DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 685

[Docket ID ED–2026–OPE–0100]

RIN 1840–AE06

Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education (Secretary) amends the regulations governing institutional eligibility, general provisions, and the William D. Ford Direct Loan (Direct Loan) Program under title IV of the Higher Education Act (HEA) of 1965, as amended (the title IV, HEA programs) to implement statutory changes to the title IV, HEA programs included in the Working Families Tax Cuts Act (WFTCA) signed into law by President Trump on July 4, 2025. These changes include revisions to program eligibility requirements for the Direct Loan program and the introduction of an earnings accountability framework that limits Direct Loan eligibility to programs whose graduates meet certain earnings benchmarks. This action finalizes regulations to implement the provisions of the WFTCA related to low-earning outcome programs and the Direct Loan program, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs).

DATES:

Effective dates: This rule is effective July 1, 2027, except for instructions 13 and 14, which are effective August 31, 2026.

Implementation dates: For the implementation dates of the regulatory provisions, see the Implementation Date of These Regulations in **SUPPLEMENTARY INFORMATION**.

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If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

A brief summary of these final regulations is available at *www.regulations.gov/docket/ED-2026-OPE-0100.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Abbreviations

AHEAD: Accountability in Higher Education and Access through Demand-driven Workforce Pell
ACS: American Community Survey
AGI: Adjusted Gross Income
APA: Administrative Procedures Act
BLS: Bureau of Labor Statistics
CFR: Code of Federal Regulations
CIP Code: Classification of Instructional Programs Code
CPI–U: Consumer Price Index for All Urban Consumers
CPS: Current Population Survey
D/E Rates: Debt-to-Earnings Rates
DEOA: Department of Education Organization Act
Department: United States Department of Education
DL: Federal Direct Loans
E.O.: Executive Order
EP: Earnings Premium
FAFSA: Free Application for Federal Student Aid
FSA: Federal Student Aid
FVT: Financial Value Transparency
GE: Gainful Employment
GEPA: General Education Provisions Act
HEA: Higher Education Act of 1965, as amended
IPEDS: Integrated Postsecondary Education Data System
NPRM: Notice of Proposed Rulemaking
OIRA: Office of Information and Regulatory Affairs
Pell Grant: Federal Pell Grant
PDF: Portable Document Format
PRA: Paperwork Reduction Act of 1995
PRCS: Puerto Rico Community Survey (PRCS)
RFA: Regulatory Flexibility Act
RFRA: Religious Freedom Restoration Act
RIA: Regulatory Impact Analysis
SOC: Standard Occupational Classification
Title IV, HEA Programs: Student financial assistance programs authorized under title IV of the HEA
rtf: Rich Text Format
SBREFA: Small Business Regulatory Enforcement Fairness Act of 1996
txt: Text format
UI: Unemployment Insurance
WFTCA: Public Law 119–21, also known as the Working Families Tax Cuts Act and the One Big Beautiful Bill Act [1]

II. Executive Summary

The Secretary implements the amendments made to the HEA relating to earnings outcomes made by Public Law 119–21, the WFTCA, through these final regulations.

These regulations overhaul the accountability framework for the title IV, HEA programs by replacing the former debt-to-earnings (''D/E'') metric with a revised earnings premium measure, expanding transparency, and strengthening institutional compliance standards. Maintaining robust accountability measures will ensure program integrity and protect students from low-earning outcomes, aligning with Congressional objectives for higher education oversight. This rule removes outdated definitions tied to D/E metrics, introduces the term ''earnings,'' and revises several existing definitions. The Student Tuition and Transparency System (''STATS'') will apply to all programs qualifying for title IV, HEA assistance, using the earnings premium measure as the new accountability standard. Institutions will be required to report program-and certain student-level data, including tuition, fees, and financial aid awards such as grants and scholarships to the Department. This reporting will enable the Department to provide enhanced informational disclosures of net program cost to the public. A revised version of the earnings premium measure will apply to both GE and non-GE programs; those failing the earnings premium measure in two out of three consecutive years will lose Direct Loan eligibility, though limited extensions may be granted when an orderly program closure described under § 668.603(c)(4) is in the students' best interest. Institutions will be required to update Direct Loan-eligible program lists, issue warnings about program risk and Pell Grant lifetime limits, and meet a new administrative capability standard. This rule aims to incentivize institutions in every sector of higher education to offer programs that deliver economic value through a return on investment, enhance data accessibility for students, and protect taxpayers and students through stricter

[1] The Department previously referred to the Working Families Tax Cuts Act as the ''One Big Beautiful Bill Act,'' including in the Notice of Proposed Rulemaking published on April 20, 2026.

oversight and comprehensive disclosures on program outcomes.

1. Summary of Major Provisions of This Regulatory Action General Definitions

These final regulations:

• Amend § 668.2 to remove the definitions of ''annual debt-to-earnings rate,'' ''debt-to-earnings rates,'' ''discretionary debt-to-earnings rate,'' ''metropolitan statistical area,'' ''poverty guideline,'' ''qualifying graduate program,'' and ''substantially similar program.''

• Amend § 668.2 to add ''earnings'' and revise existing key terms, including ''cohort period,'' ''earnings threshold,'' ''eligible non-GE program,'' ''Federal agency with earnings data,'' and ''institutional grants and scholarships.''

• Amend § 685.102 to add the terms ''eligible non-GE program'' and ''gainful employment program (GE program).''

Subpart Q—Student Tuition and Transparency System (STATS)

These final regulations:

• Amend several provisions in subpart Q to reflect new numbering.

• Amend §§ 668.401, 668.402, 668.403, 668.404, and 668.405 to remove all references to the former D/E metric and use the earnings premium measure as the new accountability standard.

• Amend § 668.401 to remove exclusions for institutions located in the U.S. Territories or Freely Associated States, and to remove an exclusion for institutions with no groups of substantially similar programs that produced 30 or more total completers over the four most recently completed award years.

• Amend § 668.402(c)(3) to provide that if a program is designed to prepare a student for employment in an occupation that qualifies for a tax deduction of tip income, 50 percent or more of individuals in the occupation receive income from tips, and the earnings calculation would use graduate earnings data from 2025 or prior, the program will not be considered to have passed or failed the earnings premium measure but the Department will make earnings data and the earnings threshold that would have been used publicly available.

• Amend § 668.403(b) to establish that the Secretary will obtain the median annual earnings of students who completed a GE program or eligible non-GE program during the cohort period for the fourth tax year following program completion. The earnings data will be obtained from at least one Federal agency and will include students who are working and not enrolled during the calendar year in which earnings are measured.

• Amend § 668.405 to clarify that the Secretary will notify an institution that a low-earning outcome program will cease participation in the Direct Loan program in the same notice of determination that is used to notify the institution of the results of the earnings premium measure calculation.

• Amend § 668.406 to require an institution offering any GE program or eligible non-GE program to report the total amount of Federal, State, private, or other grants and scholarships each student received for their entire enrollment. This reporting requirement will only apply to students who completed or withdrew from the program during the award year.

Subpart S—Earnings Accountability

These final regulations:

• Amend §§ 668.601, 668.602, 668.603, and 668.605 to remove all references of the former D/E metric.

• Amend § 668.601(a) to establish that earnings accountability applies to an eligible non-GE program or a GE program offered by an eligible institution and the Secretary determines whether the program is eligible for Direct Loan program funds.

• Add § 668.601(b) to establish exemptions for programs at institutions that enroll only students with Specific Learning Disabilities and Autism Spectrum Disorder.

• Amend § 668.603(a) to establish that a low-earning outcome program is a GE program or eligible non-GE program that fails the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated. A low-earning outcome program's participation in the Direct Loan program will end upon the completion of a termination action of Direct Loan program eligibility under subpart G.

• Amend §§ 668.603(b) and (c) to provide the conditions for an institution to appeal the Secretary's determination that a program is a low-earning outcome program that will cease participation in the Direct Loan program. Institutions will have 30 days from receipt of a notification of determination indicating that a program is a low-earning outcome program to appeal the decision and may only appeal based on specific conditions explained in these subsections.

• Add § 668.603(d)(4) to allow a program that has failed to satisfy the requirements of § 668.402, but is not a low-earning outcome program, to continue participating in the Direct Loan program if the institution voluntarily agrees to conduct an orderly program closure, provided the Secretary determines that it is in the best interest of the students. This flexibility will be limited to three years or the full-time duration of the program, whichever is less, and will require the institution and the Secretary to agree to make certain amendments to the institution's program participation agreement (PPA).

• Add § 668.603(d)(5) to allow a program that has failed to satisfy the requirements of § 668.402, but is not a low-earning outcome program, to avoid a loss of title IV, HEA eligibility under the administrative capability requirements in § 668.16(t) if the institution voluntarily agrees to prevent students from borrowing Direct Loans in the program under § 685.203(m)(2) for at least five years. This flexibility will extend as long as the institution prevents Direct Loan borrowing in the program, and will require the institution and the Secretary to agree to make certain amendments to the institution's program participation agreement (PPA).

• Add § 668.603(d)(5) to clarify that the ending of a program's participation in the Direct Loan program under these regulations is not considered a limitation action under 34 CFR 668.94.

• Amend § 668.604 to remove the transitional certification requirements and require an institution to establish a program's eligibility for Direct Loan program funds by updating the list of the institution's Direct Loan-eligible programs maintained by the Department. An institution will be prohibited from including programs that share the same 4-digit Classification of Instructional Programs (CIP) code and any overlapping Standard Occupational Classification (SOC) codes as a failing program that was subjected to a two-year loss of eligibility.

• Amend § 668.605(c) to require an institution to provide a student who is eligible for Pell Grant funds with notice of their remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against their future lifetime eligibility.

• Amend § 668.605(d) to require an institution to provide an enrolled student with information regarding their remaining Pell Grant eligibility at the time that the institution makes a disbursement of Pell Grant funds to them.

Standards for Participation in Title IV, HEA Programs

These final regulations:

• Add § 668.14(h)(1) to require institutions to be placed on provisional status if they fail to comply with 34 CFR 668.16(t) in two out of any three consecutive award years, which will result in the institution's low-earning outcome programs becoming ineligible for title IV, HEA funds.

• Add § 668.14(h)(2) to allow an institution to appeal the Secretary's determination if they are found to have failed the conditions in 34 CFR 668.16(t) in two out of any three consecutive award years.

• Add § 668.14(h)(3) and (4) to provide an exception of automatic ineligibility for title IV, HEA funds if the institution does not participate in the Direct Loan program or agrees not to allow students to borrow in a low-earning outcome program.

• Amend § 668.16(t) to require an institution to demonstrate administrative capability by showing that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S.

• Amend § 668.43(d)(1) to require that the program information website includes the median length of calendar time taken for full-time and less than full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

• Amend § 668.43(d)(2) to no longer require institutions to provide a prominent link to the website maintained by the Secretary on any web page containing academic information about the program or institution. The Secretary may require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

• Amend § 685.300 to explain that a GE program or an eligible non-GE program must meet the student tuition and transparency system requirements under 34 CFR part 668, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S to participate in the Direct Loan program.

2. Summary of Costs and Benefits:

As further detailed in the *Regulatory Impact Analysis* (RIA), the Department estimates that the regulations will have significant impacts on students, educational institutions, and taxpayers. Certain degree programs are expected to lose eligibility for title IV, HEA funds under the earnings tests in the final regulations, while some undergraduate and graduate certificate programs are expected to gain eligibility relative to the prior Financial Value Transparency and Gainful Employment regulations enacted on July 10, 2023. Students will incur costs when the programs they attend lose eligibility for title IV, HEA funds, or if they enroll in low-earning certificate programs that gain access to title IV, HEA funds. Students will also benefit in cases where the regulations prevent them from attending low-earning and high-cost degree programs. Certain institutions (mainly public and private non-profit institutions) will incur costs when programs they offer lose access to title IV, HEA funds under the regulations. Other institutions (such as proprietary institutions) will benefit as more programs in this sector will remain eligible for title IV, HEA funds. Taxpayers will incur new budget costs via an increase in transfers of title IV, HEA funds to institutions relative to prior regulations because these regulations result in a net increase in the number of students attending programs that will be eligible for these funds.

III. Purpose of This Regulatory Action

This regulatory action seeks to effectuate regulations that address the statutory changes made by the WFTCA and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs).

IV. Background

Gainful Employment (GE) Prior Rules

Under Sections 101 and 102 of the HEA, there are two broad categories of title IV-eligible programs: degree programs offered by public and private nonprofit institutions, and programs required to lead to gainful employment in a recognized occupation (which include nondegree programs at any type of institution, and nearly all programs offered by proprietary institutions). The statute does not further elaborate on the gainful employment requirement.

The Department has issued four previous regulations on GE, most recently in 2023, as part of the FVT/GE accountability framework. These regulations required the Department to calculate two separate metrics for the vast majority of programs that were eligible for title IV, HEA funds—a debt-to-earnings (D/E) rate and an earnings premium measure—but did not impose program eligibility consequences for programs other than GE programs. The regulations also established a process by which the Department would disclose key information about academic programs to current and prospective students at a point when the information would be most useful for them.

WFTCA Earnings Accountability Framework

The WFTCA, signed into law by President Trump on July 4, 2025, amended the HEA to establish a new accountability framework for most postsecondary programs of study that participate in the Direct Loan program. Congress designed this framework to compare the median earnings of graduates to those of working adults, and it requires the Department to discontinue a program's Direct Loan program eligibility if its graduates earn less than the comparison group.

The WFTCA framework does not include D/E rates, and although the earnings comparison metric largely resembles the earnings premium measure under the FVT/GE regulations, there are differences in the populations of institutions and programs covered by the new framework, in the methodology by which the comparison must be performed, and in consequences for failing programs. To provide students, families, institutions, and the public with meaningful and comparable program information and to promote consistency in the treatment of programs across all credential levels and institutional sectors, the Department amends and simplifies its existing FVT and GE framework to harmonize with the accountability framework required under the WFTCA, establishing a single metric that will be calculated for nearly all programs eligible for title IV, HEA funds and including the same program eligibility consequences for failure of GE and eligible non-GE programs alike.

V. Implementation Date of These Regulations

Except for changes to 34 CFR part 685, these regulations are effective on July 1, 2027. The changes to 34 CFR part 685 are effective on August 31, 2026.

Section 482(c)(1) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. HEA section 482(c)(2) also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and outline the conditions for early implementation. For the reasons described in ''Authority for This Regulatory Action'' below, the Secretary is waiving the master calendar requirements for the provisions of these regulations in 34 CFR part 685 that require institutions to agree to be subject to the earnings accountability requirements established in the WFTCA and these regulations.

The Secretary is exercising her authority under HEA section 482(c) to designate certain regulatory changes to Part 668 in this document for early implementation beginning July 1, 2026. The Secretary has designated the elimination of all provisions pertaining to reduced institutional reporting requirements under 34 CFR 668.406 for early implementation, and will assume that any institution that chooses not to report items that have been removed has elected to implement the provisions early.

VI. Authority for This Regulatory Action

The Department's authority to engage in this rulemaking action and pursue a transparency and accountability framework for GE programs and eligible non-GE programs is derived primarily from seven categories of statutory enactments: (1) the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV, HEA; (2) authorizations and directives within title IV, HEA regarding the collection and dissemination of potentially useful information about higher education programs, as well as provisions regarding institutional eligibility to benefit from title IV; (3) the definition of institution of higher education under Section 102 of the HEA and other provisions within title IV of the HEA that address programs that prepare students for gainful employment; (4) the Secretary's authority to establish procedures and requirements relating to the administrative capacities of institutions of higher education; (5) recently enacted changes within title IV, HEA as a result of Section 84001 of the WFTCA, which establishes an accountability system limiting Direct Loan eligibility for programs that demonstrate low-earning outcomes; (6) the Secretary's authority to develop a quality assurance system under the Direct Loan Agreement; and (7) the Secretary's authority to include other provisions in the Direct Loan Agreement that she determines are necessary to protect the interests of the United States and to promote the purposes of the Direct Loan program. Finally, this section also addresses the WFTCA's waiver of the HEA's master calendar requirements for some of the regulations set forth in this final rule.

The Secretary has broad powers to engage in rulemaking to implement programs administered by the Department. Specifically, Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority "to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department," such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, to assist in pursuing either eligible non-GE programs or GE programs. 20 U.S.C. 1221e–3. Likewise, Section 414 of the Department of Education Organization Act (DEOA) 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.

