DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AD04

[Docket ID ED–2010–OPE–0012]

Program Integrity: Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which these educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: We must receive your comments on or before September 9, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal.* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., Room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For general information, John Kolotos or Fred Sellers. Telephone: (202) 502–7762 or (202) 502–7502, or via the Internet at: *John.Kolotos@ed.gov* or *Fred.Sellers@ed.gov.*

Information regarding the regulatory impact analysis or other data, can be found at the following Web site: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking,* significant public participation, through a series of three regional hearings and three negotiated rulemaking sessions, occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before September 9, 2010. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any additional opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in Room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On September 9, 2009, the Department published a notice in the **Federal Register** (74 FR 46399) announcing our intent to establish two negotiated rulemaking committees to prepare proposed regulations. One committee would develop proposed regulations governing foreign institutions, including the implementation of the changes made to the HEA by the Higher Education Opportunity Act (HEOA), Public Law 110–315, that affect foreign institutions. A second committee would develop proposed regulations to improve integrity in the title IV, HEA programs. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team I—Program Integrity Issues (Team I) met to develop proposed regulations during the months of November 2009 through January 2010.

The Department developed a list of proposed regulatory provisions, including provisions based on advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of three public hearings held on the following dates:

• June 15, 2009, at Community College of Denver in Denver, CO.

• June 18, 2009, at University of Arkansas in Little Rock, AR.

• June 22, 2009 at Community College of Philadelphia in Philadelphia, PA.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all oral and written comments received is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html#ph*.

Department staff also identified issues for discussion and negotiation.

At its first meeting, Team I reached agreement on its protocols. These protocols provided that for each community identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

Team I included the following members:

Rich Williams, U.S. PIRG, and Angela Peoples (alternate), United States Student Association, representing students.

Margaret Reiter, attorney, and Deanne Loonin (alternate), National Consumer Law Center, representing consumer advocacy organizations.

Richard Heath, Anne Arundel Community College, and Joan Zanders (alternate), Northern Virginia Community College, representing two-year public institutions.

Phil Asbury, University of North Carolina, Chapel Hill, and Joe Pettibon (alternate), Texas A & M University, representing four-year public institutions.

Todd Jones, Association of Independent Colleges and Universities of Ohio, and Maureen Budetti (alternate) National Association of Independent Colleges and Universities, representing private, nonprofit institutions.

Elaine Neely, Kaplan Higher Education Corp., and David Rhodes, (alternate), School of Visual Arts, representing private, for-profit institutions.

Terry Hartle, American Council on Education, and Bob Moran (alternate), American Association of State Colleges and Universities, representing college presidents.

David Hawkins, National Association for College Admission Counseling, and Amanda Modar (alternate) National Association for College Admission Counseling, representing admissions officers.

Susan Williams, Bridgeport University, and Anne Gross (alternate), National Association of College and University Business Officers, representing business officers.

Val Meyers, Michigan State University, and Joan Berkes (alternate), National Association of Student Financial Aid Administrators, representing financial aid administrators.

Barbara Brittingham, Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, Sharon Tanner (1st alternate), National League for Nursing Accreditation Commission, and Ralph Wolf (2nd alternate), Western Association of Schools and Colleges, representing regional/programmatic accreditors.

Anthony Mirando, National Accrediting Commission of Cosmetology Arts and Sciences, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges, representing national accreditors.

Jim Simpson, Florida State University, and Susan Lehr (alternate), Florida State University, representing work force development.

Carol Lindsey, Texas Guaranteed Student Loan Corp, and Janet Dodson (alternate), National Student Loan Program, representing the lending community.

Chris Young, Wonderlic, Inc., and Dr. David Waldschmidt (alternate), Wonderlic, Inc., representing test publishers.

Dr. Marshall Hill, Nebraska Coordinating Commission for Postsecondary Education, and Dr. Kathryn Dodge (alternate), New Hampshire Postsecondary Education Commission, representing State higher education officials.

Carney McCullough and Fred Sellers, U.S. Department of Education, representing the Federal Government.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team I reviewed and discussed drafts of proposed regulations. At the final meeting in January 2010, Team I did not reach consensus on the proposed regulations. The proposed regulations in this document focus on the issue of whether certain programs lead to gainful employment in recognized occupations. A separate NPRM for all of the other Program Integrity issues discussed during the meetings was published on June 18, 2010.

Background

For-profit postsecondary education, along with occupationally specific training at other institutions, has long played an important role in the nation's system of postsecondary education and training. Many of the institutions offering these programs have recently pioneered new approaches to enrolling, teaching, and graduating students. In recent years, enrollment has grown rapidly, nearly tripling to 1.8 million between 2000 and 2008. This trend is promising and supports President Obama's goal of leading the world in the percentage of college graduates by 2020. The President's goal cannot be achieved without a healthy and productive higher education for-profit sector.

However, the programs offered by the for-profit sector must lead to measurable outcomes, or those programs will devalue postsecondary credentials through oversupply. The Government Accountability Office (GAO) had noted this problem in its work dating to the 1990's. Specifically, GAO found that occupation-specific training programs that lacked a general education component made graduates of for-profit institutions less versatile and limited their opportunities for employment outside their field. GAO also found that there were labor oversupplies when the numbers of expected job openings were compared to the corresponding number of postsecondary graduates who completed training programs. Oversupply in the labor market results in unemployment and a decline in real wages. Generally, the impact is felt most significantly by recent graduates and adversely affects their ability to support themselves and their families, as well as their ability to repay their student loans.

The Department of Education Organization Act gives the Secretary broad responsibility to establish the regulatory requirements necessary for appropriately managing the Department and its programs. Additionally, under the Higher Education Act of 1965, as amended (HEA), the Department has the responsibility to ensure that institutions of higher education, including for-profit institutions, meet minimum standards if they choose to participate in the title IV, HEA programs (Federal student aid programs). For the programs that would be subject to these proposed regulations, one of these minimum standards is that the programs must lead to gainful employment in a recognized occupation.

Many for-profit institutions derive most of their income from the Federal student aid programs. In 2009, the five largest for-profit institutions received 77 percent of their revenues from the Federal student aid programs. This figure that does not include revenue received from certain Federal student loans (not authorized by the HEA) that are exempted under the so-called 90/10 rule, or other revenue derived from government sources including Federal Veterans' education benefits, Federal job training programs, and State student financial aid programs. A recent study completed for the Florida legislature concluded that for-profit institutions were more expensive for taxpayers on a per-student basis due to their high prices and large subsidies.

The proposed standards for institutions participating in the title IV, HEA programs are necessary to protect taxpayers against wasteful spending on educational programs of little or no value that also lead to high indebtedness for students. The proposed standards will also protect students who often lack the necessary information to evaluate their postsecondary education options and may be mislead by skillful marketing, resulting in significant student loan debts without meaningful career opportunities. Unlike public or private nonprofit institutions, for-profit institutions are legally obligated to make profitability for shareholders the overriding objective. Furthermore, for-profit institutions may be subject to less oversight by States and other entities.

There are reasons for concern that some students attending for-profit institutions have not been well served. Student loan debt is higher among graduates of for-profit institutions. For example, the median debt of a graduate of a two-year for-profit institution is $14,000, while most students at community colleges have no student loan debt. There are 18 title IV, HEA loan defaults for every 100 graduates of for-profit institutions, compared to only 5 title IV, HEA loan defaults for every 100 graduates of public institutions. Investigations and news reports have also produced anecdotal evidence of low-quality programs that leave students with large debts and poor prospects for employment. Despite these concerns, these institutions and suspect programs have never been required to substantiate their claim that they meet the statutory requirement of preparing students for "gainful employment."

Summary of Proposed Regulations

Under these proposed regulations, the Department would assess whether a program provides training that leads to gainful employment by applying two tests: One test based upon debt-to-income ratios and the other test based upon repayment rates. Based on the program's performance under these tests, the program may be eligible, have restricted eligibility, or be ineligible. A program that meets both of these tests, or whose debt-to-income ratio is very low, would continue to be eligible for title IV, HEA program funds without restrictions, while a program that does not meet any of the tests would become ineligible. A program that meets only one of the tests would be placed in a restricted eligibility status, unless it has a high repayment rate.

Under certain circumstances, the proposed regulations would also require an institution to disclose the test results and alert current and prospective students that they may difficulty repaying their loans.

This proposed use of two measures is a balanced approach that gives institutions flexibility in how to demonstrate that they prepare students for gainful employment. The debt-to-income ratio provides a measure of program completers' ability to repay their loans, and the proposed targets were set based upon industry practices and expert recommendations. The use of discretionary income would recognize that borrowers with higher incomes can afford to devote a larger share of their income to loan repayments, while the use of annual income would benefit programs whose borrowers have lower earnings.

Under the debt-to-income test, programs whose completers typically have annual debt service payments that are 8 percent or less of average annual earnings or 20 percent or less of discretionary income would continue to qualify, without restrictions, for title IV, HEA program funds. Programs whose completers typically face annual debt service payments that exceed 12 percent of average annual earnings and 30 percent of discretionary income may become ineligible.

Debt service rates have a connection to whether borrowers will default on their loans. Borrowers with rates above the 8 percent threshold, for example, have a default rate of 10.2 percent, compared to a rate of 5.4 percent for those below the threshold.[1] Borrowers with debt rates above the 12 percent threshold, for example, have a default rate of 10.9 percent.[2]

The repayment rate is a measure of whether program enrollees are repaying their loans, regardless of whether they completed the program. This measure would provide some assurance to programs that may have high debt-to-income ratios for completers but enroll prepared and responsible students who understand their financial obligations. Programs whose former students have a loan repayment of at least 45 percent will continue to be eligible. Programs whose former students have loan repayment rates below 45 percent but at least 35 percent may be placed on restricted status. Programs whose former students have loan repayment rates below 35 percent may become ineligible.

A program that does not satisfy either the debt-to-income ratio or the 45 percent rate but has a loan repayment rate of at least 35 percent would be subject to restrictions and additional oversight by the Department.

The proposed regulations also would require an institution whose program does not have a loan repayment rate of at least 45 percent and an annual loan payment that is either 20 percent or less of discretionary income or 8 percent or less of average annual income, to alert current and prospective students that they may have difficulty repaying their loans.

Recognizing the potential impact of the proposed regulations on some students seeking a postsecondary education, the proposed regulations would provide for a one-year transition period during which the Department would limit the number of programs declared ineligible to the lowest-performing programs producing no more than five percent of completers during the prior award year. Additional programs and programs that fail to meet the debt thresholds but fall outside the five percent cap during the transition year would be subject to the same requirements as programs on a restricted eligibility status.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

[1] *Source:* U.S. Department of Education, National Center for Education Statistics, B&B: 93/03 Baccalaureate and Beyond Longitudinal Study.

[2] *Source:* U.S. Department of Education, National Center for Education Statistics, B&B: 93/03 Baccalaureate and Beyond Longitudinal Study.

Part 668 Student Assistance General Provisions

Gainful Employment in a Recognized Occupation (§ 668.7)

Section 102(b) and (c) of the HEA defines, in part, a proprietary institution and a postsecondary vocational institution, respectively, as institutions that provide an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 101(b)(1) of the HEA defines an institution of higher education, in part, as any institution that provides not less than a one-year program of training that prepares students for gainful employment in a recognized occupation.

The Department's current regulations in §§ 600.4(a)(4)(iii), 600.5(a)(5), and 600.6(a)(4) mirror the statutory provisions, and like the statute, do not define or further describe the meaning of the phrase "gainful employment."

General

The proposed regulations are intended to address growing concerns about unaffordable levels of loan debt for students attending postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation. Under the proposed regulatory framework, to determine whether these programs provide training that leads to gainful employment, as required by the HEA, the Department would take into consideration repayment rates on Federal student loans, the relationship between total student loan debt and earnings, and in some cases, whether employers endorse program content.

The Department would consider that a program prepares students for gainful employment if the loan debt incurred by the typical student attending that program is reasonable. The regulations would establish measures of the relationship between loan debt and postcompletion employment income (a loan repayment rate and debt-to-income measures based on discretionary income and average annual earnings) and set reasonable thresholds for each measure. As long as the program satisfies the debt thresholds, an institution could continue to offer title IV aid to students in the program without additional oversight from the Department. Otherwise, the program would either become ineligible for title IV, HEA program funds or the institution's ability to disburse Federal funds to students attending that program would be restricted.

The trends in earnings, student loan debt, loan defaults, and loan repayment that underscore the need for the Secretary to act are discussed more fully in Appendix A to this document.

Debt Measures and Thresholds

Under the loan repayment rate in proposed § 668.7(a), the relationship would be reasonable if students who attended the program (and are not in a military or in-school deferment status) repay their Federal loans at an aggregate rate of at least 45 percent. The rate would be based on the total amount of loans repaid divided by the original outstanding balance of all loans entering repayment in the prior four Federal fiscal years (FFY). A loan would be counted as being repaid if the borrower (1) made loan payments during the most recent fiscal year that reduced the outstanding principal balance, (2) made qualifying payments on the loan under the Public Service Loan Forgiveness Program, as provided in 34 CFR 685.219(c), or (3) paid the loan in full. Other borrowers who are meeting their legal obligations but are not actively repaying their loans, such as those in deferment or forbearance, are not considered to be in repayment.

Based on data available (*see* Appendix A for more information about these data), the following chart shows the Department's estimate of the distribution of loan repayment rates by sector of all institutions, not only those subject to these regulations, that would satisfy loan repayment thresholds of 45 and 35 percent.

INSTITUTIONAL-LEVEL REPAYMENT RATES

Sector	Number of institutions	% At least 45%	% Between 35–45%	% Below 35%
Private for-profit 2-year	565	32.92	23.19	43.89
Private for-profit 4-year or above	218	25.23	32.57	42.20
Private for-profit less-than-2-year	946	40.70	22.09	37.21
Private nonprofit 2-year	156	76.28	9.62	14.10
Private nonprofit 4-year or above	1434	78.31	10.53	11.16
Private nonprofit less-than-2-year	45	64.44	11.11	24.44
Public 2-year	860	43.14	29.53	27.33
Public 4-year or above	590	74.24	14.92	10.85
Public less-than-2-year	148	74.32	19.59	6.08
Grand Total	4962	56.75	19.21	24.04

Because the loan repayment rate considers program completers and noncompleters, a low rate may indicate that many noncompleters obtained loans they are now unable to repay. Note that this chart gives an indication of the rates at which graduates are entering into deferments that are not related to military service or returning to postsecondary education, entering into forbearances or are simply unwilling or unable to pay more than interest accrued on their Federal student loans.

The number of institutions with very low loan repayment rates, particularly in the for-profit sector, is alarmingly high. Based on these data, we propose to allow a program with a loan repayment rate as low as 35 percent to remain eligible, but may restrict that eligibility. Under proposed § 668.7(a) and (e), an institution whose program is in a restricted status would have to provide annually documentation from employers not affiliated with the institution affirming that the curriculum of the program aligns with recognized occupations at those employers' businesses and that there are projected job vacancies or expected demand for those occupations at those businesses. Moreover, the Department would limit the enrollment of title IV aid recipients in that program to the average number enrolled during the prior three award years. While we believe that these restrictions are appropriate considering the poor performance of these programs, we seek comment on whether programs with a loan repayment rate of less than 45 percent but higher than 35 percent should be subject to the loss of title IV, HEA program funds.

Even with a repayment rate of less than 35 percent, under the proposed regulations a program would still be eligible for title IV, HEA program funds, without restrictions, as long as the program has an acceptable debt-to-income ratio. We seek comment on whether a program with a loan repayment rate below a specified threshold should be ineligible for title IV, HEA funds, regardless of the debt-to-income ratio.

For the debt-to-income measures in proposed § 668.7(a)(1)(ii) and (iii), the relationship would be reasonable if the annual loan payment (based on a 10-year repayment plan) of the typical student completing the program is 30 percent or less of discretionary income or 12 percent or less of average annual earnings. The measure would use the most current income available of the students who completed the program in the most recent three years (three-year period or 3YP). However, in cases where an institution could show that the earnings of students in a particular program increase substantially after an initial employment period, the measure would use the most current earnings of students who completed the program four, five, and six years prior to the most recent year (*i.e.,* the prior three-year period or P3YP). When prior three-year data are used, the relationship would be reasonable if the annual loan payment is less than 20 percent of discretionary income or less than 8 percent of average annual earnings.

The proposed debt-to-income measures, one based on discretionary income and the other on average annual earnings, are alternatives to the loan repayment rate. The debt measure for discretionary income is modeled on the Income-Based Repayment (IBR) plan. IBR assumes that borrowers with incomes below 150 percent of the poverty guideline are unable to make any payment, while those with incomes above that level can devote 15 percent of each added dollar of earnings (Congress reduced that to 10 percent for new borrowers starting in 2014.) to loan payments. While the Federal Government has established policies allowing borrowers with financial hardships to reduce payments to 10 or 15 percent of their discretionary income, those thresholds are not appropriate for defining gainful employment. The IBR formula is based on research conducted by economists Sandy Baum and Saul Schwartz, who recommended 20 percent of discretionary income as the outer boundary of manageable student loan debt. This approach is recommended by others including Mark Kantrowitz, publisher of Finaid.org. However, we cannot rely solely on this approach because any program would fail the debt measure if the average earnings of those completing the program were below 150 percent of the poverty guideline, regardless of the level of debt incurred. To avoid this consequence, we adopted the proposal made during negotiated rulemaking that borrowers should not devote more than 8 percent of annual earnings toward repaying their student loans. This percentage has been a fairly common credit-underwriting standard, as many lenders typically recommend that student loan installments not exceed 8 percent of the borrower's pretax income so that borrowers have sufficient funds available to cover taxes, car payments, rent or mortgage payments, and household expenses. Other studies have also accepted the 8 percent standard, and some State agencies have established similar guidelines ranging from 5 percent to 15 percent of gross income. These percentages are derived from home mortgage underwriting criteria where total household debt should not exceed 38 to 45 percent of pretax income, with 30 percent being available for housing-related debt.

For these proposed regulations, we have increased the research-based and industry-used debt-to-income measures by 50 percent (from 20 to 30 percent of discretionary income, and from 8 to 12 percent of annual earnings) to establish thresholds above which it becomes unambiguous that a program's debt levels are excessive.

Summary
Gainful Employment Proposed Regulations

Measure		**Debt-to-Income**		
	Metric	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** -Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible	Eligible	Eligible (No Debt Warning)
	At least 35% and less than 45%	Restricted	Restricted	Eligible
	Below 35%	Ineligible	Restricted	Eligible

In prior generations, most graduates repaid their loans within 10 years of completing college. The standard repayment plan chosen by most borrowers remains 10 years. Among bachelor's degree recipients in 1992–93 who had student loan debt, about three-fourths fully repaid their loans in less than 10 years. Those reporting higher incomes were most likely to have repaid their loans (even though they had higher average debt), indicating that earnings played a role in their ability—or at least their willingness—to repay. For many adults, paying off student loans is an important milestone. Many borrowers see a tradeoff between making student loan payments and other important financial decisions such as saving for retirement, buying a home, or saving for their own children's education.

While the Federal Government is providing new options for repaying loans over extended periods of time to protect a portion of the borrower population from the adverse impact of nonpayment, these repayment options should not be the norm.

All other things being equal, students would be better off without student loan debt. The less debt they owe, the more of their income they can devote to home purchases, retirement savings, or serving the community. Student loan debt must be weighed against the education and training (and increased employment income) that higher education can provide. To the extent that the education and its accompanying student loan debt do not provide the necessary skills to provide increased wages and employment, public policy should attempt to minimize or eliminate that cost to students and society.

Excess student debt affects students and society in three significant ways: Payment burdens on the borrower; the cost of the loan subsidies to taxpayers; and the negative consequences of default (which affect borrowers and taxpayers).

Loan repayments that outweigh the benefits of the education and training are an inefficient use of the borrower's resources. If a student makes that choice fully informed and using his or her own funds, it is not a matter for public policy. But if the availability of Federal student aid increases the likelihood that a student will enroll at an institution of higher education, the Federal Government should consider ways to ensure that student borrowers are not unduly burdened, even if they would eventually repay the loans. This concern motivates the debt-to-income ratio, a measure of the potential individual burden incurred by taking out loans, to ensure that students on an individual basis benefit from the receipt of Federal funds.

The second cost is taxpayer subsidies. When a borrower is unemployed or is forced because of low income to obtain a forbearance or deferment, the Government waives the interest on subsidized Stafford and Perkins loans. For example, the cost to the Government of three years of deferment is up to 20 percent of the value of the loan. Also, borrowers who have low incomes but high debt may reduce their payments through income-based or income-contingent repayment programs. These programs can either be at little or no cost to the Government or as much as the full amount of the loan with interest.

Deferments and repayment options are important protections for borrowers because while higher education generally brings higher earnings, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance: They tell all Americans that the Federal Government will take on the potential risk of an education not "paying off" for a specific individual. However, these policies should not mean that institutions should increase the level of risk to the individual student or the taxpayer—just as the existence of homeowners insurance does not mean builders should make houses more flammable. The insurance is important; but public policy must protect against the moral hazard of it being seen as a license for providing a worse product to consumers or to taxpayers.

The third cost is default. The Government covers the cost of defaults on Federal student loans, $9.2 billion in fiscal year 2009. Ultimately this cost is mitigated by the Department's success in collection, using such tools as wage garnishment, Federal and State tax refund seizure, seizure of any other Federal payment, and Federal court actions. Nonetheless, the taxpayer costs can be significant. Based on historical collections, the net present value cost of the $9.2 billion of loans that defaulted in fiscal year 2009 is estimated at approximately $1 billion. This concern—protecting the taxpayer—motivates the repayment rate measure, which indicates the taxpayer's exposure to delayed repayment or default.

An additional cost of default is the damage to students and their family and community. Although the decision to enter into loans is made voluntarily by students, a wealth of evidence suggests that many individuals lack sufficient information—or may be manipulated with false information or assurances—regarding future employment prospects and program costs, and thus are unable to properly evaluate their eventual ability to repay loans. Former students who default on Federal loans cannot receive additional title IV aid for postsecondary education. Their credit rating is destroyed, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. In some States, they may be denied certain occupational licenses. And, increasingly, employers consider credit records in their hiring decisions. Furthermore, particularly for former students from disadvantaged neighborhoods, the stigma of default can send an unfortunate message to others—that seeking an education can have disastrous results. Combined with the evidence suggesting that individuals may not have the ability to evaluate fully the costs and benefits of entering into loans, the potential for substantial adverse outcomes motivates the consumer protection approach the Department is taking through these proposed regulations.

At all types of institutions, student debt is growing and will cause more students to allocate more of their future income toward repayment, whether through larger or longer payments. (*See* Tables A–1 and A–2 of Appendix A for additional details). Student loan data show that this problem is particularly problematic at for-profit institutions. For certificate, associate's degree, and bachelor's degree programs, debt levels are highest at for-profit institutions.[3] For example, in 2007–08:[4]

- 13 percent of baccalaureate recipients from public four-year institutions carried at least $30,000 of Federal and private student loan debt. Among graduates of private nonprofit colleges, 25 percent had that level of student debt. And at for-profit institutions, 57 percent of the baccalaureate recipients carried student loan debts of $30,000 or more.
- At the associate's degree level, only about five percent of public college graduates have debt of $20,000 or more, while 42 percent of for-profit graduates have debt at those levels.
- For certificate recipients, less than 2 percent at public institutions and 11 percent at for-profit institutions have debt of $20,000 or more.

The proposed regulations would lessen the potential for these negative consequences by ensuring that programs subject to the gainful employment standards actually produce students with sufficient incomes (relative to their debt) to make their debt payments.

Calculating the Loan Repayment Rate

Under proposed § 668.7(b), the Department would calculate the loan repayment rate annually using the ratio:

$$\frac{\text{OOPB of LPF plus OOPB of RPL}}{\text{OOPB of all loans for students attending the program}}$$

The OOPB (original outstanding principal balance) would be the amount of the outstanding balance on FFEL and/or Direct loans owed by students who attended the program, including capitalized interest, as of the date those loans entered repayment. The OOPB of all loans would include the FFEL and Direct loans that entered repayment in the four preceding Federal fiscal years (FFYs). LPF (loans paid in full) would be loans to the program's students that have been paid in full. However, the LPF would not include any loans paid through a consolidation loan until the consolidation loan is paid in full. The OOPB of LPF in the numerator of the ratio would be the total amount of OOPB for these loans.

RPL (reduced principal loan) would be calculated using loans where borrower payments during the most recently completed FFY reduced the outstanding principal balance of that loan in that year. RPL would also include loans for borrowers whose

[3] For graduate and professional programs, separate data are not available on for-profit colleges. For professional degrees, the known debt levels at public and nonprofit institutions could be problematic if earnings are not sufficient.

[4] National Postsecondary Student Aid Survey, as reported in Trends in Student Aid 2009, College Board.

payments and employment during that FFY qualify for the Public Service Loan Forgiveness program under 34 CFR 685.219(c). The OOPB of RPL in the numerator of the ratio would be the total amount of the OOPB for these loans.

