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Special edition overview

To help schools understand final rules on the subject of gainful employment, TG is providing this special edition that highlights key topics, notes significant changes to the proposed rules, and provides tips and tools to help schools navigate the new regulations.

Industry Update

Introduction to this special edition: A message from Carol Lindsey, TG vice president for policy and compliance

The past two years have been a period of momentous change in the regulatory environment surrounding the federal student financial assistance programs. We have witnessed this in a number of very significant events that have occurred during this time, most notably in the development of Program Integrity final rules on fourteen topics during the most recent negotiated rulemaking process. Among the many profound changes introduced in the Program Integrity final rules, none has engaged the level of public attention and extensive development effort that the definition of “gainful employment in a recognized occupation” has experienced in the national arena.

The mission of preparing students for gainful employment in a recognized occupation is the basis for making Title IV program funds available to students attending a wide range of educational and vocational training programs at postsecondary institutions. In fact, it is the reason that many schools are permitted to participate in the Title IV programs. Title IV-eligible certificate or diploma non-degree programs at public and private nonprofit schools are generally considered to be “gainful employment” programs, and nearly all educational programs at for-profit schools fall into this category. Hence this is an issue that matters to a very large number of schools spanning all three types of educational institutions.

Gainful employment is also critically important to students and to organizations that advocate for their interests. As the costs to complete postsecondary education programs continue to rise, and as educational borrowing has recently surpassed credit card debt in magnitude at the national level, much attention is being focused on reasonable expectations and student outcomes for programs that are federally funded to prepare students for gainful employment. These outcomes deeply affect borrowers.

Consequently, the stage has been set for a complex and contentious federal policy debate on this issue. The results of the debate are reflected in the federal policy positions articulated in the final rules on school reporting and disclosure requirements, and requirements for new gainful employment programs, published in October 2010, as well as in the final rules released June 2, 2011 on performance measures for gainful employment programs. These performance measures focus on the successful management and repayment of educational debt by students who enroll in these types of programs.

Due to the very high level of interest among schools, students, the federal government, taxpayers, and the public at large in this issue, we present this special edition on gainful employment. We hope it will serve to inform financial aid

professionals and other interested parties about the new rules and help them anticipate and successfully prepare for implementation of the new requirements on July 1, 2012.

TG will provide additional information on gainful employment in upcoming editions of *Shoptalk*.

Upcoming TG webinar focuses on gainful employment requirements

Federal student aid requirements for educational programs that prepare students for gainful employment in a recognized occupation at a public, nonprofit, or for-profit school are at the forefront of discussion in the financial aid community and beyond. In addition to final rules published last fall that introduce significant new reporting and disclosure requirements for these programs, ED has just released final rules on metrics with minimum standards that must be met for gainful employment programs to qualify students to receive Title IV funds.

An upcoming TG webinar will review the requirements for reporting, disclosures, and adding new educational programs of this nature that become effective July 1, 2011. The webinar will also address the new regulations on program metrics for student debt levels and repayment success that become effective on July 1, 2012.

Registration information

To accommodate the schedules of TG's coast-to-coast customers, the 90-minute webinar is scheduled for Friday, June 17, at 10 a.m. Central Time, with a repeat of the webinar on the same day at 3 p.m. Central Time. [Registration is available online](#). If you are unable to attend the scheduled broadcast, a recording will be available for viewing shortly after the event through [TG's archived webinars](#).

Overview – Key concepts and objectives of the final rules on gainful employment debt measures

ED, in developing these final rules, has adopted a definition of “gainful employment in a recognized occupation” that evaluates the degree of success of students enrolling in a program of this nature to effectively manage repayment of educational debt, and for graduates of such programs to secure relevant employment and earn sufficient wages to justify the financial investment required to complete the program. ED’s rules are focused on targeting the lowest performing programs of this nature for improvement or discontinuation by the schools that offer them.

The final rules establish minimum performance standards for vocationally oriented “gainful employment (GE) programs” to meet, in terms of a loan repayment rate

and debt-to-earnings ratios at a program level. If a GE program fails to satisfy at least one of these minimum performance standards for three years during a four-year period, the program becomes ineligible for Title IV funds. School-reported student and program data, as well as federal data held by ED and the Social Security Administration (SSA), are used to calculate the program-level debt measures. In some cases, other data may be used for this purpose as an alternative to the normal method by which the measures are computed.

ED believes that the current regulatory framework that focuses mostly on institution-level eligibility requirements for federal student aid program participation does not provide sufficient visibility into the level of success of individual students enrolling in individual GE programs at Title IV-eligible schools. For this reason, ED feels that program-level measures are critical to strengthening program integrity, protecting and improving outcomes for students, and ensuring effective stewardship of Title IV program funds.

Programs for which a significant percentage of students struggle to achieve successful outcomes according to these measures must provide warnings to prospective and enrolled students as soon as the program is first designated as “failing.” If a program continues to be classified as a “failing program,” the requirements and responsibilities of the school intensify. Programs that ultimately become ineligible for Title IV funding have further requirements and obligations to fulfill.

