

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(4) *Anchorage No. 3B, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	Longitude
39°14'32.48" N	76°33'11.31" W
39°14'46.23" N	76°33'25.83" W
39°14'57.51" N	76°33'08.14" W
39°14'43.76" N	76°32'53.63" W

These coordinates are based on NAD 83.

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(5) *Anchorage No. 3C, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	Longitude
39°14'46.23" N	76°33'25.83" W
39°14'50.06" N	76°33'29.86" W
39°14'59.42" N	76°33'15.17" W
39°14'55.60" N	76°33'11.14" W

These coordinates are based on NAD 83.

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(6) *Anchorage No. 4, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	Longitude
39°13'52.92" N	76°32'29.60" W
39°14'04.38" N	76°32'41.69" W
39°14'09.35" N	76°32'39.89" W
39°14'17.96" N	76°32'26.44" W
39°14'05.32" N	76°32'13.09" W
39°14'00.05" N	76°32'17.77" W

These coordinates are based on NAD 83.

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(7) *Anchorage No. 5, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	Longitude
39°14'07.89" N	76°32'58.23" W
39°13'34.82" N	76°32'23.66" W
39°13'22.25" N	76°32'28.90" W

Latitude	Longitude
39°13'21.20" N	76°33'11.94" W

These coordinates are based on NAD 83.

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(8) *Anchorage No. 6, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	Longitude
39°13'42.98" N	76°32'19.11" W
39°13'20.65" N	76°31'55.58" W
39°13'34.00" N	76°31'33.50" W
39°14'01.95" N	76°32'02.65" W
39°13'51.01" N	76°32'18.71" W

These coordinates are based on NAD 83.

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(9) *Anchorage No. 7, Dead ship anchorage.* (i) All waters of Curtis Bay, bounded by a line connecting the following points:

Latitude	Longitude
39°13'00.40" N	76°34'10.40" W
39°13'13.40" N	76°34'10.81" W
39°13'13.96" N	76°34'05.02" W
39°13'14.83" N	76°33'29.80" W
39°13'00.40" N	76°33'29.90" W

These coordinates are based on NAD 83.

(ii) The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. Permission from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

(b) *Definitions.* As used in this section—

*Certain dangerous cargo* means *certain dangerous cargo* as defined in § 160.202 of this chapter.

*COTP* means Captain of the Port Sector Maryland—National Capital Region.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and all vessels carrying or handling certain dangerous cargo while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor or the Patapsco River outside of the

anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become an obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains permission from the Captain of the Port.

(4) Upon notification by the Captain of the Port to shift its position, a vessel at anchor must get underway and shall move to its new designated position within two hours after notification.

(5) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(6) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this chapter.

(7) No vessel shall anchor in a “dead ship” status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

Dated: August 1, 2018.

**Meredith L. Austin,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2018–17469 Filed 8–13–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 600 and 668

[Docket ID ED–2018–OPE–0042]

RIN 1840–AD31

#### Program Integrity: Gainful Employment

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to rescind the gainful employment (GE) regulations, which added to the Student Assistance General Provisions

requirements for programs that prepare students for gainful employment in a recognized occupation. The Department plans to update the College Scorecard, or a similar web-based tool, to provide program-level outcomes for all higher education programs, at all institutions that participate in the programs authorized by title IV of the Higher Education Act of 1965, which would improve transparency and inform student enrollment decisions through a market-based accountability system.

**DATES:** We must receive your comments on or before September 13, 2018.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- **Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- **Postal Mail, Commercial Delivery, or Hand Delivery:** The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Ashley Higgins, U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 294-20, Washington, DC 20202.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW, Room 290-42, Washington, DC 20024. Telephone: (202) 453-7249. Email: [scott.filter@ed.gov](mailto:scott.filter@ed.gov).

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

**SUPPLEMENTARY INFORMATION:**

*Executive Summary:*

Purpose of This Regulatory Action:

As discussed in more detail later in this notice of proposed rulemaking

(NPRM), the proposed regulations would rescind the GE regulations and remove them from subpart Q of the Student Assistance and General Provisions in 34 CFR part 668.

We base our proposal to rescind the GE regulations on a number of findings, including research results that undermine the validity of using the regulations' debt-to-earnings (D/E) rates measure to determine continuing eligibility for participation in the programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These findings were not accurately interpreted during the development of the 2014 GE regulations, were published subsequent to the promulgation of those regulations, or were presented by committee members at negotiated rulemaking sessions. The Department has also determined that the disclosure requirements included in the GE regulations are more burdensome than originally anticipated and that a troubling degree of inconsistency and potential error exists in job placement rates reported by GE programs that could mislead students in making an enrollment decision. Additionally, the Department has received consistent feedback from the community that the GE regulations were more burdensome than previously anticipated through the disclosure and reporting requirements that were promulgated in 2014.

Finally, the Department has determined that in order to adequately inform student enrollment choices and create a framework that enables students, parents, and the public to hold institutions of higher education accountable, program-level outcomes data should be made available for all title IV-participating programs. The Department plans to publish these data using the College Scorecard, or its successor site, so that students and parents can compare the institutions and programs available to them and make informed enrollment and borrowing choices. However, the College Scorecard is not the subject of this regulation. For a more detailed discussion, see *Significant Proposed Regulations*.

Section 410 of the General Education Provisions Act (GEPA) authorizes the Secretary to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department (20 U.S.C. 1221e-3). Additionally, section 414 of the Department of Education Organization Act authorizes the Secretary to prescribe such rules and regulations as the

Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department (20 U.S.C. 3474).

**Summary of the Major Provisions of This Regulatory Action:** As discussed under "Purpose of This Regulatory Action," the proposed regulations would rescind the GE regulations. Please refer to the *Summary of Proposed Changes* section of this NPRM for more details on the major provisions contained in this NPRM.

**Costs and Benefits:** As further detailed in the *Regulatory Impact Analysis*, the benefits of the proposed regulations would include a reduction in burden for some institutions, costs in the form of transfers as a result of more students being able to enroll in a postsecondary program, and more educational program choices for students where they can use title IV aid.

**Invitation to Comment:** We invite you to submit comments regarding these proposed regulations.

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 provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this NPRM, as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing [Regulations.gov](http://Regulations.gov). You may also inspect the comments in person at 400 Maryland Ave. SW, Washington, DC, between 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the*

*Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Background

The Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations (CFR). The regulations in 34 CFR parts 600 and 668 pertain to institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and participation in title IV, HEA programs. We propose these amendments to remove the GE regulations, including the D/E rates calculations and the sanctions and alternate earnings appeals related to those calculations for GE programs, as well as the reporting, disclosure, and certification requirements applicable to GE programs.

The Department seeks public comment on whether the Department should amend 34 CFR 668.14 to require, as a condition of the Program Participation Agreement, that institutions disclose, on the program pages of their websites and in their college catalogues that, if applicable, the program meets the requirements for licensure in the State in which the institution is located and whether it meets the requirements in any other States for which the institution has determined whether the program enables graduates to become licensed or work in their field; net-price, completion rates, withdrawal rates, program size, and/or any other items currently required under the GE disclosure regulations. The Department also asks whether it should require institutions to provide links from each of its program pages to *College Scorecard*, its successor site, or any other tools managed by the Department.

### Public Participation

On June 16, 2017, we published a notice in the **Federal Register** (82 FR 27640) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations to revise the GE regulations published by the Department on October 31, 2014 (79 FR 64889). We also announced two public hearings at which interested parties could comment on the topics suggested by the Department and propose additional topics for

consideration for action by the negotiated rulemaking committee. The hearings were held on—

July 10, 2017, in Washington, DC; and July 12, 2017, in Dallas, TX.

Transcripts from the public hearings are available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/index.html>.

We also invited parties unable to attend a public hearing to submit written comments on the proposed topics and to submit other topics for consideration. Written comments submitted in response to the June 16, 2017, **Federal Register** notice may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), within docket ID ED-2017-OPE-0076. Instructions for finding comments are also available on the site under “Help.”

### Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary in most cases must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: [www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html).

On August 30, 2017, the Department published a notice in the **Federal Register** (82 FR 41197) announcing its intention to establish two negotiated rulemaking committees and a subcommittee to prepare proposed regulations governing the Federal Student Aid programs authorized under title IV of the HEA. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Two-year public institutions; four-year public institutions; accrediting agencies; business and industry; chief financial

officers (CFOs) and business officers; consumer advocacy organizations; financial aid administrators; general counsels/attorneys and compliance officers; legal assistance organizations that represent students; minority-serving institutions; private, proprietary institutions with an enrollment of 450 students or less; private, proprietary institutions with an enrollment of 451 students or more; private, non-profit institutions; State higher education executive officers; State attorneys general and other appropriate State officials; students and former students; and groups representing U.S. military service members or veteran Federal student loan borrowers. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Laura Metune, California Community Colleges, and Matthew Moore (alternate), Sinclair Community College, representing two-year public institutions.

Pamela Fowler, University of Michigan-Ann Arbor, and Chad Muntz (alternate), The University System of Maryland, representing four-year public institutions.

Anthony Mirando, National Accrediting Commission of Career Arts and Sciences, and Mark McKenzie (alternate), Accreditation Commission for Acupuncture and Oriental Medicine, representing accrediting agencies.

Roberts Jones, Education & Workforce Policy, and Jordan Matsudaira (alternate), Urban Institute and Cornell University, representing business and industry.

Sandy Sarge, SARGE Advisors, and David Silverman (alternate), The American Musical and Dramatic Academy, representing CFOs and business officers.