Finally, the ratio would not include the OOPB of borrowers on an in-school deferment or a military-related deferment status or the OOPB of borrowers entering repayment in the final six months of the most recent FFY.

Calculating the Debt-to-Income Measures

Under proposed § 668.7(c), the Department would calculate annually the debt-to-income measures for each program to determine whether the annual loan payment is less than the discretionary (30 and 20 percent) and earnings (12 and 8 percent) thresholds using the following formulas:

- Annual loan payment < Discretionary threshold * (Average Annual Earnings − (1.5 * Poverty Guideline)).
- Annual loan payment < Earnings threshold * Average Annual Earnings.

Both debt measures would examine the annual loan payment of program completers in relationship to the average annual earnings of those completers to calculate whether a program met the gainful employment standard.

The annual loan payment would be the median loan debt of students who completed a program during the three-year period under standard repayment terms (*i.e.,* 10-year repayment schedule and the current annual interest rate on Federal unsubsidized loans). Loan debt would include title IV, HEA program loans, except Parent PLUS loans, and any private educational loans or debt obligations arising from institutional financing plans. However, it would not include any student loan that a student incurred at prior institutions or at subsequent institutions unless the other and current institutions are under common ownership or control, or are otherwise related entities.

The Department would calculate the average annual earnings by using most currently available actual, average annual earnings, obtained from the Social Security Administration (SSA) or another Federal agency, of the students who completed the program during the three-year period. However, in certain cases, the measure could include the current earnings data for students who completed the program for a longer employment period (students who completed the program in the fourth, fifth, and sixth award years preceding the most recent three-year period) if the institution could show that students completing the program typically experience a significant increase in earnings after the first three years. The institution would have to provide information to the Department such as survey results of employers or former students, or through other empirical evidence, documenting the increased earnings.

As discussed in the Paperwork Reduction Act portion of this notice, institutions will have an opportunity to review and provide comments on the collection of new data associated with this provision. Interested parties will have an opportunity to provide input into this requirement through that process or in response to this notice of proposed rulemaking.

Under proposed § 668.7(a), a program would meet the gainful employment standard if the annual loan payment of its students is 30 percent or less of discretionary income or 12 percent or less of average annual earnings of its students. Discretionary income would be defined as the difference between average annual income and 150 percent of the most current Poverty Guideline for a single person in the continental United States (available at *http://aspe.hhs.gov/poverty*). We specifically seek comment on whether the 30 percent threshold for the first three years of employment is appropriately rigorous or whether the Department should consider using the 20 percent of discretionary income or 8 percent of average annual earnings to define programs as ineligible. The less restrictive standard is used here because, as a general matter, the Department would be assessing the programs during a borrower's first three years after leaving the postsecondary education institution. In any case, however, where the prior three-year period is used, the annual loan payment would have to be less than 20 percent of discretionary income or less than 8 percent of average annual earnings.

Consequences of Meeting or Not Meeting the Thresholds; Timelines; Transition

Effective July 1, 2012, under proposed § 668.7(d), an institution would be required to alert prospective and currently enrolled students they may have difficulty in repaying their loans under certain circumstances. The institution would have to provide a prominent warning in its promotional, enrollment, registration, and other materials, including those on its Web site, and to prospective students when conducting person-to-person recruiting activities. The institution must also provide the most recent debt-to-income ratios and the loan repayment rate for that program. An institution must provide the warning if the program's repayment rate is less that 45 percent and, using 3YP and, if applicable, P3YP, the debt-to-income ratio is greater than 8 percent of average annual earnings or 20 percent of discretionary income.

Under proposed § 668.7(a) and (e), the Department would place a program on a restricted status if the program's repayment rate is less than 45 percent and the program's annual loan payment is more than 20 percent of discretionary income and more than 8 percent of average annual income. For a restricted program, the institution would be required to work with employers to assure that the training program is meeting their needs, and limit new students enrollments in that program to the average enrollment level for the prior three years. These restrictions are intended to encourage an institution to improve the program to better meet the needs of students and the relevant employers identified by the institution.

Moreover, under proposed § 668.7(a) and (f), if the program does not satisfy at least one of the debt thresholds in paragraph (a)(1) of this section, effective July 1, 2012, it would not meet the gainful employment standard. The Department would notify the institution of the program's ineligibility, and new students attending the program would not qualify for title IV, HEA program funds. However, an institution would be allowed to disburse title IV, HEA program funds to current students who began attending the program before it became ineligible for the remainder of the award year and for the award year following the date of the Department's notice.

For the award year beginning on July 1, 2012, a program could fail to meet one of the measures but still remain eligible. For this transition year, the Department would cap the number of programs declared ineligible to the lowest-performing programs producing no more than five percent of completers during the prior award year, eliminating the risk of large and immediate displacement of students. Specifically, under proposed § 668.7(f)(2), the Department would determine which programs would fall within the five percent cap by:

(1) Sorting all programs subject to this section by category based solely on the credential awarded as determined by the Department (*e.g.,* certificate, associate degree, baccalaureate degree, and graduate and professional degree) and then within each category, by loan

repayment rate, from lowest rate to highest rate.

(2) For each category of programs, beginning with the ineligible program with the lowest loan repayment rate, identifying the ineligible programs that account for a combined number of students that completed the programs in the most recently completed award year that do not exceed five percent of the total number of students who completed programs in that category.

For each ineligible program that falls within the five percent grouping for each category, the Department would notify the institution that the program no longer qualifies as an eligible program. For every other ineligible program, the Department would notify the institution that it must limit the enrollment of title IV, HEA program recipients in that program to the average number of title IV, HEA program recipients enrolled during the prior three award years and provide the same employer affirmations and debt disclosures that apply to programs with low repayment rates and high debt-to-income ratios.

Additional Programs

Under proposed § 668.7(g), before an institution could offer a new program that is eligible for title IV aid, it would apply to have the program approved by the Department. As part of its application, the institution would need to provide (1) the projected enrollment for the program for the next five years for each location of the institution that will offer the additional program, (2) documentation from employers not affiliated with the institution that the program's curriculum aligns with recognized occupations at those employers' businesses, and that there are projected job vacancies or expected demand for those occupations at those businesses, and (3) if the additional program constitutes a substantive change, documentation of the approval of the substantive change from its accrediting agency.

In determining whether to approve the new program, under proposed § 668.7(g)(2), the Department could restrict the approval for an initial period based on the institution's enrollment projections and demonstrated ability to offer programs that lead to gainful employment.

If the new program constitutes a substantive change based solely on program content, it would be subject to the gainful employment measures as soon as data on the loan repayment rate and debt measures are available. Otherwise, the loan repayment rate and debt measures for the new program would be based, in part, on loan data from the institution's other programs currently or previously offered that are in the same job family. The Bureau of Labor Statistics (BLS) describes a job family as a group of occupations based on work performed, skills, education, training, and credentials and identifies the SOC code (Standard Occupational Classification code) for each occupation in a job family at *http://www.bls.gov/oes/current/oes_stru.htm*.

The following charts provide in summary form a description of the consequences of meeting or not meeting the thresholds as well as the Department's proposed timelines.

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Criteria	**Eligibility Status**	**Consequences**
Loan repayment rate of at least 45 percent **AND** a debt-earnings ratio of 20 percent or less of discretionary income or 8 percent or less of average annual earnings.	*Eligible*	None.
Loan repayment rate of at least 45 percent **OR** a debt-earnings ratio of 20 percent or less of discretionary income or 8 percent or less of average annual earnings.	*Eligible*	Institutions must warn consumers and current students of high debt levels and provide the most recent debt measures for the program.
Loan repayment rate below 45 percent and unable to demonstrate debt-earnings of 20 percent of discretionary income or less or 8 percent or less of average annual earnings.	*Restricted*	Institutions must (1) demonstrate employer support for the program and (2) warn consumers and current students of high debt levels and provide the most recent debt measures for the program. The program is subject to limits on enrollment growth.
Loan repayment rate below 35 percent and a debt-earnings ratio above 30 percent of discretionary income and 12 percent of annual earnings.	*Ineligible*	No new students may receive title IV aid. Current students may continue to receive aid for the rest of the year and one additional award year. While phasing out a program, institutions must warn current and prospective students of high debt loads and reduced ability to repay their loans from projected earnings and provide the most recent debt measures for the program.
Program not in existence long enough to demonstrate repayment and debt-earnings outcomes.	*New programs*	Institution must demonstrate employer support for the program, and the new program is subject to limits on enrollment growth.

Timeline

July 1, 2011	**Data** (in the NPRM published on 6/18/10): Institutions would begin providing information to the Department about students who completed gainful employment programs during the previous three years. The Department would determine average earnings (using information from another Federal agency such as the Social Security Administration) and median student loan debt. **Disclosure** (in the NPRM published 6/18/10): Institutions must provide on their Web sites information about the occupations for which their gainful employment programs are preparing students, and the graduation rates and median debts in those programs. **Program eligibility**: Additional programs subject to the gainful employment regulations must have employer affirmations that the program's curriculum is designed to prepare students for jobs like those at the employer's company. The program is subject to growth restrictions until loan repayment and debt measure data are available. The number, location, and size of the job placements for the businesses must be commensurate with the projected size of the program.

July 1, 2012	**Warning**: Programs subject to the gainful employment regulations that fail to meet one of the debt thresholds must include a warning in all promotional materials and provide the most recent repayment rate and debt measures for the program. **Program eligibility**: To remain eligible for title IV, HEA program funds , gainful employment programs must either have a Federal loan repayment rate of not less than 35 percent, or have student debt levels below the debt threshold. For one year, there would be a five percent cap on the number of programs (measured on the number of program completers in an award year) that can lose eligibility in that year. Ineligible programs that remain outside the cap would be subject to the employer-affirmation and growth provisions applicable to additional programs. Programs with loan repayment rates below 45 percent that fail to meet one of the debt thresholds would be subject to employer-affirmation and growth provisions, and the institution may be provisionally certified.
Definitions	
Repayment Rate:	Of the program's former students entering repayment with Federal loans in the previous four FFYs, the proportion of loans for those students who are paying more than the interest charges (or fully repaid the loans) or are in full-time public service positions (i.e. eligible to seek Public Service Loan Forgiveness) in the most recent FFY. Borrowers using in-school and military deferments are excluded from both the numerator and denominator.

Average Annual Earnings	The average annual earnings, in the most recent year for which postcompletion data are available, for the program's graduates from the previous three years. An institution may seek to measure earnings of earlier graduates (four to six years prior) if graduates typically experience large earnings increases after an initial period of employment. Earnings data would be acquired by the Department from a Federal agency. We anticipate obtaining this data from the Social Security Administration (SSA).
Discretionary Income:	The amount of total income above 150 percent of the poverty level (domestic U.S., family size of one) for the applicable year.
Debt Threshold	Loan payments as a proportion of either discretionary income or total income. The loan payments are the amount, based on a flat 10-year amortization schedule, of all of a student's loans (Federal, private, and institutional) taken at the institution, assuming the unsubsidized Stafford loan interest rate (6.8 percent). For full eligibility the proportion must be below 20 percent of discretionary income or 8 percent of average annual earnings. Rates of 30 percent of discretionary income and 12 percent of average annual earnings and above trigger ineligibility unless the repayment rate is in compliance.

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Provisional Certification (§ 668.13)

The Department's current regulations in § 668.13(c) identify the conditions or reasons for which the Department may provisionally certify an institution. We are proposing to amend § 668.13(c)(1) to provide that the Department may provisionally certify an institution if one or more of its programs becomes restricted or ineligible under the gainful employment provisions in proposed § 668.7. The Department believes that provisional certification may be warranted in cases where an institution fails to take the actions necessary to keep its programs in compliance with the gainful employment provisions in § 668.7. This failure would be one factor considered by the Department when reviewing an institution's application for recertification of its program participation agreement.

Hearing Official (§ 668.90(a))

Current § 668.90(a)(3) sets forth the limitations on the matters that may be considered, or limitations on decisions that may be rendered by hearing officials in proceedings arising under subpart G of part 668. Under proposed § 668.90(a)(3)(vii), in a termination action against a program for not meeting the standards for gainful employment in § 668.7(a), the hearing official would accept as accurate the average annual earnings calculated by another Federal agency, so long as the other Federal agency provided that calculation for the list of program completers identified by the institution and accepted by the Department. The hearing official may consider evidence from an institution about earnings from its graduates to establish a different average annual earnings amount to be used with the debt measure, so long as that information is for the same individuals and determined to be reliable by the hearing official.

During the negotiated rulemaking sessions, some non-Federal negotiators highlighted the difficulty that institutions could encounter in obtaining earnings information from students who completed their programs. During these meetings, a separate proposal was discussed to use wage information from the Bureau of Labor Statistics (BLS) to represent earnings for program graduates. Some of the negotiators voiced concerns that the reported salaries might not be representative for a number of reasons such as regional variations and job classifications and that self-employed individuals might not be included in the BLS wage records, (although other information suggested that this information was included). Nevertheless, the Department is proposing to obtain average annual earnings by program from another Federal agency, using actual wage information maintained by that Federal agency for a program's students. This information is and will be the best information available but, to preserve the confidentiality of individuals that may or may not have received a Federal benefit, neither the Department nor the institution will be able to review the wage information for specific program graduates. The Department and the institution will, however, be able to ensure that the data includes only those program completers that were included in the information provided by the institution under the notice of proposed rulemaking published by the Department on June 18, 2010.

Since the specific individuals' actual earnings information will not be available to the institution or to the Department, the proposed regulations limit the discretion of the hearing official to determining whether the average annual earnings at issue in a hearing were provided by the other Federal agency to the Department for the list of program completers identified by the institution and accepted by the Department. Since the average annual earnings will be calculated using an automated process that matches the program graduates with the wage information the other Federal agency is required to maintain, the Department believes it is sufficient to limit the review by a hearing official to whether the average annual earnings were provided for the list of program graduates that were identified by the institution and accepted by the Department. The hearing official may consider whether the institution can demonstrate that a program is eligible using a different amount for the average annual earnings of the program graduates with the debt measures for that program, so long as the institution demonstrates the average annual earnings information is reliable and for the same individuals who completed the program in question.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined this proposed regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

The Summary of Effects tables that follow describe the estimated impact on programs that would be subject to these proposed regulations along with the number of students that would be affected.

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Percentage of Programs Subject to Proposed Gainful

Employment Regulations

Measure		**Debt-to-Income**		
Total number of programs subject to the proposed regulation	Metric 52,980	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** - Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible <1%	Eligible <1%	Eligible (No Debt Warning) 39%
	At least 35% and less than 45%	Restricted ---	Restricted 3%	Eligible 26%
	Below 35%	Ineligible 5%	Restricted 4%	Eligible 22%

--- No observations in the source data.

Impact of Gainful Employment Proposed Regulations on Students

Measure		**Debt-to-Income**		
Total number of students enrolled in programs subject to the proposed regulation	Metric 3,190,476	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** - Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible <1%	Eligible <1%	Eligible (No Debt Warning) 34%
	At least 35% and less than 45%	Restricted ---	Restricted 7%	Eligible 28%
	Below 35%	Ineligible 8%	Restricted 1%	Eligible 21%

--- No observations in the source data.

Effect of Proposed Rule on Impacted Programs, Applying All Tests	Scenario 1	Scenario 2	Scenario 3
Programs by Status			
Fully Eligible	20,662	20,662	20,662
Ineligible	2,649	2,649	2,649
New Programs	*	*	*
Restricted	29,669	29,669	29,669
Total	52,980	52,980	52,980
Affected Students by Status			
Fully Eligible	2,618,476	2,618,476	2,617,476
Ineligible	307,000	307,000	307,000
New Programs	*	*	*
Restricted	265,000	265,000	266,000
Total	3,190,476	3,190,476	3,190,476
Detailed Impact of Ineligible Category			
Programs Ineligible	2,649	2,649	2,649
Students Completing Program	89,000	104,000	148,000
Students Enrolling in Another Program at the Same Institution	62,000	91,000	74,000
Students Enrolling At Another Institution in the Same Sector	88,000	56,000	48,000
Students Leaving Sector	38,000	24,000	21,000
Students Leaving Postsecondary Education	30,000	32,000	16,000
Core Revenues Leaving Institution ($mn)	1,060	672	575
Core Revenues Leaving Sector ($mn)	459	292	249
Core Revenues			

Permanently Lost ($mn)	364	383	191
Expenses Leaving Institution ($mn)	377	239	205
Expenses Leaving Sector ($mn)	164	104	89
Expenses Permanently Lost ($mn)	129	136	68
Changes in Federal Pell grants received by students ($mn)	(213)	(209)	(104)
Changes in Federal loans received by students ($mn)	20	21	11
Detailed Impact of Restricted Category			
Programs Restricted	29,669	29,669	29,669
Students Completing program	79,000	92,000	132,000
Students Enrolling in Another Program at the Same Institution	49,000	73,000	59,000
Students Enrolling At Another Institution in the Same Sector	76,000	49,000	41,000
Students Leaving Sector	35,000	22,000	19,000
Students Leaving Postsecondary Education	26,000	29,000	15,000
Core Revenues Leaving Institution ($mn)	922	592	500
Core Revenues Leaving Sector ($mn)	435	279	235
Core Revenues Permanently Lost ($mn)	321	355	178
Expenses Leaving Institution ($mn)	340	218	184
Expenses Leaving Sector ($mn)	165	106	89
Expenses Permanently Lost ($mn)	119	133	66
Changes in Federal grants received by students ($mn)	(110)	(123)	(62)
Changes in Federal loans received by students ($mn)	(9)	(10)	(5)

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The preceding table shows the estimated impact when the proposed regulations are fully implemented by July 1, 2012. A detailed analysis is found in Appendix A to this NPRM.

Paperwork Reduction Act of 1995

Proposed § 668.7 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review.

Section 668.7—Gainful Employment in a Recognized Occupation

The proposed regulations would impose new requirements on certain programs that by law must, for purposes of the title IV, HEA programs, prepare students for gainful employment in a recognized occupation. For public and private nonprofit institutions, a program that does not lead to a degree would be subject to the eligibility requirement that the program lead to gainful employment in a recognized occupation, while a program leading to a degree, including a two-academic-year program fully transferable to a baccalaureate degree, would not be subject to this eligibility requirement. For proprietary institutions, all eligible degree and nondegree programs would be required to lead to gainful employment in a recognized occupation, except for a liberal arts baccalaureate program under section 102(b)(1)(A)(ii) of the HEA.

As proposed in § 668.7(a)(3)(viii), in accordance with procedures established by the Department for the purposes of calculating the loan repayment rate under § 668.7(b), an institution must report the CIP codes for all students who attended a program at the institution whose FFEL or Direct Loan entered repayment in the prior four FFYs. As indicated earlier, there has been tremendous growth in occupational programs between 2000 and 2008, averaging 200,000 new students per year. Based upon data from our institutional eligibility and program participation unit within Federal Student Aid, the Department estimates the following number of affected institutions that offer programs that currently prepare students for gainful employment in recognized occupations. The Department estimates there are 2,086 proprietary institutions with occupational programs, there are 238 private, non-profit institutions with occupational programs, and there are 2,139 public institutions with occupational programs.

The Department estimates that in the first year of reporting CIP codes for all students who attended a program whose FFEL and Direct Loans entered repayment in the preceding four Federal fiscal years the burden would be as follows.

With respect to the 2,086 proprietary institutions, the Department estimates that 376,000 student (47 percent times 800,000) attended programs at those institutions during the preceding four FFYs. Of those 376,000, we estimate that 90 percent or 338,400 had title IV, HEA loans that entered repayment. At an average of .08 hours (5 minutes) per student to determine and report the CIP code, the Department estimates an increase in burden for proprietary institutions of 27,072 hours in OMB 1845–NEW4.

With respect to the 238 private non-profit institutions, the Department estimates that 40,000 students (5 percent times 800,000) attended programs at those institutions during the preceding four FFYs. Of those 40,000, we estimate that 60 percent or 24,000 had title IV, HEA loans that entered repayment. At an average of .08 hours (5 minutes) per student to determine and report the CIP code, the Department estimates an increase in burden for private non-profit institutions of 1,920 hours in OMB 1845–NEW4.

With respect to the 2,139 public institutions, the Department estimates that 384,000 students (48 percent times 800,000) attended those institutions during the preceding four FFYs. Of those 384,000, we estimate that 38 percent or 145,920 had title IV, HEA loans that entered repayment. At an average of .08 hours (5 minutes) per student to determine and report the CIP code, the Department estimates an increase in burden for public institutions of 11,674 hours in OMB 1845–NEW4.

Collectively, the Department estimates that the burden associated with determinations and reporting related to CIP codes for all students who attended an occupational program will increase to the affected institutions by 40,666 hours in OMB 1845–NEW4.

As proposed in § 668.7(c)(3)(i) and (ii), the Secretary determines annually for each program whether the annual loan payment is less than the discretionary income and the earnings thresholds in § 668.7(a). For annual earnings, the Secretary uses the most currently available actual, average annual earnings obtained from a Federal agency, of the students who completed the program during the 3YP and, if the data are available, during the P3YP. P3YP data are used if, in accordance with procedures established by the Secretary, the institution shows that students completing the program typically experience a significant increase in earnings after an initial employment period and the institution explains the basis for that earnings pattern. For each of the P3YP student completers, the institution is required to provide the Secretary with the following information; the program CIP code, the student's completion date, the amount of private educational loans that the student received, and the amount of debt incurred from institutional financing plans.

We estimate that 60 percent of the proprietary institutions would meet the loan repayment rate of 45 percent; therefore 40 percent of the 2,086 proprietary institutions with programs that prepare students for gainful employment or 834 institutions would have a loan repayment rate less than 45 percent. Under the proposed regulations, the debt measure as calculated by the Department would be used to determine if a program would be eligible and therefore unrestricted, or to what extent restrictions would apply. We estimate that 65.3 percent of the 834 institutions would pass the initial 3YP debt measure and therefore, 34.7 percent (.347 times 834 institutions equal 289 institutions) would not pass the initial 3YP debt measure. Of the remaining 289 institutions that would not pass the initial 3YP debt measure, 75 percent would pass the prior 3YP threshold of the annual loan repayment not exceeding 20 percent of discretionary income, or 8 percent of annual earnings. We estimate that for the explanation of the increase in earnings after the initial employment period and the submission of the P3YP information (to include for each student that completed the program: the CIP code of the program, the completion date, the amount of private educational loans, and the amount of debt incurred from institutional financing plans), to average 10 hours per proprietary institution for a total of 2,890 hours of burden in OMB 1845–NEW4.

We estimate that 89 percent of the private nonprofit institutions would meet the loan repayment rate of 45 percent; therefore 11 percent of the 238 private nonprofit institutions with programs that prepare students for gainful employment or 26 institutions would have a loan repayment rate less than 45 percent. Under the proposed regulations, the debt measure as calculated by the Department would be used to determine if a program would be eligible and unrestricted, or to what extent restrictions would apply. We estimate that 95 percent of the 26 private nonprofit institutions would pass the initial 3YP debt measure and therefore, 5 percent (.05 times 26 institutions equal 1 institution) would not pass the initial 3YP debt measure. Of the remaining 1 institution that would not pass the initial 3YP debt measure, we estimate that this institution would explain the increase in earnings after the initial employment period and submit the alternative debt threshold data. We estimate that this institution would pass the P3YP threshold of the annual loan payment not exceeding 20 percent of discretionary income, or 8 percent of average annual earnings. We estimate that the submission of the explanation of increased earnings and the P3YP information (to include for each student that completed the program: The CIP code of the program, the completion date, the amount of private educational loans, and the amount of debt incurred from institutional financing plans), to average 10 hours per private nonprofit institution for a total of 10 hours of burden in OMB 1845–NEW4.

We estimate that 82 percent of the public institutions would meet the loan repayment rate of 45 percent; therefore 18 percent of the 2,139 public institutions with programs that prepare students for gainful employment or 385 institutions would have a loan repayment rate less than 45 percent and therefore the debt measure as calculated by the Department would be used to determine if a program would be eligible and unrestricted, or to what extent restrictions would apply. We estimate that 98 percent of the 385 public institutions would pass the initial 3YP debt measure and therefore, 2 percent (.02 times 385 institutions equal 8 institutions) would not pass the initial 3YP debt measure. Of the remaining 8 institutions that would not pass the initial 3YP debt measure, we estimate that virtually all would explain the increase in earnings beyond the initial employment period and submit the alternative debt threshold data. We estimate that 90 percent would pass the P3YP threshold of the annual loan payment not exceeding 20 percent of discretionary income, or 8 percent of average annual earnings. We estimate that the submission of the explanation of the increased earnings and the P3YP information (to include for each student that completed the program: The CIP code of the program, the completion date, the amount of private educational loans, and the amount of debt incurred from institutional financing plans), to average 10 hours per public institution for a total of 80 hours of burden in OMB 1845–NEW4.

