

Issue Paper 3
Session 3: March 12-15, 2018

Issue: Debt Calculations

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); 20 U.S.C. § 1082; 20 U.S.C. § 1092; 20 U.S.C. §1094

Regulatory Cites: 34 CFR §§668.404 and 668.406

Summary of Changes:

Summary of Changes Since Session 2: Since the second session, we propose to amortize debt over a ten-year period for undergraduate certificates, post-baccalaureate certificates, and associate's degrees. We also propose to amortize debt over a fifteen-year period for bachelor's degrees. In conforming with our previous proposal to limit these regulations to undergraduate programs, we removed the amortization of debt for Master's level programs or higher. We also propose moving the calculation of a loan repayment rate to §668.406.

Summary of Changes Provided Before Session 2: We propose to use an amortization period of 15 years in the D/E rate calculation for all educational programs, regardless of the program length. We propose using the annual statutory interest rate on Federal Direct Unsubsidized Loans that were in effect during the last award year of a cohort period. We propose to exclude private educational debt and debt owed to the institution from the calculation of a student's debt in the D/E rate. We propose to no longer exclude from the numerator and the denominator of the D/E rates calculation students who have one or more title IV loans in a military related deferment status. We also propose to remove the language related to transition period due to other proposals made related to sanctions and that transition rates are not needed as programs are receiving actual D/E rate calculations. We also propose to require that a student be enrolled for at least 60 days for that individual to be counted as an exclusion to the D/E rate calculations. As noted in the regulatory language of Issue Paper 1, we propose to use a single two-year cohort period in calculating D/E rates and remove the four-year cohort rate.

§668.404 Calculating D/E rates.

(a) General. Except as provided in paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for ~~a GE~~ an undergraduate educational program as follows:

(1) Discretionary income rate = annual loan payment ~~÷~~ (the higher of the mean or median annual earnings ~~÷~~ (1.5 × Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual earnings rate = annual loan payment / the higher of the mean or median annual earnings.

(b) Annual loan payment. - The Secretary calculates the annual loan payment for a GEan undergraduate educational program by---

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d)(1) of this section and the total amount for tuition and fees and books, equipment, and supplies for each student as determined under paragraph (d)(~~23~~) of this section;

(ii) Removing, if applicable, the appropriate number of highest loan debts as described in §668.405(e)(2); and

(iii) Calculating the median of the remaining amounts;:-

~~(2)(i)~~ (i) Amortizing the median loan debt---

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~~(A)~~ (A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, or an associate degree, or a graduate certificate; or,

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree ~~or a~~ master's degree; or; and;

~~(C)~~ (C) Over a 20-year repayment period for a program that leads to a doctoral or first professional degree; and

(ii) ~~Using an annual interest rate that is the average of~~ Using the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

~~(A) The three-year period prior to the end-~~ -the last award year of the cohort period, ~~for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs. In determining the rate,~~ the Secretary ~~uses the~~ will use- ~~the-~~

~~(A) The~~ Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; for undergraduate certificate programs, post-baccalaureate certificate programs, bachelor's degree programs, and associate degree programs.; ~~of~~

~~(B) The~~ three-year period prior to the end of the cohort period, ~~for graduate certificate programs and master's degree programs. For these programs,~~ the Secretary ~~uses the~~ Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

~~(C) The six-year period prior to the end of the cohort period, for bachelor's degree~~ for graduate certificate programs, master's degree programs, doctoral programs, and first professional degree programs. ~~For these programs,~~ the Secretary ~~uses the~~ Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

~~(D) The six-year period prior to the end of the cohort period, for doctoral programs and first professional degree programs. For these programs,~~ the Secretary ~~uses the~~ Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

~~NOTE TO PARAGRAPH (B)(2)(II): For example, for an undergraduate certificate program, if the two-year cohort period is award years 2010-2011 and 2011-2012, the interest rate would be the average of the interest rates for the years from 2009-2010 through 2011-2012.~~

(c) Annual earnings. (1) The Secretary obtains from the Social Security Administration (SSA), under §668.405, the most currently available mean and median annual earnings of the students who completed the GE undergraduate educational program during the cohort 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 and assessed charges. (1) ~~In determining~~ The Secretary will determine the loan debt for a student; using the ~~Secretary includes~~ —

~~(i) The~~ amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the GE-program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included););

~~(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that were required to be reported by the institution under §668.411; and~~

~~(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term “private education loan” in 34 CFR 601.2;~~

~~(2) The Secretary~~ (2) The Secretary may elect to include in the calculation institutional loan debt, private loan debt, tuition and fees and books and supplies by publishing notice of such election, and the manner in which institutions must report such information, in the *Federal Register*.

(3) The Secretary attributes all of the loan debt incurred by the student, ~~and attributes the amount reported for the student under §668.411(a)(2)(iv) and (v),~~ for enrollment in any—

(i) ~~u~~ Undergraduate ~~GE~~ educational program at the institution to the highest credentialed undergraduate ~~GE~~ program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; ~~and~~

(ii) ~~Graduate GE educational program at the institution to the highest credentialed graduate GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;~~
~~and~~

~~(3)4)~~ The Secretary excludes any loan debt incurred by the student for enrollment in ~~educational~~ programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrollment in ~~GE~~ ~~undergraduate educational~~ programs at ~~any~~ 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.