Whitney Barkley-Denney, Center for Responsible Lending, and Jennifer Diamond (alternate), Maryland Consumer Rights Coalition, representing consumer advocacy organizations.

Kelly Morrissey, Mount Wachusett Community College, and Andrew Hammontree (alternate), Francis Tuttle Technology Center, representing financial aid administrators.

Jennifer Blum, Laureate Education, Inc., and Stephen Chema (alternate), Ritzert & Layton, PC, representing general counsels/attorneys and compliance officers.

Johnson M. Tyler, Brooklyn Legal Services, and Kirsten Keefe (alternate), Empire Justice Center, representing legal

assistance organizations that represent students.

Thelma L. Ross, Prince George's Community College, and John K. Pierre (alternate), Southern University Law Center, representing minority-serving institutions.

Jessica Barry, School of Advertising Art, and Neal Heller (alternate), Hollywood Institute of Beauty Careers, representing private, proprietary institutions with an enrollment of 450 students or less.

Jeff Arthur, ECPI University, and Marc Jerome (alternate), Monroe College, representing private, proprietary institutions with an enrollment of 451 students or more.

C. Todd Jones, Association of Independent Colleges & Universities in Ohio, and Tim Powers (alternate), National Association of Independent Colleges and Universities, representing private, non-profit institutions.

Christina Whitfield, State Higher Education Executive Officers Association, representing State higher education executive officers.

Christopher Madaio, Office of the Attorney General of Maryland, and Ryan Fisher (alternate), Office of the Attorney General of Texas, representing State attorneys general and other appropriate State officials.

Christopher Gannon, United States Student Association, and Ahmad Shawwal (alternate), University of Virginia, representing students and former students.

Daniel Elkins, Enlisted Association of the National Guard of the United States, and John Kamin (alternate), The American Legion's National Veterans Employment & Education Division, representing groups representing U.S. military service members or veteran Federal student loan borrowers.

Gregory Martin, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on December 4–7, 2017, February 5–8, 2018, and March 12–15, 2018.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the

Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of eight issues related to student financial aid. These eight issues were: Scope and purpose, gainful employment metrics (later renamed debt-to-earnings metrics), debt calculations, sanctions, alternate earnings appeals, program disclosures, reporting requirements, and certification requirements. Under the protocols, a final consensus would have to include consensus on all eight issues.

During committee meetings, the committee reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on March 15, 2018, the committee did not reach consensus on the Department's proposed regulations. For this reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking and the organizations that they represent, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/gainfulemployment.html>.

#### Data Correction

During the third meeting of the negotiated rulemaking committee, the Department provided negotiators with a number of scatterplots in response to a request from several negotiators to compare student loan repayment rates between Pell Grant recipients and students who did not receive a Pell Grant at individual institutions. The Department incorrectly concluded that the repayment rate between Pell Grant recipients and Pell Grant non-recipients at all institutions was 1:1. While the repayment rates of Pell Grant recipients and non-recipients are correlated, there is not a 1:1 relationship between them. The Department's analysis shows the difference between the repayment rates of Pell Grant recipients and non-recipients is about 20 percentage points on average. At institutions with low repayment rates among all students, the gap between Pell Grant recipients and non-recipients is relatively higher. The gap shrinks among institutions with very high overall repayment rates; however, many of these institutions serve small proportions of Pell Grant recipients and are highly selective

institutions (based on mean SAT math scores). The negotiators have been informed of the earlier error and the updated scatterplots are available on the Department's GE negotiated rulemaking website.

#### Summary of Proposed Changes

The proposed regulations would rescind the GE regulations in subpart Q of 34 CFR part 668, which establish the eligibility requirements for a program that prepares students for gainful employment in a recognized occupation, including the D/E rates measures, alternate earnings appeals, reporting and disclosure requirements, and certifications.

#### Significant Proposed Regulations

We group major issues according to subject. 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.

#### Origin and Purpose of the Gainful Employment Regulations

The definition of "gainful employment" established in the 2014 regulations created a new metric that established bright-line standards for a GE program's continuing participation in title IV, HEA programs.

The GE regulations establish a methodology for calculating mean D/E rates for programs that prepare students for gainful employment in a recognized occupation. The GE regulations also establish a range of acceptable D/E rates programs must maintain in order to retain eligibility to participate in the title IV, HEA programs. GE programs include non-degree programs at public and non-profit institutions and all programs (including undergraduate, graduate, and professional degree programs) at proprietary institutions.

Under the regulations, GE programs must have a graduate debt-to-discretionary earnings ratio of less than or equal to 20 percent or debt-to-annual earnings ratio of less than or equal to 8 percent to receive an overall passing rate. Programs with both a discretionary earnings rate greater than 30 percent (or a negative or zero denominator) and an annual earnings rate greater than 12 percent (or a zero denominator) receive an overall failing rate. Programs that fail the D/E rates measure for two out of three consecutive years lose title IV eligibility. Non-passing programs that have debt-to-discretionary income ratios greater than 20 percent and less than or equal to 30 percent or debt-to-annual income ratios greater than 8 percent and

less than or equal to 12 percent are considered to be in the “zone.” Programs with a combination of zone or failing overall rates for four consecutive years lose title IV eligibility.

The first D/E rates were published in 2017, and the Department’s analysis of those rates raises concern about the validity of the metric and how it affects the opportunities for Americans to prepare for high-demand occupations in the healthcare, hospitality, and personal services industries, among others. At a time when 6 million jobs remain unfilled due to the lack of qualified workers,<sup>1</sup> the Department is re-evaluating the wisdom of a regulatory regime that creates additional burden for, and restricts, programs designed to increase opportunities for workforce readiness. We further believe the GE regulations reinforce an inaccurate and outdated belief that career and vocational programs are less valuable to students and less valued by society, and that these programs should be held to a higher degree of accountability than traditional two- and four-year degree programs that may have less market value.

### Research Findings That Challenge the Accuracy and Validity of the D/E Rates Measure

In promulgating the 2011 and 2014 regulations, the Department cited as justification for the 8 percent D/E rates threshold a research paper published in 2006 by Baum and Schwartz that described the 8 percent threshold as a commonly utilized mortgage eligibility standard.<sup>2</sup> However, the Baum & Schwartz paper makes clear that the 8 percent mortgage eligibility standard “has no particular merit or justification” when proposed as a benchmark for manageable student loan debt.<sup>3</sup> The Department previously dismissed this statement by pointing to Baum and Schwartz’s acknowledging the “widespread acceptance” of the 8 percent standard and concluding that it is “not unreasonable.” 79 FR 64889, 64919. Upon further review, we believe that the recognition by Baum and Schwartz that the 8 percent mortgage eligibility standard “has no particular merit or justification” when proposed as a benchmark for manageable student

loan debt is more significant than the Department previously acknowledged and raises questions about the reasonableness of the 8 percent threshold as a critical, high-stakes test of purported program performance.

Research published subsequent to the promulgation of the GE regulations adds to the Department’s concern about the validity of using D/E rates as to determine whether or not a program should be allowed to continue to participate in title IV programs. As noted in the 2014 proposed rule, the Department believed that an improvement of quality would be reflected in the program’s D/E rates (79 FR 16444). However, the highest quality programs could fail the D/E rates measure simply because it costs more to deliver the highest quality program and as a result the debt level is higher.

Importantly, the HEA does not limit title IV aid to those students who attend the lowest cost institution or program. On the contrary, because the primary purpose of the title IV, HEA programs is to ensure that low-income students have the same opportunities and choices in pursuing higher education as their higher-income peers, title IV aid is awarded based on the institution’s actual cost of attendance, rather than a fixed tuition rate that limits low-income students to the lowest cost institutions.<sup>4</sup>

Other research findings suggest that D/E rates-based eligibility creates unnecessary barriers for institutions or programs that serve larger proportions of women and minority students. Such research indicates that even with a college education, women and minorities, on average, earn less than white men who also have a college degree, and in many cases, less than white men who do not have a college degree.<sup>5</sup>

Disagreement exists as to whether this is due to differences in career choices across subgroups, time out of the workforce for childcare responsibilities, barriers to high-paying fields that disproportionately impact certain groups, or the interest of females or minority students in pursuing careers that pay less but enable them to give back to their communities. Regardless of the cause of pay disparities, the GE regulations could significantly disadvantage institutions or programs

that serve larger proportions of women and minority students and further reduce the educational options available to those students.

It is also important to highlight the importance of place in determining which academic programs are available to students. A student may elect to enroll in a program that costs more simply because a lower-cost program is too far from home or work or does not offer a schedule that aligns with the student’s work or household responsibilities. The average first-time undergraduate student attending a two-year public institution enrolls at an institution within eight miles of his or her home. The distance increases to 18 miles for the average first-time undergraduate student enrolling at a four-year public institution.<sup>6</sup> Accordingly, we believe that while it is important for a student to know that a program could result in higher debt, it is not appropriate to eliminate the option simply because a lower-cost program exists, albeit outside of the student’s reasonable travel distance. In the same way that title IV programs enable traditional students to select the more expensive option simply because of the amenities an institution offers, or its location in the country, they should similarly enable adult learners to select the more expensive program due to its convenience, its more personalized environment, or its better learning facilities. We support providing more information to students and parents that enables them to compare the outcomes achieved by graduates of the programs available to them. However, due to a number of concerns with the calculation and relevance of the debt level included in the rates we do not believe that the D/E rates measure achieves a level of accuracy that it should alone determine whether or not a program can participate in title IV programs.