Collectively, under proposed § 668.7(c)(3), we estimate the burden for institutions to explain the increase in earnings after the initial 3YP and the submission of data on students that completed the program during the P3YP would result in a burden of 2,980 hours.

Under proposed § 668.7(d), on or after July 1, 2012, unless the program has a loan repayment rate of at least 45 percent or an annual loan payment that is at least 20 percent of discretionary income or 8 percent of average annual income, the Department would notify the institution that it must include a prominent warning in its promotional, enrollment, registration, and other materials describing the program, including those on its Web site, designed and intended to alert prospective and currently enrolled students they may have difficulty repaying loans obtained for attending that program.

We estimate that 60 percent of the proprietary institutions would have a loan repayment rate of 45 percent or above and that 40 percent would not pass this rate (.4 times 2,086 equal 834 proprietary institutions that have programs that prepare students for gainful employment that would not pass this rate). We estimate that for the initial 3YP, that 65.3 percent of the remaining 834 proprietary institutions would meet or surpass the debt measures of at least 20 percent of discretionary income or at least 8 percent of average annual income. We estimate that the remaining 34.7 percent (.347 times 834 equal 289 proprietary institutions) would not pass the debt measures and therefore under the proposed regulations would be required to provide a debt warning disclosure. We estimate that it will take the affected 289 proprietary institutions, on average, 1 hour to meet these reporting requirements for their occupational training programs for a total estimated increase in burden of 289 hours in OMB 1845–NEW4.

We estimate that 89 percent of the private nonprofit institutions would have a loan repayment rate of 45 percent or above and that 11 percent would not pass this rate (.11 times 238 equal 26 private nonprofit institutions that have programs that prepare students for gainful employment that would not pass this rate). We estimate that for the initial 3YP, 95 percent of the remaining 26 private nonprofit institutions would meet or surpass the debt measures of at least 20 percent of discretionary income or at least 8 percent of average annual income. We estimate that the remaining 5 percent (.05 times 26 equal 1 private nonprofit institution) would not pass the debt measures and therefore under the proposed regulations would be required to provide a debt warning disclosure. We estimate that it will take the affected private non-profit institution, on average, 1 hour to meet these reporting requirements for its occupational training programs for a total estimated increase in burden of 1 hour in OMB 1845–NEW4.

We estimate that 82 percent of the public institutions would have a loan repayment rate of 45 percent or above and that 18 percent would not pass this rate (.18 times 2,139 equal 385 public institutions that have programs that prepare students for gainful employment that would not pass this rate). We estimate that for the initial 3YP, 98 percent of the remaining 385 public institutions would meet or surpass the debt measures of at least 20 percent of discretionary income or at least 8 percent of average annual earnings. We estimate that the remaining 2 percent (.02 times 385 equal 8 public institutions) would not pass the debt measures and therefore under the proposed regulations would be required to provide a debt warning disclosure. We estimate that it will take the affected 8 public institutions, on average, 1 hour to meet these reporting requirements for their occupational training programs for a total estimated increase in burden of 8 hours in OMB 1845–NEW4.

Collectively, under proposed § 668.7(d), we estimate that burden for institutions to meet these proposed disclosure requirements in accordance with procedures established by the Department would increase by 298 hours in OMB Control Number 1845–NEW4.

Under proposed § 668.7(e), a restricted program would be required to report to the Department additional information annually. The additional information would include documentation from employers not affiliated with the institution, affirming that the curriculum of the program aligns with recognized occupations at those employers' businesses. The number and locations of the businesses, as well as the number of projected job vacancies at those businesses must be commensurate with the anticipated size of the programs.

We estimate that 22.7 percent of the proprietary institutions will be subject to the proposed requirements of the restricted status (.227 times 2,086 proprietary institutions that have programs that prepare students for gainful employment equal 474 affected institutions). We estimate that on average, each institution would take 11 hours to obtain the independent employer affirmations as proposed for submission to the Department. These institutions would already be required to provide a debt warning disclosure, so there is no additional burden associated with that requirement in this section. Therefore, we estimate an increase in burden of 5,214 hours (474 affected institutions times 11 hours equal 5,214 hours).

We estimate that 15 percent of the private nonprofit institutions will be subject to the proposed requirements of the restricted status (.15 times 238 private nonprofit institutions that have programs that prepare students for gainful employment equal 36 affected institutions). We estimate that on average, each institution would take 11 hours to obtain the independent employer affirmations as proposed for submission to the Department. These institutions would already be required to provide a debt warning disclosure, so there is no additional burden associated with that requirement in this section. Therefore, we estimate an increase in burden of 396 hours (36 affected institutions times 11 hours equal 396 hours).

We estimate that 11.8 percent of the public institutions will be subject to the proposed requirements of the restricted status (.118 times 2,139 public institutions that have programs that prepare students for gainful employment equal 252 affected institutions). We estimate that on average, each institution would take 13 hours to develop its five year enrollment projections and obtain the independent employer affirmations as proposed for submission to the Department. These institutions would already be required to provide a debt warning disclosure, so there is no additional burden associated with that requirement in this section. Therefore, we estimate an increase in burden of 2,772 hours (252 affected institutions times 11 hours equal 2,772 hours).

Collectively, under proposed § 668.7(e), we estimate that burden would increase by 8,382 hours in OMB 1845–NEW4.

Under proposed § 668.7(f), the Department would notify an institution whenever one or more of its programs become ineligible. During the initial year of implementation as proposed, for the award year beginning July 1, 2012, the number of ineligible programs would be limited to five percent. The Department estimates that there would be 3,000 programs in the ineligible category initially. Five percent of the 3,000 ineligible program or 450 programs would not be able to award title IV, HEA program assistance to new students after the notification date. The other 2,550 ineligible programs would be subject to additional reporting requirements including providing employer affirmations under § 668.7(g)(1)(iii) and providing the debt warning disclosures under § 668.7(d).

With respect to the 2,550 ineligible programs, the Department estimates that 65 percent or 1,658 of the ineligible programs would be at proprietary institutions. At an average of 11 hours to obtain and report employer affirmation per program, we estimate that burden would increase by 18,238 hours in OMB 1845–NEW4.

With respect to the 2,550 ineligible programs, the Department estimates that 65 percent or 1,658 of the ineligible programs would be at proprietary institutions. At an average of 11 hours to obtain and report employer affirmation per program, we estimate that burden would increase by 18,238 hours. At an average of 1 hour to place debt warning disclosure information in its promotional, enrollment, and other materials, including its Web site, we estimate that burden will increase by 1,658 hours in OMB 1845–NEW4. Collectively, the Department estimates that burden would increase for proprietary institutions by 19,896 hours in OMB 1845–NEW4.

With respect to the 2,550 ineligible programs, the Department estimates that 5 percent or 128 of the ineligible programs would be at private nonprofit institutions. At an average of 11 hours to obtain and report employer affirmation per program, we estimate that burden would increase by 1,408 hours. At an average of 1 hour to place debt warning disclosure information in its promotional, enrollment, and other materials, including its Web site, we estimate that burden will increase by 128 hours in OMB 1845–NEW4. Collectively, the Department estimates that burden would increase for private nonprofit institutions by 1,536 hours in OMB 1845–NEW4.

With respect to the 2,550 ineligible programs, the Department estimates that 30 percent or 764 of the ineligible programs would be at public institutions. At an average of 11 hours to obtain and report employer affirmation per program, we estimate that burden would increase by 8,404 hours. At an average of 1 hour to place debt warning disclosure information in its promotional, enrollment, and other materials, including its Web site, we estimate that burden will increase by 764 hours in OMB 1845–NEW4. Collectively, the Department estimates that burden would increase for public institutions by 9,168 hours in OMB 1845–NEW4.

In total, under proposed § 668.7(f), the Department estimates that burden would increase by 30,600 hours in OMB 1845–NEW4.

Under proposed § 668.7(g), before an institution can offer an additional program, the institution would have to apply to the Department by providing documentation of the approval of the substantive change by its accrediting agency, providing projected five year enrollment estimates, as well as, obtaining documentation from employers not affiliated with the institution, that the program curriculum aligns with recognized occupations at those employers' businesses, the number and locations of the businesses, and that the projected number of job vacancies are commensurate with the anticipated size of the program. We estimate that during the initial three year period there will be 650 submissions of additional programs for which institutions would submit to the Department this information. We estimate that, of the 4,463 institutions with programs that prepare student for gainful employment in a recognized occupation, 47 percent are in the proprietary sector, 5 percent are in the private nonprofit sector, and 48 percent are in the public sector.

We estimate that 47 percent of the 650 additional programs or 306 programs would be at proprietary institutions and that on average it will take 13 hours to develop the five-year projections and to collect the proposed employer documentation for a total increase of 3,978 hours of burden.

We estimate that 5 percent of the 650 additional programs or 32 programs would be at private nonprofit institutions and that on average it will take 13 hours to develop the five-year projections and to collect the proposed employer documentation for a total increase of 416 hours of burden.

We estimate that 48 percent of the 650 additional programs or 312 programs would be at public institutions and that on average it will take 13 hours to develop the five-year projections and to collect the proposed employer documentation for a total increase of 4,056 hours of burden.

Collectively, under § 668.7(g), we estimate that the increase in burden to institutions would be 8,450 hours in OMB Control 1845–NEW4.

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
668.7(a)(3)(viii)	As proposed in § 668.7(a)(3)(viii), in accordance with procedures established by the Department for the purposes of calculating the loan repayment rate under paragraph (b) of this section, an institution must report the CIP codes for all students who attended a program at the institution whose FFEL or Direct Loan entered repayment in the prior four FFYs.	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 40,666 hours.
668.7(c)(3)	The Department uses the current earnings of the student who completed the program during the prior 3-year period if, in accordance with procedures established by the Department, the institution shows that students completing the program typically experience a significant increase in earnings after an initial employment period. The institution also provides the information to the Department needed to calculate the annual debt measures under this section, including the CIP codes, the completion date, the amount received in private loans or institutional financing for attendance in the program and the amount of debt incurred from institutional financing plans for each graduate for the prior three-year period.	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 2,980 hours.
668.7(d)	On or after July 1, 2012, if a program exceeds the debt threshold, the Department notifies the institution that it must include a prominent warning in its promotional, enrollment, registration, and other materials describing the program, including those on its Web site, designed and intended to alert prospective and currently enrolled students that they may have difficulty repaying loans obtained for attending that program.	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 298 hours.
668.7(e)	Restricted programs as defined in proposed 668.7(e) are required annually to report employer affirmations specified in paragraph (g)(1)(iii) of this section.	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 8,382 hours.
668.7(f)	On or after July 1, 2012 a program becomes ineligible if it does not meet at least one of the debt thresholds in § 668.7(a)(1). During the initial year, 95 percent of the ineligible programs may continue to participate in the title IV, HEA programs if the institution submits employer affirmations consistent with the requirements in proposed § 668.7(g)(1)(iii) and provides the debt warning disclosures in proposed § 668.7(d).	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 30,600 hours.
668.7(g)	Before an institution offers an additional program that is subject to the requirements of this section, the institution must apply to the Department and also provide documentation of the approval of the substantive change by its accrediting agency, projected enrollment for the next five years for each location of the institution that will offer the additional program, and documentation from employers not affiliated with the institution affirming the curriculum of the additional program aligns with recognized occupations at those employers' businesses.	OMB 1845–NEW4. This collection would be a new collection. The burden increases by 8,450 hours.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–5806. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

The Department and OMB will consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of its functions, including whether the information will have practical use;

• Evaluating the accuracy of its estimate of the burden of the proposed collections, including the validity of its methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information it collects; and

• Minimizing the burden on those who must respond. This consideration includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, OMB must receive the comments within 30 days of publication. This additional time to provide comments to OMB does not affect the deadline for your comments on the proposed regulations.

The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. The Department will publish a notice at the final rulemaking stage announcing OMB's action regarding the collections of information contained in this proposed rule.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: July 16, 2010.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.7 is added to subpart A to read as follows:

§ 668.7 Gainful employment in a recognized occupation.

(a) *Gainful employment*—(1) *Debt thresholds.* A program is considered to provide training that leads to gainful employment in a recognized occupation if, as calculated under paragraph (b) and (c) of this section—

(i) The program's annual loan repayment rate is at least 35 percent;

(ii) Using the three-year period (3YP), the program's annual loan payment is 30 percent or less of discretionary income or 12 percent or less of average annual earnings; or

(iii) Using the prior three-year period (P3YP), the program's annual loan payment is less than 20 percent of discretionary income or less than 8 percent of average annual earnings.

(2) *Restricted status.* Unless a program is ineligible under paragraph (f) of this section, the Secretary places the program on a restricted status under the following conditions—

(i) The program has an annual loan repayment rate of less than 45 percent; and

(ii) The program has an annual loan payment that is more than 20 percent of discretionary income and more than 8 percent of average annual income using 3YP, and if applicable P3YP.

(3) *General.* For purposes of this section—

(i) A *program* refers to any educational program offered by the institution under § 668.8(c)(3) or (d);

(ii) A *Federal fiscal year* (FFY) is the 12-month period starting October 1 and ending September 30;

(iii) A *three-year period* (3YP) is the period covering the three most recently completed award years prior to the earnings year;

(iv) A *prior three-year period (P3YP)* is the period covering the fourth, fifth, and sixth most recently completed award years prior to the earnings year (i.e., the three years preceding the 3YP);

(v) *Earnings year* is the most recent calendar year for which earnings data are available;

(vi) *Discretionary income* is the difference between average annual earnings and 150 percent of the most current Poverty Guideline for a single person in the continental U.S. The Poverty Guidelines are published annually by the U.S. Department of Health and Human Services (HHS) and are available at *http://aspe.hhs.gov/poverty;*

(vii) *The Classification of Instructional Programs (CIP)* is a taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics; and

(viii) In accordance with procedures established by the Secretary for purposes of calculating the loan repayment rate under paragraph (b) of this section, an institution must report the CIP code for all students who attended a program at the institution whose FFEL or Direct Loans entered repayment in the prior four FFYs.

(b) *Loan repayment rate.* The Secretary calculates the loan repayment rate for a program annually using the following ratio:

$$\frac{\text{OOPB of LPF plus OOPB of RPL}}{\text{OOPB of all loans for students attending the program}}$$

(1) *Original Outstanding Principal Balance (OOPB).* (i) The OOPB is the amount of the outstanding balance on FFEL or Direct loans owed by students who attended the program, including capitalized interest, on the date those loans entered repayment.

(ii) The OOPB of all loans includes the FFEL and Direct loans that entered repayment for the prior four FFYs.

(2) *Loans Paid in Full (LPF).* (i) LPF are loans to students who attended the program that have been paid in full. However, a loan that is paid through a consolidation loan is not counted as paid in full for this purpose until the consolidation loan is paid in full.

(ii) The OOPB of LPF in the numerator of the ratio is the total amount of OOPB for these loans.

(3) *Reduced Principal Loan (RPL).* (i) RPL represents a loan where payments made by a borrower during the most recently completed FFY reduced the outstanding principal balance of that loan from the beginning of that FFY. RPL also includes loans for borrowers whose payments during that FFY qualify for the Public Service Loan Forgiveness program under 34 CFR 685.219(c), even if there is no reduction during the FFY in the outstanding principal balance of those loans.

(ii) The OOPB of RPL in the numerator of the ratio is the total amount of the OOPB for these loans.

(4) *Exclusions.* The following are excluded from both the numerator and the denominator of the ratio:

(i) The OOPB of borrowers on an in-school deferment or a military-related deferment status.

(ii) The OOPB of borrowers entering repayment after March 31 of the most recent FFY.

(c) *Debt measures*—(1) *General.* The Secretary determines annually for each program whether the annual loan payment is less than the discretionary income and earnings thresholds in paragraph (a) of this section using the following formulas:

(i) Annual loan payment < Discretionary threshold * (Average Annual Earnings − (1.5 * Poverty Guideline)). For example, under paragraph (a)(1)(ii) of this section, the Discretionary threshold is 20 percent or .20.

(ii) Annual loan payment < Earnings threshold * Average Annual Earnings. For example, under paragraph (a)(1)(iii) of this section the Earnings threshold is 12 percent or .12.

(2) *Annual loan payment.* The Secretary determines the median loan debt of students who completed the program at the institution during the 3YP and uses this amount to calculate an annual loan payment based on a 10-year repayment schedule and the current annual interest rate on Federal Direct Unsubsidized Loans. If data are available, the Secretary also calculates the median loan debt of students who completed the program during the P3YP. In general, loan debt includes title IV, HEA program loans, other than Parent PLUS loans, and any private educational loans or debt obligations arising from institutional financing plans. Loan debt does not include any debt obligations arising from student attendance at prior or subsequent institutions unless the other and current institutions are under common ownership or control, or are otherwise related entities.

(3) *Average annual earnings.* The Secretary uses the most currently available actual, average annual earnings obtained from a Federal agency, of the students who completed the program during the 3YP and, if the data are available, during the P3YP. P3YP data are used if, in accordance with procedures established by the Secretary—

(i) The institution shows that students completing the program typically experience a significant increase in earnings after an initial employment period and explains the basis for that earnings pattern; and

(ii) The institution provides the Secretary the information needed to calculate the annual debt measures under this section, including the CIP code, and for each student who completed the program, the completion date, the amount received from private educational loans, and the amount of debt incurred from institutional financing plans.

(d) *Debt warning disclosure.* On or after July 1, 2012, unless the program has a loan repayment rate of at least 45 percent and an annual loan payment that is at least 20 percent of discretionary income or 8 percent of average annual income, the Secretary notifies the institution that it must—

(1) Include a prominent warning in its promotional, enrollment, registration, and in all other materials, including those on its Web site, and in all admissions meetings with prospective students, that is designed and intended to alert prospective and currently enrolled students that they may have difficulty repaying loans obtained for attending that program; and

(2) Disclose to current and prospective students, the program's most recent loan repayment rate under paragraph (b) of this section, and most recent debt measures under paragraph (c) of this section.

(e) *Restricted programs.* The Secretary notifies an institution whenever one of its program's is placed on a restricted status under paragraph (a)(2) of this section, that—

(1) The institution must provide annually to the Secretary the employer affirmations specified in paragraph (g)(1)(iii) of this section;

(2) The institution must make the debt warning disclosures specified in paragraph (d) of this section; and

(3) The Secretary limits the enrollment of title IV, HEA program recipients in that program to the average number enrolled during the prior three award years.

(f) *Ineligible program*—(1) *General.* Except for the transition year under paragraph (f)(2) of this section, on or after July 1, 2012 a program becomes ineligible if it does not satisfy at least one of the debt thresholds in paragraph (a)(1) of this section. The Secretary notifies the institution that the program is ineligible on this basis, and the institution may not disburse any title IV, HEA program funds to students who begin attending that program after the date specified in the Secretary's notice. However, the institution may disburse title IV, HEA program funds to students who began attending the program before it became ineligible for the remainder of the award year and for the award year following the date of the Secretary's notice.

(2) *Transition year.* (i) For the award year beginning July 1, 2012, the Secretary caps the number of ineligible programs for which a notice is sent under paragraph (f)(1) of this section by—

(A) Sorting all programs subject to this section by category based solely on the credential awarded as determined by the Secretary (*e.g.,* certificate, associate degree, baccalaureate degree, and graduate and professional degree) and then within each category, by loan repayment rate, from lowest rate to highest rate; and

(B) For each category of programs, beginning with the ineligible program with the lowest loan repayment rate, identifying the ineligible programs that account for a combined number of students that completed the programs in the most recently completed award year that do not exceed five percent of the total number of students who completed programs in that category.

(ii) For each ineligible program that falls within the five percent grouping by category during the transition period, the Secretary notifies the institution under paragraph (f)(1) of this section that the program no longer qualifies as an eligible program. For every other ineligible program, the Secretary notifies the institution that—

(A) It must limit the enrollment of title IV, HEA program recipients in that program to the average number of title IV, HEA program recipients enrolled during the prior three award years;

(B) It must provide the employer affirmations under paragraph (g)(1)(iii) of this section; and

(C) It must provide the debt warning disclosures specified in paragraph (d) of this section.

(g) *Additional programs.* (1) Before an institution offers an additional program that is subject to the requirements of this section, the institution must apply to the Secretary under 34 CFR 600.10(c)(1) to have that program approved as an eligible program. As part of its application, the institution must provide—

(i) If the additional program constitutes a substantive change as provided under 34 CFR 602.22(a)(1), documentation of the approval of the substantive change by its accrediting agency;

(ii) Projected student enrollment for the next five years for each location of the institution that will offer the additional program; and

(iii) Documentation from employers not affiliated with the institution affirming that the curriculum of the additional program aligns with recognized occupations at those employers' businesses, and that there are projected job vacancies or expected demand for those occupations at those businesses. The number and locations of the businesses for which affirmation is required must be commensurate with the anticipated size of the program.

(2) In determining whether to approve the additional program, the Secretary may restrict the approval for an initial period based on the projected growth estimates provided by the institution and the demonstrated ability of the institution to offer programs subject to this section.

(3) If the additional program constitutes a substantive change based solely on program content as provided in 34 CFR 602.22(a)(2)(iii), the Secretary calculates the loan repayment rate and debt measures for that program as soon as data are available. Otherwise, the Secretary—

(i) Calculates the loan repayment rate under paragraph (b) of this section by using loan data from the additional program and, for the first three years, loan data from all other programs currently or previously offered by the institution that are in the same job family as the additional program. Any loans from the programs in the same job family that enter repayment after the third year that the loan repayment rate is calculated for the additional program, are not included in that program's loan repayment rate. As described by the Bureau of Labor Statistics (BLS), a job family is a group of occupations based on work performed, skills, education, training, and credentials. Occupations are grouped by Standard Occupational Classification (SOC) codes. Information about job families and SOC codes is available at *http://www.bls.gov/oes/current/oes_stru.htm,* or *http://online.onetcenter.org/find/family;* and

(ii) Calculates the debt measures under paragraph (c) of this section by using the loan debt incurred by students in the additional program and in all other programs currently or previously offered by the institution that are in the same job family as the additional program, until loan debt data are available for a 3YP solely for the additional program.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

(Authority: 20 U.S.C 1001(b), 1002(b) and (c))

3. Section 668.13 is amended by:

A. In paragraph (c)(1)(i)(D), removing the word "or" that appears after the punctuation ";".

B. In paragraph (c)(1)(i)(E), removing the punctuation "." and adding, in its place, the word "; or".

C. Adding a new paragraph (c)(1)(i)(F).

The addition reads as follows:

§ 668.13 Certification procedures.

* * * * *

(c) * * *

(1)(i) * * *

(F) One or more programs offered by the institution—

(*1*) Are subject to the eligibility limitations under the gainful employment provisions in § 668.7(e); or

(*2*) Become ineligible under the gainful employment provisions in § 668.7(f).

* * * * *

4. Section § 668.90 is amended by:

A. In paragraph (a)(3)(v), removing the word "and" that appears after the punctuation";".

B. In paragraph (a)(3)(vi)(F), removing the punctuation "." and adding, in its place, the word "; and".

C. Adding a new paragraph (a)(3)(vii).

The addition reads as follows:

§ 668.90 Initial and final decisions.

(a) * * *

(3) * * *

(vii) In a termination action against a program based on the grounds that the program does not meet the standards for gainful employment in § 668.7(a), the hearing official accepts as accurate the average annual earnings calculated by another Federal agency, so long as the other Federal agency provided that calculation for the list of program completers identified by the institution and accepted by the Department. The hearing official may consider evidence from an institution about earnings from its graduates to establish a different amount for the average annual earnings of the program graduates, so long as that information is for the same individuals and determined to be reliable.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

BILLING CODE 400–01–P

Introduction

The Secretary intends to establish by regulation a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the Higher Education Act of 1965, as amended (HEA), to be a reasonable relationship between the loan debt incurred by students in a training program and income from employment after the training. The proposed regulation will clarify, for purposes of establishing a student's eligibility to receive title IV funds, a program's eligibility based on providing training that leads to gainful employment in a recognized occupation. Under the notice of proposed rulemaking published by the Secretary on June 18, 2010, institutions that offer programs that lead to gainful employment will submit information to identify the students attending those programs. The Secretary will require institutions that wish to offer new programs to demonstrate a corresponding interest from employers, while those that offer existing programs will have to meet outcome requirements based on the loan repayment rates of former students, and debt thresholds comparing educational debt to the average incomes of students that complete the program. An institution must provide a warning to students and prospective students if an eligible program does not pass all of the gainful employment tests. The regulation will benefit students by reducing the number of programs that burden individuals with high debt-to-income ratios and focusing programs on generating returns for students. The regulation will benefit taxpayers by reducing the number of programs with students delaying and defaulting on loan repayment. In some cases, programs may lose title IV eligibility.

