

## Day 2 Amendatory Text

### Monday changes

#### Topic 1: Accountability Technical and Conforming Changes

### **PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED**

#### **Subpart A—General**

#### **§ 600.10 Date, extent, duration, and consequence of eligibility.**

\* \* \* \* \*

(c) \* \* \*

(3) For a gainful employment program or eligible non-GE program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the Direct Loan eligibility of the program, an eligible institution must update its application under § 600.21.\* \* \* \* \*

#### **Subpart B—Procedures for Establishing Eligibility**

#### **§ 600.21 Updating application information.**

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary, in a manner prescribed by the Secretary and no later than 10 days after the change occurs, any change in the following:

\* \* \* \* \*

(11) \* \* \*

(v) Changing the program's name, CIP code, or credential level;

or

(vi) Updating the certification pursuant to 34 CFR 668.604(a).

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## **PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

### **Subpart D—Institutional and Financial Assistance Information for Students**

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#### **§ 668.43 Institutional and programmatic information.**

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(d)(1) *Program information website.* The Secretary will establish and maintain a website with information about institutions and their educational programs. For this purpose, an institution must provide to the Department such information about the institution and its programs as the Secretary prescribes through a notice published in the *Federal Register*. The Secretary may conduct consumer testing to inform the design of the website.

(i) The website must include, but is not limited to, the following items, to the extent reasonably available:

(A) The published length of the program in calendar time (i.e., weeks, months, years).

(B) As calculated by the Secretary, the median length of calendar time (i.e., weeks, months, years) taken for full-time and less-than-full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

(C) The total number of individuals enrolled in the program during the most recently completed award year.

(D) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(E) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a Direct Loan Program loan, a private loan, or both for enrollment in the program.

(F) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(G) As provided by the Secretary, the median earnings of students who completed the program as obtained under 34 CFR

668.404(c), or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(H) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(I) As calculated by the Secretary, the program's earnings premium measure.

(ii) The website may also include other information deemed appropriate by the Secretary, such as the following items:

(A) The primary occupations (by name, SOC code, or both) that the 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.

(B) As reported to or calculated by the Secretary, the program or institution's completion rates and withdrawal rates for full-time and less-than-full-time students.

(C) As calculated by the Secretary, the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment, and the total net cost of attendance paid by students completing the program.

(D) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on Direct Loan Program loans during a period determined by the Secretary.

(2) *Distribution to prospective students.* The institution must provide the relevant information to access the

website maintained by the Secretary to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(3) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

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## **Subpart G—Fine, Limitation, Suspension and Termination**

### **Proceedings**

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#### **§ 668.91 Initial and final decisions.**

(a) \* \* \*

(3) \* \* \*

(vi) In a termination action against a GE program or eligible non-GE program based upon the program's failure to meet the requirements in § 668.403, the hearing official must terminate the program's eligibility unless the hearing official concludes

that the Secretary erred in the applicable calculation.

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**PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM**

**Subpart A—Purpose and Scope**

\* \* \* \* \*

**§ 685.102 Definitions**

(a)

(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year

Campus-based programs

Dependent student

Disbursement

Eligible program

Eligible non-GE program

Eligible student

Enrolled

Expected family contribution (EFC)

Federal Consolidation Loan Program

Federal Pell Grant Program

Federal Perkins Loan Program

Federal PLUS Program

Federal Supplemental Educational Opportunity Grant Program

Federal Work-Study Program

Full-time student

Gainful employment program (GE program)

Graduate or professional student

Half-time student

Independent student

One-third of an academic year

Parent

Payment period

Teacher Education Assistance for College and Higher Education

(TEACH) Grant Program

TEACH Grant

Two-thirds of an academic year

Undergraduate student

U.S. citizen or national

William D. Ford Federal Direct Loan (Direct Loan) Program

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**Subpart C—Requirements, Standards, and Payments for Direct Loan**

**Program Schools**

**§ 685.300 Agreements between an eligible school and the**

**Secretary for participation in the Direct Loan program**

(a) *General.* Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations;

(2) Enter into a written program participation agreement with the Secretary; and

(3) For a GE program or an eligible non-GE program, meet the student tuition and transparency system requirements under 34 CFR part 668, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

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**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

**Subpart A—General**

**§ 668.2 General definitions.**

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(b) \* \* \*

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*Classification of instructional program (CIP) code.* A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). Specific programs offered by institutions are classified using a six-digit CIP code.