Loper Bright Enters. v. *Raimondo,* 603 U.S. 369 (2024) brought about a sea change in administrative law by overturning *Chevron* deference; however, *Loper Bright* did not disrupt Congress's ability to provide "a degree of deference" to agencies in specific statutes. 603 U.S. 369, 394 (2024). Indeed, the Court directly acknowledged that Congress may "delegate . . . discretionary authority to any agency" by giving directions to agencies to promulgate rules that are "reasonable" or "appropriate." *Id.* In a post-*Loper Bright* case challenging the 2023 FVT/GE rule, a lower Court specifically held that the Department has been explicitly granted such deference by Congress under the provisions of GEPA and the DEOA. *American Assoc. of Cosmetology Sch.* v. *Dep't of Educ.,* 2025 WL 4219345, at *5 (N.D. Tex. Oct. 2, 2025) (citing 20 U.S.C. 1221e–3); 20 U.S.C. 3474). The Court further stated that, through the HEA, the Congress had clearly granted the Secretary to promulgate rules necessary for the administration of the title IV, HEA programs: "the Supreme Court in *Loper Bright* recognized that Congress may 'delegate[ ] particular discretionary authority to an agency' by leaving it with 'flexibility' through terms 'such as 'appropriate' or 'reasonable' " and that the HEA confers such authority [on the Secretary] by including the additional specific direction to 'prescribe such regulations as may be necessary to provide for . . . any matter the Secretary deems necessary to the sound administration of the financial aid programs[.]' " *American Assoc. of Cosmetology Sch.* *6 (citing 20 U.S.C. 1094(c)(1)(B); 1099c).

Section 431 of the GEPA grants the Secretary additional authority to establish rules to require institutions to make data available to the public about the performance of Federally supported education programs and about students enrolled in those programs and to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes. See 20 U.S.C. 1231a. This provision authorizes the reporting and disclosure requirements in the proposed rule, which would enable the Department to collect data and information for the purpose of developing objective measures of program performance. The reporting is not only for the Department's use in evaluating programs but also serves to inform the public—including enrolled students, prospective students, their families, institutions, and other stakeholders—about relevant information to those Federally supported programs.

The Secretary's authority to establish rules requiring institutions to provide information to the Department is further bolstered by the fact that certain provisions of the HEA would be rendered inoperable if such data was not provided. For example, without collecting data from institutions regarding students participating in title IV, HEA programs, the Department would have no ability to determine whether a program offered by that institution satisfies the earnings test set forth in HEA Section 454(c)(2), added by the WFTCA. Therefore, in any such case in which the HEA directs the Department to conduct analysis that requires information that an institution possesses, the Secretary is permitted to establish regulations regarding such data collection under the Secretary's broad authority to promulgate regulations necessary or appropriate for governing the applicable programs administered by the Department. See 20 U.S.C. 3474.

Furthermore, in the GE setting, the Department has not only a statutory basis for pursuing the effective dissemination of information to students about a range of GE program attributes and performance metrics, but also has the authority to use certain metrics to determine that an institution's program is not eligible to benefit from one or more of the title IV, HEA programs. When an institution's program is at risk of losing eligibility based on a given metric, there should be no real doubt that the Department may require the institution that operates the at-risk program to alert prospective and enrolled students that they may not be able to receive assistance from one or more title IV, HEA programs for the program in question. Without direct communication from the institution to prospective and enrolled students, the students themselves risk losing the ability to make informed choices about their educational pursuits. Congress clearly intended to require institutions to provide this manner of direct communication to students, as plainly evidenced by the presence of the student notice requirements for at-risk degree programs under HEA Section 424(c)(7), as revised by the WFTCA. In keeping with the Department's effort to harmonize the accountability requirements for non-GE and GE programs, we believe it is appropriate to similarly require institutions to provide warnings to prospective and enrolled students regarding at-risk GE programs consistent with the warnings expressly required in statute for eligible non-GE programs and that the Secretary is authorized to do so under the Secretary's general authority to promulgate regulations that are necessary or appropriate to administer the title IV, HEA programs. See 20 U.S.C. 1221e–3; 20 U.S.C. 3474.

The data to be collected and analyzed by the Department will not violate the student unit record prohibition found in HEA Section 134. The Department does not propose creating any new databases of student records. It will collect from institutions individual title IV, HEA recipient data, including PII, and will securely transmit that data to at least one Federal agency with earnings data for matching. The metric calculation will only utilize median earnings data that does not include PII data from student recipients of title IV, HEA assistance. The proposed regulation is also supported by the Department's statutory responsibilities to observe eligibility limits in the HEA. Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds to their students. 20 U.S.C. 1099c. Eligible institutions must also meet program eligibility requirements for students in those programs to receive title IV, HEA assistance.

One type of program for which certain types of institutions must establish program-level eligibility is ''a program of training to prepare students for gainful employment in a recognized occupation.'' 20 U.S.C. 1001(b)(1)(A)(i), (c)(1)(A). Section 481 of the HEA articulates this requirement by defining, an ''eligible program,'' in part, as a ''program of training to prepare students for gainful employment in a recognized profession.'' The HEA does not more specifically define the terms ''training to prepare,'' ''gainful employment,'' ''recognized occupation,'' or ''recognized profession'' for purposes of determining the eligibility of GE programs for participation in title IV, HEA programs. At the same time, the Secretary and the Department have a legal duty to interpret, implement, and apply those concepts in order to observe the statutory eligibility requirements in the HEA.

The Department has long interpreted the word ''gainful'' in this context to mean ''profitable.'' Program Integrity: Gainful Employment, 79 FR 64890, 64894 (Oct. 31, 2014); *American Assoc. of Cosmetology,* 2025 WL 4219345, at *5.[2] And the Department has consistently interpreted the broader phrase ''gainful employment'' to mean that the program ''actually train[s] and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation.''[3] This would not include, for example, ''baccalaureate degree[s] in liberal arts'' as those programs are statutorily prohibited from being eligible for title IV, HEA assistance in most instances.[4]

It is relevant to acknowledge that there is some degree of ambiguity in the term ''gainful employment.'' See *Ass'n of Priv. Colleges & Universities* v. *Duncan,* 870 F. Supp. 2d 133, 145 (D.D.C. 2012) (stating that ''There is no unambiguous meaning of what makes employment 'gainful' ''); *Ass'n of Proprietary Colleges* v. *Duncan,* 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015) (quoting *Ass'n of Priv. Colleges & Universities* v. *Duncan,* 870 F. Supp. 2d 133 at 145, and adopting its conclusion that ''There is no unambiguous meaning of what makes employment 'gainful' ''). Indeed, some dictionaries that define the whole phrase ''gainful employment'' define it as meaning ''work that you get paid for.''[5] Under this definition, the only programs that do not prepare students for ''gainful employment'' would be programs that train students for unpaid volunteer positions or hobbies. But courts have warned about reading phrases in isolation like this, as the text of a statute must be construed as a whole. See *Kmart Corp.* v. *Cartier, inc.* 486 U.S. 281, 291 (1988) (per Kennedy, J.) (''In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.'' The interpretative canon, which is generally referred to as the Whole-Text Canon or the Whole Act Rule, provides that the context of the broader statutory scheme is the ''primary determinant of meaning.'' Scalia & Garner, Reading Law, 167 (2012).

As we look to other parts of the statute, we find provisions that help provide clarity regarding the definition of gainful employment. In the first instance, Congress has created two definitions of ''institution of higher education.'' The first definition, which is in Section 101 of the HEA, authorizes non-profits and public institutions to participate in title IV student aid programs. 20 U.S.C. 1001. The definition in Section 101 does not include references to gainful employment, which is a notable omission and strongly suggests that Congress did intend to limit the universe of eligible programs when using that phrase elsewhere.

In Section 102, Congress provides its second definition of institution of higher education, this time defining it to mean proprietary institutions, vocational institutions, and foreign institutions. Here, Congress tells us that if a subset of these types of institutions (proprietary and vocational) wants to participate, they must provide ''an eligible program of training to prepare students for gainful employment in a recognized occupation.'' The broader phrase makes it clear that these programs ''train'' students for ''a recognized occupation.'' Further, we know that Congress does not think baccalaureate degree programs in liberal arts are gainful employment programs, because Congress says that proprietary institutions can offer (1) gainful employment programs, OR (2) programs leading to a baccalaureate degree in liberal arts if the program has been provided since January 1, 2009 and the institution is accredited by a certain type of accreditor. The disjunctive ''or'' in this context shows us that ''gainful employment'' does not mean liberal arts.

For the reasons above, it is clear that the operative purpose of Section 102(b)–(c) is to use taxpayer funds to help support students in their quest to obtain more training such that they may enter a recognized occupation. The Department thinks that this context is key in demonstrating that Congress only wants to fund programs that help make the student better off in their ''gainful employment.'' Gainful means

[2] ''Gainful.'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/gainful.* Accessed March 20, 2026.

[3] Financial Value Transparency and Gainful Employment (GE), 88 FR 32,300, 32,342 (May 19, 2023).

[4] Section 102(b)(1)(A)(ii) provides that baccalaureate degrees in liberal arts are no longer considered to be gainful employment programs, but Congress provided a grandfather clause to allow certain institutions that have offered such programs since January 1, 2009 to continue to offer such programs. Those baccalaureate degree programs are now covered by the accountability provisions in the WFTCA.

[5] See ''Gainful Employment'', Cambridge Dictionary Online, *https://dictionary.cambridge.org/us/dictionary/english/gainful-employment.* Accessed March 22, 2026.

''profitable,'' so Congress takes a common-sense approach where they want students to receive training that enables them to be more profitable than before they went to school. As such, the Department interprets the term ''gainful employment'' to mean that a program must, on average, make students better off financially than they would have been had they not attended the program. In other words, institutions must ensure that the median student in a gainful employment program earns a premium, compared to what they would have earned if they had never gone to school. This is the same earnings premium measure called for in the WFTCA, but the Department believes that the gainful employment statute calls for this type of accountability independent from the amendments made by the WFTCA.

The Department's interpretation of the phrase ''gainful employment'' aligns with the statute and is supported by case law concerning the Department's previous gainful employment regulations. In *Ass'n of Priv. Colleges & Universities* v. *Duncan,* 870 F. Supp. 2d 133, 146 (D.D.C. 2012), the court stated that term ''gainful employment'' must be understood in the context of the statutory command that ''a given program 'prepare students for gainful employment in a recognized occupation.' '' That court reasoned that the ''real question, then, is not how much gain is enough but rather how much preparation is enough'' and found that the Department's attempt to ''answer that question by reference to the economic success of a program's former students'' was not precluded by the HEA, as the HEA does not specifically state ''how to determine which programs actually prepare their students and which programs do not.'' *Id* at 146.[6] Additionally, in a post-Loper Bright case, *American Assoc. of Cosmetology,* the Court stated that the ordinary meaning analysis supported the Department's conclusion that students are not prepared for gainful employment if a program is designed to leave its graduates financially worse off than when they started, and they are unable to repay their loans. 2025 WL 4219345, at *5.

Furthermore, the Secretary is authorized to establish and enforce administrative capability standards for institutions participating in title IV, HEA programs and to terminate the participation of any institution who the Secretary determines does not meet those standards. Section 498(a) of the HEA provides that, for purposes of qualifying institutions of higher education for participation in title IV, HEA programs, the Secretary shall determine the administrative capability of an institution of higher education.

Section 498(d)(1) authorizes the Secretary ''to establish procedures and requirements relating to the administrative capacities of institutions of higher education'' which can include ''consideration of past performance of institutions.'' Section 498(d)(2) further authorizes the Secretary to any other reasonable procedures necessary to ensure compliance with the administrative capability standard. Therefore, because of the broad authority conferred on the Secretary to establish such standards and procedures, as well as to consider the past practice of an institution in determining whether or not it satisfies the administrative capability standard, the Department believes that it is well within the Secretary's authority to establish a standard that would penalize an institution where at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are from low-earning outcome programs under subpart S (and have remained so for two out of three consecutive years) by terminating the overall title IV, HEA program eligibility of all such programs and requiring the institution to participate in title IV, HEA program on a provisional basis.

Section 84001 of the WFTCA amends HEA Section 454 to create a new accountability framework, including an earnings test under HEA Section 454(c)(2) for title IV, HEA programs that lead to an undergraduate degree, graduate or professional degree, or graduate certificate. It further specifies under HEA Section 454(c)(7) that such programs which fail the earnings test are ineligible for Direct Loan program participation for a period of not less than two years. HEA Section 454(c)(6) further requires institutions to provide warnings to each student enrolled regarding at-risk programs.

Direct Loan Agreement Authority

Institutions that participate in the Direct Loan program must agree to comply with the requirements set forth in Section 454 of the HEA. The requirements in this section, which has been called the Direct Loan Agreement, have been incorporated into the Program Participation Agreement (PPA) which covers other title IV programs, not just the Direct Loan program. As part of the Direct Loan Agreement, institutions must ''provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives.'' 20 U.S.C. 1087d(a)(4). The Department has never developed a formal quality assurance system before this rulemaking,[7] but believes that the GE framework proposed herein is authorized by this provision and is itself a quality assurance system.[8]

The quality assurance system authority requires the Secretary to ensure that the institution is complying with program requirements and meeting program objectives. As such, it is important to discuss the ''program requirements and program objectives'' referenced in HEA Section 454. 20 U.S.C. 1087d(a)(4). The legal scholars Dan Zibel and Aaron Ament have noted that ''the HEA is silent as to what is meant by 'quality assurance,' 'program requirements,' and what it means for an institution to 'meet[ ] program objectives.' In such situations, the law affords the Department ample discretion to fill these statutory voids, resolve statutory ambiguities, and ensure that institutions of higher education are serving students and taxpayers.'' [9] Zibel and Ament have argued that ''a core 'program objective' of the Direct Loan program is to ensure not only that students have access to higher education, but also to ensure that Federally issued loans are repaid.'' [10] The Department largely agrees with these assertions that we have broad

[6] This conclusion was directly restated several years later in *Ass'n of Proprietary Colleges* v. *Duncan,* 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015), which excerpted a considerable portion of the D.D.C.'s opinion in *Ass'n of Priv. Colleges & Universities* v. *Duncan,* 870 F. Supp. 2d 133, 146 (D.D.C. 2012).

[7] See Dan Zibel & Aaron Ament, Protection and the unseen: How the US Department of Education's underdeveloped authorities can protect students and promote equity in higher education, Brookings Economic Studies, 13 (Oct. 2020) (noting that the quality assurance authority in Section 454(a)(4) has never been relied upon, but that '[n]evertheless, section 454(a)(4) of the HEA (the ''QA authority'') unambiguously provides that the DLA'' shall implement a quality assurance system''), available at *https://www.brookings.edu/wp-content/uploads/2020/10/ES-10.13.20-Zibel-Ament.pdf.*

[8] The Department has relied on its authority in Section 454(a)(7) to justify certain aspects of the 2016 Borrower Defense regulations, such as provisions prohibiting arbitration agreements in certain settings. See Student Assistance General Provisions, 81 FR 75926, 75932 (Nov. 1, 2026). These provisions were ultimately removed when the Department published 2019 borrower defense regulations, which are now in effect under Section 85001 of the WFTCA; however, the Department did not disclaim the authority to impose these provisions and made the change for policy reasons. *See* Student Assistance General Provisions, 84 FR 49788, (Sept. 23, 2019).

[9] Zibel & Ament, *supra* note 8 at 14 (cleaned up).

[10] *Id.*

authority to provide details as to what the purpose of these programs are and that the Direct Loan program is designed to provide borrowers with capital to attend college and to repay their loans in most circumstances. However, certain subsets of programs within the HEA have additional purposes that are narrower in scope.

Here, the Department believes that the gainful employment text in Section 102(b)–(c) of the HEA provides significant context as to what the program objectives are for proprietary and vocational institution programs as they participate in the Direct Loan program. Both types of institutions are required to provide ''an eligible program of training to prepare students for gainful employment in a recognized occupation.'' 20 U.S.C. 1002(b)–(c). As such, the purpose of these programs is to provide ''gainful employment.'' With that in mind, it is clear that the gainful employment authority operates in tandem with the quality assurance system authority, in that provisions intended to protect a GE program can be incorporated into a quality assurance system. As such, the Secretary is permitted to develop a quality assurance system on a curated basis for these specific GE programs that ensures quality in how these institutions are preparing students for gainful employment. As discussed above, the Department has determined that the gainful employment statute requires institutions to ensure that most graduates of a gainful employment program earn a premium compared to what they would have earned if they had never attended the program.

In sum, the Department has concurrent authority under Section 454(a)(4) along with Section 102(b)–(c) of the HEA to require institutions to comply with the earnings premium measure. Institutions that fail to comply with Section 102 fail to meet the definition of ''institution of higher education'' for the purposes of title IV, and are no longer eligible institutions, the Secretary must terminate eligibility. Institutions that fail to comply with the terms of the Direct Loan Agreement under Section 454 are not eligible to participate in the Direct Loan program. As such, as part of this final rule, the Department is establishing the earnings premium measure as a quality assurance system that establishes eligibility for all GE programs to participate only in the Direct Loan program, consistent with the scope of Section 454, which only applies to Direct Loans.

The quality assurance system authority also requires the Department to develop a quality assurance system in consultation with institutions of higher education, which we have done as part of the negotiated rulemaking process. In addition, institutions had the ability to comment on the proposed rule. The Department was required to consider making changes in response to all substantive comments under informal notice-and-comment rulemaking, and as such, we effectively consulted with institutions of higher education under the existing rulemaking procedures because we sought and obtained advice from institutions. 5 U.S.C. 553; 20 U.S.C. 1098a.