While the Department denied the impact of these other factors in the 2014 GE regulations, it now recognizes a number of errors included in its prior analysis. For example, in the 2014 final rule (79 FR 64889, 65041–57), the Department stated that changes in economic outlook would not cause a program to fail the D/E rates measure or remain in the zone for four years. This conclusion was based on the finding that the average recession lasted for 11.1 months, which would not be long enough to impact a program’s outcomes

<sup>1</sup> U.S. Department of Labor—Bureau of Labor Statistics. (July 10, 2018). Economic News Release: Job Openings and Labor Turnover Summary. Available at [www.bls.gov/news.release/jolts.nr0.htm](http://www.bls.gov/news.release/jolts.nr0.htm).

<sup>2</sup> Baum, S. & Schwartz, S. *How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt*. College Board, 2008. Available at <https://files.eric.ed.gov/fulltext/ED562688.pdf>.

<sup>3</sup> *Ibid.*

<sup>4</sup> Gladieux, L. *Federal Student Aid Policy: A History and an Assessment*. Financing Postsecondary Education: The Federal Role. October 1995. Available at <https://www2.ed.gov/offices/OPE/PPI/FinPostSecEd/gladieux.html>.

<sup>5</sup> Ma, J., Pender, M. & Welch, M. *Education Pays 2016: The Benefits of Higher Education for Individuals and Society*. CollegeBoard, 2016. Fig. 2.4.

<sup>6</sup> Hillman, N. & Weichman, T. *Education Deserts: The Continued Significance of “Place” in the Twenty-First Century*. American Council on Education, 2016. Available at [www.acenet.edu/news-room/Pages/CPRS-Viewpoints-Education-Deserts.aspx](http://www.acenet.edu/news-room/Pages/CPRS-Viewpoints-Education-Deserts.aspx).

for the number of years required to go from “zone” to failing. However, the Great Recession lasted for well over two years, and was followed by an extended “jobless” recovery, which would have significantly impacted debt and earnings outcomes for a period of time that would have exceeded the zone period, had the GE regulations been in place during that period.<sup>7</sup> The Great Recession had an unusually profound impact on recent college graduates, who were underemployed at an historic rate, meaning that graduates were working in jobs that prior to the Great Recession did not require a college credential.<sup>8</sup> The Department concedes that an extended recession coupled with rampant underemployment, could have a significant impact on a program’s D/E rates for a period of time that would span most or all of the zone period. Underemployment during the Great Recession was not limited to the graduates of GE programs, but included graduates of all types of institutions, including elite private institutions.<sup>9</sup>

The GE regulations were intended to address the problem of programs that are supposed to provide training that prepares students for gainful employment in a recognized occupation, but were leaving students with unaffordable levels of loan debt compared to the average program earnings (79 FR 16426). However, the Department believes there are other tools now available to enable students with lower incomes to manage high levels of debt. While the existence of income-driven repayment plans does

not address the high cost of college—and, in fact, could make it even easier for students to borrow more than they need and institutions to charge high prices—the Department’s plans to increase transparency will help address these issues. Furthermore, the increased availability of these repayment plans with longer repayment timelines is inconsistent with the repayment assumptions reflected in the shorter amortization periods used for the D/E rates calculation in the GE regulations.

In addition, a program’s D/E rates can be negatively affected by the fact that it enrolls a large number of adult students who have higher Federal borrowing limits, thus higher debt levels, and may be more likely than a traditionally aged student to seek part-time work after graduation in order to balance family and work responsibilities. The Department recognizes that it is inappropriate to penalize institutions simply because the students they serve take advantage of the higher borrowing capacity Congress has made available to those borrowers. It is also inappropriate to penalize institutions because students seek part-time work rather than full-time work, or are building their own businesses, which may result in lower earnings early on. Regardless of whether students elect to work part-time or full-time, the cost to the institution of administering the program is the same, and it is the cost of administering the program that determines the cost of tuition and fees. In general, programs that serve large proportions of adult learners may have very different

outcomes from those that serve large proportions of traditionally aged learners, and yet the D/E rates measure fails to take any of these important factors into account.

Most importantly, the first set of D/E rates, published in 2016, revealed that D/E rates, and particularly earnings, vary significantly from one occupation to the next, and across geographic regions within a single occupation. The Department had not predicted such substantial differences in earnings due to geography, which may have been exacerbated by the Great Recession and the speed with which individual States reduced their unemployment rate.

While the Department intended for D/E rates to serve as a mechanism for distinguishing between high- and low-performing programs, data discussed during the third session of the most recent negotiated rulemaking demonstrated that even a small change in student loan interest rates could shift many programs from a “passing” status to “failing,” or vice versa, even if nothing changed about the programs’ content or student outcomes. The Department believes that examples such as that illustrated here should be corrected and our justifications in the 2014 GE regulation did not adequately take these nuances into account sufficiently. Table 1 shows how changes in interest rate would affect outcomes under the D/E rates measure. For example, if the interest rate is seven percent, 831 programs would fail compared to only 716 programs if the interest rate is six percent.

TABLE 1—NUMBER AND PERCENTAGE OF GE 2015 PROGRAMS THAT WOULD PASS, FAIL, OR FALL INTO THE ZONE USING DIFFERENT INTEREST RATES<sup>10</sup>

Interest rate (%)	Number of programs			Percentage of programs		
	Pass	Zone	Fail	Pass	Zone	Fail
3	7,199	998	440	83	12	5
4	7,030	1,085	522	81	13	6
5	6,887	1,135	615	80	13	7
6	6,720	1,201	716	78	14	8
7	6,551	1,255	831	76	15	10
8	6,326	1,353	958	73	16	11

Source: Department analysis of GE 2015 rates.

The Department agrees with a statement made by a negotiator that any metric that could render a program ineligible to participate in title IV, HEA programs simply because the economy

is strong and interest rates rise is faulty. The Department believes that it is during these times of economic growth, when demand for skilled workers is greatest, that it is most critical that

shorter-term career and technical programs are not unduly burdened or eliminated.

In addition, the Department now recognizes that assigning a 10-year amortization period to graduates of

<sup>7</sup> [www.federalreservehistory.org/essays/great\\_recession\\_of\\_200709](http://www.federalreservehistory.org/essays/great_recession_of_200709).

<sup>8</sup> Abel, Jason & Deitz, Richard. Underemployment in the Early Career of College Graduates Following the Great Recession, Working Paper No. 22654, National Bureau of Economic

Research, September 2016. Available at [www.nber.org/papers/w22654](http://www.nber.org/papers/w22654).

<sup>9</sup> [https://money.cnn.com/2011/05/17/news/economy/recession\\_lost\\_generation/index.htm](https://money.cnn.com/2011/05/17/news/economy/recession_lost_generation/index.htm).

<sup>10</sup> The count of programs includes programs that had preliminary rates calculated, but were not

designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

certificate and associate degree programs for the purpose of calculating D/E rates creates an unacceptable and unnecessary double standard since the REPAYE plan regulations promulgated in 2015 provide a 20-year amortization period for these same graduates. The REPAYE plan acknowledges that undergraduate completers may well need to extend payments over a longer amortization period, and makes it clear that extended repayment periods are an acceptable and reasonable way to help students manage their repayment obligations. Therefore, it is not appropriate to use an amortization period of less than 20 years for any undergraduate program D/E rates calculations or of less than 25 years for any graduate program D/E rates calculations.

### Concerns About Disclosures Required Under the GE Regulations

As the Department is proposing to rescind the GE regulations in total, the disclosures required under the current regulations also would be rescinded. Generally, we are concerned that it is not appropriate to require these types of disclosures for only one type of program when such information would be valuable for all programs and institutions that receive title IV, HEA funds. However, we cannot expand the GE regulations to include programs that are not GE programs. In that regard, as indicated above, we are interested in comments on whether the Department should require that all institutions disclose information, such as net price, program size, completion rates, and accreditation and licensing requirements, on their program web pages, or if doing so is overly burdensome for institutions.

The Department has also discovered a variety of challenges and errors associated with the disclosures required under the GE regulations. For example, there is significant variation in methodologies used by institutions to determine and report in-field job placement rates, which could mislead students into choosing a lower performing program that simply appears to be higher performing because a less rigorous methodology was employed to calculate in-field job placement rates.

In some cases, a program is not required to report job placement outcomes because it is not required by its accreditor or State to do so. In other cases, GE programs at public institutions in some States (such as community colleges in Colorado) define an in-field job placement for the purpose of the GE disclosure as any job that pays a wage, regardless of the field

in which the graduate is working. Meanwhile, institutions accredited by the Accrediting Commission of Career Schools and Colleges must consider the alignment between the job and the majority of the educational and training objectives of the program, which can be a difficult standard to meet since educational programs are designed to prepare students broadly for the various jobs that may be available to them, but jobs are frequently more narrowly defined to meet the needs of a specific employer.<sup>11</sup>

The original 2011 GE regulations required NCES to “develop a placement rate methodology and the processes necessary for determining and documenting student employment.”<sup>12</sup> This requirement arose out of negotiator concerns about the complexity and subjectivity of the many job placement definitions used by States, institutional accreditors, programmatic accreditors and institutions themselves to evaluate outcomes. The Department convened a Technical Review Panel (TRP), but in 2013 the TRP reported that not only were job placement determinations “highly subjective” in nature, but that the TRP could not come to consensus on a single, acceptable definition of a job placement that could be used to report this outcome on GE disclosures, nor could it identify a reliable data source to enable institutions to accurately determine and report job placement outcomes.<sup>13</sup> In light of the failure of the TRP to develop a consistent definition of a job placement, and well-known instances of intentional or accidental job placement rate misrepresentations, the Department believes it would be irresponsible to continue requiring institutions to report job placement rates. Instead, the Department believes that program-level earnings data that will be provided by the Secretary through the College Scorecard or its successor is the more accurate and reliable way to report job outcomes in a format that students can use to compare the various institutions and programs they are considering.

