

REVISED DEBT-TO EARNINGS & GAINFUL EMPLOYMENT RULES  
SUBMITTED BY BRAD ADAMS | PROPRIETARY SCHOOLS  
ROUND 3 | MARCH 14 - 18, 2022

**Subpart QR—Gainful Employment (GE) Programs**

**§ 668.401501 Scope and purpose.**

This subpart applies to an educational GE program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

(a) The Secretary determines that the program is eligible for title IV, HEA program funds; and

(b)(a) An institution reports certifies information about the program's GE programs to the Secretary; and,

(a) Beginning with the 2026-2027 award year, the Secretary determines whether a GE program is eligible for title IV loans or otherwise subject to the consequences set forth in §668.403504.

**§ 668.502 Gainful employment framework.**

(a) ~~(a)~~ General. A GE program provides training that prepares students for gainful employment in a recognized occupation if the program—

- (1) Satisfies the applicable certification requirements in §668.444505; and
- (2) Is not an ineligible program under the D/E rates calculated pursuant to §668.403.

(b) ~~(b)~~ Debt-to-earnings rates (D/E rates) for GE programs. For each award year, the Secretary calculates two D/E rates for a GE program, the discretionary earnings rate and the annual earnings rate, using the procedures in ~~§§668.404 through §668.406~~ 403.

(c) ~~(c)~~ Outcomes of the D/E rates for GE programs.

- (1) ~~(1)~~ A GE program passes the D/E rates if--
  - (i) Its discretionary earnings rate is less than or equal to 2030 percent; or
  - (ii) Its annual earnings rate is less than or equal to 812 percent.
- (2) ~~(2)~~ A GE program fails the D/E rates if--
  - (i) Its discretionary earnings rate is greater than 2030 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and
  - (ii) Its annual earnings rate is greater than 812 percent or the denominator of the rate (annual earnings) is zero.

(3) A GE program becomes ineligible, subject to paragraph (c)(4), if it fails the D/E rates in two out of any three consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.

(4) If the Secretary does not calculate or issue D/E rates for a program for an award year, or calculates only a small program rate with respect to that program, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

**§ 668.406503 Determination of the D/E rates for GE programs.**

(a) ~~(a)~~ Notice of determination. For each award year for which the Secretary calculates D/E rates for a GE program or the small program rate, the Secretary issues a notice of determination informing the institution of the following:

- (1) The D/E rates for each GE program and for its small programs as determined under §668.404403;

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(2) The determination by the Secretary of whether each GE program is passing, failing, or ineligible, as described in §668.403502, and the consequences of that determination;

(3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program; and

(4) ~~(4)~~ Whether the institution is required to provide the student warning under §668.407504.

(b) ~~(b)~~ **Effective date of Secretary's determination.** The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination.

§ 668.407504 Consequences of the D/E rates for GE programs.

(a) ~~(a)~~ **Waiver of consequences.**

(1) The Secretary will waive and will not impose the consequences set forth in this section based on D/E rates calculated using data from award or calendar years that precede July 1, 2023.

(2) For any given year, the Secretary may waive sanctions if the Secretary determines –

(i) That the GE program trains students to be essential workers or to enter professions experiencing critical national job shortages;

(ii) That the GE program's earnings were negatively and materially impacted by an unforeseen event beyond the institution's control such as a global pandemic; or

(iii) That the GE program's earnings were negatively and materially impacted by wage discrimination experienced by the program's graduates.

(b) **Loss of Eligibility.**

(1)

(i) A GE program becomes ineligible for title IV loans, subject to paragraph (b)(2), if it fails the D/E rates in three out of any four consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.

(ii) In the event a GE program becomes ineligible pursuant to paragraph (b)(1)(i), students currently enrolled in the GE program at the time the program becomes ineligible may continue to receive title IV loans until they have graduated from the program.

(2) If the Secretary does not calculate or issue D/E rates for a GE program for an award year, or calculates only a small program rate with respect to that program, the GE program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

(c) **Student warning.**

(1) **Events requiring a warning to students and prospective students.** The institution must provide a -warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the GE program could become ineligible to disburse title IV loan funds based on its D/E rates for the -next award year.

(2) **Content of warning.** The institution must provide—

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Commented [A4]: Sanctions would not be imposed for metrics calculated using data from years that precede the effective date of the rule.

Commented [A5]: This would afford the Secretary flexibility to ensure that critical training opportunities are not reduced during times of great need, or based on wage discrimination or events beyond an institution's control.

Commented [A6]: This additional year would afford institutions a more reasonable opportunity to adjust for market shifts or other unforeseen events like a global pandemic.

Commented [A7]: This would ensure that students who have enrolled in or remained enrolled in a program with full knowledge of the program's D/E rates would be permitted to receive title IV aid until they complete their program. The GE rule should not force mass withdrawals. This would be terrible for students.

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- (i) The relevant information to access the website maintained by the Secretary;
- (ii) A warning, as specified by the Secretary in a notice published in the *Federal Register*, that the program has not passed standards established by the U.S. Department of Education and ~~may face restrictions on enrollment and/or~~ could lose access to Federal grants and loans in the subsequent award year; and
- (iii) A statement that the student must attest to having seen the warning through the disclosure website established and maintained by the Secretary.
- (iv) For warnings provided to enrolled students--

(A) ~~(A)~~ A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could attempt to transfer credits earned in the program to another program at the institution, and which course credits might ~~would~~ transfer, and an express statement that whether to receive credits on transfer is always at the discretion of the receiving institution, in the event that the program loses eligibility for title IV, ~~HEA program funds~~ loans;

(B) ~~(B)~~ An indication of whether the institution will--

- (1) Continue to provide instruction in the program to allow students to complete the program; and
- (2) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(C) ~~(C)~~ An explanation of whether the students could transfer credits earned in the program to another institution.