Finally, ED believes that greater transparency and improved disclosure of a program’s performance in terms of a broader set of student-focused criteria, such as a program’s cost, on-time completion rate, and job placement rate, should be required of all GE programs, even those that appear to be performing effectively, to encourage informed decision making by prospective students. To that end, these final rules on debt measures are linked to the final rules on school reporting and disclosure requirements published earlier, to offer a more comprehensive approach to effectively serving the needs of students.

The hitchhiker’s guide to gainful employment debt measures

For those anxious to begin studying the final rules on gainful employment (GE) program debt measures while awaiting the published version in the *Federal Register*, [here is a link to a quick guide](#) to what you’ll find and where you’ll find it in the [prepublication final rule document](#) released by ED on June 2, 2011.

Gainful employment implementation time frames — debt measures

To illustrate the time frame in which the new GE debt measures operate at the program level, TG has [developed a chart](#) that visually depicts this information based on a chart provided by ED (Table G, p. 163 in the prepublication version of the final rules).

The chart begins with fiscal year 2011, the first year for which the debt measures will be calculated for informational purposes (only) to assist schools in evaluating program-level performance. The chart includes fiscal years 2012 through 2015 to explain the potential impact of the debt measures on low-performing GE programs. The time periods used to calculate the measures, as well as the time frames for releasing the measures for each fiscal year, are outlined in the chart to assist schools in understanding what data will be used to calculate these annual measures. Schools will be required to disclose program-level performance outcomes against these measures, and ED stipulates in the final rules that it may also release the final measures to the public.

Significant changes from proposed rules

On July 26, 2010, ED's [proposed rules](#) on debt measures to be used for GE program evaluations were published in a *Federal Register* notice devoted specifically to that topic. The framework and core concepts of those draft rules were carried forward, for the most part, to the [final rules](#) released this month. The proposed "loan repayment rate" and "debt-to-earnings" ratios continue to be used in the final rules to evaluate the success of student outcomes in GE programs.

However, significant changes to the proposed rules were made by ED in response to a record-setting number of public comments submitted in response to the notice of proposed rules. These comments were also submitted in response to extensive additional analysis, research, and consultation by ED with other parties to refine the measures to effectively achieve ED's policy objectives in evaluating performance of GE programs in a balanced and informed manner. Summary highlights of significant changes to the proposed rules as reflected in the final rules are provided below. More detailed information on some of the changes is provided in other articles included in this special edition.

First, ED explains in the preamble to the final rules (beginning on p. 11 of the prepublication document) the overarching objectives of the changes made to the proposed rules:

- Improve program information disclosures to students to promote informed decision making

- Identify the worst performing programs, using appropriately targeted and calibrated measures
- Provide greater flexibility and meaningful opportunities for schools to improve their programs
- Minimize compliance costs for schools, while providing major benefits to students and taxpayers
- “Improve the operation of free markets by identifying the poorest performing programs and strengthening institutions’ incentive to provide an affordable, quality education”

The final rules differ significantly from the proposed rules in that they:

- Provide an initial three-year period for schools to improve program performance, so that lower performing programs can be strengthened to avoid loss of Title IV eligibility. (The proposed rules provided no initial evaluation period to permit program improvements.)
- Focus on removing Title IV eligibility from only the worst performing programs by permitting a program to continue to qualify for Title IV funds until it fails to satisfy all of the debt measures for three years in a four-year period. (Under the proposed rules, a program would lose eligibility if it failed to satisfy at least one of the measures for a single year.)
- Limit the extent of the adverse impact of the first year in which the lowest performing programs could lose Title IV eligibility by adopting a modified five percent cap on student enrollments as a cut-off threshold. (The five percent cap on low-performing programs differed in proposed rules.)
- Provide for a straightforward determination of program eligibility — fully eligible or ineligible — based on performance against a single threshold level for each debt measure. (The proposed rules included a more complex, two-tiered eligibility status approach for each measure, with enrollment restrictions and other requirements being applied to marginally eligible programs.)
- Improve the debt measures by setting the thresholds at levels that provide more consideration of relevant factors that adversely impact program performance beyond the quality of a program. (Proposed rules set the thresholds at tighter levels, where programs would fail more easily.)
- Permit schools to use alternative, reliable sources of earnings information on program completers under certain circumstances. (The proposed rules did not permit use of any alternative sources.)