The Department also believes that it underestimated the burden associated with distributing the disclosures directly to prospective students. In 2018, the Department announced that it was allowing institutions additional

time to meet the requirement in § 668.412(e) to directly distribute the disclosure template to prospective students, as well as the requirement in § 668.412(d) to include the disclosure template or a link thereto in program promotional materials, pending negotiated rulemaking (82 FR 30975; 83 FR 28177). A negotiator representing financial aid officials confirmed our concerns, stating that large campuses, such as community colleges that serve tens of thousands of students and are in contact with many more prospective students, would not be able to, for example, distribute paper or electronic disclosures to all the prospective students in contact with the institution. Although in decades past, institutions may have included these materials in the packets mailed to a prospective student's home; many institutions no longer mail paper documents, and instead rely on web-based materials and electronic enrollment agreements. The Department notes that § 668.412(e) requires that disclosures be made only to a prospective student before that individual signs an enrollment agreement, completes registration, or makes a financial commitment to the institution and that the institution may provide the disclosure to the student by hand-delivering the disclosure template to the prospective student or sending the disclosure template to the primary email address used by the institution for communicating with the prospective student. However, ED recognizes that even this requirement has an associated burden, especially since institutions are required to retain documentation that each student acknowledges that they have received the disclosure. The Department believes that the best way to provide disclosures to students is through a data tool that is populated with data that comes directly from the Department, and that allows prospective students to compare all institutions through a single portal, ensuring that important consumer information is available to students while minimizing institutional burden.

Finally, more than a few disclosures exclude outcomes because the program had fewer than 10 graduates in the award year covered by the disclosure template. Because the Department does not collect data from the disclosures through a central portal or tool, it has been unable to compare the number of completers reported on the GE disclosures posted by programs with the number reported through other survey tools. Therefore, it is difficult to know if these reports of less than 10 graduates are accurate.

<sup>11</sup> ACCSC Standards of Accreditation, Appendix VII—Guidelines for Employment Classification, 2015, Available at [www.accsc.org/UploadedDocuments/July%202015/Guidelines%20for%20Employment.pdf](http://www.accsc.org/UploadedDocuments/July%202015/Guidelines%20for%20Employment.pdf).

<sup>12</sup> [https://nces.ed.gov/npec/data/Calculating\\_Placement\\_Rates\\_Background\\_Paper.pdf](https://nces.ed.gov/npec/data/Calculating_Placement_Rates_Background_Paper.pdf).

<sup>13</sup> <https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/ipeds-summary91013.pdf>.

### Covered Institutions and Programs

Under its general authority to publish data related to title IV program outcomes, and in light of changes to the National Student Loan Data System related to the 150% subsidized loan rules requiring institutions to report program CIP codes, the Department believes that it is important and necessary to publish program-level student outcomes to inform consumer choice and enable researchers and policy makers to analyze program outcomes. The Department does not believe that GE data can adequately meet this goal or inform consumer choice since only a small proportion of postsecondary programs are required to report program-level outcomes data and, even among GE programs, many programs graduate fewer than 10 students per year and are not required to provide student outcome information on the GE disclosure. In addition, the Department does not believe it is appropriate to attach punitive actions to program-level outcomes published by some programs but not others. In addition, the Department believes that it is more useful to students and parents to publish actual median earnings and debt data rather than to utilize a complicated equation to calculate D/E rates that students and parents may not understand and that cannot be directly compared with the debt and earnings outcomes published by non-GE programs. For all the reasons set forth in this NPRM, the Department believes it would be unwise policy to continue using the D/E rates for reporting or eligibility purposes.

In addition, the GE regulations targeted proprietary institutions, aiming to eliminate poor performers and “bad actors” in the sector. While bad actors do exist in the proprietary sector, the Department believes that there are good and bad actors in all sectors and that the Department, States, and accreditors have distinct roles and responsibilities in holding all bad actors accountable. Prior to 2015, when the Department started collecting program-level data for all completers, the GE regulations provided a unique opportunity for the Department to calculate program-level outcomes. Now that the Department collects program information for all completers, it can easily expand program-level outcomes reporting for all institutions. Therefore, not only does the Department believe that the D/E rates calculation is not an appropriate measure for determining title IV eligibility, the availability of program-level data for all completers makes it possible to provide median earnings and

debt data for all programs, thereby providing a more accurate mechanism for providing useful information to consumers.

Further, the Department has reviewed additional research findings, including those published by the Department in follow-up to the Beginning Postsecondary Survey of 1994, and determined that student demographics and socioeconomic status play a significant role in determining student outcomes.<sup>14</sup> The GE regulations failed to take into account the abundance of research that links student outcomes with a variety of socioeconomic and demographic risk factors, and similarly failed to acknowledge that institutions serving an older student population will likely have higher median debt since Congress has provided higher borrowing limits for older students who are less likely than traditional students to receive financial support from parents.

Students select institutions and college majors for a wide variety of reasons, with cost and future earnings serving as only two data points within a more complex decision-making process. For the reasons cited throughout this document, the Department has reconsidered its position.

Well-publicized incidents of non-profit institutions misrepresenting their selectivity levels, inflating the job placement rates of their law school graduates, and even awarding credit for classes that never existed demonstrate that bad acts occur among institutions regardless of their tax status.<sup>15 16 17 18</sup>

The GE regulations underestimated the cost of delivering a program and practices within occupations that may skew reported earnings. According to Delisle and Cooper, because public institutions receive State and local taxpayer subsidies, “even if a for-profit institution and a public institution have similar overall expenditures (costs) and graduate earnings (returns on investment), the for-profit institution will be more likely to fail the GE rule, since more of its costs are reflected in student debt.”<sup>19</sup> Non-profit, private

institutions also, in general, charge higher tuition and have students who take on additional debt, including enrolling in majors that yield societal benefits, but not wages commensurate with the cost of the institution.

Challenges have been brought alleging cosmetology and hospitality programs have felt a significant impact due to the GE regulations. In the case of cosmetology programs, State licensure requirements and the high costs of delivering programs that require specialized facilities and expensive consumable supplies may make these programs expensive to operate, which may be why many public institutions do not offer them. In addition, graduates of cosmetology programs generally must build up their businesses over time, even if they rent a chair or are hired to work in a busy salon.

Finally, since a great deal of cosmetology income comes from tips, which many individuals fail to accurately report to the Internal Revenue Service, mean and median earnings figures produced by the Internal Revenue Service underrepresent the true earnings of many workers in this field in a way that institutions cannot control.<sup>20</sup> Litigation filed by the American Association of Cosmetology Schools (AACCS) asserting similar claims highlighted the importance of the alternate earnings appeal to allow institutions to account for those earnings.

While the GE regulations include an alternate earnings appeals process for programs to collect data directly from graduates, the process for developing such an appeal has proven to be more difficult to navigate than the Department originally planned. The Department has reviewed earnings appeal submissions for completeness and considered response rates on a case-by-case basis since the response rate threshold requirements were set aside in the AACCS litigation. Through this process, the Department has corroborated claims from institutions that the survey response requirements of the earnings appeals methodology are burdensome given that program graduates are not required to report their earnings to their institution or to the Department, and there is no mechanism in place for institutions to track students after they complete the program. The process of Departmental review of individual appeals has been time-

*publication/measuring-quality-or-subsidy-how-state-appropriations-rig-the-federal-gainful-employment-test/.*

<sup>20</sup> [https://www.irs.gov/newsroom/irs-releases-new-tax-gap-estimates-compliance-rates-remain-statistically-unchanged-from-previous-study.](https://www.irs.gov/newsroom/irs-releases-new-tax-gap-estimates-compliance-rates-remain-statistically-unchanged-from-previous-study)

<sup>14</sup> <https://nces.ed.gov/pubs/web/97578g.asp>.

<sup>15</sup> [www.forbes.com/sites/stevecohen/2012/09/29/the-three-biggest-lies-in-college-admission/#9ed5ccc1754f](http://www.forbes.com/sites/stevecohen/2012/09/29/the-three-biggest-lies-in-college-admission/#9ed5ccc1754f).

<sup>16</sup> [www.nytimes.com/2012/02/01/education/gaming-the-college-rankings.html](http://www.nytimes.com/2012/02/01/education/gaming-the-college-rankings.html).

<sup>17</sup> [www.cnn.com/2014/10/22/us/unc-report-academic-fraud/index.html](http://www.cnn.com/2014/10/22/us/unc-report-academic-fraud/index.html).

<sup>18</sup> [www.wsj.com/articles/temple-university-fires-a-dean-over-falsified-rankings-data-1531498822](http://www.wsj.com/articles/temple-university-fires-a-dean-over-falsified-rankings-data-1531498822).

<sup>19</sup> Delisle, J. and Cooper, P. (2017). Measuring Quality or Subsidy? How State Appropriations Rig the Federal Gainful Employment Test. Do state subsidies for public universities favor the affluent? Brookings Institute. Available at [www.aei.org/](http://www.aei.org/)



consuming and resource-intensive, with great variations in the format and completeness of appeals packages. The contents of some of these review packages would suggest continued confusion about requirements on the part of schools that would be problematic if those earnings were still tied to any kind of eligibility threshold.