For-profit postsecondary education along with occupationally specific training at other institutions has long played an important role in the nation's system of postsecondary education. Many of the institutions offering these programs have recently pioneered new approaches to enrolling, teaching, and graduating students. In recent years, enrollment has grown rapidly to 1.8 million, nearly tripling between 2000 and 2008. This trend is promising and supports President Obama's goal of leading the world in the percentage of college graduates by 2020. This goal cannot be achieved without a healthy and productive for-profit sector of higher education. However, the programs offered by the for-profit sector must lead to measurable outcomes, or those programs will devalue postsecondary credentials through oversupply. The Government Accountability Office (GAO) has noted this very real problem in work done in the 1990's. Indeed, GAO found that occupation-specific training program that lacked a general education component made graduates of for-profit institutions less versatile and limited their opportunities for employment beyond their field. GAO also found that there were labor supply oversupplies by compare job openings expected with the corresponding number of postsecondary graduates who completed training programs. Oversupply in the labor market results in a decline in real wages and generally impacts recent graduates most negatively and impacts their ability to repay their student loans.

The Department of Education Organization Act gives the Secretary broad responsibility to impose such regulatory requirements as are necessary for the appropriate administration of the Department and the programs that the Secretary is responsible for implementing. More specifically, the HEAgives the Secretary with the responsibility of ensuring that institutions of higher education, including for-profit institutions, meet minimum standards if they choose to participate in the federal student aid programs. Many of these institutions derive most of their income from the HEA title IV student financial aid. In 2009, the five largest for-profit institutions received 77 percent of their revenue from Federal student aid, a figure that does not include revenue received from certain Federal student loans, veterans' benefits, job training programs, and State financial aid. A recent study completed for the Florida legislature concluded that for-profit institutions were more expensive for taxpayers on a per-student basis due to their high costs and large subsidies.

The standards for institutions participating in the HEA title IV student financial aid programs are important to protect taxpayers against wasting resources on educational programs of little or no value that also lead to high indebtedness for students. The proposed standards also protect students who lack the information needed to evaluate their postsecondary education options and may be mislead by skillful marketing, resulting in significant student loan debts without meaningful career opportunities. Unlike publically controlled or non-profit institutions – for-profit institutions are legally obligated to make their profitability for shareholders their overriding objective. Furthermore, for-profit institutions and may be subject to less oversight by States and other entities.

There are reasons for concern that some students attending for-profit institutions have not been well served. Student loan debt is higher among graduates of for-profit institutions. For example, the median debt of a graduate of a two-year for-profit institution is $14,000, while most students at community colleges have no student loan debt. There are 18 title IV, HEA loan defaults for every 100 graduates of for-profit institutions, compared to only 5 title IV, HEA loan defaults for every 100 graduates of public institutions. Investigations and news reports have also produced anecdotal evidence of low-quality programs that leave students with large debts and poor prospects for employment. Despite these concerns, these institutions and suspect programs have never been required to substantiate their claim that they meet the statutory requirement of preparing students for "gainful employment."

The Department proposes to allow programs to demonstrate that they provide gainful employment under either of two tests, one based upon debt-to-income ratios and the other based upon repayment rates. Under these proposed regulations, the Department would assess whether a program provides training that leads to gainful employment by applying two tests: one test based upon debt-to-income ratios and the other test based upon repayment rates. Based on the program's performance under these tests, the program may be eligible, have restricted eligibility, or be ineligible. A program that meets both of these tests, or whose debt-to-income ratio is very low, would continue to be eligible for title IV, HEA program funds without restrictions, while a program that does not meet any of the tests would become ineligible. A program that meets only one of the tests would be placed in a restricted eligibility status, unless it has a high repayment rate.

Under certain circumstances, the proposed regulations would also require an institution to disclose the test results and alert current and prospective students that they may difficulty repaying their loans.

This proposed use of two measures is a balanced approach that gives institutions flexibility in how to demonstrate that they prepare students for gainful employment. The debt-to-income ratio provides a measure of program completers' ability to repay their loans, and the proposed targets were set based upon industry practices and expert recommendations. The use of discretionary income would recognize that borrowers with higher incomes can afford to devote a larger share of their income to loan repayments, while the use of annual income would benefit programs whose borrowers have lower earnings.

Under the debt-to-income test, programs whose completers typically have annual debt service payments that are 8 percent or less of average annual earnings or 20 percent or less of discretionary income would continue to qualify, without restrictions, for title IV, HEA program funds. Programs whose completers typically face annual debt service payments that exceed 12 percent of average annual earnings and 30 percent of discretionary income may become ineligible.

Debt service rates have a connection to whether borrowers will default on their loans. Borrowers with rates above the 8 percent threshold, for example, have a default rate of 10.2 percent, compared to a rate of 5.4 percent for those below the threshold.[5] Borrowers with debt rates above the 12 percent threshold, for example, have a default rate of 10.9 percent.[6]

The repayment rate is a measure of whether program enrollees are repaying their loans, regardless of whether they completed the program. This measure would provide some assurance to programs that may have high debt-to-income ratios for completers but enroll prepared and responsible students who understand their financial obligations. Programs whose former students have a loan repayment of at least 45 percent will continue to be eligible. Programs whose former students have loan repayment rates below 45 percent but at least 35 percent may be placed on restricted status. Programs whose former students have loan repayment rates below 35 percent may become ineligible.

A program that does not satisfy either the debt-to-inocme ratio or the 45 percent rate but has a loan repayment rate of at least 35 percent would be subject to restrictions and additional oversight by the Department.

The proposed regulations also would require an institution whose program does not have a loan repayment rate of at least 45 percent and an annual loan payment that is either 20 percent or less of discretionary income or 8 percent or less of average annual income, to alert current and prospective students that they may have difficulty repaying their loans.

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[5] *Source:* U.S. Department of Education, National Center for Education Statistics, B&B:93/03 Baccalaureate and Beyond Longitudinal Study.

[6] *Source:* U.S. Department of Education, National Center for Education Statistics, B&B:93/03 Baccalaureate and Beyond Longitudinal Study.

Background

1. Growth in Student Loan Debt

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt, up from less than one-half a generation ago.

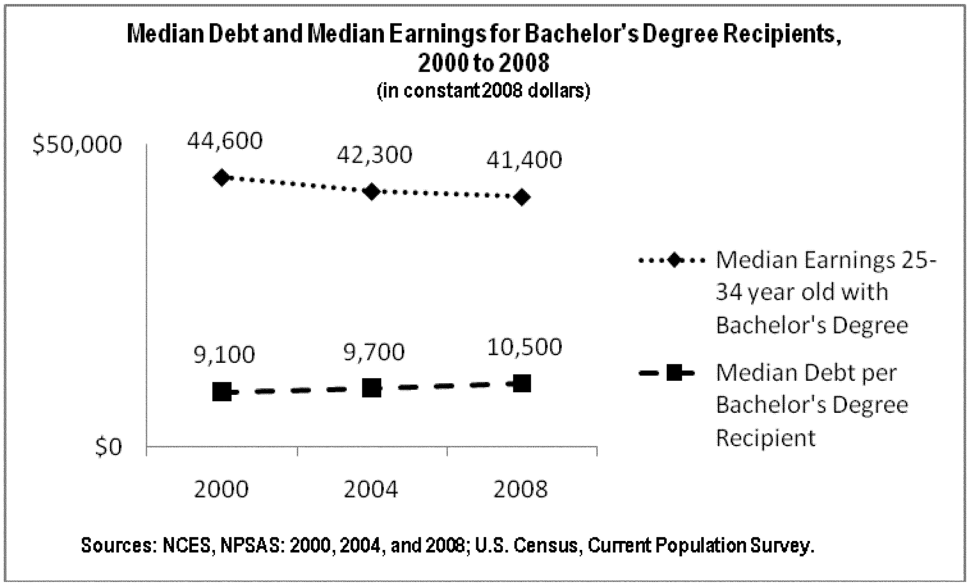
In prior generations, most graduates repaid their loans within ten years of completing college. Among bachelor's degree recipients in 1992-93 who had student loan debt, about three-fourths fully repaid their loans in less than ten years. Those reporting higher incomes were most likely to have repaid their loans (even though they had higher average debt), indicating that earnings did play a role in their ability – or at least their willingness – to repay.[7] For many adults, paying off student loans is an important milestone as many borrowers see a tradeoff between making student loan payments and other important investments such as saving for retirement, buying a home, or saving for their own children's education.[8] The Federal Government provides significant options for repaying loans over long periods of time in order to protect a portion of the borrower population from the adverse impact of nonpayment (addressing the risks that earnings will not be as hoped, for example), but they are not intended to be the norm.

For all types of credentials, debt is growing in a way that will cause more students to put more of their future income toward repayment, whether through larger or longer payments:

Bachelor's Degree Recipients. Between 2000 and 2008, while inflation-adjusted earnings for Bachelor's degree recipients have declined, median debt levels per bachelor's degree recipient have grown (see graph below).

[7] 74 percent had repaid their loans when they were interviewed in 2003. Those with lower incomes were most likely to have debt remaining (33 percent) even though they had borrowed less on average. National Center for Education Statistics 2006-156, June 2006, http://nces.ed.gov/das/epubs/2006156/es_03.asp.

[8] See for example, http://www.moolanomy.com/782/retirement-savings-versus-student-loans/, "Prioritizing retirement savings against paying down student loans is a very common money management question for young workers today. This wasn't the case in prior generations where college graduates start their first job with less student loans and were offered pension as part of their benefits package." Surveys confirm the perception that student loan debt affects home buying, for example, but regressions do not necessarily confirm the effect. *Life After Debt*, Nellie Mae, February 1998: http://www.nelliemae.com/pdf/NASLS.pdf.



In 2008 the median earnings for an individual age 25-34 with a bachelor's degree, working full-time for the full year, was $41,445. At that income level, student loan debt of $30,000 is considered high.[9] In 1999-2000, 14 percent of bachelor's degree recipients had $30,000 or more in debt (adjusted for inflation). By 2007-08, that proportion had grown to 18 percent.

Associate's Degree Recipients. Growth in debt levels is not limited to students pursuing Bachelor's degrees. Less than half of students who earned an associate's degree in 2008 borrowed for their education, so the median amount of debt per graduate remains at $0. However, there has still been growth. In 2000, 36 percent of associate's degree recipients borrowed a median of $9,100 (inflation adjusted). By 2008, 47 percent had a median debt level of $10,000. Over the same period of time, median earnings for 25-34 year olds with an associate's degree decreased from 34,900 to 31,800 after adjusting for inflation.

Certificate Recipients. Similarly, there has been growth in debt levels among students pursuing undergraduate certificates. In 2000, the median debt level per certificate recipients was $0. By 2008 it was $4,800. The proportion of certificate completers with debt increased from 46 percent in 2000 to 63 percent in 2008.

Noncompleters. Debt is not only an issue for those who earn a degree, but also those who borrow but fail to meet their degree goals. Failure to complete one's academic program is considered one of the strongest predictors of default among student types. Unfortunately, institutional retention of students is a problem for many postsecondary institutions.

2. Consequences

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[9] Experts consider the outer boundary of manageable student loan payments (amortized over ten years) to be 20 percent of discretionary income (150 percent of the poverty level). Sandy Baum and Saul Schwartz, *How Much Debt Is Too Much, College Board*, 2005. An income of $41,445, assuming an interest rate of 6.8 percent, would yield a outer boundary of $36,496 in loans. Using the 15 percent metric adopted for the Income-Based Repayment program yields a maximum manageable debt of $27,372.

All other things being equal, any former students would be better off leaving college without debt. The less debt, the more they are able to devote to buying a home, saving for retirement or for their children's education, or serving the community. Student loan debt is worth having if it makes it possible to gain the education and training that enhances productivity as a citizen, civic leader, worker or entrepreneur. To the extent that the student loan debt brings little or no benefit to the students (or to society), it is a cost that public policy should attempt to minimize or eliminate. It is in this context that the requirement that a program of study must lead to "gainful employment" can best be understood.

This "cost" of excess student debt manifests in three significant ways: payment burdens on the borrower; subsidies from taxpayers; and the negative consequences of default (which falls on the borrowers and taxpayers). First is as already described: loans that outweigh the benefits of the education and training are an inefficient use of the borrower's resources. To the extent that a consumer makes that choice fully informed and using his or her own funds, it is not a matter for public policy. But to the extent that the availability of Federal aid makes it more likely for an individual to be willing to enroll at an institution of higher education, it is appropriate for the Federal Government to consider ways to reduce or eliminate waste in terms of training that does not provide a net benefit to the student or society, even if the borrower would fully repay the loans.

The second type of cost shows up as taxpayer subsidies. When a borrower is unemployed or in poverty, the Government covers interest on subsidized Stafford and Perkins loans. For example, three years of deferment costs the Government up to 20 percent of the value of the loan. Also, borrowers who are low income relative to their debt may reduce their payments through income-based or income-contingent repayment programs. While for many borrowers this extends repayment at little or no cost to the Government, for other borrowers the taxpayer cost could be as much as the full amount of the loan with interest. Deferments and repayment options are important protections for borrowers: while education brings higher earnings on average, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance: they tell Americans to go ahead and get an education despite the existence of the potential risk in their future. However, the existence of these policies does not mean that it is appropriate for providers to increase the level of downside risk – just as the existence of homeowners insurance doesn't mean builders should make houses more flammable. The insurance is important but it should not become a license for providing a bad product to the consumer or hurt taxpayers.

The third cost is default cost. While the Government covers the cost of defaults on Federal student loans ($9.2 billion in fiscal year 2009), ultimately the cost of defaults is mitigated by the Department's success in collection using such tools as wage garnishment, Federal and State tax refund seizure, seizure of any other Federal payment, and Federal court actions. As a result, the projected taxpayer cost of defaults is less than one percent of the total annual amount of loans. Nonetheless, these costs can be significant. Based on historical collections, the net present value cost of the $9.2 billion of loans that defaulted in fiscal year 2009 is estimated at less than $1 billion.

An additional cost of default is the damage to the former student and his or her family and community. Former students who default on Federal loans are denied any further access to title IV aid for postsecondary education. Their credit rating is destroyed, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. In some States, they may be denied certain occupational licenses. And, increasingly, employers are considering credit records in their hiring decisions.[10] Furthermore, particularly for former students from disadvantaged neighborhoods, their default sends an unfortunate message to others that seeking an education can have disastrous results.

3. Debt, default and repayment by sector and credential type

As previously mentioned, student debt levels have increased at all types of institutions and programs, as Tables A-1 and A-2 indicate. For certificate, associate's degree, and bachelor's degree programs, debt levels are highest at for-profit institutions. For graduate and professional programs, separate data are not available on for-profit colleges. For professional degrees, the known debt levels at public and nonprofit institutions could be problematic if earnings are not sufficient. Table A-1 provides median debt levels; Table A-2 shows average debt levels.

Table A-1: 2003-04 and 2007-08: Median Federal debt (including nonborrowers) and median total debt (including nonborrowers) for completers of programs

	2003-04		2007-08	
	Federal	**Total**	**Federal**	**Total**
	Median debt	Median debt	Median debt	Median debt
Undergraduate Certificate				
Total	1,082	1,800	3,273	4,793
Public	0	0	0	0
Private NFP	0	0	0	*
For-profit	4,810	5,846	7,145	8,770
Associate's				
Total	0	0	0	0
Public	0	0	0	0
Private NFP	6,625	7,312	7,125	10,000
For-profit	12,103	14,000	14,045	18,415
Bachelor's				
Total	6,089	8,917	6,875	10,500
Public	4,848	6,087	4,968	6,998
Private NFP	10,650	13,250	11,580	16,175
For-profit	20,567	21,000	23,874	31,157
Master's				
Total	0	4,500	0	7,937
Public	0	0	0	0
Private NFP	12,479	14,848	4,250	9,985

[10] According to the Society for Human Resource Management, 60% of employers consider credit information for some or all of job applicants. http://www.shrm.org/Advocacy/GovernmentAffairsNews/HRIssuesUpdatee-Newsletter/Pages/051410_5.aspx

For-profit	*	*	*	*
Doctoral				
Total	0	0	0	0
Public	0	0	0	0
Private NFP	*	10,000	0	17,000
For-profit	*	*	*	*
First-professional				
Total	55,246	60,425	57,500	67,833
Public	52,322	53,976	57,010	58,568
Private NFP	55,500	70,000	57,500	78,970
For-profit	*	*	*	*
Graduate certificate				
Total	0	800*	0	1,833
Public	0	0	0	0
Private NFP	10,500	17,500	0	8,568
For-profit	*	*	*	*

*Reporting standards not met.

Note: Totals do not include students who attended multiple institutions in given year.

Table A-2: 2003-04 and 2007-08: Average Federal debt (including nonborrowers) and average total debt (including nonborrowers) for completers of programs

	2003-04		2007-08	
	Federal	Total	Federal	Total
	Average debt	Average debt	Average debt	Average debt
Undergraduate Certificate				
Total	3,175	4,024	5,083	7,054
Public	1,183	1,527	2292	2,906
Private NFP	1,670	2,505	5145	7,498
For-profit	5,117	6,430	7317	10,343
Associate's				
Total	2,896	3,673	4,702	6,233
Public	1,995	2,618	3,037	3,917
Private NFP	7,938	9,652	9,526	13,803
For-profit	11,390	13,587	14,233	19,273
Bachelor's				
Total	9,991	12,024	10,960	15,120
Public	8,878	10,285	9,572	12,321
Private NFP	11,821	15,215	12,495	19,437
For-profit	19,234	22,252	24,314	31,678
Master's				
Total	12,457	14,390	14,774	17,131
Public	8,633	9,897	12,037	13,645
Private NFP	15,933	18,818	16,414	19,567
For-profit	18,128	18,428	23,550	26,586
Doctoral				
Total	20,384	23,680	22,400	26,484
Public	15,774	17,560	15,332	18,729
Private NFP	28,396	33,877	34,702	40,357
For-profit	*	*	*	*
First-professional				
Total	53,825	66,163	63,092	74,951
Public	52,791	58,366	59,128	65,652
Private NFP	54,697	72,740	65,736	81,152
For-profit	*	*	*	*
Graduate certificate				
Total	6,852	8,975	11,498	14,119

Public	2,596	3,146	9,661	12,144
Private NFP	12,452	16,644	14,313	17,145
For-profit	*	*	*	*

*Reporting standards not met.

Note: Totals do not include students who attended multiple institutions in given year.

Beyond the averages, while there have long been some students who borrow significantly more than the average, high debt is no longer just an outlier phenomenon. In 2007-08:[11]

- 13 percent of baccalaureate recipients from public four-year institutions carried at least $30,000 of Federal and private student loan debt. Among graduates of private nonprofit colleges, one-fourth had student debts that high. And at for-profit institutions, 57 percent of the baccalaureate recipients carried student loan debts of $30,000 or more.

- At the associate's degree level, only about five percent of public college graduates have debt of $20,000 or more, while 42 percent of for-profit graduates have debt that high.

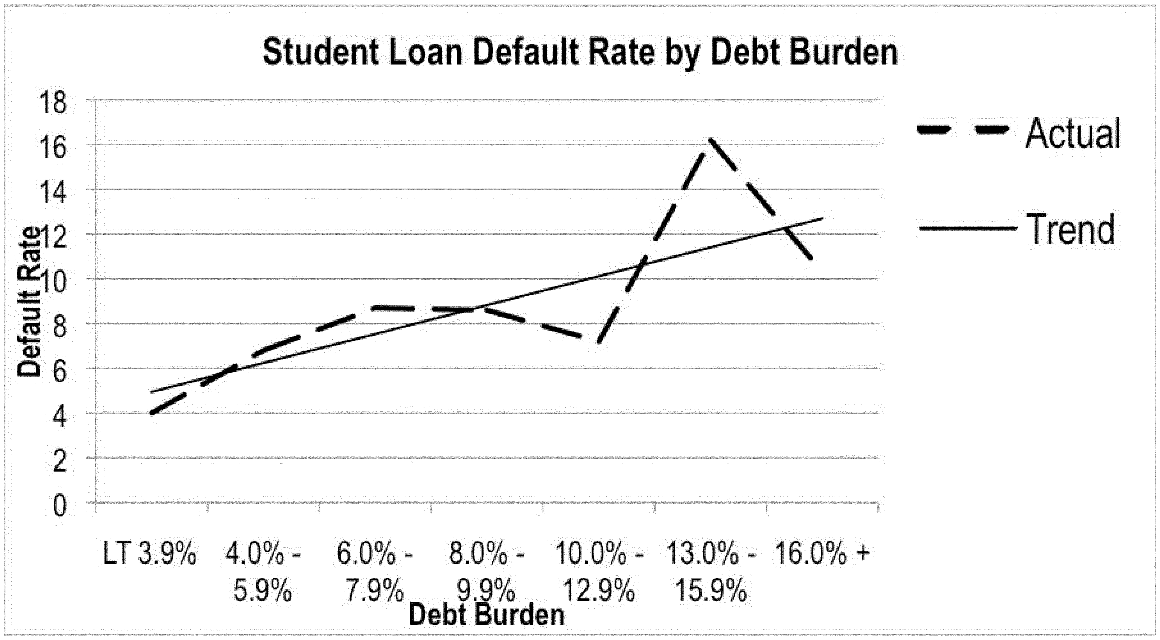
- In terms of certificate recipients, fewer than two percent at public institutions and 11 percent at for-profit institutions have debt of at least $20,000.

High levels of debt at any institution are less likely to be a burden to the borrower or a cost to taxpayers if the borrower's postgraduate income is relatively high. While not a direct measure of income, defaults on Federal loans are an indicator of borrower distress. That distress may be the result of a borrower not being employed, having inadequate income, feeling they were rushed into a loan without adequate information, or dissatisfaction with the quality or type of education that was provided. Student-level data indicate that high debt burden is related to higher likelihood of default (see Chart A).[12]

[11] National Postsecondary Student Aid Survey, as reported in Trends in Student Aid 2009, College Board.

[12] U.S. Department of Education, National Center for Education Statistics, B&B:93/03 Baccalaureate and Beyond Longitudinal Study. The crooked line is the actual, while the straight line is the trend line.

Chart A



While high defaults are likely an indicator of high debt burdens, it is not necessarily the case that *low* defaults indicate *low* debt burden. Some colleges work hard to keep default rates down by helping former students use such benefits as forbearance, economic hardship deferments, and income-contingent and income-based repayment. While these options are important protections for borrowers, they mean that lower defaults may simply be a sign of an institution's successful default management but are not a sign that borrowers have adequate income to repay their loans.[13]

Average cohort default rates (both two-year and three-year) are substantially higher at for-profit institutions, suggesting much higher levels of borrower distress, likely related in part to higher debt burdens.

One way to assess whether the defaults associated with an institution or a sector are "too high" is to balance them against the intended positive outcomes: degrees and certificates. Using that approach, there has been an increase in defaults overall compared to the number of credentials produced. For every 100 students who graduated from a title IV institution in 2003-04,

[13] One researcher has indicated that a nonrandom sample of for-profit institutions yielded data suggesting that programs with higher debt burdens had lower default rates. While more reliable data do not support this general finding, it is certainly possible that some institutions – because of strong default management practices – have low cohort default rates despite their former students having lower earnings and/or higher debt.

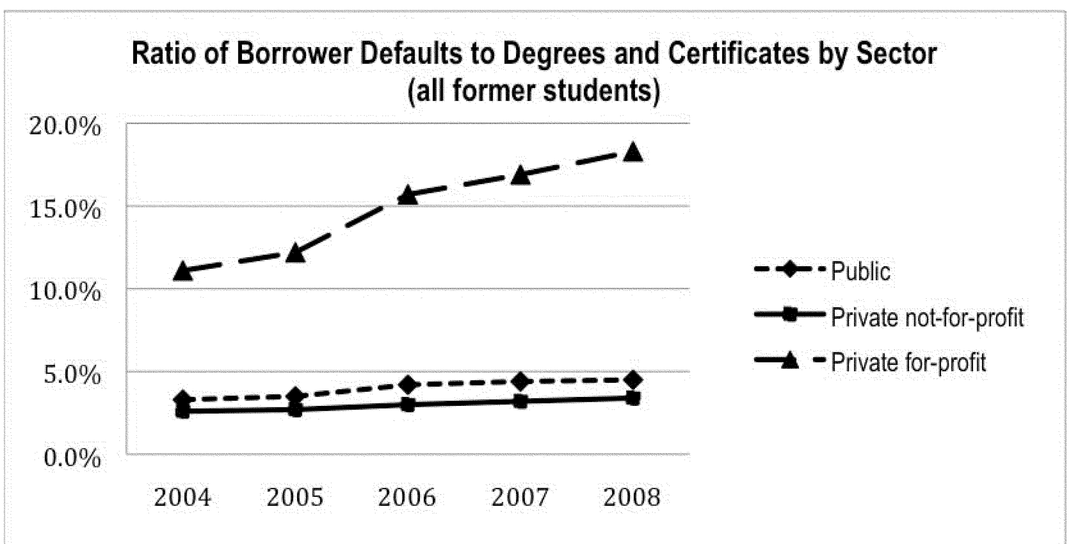
there were 3.5 former students who entered repayment in FY 2004 and defaulted the next year. That ratio has grown significantly since then, reaching 6.3 for 2008.[14]

Table B: 2003 through 2008: Comparison of Defaults to Awards

Year	Defaulters	Awards	Ratio
2003	115,568	3,295,878	3.5%
2004	144,128	3,476,732	4.1%
2005	161,951	3,595,928	4.5%
2006	204,507	3,690,124	5.5%
2007	225,371	3,775,835	6.0%
2008	244,997	3,883,697	6.3%

These increases are much more pronounced in the for-profit sector than in the public and nonprofit sectors, and they are occurring at all three types of for-profit institutions (four-year and above, two-year, and less-than-two-year). For every 100 students who graduated from a public or private institution in 2007-08, there were *four* former students of those institutions who entered repayment in 2008 and defaulted the next year (See Chart B). For every 100 students who earned a degree or certificate from a for-profit institution in 2007-8, there were *18* who defaulted the very next year.