- Evaluate the performance of programs in the third and fourth years of loan repayment, to obtain a more indicative measure of the ability of borrowers to successfully manage repayment. In certain cases, the final rules adjust or extend the evaluation period to ensure that the data fairly portrays the level of repayment success achieved by borrowers. (Under the proposed rules, program performance was evaluated beginning in the more uncertain first year of loan repayment.)
- Recognize the significant difference in debt levels and associated amortization periods among borrowers with differing levels of postsecondary degree attainment, and avoid using a “one-size-fits-all” amortization period in the formula to compute an average annual loan payment amount. (The proposed rules did not provide for differing amortization periods for this purpose.)
- Limit the amount of student debt included in the debt-to-earnings ratio calculations to the amount of a school’s tuition and fees charged to the student, if the school provides that data. (The proposed rules provided schools no protection against overborrowing by students.)
- Designate borrowers who satisfy their payment obligations on FFELP or FDLP loans using an income-sensitive repayment plan (such as income-contingent or Income-Based Repayment) as successfully repaying their loans, provided that a particular program doesn’t have an unusually large number of such borrowers. (Proposed rules designated such borrowers as unsuccessful.)
- Provide protections for programs with very small numbers of students or borrowers, so that they do not become ineligible based on the outcomes of 30 or fewer total students or borrowers. (Under the proposed rules, there was no such provision to address these types of scenarios.)
- Improve due process provisions and eliminate provisional certification of a school as a potential consequence for a program’s failure to satisfy performance measures, by providing other, more appropriate consequences for inadequate program performance. (Provisional certification and more limited due process provisions for schools were included in the proposed rules.)
- Improve provisions on program performance disclosures, by specifying that ED may disseminate final debt measures and related information to the public; adding specificity and strength to the requirements to provide appropriate warnings to students when a program fails to satisfy debt measures; and requiring that a school disclose the results of its program debt measures for all GE programs to foster informed decision making. (These were lacking in the proposed rules.)

- Establish restrictions on re-establishing eligibility for programs that have lost eligibility or have been voluntarily withdrawn from Title IV program participation while failing to satisfy debt measures. (These rules were not as fully addressed in the proposed regulations.)

Draft disclosure template for gainful employment programs

As schools develop disclosures to comply with Program Integrity final rules published on October 29, 2010, they are encouraged to review and provide comment on the draft “[ED Gainful Employment Program Disclosure Template](#)” published in a *Federal Register* notice on April 13, 2011. The disclosure template was developed by ED to standardize and automate the process for schools to submit summary information to ED on gainful employment (GE) programs. ED’s proposed template includes completion instructions and data item definitions, as appropriate.

In addition to providing an opportunity for public comment, the publication of the draft data collection form offers additional insights into the nature of the program-level information ED plans to collect in order to provide information to schools that must then be made available to prospective and current students. ED reserves the right to publicly disseminate this information, in addition to the disclosures provided directly by schools.

In preparation to use ED’s disclosure template for GE programs when it is finalized, schools may wish to consider patterning their initial disclosures to students after the model adopted by ED in the draft template. As a reminder, schools must begin disclosing information on their GE programs by July 1, 2011, as specified in §668.6(b) of the Program Integrity final rules. When the final version of ED’s disclosure template becomes available, schools will be required to use ED’s template to fulfill this disclosure responsibility as described in §668.6(b)(2)(iv), which states that a school will “use the disclosure form issued by the Secretary to provide the information ... when that form is available.” ED expects to finalize the disclosure template by the fall of 2011 so that it is available for school use by July 1, 2012.

Background

In the preamble language to the Program Integrity final rules (beginning of p. 66836), ED indicated its intent to develop a disclosure form and solicit public comment about the design of the form through the information collection process outlined in the Paperwork Reduction Act of 1995. The preamble language and recent Dear Colleague Letter (DCL) [GEN-11-10](#) emphasize that schools must comply with the [disclosure requirements](#) beginning on July 1, 2011, even though a standardized GE disclosure template is not yet available. The DCL included a

“Gainful Employment Reporting Draft Data Elements List” covering collection of student-level data, so schools may already be familiar with the student-level data collection plans. However, schools may not yet have reviewed the program-level disclosure information published in the *Federal Register* on April 13, 2011, which includes examples of the disclosure tools that will be publicly available to assist students in making enrollment decisions based on the information provided by schools about their GE programs and student outcomes.

Access ED’s draft GE template

The three draft ED forms may be accessed using the bulleted links provided below, or through ED’s Information Collection System at <http://edicsweb.ed.gov>. From the website, select the “Browse Pending Collection” link from the menu on the right-hand side of the page. Scroll down the page to the collection entitled (04561) 1845-0107-v.2 Student Assistance General Provisions - Subpart A – General, and click on the hyperlink.

From this page, you will be able to access and download the draft files including:

- [Gainful Employment Disclosure Template Draft](#) — The proposed template to be used to collect program-level GE information from schools
- [Gainful Employment Disclosure Template Zip File Draft](#) — The proposed template to provide GE information to prospective students about a specific GE program offered by a school
- [Gainful Employment Disclosure Template List of Schools Draft](#) — A proposed listing of other schools offering programs similar to the one inquired about by a prospective student

Deadline to provide feedback

The deadline for providing feedback on the “Gainful Employment Program Disclosure Template” and the companion forms is **June 13, 2011**. Comments may be sent electronically to ICDocketMgr@ed.gov or by mail to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537.