Executive Order 13777 instructs agencies to reduce unnecessary burden on regulated entities, while at the same time emphasizing the need for greater transparency. The Department believes that its proposed rescission of the GE regulations is consistent with Executive Order 13777 because the GE regulations place tremendous burden upon certain programs and institutions, as evidenced by comments from negotiators representing institutions not currently covered by the GE regulations that extending the regulations to include their institution would impose tremendous and costly burden. As noted by various associations and institutions in response to the Department's request for public feedback on which regulations should be repealed, modified, or replaced, a large number of community colleges whose GE programs have not been in danger of failing the D/E rates measure have complained about the cost of complying with the GE regulations, which has been viewed as far out of proportion with the corresponding student benefits. For example, the American Association of Community Colleges pointed to the regulations' extensive reporting and disclosure requirements.<sup>21</sup> Despite this additional burden to GE programs, the GE regulations provide only limited transparency since the regulations apply to a small subset of title IV-eligible programs. Instead, the Department believes that its efforts to expand the College Scorecard, which includes all programs that participate in the title IV, HEA programs, to include program-level earnings, debt, and other data, will better accomplish our goal of increasing transparency.

The GE regulations include, among other things, a complicated formula for calculating a program's D/E rates, a set of thresholds that are used to determine whether a program's D/E rates are passing, failing, or in the zone, and a number of disclosure requirements. The D/E rates measure compares median student loan debt (including institutional, private, and Federal loan

debt), as reported by institutions and the National Student Loan Data System, to the higher of mean and median earnings obtained from the Social Security Administration.

Further, we believe that the analysis and assumptions with respect to earnings underlying the GE regulations are flawed. In 2014, upon the introduction of the GE regulations, the Department claimed that graduates of many GE programs had earnings less than those of the average high school dropout.<sup>22</sup> *The Washington Post* highlighted several errors in this comparison including that the Department failed to explain that the three-year post-graduation GE earnings compared the earnings of recent graduates with the earnings of a population of high school graduates that could include those who are nearing the end of 40-year careers or who own successful long-existing businesses.<sup>23</sup> Further comparisons to non-college graduates need to be contextualized, given that the average person who completes a registered apprenticeship earns a starting salary of more than \$60,000 per year, and some college graduates who pursue careers in allied health, education, or human services—regardless of what college they attended—earn less than non-college graduates who complete an apprenticeship program.<sup>24</sup>

The Census Bureau, in its landmark 2002 report, *The Big Payoff*, was careful to explain that individual earnings may differ significantly due to a variety of factors, including an individual's work history, college major, personal ambition, and lifestyle choices.<sup>25</sup> The report also pointed out that even some individuals with graduate degrees, such as those in social work or education, may fail to earn as much as a high school graduate who works in the skilled trades. In other words, both debt and earnings outcomes depend on a number of factors other than program quality or institutional performance. There are tremendous complexities involved in comparing earnings,

especially since prevailing wages differ significantly from one occupation to the next.<sup>26</sup> Therefore, a bright-line D/E rates measure ignores the many research findings that were either not taken into account in publishing the GE regulations or that were published since the GE regulations were promulgated, that have demonstrated over and over again that gender, socioeconomic status, race, geographic location, and many other factors affect earnings.<sup>27 28 29</sup> Even among the graduates of the Nation's most prestigious colleges, earnings vary considerably depending upon the graduate's gender, the field the graduate pursued, whether or not the graduate pursued full-time work, and the importance of work-life balance to the individual.<sup>30</sup> And yet, the Department has never contended that the majors completed by the lower-earning graduates were lower performing or lower quality than those that result in the highest wages.

#### Additional Disclosures

The Department published in the **Federal Register** on November 1, 2016, regulations known as the Borrower Defenses to Repayment (BD) regulations (*81 FR 75926*). The effective date of the BD regulations was most recently delayed until July 1, 2019 (*83 FR 6458*) to allow for additional negotiated rulemaking to reconsider those regulations. Following the conclusion of the negotiated rulemaking process, on July 31, 2018, the Department published in the **Federal Register** a notice of proposed rulemaking in which the Department proposes, among other things, to withdraw (*i.e.*, rescind) specified provisions of the BD regulations already published but not yet effective.

Among these BD regulations are two disclosures that were included among the topics for negotiation by the GE negotiating committee, as part of the larger discussion about the disclosure requirements in the GE regulations. One of these provisions would have required proprietary institutions to provide a warning to students if the loan repayment rate for the institution did not meet a specified bright-line

<sup>22</sup> [www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-ca/](http://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-ca/).

<sup>23</sup> [www.washingtonpost.com/news/fact-checker/wp/2014/04/11/the-obama-administrations-claim-that-72-percent-of-for-profits-programs-have-graduates-making-less-than-high-school-dropouts/](http://www.washingtonpost.com/news/fact-checker/wp/2014/04/11/the-obama-administrations-claim-that-72-percent-of-for-profits-programs-have-graduates-making-less-than-high-school-dropouts/)

<sup>24</sup> *Ibid.*

<sup>25</sup> Cheeseman Day, J. & Newburger, E. *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, Current Population Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, 2002. Available at [www.census.gov/content/dam/Census/library/publications/2002/demo/p23-210.pdf](http://www.census.gov/content/dam/Census/library/publications/2002/demo/p23-210.pdf).

<sup>26</sup> [nces.ed.gov/pubs/2006/2006321.pdf](http://nces.ed.gov/pubs/2006/2006321.pdf).

<sup>27</sup> [www.brookings.edu/wp-content/uploads/2016/07/Deconstructing-and-Reconstructing-the-College-Scorecard.pdf](http://www.brookings.edu/wp-content/uploads/2016/07/Deconstructing-and-Reconstructing-the-College-Scorecard.pdf).

<sup>28</sup> [trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf](http://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf).

<sup>29</sup> [nces.ed.gov/pubs/web/97578g.asp](http://nces.ed.gov/pubs/web/97578g.asp).

<sup>30</sup> Witteveen, D. & Attewell, P. *The earnings payoff from attending a selective college*. Social Science Research 66 (2017) 154–169. Available at [www.sciencedirect.com/science/article/pii/S0049089X16301430](http://www.sciencedirect.com/science/article/pii/S0049089X16301430).

<sup>21</sup> American Association of Community College. (September 20, 2017). Comments of the American Association of Community Colleges. Docket ID: ED-2017-OS-0074. Available at <https://www.regulations.gov/document?D=ED-2017-OS-0074-15336>.

standard. The other provision would have required institutions to notify students if the institution was required under other provisions of the BD regulations to provide the Department with financial protection, such as a letter of credit.

In response to the 2016 Borrower Defense proposed regulations, the Department received many comments contending that the regulations unfairly targeted proprietary institutions (81 FR 75934). Others commented that the loan repayment rate disclosure reflected financial circumstances and not educational quality. The Department believes that these comments are in line with how the Department views GE and the reasons provided for rescinding it. As such, the Department also proposes to remove the requirement for institutions to disclose information related to student loan repayment rates. With respect to the financial protection disclosure, the Department believes that matters such as the calculation of an institution's composite score and requirements regarding letters of credit are complex and beyond the level of understanding of a typical high school graduate considering enrollment in a postsecondary education program. Therefore, a student may misjudge the meaning of such a disclosure to indicate the imminent closure of the institution, which is not necessarily the case. While in certain instances, a letter of credit may serve as an indicator of financial risk to taxpayers, there are other instances where this may not be the case. Therefore, the Department proposes to remove the requirement for institutions to disclose that they are required to post a letter of credit and the related circumstances.

In discussion with the negotiators, those representing attorneys general, legal organizations, and student advocacy groups opposed eliminating these disclosures because they believed the disclosures would benefit students. However, the Department believes that these disclosures will not provide meaningful or clear information to students, and will increase cost and burden to institutions that would have to disclose this information.

Although these two disclosures were discussed by the negotiated rulemaking committee convened to consider the GE regulations, because they are formally associated with the borrower defense regulations, their proposed withdrawal is addressed through the proposed regulatory text in the 2018 notice of proposed rulemaking relating to the BD regulations.

In summary, the Department proposes to rescind the GE regulations for a number of reasons, including:

- Research findings published subsequent to the promulgation of the regulation confirm that the D/E rates measure is inappropriate for determining an institution's continuing eligibility for title IV participation;
- A review of GE disclosures posted by institutions over the last two years has revealed troubling inconsistencies in the way that job placement rates are determined and reported;
- The use of a standardized disclosure template and the physical distribution of disclosures to students is more burdensome than originally predicted; and
- GE outcomes data reveal the disparate impact that the GE regulation has on some academic programs.

In July 2018, the Department published a notice of proposed rulemaking that more appropriately addresses concerns about institutional misrepresentation by providing direct remedies to students harmed by such misrepresentations (83 FR 37242). In addition, the Department believes that by publishing outcomes data through the College Scorecard for all title IV participating programs, it will be more difficult for institutions to misrepresent likely program outcomes, including earnings or job placement rates, which should not be determined or published until such time that a reliable data source is identified to validate such data. For the reasons cited above, the Department proposes to amend or rescind the GE regulations.

#### *Scope of the Proposed Regulations*

##### 1. Removal of GE Regulations

The Department proposes to rescind the GE regulations because, among other things, they are based on a D/E metric that has proven to not be an appropriate proxy for use in determining continuing eligibility for title IV participation; they incorporate a threshold that the researchers whose work gave rise to the standard questioned the relevance of to student loan borrowing levels; and they rely on a job placement rate reporting requirement that the Department was unable to define consistently or provide a data source to ensure its reliability and accuracy and that has since been determined is unreliable and vulnerable to accidental or intentional misreporting. In addition, because the GE regulations require only a small portion of higher education programs to report outcomes, they do not adequately inform consumer choice or help

borrowers compare all of their available options.