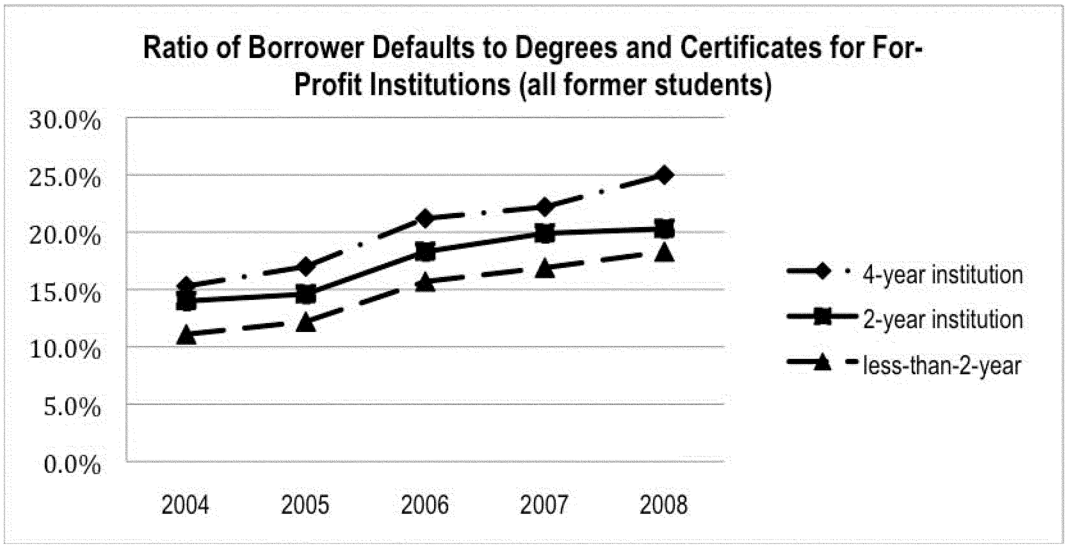
Chart B



[14] The table shows the number of credentials awarded in the award year (2003 is the 2002-03 award year) as reported to NCES's Integrated Postsecondary Education Data System (IPEDS), and the number of borrowers entering repayment in the fiscal year indicated and defaulting in the following fiscal year (standard two-year cohort default rate analysis).

Data from NCES's IPEDS system and FSA's loan default database indicate that the increases are occurring at for-profit two-year and certificate-granting colleges, but the numbers are particularly high at the four-year for-profit colleges where there are 25 new defaulters for every 100 new degrees (See Chart C). The high default rate in for-profit programs appears to indicate substantial barriers to providing value to enrollees, beyond what could be explained by informed investment on the part of students.

Chart C



Not all for-profit colleges have disturbingly high default-completion ratios, and not all public and nonprofit colleges have low ratios. Of the 1,378 institutions with ratios below one percent (2005-07 combined), more than a third are for-profit. And of the 258 institutions with ratios of 25 percent or above, about a third are public and nonprofit institutions.

Analyses of loan repayment—whether borrowers are making actual payments on their loans after leaving school—show the same types of differences by sector. On average, 80 percent of recent borrowers from public institutions and 88 percent from nonprofit institutions paid at least a penny more than interest on their loans since FY 2006 in FY 2009, compared to 55 percent at for-profit institutions. About 89 percent of public and nonprofit four-year institutions and 73 percent of public two-year institutions have loan repayment rates of at least 35 percent, compared to less than 60 percent of for-profit institutions. [15]

4. Accountability for debt difficulty

Representatives of high-default institutions sometimes dismiss high default rates as an inevitable outcome of enrolling certain types of students. While for-profit institutions do tend to enroll a larger proportion of low-income students than do other institutions on average, the industry's own report found that only about half of the difference in defaults could be explained by student characteristics. This circumstance overstates the role of socioeconomic factors since the analysis considered persistence and completion to be a "student characteristic" rather than a variable that can be influenced by the institution.[16]

[15] This analysis was performed in the manner described for the repayment rate in the NPRM.

[16] Jonathan Guryan and Matthew Thompson, "Report on Gainful Employment: Executive Summary," Charles River Associates for the Career College Association, April 2, 2010. The notes beneath Figure 7 indicate controls for race, gender, persistence and completion, Pell Grant receipt, family AFDC receipt, income, and dependency status.

While there are undoubtedly student and family factors that contribute to defaults, institutions are not neutral actors: they have a responsibility to recruit and enroll students who can succeed at their institutions, and to help them reach that goal. That responsibility is greater for students with loans, since students who do not get a degree are much more likely to default on their loans than those do.[17] Judge Richard Posner suggests that some colleges may target vulnerable, low-income consumers as a strategy despite the fact that they are unlikely to persist:

> "There is evidence that just as in the case of the marketing of mortgage loans during the housing bubble of the early 2000s, the for-profit colleges use aggressive advertising to attract students from low-income families that lack financial sophistication and the ability to evaluate the benefits of attending a for-profit college. These people—who may be the only people who would consider a for-profit college, because no other college would admit them—almost by definition have little information about higher education and are therefore prey to skillful marketing that even if literally truthful may create a misleading impression of the benefits of attendance at a for-profit college."[18]

The high debt levels and default rates in these programs provides strong evidence that they often do not provide beneficial returns on investment for students. Combined with the aforementioned evidence regarding adverse actions by institutions, this suggests that individuals may not be fully informed or aware of the implications of entering into these loan contracts, motivating regulations for consumer protection.

For-profit colleges have a particularly high rate of students who left their program without a degree and did not transfer to another institution (34 percent of students who left three years after entering a for-profit college compared to 10-11 percent of students who left three years after entering public and nonprofit institutions). For two-year colleges, the student retention rates are better at for-profit institutions than at the public institutions (27 percent compared to 34 percent).

Table C: Status 3 Years after Initial Enrollment in Postsecondary Education by Type of Institutions Initially Attended

	Completed or Still Enrolled	Transferred to Another Institution	Left Without Enrolling Elsewhere
Public 4-Year	**70.7%**	**18.5%**	**10.8%**
Nonprofit 4-Year	**72.1%**	**17.9%**	**10.0%**
For-profit 4-Year	**53.8%**	**11.7%**	**34.5%**

[17] Six years out, graduates have a default rate that is one-third the rate of students who dropped out and about three-fifths of the overall default rate. Mark Kantrowitz, citing data from BPS 96:01 in "What is Gainful Employment? What is Affordable Debt," March 1, 2010, Revised March 11 2009 [sic], p. 9.

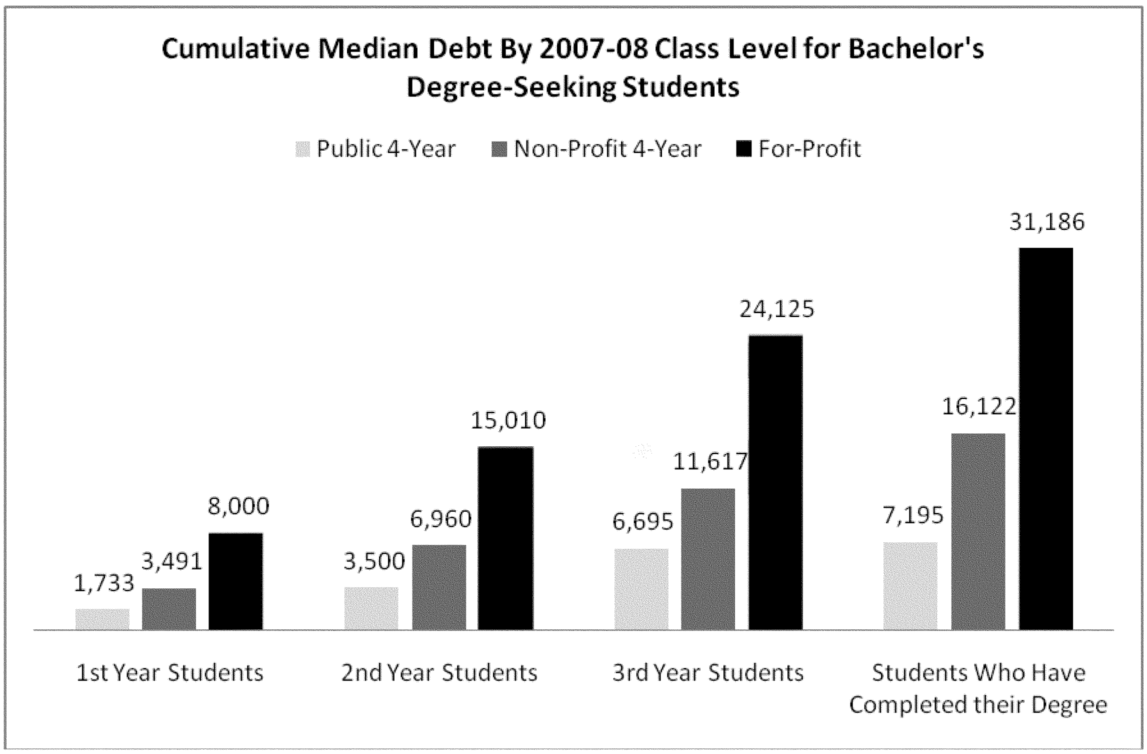
[18] Richard Posner, "The Controversy over For-Profit Colleges," the *Becker-Posner Blog*, http://uchicagolaw.typepad.com/beckerposner/2010/06/the-controversy-over-forprofit-collegesposner.html

Public 2-Year	**47.3%**	**18.6%**	**34.1%**
For-profit 2-Year	**67.1%**	**6.3%**	**26.6%**
Public < 2-Year	**67.1%**	**6.3%**	**26.6%**
For-profit <2-Year	**58.9%**	**5.1%**	**36.0%**

Source: Beginning Postsecondary Students, NCES, ED

Levels of debt at graduation are a strong indicator for the relative levels of debt that students would have if they dropped out before receiving a degree, as shown in Chart D.

Chart D



Source: 2008 National Postsecondary Student Aid Survey, NCES, ED

In the first two years of attending a bachelor's degree program at a for-profit institution, students accumulated almost as much debt as a student who *completed* a degree program at a nonprofit 4-year institution, and more than double the median level of debt for bachelor's degree recipients from public 4-year institutions.

5. "Gainful employment"

The HEA applies a variety of criteria for determining the eligibility of programs and institutions for title IV funds. For public and nonprofit institutions, degree programs of at least a year in length are generally eligible for title IV aid regardless of the subject or purpose of the program as long as they meet other requirements. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that "prepare students for gainful employment in a recognize occupation." This difference in eligibility is longstanding and has been retained through many amendments to the HEA. While the for-profit institutions have sought inclusion in a single definition that would remove the gainful employment requirement, Congress has not made that change. Indeed, as recently as the Higher Education Opportunity Act of 2008 (HEOA), Congress maintained the distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions.

The legislative history of the gainful employment requirement bears directly on the issues now emerging in the data: Congress was concerned that availability of Federal student aid, particularly in the form of loans for some types of programs and institutions might lead to students taking on more debt than is reasonable given the earnings that could be expected. Congress extended loan eligibility beyond traditional degrees at traditional institutions after considering testimony regarding the connection between the expected earnings of the graduates and the debt burden they would incur from this training. A Senate Report quotes extensively from testimony provided by University of Iowa professor Dr. Kenneth B. Hoyt, who testified on behalf of the American Personnel and Guidance Association:

> It seems evident that, in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take. . . . I have found no reason to believe that such funds are not needed, that their availability would be unjustified in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk. At 3749 Sen. Rep. No. 758, 89th Cong., First Sess. (1965) at 3745, 3748.

Congress cited the same affirmation from an industry spokesman, Lattie Upchurch, Jr., of Capitol Radio Engineering Institution, Washington, DC, who testified that "the purely material rewards of continued education are such that the students receiving loans will, in almost every case, be enabled to repay them out of the added income resulting from their better educational status." Id. at 3752 .

The concept of the training leading to gainful employment was intended to ensure that this connection between debt and earnings would not be lost. However, the Department has applied the barest minimum enforcement: when applying to access Federal funds, the institution must check a box that says its programs "prepare students for gainful employment in a recognized occupation."[19] While the Department does audit and review other aspects of program eligibility (such as the length of the program), there is no standard for determining whether a program in fact meets the gainful employment requirement.

While some have asked why the Department is considering new regulations that restrict most programs at for-profit institutions and few programs at public and nonprofit institutions, the statute itself imposes the gainful employment requirement to most programs at for-profit institutions, and exempts most programs at public and nonprofit instituitons. The statute may limit

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[19] The application form is available at http://www.eligcert.ed.gov/ows-doc/eapp.pdf. Most institutions complete an electronic version of the form.

the Department from applying such a regulation to all programs at all institutions, but this does not mean that the Department should not enforce the regulation at the institutions where it can—especially in those institutions where the problem is becoming the most severe.

Proposed Approach

The trends in graduates' earnings, student loan debt, defaults and repayment underscore the need for the Department to act. The Secretary is proposing, for public comment, a gainful employment (GE) standard that would take into consideration repayment rates on Federal student loans, the relationship between total student loan debt and earnings after a postsecondary program, and, in some circumstances, employer endorsements of programs. In effect, the proposal would establish four eligibility status categories of gainful employment programs:

Criteria	Eligibility Status	Consequences
Loan repayment rate of at least 45 percent **AND** a debt-earnings ratio of 20 percent or less of discretionary income or 8 percent or less of average annual earnings.	*Eligible*	None.
Loan repayment rate of at least 45 percent **OR** a debt-earnings ratio of 20 percent or less of discretionary income or 8 percent or less of average annual earnings.	*Eligible*	Institutions must warn consumers and current students of high debt levels and provide the most recent debt measures for the program.
Loan repayment rate below 45 percent and unable to demonstrate debt-earnings of 20 percent of discretionary income or less or 8 percent or less of average annual earnings.	*Restricted*	Institutions must (1) demonstrate employer support for the program and (2) warn consumers and current students of high debt levels and provide the most recent debt measures for the program. The program is subject to limits on enrollment growth.
Loan repayment rate below 35 percent and a debt-earnings ratio above 30 percent of discretionary income and 12 percent of annual earnings.	*Ineligible*	No new students may receive title IV aid. Current students may continue to receive aid for the rest of the year and one additional award year. While phasing out a program, institutions must warn current and prospective students of high debt loads and reduced ability to repay their loans from projected earnings and provide the most recent debt measures for the program.
Program not in existence long enough to demonstrate repayment and debt-earnings outcomes.	*New programs*	Institution must demonstrate employer support for the program, and the new program is subject to limits on enrollment growth.

To minimize any disruption that might result from the eligibility regulation, the gainful employment standard would not go into effect until July 1, 2012. Prior to July 1, 2012, institutions should begin to assess the effect on programs they offer and could take steps to mitigate the number of programs negatively affected. Further, in the first year after the regulation takes effect, there would be a cap on the number of programs that could lose eligibility (the lowest-performing programs producing no more than five percent of completers during the prior award year), to facilitate programs' response to the rule.

Timeline

July 1, 2011	**Data** (in the NPRM published on 6/18/10): Institutions would begin providing information to the Department about students who completed gainful employment programs during the previous three years. The Department would determine average earnings (using information from another Federal agency such as the Social Security Administration) and median student loan debt. **Disclosure** (in the NPRM published 6/18/10): Institutions must provide on their Web sites information about the occupations for which their gainful employment programs are preparing students, and the graduation rates and median debts in those programs. **Program eligibility**: Additional programs subject to the gainful employment regulations must have employer affirmations that the program's curriculum is designed to prepare students for jobs like those at the employer's company. The program is subject to growth restrictions until loan repayment and debt measure data are available. The number, location, and size of the job placements for the businesses must be commensurate with the projected size of the program.

July 1, 2012	**Warning**: Programs subject to the gainful employment regulations that fail to meet one of the debt thresholds must include a warning in all promotional materials and provide the most recent repayment rate and debt measures for the program. **Program eligibility**: To remain eligible for title IV, HEA program funds , gainful employment programs must either have a Federal loan repayment rate of not less than 35 percent, or have student debt levels below the debt threshold. For one year, there would be a five percent cap on the number of programs (measured on the number of program completers in an award year) that can lose eligibility in that year. Ineligible programs that remain outside the cap would be subject to the employer-affirmation and growth provisions applicable to additional programs. Programs with loan repayment rates below 45 percent that fail to meet one of the debt thresholds would be subject to employer-affirmation and growth provisions, and the institution may be provisionally certified.

Definitions

Repayment Rate:	Of the program's former students entering repayment with Federal loans in the previous four FFYs, the proportion of loans for those students who are paying more than the interest charges (or fully repaid the loans) or are in full-time public service positions (i.e. eligible to seek Public Service Loan Forgiveness) in the most recent FFY. Borrowers using in-school and military deferments are excluded from both the numerator and denominator.
Average Annual Earnings	The average annual earnings, in the most recent year for which postcompletion data are available, for the program's graduates from the previous three years. An institution may seek to measure earnings of earlier graduates (four to six years prior) if graduates typically experience large earnings increases after an initial period of employment. Earnings data would be acquired by the Department from a Federal agency. We anticipate obtaining this data from the Social Security Administration (SSA).
Discretionary Income:	The amount of total income above 150 percent of the poverty level (domestic U.S., family size of one) for the applicable year.

Debt Threshold	Loan payments as a proportion of either discretionary income or total income. The loan payments are the amount, based on a flat 10-year amortization schedule, of all of a student's loans (Federal, private, and institutional) taken at the institution, assuming the unsubsidized Stafford loan interest rate (6.8 percent). For full eligibility the proportion must be below 20 percent of discretionary income or 8 percent of average annual earnings. Rates of 30 percent of discretionary income and 12 percent of average annual earnings and above trigger ineligibility unless the repayment rate is in compliance.

Students who had started a program before it becomes ineligible would be able to continue to receive Federal aid for one additional award year beyond the year when the institution is notified that the program is no longer eligible. Prospective students who want to use Federal aid would be able to choose from other programs and institutions. Programs subject to adverse action under the rule can appeal through the standard process, subject to the limitation on challenging the average annual earnings calculation discussed in the preamble.

The Federal loan repayment rate would count in the numerator those loans that have been repaid in full, made payments of more than interest in the most recent fiscal year, or are qualifying for Public Service Loan Forgiveness (PSLF). This rate would be cumulative – looking at the repayment status of all former students in the program who took out Federal loans, if they entered repayment in the previous four fiscal years. Borrowers on an in-school or military deferment status would not be included in either the numerator or denominator.

The proposed regulation sets the repayment rate for ineligibility for gainful employment programs at 35 percent, indicating that slightly more than a third of recent former students are able to begin paying down their loan principal with money or through public service. According to the Department's analysis of NSLDS data, if this rate were applied to all public and nonprofit institutions fewer than 18 percent of them would fail to meet the measure. Of for-profit institutions, 48 percent currently fall below the 35 percent mark.[20]

The loan repayment rate includes consideration of both program completers as well as students who did not complete the program. Therefore, a low loan repayment rate may be an indicator of a large number of noncompleters with loans; those who complete the program may have been prepared for gainful employment. The proposed test for the question of whether a program with low repayment rates prepares program completers for gainful employment is whether the program's graduates meet a ratio of student debt and income. This test would use a sliding scale based on the Income-Based Repayment (IBR) program. The program assumes that borrowers with incomes below 150 percent of the poverty guideline are unable to make any payment, while borrowers with incomes above that level can devote 15 percent of each added dollar of earnings (Congress reduced that to 10 percent for new borrowers starting in 2013). While Congress has established policies allowing borrowers to reduce payments to 10 or 15 percent of discretionary income, the appropriate proportion for the purposes of the gainful

[20] Note: the estimated loan repayment rates described here are by institution, not by program, and do not include a consideration of public service work. Those data are not yet available.

employment definition would be higher. The IBR formula is based on research conducted by economists Sandy Baum and Saul Schwartz, who recommended 20 percent of discretionary income as the outer boundary of manageable student loan debt. This approach is one of those recommended by Mark Kantrowitz, publisher of Finaid.org.[21] As Chart E shows, for everyone above about $27,000 of income, this approach allows for higher debt levels than the eight percent approach that was discussed in negotiated rulemaking.

Chart E

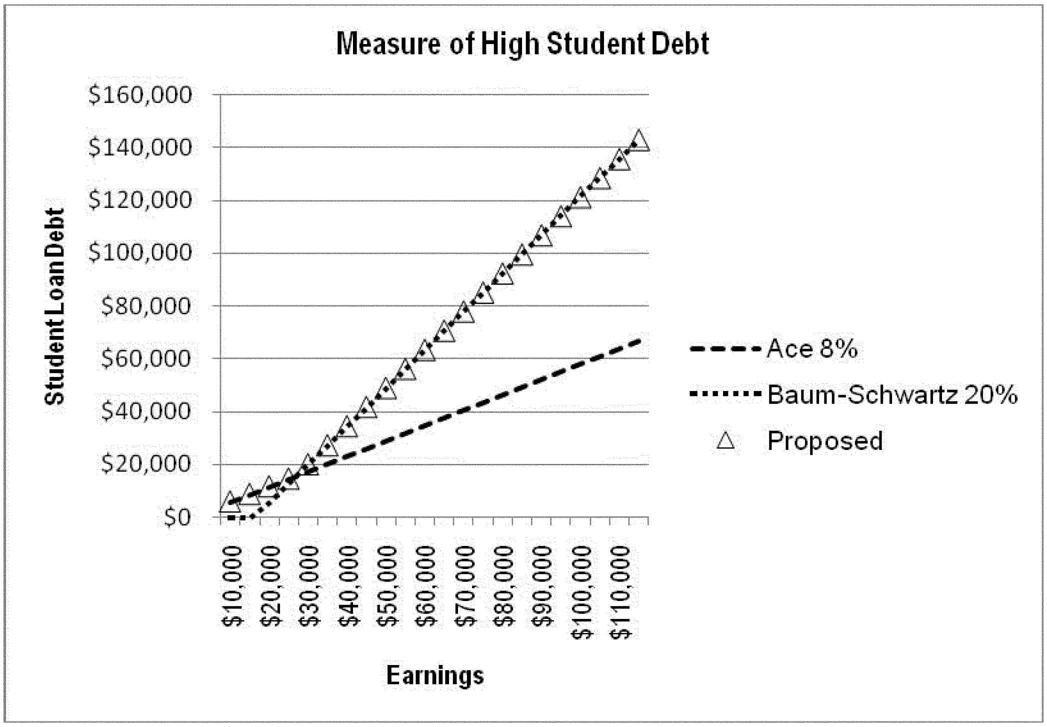


Table D provides the data underlying Chart E and indicate the maximum median a program may have so that the monthly payment falls under the proposed debt threshold. Table E provides the same information for the alternative debt threshold available to programs that fail the first two tests and request an evaluation of those who completed the program four to six years prior.

[21] Mark Kantrowitz, "What is Gainful Employment? What is Affordable Debt," March 1, 2010, Revised March 11 2009 [sic].