Institutions must also comply with ''other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.'' 20 U.S.C. 1087d(a)(7). Failure to abide by the terms of the Direct Loan Agreement results in disqualification from participating in the Direct Loan program, but not necessarily other title IV, HEA programs.

The Department believes that it has authority under these provisions in Section 454 of the HEA, as well as the GE provisions in Section 102, to require GE programs to comply with the earnings premium standard. However, the Department believes that the appropriate remedy for programmatic noncompliance is the loss of eligibility for Direct Loans for such programs that fail the earnings premium measure, except when a large number of an institution's programs fail, which is discussed in greater detail below. The Secretary has been given significant deference by Congress in Section 454 in designing a quality assurance system, and that includes the option to tailor the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. Indeed, it would not be in the interest of the United States to disqualify all programs at an institution if only one or a few programs are not performing because students in high performing programs would also lose access to programs that are adding value.

The Department also has authority under Section 454(a)(7) for this final rule, which authorizes the Secretary to include in the Direct Loan Agreement (which is incorporated into the PPA) ''such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.'' 20 U.S.C. 1087d(a)(7).

Indeed, this broad grant of deference to the Secretary gives the Department significant latitude in designing a quality assurance system necessary to protect the interests of the United States and promote the purposes of this part. As explained above, the holding in *Loper Bright* does nothing to disrupt deference provided to the Department in broad statutory grants of authority like we have here. *Loper Bright,* 603 U.S. at 394–95.

As stated above, the purpose of authorizing proprietary institutions and vocational institutions to participate in title IV, HEA programs is to provide students opportunities for training designed to ensure that they may become gainfully employed in a recognized occupation. As such, the Department believes that Section 454(a)(7) provides additional authority for the Department to require the earnings premium measure, because doing so advances the purposes of the Direct Loan program through institutional eligibility under Section 102(b)–(c).

In sum, the Department has overlapping and concurrent authority to require an earnings premium measure for GE programs under the gainful employment authority in Section 102(b)–(c), the quality assurance system authority in Section 454(a)(4), the ''protect'' and ''promote'' authority in Section 454(a)(7), and our broad authority to regulate Section 410 of the GEPA. The Department believes that all of these authorities work in tandem and authorize us, independent from the amendments made by the WFTCA related to accountability, require an earnings premium measure for such GE programs.

In practice, the proposed earnings premium measure under the WFTCA is the same as the earnings premium measure under GE. The only type of program not covered by the earnings premium measure under the WFTCA are certificate programs, which are covered by GE. As such, if a court disagrees with our assessment of the robust legal authority we have, the accountability provisions relating to GE are severable and would only have a practical impact on certificate programs.

Summary of Authorities

The above authorities collectively empower the Secretary to promulgate regulations to (1) require institutions to report information about GE programs and eligible non-GE programs to the Secretary; (2) require institutions to provide disclosures or warnings to prospective and enrolled students regarding programs that do not meet earnings premium measures established by the Department; (3) implement Direct Loan program eligibility requirements pertaining to graduate earnings outcomes, including an earnings premium measure and associated reporting, certification, and warning processes; and (4) define the GE requirement in the HEA by establishing similar measures to determine the eligibility of GE programs for participation in the Direct Loan program, which also is supported by the overlapping authority the Department has to create a quality assurance system for institutions participating in the Direct Loan program.

Waiver of HEA Master Calendar Requirements

Congress may waive, modify, or rescind requirements in the HEA and Administrative Procedure Act (APA) that require the Department to follow certain processes and procedures when engaging in informal notice-and-comment rulemaking. See, *e.g., Asiana Airlines* v. *F.A.A.,* 134 F.3d 393, 398 (D.C. Cir. 1998); *Methodist Hospital of Sacramento* v. *Shalala,* 38 F.3d 1225, 1237 (D.C. Cir. 1998) (finding that certain parts of the APA procedural framework had been waived when Congress gave an agency direction that conflicts with and is irreconcilable with the APA).

At the same time, the court in *Asiana Airlines* made clear that the APA requires ''clear intent'' from Congress to justify a departure from the procedural requirements in the APA, noting that 5 U.S.C. 559 requires an explicit waiver of APA procedural requirements. Here, the Department is complying with all of the requirements for informal notice-and-comment rulemaking in 5 U.S.C. 553, so an explicit waiver is not needed. The explicit waiver standard in 5 U.S.C. 559 only applies to the procedural requirement of the APA, and does not apply to the Master Calendar provision in Section 482(c) the HEA. Had Congress wished for the HEA Master Calendar provision to have the same rule of construction as it does for procedural requirements of the APA, we would have expected that Congress would either cross reference and incorporate 5 U.S.C. 559 into the HEA or use similar language to 5 U.S.C. 559 within Section 482(c) of the HEA. Congress knows how to create these types of special rules of construction when they want to, and they declined to do so in Section 482(c) of the HEA.

Absent an explicit rule of construction in the HEA, we rely on the ordinary tools of statutory interpretation to glean the meaning of the statute. The Harmonious-Reading Canon provides that statutes should, when possible, be interpreted in a way that renders them compatible, not contradictory, but such an approach is not always possible if context and other considerations (including the application of other canons) make it impossible to do so, and another approach to statutory interpretation, such as the General/Specific Canon must be applied. See Scalia & Garner, *Reading Law,* 155 (2012). The General/Specific Canon dictates that, in cases where a general prohibition is contradicted by a specific permission or a general permission that is contradicted by a specific prohibition, the more specific of the two provisions controls. *Id.* at 158. Because, as discussed below, the WFTCA contains provisions with effective dates that cannot possibly be implemented in regulation in accordance with the HEA's Master Calendar provision, the WFTCA implicitly provides a limited waiver of the HEA's Master Calendar provision, so far as it is necessary to promulgate regulations that give effect to those provisions. *See Dorsey* v. *United States,* 567 U.S. 260, 274 (2012) (stating that an agency's compliance with an existing statute ''cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment'' (quoting *Great Northern R. Co.* v. *United States,* 208 U.S. 452, 465 (1908)).

Here, the WFTCA was enacted on July 4, 2025. The WFTCA directs the Department to implement roughly a dozen provisions by July 1, 2026. Many of these provisions are not self-executing and could not be implemented absent the Department promulgating regulations to provide details for institutions on how to comply with the WFTCA. Congress gave the Secretary discretion within the WFTCA to implement the provisions impacting the title IV, HEA programs and knew that its commands were not self-executing when directing the Secretary to take action. Congress expected the Secretary to act via rulemaking before July 1, 2026, to enable these provisions to actually go into effect.

The Master Calendar provision in the HEA provides that regulatory changes initiated by the Secretary affecting the title IV, HEA programs must be published in final form by November 1st in order for them to go into effect by July 1st of the following year. 20 U.S.C. 1089(c)(1). Section 492 of the HEA requires the Department to undertake negotiated rulemaking as part of any regulation under title IV of the HEA. In order to conduct negotiated rulemaking and meet APA requirements, the Department must have a public hearing (providing notice to the public), solicit nominations from the public to serve on a negotiated rulemaking committee, select non-Federal negotiators, hold negotiations, develop an NPRM, publish an NPRM (with at least a 30-day comment period), and then publish a final rule that responds to any substantive comments received. The fastest possible timeframe in which the negotiated rulemaking process for the rulemaking packages assigned to the AHEAD Committee could have occurred is 149 days, which is irreconcilable with the timeline allowed by the enactment of the WFTCA, due to the fact that there were 120 days from July 4, 2025, (the day the WFTCA was enacted), through and including November 1, 2025, (the publication date of the final rule required by the Master Calendar).

It would not have been possible for the Department to undertake every step of the negotiated rulemaking process by November 1, 2025, in order to implement the provisions that become effective in the WFTCA by July 1, 2026, which is the statutory effective date. Congress was aware of this temporal impossibility when they passed the WFTCA, yet Congress decided that these provisions would still go into effect on July 1, 2026. Because these provisions are not self-implementing and cannot go into effect unless the Department promulgates a final rule, the WFTCA implicitly waives the Master Calendar provision.

With important details unanswered by the plain text of the WFTCA, it is clear that the policy scheme set forth in the HEA made by the WFTCA cannot be implemented absent regulatory action by the Department. The Department was not able to comply with the master calendar requirements and Congress's statutory deadlines. Furthermore, the Office of Management and Budget has determined this is a major rule under the Congressional Review Act, and because major rules cannot go into effect until 60 days after publication, the effective date for the WFTCA provisions is August 31, 2026. Therefore, the WFTCA does not waive negotiated rulemaking nor any provision in the APA. For provisions in the WFTCA that become effective July 1, 2027, and beyond, Congress did not implicitly repeal the Master Calendar provision because it is possible for the Department to publish a final rule that complies with the Master Calendar to implement those provisions.

Severability

''It is axiomatic'' that a regulation may be invalid in part but not in whole or as applied to one set of facts but not another. *Ayotte* v. *Planned Parenthood of N. New England,* 546 U.S. 320, 329 (2006). If a court finds one part of a regulation is unlawful, the ''normal rule'' is to enjoin only that part. *Id.* (quoting *Brockett* v. *Spokane Arcades, Inc.,* 472 U.S. 491, 504 (1985).

It is the Department's intent that if any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

Statutes and regulations are severable if the separate provisions are ''wholly independent of each other'' and can operate independently. *Brockett* v. *Spokane Arcades, Inc.,* 472 U.S. 491, 502 (1985). That is the case here. No part herein will be affected if another part is found to be unlawful. Nor does the Department believe courts or regulated parties would be unable to apply the rule if one part is held invalid. *C.f. Dep't of Educ.* v. *Louisiana,* 603 U.S. 866, 868 (2024) (per curiam) (denying the government's request to stay a preliminary injunction against an entire rule where only parts were found to be invalid because ''schools would face in determining how to apply the rule for a temporary period with some provisions in effect and some enjoined'').

While the Department's goal with these proposed regulations is to establish a universal earnings accountability framework that is applied evenly across all sectors and credential levels, because of the multiple bases of statutory authority the Department is relying upon for this regulatory action, the Department believes that it crucial to clarify that the provisions of this rule applicable to GE programs and non-GE programs are wholly independent of each other and can operate independently. The Department believes the application of a universal earnings accountability framework to GE programs and non-GE programs is severable, because while the standard applied to GE programs and non-GE programs will be the same, as discussed previously within this section, the Department is not relying on the same statutory authority to impose this unified framework. Likewise, the earnings accountability framework could be applied to only one category of programs without an issue operationally.

Relatedly, as explained in detail in this rule, the Department believes that the application of the earnings accountability framework to all programs, irrespective of whether a program is religious in nature or is offered by a religious institution, does not place a substantial burden on the exercise of religion, in violation of the Religious Freedom Restoration Act (''RFRA''). However, should a court disagree with the Department's conclusion, the Department intends for the earnings accountability framework to continue to survive and remain in effect for all other programs.

Relationship to Other Federal Agencies

Earnings measures supplied by another Federal agency are statistical inputs to the Department's administration of the statutory accountability framework. The provision of such statistical products does not constitute the supplying agency's participation in, endorsement of, validation of, or responsibility for any Department eligibility, accountability, enforcement, or appeal determination. Any administrative appeal or litigation concerning a program's status under these regulations concerns the Department's application of statutory and regulatory standards, not a determination by the agency that supplied the statistical product.

VII. Analysis of Public Comment and Changes

On April 20, 2026, the Secretary published an NPRM for these regulations in the **Federal Register** (91 FR 21088) (April 20, 2026). The Department received 9,994 comments on the proposed regulations. The Department has grouped the comments by functional topics and by similar themes. We discuss substantive issues under the sections of the regulations to which they pertain. In instances where individual submissions appeared to be duplicates or near-duplicates of comments prepared as part of a write-in campaign, the Department posted one representative sample comment along with the total comment count for that campaign to *www.Regulations.gov,* which continues to be our standard practice. We considered these comments along with all the other comments received. In instances where individual submissions were bundled together (submitted as a single document or packaged together), the Department posted all the substantive comments included in the submissions along with the total comment count for that document or package to *www.Regulations.gov.* Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding a word, or typographical errors) within this final rule. Additionally, we generally do not address changes or comments recommended by commenters that the statute does not authorize the Secretary to make (such as forgiving all student loans), or comments pertaining to operational processes. Analysis of the comments and of any changes in the regulations since publication of the NPRM (91 FR 21088) follows.

Process for Out-of-Scope Comments

The Department does not typically address comments that are out of scope. For purposes of this final rule, out-of-scope comments are those that are not addressed in the NPRM (91 FR 21088) altogether. Generally, comments that are outside of the scope of the NPRM (91 FR 21088) are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations.

General Comments

Negotiated Rulemaking and Public Input

Comments: Several commenters argued that the Department failed to provide sufficient time for meaningful negotiated rulemaking and public comment. Some commenters requested the Department delay implementation until July 1, 2027, or later to allow for further study, stakeholder input, and adjustment.

Discussion: As mentioned in the Implementation Date of These Regulations section, except for changes to 34 CFR part 685, these regulations are effective on July 1, 2027. The changes to 34 CFR part 685 are effective on August 31, 2026. However, we note that one of the provisions that the Department is changing in section ''Earnings of Program Completers—Use of IRS Data'' would have the effect of delaying the application of program eligibility consequences for programs in certain fields associated with tip income. Please see that section for more information.

The Department is committed to conducting rulemaking in accordance with all statutory and regulatory requirements. For this rulemaking, we followed the procedures outlined in the HEA and the APA, including convening a negotiated rulemaking committee with representatives from a broad range of stakeholders and providing a public comment period consistent with Federal requirements. While we understand the desire for extended deliberation, the Department has a responsibility to implement timely reforms that protect students and taxpayers.

Changes: None.

Comments: One commenter urged the Department to engage in additional profession-specific outreach and operational consultation with institutions, accreditors, certifying organizations, and professional stakeholders within the acupuncture and herbal medicine community before finalizing any earnings accountability framework that could significantly affect student access to graduate healthcare education and professional workforce entry within this field.

Discussion: The Department declines this suggestion. The Department strives to select negotiators with the goal of ensuring balanced representation across the communities most affected by the regulations. We will continue to apply this principle in future rulemakings.

Changes: None.

Comments: One commenter stated that the Department has already placed ''lower earnings'' warning labels on the Free Application for Federal Student Aid (FAFSA) form. They believed the warnings are premature since the rulemaking process is ongoing.

Discussion: The Department has provided these disclosures for transparent information about program outcomes as students and families make important decisions about their education. The warning labels are based on currently available data and are intended to inform, not to presume the outcome of this rulemaking process.

Changes: None.

General Agreement With the Regulations

Comments: Dozens of commenters including students, graduates, instructors, beauty and massage industry professionals, educators, and program owners support the overall goal of protecting students from predatory programs, ensuring programs lead to meaningful economic outcomes, and improving transparency. Commenters shared personal experiences of debt burdens, poor instruction, unsafe or inadequate equipment, and misleading job placement claims. A few commenters also raised concerns about the cosmetology sector specifically and urged the Department not to grant exemptions for programs or institutions represented by the American Association of Cosmetology Schools (AACS). These commenters asserted that accountability is necessary in this field and expressed concern that certain stakeholders are seeking relief from regulations designed to ensure program value.

Discussion: We thank commenters for their support. The Department agrees with commenters that the earnings accountability framework in this regulation will help protect students from low-earning outcome programs. We agree with commenters who suggested that the rule may result in improved program quality, affordability, and outcomes. As explained in the ''Earnings of Program Completers—Use of IRS Data'' section, the Department also agrees that the earnings accountability framework must include cosmetology programs. The Department does not find a basis for providing the cosmetology sector with a blanket exemption to the rule; the intent of the rule is to ensure that all programs receiving title IV, HEA funds demonstrate that their graduates achieve earnings sufficient to support their educational investment.

Changes: None.

General Opposition to the Regulations

Comments: Thousands of commenters are concerned that this rule will reduce Federal student financial assistance for beauty, wellness, early childhood, drama/theater programs, music programs, fine arts programs, and other fields. Commenters, including cosmetologists, estheticians, massage therapists, beauty school owners, parents, and students shared personal stories about how financial aid enabled them to attend school, pursue a career, achieve financial independence, support their families, and contribute to their communities. Many commenters stated they would not have been able to attend school or enter their profession without Federal student aid, and they are concerned that the earnings test would reduce economic activity and growth generally because it would lead to fewer educational opportunities as programs and colleges would be forced to close.

Many commenters noted the high graduation rates and job placement rates of cosmetology programs, suggesting that they are high-quality programs based on these measures. Commenters also noted that the Department's data suggested that approximately 93% of cosmetology programs would fail the proposed rule. Some commenters stated that protecting the cosmetology sector is essential because these workers provide critical services for weddings, graduations, job interviews, and other celebrations. Other commenters stated that cosmetology programs provide critical preventative health services that, without them, would have adverse consequences for society.