(e) ~~Exclusions.~~ The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

~~(1) One or more of the student's title IV 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) of this section;~~

~~(2) One or more of the student's~~ (1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

~~(3)~~ (2) The student was enrolled for at least 60 days 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) of this section;

~~(4)~~ (3) For undergraduate GE programs, ~~t~~The student completed a higher credentialed undergraduate ~~GE~~ program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;

~~(5)~~ (4) For graduate GE programs, the student completed a higher credentialed graduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; or

~~(6)~~ (5) (4) The student died.

(f) ~~D/E rates not issued.~~ The Secretary does not issue draft or final D/E rates for a GE an undergraduate educational program under §668.405 if ~~---~~

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30~~10~~ students completed the program during the two-year cohort period ~~and fewer than 30 students completed the program during the four-year cohort period;~~ or

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

~~(g) Transition period. (1) The transition period is determined by the length of the GE program for which the Secretary calculates D/E rates under this subpart. The transition period is—~~

~~(i) The first five award years for which the Secretary calculates D/E rates under this subpart if the length of the program is one year or less;~~

~~(ii) The first six award years for which the Secretary calculates D/E rates under this subpart if the length of the program is between one and two years; and~~

~~(iii) The first seven award years for which the Secretary calculates D/E rates if the length of the program is more than two years.~~

~~(2) If a GE program is failing or in the zone based on its draft D/E rates for any award year during the transition period, the Secretary calculates transitional draft D/E rates for that award year by using—~~

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

~~(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.~~

~~(3) For any award year for which the Secretary calculates transitional draft D/E rates for a program, the Secretary determines the final D/E rates for the program based on the lower of the draft or transitional draft D/E rates.~~

~~(4) An institution may challenge or appeal the draft or transitional draft D/E rates, or both, under the procedures in §668.405 and §668.406, respectively.~~

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

§668.406 Calculating and issuing loan repayment rates.

(a) (1) General. Under the procedure in this section, the Secretary determines the loan repayment rate for each undergraduate educational program and notifies the institution of the rate associated with each of its programs.

(2) Repayment rate cohort. Repayment rates are based on the set of Federal loan borrowers who enter repayment in two consecutive fiscal years. This cohort combines borrowers who enter repayment during a given fiscal year with the set of borrowers who entered repayment in a previous fiscal year. For example, the fiscal year 2011 and 2012 repayment rate cohort combines the set of borrowers who entered repayment -from October 1, 2011 to September 30, 2012 with the set of borrowers who entered repayment from October 1, 2010 to September 30, 2011. The time of repayment rate measurement is the end of the fifth and sixth respective fiscal year following the fiscal year of borrowers entering repayment. For each combined two-year cohort, there are two measurement periods for each corresponding fiscal year. For example, for the 2011-12 repayment rate cohort, borrowers -who entered repayment in fiscal year 2012 are

measured at the end of fiscal year 2017 (September 30, 2017) and borrowers who entered repayment in fiscal year 2011 are measured at the end of fiscal year 2016 (September 30, 2016).

(b) Calculating loan repayment rates. For an award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(56) of this section who enrolled in an undergraduate educational program as follows:

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

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

(2) Number of borrowers paid in full. Of the number of borrowers entering repayment, the number who have fully repaid all FFEL or Direct Loans received for enrollment in the program at the time of measurement.

(3) Number of borrowers in active repayment. Of the number of borrowers entering repayment, the number who made loan payments sufficient to reduce by at least one dollar the outstanding balance of the aggregate FFEL or Direct Loans received for enrollment in the program, by comparing the aggregate outstanding balance of applicable loans at the time of entering repayment with the aggregate outstanding balance of applicable loans at the time of measurement.

(4) Loan defaults. A borrower who is in default on an applicable FFEL or Direct Loan at the time of measurement is not included in the numerator of the loan repayment rate formula even if the borrower's loan balance meets the definition of being in active repayment.

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

(i) One or more of the borrower's FFEL or Direct loans were in a military-related deferment status at any time during the time of measurement;

(ii) One or more of the borrower's FFEL 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 or 685.212;

(iii) The borrower was enrolled in any other eligible program for at least 60 days at the institution or at another institution during the time of measurement; or

(iv) The borrower died.

(c) Notification. The Secretary informs the institution of the loan repayment rate for each of its undergraduate educational programs by issuing a notice of determination.

(d) Challenges to loan repayment rates.

(1) No later than 45 days after the Secretary notifies an institution of an undergraduate educational program's draft loan repayment rate the institution may challenge the accuracy of the information that the Secretary used to calculate the draft repayment rate by submitting, in a form prescribed by the Secretary, evidence demonstrating that the information was incorrect.

(2) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate the repayment rate and notifies the institution whether the challenge is accepted or the reasons the challenge is not accepted. If the Secretary accepts the challenge, the Secretary uses the corrected data to calculate the repayment rate.

(3) An institution may challenge the Secretary's calculation of a repayment rate only once for an award year. An institution that does not timely challenge the repayment rate waives any objection to the rate as stated in the notice of determination.

(e) Final calculation of loan repayment rates. (1) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a program's draft repayment rate constitutes the final rate -for that program.

(2) The Secretary informs the institution of the final repayment rate for each of its undergraduate educational programs by issuing a notice of determination.

(3) Unless paragraph (g) of this section applies, after the Secretary provides the notice of determination, the Secretary may publish the final loan repayment rate.

(f) Conditions for challenges. An institution must ensure that any material that it submits to make any corrections or challenge under this section is—

(1) Complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart; and

(2) Consistent with any instructions provided to the institution with the notice of its draft loan repayment rate.

(g) Privacy considerations. The Secretary does not publish an undergraduate educational program's loan repayment rate and an institution may not disclose such rate if the loan repayment rate is based on fewer than 10 students.

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