Table D: Maximum Monthly Payment by Annual Earnings for Debt Threshold

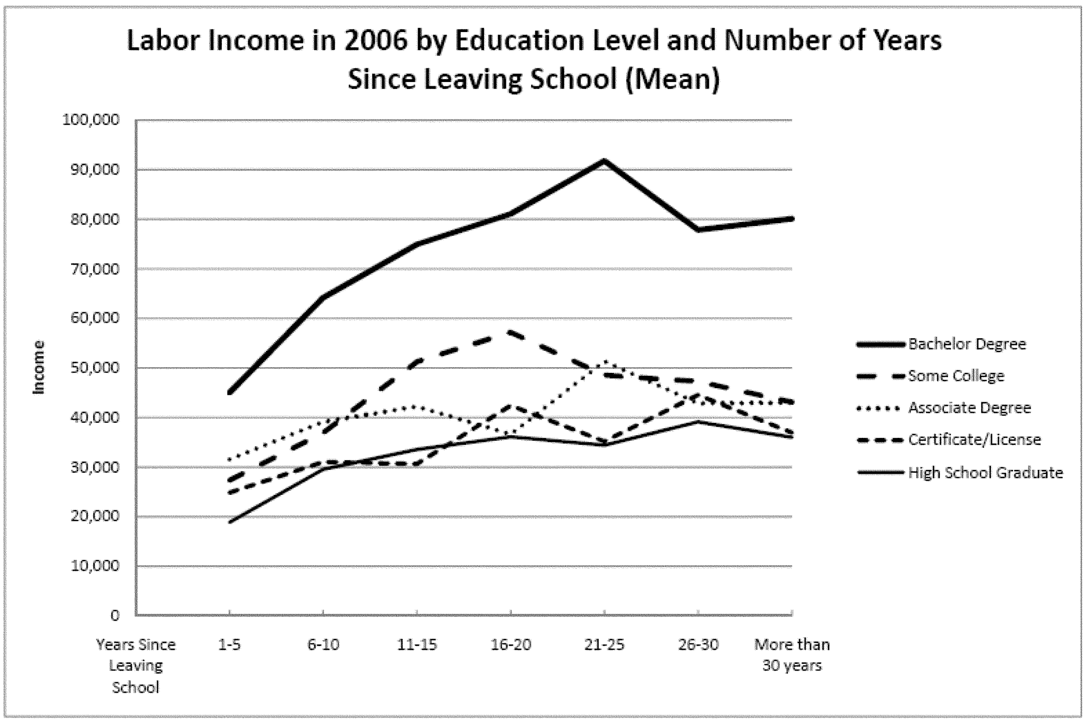
Annual Earnings	Threshold of "High Debt" 12%	30%	% of Total Earnings	Monthly Payment
$10,000	**$8,690**		12%	$100
$15,000	**$13,034**		12%	$150
$20,000	**$17,379**		12%	$200
$25,000	**$21,724**		12%	$250
$30,000		**$29,881**	14%	$344
$35,000		**$40,743**	16%	$469
$40,000		**$51,605**	18%	$594
$45,000		**$62,467**	19%	$719
$50,000		**$73,329**	20%	$844
$55,000		**$84,191**	21%	$969
$60,000		**$95,053**	22%	$1,094
$65,000		**$105,915**	23%	$1,219
$70,000		**$116,777**	23%	$1,344
$75,000		**$127,639**	24%	$1,469
$80,000		**$138,501**	24%	$1,594
$85,000		**$149,363**	24%	$1,719
$90,000		**$160,225**	25%	$1,844
$95,000		**$171,087**	25%	$1,969
$100,000		**$181,949**	25%	$2,094
$105,000		**$192,811**	25%	$2,219
$110,000		**$203,673**	26%	$2,344
$115,000		**$214,535**	26%	$2,469

Table E: Maximum Monthly Payment by Annual Earnings for Alternative Debt Threshold

	Threshold of "High Debt"			
Annual Earnings	ACE 8%	Baum-Schwartz 20%	% of Total Earnings	Monthly Payment
$10,000	**$5,793**		8%	$67
$15,000	**$8,690**		8%	$100
$20,000	**$11,586**		8%	$133
$25,000	**$14,483**		8%	$167
$30,000		$19,921	9%	$229
$35,000		$27,162	11%	$313
$40,000		$34,404	12%	$396
$45,000		$41,645	13%	$479
$50,000		$48,886	14%	$563
$55,000		$56,127	14%	$646
$60,000		$63,369	15%	$729
$65,000		$70,610	15%	$813
$70,000		$77,851	15%	$896
$75,000		$85,093	16%	$979
$80,000		$92,334	16%	$1,063
$85,000		$99,575	16%	$1,146
$90,000		$106,817	16%	$1,229
$95,000		$114,058	17%	$1,313
$100,000		$121,299	17%	$1,396
$105,000		$128,541	17%	$1,479
$110,000		$135,782	17%	$1,563
$115,000		$143,023	17%	$1,646

The primary approach in this regulation is to measure income in the first three years after completion of a program. However, most graduates have typically repaid their loans over a period of about ten years. Some would argue that a more appropriate income measure would occur a few years after completion of the degree or certificate, since incomes increase with age and experience. Data shown in Chart F from the Michigan Survey Panel on Income Dynamics show that incomes increase by as much as 43 percent between the first few years out of postsecondary education and the sixth to tenth years out. It should be noted, however, that this increase is true for high school diplomas as well as postsecondary education; in other words, the income gaps measured in the early years generally serve as good indicators of the income gaps in the later years.

Chart F



The Department's proposal adopts the view that a debt measure should consider incomes a few years after a student completes a program. The proposed regulation addresses this issue in two ways. First, when applying the debt measure to incomes from the first three years out of a program, the measure is adjusted to 30 percent rather than 20 percent. Second, an institution that has reason to believe that its graduates' earnings increase at a very high rate may seek to use earnings information from those who completed the program four to six years prior. In this latter case, the 20 percent measure would apply.

The discretionary income approach does not consider the fact that an individual who has *no* earnings at all may seek training in order to be able to get even a low-paying job. Any loan debt incurred by that individual would likely exceed 20 or 30 percent of his or her discretionary income. For this reason, the proposed regulation includes a threshold at 12 percent of *total* income, for those with lower incomes, or 8 percent if an institution seeks to measure completers from four to six years prior. This figure stems from historical lending practices that typically limit the annual student loan payment to no more than 8 percent of the student's annual pretax income so that the student has sufficient funds available to cover taxes, car payments, rent or mortgage payments, and other household expenses.[22]

The Department proposes to use median loan debt instead of another measure of loan debt because it effectively excludes extreme values that could otherwise skew the result. For example, by using the middle or median value the regulation avoids the circumstance where a small number of students with extremely high loan debt would distort the amount of loan debt incurred by students in the program. As an example, the debt measure calculated with calendar year 2013 income would include the median loan debt of students who completed the program in the years ending on June 30, 2009, 2010, and 2011. Institutions that have reason to believe that a longer time horizon would improve the institution's rate would be able to request an analysis of graduates from the award years ending in 2006, 2007, and 2008.

Actual pretax earnings data would be obtained by the Department from the Social Security Administration or another appropriate government source. We propose to determine average earnings, but we have not indicated how we would treat completers for whom there is no income information available. We are interested in input on whether they should be treated as zeroes, excluded from the calculation of the average, or if a median should be used instead.

Anticipated Effects of the Proposed Gainful Employment Provision

1. Effect on students

Prospective consumers of postsecondary education have tens of thousands of programs to choose from at thousands of institutions across the country and on the Internet. The purpose of this proposed regulation is to provide incentives for institutions to design and offer programs that will serve students well: preparing them for high-paying jobs without burdening them with excessive debts that cost them and taxpayers.

Outcomes of the proposed regulation would be for institutions to improve the quality of their programs and to emphasize in their recruiting those programs with the best occupational and salary outcomes, including public service professions. The Department is not attempting to estimate an aggregate dollar value for these outcomes, but they are expected to be substantial.

[22] According to the American Council on Education (ACE), "Student aid research generally considers monthly debt burden of 8 percent or less 'manageable.'" (in "Debt Burden: Repaying Student Debt," *Issue Brief*, American Council on Education, September 2004). The National Center on Education Statistics noted in 2000 that "housing lenders typically use an 8 percent rule for student loan debt," http://nces.ed.gov/das/epubs/2000188/burden.asp. And many campuses have used the 8 percent rule; for example, see the chart on this page from Ohio State University: http://sfa.osu.edu/basic/debt.asp?tab=b.

Institutions are also expected to adjust their pricing as a result of the regulation. In other industries, the S&P 500 long-term average operating margin (a measure of profit) is six percent. Data from the publicly-traded institutions indicate that operating margins for 2007-2009 have averaged 17 percent, and were 21 percent in 2009. Because a large proportion of the for-profit institutions have low repayment rates on their loans, we anticipate that at least half of the industry will adjust prices downward by an average of 10 percent as one way of complying with the proposed regulations. If this 10% adjustment were made, it could lead to significant ongoing tuition savings. Given IPEDS revenue data, the Department estimates this could be as much as $835 million, but we welcome comments to refine the estimate of this adjustment and its effects.

It is important to underscore that the proposed regulations do not determine whether a student is eligible for aid; the regulation is focused on the eligibility of the program. There have always been some programs that are eligible and others that are not eligible for Federal aid; most prospective students who would theoretically be affected by the regulation would never be aware that some programs moved from one side of that line to the other.

Furthermore, students already enrolled in programs would remain eligible for Federal aid for one award year beyond the award year when the institution is notified that the program is no longer eligible. This additional period of eligibility will allow most students to complete and other students to arrange for changing to a different program either at the same institution or at a different institution. Based on the scenarios described in the Model Specifications section of this RIA, the Department estimates that, as a result of a program losing eligibility to enroll new students using Federal aid, most students already enrolled would continue in programs, between 62,000 and 91,000 students would transfer to different programs at the same institution, between 69,000 and 126,000 students would transfer to a different institution, and between 16,000 and 30,000 students would leave programs without immediately enrolling elsewhere. These estimates represent the total effects across all sectors, with the greatest share coming from for-profit sectors, as shown in Tables J-1 through J-11.

More generally, however, future students will be likely to bear lower debt burdens and enroll in programs with a greater incentive to provide larger returns on their students' investment.

2. Effect on institutions and programs

Assessing the effect on institutions and programs requires estimating the programs that would fail both the repayment rate measure and the debt measure and would fail to take adequate steps to come into compliance before the effective date of the regulation in 2013. While repayment rates by program are not available, the Department has developed queries of the National Student Loan Data System (NSLDS) to determine repayment rates by institution. Further, to assess debt and income levels by program, the Department worked with the Missouri Department of Higher Education to combine income information which the State has for programs at public and for-profit institutions, with the Federal student loan information available from NSLDS.

Missouri is an appropriate and generally applicable lens to assess the potential effects nationally. The State's distribution of educational institutions is broadly similar to the nation. However, data availability limited the analysis to the public and for-profit sectors and excluded cosmetology programs, a significant component of institutions that have only one program (single Classification of Instructional Program (CIP) code). On a student level, the Missouri data is broadly representative with the exception of race and ethnicity. Table F presents some demographic information comparing the State and national averages related to postsecondary education. A description of the data and methods used in the generation of the Missouri data will be available on the gainful employment analysis Web site at http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html.

Table F: Missouri Postsecondary Sector Compared to United States

	Missouri	United States (State average)
Postsecondary Education[5]		
Enrollment by sector (2007)		
Public, 4-year and above	133,870	142,935
Private, nonprofit, 4-year and above	141,747	69,289
Private, for-profit, 4-year and above	10,020	17,796
Public, 2-year	89,693	127,491
Private, nonprofit, 2-year	1,823	881
Private, for-profit, 2-year	7,710	6,367
Private, for-profit, less-than-two-year	2,512	4,584
Other less-than-two-year	933	1,338
Female students (2007, percent)	58.1%	57.4%
Race/ethnicity (2007, percent minority)	27.5%	41.0%
Undergraduate enrollment (2007)	315,170	318,731
Graduate enrollment (2007)	73,138	51,950
Bachelor's degree completions (2007-08)	35,405	31,076
Associates degree completions (2007-08)	14,380	14,940
Undergraduate certificate completions (2007-08)[6]	9,178	14,864

SOURCES:

[5] Integrated Postsecondary Education Data System, 2007 Fall Enrollment, Institutional Characteristics, and Completions Components. National Center for Education Statistics, U.S. Department of Education.

[6] These values only reflect certificates earned at title IV institutions.

Based on the institutional repayment rates, 80 percent of the public institutions would meet the 35 percent repayment rate requirement, while only 60 percent of the for-profit institutions would meet that test. These figures based on Missouri are similar to the national figures shown below.

Table G: Institutional Characteristics by Repayment Rate Test Performance

Sector	% of Institutions in Sector	Pell Recipients as % of 12 Month Undergrad Enrollment	Average Overall Graduation Rate
Public 4-Year Institutions			
Above 35% Repay Rate	89.15%	24.89%	46.27%
Below 35% Repay Rate	10.85%	46.34%	29.82%
Nonprofit 4-Year Institutions			
Above 35% Repay Rate	88.84%	25.81%	57.08%
Below 35% Repay Rate	11.16%	50.59%	43.13%
For-Profit 4-Year Institutions			
Above 35% Repay Rate	57.80%	40.49%	49.82%
Below 35% Repay Rate	42.20%	56.41%	44.68%
Public 2-Year Institutions			
Above 35% Repay Rate	72.67%	21.69%	25.78%
Below 35% Repay Rate	27.33%	27.41%	19.50%
Nonprofit 2-Year of Less Institutions			
Above 35% Repay Rate	83.58%	37.35%	67.62%
Below 35% Repay Rate	16.42%	61.56%	47.90%
For-Profit 2-Year Institutions			
Above 35% Repay Rate	56.11%	53.53%	64.73%
Below 35% Repay Rate	43.89%	75.78%	56.86%
Public < 2-Year Institutions			
Above 35% Repay Rate	93.92%	55.09%	81.59%
Below 35% Repay Rate	6.08%	45.96%	78.47%
For-Profit < 2-Year Institutions			
Above 35% Repay Rate	62.79%	54.43%	72.11%
Below 35% Repay Rate	37.21%	80.12%	63.42%

Source: NSLDS and *Integrated Postsecondary Education Data System* (IPEDS)

The next step would be for the institutions to determine whether their programs demonstrate earnings outcomes that are within the debt threshold requirement. The Missouri income figures indicate that about two-thirds of those programs would meet the debt threshold, reducing the number of affected programs to 27 percent of the programs at for-profit institutions (all public institutions would pass based on the debt threshold). Tables G-1 and G-2 shows the estimated number of programs and students in each status based on the NSLDS repayment rate information and the Missouri debt-to-earnings information. The percentages represent the share of the programs or students subject to the rule falling within each cell. Observations for non-degree programs were not available for public four-year and private, nonprofit institutions, and they were assumed to have a debt-to-income performance similar to public two-year institutions.

Table G-1: Percentage of Programs Subject to Proposed Gainful Employment Regulations

Measure		**Debt-to-Income**		
Total number of programs subject to the proposed regulation	Metric 52,980	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** -Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible <1%	Eligible <1%	Eligible (No Debt Warning) 39%
	At least 35% and less than 45%	Restricted ---	Restricted 3%	Eligible 26%
	Below 35%	Ineligible 5%	Restricted 4%	Eligible 22%

--- No observations in the source data.

Table G-2: Impact of Gainful Employment Proposed Regulations on Students

Measure		**Debt-to-Income**		
Total number of students enrolled in programs subject to the proposed regulation	Metric 3,190,476	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** -Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible <1%	Eligible <1%	Eligible (No Debt Warning) 34%
	At least 35% and less than 45%	Restricted ---	Restricted 7%	Eligible 28%
	Below 35%	Ineligible 8%	Restricted 1%	Eligible 21%

--- No observations in the source data.

Institutions can be expected to take actions to improve the likelihood that their programs will meet one of the measures. In the Missouri data, 52 percent of programs are below the repayment rate and have relatively high debt (above 20 percent of discretionary income or 8 percent of total income). Institutions would have a strong financial incentive to take steps to make sure their programs meet the tests. As noted above, profits are very high in for-profit higher education, so many will adjust prices to attempt to bring programs into compliance. However, not every institution that makes a price adjustment will succeed in bringing the debt ratio below the cutoff. The successful ones will tend to be those that are closer to the 30 percent/12 percent. If we assume that programs that are now below 14 percent/35 percent debt ratios will be able to come in under the wire after some adjustments, then the number of programs missing the mark is 16 percent of the proprietary programs.

Two other adjustments are important. First, to address the fact that repayment rates by program will not actually be the same as repayment rates by institution, we should assume that some of those programs will not manage to meet the thresholds. Second, many institutions will seek to use incomes from earlier graduates (four to six years out from completion); some of them will meet the 20 percent/8 percent test. The analysis assumes that these two factors balance each other out.

During a transition period covering the first year that the regulation affects program eligibility the effect will be limited to five percent. To implement the cap, the Secretary would sort all programs subject to these regulations by credential type and then within each type, by loan repayment rate, from lowest to highest. Then for each credential type, beginning with the ineligible program with the lowest loan repayment rate, the Secretary would identify the ineligible programs that account for a combined number of students that completed the programs in the most recent award year that do not exceed five percent of the total number of students who completed programs in that credential type .

Table H summarizes the national demographic differences in students attending the institutions that are most affected by the regulation – for-profit institutions – and the public and nonprofit colleges and universities that are less likely to experience changes in program eligibility.

Table H: Socioeconomic Profiles of Undergraduate Students by Institutional Sectors: 2007-08

	Average Age	% independent	Median income (dependent)	Median income (independent)	% first-generation
Public 4-year	23.3	30.9	75,734	22,020	25.4
Nonprofit 4-year	24.3	33.6	84,470	30,284	24.3
For-profit 4-year	29.8	82.5	40,320	24,663	46.5
Public 2-year	27.8	57.2	54,225	29,421	39.7
Nonprofit 2-year or less	28.7	68.5	43,684	21,519	43.4
For-profit 2-year	27.1	72.4	34,553	16,432	54.5
Public <2-year	30.4	70.7	42,185	23,109	51.8
For-profit <2-year	26.3	67.0	34,611	12,990	55.1

	White	Black or African American	Hispanic or Latino	Asian	American Indian or Alaska Native	Native Hawaiian /other Pacific Islander	More than one race/other
Public 4-year	66.5	11.5	11.9	6.2	0.8	0.5	2.3
Nonprofit 4-year	67.7	11.7	11.6	5.5	0.3	0.6	2.2
For-profit 4-year	51.2	24.6	15.4	3.7	0.9	0.4	3.2

Public 2-year	60.2	14.4	14.8	6.1	1.0	0.9	2.3
Nonprofit 2-year or less	29.9	12.5	33.5	8.7	8.5	5.0	1.6
For-profit 2-year	44.8	28.7	18.8	2.9	1.4	1.1	2.0
Public <2-year	56.1	14.2	19.9	4.4	1.6	1.8	1.8
For-profit <2-year	38.8	20.3	35.1	2.5	0.7	0.5	1.9

While much of the Department's analysis has been done on the institutional or sector levels, Table I demonstrates that the effect of the proposed repayment rate regulation will vary by CIP code, one indication of the subject area of the training provided by a program. This result is based on an analysis of NSLDS and IPEDS data for institutions that report offering a program in a single CIP code. While this analysis does not capture the effect of the regulation at institutions that offer multiple programs, it does suggest that there could be a concentration of programs that need to adjust to the proposed regulation in certain CIP code categories, including cosmetology, vehicle maintenance, legal support services, culinary arts, ground transportation, audiovisual technology, and medical assistant services programs.

More generally, these changes will likely shift enrollment patterns toward institutions that provide a greater return on investment to students. Additionally, by creating minimum standards for repayment at the program level, taxpayers will be protected from default and delayed repayment.

Table I: Count and Percent of Institutions Awarding all Degrees in Single CIP Code that Meet 35% Repayment Rate in 2009

Only CIP Codes with 5 or More Cases are Included

CIP Code	CIP Name	Single CIP Code Institutions	Single CIP Institutions Below 35% Repay Rate	% Within CIP Code that Fail 35% Repay Rate Test
12.04	Cosmetology and Related Personal Grooming Services	578	186	32.2%
51.16	Nursing	146	5	3.4%
51.35	Somatic Bodywork and Related Therapeutic Services	66	3	4.5%
39.06	Theological and Ministerial Studies	62	11	17.7%
51.33	Alternative and Complementary Medicine and Medical Systems	32	14	43.8%
51.09	Allied Health Diagnostic, Intervention, and Treatment Professions	26	1	3.8%

47.06	Vehicle Maintenance and Repair Technologies	23	8	34.8%
24.01	Liberal Arts and Sciences, General Studies, and Humanities	19	5	26.3%
22.01	Law (LL.B, J.D.)	14	1	7.1%
22.03	Legal Support Services	12	6	50.0%
39.02	Bible/Biblical Studies	12	4	33.3%
50.04	Design and Applied Arts	12	0	0.0%
12.03	Funeral Service and Mortuary Science	11	1	9.1%
12.05	Culinary Arts and Related Services	11	4	36.4%
50.05	Drama/Theatre Arts and Stagecraft	9	1	11.1%
50.09	Music	9	0	0.0%
49.02	Ground Transportation	8	4	50.0%
50.07	Fine and Studio Art	6	0	0.0%
10.02	Audiovisual Communications Technologies/Technicians	5	0	0.0%
47.04	Precision Systems Maintenance and Repair Technologies	5	0	0.0%
48.05	Precision Metal Working	5	0	0.0%
51.08	Allied Health and Medical Assisting Services	5	2	40.0%

Transfer Effects

The Department does not currently have a count of the number of programs offered by institutions. As shown in Table G-1, the Department estimates that as many as 52,980 programs could be subject to this rule. The proxy used for the number of "programs" is IPEDS Completions data. It counts each instance of a 6-digit CIP code (area of study) by award level. So for example, if an institution awards a certificate in business as well as a bachelor's and a master's, this is counted as 3 separate programs. When aggregating to the 6-digit ID level so that it can be looked at with the repayment data, the number of programs is not unduplicated – it is straight sum of the number of programs for each institution/campus that is represented by the 6-digit OPEID. This may overstate the number of programs subject to the rule, and we welcome comments to help refine this measure.

If programs lose eligibility for title IV funds, a portion of the revenues and expenses attributable to that program will leave the higher education system and another portion would be redistributed to other programs and institutions as students continue their education at programs that meet the debt-to-income or repayment rate tests. The effect of this redistribution will depend on students' decisions about continuing their education, institutions' responses to their performance on the gainful employment tests, and the effect program closures and consumer disclosures have on demand for education leading to gainful employment. Table J summarizes the effects of the provision across all sectors, while Tables J-1 to J-10 present the anticipated net benefits, costs and transfers associated with the gainful employment provision by sector in 2013-2014. Public institutions and private, nonprofit institutions are grouped across program length because of the small number of programs estimated to be subject to and ineligible under the proposed rule. The results shown represent the effects of full implementation of the proposed regulation. The proposed 5 percent cap by credential type would reduce the anticipated effects as the regulation is phased in. The assumptions that generate these effects are described in the Model Specifications section of this NPRM.

As discussed above, the greatest effects of the proposed regulation would occur within the for-profit sectors because of the share of their programs covered by the provision and the institution's performance on the repayment rate and debt-to-income tests. For public and private, nonprofit institutions, the regulation would have greater applicability and effect at institutions of two years or less. Across all sectors, the anticipated core revenue removed from the system as students who would have attended programs that lose eligibility elect not to pursue education ranges from approximately $191 million to $383 million dollars annually. While the revenue effects are significant, the results of this analysis indicate that opportunities exist for institutions that perform well at preparing students for gainful employment to capture most of the revenue from programs that can no longer offer title IV aid. Across all sectors, the revenues associated with those who remain at institutions that fail the tests to complete programs or switch programs ranges from $1,825 million to $2,692 million and transfers from program to program within sectors ranges from approximately $575 million to $1,060 million. These amounts that stay within a program, institution, or sector are not shown in the sector specific tables, but are summarized by sector in Table J-11.

Table J: Effect of Proposed Regulation Across All Sectors

Effect of Proposed Rule on Impacted Programs, Applying All Tests	Scenario 1	Scenario 2	Scenario 3
Programs by Status			
Fully Eligible	20,662	20,662	20,662
Ineligible	2,649	2,649	2,649
New Programs	*	*	*
Restricted	29,669	29,669	29,669
Total	52,980	52,980	52,980
Affected Students by Status			
Fully Eligible	2,618,476	2,618,476	2,617,476
Ineligible	307,000	307,000	307,000
New Programs	*	*	*
Restricted	265,000	265,000	266,000
Total	3,190,476	3,190,476	3,190,476
Detailed Impact of Ineligible Category			
Programs Ineligible	2,649	2,649	2,649
Students Completing Program	89,000	104,000	148,000

Students Enrolling in Another Program at the Same Institution	62,000	91,000	74,000
Students Enrolling At Another Institution in the Same Sector	88,000	56,000	48,000
Students Leaving Sector	38,000	24,000	21,000
Students Leaving Postsecondary Education	30,000	32,000	16,000
Core Revenues Leaving Institution ($mn)	1,060	672	575
Core Revenues Leaving Sector ($mn)	459	292	249
Core Revenues Permanently Lost ($mn)	364	383	191
Expenses Leaving Institution ($mn)	377	239	205
Expenses Leaving Sector ($mn)	164	104	89
Expenses Permanently Lost ($mn)	129	136	68
Changes in Federal Pell grants received by students ($mn)	(213)	(209)	(104)
Changes in Federal loans received by students ($mn)	20	21	11

Detailed Impact of Restricted Category			
Programs Restricted	29,669	29,669	29,669
Students Completing program	79,000	92,000	132,000
Students Enrolling in Another Program at the Same Institution	49,000	73,000	59,000
Students Enrolling At Another Institution in the Same Sector	76,000	49,000	41,000
Students Leaving Sector	35,000	22,000	19,000
Students Leaving Postsecondary Education	26,000	29,000	15,000
Core Revenues Leaving Institution ($mn)	922	592	500
Core Revenues Leaving Sector ($mn)	435	279	235
Core Revenues Permanently Lost ($mn)	321	355	178
Expenses Leaving Institution ($mn)	340	218	184
Expenses Leaving Sector ($mn)	165	106	89
Expenses Permanently Lost ($mn)	119	133	66
Changes in Federal grants received by students ($mn)	(110)	(123)	(62)
Changes in Federal loans received by students ($mn)	(9)	(10)	(5)

As indicated by the repayment rate and debt to earnings performance discussed above, as well as the small share of enrollment in certificate programs subject to the provision, public institutions will not be greatly affected by the proposed regulation. For both the public two-year and less-than-two-year sectors, while more programs are subject to the proposed regulation, the lower debt burdens taken on by students limit the effect of the provision on programs in the sectors. Table J-1 presents the estimated effects of the regulation on programs at public institutions that do not meet any of the tests. Given the operation of the cap and the performance of public institutions relative to other sectors, it is likely that the negative effects on this sector would be reduced to nothing in the proposed transition year.