(3) *Alternative languages.* To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.

(4) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under §668.406 and maintain documentation of its efforts to provide that warning.

(5) ~~(5)~~ *Delivery to prospective students.*

~~(i) An institution must provide the warning as required under paragraph (c)(2) of 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--~~

(A) ~~Hand delivering the warning and the relevant information to access the website maintained by the Secretary as a separate document to the prospective student or third party individually, or as part of a group presentation;~~

(B) ~~Sending the warning and the relevant information to access the website maintained by the Secretary 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~~

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~~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~~

~~(C)(i) Providing the warning and the relevant information to access the website maintained by the Secretary orally to the student or third party if the contact is by telephone.~~

~~(ii) 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 student completes the attestation in subparagraph (ac)(2)(iii).~~

~~(iii) The Secretary shall provide institutions with real-time, on demand access to the website maintained by the Secretary for the purposes of identifying the students who have completed the attestation in subparagraph (a)(2)(iii) and determining the date such attestation was completed.~~

~~(d) Restrictions.~~

~~(1) Ineligible program. Except as provided in §668.26(d), an institution may not disburse title IV, HEA program loan funds to students enrolled in an ineligible GE program.~~

~~(2) Period of ineligibility. An institution may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after failing D/E rates are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing program.~~

~~(3) Restoring eligibility. An ineligible GE program, or a failing program that an institution voluntarily discontinues after failing D/E rates are issued for that program, remains ineligible until the institution establishes the eligibility of that program under §668.410505(c).~~

~~(e) Exclusion. For any year for which the Secretary provides the institution a notice of determination under section 668.503 that a D/E rate is failing for a GE program, the program is excluded from consequences in this section if the D/E rate contained in that notice of determination exceeds the median debt to earnings rate for programs leading to the same primary occupation (by name and/or CIP code) as calculated by the Secretary using the median loan debt and median earnings data provided by all participating institutions under section 668.43 and subpart Q or as published on the College Scorecard.~~

~~§ 668.409 Supplementary performance measures.~~

~~(a) General. The Secretary assesses and analyzes the following information prior to issuing an institution a new Program Participation Agreement, and may consider the information in determining whether to certify, or condition the participation of, an institution under §§ 668.13 and 668.14—~~

~~(1) Withdrawal rate. The percentage of students in the enrollment cohort who withdrew from the institution within 100 percent or 150 percent of the length of the program.~~

~~(2) Debt to earnings rates. The debt to earnings rates under §668.403, if applicable.~~

~~(3) Small program rates. The small program rates under §668.404(g), if applicable.~~

~~(4) Instructional, advertising, and administrative expenses. The amounts the institution spent on instruction/instructional activities; advertising or recruiting activities; and administrative activities, which~~

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include the salaries and compensation of the owners and principal officers, as provided through a disclosure in the audited financial statements required under §668.23(d).

(5) Job placement rate. If the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or a program, or both, the placement rate or rates, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State.

**§ 668.410505 Certification requirements for GE programs.**

**(a) ~~(a)~~ Transitional certification for existing programs.**

(1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under §668.14.

~~(2)~~ If an institution makes the certification in its program participation agreement pursuant to paragraph

(2) (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) ~~(b)~~ 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 included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. 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 make an existing certification no longer accurate.

**(c) ~~(c)~~ Establishing eligibility and disbursing funds.**

(1) ~~(1)~~ An institution establishes the eligibility for title IV, HEA program funds loans of a GE program by updating the list of the institution's 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 eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds loans to students enrolled in that program.

(2) ~~(2)~~ An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in §668.407504(b), that was subject to the three-year loss of eligibility under §668.407504(b), until that three-year period expires.

(d) ~~(d)~~ GE program eligibility certifications. An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that each eligible GE program it offers 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.

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**§ 668.~~506411~~ Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

\* \* \*

**§ 668.43 Institutional and programmatic information.**

\* \* \*

~~(d)~~

(d) (1)

(1) D/E program rates. An institution must make readily available to enrolled and prospective students the D/E rates calculated for D/E programs under subpart Q.

(2) Disclosure website. An institution must provide such information as the Secretary prescribes through -a Federal Register notice for disclosure to prospective and enrolled students through a website established and maintained by the Secretary. The Secretary will conduct consumer testing to inform the design of the website. The Secretary may include on the website, among other disclosures:

(i) The D/E rates calculated for D/E programs under subpart Q.

(ii) The primary occupations (by name and/or SOC code) that the D/E 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.

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

(iv) The length of the D/E program in calendar time (i.e., weeks, months, years).

(v) The total number of individuals enrolled in the D/E program during the most recently completed award year.

(vi) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on title IV loans during a period determined by the Secretary.

(vii) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, other institutional charges that a student would incur for completing the D/E program within the length of the program.

(viii) Of the individuals enrolled in the D/E program during the most recently completed award year, the percentage who received a title IV loan and/or a private loan for enrollment in the program.

(ix) As calculated by the Secretary in accordance with § 668.403, the median loan debt of students who completed the D/E program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(x) As provided determined by the Secretary in accordance with § 668.403, the greater of the mean or median earnings of students who completed the D/E program- or of all students who completed or withdrew from the program, during a period determined by the Secretary.

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~~(x)~~(xi) Whether the D/E program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

~~(xi)~~ The supplementary performance measures in § 668.409.

~~(xii)~~ A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

~~(2)~~(3) Program web pages. The institution must provide a link and any needed information to access the website maintained by the Secretary on any webpage containing academic, cost, financial aid, or admissions information about the D/E program. The Secretary may require the institution to modify a webpage if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

~~(3)~~(4) Distribution to prospective students. The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student (as defined in 34 CFR 668.402), 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.

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