Therefore, the Department proposes to rescind the GE regulations. Removal of the GE regulations would include removing the provisions in § 668.401 through § 668.415, including the provisions regarding the scope and purpose of those regulations (§ 668.401), the gainful employment framework (§ 668.403), calculating D/E rates, issuing and challenging those rates, and providing for a D/E rates alternate earnings appeal (§ 668.404–§ 668.406). Consequently, by removing the provisions pertaining to the D/E rates measure, the consequences of the D/E rates measure would also be removed from the regulations (§ 668.410), as well as the required certifications (§ 668.414). In addition, current sections that condition title IV eligibility on outcomes under the D/E rates measure, the methodology for calculating the D/E rates, the reporting requirements necessary to calculate D/E rates and certain other certifications and disclosures, and subpart R pertaining to program cohort default rates, a potential disclosure item, would no longer be required, and the Department proposes to remove those sections, as well (§§ 668.411–668.413; subpart R).

##### 2. Technical and Conforming Changes

Proposed § 600.10(c)(1) would remove current paragraph (i) and redesignate the remaining paragraphs. Current § 600.10(c)(1)(i) establishes title IV eligibility for GE programs. The Department's proposed regulations would remove the GE regulations referenced in this paragraph, and therefore we are proposing to remove this paragraph and renumber this section. This technical correction was proposed during the negotiations because the Department proposed removing the GE regulations and moving to a disclosure-only framework. Discussion related to the removal of sanctions and the disclosure framework is summarized above, but there were no additional comments made solely on this technical change. Additionally, proposed § 600.10(c)(1)(iii) would require programs that are at least 300 clock hours but less than 600 clock hours and do not admit as regular students only persons who have completed the equivalent of an associate's degree to obtain the Secretary's approval to be eligible for title IV aid student loans. This is consistent with § 668.8(d) where programs of at least 300 clock hours are referenced and is consistent with the statute. This proposal was also made during the negotiations, but the

committee did not have comments related to this aspect of the proposals.

The Department also proposes to remove references to subpart Q in § 600.21(a)(11) as part of its proposed removal of the GE regulations. Likewise, we propose technical edits to § 668.8(d) to remove references to subpart Q. The Department also proposes to remove and reserve current § 668.6, which lists disclosure requirements for GE programs that ceased to have effect upon the effective date of the disclosure requirements under the 2014 GE regulations.

#### **Executive Orders 12866, 13563, and 13771**

Under Executive Order 12866, it must be determined whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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 stated in the Executive order.

This proposed regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 because it would have an annual effect on the economy of over \$100 million.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions, unless required by law or approved in writing by the Director of the OMB. Because these proposed

regulations do not impose total costs greater than zero, the requirement to offset new regulations in Executive Order 13771 would not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed regulatory action only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal

governments in the exercise of their governmental functions.

#### **Regulatory Impact Analysis**

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. This proposed regulatory action would have an annual economic benefit of approximately \$209 million in reduced paperwork burden and increased transfers to Pell Grant recipients and student loan borrowers and subsequently institutions of about \$518 million annually at the 7 percent discount rate, as further explained in the *Analysis of Costs and Benefits* section.

##### *A. Need for Regulatory Action*

This regulatory action is necessary to comply with Executive Order 13777, whereby the President instructed agencies to reduce unnecessary burden on regulated entities and to increase transparency. Because the GE regulations significantly burden certain programs and institutions but provide limited transparency at only a small subset of title IV-eligible programs, the Department proposes to rescind them.

Furthermore, when developing the GE regulations, the Department, as noted in feedback received from multiple institutions, underestimated the burden on institutions associated with the use of a standardized disclosure template in publishing program outcomes and distributing notifications directly to prospective and current students. For example, the estimate did not include an assessment of burden on the government to support the development of an approved disclosure template and the distribution of the template populated with the appropriate data. The Department has determined that it would be more efficient to publish data using the College Scorecard, not only to reduce reporting burden but to enable students to more readily review the data and compare institutions.

##### *B. Analysis of Costs and Benefits*

These proposed regulations would affect prospective and current students; institutions with GE programs participating in the title IV, HEA programs; and the Federal government. The Department expects institutions and the Federal government would benefit as the action would remove highly burdensome reporting, administrative costs, and sanctions. The Department has also analyzed the costs of this regulatory action and has determined that it would impose no additional costs (\$0). As detailed earlier,

pursuant to this proposed regulatory action, the Department would remove the GE regulations and adopt no new ones.

1. Students

The proposed removal of the GE regulations may result in both costs and benefits to students, including the costs and benefits associated with continued enrollment in zone and failing GE programs and the benefit of reduced information collections. Students may see costs from continued enrollment in programs that may have, if the GE regulations were in effect, lost title IV eligibility and the student would have discontinued enrollment. Students may also see benefits from not having to transfer to another institution in cases where their program would have lost title IV eligibility. Burden on students will be reduced by not having to respond to schools to acknowledge receipt of disclosures.

There are student costs and benefits associated with enrollment in a program that would have otherwise lost eligibility to participate in the title IV, HEA programs under the GE regulations; however, the actual outcome for students enrolled in failing or zone programs under the GE regulations is unknown. Under the GE regulations, if a GE program becomes ineligible to participate in the title IV, HEA programs, students would not be able to receive title IV aid to enroll in it. Because D/E rates have been calculated under the GE regulations for only one year, no programs have lost

title IV, HEA eligibility. However, 2,050 programs were identified as failing programs or programs in the zone based on their 2015 GE rates and are at risk of losing eligibility under the GE regulations. In 2015–16, 329,250 students were enrolled in zone GE programs and 189,920 students were enrolled in failing programs.

Under the proposed regulations, the Department would discontinue certain GE information collections, which is detailed further in the *Paperwork Reduction Act of 1995* section of this preamble. Two of these information collections impact students—OMB control number 1845–0123 and OMB control number 1845–0107. By removing these collections, the proposed regulations would reduce burden on students by 2,167,129 hours annually. The burden associated with these information collections is attributed to students being required to read the warning notices and certify that they received them. Therefore, using the individual hourly rate of \$16.30, the benefit due to reduced burden for students is \$35,324,203 annually (2,167,129 hours per year \* \$16.30 per hour).

2. Institutions

The proposed regulations would also benefit institutions administering GE programs. These institutions would have a reduced paperwork burden and no longer be subject to a potential loss of title IV eligibility. The table below shows the distribution of institutions administering GE programs by sector.

TABLE 2—INSTITUTIONS WITH 2015 GE PROGRAMS <sup>31</sup>

Type	Institutions	Programs
Public .....	865	2,493
Private .....	206	476
Proprietary .....	1,546	5,681
Total ...	2,617	8,650

All 2,617 institutions with GE programs would see savings from reduced reporting requirements due to removal of the GE regulations. As discussed further in the *Paperwork Reduction Act of 1995* section of this preamble, reduction in burden associated with removing the GE regulatory information collections for institutions is 4,758,499 hours. Institutions would benefit from these proposed changes, which would reduce their costs by \$173,923,138 annually using the hourly rate of \$36.55.

Under the proposed regulations, programs that had or have D/E rates that are failing or in the zone could see benefits because they would no longer be subject to sanctions, incur the cost of appealing failing or zone D/E rates, or be at risk of losing their title IV eligibility. Specifically, 778 institutions administering 2,050 zone or failing GE programs would receive these benefits, which represents 24 percent of the 8,650 2015 GE programs. Disaggregation of these program counts and counts by institutional type are provided in the table below.

TABLE 3—INSTITUTIONS WITH 2015 GE ZONE OR FAILING PROGRAMS <sup>32</sup>

Type	Institutions	Zone programs	Failing programs	Zone or failing programs
Public .....	9	9	.....	9
Private .....	34	68	21	89
Proprietary .....	735	1,165	787	1,952
Total .....	778	1,242	808	2,050

Cosmetology undergraduate certificate programs are the most common type of program in the zone or failing categories. Among the 895 cosmetology undergraduate certificate programs with

a 2015 GE rate, 91 failed the D/E rates measure and 270 fell into the zone. Table 4 shows the most frequent types of programs with failing or zone D/E rates. These programs and their

institutions would be most significantly affected by the proposed removal of GE sanctions as they would continue to be eligible to participate in title IV, HEA programs. As indicated in the Accounting Statement, the money received by these institutions is a transfer from the taxpayers through students who choose to attend the institutions' programs.

<sup>31</sup> The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

<sup>32</sup> The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

TABLE 4—ZONE OR FAILING 2015 GE PROGRAMS BY FREQUENCY OF PROGRAM TYPES<sup>33</sup>

CIP	Credential level	Zone	Fail	Zone or Fail	All programs
Cosmetology/Cosmetologist, General. ....	Undergraduate Certificate .....	270	91	361	895
Medical/Clinical Assistant. ....	Associates Degree .....	35	56	91	119
Medical/Clinical Assistant. ....	Undergraduate Certificate .....	78	12	90	424
Massage Therapy/Therapeutic Massage.	Undergraduate Certificate .....	43	4	47	270
Business Administration and Manage- ment, General..	Associates Degree .....	24	22	46	74
Legal Assistant/Paralegal. ....	Associates Degree .....	20	25	45	58
Barbering/Barber. ....	Undergraduate Certificate .....	22	16	38	96
Graphic Design. ....	Associates Degree .....	16	17	33	45
Criminal Justice/Safety Studies. ....	Associates Degree .....	20	11	31	41
Massage Therapy/Therapeutic Massage.	Associates Degree .....	8	19	27	33
All other programs .....	.....	706	535	1,241	6,595
Total .....	.....	1,242	808	2,050	8,650

### 3. Federal Government

Under the proposed regulations, the Federal government would benefit from reduced administrative burden associated with removing provisions in the GE regulations and from discontinuing information collections. The Federal government would incur annual costs to fund more Pell Grants and title IV loans, as discussed in the Net Budget Impact section.

