

To: Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Committee

From: Tamar Hoffman and Zoe Kemmerling, representing legal assistance organizations that represent students and borrowers, consumer advocates, and civil rights groups that represent students; and
Preston Cooper, representing the taxpayer and public interest.

Re: Failing Programs that Appeal Termination of Title IV Eligibility Should Not Receive Title IV Funds During the Pendency of the Appeals Process

Date: January 5, 2026

Recommendation

The proposed rule should clarify that programs that fail to meet the rule's earning test standards cannot receive Direct Loan funds during the pendency of an appeal of a termination decision by the Department.

Rationale

Under the existing Gainful Employment (GE) rule, programs that fail the rule's accountability standards for two out of three consecutive years lose eligibility for Title IV funds. The process for termination differs depending on the certification status of the institution: Failing programs offered at institutions that are in provisional certification status lose eligibility for Title IV via a revocation action; failing programs offered by schools that are up for re-certification lose access to Title IV upon issuance of a new Eligibility and Certification Approval Report; and for all other institutions, failing programs lose access to Title IV following a termination action of program eligibility. (See 34 C.F.R. § 668.603.) As the GE rule [explained](#), this ensures consistency with Subpart G requirements applicable to the institution based on its certification status.

The Department's discussion proposal would change these processes so that all terminations of program eligibility for failure to meet earnings test requirements would require a termination action be issued by the Department, including by providing an opportunity for a hearing. (These procedures are described in 34 CFR Subpart G.) In addition, the discussion proposal extends the ability to appeal a determination of programmatic ineligibility, if the institution believes the Secretary erred in the calculation of the earnings premium measure, to institutions in all certification statuses. (See proposed changes to § 668.603.)

This proposed change would lead to a significant increase in the number of Subpart G processes and hearings handled by the Department, increasing the administrative burden on the Department at a time when staffing is especially stretched. The increase in the number of Subpart G processes and appeals will require the Department to allocate additional Department staff time to Subpart G processes and appeals, including but not limited to the Office of General Counsel and the Administrative Actions and Appeals Service Branch of FSA. It will also require a substantial increase in resources for the Department's Office of Hearings and Appeals. Without a substantial investment, , there will likely be long lag times between initial determinations of ineligibility and the resolution of Subpart G processes and

appeals. As a result, some appeals of determinations of program ineligibility for programs that fail the earnings tests may remain pending with the Department for years before resolution.

Without changes, during the pendency of such appeals, taxpayer dollars may continue to flow to programs that fail these accountability metrics, and students will continue to invest time and limited Pell Grant eligibility, and even take on student debt, to attend low-value programs. To address this harm to taxpayers and students, the provision should clarify that failing programs may not continue to receive Title IV funds during the period under which an institution is appealing a termination decision by the Department. If the institution's appeal is successful, Title IV eligibility may be reinstated; but when the data have already revealed a program is low-value, the Department should not continue to throw good money after bad.

Proposed Language:

§ 668.603 ~~ineligible~~ ~~GE~~ **Low-earning outcome** programs.

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(b) Basis for appeal. If the Secretary initiates an action under paragraph (a) ~~(2)~~ of this section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the ~~program's D/E rates under § 668.403 or the~~ earnings premium measure under § 668.403~~4~~. Institutions may not dispute a program's Direct Loan Program ineligibility based upon its ~~D/E rates or the~~ earnings premium measure except as described in this paragraph (b). Institutions shall not disburse or deliver Direct Loan program funds to students enrolled in failing programs during the appeals period.