Learn more

For additional assistance with the Program Integrity final rules, visit [TG's Program Integrity Final Rules Web page](#). You can also contact TG's Customer Assistance team at (800) 845-6267, or send an email message to cust.assist@tgsllc.org.

Timely guidance available on ED's Gainful Employment Information Page

Are you wondering when the final rules on gainful employment (GE) program debt measures will be published in the *Federal Register*? Are you looking for answers to questions about the GE reporting, disclosure, and new program requirements taking effect on July 1, 2011? This information and much more is provided on a valuable, one-stop resource that ED has created for schools: the [Gainful Employment Information Page](#).

As schools continue to learn more about the GE reporting, disclosure, and new program final rules published on October 29, 2010, and become familiar with the [new GE program debt measures](#)— announced by ED on June 2, 2011, vital access to timely GE information including final rules, *Dear Colleague Letters*, electronic announcements, frequently asked questions, and other resources is provided on ED's Web page.

Navigating the GE information page

The page is divided into four informational sections as outlined below:

- *Regulations* — includes the two *Federal Register* notices published on October 29, 2010 — Program Integrity final rules, which provides GE program reporting and disclosure requirements, and Gainful Employment—New Programs regulations. The Gainful Employment—Debt Measures final rules will be added here upon publication in the *Federal Register*.
- *Dear Colleague Letters and Electronic Announcements* — covers the latest guidance issued by ED on implementation of GE program requirements.
- *Frequently Asked Questions* — provides answers to questions on a wide range of GE topics.
- *Resources and Links* — currently contains links to the NSLDS Gainful Employment User Guide, ED press statements, and GE-related meetings and data analysis.

To help readers quickly identify recent updates, ED generally highlights such items by displaying them in red font when they first appear on the page. This makes it easy to scan the contents on a weekly or daily basis to quickly identify if any new guidance has been provided.

Most recent guidance posted on the GE information page

ED has recently issued a series of electronic announcements to assist schools in implementing the GE provisions effective July 1, 2011. A high-level summary of the latest announcements is provided below:

- [Electronic announcement #5](#)

On June 1, 2011, ED provided operational guidance to schools seeking to offer new GE programs. The ED guidance includes three attachments:

- Regulatory language outlining new program requirements
- Procedures for a school to notify ED of new programs
- Format for a school's notice of intent to offer a new program

The announcement outlines the specific timelines for reporting new GE programs and reiterates that provisionally certified schools must wait for ED approval before disbursing Title IV funds to students enrolled in any new program, along with any schools previously notified that they must obtain ED approval for new programs. The attachments provide more details on the mechanism and format to use for reporting these new programs to ED.

- [Electronic announcement #6](#)

On June 2, 2011, ED made available an unofficial, prepublication copy of the final rules pertaining to the measures to be used when determining if a program adequately prepares students for gainful employment in a recognized occupation. The announcement includes a link to ED's press release, where the prepublication final rules and supplemental information may be found.

- [Electronic announcement #7](#)

On June 3, 2011, ED announced updates to the NSLDS Gainful Employment User Guide to reflect the following changes:

- Removal of the XML record layout from the guide as part of the GE batch reporting process. ED has determined that it is not able to offer the XML format as an option for the initial year of GE data reporting.
- Inclusion of a new field for "Tuition and Fees." This change anticipates the final rules on GE program measures to be published soon, as noted in electronic announcement #6 above. The new field title replaces the previous designation as "Reserved for Future Use." ED also notes that under the final rules on program measures, reporting of tuition and fees is optional for schools.

For questions

Questions that are not addressed on the Gainful Employment Information Page may be submitted to the GE Questions mailbox at GE-Questions@ed.gov.

For additional assistance with the Program Integrity final rules, visit [TG's Program Integrity Final Rules Web page](#). You can also contact TG's Customer Assistance team at (800) 845-6267, or send an email message to cust.assist@tgslc.org.

A closer look at the new loan repayment rate

In order to determine if a program adequately prepares students for gainful employment (GE) in a recognized occupation, the GE final rules released by ED on June 2, 2011, require the program to satisfy minimum thresholds on student debt measures. These measures include the loan repayment rate and two types of debt-to-earnings ratios. This article focuses on the loan repayment rate measure, describing its purpose, outlining significant changes from the proposed rules, providing a basic overview of key terminology, and detailing the calculation of the measure.

Purpose of the loan repayment rate

The loan repayment rate is intended to measure the repayment success of former students in a program by evaluating their success in making sufficient payments on their FFELP or FDLP loans to reduce the outstanding balance over time. Former students include both those who completed the school's program and those who did not complete the program.

