~~to the prospective student in the manner prescribed in paragraph (a)(6)(i)(A) through (C) of this section.~~

~~(B) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than —~~

~~(1) Three business days after the institution first provides the student warning to the prospective student; or~~

~~(2) If more than 30 days have passed from the date the institution first provided the student warning to the prospective student, three business days after the institution provides another warning as required by this paragraph.~~

~~(iii) Email delivery and acknowledgement. - If the institution ~~sends~~provides the ~~warning~~notification to the prospective student or the third party by email, including by providing the prospective student or third party an electronic copy of the disclosure template, the institution must —~~

~~(A)i) Ensure that the warning notification is the only ~~substantive~~ content in the email;~~

~~(B) Receive electronic or other written acknowledgement from the prospective student or third party that the student or third party has received the email;~~

~~(C) (ii) Send the warning notification using a different address or method of delivery if the institution receives a response that the email could not be delivered; and~~

~~(D)iii) Maintain records of its efforts to provide the ~~warning required under this section.~~notification.~~

~~(7-f) Disclosure template.~~ Within 30 days of receiving notice from the Secretary that the institution must provide a ~~student warning for the program~~notification under this section, the institution must update the educational program's disclosure template described in §668.412 to include the warning notification in paragraph ~~(a)(2b)~~ of this section or such other warning notification specified by the Secretary in a notice published in the ~~Federal Register~~.

~~(b) Restrictions—(1) Ineligible program.~~ Except as provided in §668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

~~(2) Period of ineligibility.~~ (i) An institution may not seek to reestablish the eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of a program that is ineligible under the D/E rates measure, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing or zone program.

~~(ii) An institution may not seek to reestablish the eligibility of a program that it discontinued voluntarily after receiving draft D/E rates that are failing or in the zone, or establish the eligibility of a program that is substantially similar to the discontinued program, until—~~

~~(A) Final D/E rates that are passing are issued for the program for that award year; or~~

~~(B) If the final D/E rates for the program for that award year are failing or in the zone, three years following the date the institution discontinued the program.~~

~~(iii) For the purposes of this section, an institution voluntarily discontinues a program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.~~

~~(iv) For the purposes of this subpart, a program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program with its certification under §668.414.~~

~~(3) *Restoring eligibility.* An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under §668.414(e).~~

~~(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)~~