Many commenters also noted that this final rule could cause workforce shortages in essential service industries and create negative ripple effects on small businesses, local economies, and community services due to a shrinking pipeline of licensed professionals. Commenters further cited the effects of cosmetology program closure on unemployment and local communities and emphasized the inability of businesses to fill in-demand jobs if cosmetology and massage therapy programs and programs close. They also indicated that unemployment would increase from students who would otherwise have found jobs after attending these programs and because employees from these schools would lose their jobs. Commenters expressed the importance of protecting these programs and personal anecdotes about the success they have achieved by attending a cosmetology program.

Discussion: The Department appreciates the extensive feedback from commenters regarding the importance of Federal student financial assistance. The Department's intent is not to reduce access to high-quality programs and career pathways. The purpose of the earnings premium measure is to ensure that students are not left worse off financially after completing a program. Students who attend programs that do not support improved earnings are often stuck with debt and little ability to pay it off, resulting in long-term financial challenges for those students.

The Department has estimated the effects of the final rule on all types of programs, including specific analyses on the estimated impacts on cosmetology programs. Overall, we note that fewer students are anticipated to attend failing programs under this regulation relative to the current gainful employment regulation (Table 5.12). Regarding cosmetology programs, we note that compared with the current regulation, fewer cosmetology and massage therapy programs will fail the earnings test under the final rule (Tables 5.17, 5.18, 5.19, 5.20, and 5.28). Fewer of these programs are expected to fail the earnings test under the final rule because it measures earnings a year later than the current rule (4th year instead of 3rd year after completion) and it measures the median earnings of working individuals only (whereas the current rule measures the earnings of all completers regardless of whether they are working).

As described in the ''Earnings of Program Completers—Use of IRS Data'', ''Department Authority (Including GE and Quality Assurance Authority)'', and ''Orderly Program Closure'' sections, the Department has included certain provisions to mitigate the disproportionate impact the rule has on certain types of programs. First, the final rule amends the accountability framework so that certain programs are exempt from the earnings test if they did not receive Federal student loans for the five award years prior to the earnings premium calculation. Many types of programs, including certain cosmetology programs, will be exempt from the earnings test due to this exemption (Table 5.27). Second, the final rule includes a new provision that allows failing programs to voluntarily remove themselves from the Federal student loan program after the first year they fail the accountability framework. In return, these programs preserve their Pell Grant eligibility in future years. Third, we amend the final rule to include a provision that delays the accountability framework for certain types of programs that are linked to predominantly tipped occupations.

Furthermore, as discussed in the Regulatory Impact Analysis, this regulation is estimated to cost $1.5 billion in Direct Loan cohorts 2027 to 2036 and $8.8 billion in Pell Grants in FYs 2027 to 2036 due to the higher amount of financial aid that will be available to students as a result of this regulation. Commenters mistakenly believe the regulation is removing financial aid from programs, when in reality, certain types of programs will receive a much greater amount of financial aid as a result of this regulation.

Ultimately, the Department's analysis and these included provisions suggests that the commenters' assertions about the harmful effects of this regulation are misguided: they incorrectly believe the rule is harming certain types of programs—including cosmetology programs, religious studies programs, and others—when in reality, this rule is often beneficial to those programs because fewer are expected to fail relative to the baseline policy. That said, the rule continues to hold all types of programs accountable, regardless of sector or credential level, to a fair and consistent accountability framework. The Department views this as critical because this framework helps protect students from programs that consistently deliver low-earning outcomes for their students.

In response to the many commenters who expressed concern about the rule's specific impact on the cosmetology sector, the Department clarifies that the final regulation only impacts cosmetology programs that participate in the Federal student loan program. Many cosmetology programs will not be impacted by the rule because they operate outside of the Federal student loan program. While precise data on the number of these programs is scarce, one study found that approximately 86 percent of cosmetology programs in Texas operated outside of the Federal student loan program.[11] While this analysis is for a single State, it provides suggestive evidence that many cosmetology programs will be unaffected by the rule. Given this, the Department does not believe the commenters' assertions about the rule may result in workforce shortages in the cosmetology sector.

Changes: None.

Comments: Hundreds of commenters noted that the final rule's earnings test will have a large impact on religious studies and theology programs. Commenters pointed to the Department's analysis (Table 3.16 from the NPRM) showing that a large share of religious studies programs are estimated to fail the earnings test. Commenters argue that it is inappropriate to measure these programs based on their graduates' earnings because they are not intended to provide high earnings for their graduates but rather aim to achieve important spiritual and societal benefits. Some commenters requested that programs in religion, theology, and ministry studies be entirely excluded from the earnings premium measure.

The commenters argued that the income levels for religious programs are relatively low, at least during the first few years after graduation, but students enter faith-based programs knowing that they are accepting lower financial compensation in order to pursue religious service. One commenter pointed out that yeshivas do not participate in the Direct Loan program and therefore do not contribute to the problem of unsustainable student debt, which is the problem that the WFTCA was intended to address. The commenter further argued that the concern for such institutions is not the loss of Direct Loan program access, but rather the loss of Pell Grant funds.

Some commenters noted that many theology and religious studies programs only receive Federal Pell Grants and do not participate in the Federal student loan program. These commenters argued that it would be unfair to remove these programs' eligibility for Pell Grants because they do not participate in the Federal student loan program.

Discussion: The Department acknowledges the rule proposed in the NPRM would have had a significant impact on religious programs. However, as described in the "Department Authority (Including GE and Quality Assurance Authority)" section below, the Department is amending its regulations to exempt an institution's programs from the administrative capability penalty if the institution has not participated in the Direct Loan program for the five most recently completed award years, and to similarly exempt a program if an institution voluntarily agrees to forego disbursing Direct Loans to students in that program for at least five years. This provision will allow low-earning outcome programs to continue receiving Federal Pell Grants while preventing students in those programs from borrowing Direct Loan funds that they would likely experience difficulty repaying.

Many institutions with religious missions do not participate in the Direct Loan program, and the Department's estimates show that this provision will likely reduce the regulation's impact on undergraduate students attending such institutions and programs. Specifically, the Department estimates that the final rule will have roughly half the impact on students and title IV, HEA program funds disbursed to religious programs relative to the impact of the current regulation (Table 5.18 and 5.19). Ultimately, the final rule is expected to benefit the religious sector, as fewer students in religious programs will be negatively impacted by the final rule relative to the current baseline.

Changes: None.

Comments: Hundreds of commenters urged the Department to allow institutions to demonstrate a program's value based on a broad set of factors rather than solely relying on graduates' earnings. Commenters recommended a variety of alternative metrics, such as program completion rates, transfer rates, job placement rates, employment rates, loan repayment rates, long-term earnings growth, business ownership rates, licensure pass rates, default rates, debt-to-earnings ratios, and levels of student satisfaction.

Discussion: The Department declines the suggested proposals. The Department believes the accountability framework should rely on metrics that are standardized, consistently available across all programs, and derived from reliable administrative data sources. At present, nationally consistent data on long-term career progression, transfer outcomes, business ownership among graduates, student satisfaction, patient outcome measures, and lifetime earnings are not uniformly available across institutions or programs.

Furthermore, the Department agrees that many of the alternative metrics cited by commenters, including debt and repayment measures, completion rates, and licensure attainment, all

[11] Cellini, S.R., & Onwukwe, B., (2022). Cosmetology Schools Everywhere: Most Cosmetology Schools Exist Outside the Federal Student Aid System. Washington, DC: PEER Center. *www.american.edu/spa/peer/upload/peer_cosmetology_b.pdf.*

provide meaningful information on program quality. The Department intends to continue publishing this type of data through the STATS collection, which will provide important information for prospective students as they consider enrolling in higher education. However, the WFTCA specifically requires the Department to consider the earnings outcomes of degree and graduate programs. Congress did not include other metrics, such as job placement rates or licensure pass rates, in the accountability framework authorized under the WFTCA.

Changes: None.

Comments: Many commenters expressed concern that the earnings test will penalize programs that have low earnings but are in valuable fields. Commenters specifically pointed out the social value provided by early childhood education programs, K–12 education programs, special education programs, social work programs, counseling programs, museum and library science programs, religion/religious studies programs, health care programs, career & technical education programs, fine arts programs, and other types of programs.

Commenters expressed that these fields provide value to students beyond their earnings that benefit society through the ''social returns'' these programs offer. Commenters recommended the Department exempt these fields of study from the earnings test or that the Department create ''field specific benchmarks'' that would lower the earnings test threshold for certain fields that provide higher levels of social returns. Commenters also highlighted that many of these socially valuable fields are already facing worker shortages, and that the proposed regulation would worsen these conditions.

A few other commenters argued that a student may obtain a degree in one field and use it for a job in a different field. These commenters emphasized the broader value of higher education, noting that degrees can open doors to various career paths and that the skills and experiences gained are often transferable across industries.

Discussion: The Department recognizes that postsecondary education can create benefits beyond higher earnings and that some programs that will be heavily impacted by the earnings test may face worker shortages. The Department also notes, however, that students need sufficient earnings to afford and repay their Title IV student loans, which makes the earnings test in the final rule an appropriate policy for student loan access. While the loss of title IV, HEA program assistance may lead to closure of programs in high demand fields or those that face workforce shortages, the Department is concerned that these fields and credentials do not produce adequate earnings to support the growing student debt. The Department believes that institutions of higher education, employers, and State and local policymakers have the opportunity to respond to the effects of the earnings premium measure by creating or modifying programs so that they lead to higher earnings, or by reforming employee pay policies or credentialing requirements.

The Department is aware that the proposed earnings test will have a larger impact on certain fields and has provided an extensive analysis in the RIA (Tables 5.17, 5.18, 5.19, and 5.20) of which fields may be most affected. The Department's analysis shows that bachelor's degrees in the fine arts are estimated to fail the earnings test at relatively high rates. However, as many commenters noted, undergraduate students enrolled in Business/Management, Health, Vocational, and Technical programs all have lower fail rates (student-weighted) relative to the baseline policy (Table 5.18).

Furthermore, the commenters who argued that the Department should measure the ''social returns'' of programs provided no basis, data, or recommendation for how the social returns could be fairly and consistently measured. Lacking the data and methodology necessary to perform such an evaluation, the Department notes that any attempt to classify the social returns of programs would be arbitrary. For example, the Department does not have the ability to determine if electrical engineers have more or less ''social value'' in society than musicians.

Lastly, the Department does not have the statutory authority to set lower or different earnings benchmarks for the programs that commenters mentioned based on the potential social returns that these programs may offer. Congress provided specific statutory language on the way program earnings outcomes would be used to determine eligibility to title IV, HEA student loan programs. Congress did not provide any indication that the Department should also consider other factors, such as the ''social value'' of certain programs.

Regarding commenters' assertion that programs can often set up an individual for a variety of different career paths, we agree that this can also be a source of value for graduates. This point has long been acknowledged in the Department's CIP–SOC crosswalk, where many programs are linked with a variety of different occupations and career paths. The Department also acknowledges that some occupations and career paths may have higher earnings outcomes than others, despite those occupations being linked to the same program. However, the Department contends that the commenters' concern is already addressed in the regulation. The earning premium metric includes all program graduates, regardless of the particular career path they enter. Then, the Department calculates each program's earnings value based on the median earnings of its graduates, thereby reducing the extent that outliers in high-paying or low-paying career paths have on the overall median earnings value. If programs are routinely leading students to enter into occupations that are unrelated to their field of study, the Department is concerned about the potential value of these programs and wants to ensure those graduates are included in the program's median earnings measure.

Changes: None.

Comments: Commenters expressed concern that the earnings test would result in programs being judged during anomalous economic periods, like during the COVID–19 pandemic, when wages were unusually low. Some commenters expressed that this would particularly harm cosmetology programs, music programs, and theater programs. This is because many barber shops, massage therapy centers, theaters, and performing arts centers were forced to close or suspend services during COVID–19, negatively impacting the earnings of their graduates. Ultimately, commenters expressed concern that the regulation would unfairly penalize certain types of programs for factors that were outside of the institution's control.

Discussion: The earnings test in this final rule includes several features that will mitigate the effects the commenters raised. First, programs lose eligibility if they fail in two out of three consecutive years, which reduces the significance of a single year in the test. Second, the high school and bachelor's degree earnings threshold is aligned with the year that program graduates' earnings are measured. If earnings are depressed across the economy, then the earnings used to calculate median earnings for the test and the earnings of programs completers will similarly be depressed. Third, for small programs, the earnings of program graduates are based on completers from multiple years (see the cohort aggregation process described in the ''Minimum Number of Completers, Privacy, and Statistical Reliability'' section). Because many cosmetology and music programs are small, the earnings premium measure may be based on the earnings of graduates from multiple different years, smoothing the effect that one anomalous year has on the overall earnings measure. Fourth, the first year of the earnings test will primarily be based on completers who graduated during the 2021 award year, with earnings measured during the 2025 calendar year. Thus, the earnings period used to evaluate programs often occurred well after the conclusion of the COVID–19 pandemic. Collectively, these features will likely prevent programs from failing the earnings premium metric due to one year of anomalous data, similar to what occurred during the COVID–19 pandemic.

Changes: None.

Other General Comments

Comments: A few commenters argued that low wages in fields like massage therapy, cosmetology, and other skilled trades are primarily the result of employer pay practices, not the quality of educational programs. The commenters suggested that the Department should focus on why employers underpay skilled workers, rather than penalizing educational institutions or restricting student access to financial aid.

Discussion: The Department's regulatory scope is limited to educational institutions and the administration of Federal student financial assistance. The Department does not have authority over private sector wage-setting or employer compensation practices and therefore cannot adopt the commenters' suggestion.

Changes: None.

Comments: Some commenters argued that accountability rules should focus on fixing structural barriers that limit students' employment outcomes rather than penalizing academic programs for factors beyond their control. The commenters recommended a variety of things, including requiring universities to establish formal workforce agreements with government agencies, maintain dedicated staff responsible for securing paid public sector internships, and provide transparent data showing the different career pathways and job placement processes for career changers compared with students who enter programs with existing professional networks.

Discussion: The Department does not adopt these recommendations. These proposals extend beyond the Department's current statutory authority and the scope of this final rule.

Changes: None.

Comments: A few commenters argued that a person may obtain a degree in one field and use it for a job in a different field. Commenters emphasized the broader value of higher education, noting that degrees can open doors to various career paths and that the skills and experiences gained are often transferable across industries.

Discussion: Programs can often set up an individual for a variety of different career paths. As discussed above, the Department of Labor's CIP–SOC crosswalk specifically links academic programs with occupations, and in many cases links several occupations to a single program type. While students from the same program may choose different career paths, the Department believes that including all students in the program earnings calculation is necessary to appropriately determine program value. The Department is concerned that excluding certain students from program completers list based on the career path they enter into could result in gamesmanship by colleges, as they could potentially skirt the accountability framework by directing students into certain career pathways. Furthermore, if programs are routinely leading students to enter into occupations that are unrelated to their field of study, the Department is concerned about the potential value of these programs. Ultimately, the Department believes the commenters' suggestions would leave students unprotected from programs with low-earning outcomes.

Changes: None.

Comments: Several commenters suggested the Department compare a student's earnings before and after completion of a program to assess whether the program has provided economic value. Commenters argue that programs that improve their students' earnings outcomes relative to their pre-enrollment earnings should be exempt from the accountability framework regardless of whether the median earnings of program graduates exceeds the earnings threshold for the program. These commenters argue that this is a more appropriate comparison than between program graduates and the individuals surveyed on the ACS.

Discussion: The Department declines to adopt this approach for several reasons. The first reason is feasibility: Not all students have pre-enrollment earnings. For example, many traditional college students, especially dependents who recently graduated from high school, do not have pre-enrollment earnings. Second, for the subset of these students who do have pre-enrollment earnings, it is likely that these earnings occurred while the student was enrolled in high school, which would greatly bias the measure of pre-enrollment earnings. Third, a significant body of economic research finds that students' earnings in the years leading up to college enrollment are downwardly biased (*i.e.,* ''Ashenfelter's Dip'' [12]), providing an improper counterfactual to judge graduates' post-enrollment outcomes. Fourth, this proposal is not aligned with what Congress requires in the WFTCA. Congress instructed the Department to use earnings benchmarks based on working high school and bachelor-degree holders from a certain age and in the same geography; Congress did not contemplate pre-enrollment earnings as the benchmark. For these reasons, the Department rejects the commenters' proposal to use pre-enrollment earnings as the earnings benchmark.

Changes: None.

Comments: Several commenters called for greater accountability and transparency regarding tuition and program costs and urged the Department to address the root causes of rising education costs rather than restricting financial aid or access to programs.

Discussion: With extremely limited exceptions,[13] the Department does not have the statutory authority to regulate tuition and program costs. The HEA stipulates the amount of title IV, HEA program funds an eligible student can receive, not how much an institution can charge.

Changes: None.