Notable changes to the loan repayment rate in the final rules

ED made a number of significant changes to the loan repayment rate measure in the final rules:

- A program satisfies this measure if it has a loan repayment rate of at least 35 percent. The proposed rules specified a targeted performance level of at least 45 percent, but also featured a two-tiered eligibility status approach for restricted vs. unrestricted programs with a lower limit boundary of 35 percent for restricted programs. The two-tiered approach has been eliminated.
- In general, the loan repayment rate in the final rules provides "credit" for borrower payments that reduce the total outstanding loan balance (principal plus interest), whereas the proposed rules counted as successful only borrowers who reduced the principal balance of their loan debt. Under the final rules, borrowers making their scheduled payments under an Income-Based Repayment (IBR), income-contingent repayment (ICR), income-sensitive repayment (ISR), or other repayment plan in an amount equal to or less than the amount of interest accruing on the loans are considered to be successfully repaying their loans, *if* the dollar amount of interest only or negative-amortization payments do not exceed three percent of the total outstanding loan balance in the denominator of the calculation.

- The final rules specify that the loan repayment rate focuses on borrowers who entered repayment on their FFELP and FDLP loans during the third and fourth fiscal years prior to the most recently completed fiscal year for which the rate is calculated, in most cases. This is a shorter period of time (two years) that falls later in the repayment period for these borrowers than was specified in the proposed rules.
 - If 30 or fewer borrowers entered repayment on their loans during the two-year period described above, the two-year period will be extended to include borrowers who entered repayment in the third, fourth, fifth, and sixth fiscal years prior to the most recently completed fiscal year (a four-year period). If there are still 30 or fewer borrowers in this four-year period, the program is considered to satisfy the measure.
 - For medical and dental programs with internship or residency requirements, the loan repayment rate includes borrowers who entered repayment in the sixth and seventh fiscal years prior to the most recently completed fiscal year for which the rate is calculated. If this two-year period includes 30 or fewer borrowers, it will be extended to include borrowers who entered repayment in the sixth, seventh, eighth, and ninth prior fiscal years. If there are still 30 or fewer borrowers in this four-year period, the program is considered to satisfy the measure.
- The final rules also stipulate that ED will issue a “draft” loan repayment rate to a school for review before issuing the final rate. This process is explained in further detail in a separate article in this special edition that covers review and correction of draft debt measures. The proposed rules did not provide this type of data review process for schools.
- ED makes clear in the final rules that it may publish loan repayment rates and other related information to help students compare similar GE programs offered by other schools. The emphasis on increased public disclosures of this nature differs from the proposed rules.

Key terminology and loan repayment rate calculation

It is important to identify key terms to facilitate an understanding of the loan repayment rate calculation.

- **Fiscal year (FY):** A twelve-month period beginning on October 1 of the prior year and ending on September 30 of the specified year.
- **Original Outstanding Principal Balance (OOPB):** This is the total loan balance, including capitalized interest, when a loan first entered repayment. The OOPB does not include parent PLUS loans or TEACH Grants that have

converted to unsubsidized loans. For Consolidation loans, only FFELP and FDLP loans attributable to a borrower's attendance in the program are included.

- **Excluded loans:** The following types of loans are excluded from the calculation:
 - Loans in an in-school or military-related deferment status during any part of the FY.
 - Loans that have been transferred or assigned to ED due to a borrower's total and permanent disability, as well as loans that have been discharged for this reason.
 - Loans that have been discharged due to the death of the borrower.
- **Loans Paid in Full (LPF):** Loans that have never been in default and have been paid in full by the borrower. Consolidation loans are not counted unless the Consolidation loans are paid in full.
- **Payments-Made Loans (PML):** Loans that have never been in default, on which borrower payments made during the most recently completed FY have reduced the outstanding balance of the loan (including the outstanding balance of a Consolidation loan) to an amount that is *less than* the outstanding balance of the loan at the beginning of that year. The outstanding balance includes any unpaid accrued interest that has not been capitalized. If the program is a post-baccalaureate certificate, master's degree, doctoral degree, or first-professional degree program, a Consolidation loan is included if the total outstanding balance (including unpaid accrued interest that has not been capitalized) at the end of the most recently completed FY is *less than or equal to* the total outstanding balance of the Consolidation loan at the beginning of the year.

Also, loans eligible for Public Service Loan Forgiveness and loans in a repayment plan in which a borrower makes scheduled payments during the most recently completed FY in an amount equal to or less than accruing interest are considered PML with certain limitations.

The loan repayment rate formula is as follows:

Loan repayment rate calculation:

$$\text{OOPB of LPF} + \text{OOPB of PML}$$

$$\text{OOPB of all FFELP and FDLP loans obtained by students to enroll in the program}$$

Informational loan repayment rate data to be provided (see [TG GE Implementation Time Frames chart](#))

To help schools initially evaluate the performance of a program with respect to the GE debt measures, ED will provide an FY 2011 informational loan repayment rate and the data used to calculate it for each GE program offered by a school. The informational rate will include borrowers who entered repayment during FY 2007 and FY 2008. This data will assist a school in evaluating the loan repayment rate of each of its GE programs before any adverse consequences based on a low repayment rate would occur.