Table J-1: Effect of Proposed Regulation on Public Institutions that Fail Tests

	Public Institutions		
	Scenario 1	**Scenario 2**	**Scenario 3**
Students Leaving System	*	*	*
Students Leaving Sector	*	*	*
Core Revenues Leaving System ($ mns)	3.3	3.4	1.7
Core Revenues Leaving Sector ($ mns)	6.8	4.2	3.5
Expenses Leaving System ($ mns)	1.3	1.3	0.7
Expenses Leaving Sector ($ mns)	2.6	1.6	1.4

***=Rounds to less than 1,000 students**

For institutions within the sector that pass the gainful employment tests, there will be an opportunity to gain students from within the sector and from other sectors. As seen in Table J-2, the model assumes programs that receive students gain tuition and fee revenue but would not necessarily increase other sources of revenue. According to IPEDS data, tuition and fee revenue does not always cover instructional expenses. The Department welcomes comments on possible constraints on programs at public institutions accepting more students.

Table J-2: Effect of Proposed Regulation on Public Institutions that Pass Tests

	Public Institutions		
	Scenario 1	**Scenario 2**	**Scenario 3**
Students Gained from Other Sectors	19,000	12,000	10,000
Tuition and Fee Revenues Gained from Other Sectors	148.7	94.3	80.7
Expenses from Other Sectors	286.5	181.7	155.5

The estimated effects of the provision on programs at private nonprofit institutions are similar to those in the public four-year sector, due to the applicability of the regulation and the performance on the gainful employment tests. The Department did not have specific data on the performance of this sector on the debt to earnings measures but assumed it would fall within the range from the public and for-profit sectors. Table J-3 presents the estimated effects on those programs that fail, showing that approximately $1.4 million to $3.7 million would leave the sector or system before the effect of the cap.

Table J-3: Effect of Proposed Regulation on Private Nonprofit Institutions that Fail Tests

	Private, Nonprofit		
	Scenario 1	**Scenario 2**	**Scenario 3**
Students Leaving System	*	*	*
Students Leaving Sector	*	*	*
Core Revenues Leaving System ($ mns)	1.2	1.3	0.6
Core Revenues Leaving Sector ($ mns)	2.5	1.6	1.3
Expenses Leaving System ($ mns)	0.6	0.6	0.3
Expenses Leaving Sector ($ mns)	1.2	0.7	0.6

***=Rounds to less than 1,000 students**

In the scenarios described in Model Specifications section following these tables, programs that pass the gainful employment tests within the nonprofit sector may gain between $152.9 million and $281.5 million in tuition and fee revenue if they have the capacity to take on students anticipated to transfer between sectors.

Table J-4: Effect of Proposed Regulation on Private Nonprofit Institutions that Pass Tests

	Private, Nonprofit		
	Scenario 1	**Scenario 2**	**Scenario 3**
Students Gained from Other Sectors	10,000	6,000	5,000
Tuition and Fee Revenues Gained from Other Sectors	281.5	178.7	152.9
Expenses from Other Sectors	316.3	200.9	172.0

Given the broad applicability of the proposed regulation to for-profit programs and the current performance of institutions within the sector on the gainful employment tests, the effect of the provision on for-profit sectors is estimated to be significant. As shown in Table J-5, the anticipated loss of core revenues from programs in the sector ranges from $280 million to $527 million per year before the effect of the cap. Additional revenues would be shifted to programs that meet the tests within the institution and within the sector.

Table J-5: Effect of Proposed Regulation on Private For-Profit 4-Year Institutions that Fail Tests

Private For-Profit 4-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	16,000	16,000	8,000
Students Leaving Sector	20,000	12,000	11,000
Core Revenues Leaving System ($ mns)	234.5	243.8	121.9
Core Revenues Leaving Sector ($ mns)	292.5	185.1	158.0
Expenses Leaving System ($ mns)	81.6	84.9	42.5
Expenses Leaving Sector ($ mns)	101.8	64.4	55.0

However, for programs within the sector that pass the gainful employment tests, the opportunity exists to capture additional revenues from within the sector ranging from $432 million to $682 million annually. Additionally, as a sector that is less capacity constrained, programs that perform well under the new regulation could gain students from other sectors, as shown in Table J-6.

Table J-6: Effect of Proposed Regulation on Private For-Profit 4-Year Institutions that Pass Tests

Private For-Profit 4-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	3,000	2,000	2,000
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	100.8	64.2	55.2
Expenses from Other Sectors ($ mns)	27.5	17.5	15.0

The broad applicability of the provision and the estimated performance of programs within the sectors results in a significant effect of the proposed regulation on the for-profit two-year and less-than-two-year sectors. Table J-7 presents the estimated effect on programs that fail at for-profit two-year institutions, while Table J-8 indicates the potential effects on programs that fail at short-term for-profit institutions.

Table J-7: Effect of Proposed Regulation on Private For-Profit 2-Year Institutions that Fail Tests

	Private For-Profit 2-Year		
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	11,000	12,000	6,000
Students Leaving Sector	14,000	9,000	8,000
Core Revenues Leaving System ($ mns)	107.4	113.9	57.0
Core Revenues Leaving Sector ($ mns)	135.5	86.2	74.5
Expenses Leaving System ($ mns)	39.7	42.1	21.1
Expenses Leaving Sector ($ mns)	50.1	31.9	27.6

Table J-8: Effect of Proposed Regulation on Private For-Profit Less-than-2-Year Institutions that Fail Tests

	Private For-Profit Less than 2-Year		
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	2,000	3,000	1,000
Students Leaving Sector	3,000	2,000	2,000
Core Revenues Leaving System ($ mns)	17.3	20.2	10.1
Core Revenues Leaving Sector ($ mns)	22.2	14.4	12.0
Expenses Leaving System ($ mns)	6.2	7.2	3.6
Expenses Leaving Sector ($ mns)	7.9	5.1	4.3

The potential losses from programs that fail the gainful employments tests create opportunities for programs that are performing. Core revenues associated with transfers within the for-profit two-year sector are estimated to range from $174 million to $316 million. For programs at for-profit institutions of less-than-two years, transfers within the sector could range from $28 million to $52 million. The potential gains from other sectors are presented in Table J-9 for the for-profit two-year sector and Table J-10 for the for-profit less-than-two-year sector.

Table J-9: Effect of Proposed Regulation on Private For-Profit 2-Year Institutions that Pass Tests

Private For-Profit 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	4,000	3,000	2,000
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	70.9	45.0	38.3
Expenses from Other Sectors ($ mns)	31.7	20.1	17.1

Table J-10: Effect of Proposed Regulation on Private For-Profit Less-than-2-Year Institutions that Pass Tests

Private For-Profit Less than 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	2,000	1,000	1,000
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	27.9	17.7	15.3
Expenses from Other Sectors ($ mns)	12.8	8.1	7.0

Table J-11: Effects Retained in Sector from Ineligible Programs

Public Institutions			
	Scenario 1	Scenario 2	Scenario 3
Students who Complete Existing Program	900	1,000	1,500
Students who Switch Programs at same Institution	600	900	700
Students who Transfer In-Sector	600	400	300
Core Revenues Associated with Completers ($mns)	10	12	16
Core Revenues Associated with Program Switchers ($mns)	6.8	10.1	8.3
Core Revenues of Transfers within Sector ($mns)	6.8	4.2	3.5
Expenses Associated with Students who Complete ($mns)	3.8	4.4	6.3
Expenses Associated with Students who Switch Programs ($mns)	2.6	3.9	3.2
Expenses Transferred Within Sector ($mns)	2.6	1.6	1.4

Private, Nonprofit			
	Scenario 1	Scenario 2	Scenario 3
Students who Complete Existing Program	300	300	500
Students who Switch Programs at same Institution	200	300	200
Students who Transfer In-Sector	200	100	100
Core Revenues Associated with Completers ($mns)	3.5	4.0	5.8
Core Revenues Associated with Program Switchers ($mns)	2.2	3.3	2.7
Core Revenues of Transfers within Sector ($mns)	2.4	1.5	1.2
Expenses Associated with Students who Complete ($mns)	1.5	1.5	2.0
Expenses Associated with Students who Switch Programs ($mns)	1.1	1.3	1.1
Expenses Transferred Within Sector ($mns)	0.9	0.7	0.5

Private For-Profit 4-Year			
	Scenario 1	Scenario 2	Scenario 3
Students who Complete Existing Program	46,800	54,600	78,000
Students who Switch Programs at same Institution	33,000	48,900	39,700
Students who Transfer In-Sector	46,100	29,100	24,900
Core Revenues Associated with Completers ($mns)	694.1	809.0	1156.0
Core Revenues Associated with Program Switchers ($mns)	485.8	719.7	584.7
Core Revenues of Transfers within Sector ($mns)	682.5	431.9	368.7
Expenses Associated with Students who Complete ($mns)	241.6	281.6	402.4
Expenses Associated with Students who Switch Programs ($mns)	168.9	250.2	203.3
Expenses Transferred Within Sector ($mns)	237.6	150.4	128.4

Private For-Profit 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students who Complete Existing Program	33,600	39,100	55,900
Students who Switch Programs at same Institution	23,300	34,400	27,800
Students who Transfer In-Sector	33,400	21,300	18,400
Core Revenues Associated with Completers ($mns)	317.8	370.1	529.0
Core Revenues Associated with Program Switchers ($mns)	220.8	326.2	263.5
Core Revenues of Transfers within Sector ($mns)	316.2	201.2	173.8
Expenses Associated with Students who Complete ($mns)	117.0	74.4	64.3
Expenses Associated with Students who Switch Programs ($mns)	50.1	31.9	27.6
Expenses Transferred Within Sector ($mns)	39.7	42.1	21.1

Private For-Profit Less than 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students who Complete Existing Program	7,500	8,700	12,400
Students who Switch Programs at same Institution	4,600	6,800	5,500
Students who Transfer In-Sector	7,300	4,700	4,000
Core Revenues Associated with Completers ($mns)	53.2	61.6	88.2
Core Revenues Associated with Program Switchers ($mns)	30.6	45.3	36.8
Core Revenues of Transfers within Sector ($mns)	51.8	33.6	28.0
Expenses Associated with Students who Complete ($mns)	18.9	21.9	31.4
Expenses Associated with Students who Switch Programs ($mns)	10.9	16.2	13.1
Expenses Transferred Within Sector ($mns)	18.4	12.0	10.0

Model Specifications:

The Department developed a model to estimate the effects of the gainful employment provision. The model does not attempt to predict what outcome is likely to occur, but distributes the revenue, expense, and enrollment levels from institutional data according to the student outcome scenarios described in Table M. The Department believes these scenarios capture the range of likely outcomes, but welcomes comments on the scenarios presented. Branches of institutions were rolled up to generate repayment rate information by owner. Approximately 33 percent of the for-profit institutions identified as participating in title IV programs and 77 percent of revenues within the sector are controlled by approximately 38 corporate owners. In evaluating the effect of this regulation, the Department associated institutions by corporate owner as the potential effects on programs will vary by type of institution and control. Table K summarizes all title IV institutions by the number of programs they offer.

Table K: Profile of Institutions by Number of Programs Offered

Number of Programs Offered	Number of Institutions	% of Institutions that are For-Profit	Total Revenues ($ mn)	Total Enrollment	% Passing Repayment Rate
Single Program	1,387	68%	3,966.5	317,248	75.5%
Multiple Programs	4,214	24%	430,802.9	15,661,047	76.1%

Source: IPEDS and NSLDS

As the potential response of students and ability of institutions to adapt to the provision may vary by size and range of program offerings, the model used to estimate the effects of the provision allows for the specification of assumptions by sector, scenario, and whether an institution offers multiple programs or concentrates on a single CIP code. The Department used NSLDS data to estimate the repayment rate and combined that with institutional data from IPEDS to identify institutions that would pass or fail the repayment rate test. The NSLDS data is available at the institutional level at this point, but will be applied at the program level under the rule. The use of institutional level data could overstate or understate the number of programs affected by the rule. If the repayment data were at the program level, it may be that only a handful of programs at the institution would be impacted as opposed to all of the regulated programs or that some programs at institutions with passing repayment rates do not pass. This issue would be most problematic with institutions that have an institutional repayment rate right on the edge of the threshold and so it is likely that some programs would fail and some would pass.

The institutions were classified into groups by sector, single CIP status, and repayment rate test performance, resulting in four groups per sector. The anticipated effects on revenues, expenses, and enrollment was generated by applying sector level assumptions about enrollment growth, the likelihood that students would transfer within the sector, the applicability of the provision to the sector, and the anticipated effect of the debt tests on programs. The sector-level assumptions are shown in Table L.

Table L: Sector-Level Assumptions

	Public 4-year or above	Private nonprofit 4-year or above	Private for-profit 4-year or above	Public 2-year	Private nonprofit 2-year	Private for-profit 2-year	Public less-than-2-year	Private nonprofit less-than-2-year	Private for-profit less-than-2-year
% of Transfers Sector Retains	0.50	0.50	0.70	0.50	0.50	0.70	0.50	0.50	0.70
% of Sector Provision Applies to	0.05	0.03	0.99	0.20	0.45	0.99	0.95	0.95	0.99
Annual Enrollment Growth Percentage	0.02	0.02	0.04	0.02	0.02	0.05	0.02	0.04	0.04
Ineligible Debt Test Adjustment %	0.01	0.05	0.48	0.01	0.05	0.41	0.01	0.05	0.10
Restricted Debt Test Adjustment %	0.01	0.05	0.24	0.01	0.05	0.24	0.01	0.05	0.10
% of Total Expenses Saved	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40
% of Salary Expenses Saved	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60

The model also includes assumptions by scenario to capture the effect of student responses to a loss of eligibility. For this NPRM, a standard set of assumptions was used for each scenario to capture the potential for current students to complete the program, and for current and entering students to switch to another program at the same institutions, transfer within the sector, or transfer out of the sector, as seen in Table M. Students who transfer out of the sector were distributed to other sectors according to shares in Table N.

Table M: Transfer Assumptions

	Scenario 1	Scenario 2	Scenario 3
All Sectors			
% of Current Students who Complete			
Institutions with Multiple Programs	30%	35%	50%
Institutions with Single CIP	40%	45%	65%
% of Current Students who Switch Programs			
Institutions with Multiple Programs	20%	30%	25%
Institutions with Single CIP	0%	0%	0%
% of Current Students who Transfer			
Institutions with Multiple Programs	40%	25%	20%
Institutions with Single CIP	50%	35%	25%
% of Current Students who leave Education			
Institutions with Multiple Programs	10%	10%	5%
Institutions with Single CIP	10%	20%	10%
% of New Students who Complete			
Institutions with Multiple Programs	0%	0%	0%
Institutions with Single CIP	0%	0%	0%
% of New Students who Switch Programs			
Institutions with Multiple Programs	40%	50%	25%
Institutions with Single CIP	0%	0%	0%
% of New Students who Transfer			
Institutions with Multiple Programs	55%	40%	70%
Institutions with Single CIP	85%	90%	95%
% of New Students who leave Education			
Institutions with Multiple Programs	5%	10%	5%
Institutions with Single CIP	15%	10%	5%

Table N: Distribution of Students who Transfer Out of Sector when Program Loses Eligibility

From/To Sector	Public 4-year or above	Private nonprofit 4-year or above	Private for-profit 4-year or above	Public 2-year	Private nonprofit 2-year	Private for-profit 2-year	Public less-than-2-year	Private nonprofit less-than-2-year	Private for-profit less-than-2-year
Public 4-year or above	0.00	0.25	0.35	0.25	0.03	0.05	0.03	0.02	0.02

Private nonprofit 4-year or above	0.15	0.00	0.40	0.30	0.03	0.05	0.03	0.02	0.02
Private for-profit 4-year or above	0.25	0.20	0.00	0.30	0.03	0.15	0.04	0.02	0.02
Public 2-year	0.15	0.15	0.20	0.00	0.15	0.15	0.04	0.08	0.08
Private nonprofit 2-year	0.10	0.10	0.15	0.23	0.00	0.25	0.05	0.04	0.08
Private for-profit 2-year	0.10	0.05	0.20	0.30	0.10	0.00	0.05	0.10	0.10
Public less-than-2-year	0.05	0.05	0.15	0.25	0.10	0.25	0.00	0.05	0.10
Private nonprofit less-than-2-year	0.10	0.10	0.15	0.24	0.04	0.25	0.04	0.00	0.08
Private for-profit less-than-2-year	0.10	0.10	0.10	0.15	0.10	0.25	0.10	0.10	0.00

The Department welcomes comments on the assumptions presented in this NPRM. Updated estimates of the provision's effect to reflect changes to the assumptions and specifications of the model will be published in the final regulations.

Paperwork Burden Costs

In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these proposed changes are estimated to increase burden on institutions participating in the title IV student assistance programs by 91,376 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using Bureau of Labor Statistics available at http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $1,892,397. This cost was based on an hourly rate of $20.71 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions.

Table O: Estimated Annual Paperwork Burden by Requirement

Provision	Reg. Section	OMB Control #	Hours	Costs
Report CIP codes for students who enter repayment in prior four FFYs	668.7(a)(3)(viii)	OMB 1845-NEW4	40,666	842,193

Information to calculate debt measure for completers from P3YP	668.7(c)	OMB 1845-NEW4	2,980	61,716
Student notification of potential financial burden	668.7(d)	OMB 1845-NEW4	298	6,172
Enrollment plan and employer documentation for restricted programs	668.7(e)	OMB 1845-NEW4	8,382	173,591
Employer affirmations and debt warning for ineligible institutions outside of the first-year cap	668.7(f)	OMB 1845-NEW4	30,600	633,726
New program research and proposals	668.7(h)	OMB 1845-NEW4	8,450	175,000

Table O relates the estimated burden of each paperwork requirement to the hours and costs estimated in the Paperwork Reduction Act section of this NPRM. The largest burden comes from reporting CIP codes for students who enter repayment in the prior four FFYs, followed by the issuance of debt warnings and submission of employer affirmations by programs ineligible by their performance on the gainful employment tests but able to continue participation because of the initial cap. Employer verifications and enrollment projections for new and additional programs are also required. The following information for the students who completed during the prior three-year period including the student's CIP code, the completion date, the amount of private educational loans and the amount of debt incurred from institutional financing plans to facilitate the calculation of the alternative debt threshold must be submitted. Under 668.7(d), if a program exceeds the debt threshold, the Secretary notifies the institution that it must include a prominent warning in its promotional, enrollment, registration, and other materials describing the program, including those on its Web site, designed and intended to alert prospective and currently enrolled students that they may have difficulty repaying loans obtained for attending that program.

As described in the Paperwork Reduction Act section of the NPRM , in proposed §668.7(e)(2), whenever an institution offers a new or replacement program, it will be required to submit: (1) documentation of the approval of a substantive change by its accrediting agency or an explanation of why the new program does not constitute a substantive change; (2) projected student enrollment for the next five years for each location of the institution that will offer the program; and (3) documentation from employers not affiliated with the institution affirming that the curriculum for the new program aligns with recognized occupations at those employers' businesses. The number, locations, and size of the employers would need to be commensurate with the anticipated size of the program. An estimate of 8,450 hours associated with generating this information over the initial three-year period is based on 650 new or replacement programs.

In addition to the reporting requirements described in this NPRM, institutions are required to submit information annually that would include identifying information about each student who completed a program that prepares a student for gainful employment, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing programs. Institutions would have to disclose on their Web site information about the occupations that their programs prepare students to enter, information from DOL's O-Net data about the job tasks and expected salaries. In addition, the institution would also have to report the costs for tuition and fees, room and board, and other associated institutional costs typically incurred by students enrolling in these programs; graduation rates; placement rates; and median debt rate information about title IV, HEA loans and private loans as provided by the Department to the institution. A description of these requirements and the estimated burden and costs associated with them is provided in the Program Integrity NPRM (75 FR 34806) published in the Federal Register on June 18, 2010 and available at http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf. The estimated hours and costs of those requirements were 105,377 and approximately $2,182,885.

Federal Costs

The proposed regulations are estimated to have a net budget impact ranging between $343.3 million in Scenario 3 to $681.2 million in Scenario 2 in savings over FYs 2011-2015. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. (This calculator will also be used for reestimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these proposed regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: proprietary institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior--for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits--of borrowers in each category.

The gainful employment provision is not expected to affect Federal costs, as students are typically assumed to resume their education at another program in the event the program they are attending loses eligibility to participate in the student loan program or is in a restricted status. However, the scenarios presented in this NPRM anticipate that some students would not pursue education if their program loses eligibility, so we have estimated potential Federal costs under those scenarios. The estimated savings come from Federal loans and Pell Grants not taken by students who do not pursue an education in each scenario. The estimated net impact on the Federal budget between FY 2011 to FY 2015 are savings of $741.3 million in Scenario 1, $799.6 million in Scenario 2, and $404.4 million in Scenario 3. Of these estimated savings, approximately $645.8 million in Scenario 1, $697.6 million in Scenario 2, and $373.3 million in Scenario 3 would be from reductions in Pell Grants.

Accounting Statement

As required by OMB Circular A-4 (available at www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf), in Table P, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

Table P: Accounting Statement: Classification of Estimated Expenditures (in millions) Scenario 1/ Scenario 2/ Scenario 3	
Category	Benefits
	Costs
Revenues associated with students who leave system	$552/ 595/ 297
Cost of paperwork burden	1.3/1.3/1.3
Category	Transfers
Annualized Monetized Transfers	$(181)/(195)/(98.6)
From Whom To Whom?	Federal Government To Student Loan Borrowers
Annualized Monetized Transfers	$619.2
From Whom To Whom?	Ineligible programs to students as potential tuition changes

Alternatives Considered

Throughout the process of developing the proposed regulation, the Department considered several alternatives for defining gainful employment, including graduation and placement rates, a higher repayment rate threshold, an index, alternative debt measures, and default rates. These options and the reasons they were not adopted are discussed below.

Graduation and placement rates. During the negotiated sessions, we suggested the idea of a combined graduation rate and placement rate. The non-Federal negotiators objected to the graduation rate that was suggested as too high and did not recommend an alternative. Further, they raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. In the other package of regulations we are proposing disclosure of program-level graduation and placement rates. Based on the information we have available, using them as a measure of gainful employment would be premature.

Disclosure. A number of institutions recommended that the Department require additional disclosures so that consumers can make better-informed decisions. However, disclosures cannot serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as "preparing students for gainful employment in a recognized occupation" because it disclosed the fact that it had failed to do so.

Default rates. The application of default rates to institutional eligibility is one tool that Congress has used that is at least somewhat related to debt burdens. Under current law, prospective students are not allowed to use their Federal aid at an institution that had a high default rate among its former students. However, a low default rate is not synonymous with a low debt burden: an institution can have a low default rate even if its former students are unemployed and impoverished. While having an income is a necessary condition for making standard payments on a Federal student loan, staying out of default mostly requires borrowers to remain in communication with their lenders. Borrowers who can demonstrate that they are low income need not make substantial payments. As noted earlier, forbearance, deferments for economic hardship and unemployment, and income-contingent and income-based repayment are important consumer protections that help keep former students out of default. Therefore, cohort default rates, alone, are not an adequate standard for assessment whether a program prepares students for gainful employment.

Higher repayment rate. At the negotiated rulemaking sessions, the Department suggested a loan repayment rate of 75 percent of all borrowers in a program, and later suggested a rate of 90 percent for completers. While the precise definition of the rate that is now being proposed is not the same as what was being discussed, the rates originally considered were clearly much higher. The Department modified its expectations for loan repayment in light of further research and community input.

An index. Still other have recommended the creation of an index that would take into consideration an institution's or program's default rate, graduation rate, placement rate, the proportion of low-income students served, and other factors. There has not been a concrete proposal, nor is it clear how such an index would logically measure gainful employment. Furthermore, one should be cautious about assuming that an institution enrolling lower-income students should necessarily have lower expectations for the future employment or earnings of graduates. An index could be a good approach to provide incentives, perhaps as a method of distributing funds in a program. While we find the concept appealing, we are not convinced that it is appropriate for this task.