Legal Authority/Department Authority

Department Authority (Including GE and Quality Assurance Authority)

Comments: As described in the ''Consequences for Failure to Demonstrate Administrative Capability'' section below, many commenters objected to the loss of title IV, HEA eligibility for all of an institution's low-earning outcome programs if the institution fails the new administrative capability requirement at § 668.16(t),

[12] Heckman, J.J., & Smith, J.A., (1999). The Pre-Program Earnings Dip and the Determinants of Participation in a Social Program: Implications for Simple Program Evaluation Strategies. NBER Working Paper No. 6983. *www.nber.org/system/files/working_papers/w6983/w6983.pdf.*

[13] In the ''Workforce Pell'' provisions of the WFTCA, Congress established a ''value-added earnings'' framework applicable only to eligible workforce programs that would limit the tuition and fees that could be charged for such programs based on the earnings of graduates. *See* 91 FR 29254. Congress did not establish a similar framework for other programs.

arguing that the WFTCA specifically only pertains to participation in the Direct Loan program and does not reference eligibility for other title IV, HEA programs.

Additionally, several commenters expressed concern about the applicability of these regulations to programs or institutions that exclusively serve students with documented learning differences—Specific Learning Disabilities and Autism Spectrum Disorder (ASD)—all of which are considered disabilities under Section 504 of the Rehabilitation Act of 1973. The commenters pointed to well-documented differences in labor market outcomes for individuals with disabilities versus those without such disabilities. The commenters also noted that as a result of these documented earnings gaps, the proposed accountability framework may negatively impact the students who enroll in such programs and institutions solely on the basis of the students' disabilities. The commenters requested that if a program is offered by an institution that enrolls 100 percent of its students with such disabilities, the Department should exclude such programs offered by those institutions from the accountability framework.

Discussion: Commenters make a strong argument that Congress did not intend for such programs to lose eligibility for title IV, HEA programs other than the Direct Loan program. Therefore, Department finds their assertion compelling that the application of the administrative capability test under 34 CFR 668.16(t) to institutions that do not participate in the Direct Loan program is inappropriate. The Department's intent in adopting the administrative capability provision during negotiated rulemaking was to improve program integrity by addressing institutions whose results suggest a more systemic set of concerns which extend beyond outcomes for individual programs. However, this argument must be placed in relation to the intent of Congress, which chose to apply the earnings accountability metric to non-GE programs participating in the Direct Loan program, rather than institutions. As a result, the Department acknowledges the likely intent of Congress not to apply sanctions to institutions that have not participated in the Direct Loan program for an extended period of time and will exempt an institution from the administrative capability provision under 34 CFR 668.14(h) if it has not participated in the Direct Loan program for the five most recently completed award years prior to the year during which the earnings premium measure is calculated. Similarly, the Department will exempt a specific program from the administrative capability penalty if, shortly after the first time that program fails the earnings premium measure, the institution commits to preventing students from borrowing Direct Loan funds for the program for at least five years under 685.203(m)(2). The metric would still be calculated for programs in these situations, but the programs would not be subject to a loss of eligibility for title IV, HEA programs other than the Direct Loan program due to the new administrative capability test in 34 CFR 668.16(t). The Department chose a five-year period because that time period is longer than the published length of most postsecondary programs. Using a period of this length is intended to identify institutions that have made a long-term commitment to offering postsecondary programs without the support of the Direct Loan program, such that in most cases the most recent cohort of students in the institution's programs graduated without the ability to borrow. The Department seeks to avoid the possibility of institutions temporarily suspending Direct Loan participation for the purpose of avoiding the consequences of the administrative capability penalty.

We agree with the commenters that programs at institutions exclusively serving students with specific learning disabilities and related disabilities under Section 504 of the Rehabilitation Act of 1973 should be treated differently under this final rule. We believe that, without this change, the regulation could violate Section 504 of the Rehabilitation Act of 1973, which states that ''no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.'' Therefore, we will exempt programs at such institutions from the program eligibility consequences of these regulations if they only enroll students with a *Specific Learning Disability or Autism,* as defined under the Department's Individuals with Disabilities Education Act, or IDEA regulations. Similar to the treatment of institutions not participating in the Direct Loan program, the Department would still calculate the metric for programs at these institutions, but the programs would not lose eligibility for any title IV, HEA program as a result of the earnings premium measure.

For similar reasons, the Department notes that it already excludes from inclusion in the earnings premium measure, Comprehensive Transition and Postsecondary (CTP) programs that serve students with intellectual disabilities. These programs are approved by the Department to help students with intellectual disabilities continue their education, build independent living and career skills, and prepare for competitive employment. These final regulations do not change that exclusion.

Changes: We have made two changes in response to the concerns described above. In 34 CFR 668.14(h) we added new paragraphs (3) and (4). In paragraph (3), we specify that a low-earning outcome program at an institution that is not participating in the Direct Loan program and that has not participated in the Direct Loan program for at least the five most recently completed award years shall not be subject to an automatic loss of title IV, HEA program eligibility. Additionally, we provided in that paragraph that a similar exception applies if the institution agrees not to permit students to borrow Direct Loan funds in that program under the provisions in 34 CFR 685.203(m)(2). In paragraph (4) we explain the conditions for such agreement, where an institution is required to agree within 120 days of the Secretary's determination that the program has failed for the first time, to add an amendment to the institution's program participation agreement disallowing borrowing in the program for at least five award years prospectively. The paragraph also explains that the exception will remain in effect for as long as the institution agrees to prevent Direct Loan borrowing in the program.

We also added a new paragraph (b) to § 668.601 that exempts institutions from the program eligibility consequences of 34 CFR Subpart S if they only enroll individuals with documented *Specific Learning Disability* or *Autism,* as defined under 34 CFR 300.8.

Master Calendar and Effective Dates

Comments: Some commenters argued that the July 1, 2026, effective date of the final rule violates the HEA's master calendar requirements, due to the fact that the final rule was not published by November 1, 2025. Several of these commenters stated that, insofar as the WFTCA provides an implied waiver of the HEA's master calendar requirements, that this waiver does not extend to portions of the rule that impose the earnings accountability framework on certificate programs below the graduate level, as such programs were not addressed in the WFTCA.

Discussion: As discussed fully in the ''Authority for this Regulatory Action'' section, above, the WFTCA implicitly provides a limited waiver of the HEA's master calendar requirement, so far as it is necessary to promulgate regulations that give effect to provisions of the WFTCA that must take effect on July 1, 2026. *See Dorsey,* 567 U.S. 260, 274 (stating that an agency's compliance with an existing statute ''cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment'' (quoting *Great Northern R. Co.,* 208 U.S. 452, 465).

The WFTCA was enacted on July 4, 2025, and directs the Department to implement roughly a dozen provisions by July 1, 2026. Many of these provisions are not self-executing and could not be implemented absent the Department promulgating regulations to provide details for institutions on how to comply with the WFTCA. Congress gave the Secretary discretion within the WFTCA to implement the provisions impacting the title IV, HEA programs and knew that its commands were not self-executing when directing the Secretary to take action. Congress expected the Secretary to act via rulemaking before July 1, 2026, to enable these provisions to actually go into effect. Therefore, Congress's command to implement certain provisions of WFTCA by July 1, 2026, functions as an implicit waiver of the HEA's master calendar requirements for rulemaking actions taken to implement those provisions in regulation.

The Department agrees with those commenters who stated that the WFTCA's implied waiver of the HEA's master calendar requirements does not extend to the regulations outside of those necessary to implement the provisions of WFTCA. Those provisions would normally take effect on July 1, 2027. However, the Secretary is designating such regulatory provisions as one that an entity subject to the provision may, in the entity's discretion, choose to implement prior to the July 1, 2027, effective date of such regulations.

Changes: None.

First Amendment and Religious Freedom Restoration Act Concerns

Comments: Several commenters stated that they believe that the application of the earnings accountability framework to religious degree programs violates the requirements of the First Amendment and the Religious Freedom Restoration Act (RFRA), with such commenters alleging that the application of the earnings accountability framework to religious degree programs will substantially burden the exercise of students seeking to pursue careers in religious fields, but will not be the least restrictive means of furthering a compelling government interest. These commenters stated that the application of the earnings accountability framework to religious degree programs will substantially burden the religious exercise of individuals seeking to pursue careers in religious fields by potentially precluding their ability to receive title IV, HEA funds to attend the programs necessary to prepare for such careers. Several commenters suggested that this burden will be substantial because of the many religious occupations that are generally low-paying in nature.

Some commenters further stated that the proposed requirement that as a component of administrative capability an institution must demonstrate that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs, constitutes an additional substantial burden on religious exercise. These commenters further state that, because of the low-paying nature of many religious occupations, institutions where a large percentage of students are enrolled in programs designed to prepare individuals for employment in religious occupations will be disproportionately likely to lose eligibility to participate in all title IV, HEA programs. These commenters stated that this will disincentivize institutions from offering programs that prepare individuals for employment in religious occupations, restrict the ability of individuals to obtain such employment, and harm religious organizations by reducing the number of individuals who are qualified to fill certain positions within those organizations.

Several commenters further argued that the Department has not adequately demonstrated that application of the earnings accountability framework for religious programs is the least restrictive means of furthering a compelling government interest. One commenter stated that the NPRM lacked sufficient analysis of the burden being imposed on the exercise of religion, despite acknowledging the substantial impact on religious programs that the rule would have. This commenter and others stated that they believed that the Department failed to adequately consider alternative earnings accountability measures for religious programs that they contend would impose a less severe burden on religious exercise, such as allowing alternative earnings appeals for religious programs.

Discussion: The Department has considered the impact the Rule will have on religious institutions and programs and on religious exercise. Congress provided broad protection for religious liberty from the federal government through RFRA. 42 U.S.C. 2000bb *et seq.;* see also *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania*, 591 U.S. 657, 680(2020). RFRA provides that the federal ''Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability'' unless the burden is ''in furtherance of a compelling governmental interest and is the least restrictive means of furthering'' that interest.'' 42 U.S.C. 2000bb–1(a)–(b). A general rule of general applicability ''substantially burdens'' religious exercise when it forces someone to act in a way that violates his religious beliefs or denies him '''rights, benefits, and privileges enjoyed by other citizens'—even if 'the challenged Government action would interfere significantly with private persons' ability to pursue spiritual fulfillment according to their own religious beliefs.'' *Real Alternatives, Inc.* v. *Sec'y Dep't of Health & Hum. Servs.*, 867 F.3d 338, 357 (3d Cir. 2017) (quoting *Lyng* v. *Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988)); accord *Hobby Lobby Stores, Inc.* v. *Sebelius*, 723 F.3d 1114, 1138 (10th Cir. 2013) (the law substantially burdens religious exercise if it ''(1) requires participation in an activity prohibited by a sincerely held religious belief, (2) prevents participation in conduct motivated by a sincerely held religious belief, or (3) places substantial pressure on an adherent . . . to engage in conduct contrary to a sincerely held religious belief.'' (internal quotation marks omitted, alteration in original)), aff'd sub nom. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014)).

The Department does not believe the Rule substantially burdens religious exercise. Applying the low earning outcome test to religious programs that accept Direct Loans does not require anyone to participate in an activity that violates or places substantial pressure on his or her religious beliefs. While many commenters pointed out that students who graduate from religious programs take jobs that often have lower salaries, none alleged it would violate a religious belief to accept a higher salary.

And even if ''[t]raining [ ] to lead a congregation is an essentially religious endeavor,'' *Locke* v. *Davey*, 540 U.S. 712, 721 (2004), the government does not have to fund that training, see id. at 725. While the final rule may cause a small number of programs to become ineligible to receive federal student assistance—thus potentially making it more difficult or costly for some to enter these programs—it will not prevent students who are motived by religious belief to enter into religious programs from doing so. Students will be able to use Pell Grants to participate in many programs even if some lose Direct Loan eligibility.

To the extent that this could constitute a substantial burden on religious practice, the Department believes it is justified by a compelling governmental interest. As discussed, the federal government has a strong interest in ensuring that federal student aid goes to programs that result in students earning more than they would have without having attended the program. This is true regardless of the subject matter of the program or the religious or non-religious affiliation of the school.

Finally, the rule is narrowly tailored because it only applies to programs that accept Direct Loans, which as stated, many religious programs do not. This ensures that these programs can continue to operate as they have been, with accepting Pell Grant funds, while also ensuring that those programs that receive Direct Loans lead to higher earnings for their students. Commenters did not demonstrate that all religious programs would fail the accountability framework in the regulation. The Department's analysis suggests that fewer than 4 percent of undergraduate students in religious/theology programs will be impacted by our regulation, and this represents a large reduction in impact relative to the current regulation (3.9 percent vs. 7.8 percent) (Table 5.18). While the Department does acknowledge that graduate students in religious/theology programs will be slightly more impacted under this rule relative to the current baseline, only approximately 1 percent of such students are estimated to attend failing religious/theology graduate programs (Table 5.18) under the final rule.

The Department also considered the First Amendment implications of the rule on religious programs and institutions and does not believe the rule violates religious liberty. The First Amendment provides ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'' U.S. Const. amend. 1. This amendment offers a more limited protection than RFRA. As discussed above, the Department does not believe the rule violates RFRA because it does not substantially burden religious exercise, and, even if it did, the rule advances a compelling government interest and is narrowly tailored to meet that interest.

The First Amendment does not require the Department to provide funding for devotional programs or religious degrees for ministry. *Locke* v. *Davey*, 540 U.S. 712, 725 (2004). Rather, it prohibits the Department from denying funds to religious programs or institutions solely because of their religious nature. *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 462–63 (2017). Religious programs and institutions should be allowed to ''compete on an equal footing'' for a government benefit. Id. at 463.

That is exactly what the Rule allows. Religious and non-religious programs and institutions alike are eligible to participate in the title IV Program. All programs and institutions that participate in the title IV program are subject to the low-earnings test. Should a program fail the test and lose Federal student aid eligibility, it will not be because of its religious nature. It will be because the earnings of program graduates fail in the same way as a secular program that fails.

Changes: None.

Comments: Some commenters who raised religious liberty concerns (both under the First Amendment and RFRA) urged the Department to apply an alternate appeals process for religious institutions. They suggested that using ministry-related CIP codes and Bureau of Labor Statistics (BLS) wage data would more accurately and equitable reflect ministry programs while being consistent with Congressional intent and administratively feasible for the Department.

Discussion: The Department declines to apply an alternate earnings appeal for religious programs or institutions. As discussed above, the Department includes a provision that will exempt any program that has not accepted Federal direct loans for at least five award years prior to the enactment of the WFTCA. The Department's analysis indicates that this will exempt approximately 600 religious programs from the earnings test, making an alternative appeals process unnecessary for many such programs. The Department also declines to create an alternative appeals process for the remaining programs for many of the reasons already discussed.

Changes: None.

Loper Bright Concerns

Comments: One commenter argues that the Department lacks statutory authority to apply the earnings accountability framework to all credential levels. The commenter states that the only statutory outcome requirements GE programs are completion and placement rates set forth in HEA Sec. 481(b) applicable to those short-term programs and that the WFTCA only explicitly applied the earnings accountability framework to for undergraduate degrees, graduate degrees, professional degrees, and graduate certificates and only intended for such programs to lose eligibility to participate in the Direct Loan Program. Therefore, the commenter asserts that the proposed regulations are in conflict with the Supreme Court's ruling in *Loper Bright* and are not entitled to deference by a reviewing court.

Discussion: The Department disagrees with the commenter's contention that the Department lacks statutory authority to extend the earnings accountability framework to all sectors and credential levels, including undergraduate nondegree programs. The Department has clearly identified its statutory authority for the proposed regulations, more fully discussed in the ''Authority for This Regulatory Action'' section of this rule.

The Department further disagrees with the commenter's contention that the proposed regulations violate the standard established by *Loper Bright.* While the Department agrees that Section 454(c) of the HEA, as added by the WFTCA, only explicitly applied the earnings accountability framework to undergraduate degrees, graduate degrees, professional degrees, and graduate certificates, the Department does not believe that this precludes the implementation of a universal earnings accountability framework across all credential levels, because it possesses separate statutory authority to apply this framework to programs that ''lead to gainful employment in a recognized profession.''

As previously discussed, in challenge the Department's previous FVT/GE rule, a post-*Loper Bright* court stated that, through the HEA, the Congress had clearly granted the Secretary to promulgate rules necessary for the administration of the title IV, HEA programs: ''the Supreme Court in *Loper Bright* recognized that Congress may 'delegate[ ] particular discretionary authority to an agency' by leaving it with 'flexibility' through terms 'such as 'appropriate' or 'reasonable' '' and that the HEA confers such authority [on the

Secretary] by including the additional specific direction to 'prescribe such regulations as may be necessary to provide for . . . any matter the Secretary deems necessary to the sound administration of the financial aid programs[.]' '' *American Assoc. of Cosmetology Sch.* *6 (citing 20 U.S.C. 1094(c)(1)(B); 1099c).