Reduced administrative burden due to the proposed regulatory changes would result from removing the provisions in the GE regulations regarding sending completer lists to institutions, adjudicating completer list corrections, adjudicating challenges, and adjudicating alternate earnings appeals. Under the GE regulations, the Department expects to receive about 500 earnings appeals annually and estimates that it would take Department staff 10 hours per appeal to evaluate the information submitted. Using the hourly rate of a GS–13 Step 1 in the Washington, DC area of \$46.46,<sup>34</sup> the estimated benefit due to reduced costs from eliminating earnings appeals is \$232,300 annually (500 earnings appeals \* 10 hours per appeal \* \$46.46 per hour). Similarly, the Department sends out 31,018 program completer lists to institutions annually and estimates that it takes about 40 hours total to complete. Using the hourly rate of a GS–14 Step 1 in the Washington, DC area of \$54.91,<sup>35</sup> the estimated benefit due to reduced costs from

eliminating sending completer lists is \$2,196 annually (40\*54.91). Institutions can correct and challenge the lists, and for the 2015 D/E rates the Department processed 90,318 completer list corrections and adjudicated 2,894 challenges. The Department estimates it took Department staff 1,420 hours total to make completer list corrections. Similarly, the Department estimates it took \$1,500,000 in contractor support and 1,400 hours of Federal staff time total to adjudicate the challenges. Using the hourly rate of a GS–13 step 1 in the Washington, DC area of \$46.46, the estimated benefit due to reduced costs from eliminating completer lists, corrections, and challenges is \$1,631,017 (\$1,500,000 contractor support + (1420 + 1400) staff hours \* \$46.46 per hour).

Finally, under the proposed regulations, the Department would rescind information collections with OMB control numbers 1845–0121, 1845–1022, and 1845–0123. This would result in a Federal government benefit due to reduced contractor costs of \$23,099,946 annually. Therefore, the Department estimates an annual benefit due to reduced administrative costs under the proposed regulations of \$24,965,459 (\$232,300 + \$2,196 + \$1,631,017 + \$23,099,946).

The Department would also incur increased budget costs due to increased transfers of Pell Grants and title IV loans, as discussed further in the Net Budget Impacts section. The estimated annualized costs of increased Pell Grants and title IV loans from eliminating the GE regulations is approximately \$518 to \$527 million at 7 percent and 3 percent discount rates, respectively. The Department recognizes that this may be offset by student and institutional response to institutional and program level disclosures in the College Scorecard and other resources, but, as discussed in the Net Budget

Impact section, the Department does not specifically quantify those impacts.

#### C. Net Budget Impacts

The Department proposes to remove the GE regulations, which include provisions for GE programs' loss of title IV, HEA program eligibility based on performance on the D/E rates measure. In estimating the impact of the GE regulations at the time they were developed and in subsequent budget estimates, the Department attributed some savings in the Pell Grant program based on the assumption that some students, including prospective students, would drop out of postsecondary education as their programs became ineligible or imminently approached ineligibility.

This assumption has remained in the baseline estimates for the Pell Grant program, with an average of approximately 123,000 dropouts annually over the 10-year budget window from FY2019 to FY2028. By applying the estimated average Pell Grant per recipient for proprietary institutions (\$3,649) for 2019 to 2028 in the PB2019 Pell Baseline, the estimated net budget impact of the GE regulations in the PB2019 Pell baseline is approximately \$–4.5 billion. As was indicated in the Primary Student Response assumption in the 2014 GE final rule,<sup>36</sup> much of this impact was expected to come from the warning that a program could lose eligibility in the next year. If we attribute all of the dropout effect to loss of eligibility, it would generate a maximum estimated Federal net budget impact of the proposed regulations of \$4.5 billion in

<sup>33</sup> The count of programs includes programs that had preliminary rates calculated, but were not designated with an official pass, zone, or fail status due to reaccreditation and reinstatements of eligibility during the validation process of establishing D/E rates.

<sup>34</sup> Salary Table 2018—DCB effective January 2018. Available at [www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB\\_h.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf).

<sup>35</sup> Ibid.

<sup>36</sup> See 79 FR 211, Table 3.4: Student Response Assumptions, p. 65077, published October 31, 2014. Available at [www.regulations.gov/document?D=ED-2014-OPE-0039-2390](http://www.regulations.gov/document?D=ED-2014-OPE-0039-2390). The dropout rate increased from 5 percent for a first zone result and 15 percent for a first failure to 20 percent for the fourth zone, second failure, or ineligibility.

costs by removing the GE regulations from the PB2019 Pell Grant baseline.

The Department also estimated an impact of warnings and ineligibility in the analysis for the final 2014 GE rule, that, due to negative subsidy rates for PLUS and Unsubsidized loans at the time, offset the savings in Pell Grants by \$695 million.<sup>37</sup> The effect of the GE regulations is not specifically identified in the PB2019 baseline, but it is one of several factors reflected in declining loan volume estimates. The development of GE regulations since the first negotiated rulemaking on the subject was announced on May 26, 2009, has coincided with demographic and economic trends that significantly influence postsecondary enrollment, especially in career-oriented programs classified as GE programs under the GE regulations. Enrollment and aid awarded have both declined substantially from peak amounts in 2010 and 2011.

As classified under the GE regulations, GE programs serve non-traditional students who may be more responsive to immediate economic trends in making postsecondary education decisions. Non-consolidated title IV loans made at proprietary institutions declined 48 percent between AY2010–11 and AY2016–17, compared to a 6 percent decline at public institutions, and a 1 percent increase at private institutions. The average annual loan volume change from AY2010–11 to AY2016–17 was – 10 percent at proprietary institutions,

– 1 percent at public institutions, and 0.2 percent at private institutions. If we attribute all of the excess decline at proprietary institutions to the potential loss of eligibility under the GE regulations and increase estimated volume in the 2-year proprietary risk group that has the highest subsidy rate in the PB2019 baseline by the difference in the average annual change (12 percent for subsidized and unsubsidized loans and 9 percent for PLUS), then the estimated net budget impact of the removal of the ineligibility sanction in the proposed regulations on the Direct Loan program is a cost of \$848 million.

Therefore, the total estimated net budget impact from the proposed regulations is \$5.3 billion cost in increased transfers from the Federal government to Pell Grant recipients and student loan borrowers and subsequently to institutions, primarily from the elimination of the ineligibility provision of the GE regulations. However, this estimate assumes that a borrower who could no longer enroll in a GE program that loses title IV eligibility would not enroll in a different program that passes the D/E rates measure, but would instead opt out of a postsecondary education experience. The long-term impact to the student and the government of the decision to pursue no postsecondary education could be significant, but cannot be estimated for the purpose of this analysis.

This is a maximum net budget impact and could be offset by student and

institutional behavior in response to disclosures in the College Scorecard and other resources. Generally, the Department does not attribute a significant budget impact to disclosure requirements absent substantial evidence that such information will change borrower or institutional behavior. The Department welcomes comments on the net budget impact analysis. Information received will be considered in development of the Net Budget Impact analysis of the final rule.

*D. Accounting Statement*

As required by OMB Circular A–4 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of the proposed regulations (see Table 5). This table provides our best estimate of the changes in annual monetized transfers as a result of the proposed regulations. The estimated reduced reporting and disclosure burden equals the – \$209 million annual paperwork burden calculated in the *Paperwork Reduction Act of 1995* section (and also appearing on page 65004 of the regulatory impact analysis accompanying the 2014 final rule). The annualization of the paperwork burden differs from the 2014 final rule as the annualization of the paperwork burden for that rule assumed the same pattern as the 2011 rule that featured multiple years of data being reported in the first year with a significant decline in burden in subsequent years.

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES  
[In millions]

Category	Benefits	
	Discount Rate .....	7%
Reduced reporting and disclosure burden for institutions with GE programs under the GE regulations. ....	\$209	\$209
Category	Costs	
	Discount Rate .....	7%
Costs .....	.....	.....
Category	Transfers	
	Discount Rate .....	7%
Increased transfers to Pell Grant recipients and student loan borrowers from elimination of ineligibility provision of GE regulations. ....	\$518	\$527

<sup>37</sup> See 79 FR 211, pp 65081–82, available at [www.regulations.gov/document?D=ED-2014-OPE-0039-2390](http://www.regulations.gov/document?D=ED-2014-OPE-0039-2390).

### Regulatory Flexibility Act (RFA) Certification

The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The Department lacks data to identify which public and private, nonprofit institutions qualify as small based on the SBA definition. Given the data limitations and to establish a common definition across all sectors of postsecondary institutions, the Department uses its proposed data-driven definitions for “small institutions” (Full-time enrollment of 500 or less for a two-year institution or less than two-year institution and 1,000 or less for four-year institutions) in each sector (Docket ID ED–2018–OPE–0027) to certify the RFA impacts of these proposed regulations. Using this definition, there are 2,816 title IV institutions that qualify as small entities based on 2015–2016 12-month enrollment.

When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The proposed regulations directly affect all institutions with GE programs participating in title IV aid. There were 2,617 institutions in the 2015 GE cohort, of which 1,357 are small entities. This represents approximately 20 percent of all title IV-participating institutions and 48 percent of all small institutions. Therefore, the Department has determined that the proposed regulations would not have a significant

economic impact on a substantial number of small entities.