Additional Information Requested and Areas for Future Study

The Department welcomes comments on the proposed regulation, anticipated effects, and assumptions underlying the estimates presented in this NPRM. In particular, data about debt burdens by program and student responses to changes in program eligibility status would be helpful. Information received will be considered in development of the final regulation.

The Department recognizes that the data that will be generated in the development and implementation of this regulation will allow additional study of the value of programs subject to the rule and the effect of the rule. The Department will consider evaluating the effects on the student population and the labor market, including changes in income, debt, and educational attainment. We welcome comments and suggestions for additional areas for future evaluation.

Initial Regulatory Flexibility Analysis

The proposed regulations would affect institutions that participate in title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define for-profit institutions as “small businesses” if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000,and defines nonprofit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in this sector, the concentration of ownership of institutions by private owners or government systems means that the number of title IV eligible institutions that are small entities. However, the concentration of small entities in the sectors directly affected by this provision and the potential for some of those entities to lose eligibility for title IV aid led to the preparation of this Initial Regulatory Flexibility Analysis.

Description of the reasons that action by the agency is being considered

The Secretary intends to establish by regulation a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the HEA, as amended, to be a reasonable relationship between the loan debt incurred by students in a training program and income from employment after the training. The proposed regulation will clarify, for purposes of establishing a student’s eligibility to receive title IV funds, a program’s eligibility based on providing training that leads to gainful employment in a recognized occupation. Under the notice of proposed rulemaking published by the Secretary on June 18, 2010, institutions that offer programs that lead to gainful employment will submit information to identify the students attending those programs. The Secretary will require institutions that wish to offer new programs to demonstrate a corresponding interest from employers, while those that offer existing programs will have to meet outcome requirements based on the loan repayment rates of former students, and debt thresholds comparing educational debt to the average incomes of students that complete the program. An institution must provide a warning to students and prospective students if an eligible program does not pass all of the gainful employment tests.

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt, up from less than one-half a generation ago. All other things being equal, any former students would be better off leaving college without debt. The less debt, the more they are able to devote to buying a home, saving for retirement or for their children's education, or serving the community. Student loan debt is worth having if it makes it possible to gain the education and training that enhances productivity as a citizen, civic leader, worker or entrepreneur. To the extent that the student loan debt brings little or no benefit to the students (or to society), it is a cost that public policy should attempt to minimize or eliminate. It is in this context that the requirement that a program of study must lead to "gainful employment" can best be understood. The "cost" of excess student debt manifests in three significant ways: payment burdens on the borrower; subsidies from taxpayers; and the negative consequences of default (which falls on the borrower and taxpayers).

The concept of the training leading to gainful employment was intended to ensure that this connection between debt and earnings would not be lost. However, the Department has applied the barest minimum enforcement: when applying to access Federal funds, the institution must check a box that says its programs "prepare students for gainful employment in a recognized occupation."[23] While the Department does audit and review other aspects of program eligibility (such as the length of the program), there is no standard for determining whether a program in fact meets the gainful employment requirement.

As described in the Regulatory Impact Analysis of this NPRM, the trends in graduates' earnings, student loan debt, defaults and repayment underscore the need for the Department to act. The Secretary is proposing a gainful employment standard that would take into consideration repayment rates on Federal student loans, the relationship between total student loan debt and earnings after a postsecondary program, and, in some circumstances, employer endorsements of programs. Chart G summarizes the interaction of the gainful employment tests and the estimated percentage of programs that fall within each category.

[23] The application form is available at http://www.eligcert.ed.gov/ows-doc/eapp.pdf. Most institutions complete an electronic version of the form.

Chart G: Summary of Gainful Employment Tests

Measure		**Debt-to-Income**		
Total number of programs subject to the proposed regulation	Metric 11,433	Using 3YP: - Above 12% of annual earnings **AND** - Above 30% of discretionary income Using P3YP: - Above 8% of annual earnings **AND** - Above 20% of discretionary income	Using 3YP: -Between 8% and not more than 12% of annual earnings **OR** -Between 20% and not more than 30% of discretionary income Using P3YP: Not Applicable	Using 3YP OR P3YP: -8% or less of annual earnings, **OR** 20% or less of discretionary income
Repayment Rate	At least 45%	Eligible <1%	Eligible <1%	Eligible (No Debt Warning) 39%
	At least 35% and less than 45%	Restricted ---	Restricted 3%	Eligible 26%
	Below 35%	Ineligible 5%	Restricted 4%	Eligible 22%

--- No observations in the source data.

Succinct statement of the objectives of, and legal basis for, the proposed regulation

The proposed regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation.

The HEA applies different criteria for determining the eligibility of programs and institutions for title IV funds. For public and nonprofit institutions, degree programs of greater than one year in length are generally eligible for title IV aid regardless of the subject or purpose of the program as long as they meet other requirements. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that "prepare students for gainful employment in a recognized occupation." This difference in eligibility is longstanding and has been retained through many amendments to the HEA. As recently as the HEOA, Congress again adopted the distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions.

Description of and, where feasible, an estimate of the number of small entities to which the proposed regulation will apply

The proposed regulations will apply to programs eligible for title IV funding because they prepare students for gainful employment. At this time, the Department does not have a count of the number of programs offered by institutions. We have estimated that as many as 11,433 programs offered by small entities could be subject to this rule. The proxy used for the number of "programs" is IPEDS Completions data. It counts each instance of a 6-digit CIP code (area of study) by award level. So for example, if an institution awards a certificate in business as well as a bachelor's and a master's, this is counted as 3 separate programs. When aggregating to the 6-digit ID level so that it can be looked at with the repayment data, the number of programs is not unduplicated – it is straight sum of the number of programs for each institution/campus that is represented by the 6-digit OPEID. This may overstate the number of programs subject to the rule, and we welcome comments to help refine this measure, which is less likely to be a factor with small entities than with all programs subject to the rule. As the category of small entities includes some nonprofit institutions regardless of revenues, the wide range of small entities is covered by the rule. This can include institutions with multiple programs, a few of which are covered by the rule, to single-program institutions with well established ties to a local employer base. Many of the programs subject to the regulation are offered by for-profit institutions and public and nonprofit institutions with programs less than two years in length. As demonstrated in Table Q, these sectors have a greater concentration of small entities. Across all sectors, the average total revenue for entities with revenue below $7 million from IPEDS 2007-2008 data is $1,851,281.

Table Q: Institutional Characteristics of Small Entities by Sector

	Number of Institutions with Revenues below $7mn	% of Institutions	% of 12Mo FTE Enrollment	% of Tuition and Fee Revenues
Public 4-Year or Above	4	0.69%	0.02%	0.00%
Private Nonprofit 4 Year	306	21.41%	1.82%	1.00%
Private For-Profit 4-Year	52	24.19%	1.54%	1.09%
Public 2-Year	35	4.07%	0.51%	0.35%
Private Nonprofit 2-Year or Less	174	89.07%	49.99%	44.13%
Private For-Profit 2-Year	402	71.53%	26.29%	20.45%
Public Less than 2-Year	137	91.33%	65.05%	78.13%
Private For-Profit Less than 2-Year	845	89.32%	48.90%	42.87%

Therefore, the Department prepared estimates from the model described in the Regulatory Impact Analysis of this NPRM based exclusively on small entities. The analysis groups institutions by sector, whether they offer one or multiple programs, and by performance on the repayment rate test and then generates total enrollment, revenues, and expenses for the group. Effects are generated according to performance on the repayment test and based on the percentage of programs in that sector likely covered by the rule and other assumptions set out in Table L of the RIA. If a program is considered ineligible based on that first look at the repayment rate, there are five possible outcomes for distributing that student and the associated per-student revenues and expenses. Students could complete the existing program, switch to another program at the same institution, transfer to a program offered by an institution within the same sector, transfer to a program in a different sector, or leave the higher education system. The scenarios described in Table M of the RIA present a range of possible outcomes considered by the Department. Table N presents an estimate of where students transferring out of a sector might continue their education. Applying these assumptions generates a set of effects based on the repayment rates calculated from NSLDS. These amounts are then reduced by applying the percentage in the debt-test adjustment assumptions in Table L to account for performance on the debt measures as seen in the Missouri data. This generates the sector level effects seen in Tables R to R-9. To get the institutional level estimates in Tables S-1 and S-2, the effects were divided by the estimated number of small institutions associated with each group. The Department recognizes that the impact on specific entities may differ greatly from the average institution presented in this analysis, especially if multiple programs at the institution become ineligible. We welcome comments on the applicability of the assumptions to small entities.

The estimates are summarized in Table R, with details by sector presented in Tables R-1 through R-10. Across all sectors, the anticipated tuition and fee revenue removed from the system as students who would have attended programs that lose eligibility elect not to pursue ranges from approximately $17 million to $33 million dollars annually. While the tuition and fee revenue effects are significant, the results of this analysis indicate that opportunities exist for institutions that perform well at preparing students for gainful employment to capture most of the revenue from programs that can no longer offer title IV aid. Across all sectors, the revenues associated with those who remain at institutions that fail the tests to complete programs or switch programs ranges from $129 million to $193 million and transfers from program to program within sectors ranges from approximately $45 million to $82 million.

Table R: Effect of Proposed Regulation Across All Sectors

Effect of Proposed Rule on Impacted Programs, Applying All Tests	Scenario 1	Scenario 2	Scenario 3
Programs by Status			
Fully Eligible	9965	9965	9965
Ineligible	700	700	700
New Programs	*	*	*
Restricted	768	768	768
Total	11,433	11,433	11,433
Affected Students by Status			
Fully Eligible	1,382,203	1,385,203	1,393,203
Ineligible	44,000	43,000	44,000
New Programs	*	*	*
Restricted	37,000	35,000	26,000
Total			
Detailed Impact of Ineligible Category			
Programs Ineligible	700	700	700
Students Completing Program	13,000	15,000	22,000
Students Enrolling in Another Program at the Same Institution	8,000	11,000	9,000
Students Enrolling At Another Institution in the Same Sector	13,000	8,000	7,000

Students Leaving Sector	6,000	4,000	3,000
Students Leaving Postsecondary Education	4,000	5,000	3,000
Core Revenues Leaving Institution ($mn)	81.7	53.6	44.6
Core Revenues Leaving Sector ($mn)	36.4	23.9	19.8
Core Revenues Permanently Lost ($mn)	27.1	33.2	16.6
Expenses Leaving Institution ($mn)	31.3	20.5	17.1
Expenses Leaving Sector ($mn)	14.1	9.2	7.7
Expenses Permanently Lost ($mn)	10.4	12.7	6.3
Changes in Federal Pell grants received by students ($mn)	(15.6)	(18.3)	(9.2)
Changes in Federal loans received by students ($mn)	(0.1)	(0.6)	(0.3)

Detailed Impact of Restricted Category			
Restricted Programs	768	768	768
Students Completing Program	17,000	20,000	28,000
Students Enrolling in Another Program at the Same Institution	8,000	12,000	10,000
Students Enrolling At Another Institution in the Same Sector	16,000	11,000	9,000
Students Leaving Sector	8,000	5,000	4,000
Students Leaving Postsecondary Education	5,000	7,000	3,000
Core Revenues Leaving Institution ($mn)	151	100	81
Core Revenues Leaving Sector ($mn)	86	57	46
Core Revenues Permanently Lost ($mn)	54	68	34
Expenses Leaving Institution ($mn)	62	41	33
Expenses Leaving Sector ($mn)	38	24	20
Expenses Permanently Lost ($mn)	23	28	14
Changes in Federal Pell grants received by students ($mn)	(20.6)	(27.0)	(13.3)
Changes in Federal loans received by students ($mn)	(1.4)	(1.7)	(0.8)

Table R-1: Effect of Proposed Rule on Public Institutions that Fail Tests

All Small Public Institutions			
	Scenario 1	**Scenario 2**	**Scenario 3**
Students Leaving System	*	*	*
Students Leaving Sector	*	*	*
Core Revenues Leaving System	17,000	20,000	10,000
Core Revenues Leaving Sector	35,000	23,000	18,000
Expenses Leaving System	10,000	11,000	6,000
Expenses Leaving Sector	21,000	13,000	11,000

***=Rounds to less than 100 students**

Table R-2: Effect of Proposed Rule on Public Institutions that Pass Tests

All Small Public Institutions			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	2,000	2,000	2,000
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	15.6	10.1	10.5
Expenses from Other Sectors ($ mns)	27.0	17.6	18.3

Table R-3: Effect of Proposed Rule on Private Nonprofit Institutions that Fail Tests

All Small Private, Nonprofit Institutions			
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	*	*	*
Students Leaving Sector	200	150	150
Core Revenues Leaving System	1,191,000	1,281,000	640,000
Core Revenues Leaving Sector	2,470,000	1,569,000	1,296,000
Expenses Leaving System	564,000	602,000	301,000
Expenses Leaving Sector	1,166,000	740,000	611,000

*=Rounds to less than 100 students

Table R-4: Effect of Proposed Rule on Private Nonprofit Institutions that Pass Tests

All Small Private, Nonprofit Institutions			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	1,000	1,000	1,000
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	43.0	28.0	23.5
Expenses from Other Sectors ($ mns)	54.4	35.4	29.7

Table R-5: Effect of Proposed Rule on Private For-Profit 4-Year Institutions that Fail Tests

Private For-Profit 4-Year

	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	300	300	200
Students Leaving Sector	200	150	150
Core Revenues Leaving System ($ mns)	3.2	4.2	2.1
Core Revenues Leaving Sector ($ mns)	4.3	2.8	2.3
Expenses Leaving System ($ mns)	1.3	1.7	0.8
Expenses Leaving Sector ($ mns)	1.7	1.1	0.9

Table R-6: Effect of Proposed Rule on Private For-Profit 4-Year Institutions that Pass Tests

	Private For-Profit 4-Year		
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	900	600	500
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	16.8	10.9	9.2
Expenses from Other Sectors ($ mns)	7.8	5.1	4.3

Table R-7: Effect of Proposed Rule on Private For-Profit 2-Year Institutions that Fail Tests

	Private For-Profit 2-Year		
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	2,900	3,300	1,700
Students Leaving Sector	3,700	2,400	2,000
Core Revenues Leaving System ($ mns)	20.2	23.8	11.9
Core Revenues Leaving Sector ($ mns)	26.2	17.1	14.4
Expenses Leaving System ($ mns)	7.6	8.9	4.5
Expenses Leaving Sector ($ mns)	9.9	6.4	5.4

Table R-8: Effect of Proposed Rule on Private For-Profit 2-Year Institutions that Pass Tests

Private For-Profit 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	500	300	300
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	6.9	4.5	3.7
Expenses from Other Sectors ($ mns)	4.0	2.6	2.2

Table R-9: Effect of Proposed Rule on Private For-Profit Less-than 2-Year Institutions that Fail Tests

Private For-Profit Less than 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	1,200	1,500	700
Students Leaving Sector	1,600	1,000	900
Core Revenues Leaving System ($ mns)	6.0	8.2	4.1
Core Revenues Leaving Sector ($ mns)	8.1	5.4	4.4
Expenses Leaving System ($ mns)	2.3	3.1	1.6
Expenses Leaving Sector ($ mns)	3.1	2.1	1.7

Table R-10: Effect of Proposed Rule on Private For-Profit Less-than-2-Year Institutions that Pass Tests

Private For-Profit Less than 2-Year			
	Scenario 1	Scenario 2	Scenario 3
Students Gained from Other Sectors	400	300	200
Tuition and Fee Revenues Gained from Other Sectors ($ mns)	6.1	3.9	3.3
Expenses from Other Sectors ($ mns)	3.0	1.9	1.6

The estimates in Tables R through R10 present the effects for entities within a given sector. At this point, the Department does not have the program level data or debt to income data for all institutions to specify which programs would fall into the ineligible, restricted, and unrestricted groups. Based on the repayment rate and debt to income data we do have available, we expect that small entities falling in the ineligible group are likely to come from the for-profit sectors. Table

S-1 presents the estimated effects for an average ineligible institution in these sectors while Table S-2 presents the effects for an average small entity in a restricted status.

Table S-1: Per-Institution Effect of Proposed Rule on Small Private For-Profit Institutions that Fail Tests

Private For-Profit 4-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	25	32	16
Students Leaving Sector	47	31	32
Core Revenues Leaving System	475,000	547,300	784,800
Core Revenues Leaving Sector	372,900	483,200	241,600
Expenses Leaving System	149,300	191,300	95,600
Expenses Leaving Sector	196,900	130,200	134,200

Private For-Profit 2-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	25	28	14
Students Leaving Sector	45	29	31
Core Revenues Leaving System	224,700	265,300	132,600
Core Revenues Leaving Sector	291,600	190,000	198,400
Expenses Leaving System	84,800	99,500	49,700
Expenses Leaving Sector	109,900	71,500	74,700

Private For-Profit less than 2-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	27	34	17
Students Leaving Sector	51	33	35
Core Revenues Leaving System	175,500	241,700	120,900
Core Revenues Leaving Sector	236,600	158,800	163,000
Expenses Leaving System	67,000	91,100	45,600
Expenses Leaving Sector	89,900	60,200	61,800

Table S-2: Per-Institution Effect of Proposed Rule on Small Private For-Profit Institutions that are in Restricted Status

Private For-Profit 4-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	22	27	14
Students Leaving Sector	40	27	27
Core Revenues Leaving System	376,200	491,800	245,900
Core Revenues Leaving Sector	499,200	331,400	341,100
Expenses Leaving System	150,400	194,900	97,500
Expenses Leaving Sector	199,100	131,900	135,800

Private For-Profit 2-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	23	29	15
Students Leaving Sector	44	29	30
Core Revenues Leaving System	270,000	353,900	176,900
Core Revenues Leaving Sector	360,800	240,700	249,300
Expenses Leaving System	100,900	131,000	65,500
Expenses Leaving Sector	134,500	89,500	92,800

Private For-Profit less than 2-Year	Scenario 1	Scenario 2	Scenario 3
Students Leaving System	20	28	14
Students Leaving Sector	40	27	27
Core Revenues Leaving System	184,300	276,100	138,100
Core Revenues Leaving Sector	255,100	174,400	178,100
Expenses Leaving System		104,900	52,500

	70,400		
Expenses Leaving Sector	97,300	66,500	67,900

One issue not specifically addressed in the proposed regulation is the treatment of small entities under the debt measures. To develop the data necessary to calculate the debt measures, the Department will be entering into a data matching agreement with another Federal agency that has income data. The data matching agreement will not permit us to be able to identify individual program completer's income. Therefore, we will need to assure that data for particular individuals will not be identifiable. To ensure individual data are not identifiable, we will need to suppress small cell sizes based on the requirements of the other Federal agency. We anticipate for small entities we will need to roll up data first from 6 to 4 digit CIP codes, then from 4 to 2 digit CIP code families, then to the entire institution. If this process still does not result in sufficient observations to ensure that an individual's personally identifiable is not disclosed, we will aggregate years of data. Ultimately, if there are insufficient observations, we will not be able to assess an institution's performance against the debt measures.

The Department welcomes comments on the assumptions used in developing these estimates and the anticipated effects of the provision on small entities. The data and methods underlying these estimates will be available at http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html. Information received will be considered in development of the final regulation.

Description of the projected reporting, recordkeeping and other compliance requirements of the proposed regulation, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

Table T relates the estimated burden of each paperwork requirement to the hours and costs estimated in the Paperwork Reduction Act section of this NPRM. This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these proposed changes are estimated to increase burden on small institutions participating in the title IV student assistance programs by 43,612 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using Bureau of Labor Statistics available at http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $903,212. This cost was based on an hourly rate of $20.71 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions.

Table T: Estimated Paperwork Burden for Small Entities

Provision	Reg. Section	OMB Control #	Hours	Costs	Hours Per Inst.	Cost per Inst.
Report CIP codes for students who enter repayment in prior four FFYs	668.7(a)(3)(viii)	OMB 1845-NEW4	25,620	530,582	2.2	46.4
Information to calculate debt measure for completers from P3YP	668.7(c)	OMB 1845-NEW4	1,877	38,881	0.2	3.4
Student notification of potential financial burden	668.7(d)	OMB 1845-NEW4	188	3,888	0.3	5.2
Enrollment plan and employer documentation for restricted programs	668.7(e)	OMB 1845-NEW4	5,281	109,362	7.1	146.2
Employer affirmations and debt warning for ineligible institutions outside of the first-year cap	668.7(f)	OMB 1845-NEW4	5,324	110,250	7.7	157.5
New program research and proposals	668.7(h)	OMB 1845-NEW4	5323.5	110249.7	8.2	169.6

The largest burden comes from reporting CIP codes for all students entering repayment in the prior four FFYs. Additional burden comes from reporting the following information for the students who completed during the prior three-year period including the student's CIP code, the completion date, the amount of private educational loans, and the amount of debt incurred from institutional financing plans to facilitate the calculation of the alternative debt threshold. Under §668.7(d), if a program exceeds the debt threshold, the Secretary notifies the institution that it must include a prominent warning in its promotional, enrollment, registration, and other materials describing the program, including those on its Web site, designed and intended to alert prospective and currently enrolled students that they may have difficulty repaying loans obtained for attending that program.

As described in the Paperwork Reduction Act section of the NPRM, in proposed §668.7(e)(2), whenever an institution offers a new program, it will be required to submit: (1) documentation of the approval of a substantive change by its accrediting agency or an explanation of why the new program does not constitute a substantive change, (2) projected student enrollment for the next five years for each location of the institution that will offer the program, and (3) documentation from employers not affiliated with the institution affirming that the curriculum for the new program aligns with recognized occupations at those employers' businesses. The number, locations, and size of the employers would need to be commensurate with the anticipated size of the program.

In addition to the reporting requirements described in this NPRM, institutions are required to submit information annually that would include identifying information about each student who completed a program that prepares a student for gainful employment, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing programs. Institutions would have to disclose on their Web site information about the occupations that its programs prepare students to enter, information from DOL's O-Net data about the job tasks and expected salaries. In addition, the institution would also have to report the costs for tuition and fees, room and board, and other associated institutional costs typically incurred by students enrolling in these programs; graduation rates; placement rates; and median debt rate information about title IV, HEA loans and private loan as provided by the Department to the institution. A description of these requirements and the estimated burden and costs associated with them is provided in the Program Integrity NPRM published in the Federal Register on Federal Register on June 18, 2010 and available at http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf. The estimated hours and costs of those requirements were 82,637 and approximately $1,711,818.

Identification, to the extent practicable, of all relevant Federal regulations that may duplicate, overlap or conflict with the proposed regulation

The proposed regulation is unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations, institutions are required to disclose data in a number of areas related to the proposed regulation. Among the information that institutions must disclose is price information including a "net price" calculator and a pricing summary page.

Alternatives Considered

As described above, the Department evaluated the proposed regulation for its effect on different types of institutions, including the small entities that comprise approximately 40% of title IV eligible institutions subject to this regulation. As discussed in the RIA, several alternatives were considered, including the use of graduation and placement rates, disclosure alone, an index of factors, default rates, and higher thresholds for the repayment rate. Default rates are not used because a low default rate is not synonymous with a low debt burden. As noted earlier, forbearance, deferments for economic hardship and unemployment, and income-contingent and income-based repayment are important consumer protections that help keep former students out of default. Therefore, cohort default rates, alone, are not an adequate standard for assessment whether a program prepares students for gainful employment. Disclosure alone cannot serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as "preparing students for gainful employment in a recognized occupation" because it disclosed the fact that it had failed to do so. For graduation and placement rates, non-Federal negotiators raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. In the other package of regulations we are proposing disclosure of program-level graduation and placement rates. Based on the information we have available, using them as a measure of gainful employment would be premature. No specific proposal was considered for an index, nor is it clear how such an index would logically measure gainful employment. Furthermore, one should be cautious about assuming that an institution enrolling lower-income students should necessarily have lower expectations for the future employment or earnings of graduates. An index could be a good approach to provide incentives, perhaps as a method of distributing funds in a program. While we find the concept appealing, we are not convinced that it is appropriate for this task.

As the analysis and comments from non-Federal negotiators shaped the proposal, alternatives were developed that reduced the proposal's negative effects. These alternatives include a delayed effective date for the gainful employment standard, an ability of institutions to request that a program's repayment rate be evaluated for those three years further along in their careers, a cap limiting the number of programs that could lose eligibility in the first year after the regulation takes effect to the lowest-performing programs producing no more than five percent of completers during the prior award year, increased debt-to-income limits, and a decreased payment rate threshold. These alternatives are not specifically targeted at small entities, but the delayed effective date and initial cap on the regulation's effect will provide time for small entities to adapt to the regulation. The Department welcomes comments from small entities on the alternatives presented and requests data to support analysis of the rule and proposed alternatives for the effect on small entities. Information received will be considered in development of the final regulation.

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