Section 481(b) of the HEA provides that certain non-degree programs are eligible for title IV, HEA program funds if they ''prepare students for gainful employment in a recognized profession.'' However, nowhere in the HEA is the term ''gainful employment'' defined. In *Loper Bright* the Supreme Court held that when the ''best reading of the statute is that it delegates discretionary authority to an agency,'' then ''the role of the reviewing court'' is to ''recogniz[e] constitutional delegations, fix[ ] the boundaries of the delegated authority, and ensur[e] the agency has engaged in 'reasoned decision making' within those boundaries.'' *Loper Bright* at 371. Because the term ''gainful employment'' is undefined, and because courts have found that the HEA confers upon the Secretary authority to promulgate regulations that Secretary deems necessary to the sound administration of the financial aid programs, the Department believes that the ''best reading' of the HEA is that Congress intended to grant the Secretary discretion to promulgate regulations which interpret what ''gainful employment'' means and such definition is entitled to deference so long as the Secretary engages in ''reasoned decision making.'' The Department believes that that requirement has been more than satisfied, as the Department has offered a multitude of bases for imposing a universal earnings accountability framework, most importantly, ensuring that students who complete GE programs obtain employment that is truly ''gainful,'' insofar as it leads to such students obtaining better economic returns than similarly placed individuals who received no postsecondary education.

Changes: None.

Title IX Exemption

Comments: Some commentators urged the Department to create an exemption for religious programs or institutions similar to the Title IX exemption the Department provides for faith-based institutions. They claim that the Title IX exemption provides a workable model for the Department to create an exemption from the earnings test for religious institutions and programs.

Discussion: The Department declines to adopt an exemption for religious institutions and programs similar to that provided by the Department's Title IX regulations. 34 CFR 106.12 provides that an ''educational institution which is controlled by a religious organization'' does not need to comply with Title IX to the extent doing so ''would not be consistent with the religious tenets of such organization.'' 34 CFR 106.12(a). This exemption applies when the organization submits to the Department a statement explaining precisely which provisions of Title IX conflict with a specific religious tenant.

Title IX's prohibition on sex discrimination, though, is different in kind than the rule's earnings outcome requirement. No specific provision of the rule compels any religious organization to violate its religious tenants in order to continue receiving title IV, HEA funding. The burden, if any, on religious exercise comes from the outcome of the earnings test, not from the complying with the test. For this reason, the Title IX exemption does not create a workable framework for an exemption under this rule.

Changes: None.

Procedural Concerns

Comments: A few commenters argued that the Department provided an insufficient amount of time to submit comments on the proposed rule. Several of these commenters argued that 30-day comment period did not allow institutions and other affected stakeholders a meaningful opportunity to analyze the proposal and provide informed feedback, with one commenter noting that some (but not all) previous rulemakings which dealt with gainful employment regulations utilized longer comment periods.

Additionally, a few commenters challenged the composition and conduct of the negotiated rulemaking committee. One commenter took issue with the qualifications of negotiators chosen to represent specific constituencies. Another commenter took issue with the fact that civil rights groups that represent students were not given a separate, dedicated place on the committee. Finally, two commenters argued that the negotiated rulemaking committee did not actually reach consensus, because one negotiator abstained from the final consensus vote and, with the commenters claiming that the negotiator stated that she was coerced to do so. Still another argued that no negotiator represented the cosmetology industry, which would be the industry most negatively affected by the proposed regulations.

Discussion: The Department disagrees that the comment period following the NPRM offered stakeholders an insufficient amount of time to submit comments on the proposed rule. As discussed in the ''Authority for this Regulatory Activity'' section, above, the Congress imposed a very short window of time for the Department to implement those provisions of WFTCA which are required to be given effect beginning on July 1, 2026. Despite these time constraints, the Department has still provided the public opportunity to comment on the proposed regulations for just as long as it did during the 2018 and 2023 rulemakings dealing with accountability metrics and gainful employment issues. Furthermore, the Department notes that, in spite of these commenters' assertion that the comment period was insufficient, over 9,900 comments were submitted regarding the NPRM.

Regarding the composition of the negotiated rulemaking committee, the Department disagrees that any negotiator serving on the committee lacked the competence to do so. Negotiators were chosen by the Department from list of individuals nominated by groups involved in student financial assistance programs, in accordance with the requirements of Section 492(b)(1) of the HEA and all negotiators possessed demonstrated expertise or experience in the relevant topics proposed for negotiations. And, although there was no negotiator specifically from the cosmetology industry, that industry was represented by negotiators for for-profit institutions, and to a lesser extent, community colleges. These negotiators brought up concerns that were specific to the cosmetology industry on several occasions during negotiated rulemaking.

Furthermore, in regard to the composition of the negotiated rulemaking committee, the Department rejects the assertion that the Department acted improperly by not providing a dedicated seat at the table for civil rights groups that represent students. Section 492(b)(1) of the HEA does not require the Department to provide a dedicated seat for that constituency and believes that the interest of that constituency was ably represented by the negotiators who jointly represented both that constituency and legal assistance organizations that represent students.

Finally, the Department rejects commenters' contention that consensus was not reached because one negotiator abstained from the consensus vote. Prior to the vote, negotiators were very clearly informed about the effect of abstaining from the consensus vote. *See*

Accountability in Higher Education and Access through Demand-Driven (AHEAD) Workforce Pell Committee, Session 2, Day 5, Afternoon, at 15 (statement of Ms. Mack)(Jan. 9, 2026)(''I would like to clarify that I will ask everyone to exhibit their thumb [in] show of consensus. If you are a thumbs up, this means you are in support of the text as we just reviewed. If you are a thumb down, that would mean that you are, in fact, blocking consensus. If you wish to give a sideways thumb, we are going to treat that as abstaining. So, it will not be in support of the text, but it will also not block consensus.'') Furthermore, the Department rejects commenters' assertion that the negotiator who chose to abstain from the consensus vote was the product of coercion. Contrary to commenters' claims, the negotiator who abstained did not state that her decision was coerced, merely that it was made clear that certain bargains for provisions and compromises would be lost if consensus was not reached. *See Id.* at 17 (statement of Ms. Hoffman). Rather than improper, the Department contends that this statement simply demonstrates the give-and-take nature of the negotiated rulemaking process.

Changes: None.

Earnings and Earnings Threshold (Including Responses to Directed Questions)

Earnings of Program Completers—Use of IRS Data

Comments: Many commenters asserted that the earnings calculation in the regulation would not be accurate for programs that are designed to train students for occupations that rely on tipped income, cash payments, or freelance work, all of which may go under-reported in Federal tax data. Many commenters argued that the Department should apply an earnings multiplier (whereby the Department increases the actual reported median earnings to account for unreported or under-reported income) to cosmetology programs and other programs where graduates often receive a significant portion of their earnings through tips, as a way to account for this potential under-reporting. Some commenters asserted that most tipped income was not included in Federal tax data at all, arguing that the earnings test would therefore be biased against cosmetology and other programs that prepare students for occupations that customarily and regularly receive tips.

Other commenters argued that cosmetology programs should not receive an earnings variance or exemption from the accountability framework. These commenters explained that all tipped income is required to be reported by law, and if any under-reporting occurs, based on past research, it is a relatively small percentage—usually around 8 percent of income, according to one study.[14] For those reasons, commenters argued that these programs should not be treated differently from other types of programs, stating that they should not receive an earnings multiplier, exemption, or any other special treatment.

A few other commenters argued that tipped income may be more accurately reported by tax filers after the ''No Tax on Tips'' policy from the WFTCA is implemented. These commenters argued that many individuals working in occupations where workers customarily and regularly receive tips do not currently fully report their tipped income. They also acknowledged that the ''No Tax on Tips'' provision was passed in the same law as the earnings test, and it may likely change the way that tipped workers report their tips in the future. Other commenters recommended the Department consider a ''more comprehensive and equitable evaluation method'' for tipped workers, proposing a delay in the implementation of the accountability framework. Noting the challenges currently associated with the reporting of tipped income, commenters specifically requested the Department delay the rule until July 1, 2028, to allow for ''sufficient time to address outstanding concerns.''

Discussion: After considering the totality of feedback the Department received on the issue of unreported and under-reported tipped income, the Department has decided to delay the implementation of the accountability framework for certain programs that prepare students for employment in occupations where workers customarily and regularly receive a predominant percentage of their income through tips, in order to use earnings from the tax years when the ''No Tax on Tips'' policy is in effect, which began with the 2026 tax year.

The Department made this determination based on the following comments and feedback. First, commenters argued that Federal tax data may often not reflect amounts of tipped income customarily and regularly received by certain types of workers.

Conversely, other commenters argued that significant amounts of under-reported tipped income is rare and unlikely to make up a significant share of a tax-filer's total income. However, these commenters still acknowledged that unreported tips may comprise around 8 percent of individuals' total earnings in cosmetology and related occupations. Notwithstanding these issues identified by commenters, the Department continues to believe that the earnings data reported annually by tax-filers to the IRS are the most accurate and comprehensive information available to determine the earnings of individuals.

To address some of the situations identified by commenters and to increase the accuracy of the earnings calculations, the Department is adopting a solution suggested by some commenters: To delay the implementation of the accountability framework for certain programs that train individuals for occupations where workers customarily and regularly receive tips until the earnings of those individuals can be measured after the ''No Tax on Tips'' policy is in effect. Beginning in the 2026 tax year, the new policy removes the potential incentive that certain tax filers previously faced to under-report or not report tipped income. Because of this, the Department believes the accuracy of the earnings data for workers in tipped occupations is likely to increase starting in the 2026 tax year, further enhancing the precision of the IRS data.

To implement this, the Department determined the types of programs that prepare students for employment in occupations that customarily and regularly receive tipped income. For this determination, the Department used the list of occupations included in the IRS and Treasury final rule listing occupations that qualify for the ''No Tax on Tips'' policy.[15] We then limited those occupations to those where tipping is most predominant, meaning that 50 percent or more of tax filers in these occupations reported at least $100 in tipped income. The Treasury Department and the IRS identified occupations listed on the income tax returns (as reported on page 2 of Form 1040 next to the taxpayer's signature) described in the prior sentence as having customarily and regularly received tips based on the percentage of taxpayers who reported at least $100 in

[14] Cellini, S.R., & Blanchard, K.J., (2022). Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income. Washington, DC: PEER Center. *www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf.*

[15] 26 CFR part 1. ''Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips.'' 91 FR 19026. *www.federalregister.gov/documents/2026/04/13/2026-07104/occupations-that-customarily-and-regularly-received-tips-definition-of-qualified-tips.*

annual tip income within a given occupation as reported on Form 1040. The Department used the threshold of 50 percent because it is unlikely that a program's median earnings value would be significantly affected by occupations where fewer than half of individuals receive tipped income. Then, the Department linked those occupations (defined by 6-digit SOC codes) to programs defined by 6-digit CIP codes.

Ultimately, this process results in 20 fields that are associated with predominantly tipped occupations. These 20 fields are listed in Table 5.22. For programs in these 6-digit CIP codes, the Department will not apply the accountability framework in this regulation until the measurement year(s) for the earnings test includes only year(s) that the ''No Tax on Tips'' policy is in effect (2026 through at least 2028 under current law).

This change results in at least a one-year delay for affected eligible programs because the first cohort of students included in the earnings test are those who completed during the 2020–21 award year. These students will have their earnings measured under the regulations during tax year 2025—a year before the ''No Tax on Tips'' policy was in effect. During the second year the Department will calculate the earnings test, the single-year cohort covers students who graduated in the 2021–22 award year, and their earnings will be measured in tax year 2026. This year occurs after the ''No Tax on Tips'' policy is in effect, so programs with 6-digit CIPs matching those listed in Table 5.22 that have sufficient N-size for a single-year cohort will begin being counted as passing or failing the earnings test in the second round of calculations. However, if the program is small and requires cohort aggregation with prior years, those programs will take longer to reach a stage where their earnings premium metric can potentially lead to consequences for a failing result. For the smaller programs in this group, it may take several rounds of calculations until the program's aggregated cohort is fully comprised of completers from 2021–22 or later. These programs could potentially see up to four years with the earnings premium metric being published on an informational basis (after which point all cohorts with sufficient N-size to receive median earnings would consist of completers from award year 2021–22 or later).

The Department acknowledges that the ''No Tax on Tips'' policy is currently set to expire after tax year 2028. While it is likely that this provision would be extended or made permanent, should this policy expire at a future point, the Department will continue to apply the accountability framework to these programs and will revisit the issue of data quality. This is because, as stated above, the Department continues to believe that the income data maintained by the IRS is the most comprehensive information available on individual earnings. Additionally, the Department notes that tipped income is included in Federal tax data, as it is legally required to be reported under the tax code. The IRS directs employees to keep a daily tip record, to report all cash tips to the employer (unless tips are less than $20 per month), and to report all tips on the individual's Federal income tax return.[16] Therefore, the possibility of under-reported tipped income would only occur if program graduates were unlawfully not reporting tipped income *en masse,* which is why we continue to believe the issue of under-reported tipped income is likely to be much smaller than what some commenters suggested.

The Department further clarifies that it will continue to measure and report the earnings outcomes for the programs listed in Table 5.22, though these will not be subject to the accountability framework during years where their graduates' earnings are measured in 2025 or before. The Department believes this provides important information to students about the possible earnings outcomes they may experience if they attend such programs, and furthermore, it provides colleges with information to help it gauge whether their particular programs may be likely to pass or fail the earnings premium measure once the program becomes subject to the penalties of the accountability framework during a future year.

The Department has broad authority to provide this delay under 20 U.S.C. 1221e–3, as well as from its express authority to establish and manage an appeals process for programs that do not meet the low-earnings requirements, 20 U.S.C. 1087d(c)(5). The Department anticipates if the programs included in Table 5.22 are not found to meet the low-earnings requirements, many would likely try to appeal the outcome on the basis that the 2026 tax year data does not accurately reflect the earnings of their graduates. By the time of such an appeal, the Department will have the benefit of the enhanced data brought about by tax filings made under the ''No Tax on Tips'' provisions, which, as stated, the Department anticipates will reflect higher earnings because more workers in these occupations will report more of their tipped income. Given the number of programs potentially affected, these avoidable appeals could prevent the Department from adjudicating appeals from other programs in a timely, efficient manner. And because the Department cannot end a program's participation in a title IV, HEA program while the appeals processes is ongoing, this could result in many programs that have failed to meet the low-earnings requirements, and whose data the Department has no reason to believe is inaccurate, continuing to use funds for an extended period. So, the Department has determined that the appeals process can be more efficient if the Department institutes the one-year delay for the programs listed in Table 5.22.

The Department disagrees with commenters who requested an earnings multiplier for cosmetology programs and other types of programs that prepare students to work in occupations where workers customarily and regularly receive tips. As we discussed in the NPRM, the Department specifically evaluated how an earnings multiplier for cosmetology programs would impact the extent that these programs fail the earnings test in the final rule (Table 8.2). The Department's analysis showed that an 8 percent earnings multiplier to income reported to the IRS by graduates of cosmetology programs would result in only a roughly 8–9 percentage point decline in the fail rates of cosmetology programs. Instead, we believe the approach discussed above more adequately addresses the concern about the accuracy of tipped income by tax-filers. Many cosmetology programs, approximately 77 percent, will qualify for at least a one-year delay in when the accountability framework first applies (Table 5.24). The Department believes this provision addresses the commenters' concerns about unreported tipped income while also maintaining a consistent earnings premium metric and protecting students from programs that regularly leave students with low earnings after attending.

To determine which programs are designed to prepare students for employment in occupations that predominantly receive tipped income, the Department will use the following process. First, we will use the list of occupations included in the final rule ''Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips'' from the Internal Revenue Service and Treasury (91 FR 19026). We will then narrow the list to the occupations where 50 percent or more of workers report tipped income to

[16] *www.irs.gov/businesses/small-businesses-self-employed/tip-recordkeeping-and-reporting.*

the IRS. Then, we will use the Department's CIP–SOC crosswalk to link occupations (defined using 6-digit SOC codes) to programs (defined using 6-digit CIP codes).

Ultimately, twenty unique programs (defined using 6-digit CIP codes) will qualify for this provision. These CIP codes and program names are listed in Table 5.22. For these programs, the Department will continue to compute and publish median earnings information and the benchmark that the program would have been compared against. However, these programs will not be held accountable for the sanctions associated with failing the earnings premium metric until the program graduates are measured using earnings from the 2026 tax year or later.

Programs would not be held accountable for results occurring prior to consequences taking effect. For example, if a program had informational metrics in the first round of calculations that would have resulted in failing the earnings premium and passed the earnings premium metric in the second round when consequences first could take effect, it would be in the same position as a non-tipped program that had passed both of the first two rounds of calculations. The tipped program would not be subject to warnings based on informational results from before potential consequences took effect.