Further, the Department has determined that the impact on small entities affected by the proposed regulations would not be significant. For these 1,357 institutions, the effect of the proposed regulations would be to eliminate GE paperwork burden and potential loss of title IV eligibility. We believe that the economic impacts of the proposed paperwork and title IV eligibility changes would be beneficial to small institutions. Accordingly, the Secretary hereby proposes to certify that these proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Department invites comment from members of the public who believe there will be a significant impact on small institutions.

### Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed or continuing, or the discontinuance of, collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Respondents also have the opportunity to comment on our burden reduction estimates.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

The proposed regulations would rescind the GE regulations. That action would eliminate the burden as assessed

to the GE regulations in the following previously approved information collections.

#### 1845–0107—Gainful Employment Disclosure Template

Individuals—13,953,411 respondents for a total of 1,116,272 burden hours eliminated.

For Profit Institutions—2,526 respondents for a total of 1,798,489 burden hours eliminated.

Private Non Profit Institutions—318 respondents for a total of 27,088 burden hours eliminated.

Public Institutions—1,117 respondents for a total of 176,311 burden hours eliminated.

#### 1845–0121—Gainful Employment Program—Subpart R—Cohort Default Rates

For Profit Institutions—1,434 respondents for a total of 5,201 burden hours eliminated.

Private Non Profit Institutions—47 respondents for a total of 172 burden hours eliminated.

Public Institutions—78 respondents for a total of 283 burden hours eliminated.

#### 1845–0122—Gainful Employment Program—Subpart Q—Appeals for Debt to Earnings Rates

For Profit Institutions—388 respondents for a total of 23,377 burden hours eliminated.

Private Non Profit Institutions—6 respondents for a total of 362 burden hours eliminated.

Public Institutions—2 respondents for a total of 121 burden hours eliminated.

#### 1845–0123—Gainful Employment Program—Subpart Q—Regulations

Individuals—11,793,035 respondents for a total of 1,050,857 burden hours eliminated.

For Profit Institutions—28,018,705 respondents for a total of 2,017,100 burden hours eliminated.

Private Non Profit Institutions—442,348 respondents for a total of 76,032 burden hours eliminated.

Public Institutions—2,049,488 respondents for a total of 633,963 burden hours eliminated.

The total burden hours and proposed change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Regulatory section	OMB control No.	Burden hours	Estimated cost \$36.55/hour for institutions; \$16.30/hour for individuals
§ 668.412 .....	1845-0107	- 3,118,160	- \$91,364,240
§§ 668.504, 668.509, 668.510, 668.511, 668.512 .....	1845-0121	- 5,656	- 206,727
§ 668.406 .....	1845-0122	- 23,860	- 872,083
§§ 668.405, 668.410, 668.411, 668.413, 668.414 .....	1845-0123	- 3,777,952	- 116,804,291
Total .....	.....	- 6,925,628	- 209,247,341

We have prepared Information Collection Requests which will be filed upon the effective date of these proposed regulations to discontinue the currently approved information collections noted above.

**Note:** The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at [www.regulations.gov](http://www.regulations.gov).

We consider your comments on discontinuing these collections of information in—

- Evaluating the accuracy of our estimate of the burden reduction of the proposed discontinuance, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

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, it is important that OMB receives your comments on these Information Collection Requests by September 13, 2018. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the Information Collection Requests for these proposed regulations, please indicate “Information Collection Comments” on the top of your comments.

**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 GEPA, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on

whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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**List of Subjects**

*34 CFR Part 600*

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

*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: August 9, 2018.

**Betsy DeVos,**

*Secretary of Education.*

For the reasons discussed in the preamble, and under the authority at 20 U.S.C. 3474 and 20 U.S.C. 1221e-3, the Secretary of Education proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

**PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED**

- 1. The authority citation for part 600 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

- 2. Section 600.10 is amended by revising paragraphs (c)(1) and (2) to read as follows:

**§ 600.10 Date, extent, duration, and consequence of eligibility.**

\* \* \* \* \*

(c) \* \* \*

(1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) Pursuant to a requirement regarding additional programs included in the institution’s program participation agreement under 34 CFR 668.14, obtain the Secretary’s approval;

(ii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary’s approval; and

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3), obtain the Secretary’s approval.

(2) Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary’s approval to establish the eligibility of



any program that is not described in paragraph (c)(1) of this section.

\* \* \* \* \*

■ 3. Section 600.21 is amended by revising the paragraph (a)(11) introductory text to read as follows:

**§ 600.21 Updating application information.**

(a) \* \* \*

(11) For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—

\* \* \* \* \*

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

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

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

**§ 668.6 [Removed and Reserved]**

■ 5. Remove and reserve § 668.6.

■ 6. Section 668.8 is amended by revising paragraphs (d)(2)(iii) and (d)(3)(iii) to read as follows:

**§ 668.8 Eligible program.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(3) \* \* \*

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

\* \* \* \* \*

**Subpart Q—[Removed and Reserved]**

■ 7. Remove and reserve subpart Q, consisting of §§ 668.401 through 668.415.

**Subpart R—[Removed and Reserved]**

■ 8. Remove and reserve subpart R, consisting of §§ 668.500 through 668.516.

[FR Doc. 2018–17531 Filed 8–10–18; 4:15 pm]

BILLING CODE 4000–01–P

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3010**

[Docket No. RM2016–6; Order No. 4751]

**Motions Concerning Mail Preparation Changes**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is noticing the partial rescindment of a previously proposed rule. This notice informs the public of the docket's reinstatement, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due on or before* September 13, 2018.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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- I. Introduction
- II. Background
- III. Description of the Proposed Rule
- IV. Comments Requested

**I. Introduction**

The Commission initiates this notice of proposed rulemaking (NPR) to partially rescind the rule concerning procedures for mail preparation changes in response to the recent decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018).

**II. Background**

In Docket No. R2013–10R, the Commission determined that a change to the Intelligent Mail Barcoding (IMb) requirements constituted a change in rates requiring compliance with the price cap under 39 U.S.C. 3622.<sup>1</sup> The Postal Service appealed the Commission's determination to the United States Court of Appeals for the District of Columbia (the Court). In *United States Postal Serv. v. Postal Reg. Comm'n*, 785 F.3d 740, 751 (D.C. Cir. 2015), the Court found that “changes in rates” under 39 U.S.C. 3622 could include changes to mail preparation requirements and were not limited to “only changes to the official posted prices of each product.” *Id.* However, the Court remanded the matter to the Commission so that it could articulate an intelligible standard to determine when mail preparation requirement changes constitute changes in rates subject to the price cap. *Id.* at 744.

In response to the Court's remand, the Commission issued Order No. 3047,

which set forth a standard to determine when mail preparation changes require compliance with the Commission's price cap rules.<sup>2</sup> Under § 3010.23(d)(2), the Postal Service must make reasonable adjustments to its billing determinants to account for the effects of classification changes that result in the introduction, deletion, or redefinition of rate cells. The standard established by the Commission in Order No. 3047 provided that mail preparation changes could have rate effects when they resulted in the deletion or redefinition of rate cells as set forth by § 3010.23(d)(2). Order No. 3047 at 59. In conjunction with Order No. 3047, the Commission initiated a separate rulemaking proceeding in this docket to develop a procedural rule that would ensure the Postal Service properly accounted for the rate effects of mail preparation changes “in accordance with the Commission's standard articulated in Order No. 3047.”<sup>3</sup>

While the rulemaking was pending, the Postal Service requested the Commission reconsider the standard set forth in Order No. 3047. In response, the Commission issued Order No. 3441 resolving the request for reconsideration and maintaining the standard articulated in Order No. 3047.<sup>4</sup> The Postal Service petitioned the Court for review of the revised standard set forth in Order Nos. 3047 and 3441.<sup>5</sup>

During the pendency of the appellate proceedings, the Commission issued Order No. 4393 in this docket, adopting a final procedural rule concerning mail preparation changes.<sup>6</sup> The final rule institutes publication requirements for changes to mail preparation rules and requires the Postal Service to (1) affirmatively designate whether or not a change to a mail preparation

<sup>2</sup>Docket No. R2013–10R, Order Resolving Issues on Remand, January 22, 2016 (Order No. 3047).

<sup>3</sup>Notice of Proposed Rulemaking on Motions Concerning Mail Preparation Changes, January 22, 2016, at 1–2 (Order No. 3048). The Notice of Proposed Rulemaking on Motions Concerning Mail Preparation Changes was published in the **Federal Register** on February 1, 2016. See 81 FR 5085 (February 1, 2016).

<sup>4</sup>Docket No. R2013–10R, Order Resolving Motion for Reconsideration of Commission Order No. 3047, July 20, 2016 (Order No. 3441).

<sup>5</sup>Petition for Review, *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018).

<sup>6</sup>Order Adopting Final Procedural Rule for Mail Preparation Changes, January 25, 2018, at 22–23 (Order No. 4393). The Order Adopting Final Procedural Rule for Mail Preparation Changes was published in the **Federal Register** on March 5, 2018. See 83 FR 4585 (March 5, 2018). See also Revised Notice of Proposed Rulemaking, March 27, 2017 (Order No. 3827). The Revised Notice of Proposed Rulemaking was published in the **Federal Register** on March 31, 2017. See 82 FR 16015 (March 31, 2017).

<sup>1</sup>Docket No. R2013–10, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 21, 2013, at 5–35 (Order No. 1890).