Understanding debt-to-earnings ratios

New rules that become effective July 1, 2012, evaluate the effectiveness of a gainful employment (GE) program offered by a school based on its level of success in meeting minimum thresholds on two types of student debt measures: the loan repayment rate and two types of debt-to-earnings ratios. This article describes the purpose of the two debt-to-earnings ratios, highlights significant changes from the proposed rules, explains key terminology, and provides the calculations used to derive the ratios.

Purpose of the debt-to-earnings ratios

These ratios are used to determine the portion of a typical graduate's annual earnings or discretionary income that is consumed by repayment of educational debt incurred to attend a particular program.

The ratios measure this result at the program level, and the results are compared to minimum standards or thresholds established by ED. The minimum standards are used to determine if Title IV funds will be available to students to pay for enrollment in the program.

Information on the debt burden of program graduates will also help prospective students determine whether to enroll in a program or to choose among similar programs offered by schools.

Notable changes to the debt-to-earnings ratios in the final rules

ED made a number of significant changes to the calculation of these ratios in the final rules:

- A program satisfies this measure if its "annual loan payment" as reflected in these ratios is 12 percent or less of annual earnings, or 30 percent or less of discretionary income, for a typical program graduate. The proposed rules specified a targeted performance level of eight percent or less of annual

earnings, or 20 percent or less of discretionary income, but also featured a two-tiered eligibility status approach for restricted vs. unrestricted programs with the upper-limit boundaries being the same as those used in the final rules. The two-tiered program eligibility approach has been eliminated.

- Included students: Final rules specify that the debt-to-earnings ratios focus on students who completed programs during the third and fourth fiscal years prior to the most recently completed fiscal year for which the rate is calculated, in most cases. This is a shorter period of time (two years), evaluated later after program completion, than the proposed rules permitted.
 - If 30 or fewer students completed programs during the two-year period described above, the two-year period will be extended to include students who completed programs during the third, fourth, fifth, and sixth fiscal years prior to the most recently completed fiscal year (a four-year period). If there are still 30 or fewer students in this four-year period, the program is considered to satisfy the measure.
 - For medical and dental programs with internship or residency requirements, the debt-to-earnings ratios include students who completed programs during the sixth and seventh fiscal years prior to the most recently completed fiscal year for which the rate is calculated. If this two-year period includes 30 or fewer borrowers, it will be extended to include students who completed programs in the sixth, seventh, eighth, and ninth prior fiscal years. If there are still 30 or fewer borrowers in this four-year period, the program is considered to satisfy the measure.
- Excluded students: The final rules exclude students with one or more FFELP or FDLP loans in the following categories:
 - Loans in a military-related deferment status during any part of the calendar year for which ED obtains earnings.
 - Loans that have been transferred or assigned to ED due to a borrower's total and permanent disability, as well as loans that have been discharged for this reason.
 - Loans that have been discharged due to the death of the borrower.
 - Loans for a student enrolled in any other eligible program at the same school or another school during the calendar year for which ED obtains earnings.

The proposed rules did not exclude students from the calculation of debt-to-earnings ratios for any of these reasons (only the loan repayment rate calculation permitted limited exclusions).

- The final rules also stipulate that ED will issue “draft” debt-to-earnings ratios to a school for review, before issuing the final rates. This process is explained in further detail in a separate article in this special edition that covers review and correction of draft debt measures. The proposed rules did not provide this type of data review process for schools.
- ED makes clear in the final rules that it may publish a program’s debt-to-earnings ratios and other related information to help students compare similar GE programs offered by other schools. The emphasis on increased public disclosures of this nature differs from the proposed rules.

Key terminology

ED refers to “mean” and “median” loan debt, so it is important to understand these concepts:

- “Mean” is the mathematical average of a set of numbers. Commonly referred to as “average,” to determine the mean, add two or more numbers and then divide by the sum.
- “Median” is the “middle” value in a list of numbers. To find the median, the list of numbers has to be in numerical (ascending or descending) order. For a helpful example, see question and answer D-Q5 on [ED’s Gainful Employment Information Page](#).

“Median loan debt” is calculated based on either the total amount of loan debt a student incurred to complete a program, or the total tuition and fees charged to the student by the school to complete the program. If the school provides both of these amounts, ED will calculate the median loan debt for the program using the lower of these two amounts.

“Annual loan payment” refers to the yearly sum of money a typical graduate of a program must devote to making payments on FFELP and FDLP loans, private educational loans, and institutional financing debt. If a particular student did not incur these types of debts to complete a program, the annual loan payment amount would be “zero” for that student.

The annual loan payment is calculated using the median loan debt and the current annual interest rate on unsubsidized Stafford loans, based on a:

- 10-year repayment schedule for a program that leads to an undergraduate or post-baccalaureate certificate, or to an associate degree;
- 15-year repayment schedule for a program leading to a bachelor’s or master’s degree; or

- 20-year repayment schedule for a program leading to a doctoral or first professional degree

The terms “earnings rate” and “discretionary income rate” are described below.