Changes: The Department modifies § 668.402 to add a new paragraph (c)(4), which specifies that programs that are designed to prepare students for employment in certain occupations that predominantly receive tipped income, as defined under IRS regulations in 26 CFR 1.224–1(h), and in which the IRS has determined that 50 percent or more of the individuals in the occupation receive income from tips, will not be considered to have passed or failed the earnings premium measure for any award year in which the Secretary evaluates earnings data from the 2025 tax year or prior. We also specify that we will make earnings data and the earnings threshold used to calculate the earnings premium measure available to the public.

Comments: Commenters raised several concerns about how income from self-employment and independent contractors is treated in the earnings test. These include concerns that the earnings data used to assess programs does not include self-employment income, and that individuals working in certain careers (including individuals who conduct acupuncture, chiropractors, cosmetologists, massage therapists, and the fine arts) earn significant amounts of their income from self-employment. Some commenters also noted that self-employment earnings only include earnings after business deductions, which would therefore undercount the true earnings of program graduates who earn a significant share of their income through self-employment.

A few commenters stated that the methodology explained in the NPRM would fail to capture partnership income as reported on IRS Form K–1 and the business distribution portion of earned income arising from an S-corp. Other commenters voiced concern that graduates working in gig-style employment involving cobbling together many engagements, most if not all of which fall under the reporting threshold, would show up with inaccurately low income.

One commenter indicated that they understood the Department's emphasis on maintaining comparability with ACS and were not proposing a change in the data source, but instead requested that the Department apply a methodology-based correction factor, grounded in the IRS's own tax gap research, for fields in which freelance work is the predominant employment outcome. The commenter argued that this approach would preserve consistency with ACS thresholds while addressing a known and measurable bias.

Discussion: Earnings data available to the Department through the IRS includes self-employment income from IRS Form 1040–SE records. This data includes ''the sum of wages and deferred compensation from all non-duplicate W–2 forms and positive self-employment earnings from IRS Form 1040 Schedule SE (Self-Employment Tax) for each student measured.'' [17] The IRS form 1040 Schedule SE captures self-employment income earned from a partnership and reported on form 1065 Schedule K–1, and it captures self-employment income from a sole proprietorship reported on form 1040 Schedule C. The Department acknowledges that the 1040 Schedule SE captures the net profit or loss from a business or self-employment and therefore reports income that is the net of certain business-related deductions that individuals claim.

The Department believes that the claimed possibility that some types of earnings, like earnings from partnerships and business distributions, may be missing from Federal tax data is unlikely to have an impact on median program earnings values. First, the commenter did not provide data or evidence on the extent of this potential problem, and the Department is not independently aware of data demonstrating either that people underreport earnings from partnerships and business distributions or, if there is such underreporting, the scope of the underreporting. Even if there is underreporting, the Department believes that many individuals from the same program—usually more than half—would need to have unobserved income from partnerships and business distributions for this to influence the median value, which the Department has no evidence to support and views as unlikely.

Furthermore, the Department believes the income data that are available from Federal administrative sources are well-suited for the purposes of these regulations. Only Federal administrative sources, such as earnings records maintained by the IRS, contain such a comprehensive view of earned income. As discussed in prior versions of the Gainful Employment regulations (such as the 2014 and 2023 prior rules), earnings data reported though other channels—such as by self-reported survey data collected by colleges—are implausibly high. Issues such as recall and selection bias likely contributed to inflated earnings measures when colleges conducted surveys to gather self-reported income information. Therefore, the Department believes that if it allowed colleges to supplement earnings data through self-reported surveys to account for sources of potentially unobserved income, as the commenters requested, it would introduce another larger problem that the earnings data would likely be arbitrarily inflated due to the issues of recall and selection bias.

Additionally, while self-employment income reflects income after business deductions, the Department believes that this measure is appropriate because it more accurately reflects the income the individual has available to pay a loan, and because measures self-employment income prior to business deductions are not accurately capturing the actual income that the individual has available.

For all the reasons described above, the Department also believes that applying adjustments to earnings is unnecessary, and moreover would violate the statute's requirements. Regarding the request by one commenter to specifically make such an adjustment for individuals engaged in freelance work, we are concerned that the nature of freelance work varies greatly by profession, so applying a one-size-fits-all ''correction factor'' would

[17] *https://collegescorecard.ed.gov/files/InstitutionDataDocumentation.pdf.*

likely result in large-scale distortion. Therefore, we decline to adopt that commenter's recommendation.

Changes: None.

Comments: Some commenters suggested that the Department should use earnings data from BLS rather than the IRS to determine whether programs would remain eligible for Federal student financial assistance. Under the proposed approach, a program would pass the earnings test if BLS data showed that a worker with a specific credential earns above the high-school or bachelor's degree tests. Similarly, other commenters noted that BLS data show that earnings for certain fields of study are higher than those the Department has cited and reported using data from the IRS.

Discussion: The Department does not have the statutory authority to use earnings data from the BLS when measuring earnings for degree programs as the commenters requested. The earnings data from the BLS are based on the earnings of all individuals who have a certain level of educational attainment and who work in a certain industry. However, the statute clearly requires that the earnings data be based on individuals who graduate from specific degree programs. Therefore, data from the BLS do not satisfy the statutory requirements to determine the median earnings measure of graduates from each program as outlined in Section 84001 of the WFTCA.

The Department further notes that the observed differences between the earnings data in the PPD:2026 data that the Department released and the BLS data stem from a difference in what these two sources attempt to measure. Whereas the PPD:2026 data measure earnings for all individuals who graduate from specific programs, regardless of the industry they enter four years after completion, the BLS data cited by the commenters measures the distribution of earnings for individuals who successfully work in a given industry, irrespective of their path into the industry or the stage of their career. We do not believe it is appropriate to evaluate a postsecondary program on the basis of the earnings of individuals who were not enrolled in that program and who are successfully employed, as this would not recognize any impact by the postsecondary institution on the student's employment success.

Changes: None.

Comments: One commenter requested the Department incorporate safeguards or complementary measures that account for variability in earnings realization and reporting to improve the accuracy and fairness of the framework while maintaining administrative flexibility.

Discussion: The Department thanks the commenter for their feedback, but without a concrete suggestion, it is difficult to come up with further ideas for what those improvements might be. We would note, however, that the statutory framework's use of two failures in three consecutive calculations for a program to reach the low-earning outcome designation would protect programs having uncharacteristic outcomes occurring in a single year.

Changes: None.

Comments: One commenter suggested supplementing IRS data with payroll-based sources such as the National Directory of New Hires or State Unemployment Insurance (UI) wage records, where data-sharing agreements are permitted. The commenter felt the alternative payroll data captured earnings closer to real time and with greater accuracy for wage earners than annual tax filings.

Discussion: The Department thanks the commenter for their suggestion, but we believe that data from the IRS is currently the best available data for these purposes. The data is measured after sufficient time has passed for the IRS records to be compiled and validated, so the use of prior real-time data would not provide the enhancement that the commenter describes. Requiring earnings data from a Federal source is consistent with prior approaches and provides both statistical reliability and the option to use a different Federal source in the future should operational needs arise. Furthermore, the Department is concerned that supplementing the earnings data from the IRS with other sources of income, such as State UI data, will create a significant burden on the Department and would likely be infeasible given the privacy protocols of other agencies.

Changes: None.

Comments: Several commenters stressed concern with which income or tax return line items would be used when calculating median earnings and the real differences that can exist when reporting income for different comparison groups due to occupational variances. As an example, if using the adjusted gross income (AGI) as a measure of income, there are several occupations that due to self-employment or freelance work, are able to claim legitimate deductions that will reduce taxable income thus reducing the formal AGI reported.

Several commenters noted that for the creative workforce, disproportionately composed of sole proprietorships and independent contractors, income would be drawn from Schedule C after legitimate business expenses have been deducted. These commenters believed that this would be an unfair net profit vs. gross income penalty since an artist's direct receipts would be reduced by the costs associated with inputs such as rent, materials, and equipment.

Discussion: The Department will not be directly using AGI because that number is shaped by household choices, such as directing funds to a tax-advantaged retirement account or to a health savings account, but the Department will be sourcing reported earnings from IRS data.

While self-employed individuals have some amount of discretion in how to allocate funds that employees do not, such as moving to a less expensive office to free up more funds for household income or accepting lower household income to cover investment in new equipment, funds allocated to business expenses are not available to cover household expenditures or savings. These expenses are not considered income.

Change: None.

Comments: One commenter requested that the definition of earnings be revised to include self-employment and gross business revenue. Their proposed language would change § 668.2(b)'s definition of earnings to read ''For the purposes of Subparts Q and S of this part, wages, income as reported to the Internal Revenue Service, and other earned income, including self-employment and gross business revenue.''

Discussion: The Department declines to adopt this definition, and notes that using gross business revenue would result in a massive distortion of an individual's earnings and funds available for living expenses, debt repayment, and other expenses, and would certainly not represent an earnings boost from an educational credential. Gross business revenue includes the prices of any inventory sold, or costs of other inputs, and counting this as part of an individual's income could have a drastically misrepresentative multiplicative effect on the amount stated. For example, if an individual sold goods purchased for $950,000 at a markup, receiving $1,000,000, their gross revenue would be $1,000,000 and their profit would be $50,000 (minus any additional expenses); claiming the $1,000,000 as income would be inappropriate.

Changes: None.

Comments: Several commenters expressed concerns that occupations compensated with housing allowances, such as many ministerial vocations, will not have their full earnings factored in when evaluating IRS income data because, though listed on W–2s, housing allowances are not reported as part of taxable income since they are excluded before the IRS calculates taxable income. One commenter also requested an alternative earnings metric covering all elements of the compensation structure for clergy and religious workers, including housing allowances, in-kind benefits, and stipend arrangements.

One commenter mentioned that it is a common experience for early career artists to work in residencies that provide room and board which can last from two weeks to a full year. This commenter indicated that these benefits dramatically impact the income required by an artist to live and create that gets reported to the IRS.

One commenter recommended including all earned income regardless of whether such compensation is taxed, including non-monetary or in-kind compensation from the employer such as food, lodging, use of a company car, etc.

A couple of commenters also requested that the Department clarify if, or how, certain types of compensation for physician residencies such as housing stipends, meals or education will be factored into the earnings measurement to ensure all appropriate income is fully captured. The commenters indicated that these issues highlight concerns that certain program completers will not have their full income compensation used when comparing earnings to the benchmark earnings causing potential discrepancies.

Discussion: The Department carefully considered possibilities recommended by commenters and reached the decision to limit earnings to forms of monetary compensation, as these are fungible earnings available to cover household expenses and loan repayments and to otherwise be directed by the recipient.

Housing stipends are unlikely to be observed in Federal tax data used by the IRS to compute program earnings. However, the Department believes these data are still the best available data to determine program earnings. While the Department acknowledges that occupations where non-taxable allowances are common may affect how earnings appear for individuals, developing or mandating new data collections would be burdensome for institutions and would introduce significant variation that could undermine comparability across programs. Furthermore, for the reasons discussed in prior comments about tipped and self-employment income, the Department views administrative data from Federal agencies with earnings data as the highest quality data that currently exist that could be utilized to fulfill the statutory requirements. Alternative sources of income data, such as data collected through self-reported surveys conducted by colleges, would likely produce inflated earnings values due to issues of selection bias and recall bias.

Changes: None.

Comments: One commenter stated that they believed the description in the regulatory text was inconsistent with the discussion in the NPRM's preamble guidance as to how earnings would be sourced. The commenter believed that the regulatory definition of earnings as ''wages, income as reported to the Internal Revenue Service, and other earned income, including from self-employment'' is inconsistent with the preamble's clarification that earnings would be defined as ''wages, and other earned income as reported to the IRS, including net income reported from self-employment. This does not include other forms of income (whether taxed or untaxed).'' The commenter stated that the latter frames the calculation as one that excludes any income not reported to the IRS regardless of whether it is earned.

Discussion: The Department does not view these as inconsistent. In both cases, the Department has expressed its view that earnings information will be sourced from data held by the IRS.

Change: None.

Graduate Earnings—Alternative Data Sources

Comments: One commenter stated that it is incumbent upon the Department to review the school-conducted earnings surveys submitted in 2018 under the 2014 Gainful Employment rule as a means of evaluating the accuracy of government-reported income.

Discussion: The Department disagrees with this commenter's recommendation. Small samples taken by schools without any means of controlling for non-response bias and other sources of statistical distortion are not an authoritative source to evaluate whether tax data, covering all individuals and required by law to be reported truthfully, are accurate.

Changes: None.

Graduate Earnings—Adjustments

Comments: One commenter requested that the Department adjust wages for certain occupations, such as chiropractors, who are often forced to accept lower fees in order to be included in various State or private insurance networks.

Discussion: We thank the commenter for raising their concern; however, the statute does not allow the Department to individually adjust earnings for particular occupations or academic programs. In our effort to harmonize across all eligible title IV, HEA programs, we want to ensure all students and programs are treated as consistently as possible when calculating an earnings premium measure.

Changes: None.

Comments: Many commenters expressed concern that the earnings test does not account for the race or sex of program graduates, noting that certain groups of individuals may experience challenges in the labor market that impact their earnings outcomes. Consequently, commenters expressed that this would unfairly penalize certain programs who serve marginalized or disadvantaged groups.

Discussion: The Department disagrees with commenters who requested to adjust program earnings based on the characteristics of program completers, such as student race/ethnicity and sex. First, several studies have found that, after controlling for State location and program, that differences in the compositions of students in programs are unrelated to the program earnings outcomes.[18] This research contradicts the commenters' assertion that programs serving different types of student populations—such as Black and Hispanic populations—will be unfairly treated under the earnings test. Second, the earnings benchmark also includes individuals from a variety of different racial/ethnic and sex categories. This will likely mitigate the extent to which programs are penalized based on the composition of students they serve, because the geographic area and population they are compared against will likely contain a similar mixture of

[18] Christensen, C., (2024) Unintended Consequences of an Earnings-Based Accountability Test for Master's Degree Programs. Washington, DC: Urban Institute. January 2024. *www.urban.org/research/publication/unintended-consequences-earnings-based-accountability-test-masters-degree;* Christensen, C., & Turner, L.J., (2021). Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings? Washington, DC: Brookings Institution. *www.brookings.edu/articles/student-outcomes-at-community-colleges-what-factors-explain-variation-in-loan-repayment-and-earnings/.*

characteristics. In effect, the Department believes this ''nets out'' any potential influence that such factors would have on program outcomes. Third, the Department may not treat programs differently based on the racial composition of their students. Absent (at the very least) any findings that the Department had discriminated against students on the basis of race in the title IV, HEA program and that this course of action would rectify that discrimination, any consideration of race would violate the students' Equal Protection rights. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 205 (2023). The Department believes that preferencing or penalizing programs for the immutable characteristics of students would likely violate Civil Rights law, which we decline to do.

Changes: None.

Comments: One commenter suggested that the Department consider whether annualized earnings measures could be supplemented with quarterly earnings data to capture short-term post-completion gains that the annual snapshot may obscure, especially for students enrolled in nonstandard programs with rolling start dates who complete programs at various times throughout the award year.

Discussion: The Department believes that the commenter may be misunderstanding the time frame under which earnings are measured. The Department looks at earnings for students who completed the program four award years prior to the calendar year from which we source earnings, allowing time for students to finish their programs, find jobs, and become established in their career. The short-term gains the commenter describes would not be as relevant by that point, and the timing with which students graduate within the July-June award year would not have the materiality the commenter cites.

Changes: None.

Comments: One commenter asked the Department to ''expand § 668.2(b) earnings definition to include Schedule E income—royalties, licensing, and performance residuals—which represent another post-graduation revenue stream for working film, music, and literary professionals.''

Discussion: The Department declines the commenter's request for several reasons. First, the request is not feasible, as the data maintained by the IRS is not positioned to observe this type of income. Second, the Department believes this type of income is relatively rare and is unlikely to influence the overall median earnings value of a program. A large share of individuals from the same program would need to receive royalties and licensing income, which seems implausible. Third, the Department continues to contend that the income information maintained by the IRS, which includes W–2 income and 1040 self-employment income, is the best and most comprehensive income information available. Furthermore, income from royalties that is earned through self-employment is captured on form 1040 SE, which is included in the earnings information provided by the IRS to the Department. Income earned from royalties reported on other IRS forms (such as form 1040 Schedule E) are more similar to investment or passive income than employment income, which the Department believes should be excluded from the earnings measure.

Changes: None.

Comments: One commenter recommends that the Department adjust the earnings definition for self-employed graduates to use gross receipts or measures based on the Current Population Survey (CPS) or to adopt a longer multi-year measurement window analogous to Social Security benefit calculations, to mitigate the structural downward bias in IRS administrative data for independent-practice professions.

Discussion: Gross receipts include items such as business expenses that cannot be reasonably interpreted as income. CPS measures are not specific to a program's exact completers and would therefore not fit with this framework. The statute requires us to source earnings covering one calendar year, but we would point out that in the case of small programs such as the commenter mentioned, the fact that completers are sourced from different years to complete the cohort will also mean that earnings from different calendar years are being covered.

Change: None.

