

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

Re: Restoring Streamlined Processes for Terminating Direct Loan Eligibility for Certain Failing GE Programs

Date: January 6, 2026

Recommendation

The Department's proposal would eliminate existing provisions in the Gainful Employment (GE) rule that provide for streamlined processes for terminating eligibility for Title IV for failing programs offered by provisionally certified and re-certifying institutions. The Department's elimination of streamlined termination processes for failing programs offered at such institutions would significantly increase the administrative burden on the Department and would delay action to protect students and taxpayers from investing in low-value programs. We recommend that the Department maintain the provisions of the existing GE rule that permit a streamlined process for terminating Direct Loan eligibility for failing programs offered by provisionally-certified and re-certifying institutions.

Rationale

Under the existing 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 eliminates the streamlined termination process for provisionally certified schools and schools that are up for re-certification and would instead require 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 (as described in 34 CFR Subpart G).

The proposed change eliminating streamlined termination processes for provisionally-certified and re-certifying institutions 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 will require the Department to allocate additional Department staff time to Subpart G processes and appeals, including 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 significant additional investment, there will likely be long lag times between initial determinations of ineligibility and the resolution of Subpart G processes.

Nor are these termination actions necessary to ensure institutions have a sufficient opportunity to appeal, as required for OBBBA-covered programs in Sec. 84001. A provisionally certified institution that is subject to a revocation action for its failing programs, for instance, is provided the opportunity to request a reconsideration of the revocation under 34 CFR 668.13(d)(3) and (4).

Without changes, during the pendency of Subpart G processes, taxpayer dollars will 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 reduce administrative burden on the Department, and to ensure that students and taxpayers do not continue to invest in low-value programs, the Department should preserve existing regulatory language that provides for streamlined termination procedures for provisionally certified and re-certifying institutions. Maintaining the current provisions on streamlined termination processes would ease the burden of administering the rule for the Department and would protect students and taxpayers from investing in low-value programs.

Proposed Language:

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

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(a) ~~ineligible Low-earning outcome~~ programs. If a GE program or eligible non-GE program is a failing program under ~~(i) the D/E rates measure in § 668.402 in two out of three consecutive award years for which the program's D/E rates are calculated, or (ii) 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 ineligible a~~ low-earning outcome program and its participation in the ~~title IV, HEA Direct Loan pP~~ programs ends upon the earliest of

(1) The issuance of a new Eligibility and Certification Approval Report that does not include that program;

(2) The completion of a termination action of Direct Loan pP program eligibility, if an action is initiated under subpart G of this part, or

(3) A revocation of program eligibility if the institution is provisionally certified.

(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 § 668.40334. If the Secretary utilizes the process in paragraph (a)(1) or (a)(3) to end a program's eligibility, the institution may initiate an appeal under § 668.13(d)(3) if it believes the Secretary erred in the

calculation of the earnings premium measure under §668.403. 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).