Earnings rate

This measure compares the annual loan payment to the total annual earnings of program completers:

$$\frac{\text{Annual loan payment of program completers}}{\text{Mean or median annual earnings of program completers}}$$

Discretionary income rate

For this purpose, “discretionary income” is the difference between annual earnings and 150 percent of the current Poverty Guideline for a single person in the continental U.S.

This measure compares the annual loan payment to the discretionary income of program completers:

$$\frac{\text{Annual loan payment of program completers}}{\text{Mean or median annual earnings of program completers minus 150\% of poverty guideline amount}}$$

Data review and challenge process

A loan repayment rate and two debt-to-earnings ratios are calculated annually for each gainful employment (GE) program. This article focuses on the two-step data review and challenge process a school can use to correct data included in its draft debt measures.

ED will issue draft results of the debt measures for each of a school’s GE programs beginning with fiscal year (FY) 2012. The school has an opportunity to review and correct or update certain data before ED issues final debt measures for these programs. An overview of this process is provided below.

Pre-draft corrections process

- Prior to issuing the draft results of the **debt-to-earnings** ratios for a program, ED will provide a school with a list of the students who will be included in the applicable two-year or four-year period for calculating the ratios.

- No later than 30 days after the date ED provides the list to the school, the school may provide evidence showing that a student should be included on or removed from the list and may correct or update the identity information provided for a student.
- ED finalizes the list of students based on the school's corrections and updates and submits the list to the Social Security Administration (SSA). A school may not challenge the accuracy of the mean or median annual earnings ED obtains from SSA to calculate the draft debt-to-earnings ratios for the program.

Post-draft corrections process

- No later than 45 days after ED issues the draft results of the **debt-to-earnings** ratios for a program, a school may challenge the accuracy of the median loan debt for the program that was used to determine the draft debt-to-earnings ratios by submitting evidence showing that the borrower loan data or the program median loan debt is inaccurate. The school may also challenge the accuracy of the list of borrowers by submitting evidence showing that a borrower should be included on or removed from the list and may correct or update the identity information provided for a borrower.
- No later than 45 days after ED issues the draft results of the **loan repayment rate** for a program, a school may challenge the accuracy of the loan data for a borrower that was used to determine the draft loan repayment rate. The school may also challenge the accuracy of the list of borrowers included in the applicable two-year or four-year period used to calculate the draft loan repayment rate by submitting evidence showing that a borrower should be included on or removed from the list. The school may also correct or update the identity information provided for a borrower on the list.

Recalculation

- If the data included in a school's challenge is accepted, ED recalculates the debt measures for the applicable program. For a failing program, if SSA is unable to include the mean and median earnings for one or more students on the final list for a program, ED adjusts the median loan debt by removing the highest loan debt associated with the number of students that SSA is unable to include in its calculation. For example, if SSA cannot include three students in its calculation, ED removes the loan debt for three students on the list that had the highest loan debt. ED then recalculates the debt-to-earnings ratios for the program based on the adjusted median loan debt.
- After appropriate updates are made, ED notifies a school of the final debt measures for the program.

Process of using alternative earnings for a failing program

A school may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program and alternative earnings from a state-sponsored data system, a school survey conducted in accordance with National Center for Education Statistics (NCES) standards, or for FY 2012, 2013, and 2014, Bureau of Labor Statistics (BLS) earnings data.

State data

For final debt-to-earnings ratios calculated by ED for FY 2012 and beyond, a school may use state data to recalculate those ratios for a failing program only if the school obtains earnings data from a state-sponsored data system for more than 50 percent of the students in the applicable period or a comparable period, and provided that the number of students is more than 30; the school uses the actual, state-derived mean or median earnings of the students; and the school demonstrates that it accurately used the actual state-derived data to recalculate the ratios.

Survey data

For final debt-to-earnings ratios calculated by ED for FY 2012 and beyond, a school may use survey data to recalculate those ratios for a failing program only if the school uses reported earnings obtained from a school survey conducted of the students in the applicable period or a comparable period, and if the survey data includes more than 30 students. The school may use the mean or median annual earnings derived from the survey data. The school must submit a copy of the survey and certify that it was conducted in accordance with the [statistical standards and procedures established by NCES](#). The school must also submit an examination-level attestation by an independent public accountant or independent governmental auditor, as appropriate, indicating that the survey was conducted in accordance with the specified NCES standards and procedures. The attestation must be conducted in accordance with the general, field work, and reporting standards for attestation engagements contained in the GAO's Government Auditing Standards and with procedures for attestations contained in guides developed by and available from ED's Office of Inspector General.

