

Proposal to Prohibit Continually Low-Earning Programs from Regaining Eligibility for Direct Loans

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Summary and Purpose

This proposed addition to the regulations would specify that a program that has lost eligibility for Direct Loans under the earnings accountability test may not regain eligibility for loans if that program fails the earnings premium measure in either of the two most recent award years. As the Secretary will have sufficient data to calculate the earnings premium measure for many programs even after they lose eligibility (because they will retain Pell Grant eligibility), this proposal would prevent programs that continue to fail the measure from regaining access to Direct Loans. The proposed language will further the intent of Congress to protect students from taking on debt for low-value programs and save taxpayers money by preventing the disbursement of loans that are unlikely to be repaid in full.

Proposed Language (proposed additions in red)

Sec. 668.604: Certification Requirements for GE programs and eligible non-GE programs

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(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 paragraphs (b)(2) and (3) 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.

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(3) An institution may not update its list of Direct Loan-eligible programs to include a program that was subject to the two-year loss of eligibility under Sec. 668.403(c) and is a failing program under Sec. 668.402 in either of the two most recent award years, or a program sharing the same 4-digit CIP code at the same credential level as a program that was both subject to the two-year loss of eligibility under Sec. 668.403(c) and is a failing program under Sec. 668.402 in either of the two most recent award years.

Discussion

The Department’s proposed regulations do not prohibit the Secretary from calculating the earnings premium measure for programs that have lost eligibility for Direct Loans; on the contrary, the STATS framework proposed by the Department appears to include all programs when calculating the earnings premium metric. The Secretary will have the ability to calculate this measure for most programs even after their participation in the Direct Loan (DL) program ends.¹ The Secretary may calculate the earnings premium measure using earnings data for students who received Direct Loans before the program lost eligibility but who still completed their programs within the specified cohort period, and for students who receive other forms of Title IV aid, such as Pell Grants, even after the program’s DL eligibility is terminated.²

The upshot is that the Secretary will continue to calculate the earnings premium measure for many programs—and determine whether those programs pass or fail the measure—even after those programs lose eligibility for Direct Loans. Given that the Secretary has this information on earnings outcomes for ineligible programs readily available, it follows that this information should factor into the process by which programs which lost eligibility for Direct Loans seek to regain it.

Under the current draft of the regulations, programs that fail the earnings premium measure for two of three consecutive years (or which are voluntarily discontinued after failing) may not regain eligibility for two years. Under this proposal, after the two-year period of ineligibility expires, programs still may not regain eligibility for Direct Loans if they fail the earnings premium measure in either of the two most recent award years. In other words, the Secretary would ensure that reinstated programs are not likely to again immediately fail the measure based on their continued low earnings during and after the period of ineligibility.

Additionally, under this proposal, if a program passes the earnings premium measure in the two most recent award years, it may regain eligibility for Direct Loans after the mandated two-year period of ineligibility has expired. In addition, if the Secretary does not issue earnings premium measures in the two most recent award years (due to an insufficient number of Title IV-aided students in the cohort, for instance), the program may still regain eligibility for Direct Loans, again after the mandated two-year period of ineligibility has expired. Only a determination that the program failed the earnings premium measure in one of the two most recent award years would block a program from regaining eligibility.

The proposal also seeks to promote institutional improvement: It allows programs that demonstrably improve their earnings outcomes after losing eligibility to regain it by quickly improving their programs, limiting the assessment of the earnings premium measure just to the two most recent award years. For instance, if a program fails the earnings premium measure in

¹ As a separate proposal argues, the Department should also require that GE programs be subject to a loss of all Title IV eligibility, not just Direct Loan eligibility. But that change wouldn’t affect this proposal; to the extent the Department has calculated data showing a program continues to fail the earnings premium measure, it should use those data to enforce any reinstatement of eligibility.

² According to the PPD data released by the Department, 71% of Title IV students enrolled in undergraduate programs that fail the earnings accountability test receive Pell Grants.

the first award year after losing eligibility, but passes in the second and third award years thereafter, the program may still regain eligibility for Direct Loans after the third award year.

To further the Department's goal of blocking programs that are similar to failing programs (i.e., those sharing the same four-digit CIP code and credential level) from accessing Direct Loans, the proposal includes language to apply the same restrictions to such similar programs. If a program loses eligibility for Direct Loans, a similar program (defined as a program within the same four-digit CIP code and credential level) may not gain eligibility for Direct Loans if the *original* program fails the earnings premium measure in either of the two most recent award years.

Statutory Justification

Under Sec. 84001 of the One Big Beautiful Bill Act, paragraph (7) provides that “[t]he Secretary shall establish a process by which an institution of higher education that has an educational program that has lost eligibility under this subsection may, after a period of not less than 2 years of such program’s ineligibility, apply to regain such eligibility, *subject to the requirements established by the Secretary that further the purpose of this subsection.*” (emphasis added)

The statute gives the Secretary broad latitude to design a process and requirements for ineligible programs seeking to regain eligibility for Direct Loans. The phrase “subject to the requirements established by the Secretary” grants discretion within a clear constraint: any such requirements must “further the purpose of this subsection.” The purpose of this subsection is to condition access to Direct Loans on program-level earnings outcomes, measured using a specified earnings premium test and particular data sources. The Secretary could—and should—require programs seeking to regain eligibility to demonstrate, based on the same earnings metrics and data sources used for the initial determination, that they no longer fail the earnings premium measure before reinstating their access to loan dollars.