

Proposed Updated Language on Orderly Closures of Failing Programs

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This document proposes changes to address concerns with the additions that would allow for a teach out framework to be included in the draft rule presented to negotiators by the U.S. Department of Education. Our concerns with the language as proposed are 1.) that it would allow for students to remain enrolled in a program that may not be in their best benefit because it has already been demonstrated to result in low earnings without providing students other viable transfer options; and 2.) that the language limiting the creation of substantially similar programs is too broad and would allow institutions to create new similar programs that are likely to result in similarly low earnings. As constructed, the language provides a substantial loophole to institutions that would enable them to offer low-performing programs to students in perpetuity, without providing a significant off-ramp to students that enables them to transfer to a program that has demonstrated to meet the earnings threshold.

To further specify the scope of the Department's proposed addition, we have suggested language below. The new language would:

- Set a maximum timeframe for the orderly closure, if approved by the Secretary, designed to align with the RISE Committee's consensus language on the phase-in of new loan limits, of the lesser of three academic years or the remaining time for each student in the program, based on the program's length.
- Ensure that institutions disclose to students enrolled in the failing program relevant information about students' ability to transfer to another program at the institution that passes the earnings premium standard and to another program at another institution.
- Require (as the Department confirmed was its intent) that the institution not restart a substantially similar program until the completion of the orderly closure, including by clarifying that substantially similar programs are defined solely by the CIP code of the program.

§ 668.603 Low-earning outcome programs.

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(4) Retaining eligibility during orderly program closure. Notwithstanding paragraph (1), if the Secretary determines that a program has failed to satisfy the requirements of § 668.402 **and if the Secretary makes a finding that it is in the best interests of students and the Title IV program, the Secretary may allow** such a program ~~shall not continue participation in the~~ Direct Loan Program ~~participation~~ if, within 120 days of the Secretary's determination, the institution and the Secretary agree to add an amendment to the institution's program participation agreement that requires the institution to—

(i) Cease accepting new enrollments on or after the date of the agreement;

(ii) Engage in an orderly closure of the program in which the institution ~~provides an opportunity for enrolled individuals to complete their program, regardless of their academic progress at the time of closure.~~ may continue to enroll students for the expected time for a student to complete a program that is equal to or the lesser of—

(A) Three academic years, as defined in 34 CFR 668.3; or

(B) The period determined by calculating the difference between—

(1) The program length for the program of study in which the individual is enrolled; and

(2) The period of such program of study that such individual has completed as of the date of the Secretary's determination

(iii) Provide to students the academic and financial options available to continue their education in another program that passes the earnings premium at the institution, including at least one option for students to transfer credits earned in the program to another program at the institution and one option to transfer to a program at another institution that meets the requirements under [34 CFR 602.24\(c\)\(7\)](#), and which course credits would transfer; and

(iv) Agree not to restart a substantially similar program, as described in 34 CFR 668.604, for at least two award years following the completion of the orderly closure in subparagraph (ii).

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

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(2) An institution may not update its list of Direct Loan-eligible programs to include a program sharing the same 4-digit CIP code ~~and an identical SOC code according to the CIP SOC Crosswalk that is provided by a Federal agency with~~ 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.

(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 34 CFR 668.403(c) and is a failing program under 34 CFR 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 34 CFR 668.403(c) and is a failing program under 34 CFR 668.402 in either of the two most recent award years.

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