*Cohort period.* The set of award years used to identify a cohort of students who completed a program and whose earnings outcomes are used to calculate the earnings premium measure under subpart Q of this part. The Secretary uses a single-year cohort period to calculate the earnings premium measure for a program when the number of students (after exclusions identified in 668.403(c)) in the single-year cohort period is 30 or more. The Secretary sequentially expands the cohort period when the number of students completing the program in the single-year cohort period is fewer than 30. The cohort period includes award years that are—

(1) For the single-year cohort period, the fourth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403.

(2) For the expanded cohort period, the Secretary will sequentially add prior award year data to the single-year cohort in the following order until the cohort equals or exceeds 30  students (unless the Secretary determines the data are unreliable, in which case the cohort size may be increased until the Secretary determines the data are statistically reliable)—

(i) Sequential prior award years within the same program—

(A) The fifth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(B) The sixth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time  the earnings premium measure is calculated, pursuant to §§ 668.403;

(C) The seventh award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(D) The eighth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(ii) Sequential award years for all programs within the same 4-digit CIP code and credential level—

(A) The fourth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(B) The fifth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(C) The sixth award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(D) The seventh award year prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to §§ 668.403;

(E) The eighth award year prior to the year for which the most recent data are available from the Federal agency with earnings

data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403;

(iii) Sequential award years for all programs within the same  
2-digit CIP code and credential level—

(A) The fourth award year prior to the year for which the most  
recent data are available from the Federal agency with earnings  
data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403;

(B) The fifth award year prior to the year for which the most  
recent data are available from the Federal agency with earnings  
data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403;

(C) The sixth award year prior to the year for which the most  
recent data are available from the Federal agency with earnings  
data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403;

(D) The seventh award year prior to the year for which the most  
recent data are available from the Federal agency with earnings  
data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403;

(E) The eighth award year prior to the year for which the most  
recent data are available from the Federal agency with earnings  
data at the time the earnings premium measure is calculated,  
pursuant to §§ 668.403.

*Credential level.* The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are master's degree, doctoral degree, first-professional degree (e.g., MD, DDS, JD), and graduate certificate (including a postgraduate certificate).

\* \* \* \* \*

*Earnings premium.* The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.403. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

*Earnings threshold.*

(1) For undergraduate programs offered by an eligible institution located in a State of the Union or in the District of Columbia, based on data from the Census Bureau, the median earnings for working adults aged 25-34, with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution during the year of the associated measured earnings—

(i) In the State in which the institution is located; or  
(ii) Nationally, if fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located.

(2) For graduate programs offered by an eligible institution located in a State of the Union or in the District of Columbia, based on data from the Census Bureau, the median earnings of working adults aged 25-34, with only a baccalaureate degree, who worked and were not enrolled in an eligible institution of higher education during the year of the associated measured earnings. The median earnings will be-

(i) The lowest of the median earnings of working adults-

(A) In the State in which the institution is located;

(B) In the same field of study under the two-digit CIP code in the State in which the institution is located; or

(C) Nationally in the same field of study under the two-digit CIP code; or

(ii) If fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located, the lowest of the median earnings of working adults-

(A) Nationally; or

(B) Nationally in the same field of study under the two-digit CIP code.

(3) For programs offered by institutions located in the U.S. Territories and the Freely Associated States—

(i) For undergraduate programs in these territories, based on data from the Census Bureau, the median earnings for working adults aged 25-34, with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution during the year of the associated measured earnings—


(A) In Puerto Rico; or

(B) If fewer than 50 percent of the students enrolled in the institution reside in the territory where the institution is located, based on data from the Census Bureau, the median earnings of working adults aged 25-34 in the United States, with only a high school diploma or recognized equivalent, who were not enrolled in an eligible institution during the year of the associated measured earnings; or

(ii) For graduate programs in these territories, based on data from the Census Bureau, the median earnings of working adults aged 25-34, with only a baccalaureate degree, who were not enrolled in an eligible institution of higher education during the year of the associated measured earnings. The median earnings will be—

(A) The lowest of the median earnings of working adults—

(1) In Puerto Rico;

(2) In the same field of study under the two-digit CIP code in Puerto Rico; or 


(3) Nationally in the same field of study under the two-digit CIP code; or

(B) If fewer than 50 percent of the students enrolled in the institution reside in the territory where the institution is located, the lowest of the median earnings of working adults—


(1) Nationally; or

(2) Nationally in the same field of study under the two-digit CIP code; or

(4) For programs offered by eligible foreign institutions—

(i) For undergraduate programs at these institutions, based on data from the Census Bureau, the median earnings of working  adults aged 25-34 in the United States, with only a high school diploma or recognized equivalent, who were not enrolled in an eligible institution during the year of the associated measured earnings; or

(ii) For graduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25-34, with only a baccalaureate degree, who were not enrolled in an eligible institution ~~of higher education~~ during the year of the associated measured earnings. The median

earnings will be the lowest of the median earnings of working adults— 

(A) Nationally in the United States; or

(B) Nationally in the United States in the same field of study under the two-digit CIP code.