BLS data

For final debt-to-earnings ratios calculated by ED for FY 2012, FY 2013, and FY 2014, a school may use BLS earnings data to recalculate those ratios for a failing program only if the school identifies and provides documentation of the occupation by Standard Occupational Classification (SOC) code, or a combination of SOC codes, in which more than 50 percent of the students in the applicable period were placed or found employment and the number of students is more than 30. The school may use placement records it maintains to satisfy accrediting or state agency requirements if those records indicate the occupation in which the student was placed. Otherwise, the school must submit employment records or other documentation showing the SOC code or codes in which the students typically found employment. The school must use the most current BLS earnings data for the identified SOC code to calculate the debt-to-earnings ratios. If more than one SOC code is identified, the school must calculate the weighted average earnings of those SOC codes based on BLS employment data or school placement data. In either case, the school must use BLS earnings at no higher than the twenty-fifth percentile. The school must then submit, upon request, all the placement, employment, and other records maintained by the school for the program that the school examined to determine whether those records identified the SOC codes for the students who were placed or found employment.

Alternative earnings process

The school must notify ED of its intent to use alternative earnings no later than 14 days after the date the school is notified of its final debt measures and must submit all supporting documentation related to the recalculation of the debt-to-earnings ratios using alternative earnings no later than 60 days after the date the school is notified of its final debt measures. ED then evaluates the school's submission. Pending ED's review of the submission, a school is not subject to the requirements related to the failure of a program to meet the debt measures provided the information submitted was timely, accurate, and complete. If ED denies the school's submission, it notifies the school of the reasons for the denial, and the debt measures that ED earlier provided become the final measures. If ED approves the school's submission, the recalculated debt-to-earnings ratios become final.

Two-tiered approach to debt warnings

Debt warning requirements

The final rules, released by ED on June 2, 2011, establish minimum standards on program-level measures for student debt levels and repayment success that must be met for gainful employment programs to qualify students to receive Title IV funds. The regulations are intended to provide currently enrolled and prospective

students with the information they need to make informed educational choices and to give schools time to make needed improvements to failing programs.

A school that offers a program that does not meet the minimum standards in any of the measures in a single fiscal year (FY) must provide certain information to currently enrolled and prospective students by providing a “debt warning.” The regulations differentiate between a warning when a program fails the first year (“first-year warning”) and a warning after a second-year failure (“second-year warning”).

First-year warning

The first time a program fails to meet the debt measure minimum standards, the school must issue a “first-year warning” that contains the following information:

- A plain language explanation of the debt measures
- The amount by which the program did not meet the minimum standards
- The steps the school plans to take, if any, to improve the program’s performance under the debt measures

ED explains in the final rules that while the first-year warning requires a direct communication — orally or in writing — with enrolled and prospective students, it is not a publicly disclosed warning. A school must continue to provide this warning until it has been notified by ED that the program has met one of the minimum standards or the school is notified that the program has not met the standards for a second time.

Second-year warning

A school must issue a “second-year warning” after a program fails to meet the minimum standards for two consecutive FYs or for two of the three most recently completed FYs. Due to the stronger negative impact of the program failing twice, the regulations specify the information the school must provide to students.

The “second-year warning” must include:

- The information required for a first-year warning;
- A plain language explanation of the actions the school plans to take in response to the second failure, including any plans to voluntarily discontinue the program;
- An explanation of the risks to students associated with enrolling or continuing in the program (e.g., inability to receive Title IV funds);

- An explanation of resources available, including www.collegenavigator.gov, that the student may use to research other education options and compare program costs; and
- A “clear and conspicuous” statement that a student who enrolls or continues to enroll in the program should expect to have difficulty repaying his or her student loans.

A school must prominently display the debt warning on the home page of the program’s website and include the debt warning in all promotional materials related to the program. ED considers promotional materials to include a wide range of materials pertaining to a program including course catalogues, brochures, television ads, and poster advertisements.

The school must continue to provide the second-year warning until the program has met one or more of the minimum standards for two of the three most recently completed FYs.

Timely notification

The final rules require a school to provide the first- or second-year warnings to currently enrolled students no later than 30 days after the date ED notifies the school that a program failed the minimum standards.

For a prospective student, a school must provide the first- and second-year warnings at the time the student first contacts the school requesting information about a program that failed to meet the debt measure minimum standards. If the prospective student intends to use Title IV funds to attend the program, the school may not enroll the student until three days after the school first provides the debt warnings. If more than 30 days pass before the student seeks to enroll, the regulations require the school to provide the warnings again, and the school cannot enroll the student until at least three days later. ED believes that this will provide the student with time to consider whether to enroll in the program and how to pay for the program if Title IV funds are not available.

The regulations also require, to the extent practicable, that the school provide alternatives to English-language warnings for those students for whom English is not their first language.

Although ED does not dictate specific language to be used in delivering the debt warnings, ED does expect to develop an optional model warning form to assist schools in providing this information to students. In the meantime, ED directs schools to the website, www.plainlanguage.gov, which contains guidelines and examples that schools may find helpful in developing their own warnings.

More information

The National Council of Higher Education Loan Programs (NCHELP) Program Regulations Committee is currently preparing an integrated version of the regulations to reflect the Gainful Employment final rule. TG will post the integrated regulations on *TG Online* as soon as they become available.



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