*Eligible non-GE program.* An educational program other than a GE program offered by an institution and included in the institution's participation in the title IV, HEA programs, 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. Includes all coursework associated with the program's credential level.

\* \* \* \* \*

*Federal agency with earnings data.* A Federal agency with which the Department enters into an agreement to access earnings data for the earnings threshold or value-added earnings measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

\* \* \* \* \*

*Gainful employment program (GE 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.

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*Institutional grants and scholarships.* Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver. An institutional grant or scholarship does not include Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Supplemental Educational Opportunity Grants; or assistance that must be repaid.

\* \* \* \* \*

*Length of the program.* The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to

complete the requirements needed to obtain the degree or credential offered by the program.

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*Prospective student.* An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

\* \* \* \* \*

*Student.* For the purposes of subparts Q and S of this part and of § 668.43(d), an individual who received title IV, HEA program funds for enrolling in the program.

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**Subpart Q—Student Tuition and Transparency System**

**§ 668.401 Student tuition and transparency system scope and purpose.**

*General.* This subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

- (a) An institution reports information about the program to the Secretary; and
- (b) The Secretary assesses the program's earnings outcomes.

**§ 668.402 Student tuition and transparency system framework.**

(a) *General.* The Secretary assesses the program's earnings outcomes using an earnings premium measure.

(b) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in §§ 668.403 and 668.404.

(c) *Outcomes of the earnings premium measure.*

(1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program equal or exceed the earnings threshold.



(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are less than the earnings threshold.

**§ 668.403 Calculating earnings premium measure.**

(a) *General.* Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the earnings premium measure for a program by determining whether the median annual earnings of the students who completed the program equal or exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.*

(1) The Secretary obtains from a Federal agency with earnings data, under § 668.404, the most currently available median annual earnings of the students who completed the program during the cohort period, who are working and are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of working adults using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually.

(c) *Exclusions.* The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that—

(1) One or more of the student's Direct Loan Program 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;

(2) The student was enrolled 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 (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate 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 earnings premium measure under this section;

(4) The student is enrolled in an approved prison education program;

(5) The student is enrolled in a comprehensive transition and postsecondary program; or

(6) The student died.

(d) *Earnings premium measures not issued.* The Secretary does not issue the earnings premium measure for a program under § 668.405 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the fully expanded cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

**§ 668.404 Process for obtaining data and calculating earnings premium measure.**

(a) *Administrative data.* In calculating the earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview.* The Secretary uses the administrative data to—

(1) Compile a list of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under 668.403(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information reported by the institution on which the list was based, no

later than 60 days after the date the Secretary provides the list to the institution;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the earnings premium measure and provide it to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary the median annual earnings of the students on the list who are working and whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form.

(d) *Calculating earnings premium measure.* If the Federal agency with earnings data includes reports from records of earnings on at least 16 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the earnings premium measure for each program.

**§ 668.405 Determination of the earnings premium measure.**

(a) For each award year for which the Secretary calculates the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The earnings premium measure for each program as determined under § 668.403.

(2) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(3) Whether the institution is required to provide the student warning under § 668.605.

(4) Whether the program could become ineligible under subpart S of this part based on its final earnings premium measure for the next award year for which it is calculated for the program.



**Topic 4: Student Tuition and Transparency System (STATS): Reporting Requirements**

**§ 668.406 Reporting requirements.**

(a) *Data elements.* In accordance with procedures established by the Secretary, an institution offering any GE program or eligible non-GE program must report to the Department—

(1) For each GE program and eligible non-GE program, for its most recently completed award year—

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in any State; and

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds.

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's total cost of attendance (COA) for the award year under HEA section 472;

(iv) The total actual tuition and fees assessed to the student for the award year;

(v) The student's residency tuition status by State or district, as applicable;

(vi) The student's total allowance for books, supplies, and equipment from their COA for the award year under HEA section 472;

(vii) The student's total allowance for housing and food from their COA for the award year under HEA section 472;

(viii) The amount of institutional grants and scholarships disbursed to the student for the award year;

(ix) The amount of other Federal, State, Tribal, or private grants disbursed to the student for the award year; and

(x) The amount of any private education loans disbursed to the student for the award year for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The total amount the student received from private education loans, as defined in 34 CFR 601.2(b), for enrollment in the program that the institution is, or should reasonably be, aware of;

(ii) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(iii) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and

(iv) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program;

(v) The total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the *Federal Register*, any other information the Secretary requires the institution to report.

(b) *Initial and annual reporting.*

(1) An **eligible** institution must report the information required under paragraph (a) of this section no later than—

(i) October 1, following the date these regulations take effect, for the two most recently completed award years prior to that date; and

(ii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the *Federal Register*.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, of why the institution failed to comply with any of the reporting requirements that is acceptable to the Secretary.

**§ 668.407 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

*Topic 5: Earnings Accountability and Student Warnings*

**Subpart S—Earnings accountability**

**§ 668.601 Earnings accountability scope and purpose.**

*General.* This subpart applies to an eligible non-GE program or a GE program offered by an eligible institution and establishes rules and procedures under which the Secretary determines that the program is eligible for Direct Loan Program funds.

**§ 668.602 Earnings accountability criteria.**

(a) A GE program or eligible non-GE program provides training that leads to acceptable earnings outcomes if the program—

(1) Satisfies the applicable certification requirements in § 668.604; and

(2) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

**§ 668.603 Low-earning outcome programs.**

(a) *Low-earning outcome programs.* If a GE program or eligible non-GE program is a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated, the program is a low-earning outcome program and its participation in the Direct Loan Program ends upon the completion of a termination action of Direct Loan Program eligibility under subpart G of this part.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a) 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 earnings premium measure under § 668.403. Institutions may not dispute a program's Direct Loan Program ineligibility based upon its earnings premium measure except as described in this paragraph (b).

(c) *Restrictions.*

(1) *Direct Loan Program ineligibility.* Except as provided in § 668.26(d), an institution may not disburse Direct Loan Program funds to students enrolled in a low-earning outcome program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the Direct Loan Program eligibility of a failing program that it discontinued voluntarily either before or after the earnings premium measure is issued for that program, or

reestablish the Direct Loan Program eligibility of a program that is ineligible under the earnings premium measure, until two years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility.* A low-earning outcome program, or a failing program that an institution voluntarily discontinues, remains ineligible for Direct Loan Program participation until the institution establishes the eligibility of that program under § 668.604(b).

**§ 668.604 Certification requirements for GE programs and eligible non-GE programs.**

(a) *Program participation agreement certification.*

As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs and eligible non-GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (c) of this section. As provided under § 600.21(a)(11)(vi), an institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(b) *Establishing eligibility and disbursing funds.*

(1) An institution establishes a program's eligibility for Direct Loan Program funds by updating the list of the institution's Direct Loan-eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's Direct Loan-eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (c) of this section. Except as provided in paragraph (b)(2) of this section, after the institution updates its list of Direct Loan-eligible programs, the institution may disburse Direct Loan Program funds to students enrolled in that program.

(2) An institution may not update its list of Direct Loan-eligible programs to include a program, or a program sharing the same 4-digit CIP code, as a failing program that the institution voluntarily discontinued or became ineligible as described in §668.603(c), at the same credential level that was subject to the two-year loss of eligibility under §668.603(c), until that period expires.

(c) *Direct Loan Program eligibility certifications.* An institution certifies for each Direct Loan-eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that—

(1) The institution agrees to comply with the requirements of subparts Q and S of this part; and

(2) Such program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

**§ 668.605 Student warnings.**

(a) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program or eligible non-GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible for the Direct Loan Program under this subpart based on its final earnings premium measure for the next award year for which it is calculated for the program.

(b) *Content of warning.* The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the *Federal Register*, that—

(i) The program has not passed standards established by the U.S. Department of Education based on the reported earnings of program graduates; and

(ii) The program could lose access to Direct Loans based on the next calculated program metrics;

(2) The relevant information to access the program information website maintained by the Secretary described in § 668.43(d);

and

(3) A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds to the student.

(c) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.405 and maintain documentation of its efforts to provide that warning. The warning must be the only substantive content contained in these written communications.

(d) *Delivery to prospective students.*

(1) An institution must provide the warning as 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-

(i) Hand-delivering the warning as a separate document to the prospective student or third party, individually or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in paragraph (f) of this section.

(e) *Acknowledgment prior to enrollment and disbursement.* An institution may not allow a prospective student seeking title IV, HEA assistance to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse title IV, HEA funds to the student until the student or prospective student completes the acknowledgment described in paragraph (b) (3) of this section.

(f) *Discharge claims.* The provision of a student warning or the acknowledgment described in paragraph (b) (3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive evidence against a student's claim if applying for a loan discharge.

**§ 668.606 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

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