Comments: One commenter indicated that artists often participate in a barter economy, exchanging services and creative product for other goods and services, which would dramatically impact the income required by an artist to live and create that gets reported to the IRS thus artificially lowering their median earnings as compared to benchmark earnings where the majority of income is fully reported to the IRS.

Discussion: The Department thanks the commenter for this information, but there is no viable way for us to incorporate it. Earnings derived from the barter economy are not captured on the IRS's W–2 earnings or 1040 self-employment reporting. The IRS data are the best and most accurate income information available and attempts to otherwise capture this data (such as through institution-constructed surveys) would introduce bigger problems, including non-response bias, social desirability bias, and recall bias. Any of these would make our data less likely than the IRS's records, not more accurate. We do believe that this type of income is likely to be rare, or not on a large scale, making it unlikely to influence a program's median earnings value.

Change: None.

Earnings Threshold—Data Source

Comments: A few commenters suggested that it was unfair that both baccalaureate degrees and undergraduate certificates were being compared to a threshold based on working adults with only a high school diploma, with one claiming that this was the equivalent to comparing a graduate of a highly selective institution with a baccalaureate degree in a more lucrative science field to a graduate of a cosmetology certificate program. The commenter suggested instead comparing undergraduate nondegree programs to a group with proportionately lower earnings, such as working adults without a high school diploma. One commenter suggested creating a special group for nondegree certificate programs tied to state licensure.

Discussion: The use of an earnings threshold comparing completers of undergraduate-level degree programs to individuals with only a high school diploma is a statutory requirement; therefore, the Department does not have the authority to change this comparison for degree programs. In order to provide high school graduates seeking higher education with meaningful and comparable data across program types, we need to use a harmonized and standard comparison for undergraduate-level programs. We would point out, however, that the metric is designed to approximate the change in earnings from pursuing a career after earning a higher education credential versus solely with the education level a student would have before. Not only do students in undergraduate certificate programs most commonly enter their programs after earning a high school diploma or equivalent, but receipt of title IV, HEA funds usually requires a high school diploma or equivalent for eligibility, with few exceptions. In this context, working adults without a high school diploma or equivalent would not be a meaningful comparison group. It sounds as though the commenter requesting a comparison group tied to state licensure would want a comparison to the earnings of other licensed professionals instead of to individuals with only a high school degree, which would likely set a higher threshold and regardless would not meet the requirements of the statute.

Changes: None.

Comments: The Department received comments in response to its directed question in the NPRM regarding limitations with the ACS when calculating one of the graduate-level earnings thresholds described in Section 668.2(b), specifically the ''same-state, same-field bachelor's degree median earnings benchmark'' (Table 5.5). Some commenters believed that the policy proposed in the NPRM would unfairly harm these graduate programs, which are more likely to be in rural areas and in specialized fields.

Some commenters suggested that the Department should exempt these programs from the earnings test. Other commenters suggested that the Department partner with the Census Bureau to obtain statistical estimates that could serve as the earnings threshold for bachelor's degrees in the same field of study, or that the Department should conduct a full analysis of its own administrative data to determine which undergraduate fields feed into each graduate credential and use those to define the threshold instead.

Discussion: The Department believes the commenters are correct that, in some instances, it may not be possible to calculate the median earnings of working adults aged 25–34 with a bachelor's degree in the same field of study (defined using 2-digit or 4-digit CIP codes) in the State in which the institution is located and who are not enrolled in college. In some cases, especially in uncommon graduate fields of study and in less-populated states, the ACS may not sample any individuals (or only a very small number of individuals) who meet all of these criteria. We estimate ACS data are unreliable for approximately 2,650 graduate programs.

The Department agrees with the commenters who stated that it is necessary to avoid unfairly comparing certain graduate programs to the lower of two earnings thresholds, when the statute calls for these programs to be compared to the lowest of three earnings thresholds. The Department considered the suggestions it received about working with the Census Bureau to produce more detailed earnings estimates, but we believe that obtaining such estimates from the Census Bureau would significantly increase the administrative burden for the Department.

Therefore, in cases where the ACS data are unreliable, the Department will amend Section 668.2(b) to use a value of $1 for the ''same-state, same-field of study'' earnings threshold. The Department will use $1 because it has no reliable way to determine the income of individuals who should be included in the calculation for this particular earnings threshold, and therefore uses the smallest possible value that working individuals could earn during a year—one dollar. This safeguards graduate-level programs from being held to an unfairly high threshold if they are at an institution where at least 50% of enrolled students come from the State of the main campus and if the data for their field of study has an insufficient n-size in the ACS data.

The Department will use this earnings threshold value for programs where there are fewer than 16 individuals who meet the criteria to be included in the ''same-state, same-field'' earnings threshold. This aligns with sample size criteria used by the Department and other Federal agencies for the purposes of protecting student privacy. Furthermore, we believe that calculating a median earnings value based on fewer than 16 individuals would be unreliable and arbitrary.

Changes: The final rule adjusts the language in § 668.2's definition of earnings threshold under paragraph (3). This paragraph now specifies that for States where the Census Bureau data necessary to perform the calculations set forth in subsections (1) and (2) are not available, the earnings threshold will be one dollar. As a conforming change, we also struck the language in 34 CFR 668.402(c)(3), which indicated that the Department would not calculate an earnings premium in cases where there no earnings threshold could be determined. The change to the earnings threshold definition obviates this provision.

Comments: One commenter voiced concern with the methodology behind the use of same-field comparison groups to construct the earnings threshold and how individuals with graduate degrees might affect the earnings threshold in different subject areas. They incorrectly stated that the earnings threshold would consist of students who earned a bachelor's degree or higher, and listed an example with a respondent with an undergraduate degree in history and a law degree, claiming that individual would pull up the earnings statistics for history bachelor's degrees, leading to problematic comparison groups for graduate-level programs in history when the bulk of the individual's earnings stem from their studies in the legal subject area.

Discussion: The commenter misdescribes how ACS data works. The ACS asks individuals to answer with the highest level of education they have attained. While all individuals with at least a bachelor's degree are asked to name their bachelor's degree major in a separate question, the category for individuals whose highest level of education is a bachelor's degree strictly pulls individuals whose highest level of education is a bachelor's degree. Joining a higher-level category would mean departing the lower-level category. The individual in the commenter's example would not be counted in ACS data as an individual holding only a bachelor's degree in history because they hold a higher degree than a bachelor's degree, and therefore, would not impact ACS statistics for individuals holding only a bachelor's degree.

Changes: None.

Comments: Some commenters requested that the Department not use the ACS data when calculating the earnings benchmarks for programs. Commenters expressed that this data is not granular enough to implement the statutory requirements of the WFTCA, and instead proposed that the Department delay implementing the regulations until such a data source exists.

Discussion: The Department rejects the commenter's request. Congress directed the Department to use a dataset maintained by the Census Bureau for this calculation. Presumably, Congress was referencing the ACS because it is the only data set that is updated annually and that is granular enough to calculate the specified earnings benchmarks.

The Department does note, that in response to some commenters' suggestions, that it has modified the final rule (see ''*Discussion*'' and ''*Changes*'' related to the changes above) to exempt such programs where ACS data are unreliable to produce a particular benchmark. Specifically, certain graduate level programs at institutions that enroll a majority of students from in-state will be exempted from the earnings test if they are offered in a State and field where ACS data are not granular enough to produce the ''same-state, same-field earnings benchmark'' among bachelor's degree-holders. The Department believes this modification alleviates the commenters' concern about the ACS data not being granular enough to implement the policy, while also allowing us to move forward with implementing the earnings test for all other programs for which data are available.

Changes: No changes directly relate to this comment, but see other changes pertaining to States where no earnings threshold is available referenced above.

Comments: Several commenters voiced concern that the data used from the ACS would be insufficiently accurate to construct the earnings threshold, citing the fact that ACS uses voluntary self-reported data for earnings as opposed to tax data reported under legal obligation. Concerns were raised that using two fundamentally different data sources (treatment-group earnings from IRS and comparator-group earnings from the ACS) for a binary pass/fail regulatory determination falls short of the experimental design standards reflected in the Department's own What Works Clearinghouse Procedures and Standards Handbook (Version 5.0, 2022) [14].

Several other commenters expressed concern with using the ACS data as the primary source for the earnings benchmarks because they argue the data may be unreliable. These commenters noted that the ACS data is limited because it often has wide confidence intervals and may suffer from non-response bias, both of which may result in earnings values being overestimated in the ACS. One commenter alleged that self-reported earnings may be inflated. Another commenter requested an across-the-board ''haircut'' to all of the earnings thresholds to offset these perceived weaknesses in the ACS.

Discussion: Individuals selected by ACS are legally obligated to answer all of the questions as accurately as they can under Title 18 U.S.C 3571 and 3559, so those questions are also completed under legal obligation. The Census Bureau also has methods to combat nonresponse bias, including mailing reminders on a broad scale and conducting telephone or in-person interviews for a targeted sample. Moreover, as discussed in more detail throughout this document, the WFTCA requires the Department to construct the earnings threshold using data from the Census Bureau.

In response to the commenter pointing out that the framework's approach does not match experimental standards, the Department points out that the framework established by Congress is not an experiment. We are not working with a control group or a treatment group; we are working with a comparison mandated under statute according to criteria set by Congress. Additionally, the Department disagrees with the commenters' assertions about the quality of the ACS data. The ACS data are among the highest quality, nationally-representative datasets maintained by the Census Bureau. These data are routinely assessed for their quality and accuracy. Furthermore, the commenters did not provide or suggest an alternative dataset that they thought was stronger than the ACS. For these reasons, we disagree with the commenters who question the accuracy of the ACS data and those who requested that the ACS data be downwardly adjusted to account for its potential weaknesses.

Changes: None.

Comments: One commenter voiced the opinion that the margin of error and any additional statistical noise in the ACS make it an invalid source of data for the earnings threshold. This commenter also stated a belief that WFTCA requires the use of median earnings and not an estimate of median earnings in constructing the earnings threshold, and that a true median can only mean the exact midpoint of a complete distribution taken from full population data.

Discussion: The Department disagrees. Any survey using sampling will have some margin of error. Congress would have been aware of the impact of margin of error and statistical noise when drafting the WFTCA, and it still decided to specify the use of Census data in its requirements for the earnings threshold. WFTCA specifies that the data for incomes should be based on data from the Bureau of the Census, and as discussed in more detail earlier in the document, the ACS is the only dataset held by Census that matches the specifications set by Congress. Congress did not specify whether a population median or a sample median should be used in constructing the earnings threshold, but since they stated it should be sourced from datasets maintained by the US Census, the only reasonable conclusion is that they believed a sample median derived from the ACS would suffice for median earnings used in calculating the earnings threshold.

Changes: None.

Comments: Many commenters argue that the high-school earnings benchmark will inadvertently include individuals with undergraduate certificates, skewing the earnings benchmark higher than intended. They note that ACS treats individuals with apprenticeships, certificates, vocational training, or other types of workforce preparation beyond high school as having completed only a high school diploma as their highest level of education. Some commenters pointed to information from the Census Bureau that says vocational degrees are generally not included as a category of educational attainment because these credentials are ''not part of the regular collegiate system'' and that respondents are instructed to ''exclude vocational degrees as a level of schooling.''

One commenter further extended this analysis to note that individuals with a graduate-level certificate but no graduate-level degree are categorized in ACS data as only having a bachelor's degree, potentially raising values used in the earnings threshold for graduate-level programs.

Discussion: The Department acknowledges that, in some instances, individuals the ACS categorizes as having only a high school diploma may have undergraduate certificates, as the survey is at times unclear about how these credentials are treated in the data collection. The Department does not believe, however, that the ambiguities in the survey would systematically categorize survey respondents who hold certificates as having only a high school diploma.

While some commenters argue that the ACS technical documentation instructs respondents with an undergraduate certificate to select a high school diploma as their highest level of education, the Department notes that the documentation is far from clear on this matter and it does not define key terms that would ensure that respondents complete the survey as commenters claim. For example, ACS technical documentation related to these issues uses the terms ''vocational degree'' and ''trade school'' and ''regular collegiate system'' but does not define these terms nor does it explain if these terms encompass a 1-year undergraduate certificate offered at a public community college.

The Department believes the ACS data are the best and only available dataset for assessing the typical earnings in each state of individuals aged 25–34 whose highest level of education is a high school diploma and who are not currently enrolled in college. This is because the ACS is the only annual dataset maintained by the Census Bureau that contains all the needed individual-level data elements to compute these calculations. Ultimately, to the extent that the education level of individuals in the ACS is misclassified, the Department contends that this dataset remains the only one available in which the statutory and regulatory requirements could be fulfilled. The commenters did not identify or suggest an alternative source of data that the Department could use to construct the high-school earnings threshold.

The Department also received comments citing analyses that suggest any effects of the misclassification of certificate holders in the ACS would be insignificant and unlikely to affect the earnings benchmark. The commenters note that alternative Census Bureau data sources show that only about 9% percent of high school diploma holders also hold an undergraduate certificate and that while their earnings are higher than their peers with only a high school diploma, the difference has a negligible effect (about $200) on the median earnings of the combined group. The Department verified these findings after conducting its own analysis of data from the Census Bureau's 2024 Survey of Income and Program Participation. For this reason, the Department believes that the ACS's treatment of undergraduate certificates would only have a de minimis impact on the earnings benchmarks produced using the ACS data.

The Department similarly believes that the impact of individuals holding a graduate-level certificate but no graduate-level degree potentially being included among individuals with only a bachelor's degree in the median earnings calculation is de minimis.

Changes: None.

Comments: One commenter stated that the Department's use of the 5-year pooled ACS data instead of single-year ACS data means that the resulting earnings thresholds are a temporal mismatch to program earnings data taken from the fourth calendar year following a student's program completion. The commenter voiced concern that this pooled estimate may differ substantially from a single-year benchmark.

Discussion: The Department is using the 5-year pooled ACS rather than the 1-year ACS out of necessity since the 1-year ACS will often have too few respondents to calculate all of the earnings thresholds called for in the statute. This data will be adjusted for inflation (using the CPI–U) to make comparisons fair. Many completion cohorts will also be taking data from several years, so we do not believe it will be a temporal mismatch as the commenter states. Most importantly, the use of 5-year pooled data helps smooth year-to-year fluctuations, protecting program metrics from some of the impact of fluctuations, which we believe will benefit schools.

Changes: None.

Comments: A few commenters requested that the Department take a hybrid approach to the 2-digit CIP level ACS data in the ''same field of study'' earnings threshold amounts used to evaluate graduate-level programs. In such a structure, the 2-digit CIP level data from ACS would be supplemented with 4-digit CIP level from the Department's own program-level earnings data (such as College Scorecard data and IRS-matched NSLDS earnings) to scale the earnings threshold for a 2-digit CIP program area up or down by a prorated percentage based upon earnings in their 4-digit CIP sub-field, so that programs in lower-earning sub-fields would be held to a lower benchmark and programs in higher-earning sub-fields would be held to a higher benchmark.

Another commenter suggested a similar approach, but with a plus or minus 25 percent cap. One commenter suggested that if a benchmark adjustment is not possible, use the 4-digit CIP data where available and 2-digit CIP data only when necessary.

Discussion: The Department thanks the commenters for their idea, but program level data sourced from IRS matches to data from NSLDS could not be adapted to statewide or nationwide medians at the 4-digit CIP level because the IRS does not return data for individual students; they return the median earnings for a program's completers anonymously and in the aggregate.

The Department also disagrees with the commenters' suggestion to match earnings data from the ACS to College Scorecard data to scale the earnings threshold values. The statute calls on the Department to use data from the Census Bureau for the calculation of the earnings thresholds, and the College Scorecard is maintained by the Department of Education. Therefore, the Department believes that it would be inappropriate to alter the Census Bureau data using additional datasets from the Department of Education, as the commenters request.

Furthermore, the Department believes the commenter's suggestion to use the College Scorecard data to scale the earnings of certain fields in the ACS data based on the percentage of individuals in 4-digit CIPs would not be feasible due to the high number of privacy-suppressed fields in the College Scorecard.

Changes: None.

Comments: One commenter suggested the use of the Census Bureau's CIP–PUMS crosswalk for the field-of-study comparison group for the earnings threshold for graduate-level programs, stating that the Public Use Microdata Sample (PUMS) could provide field-of-study data at a level of aggregation more granular than 2-digit CIP codes but less granular than four-digit CIP codes, providing 200 field groupings as opposed to dozens of 2-digit CIP instructional families and over 400 four-digit CIP codes.

Discussion: The Department declines the commenter's suggestion to use a hybrid field-of-study category that falls somewhere between the granularity of the 2-digit CIP code and 4-digit CIP code level. The ACS does not contain more granular field of study information beyond the 2-digit CIP classifications. The Department is concerned that any attempt to estimate the particular fields that individuals graduated from using a crosswalk (such as the CIP–PUMS crosswalk) based on their field of employment would result in making arbitrary estimations, as we do not actually have any information about the particular field of study an individual graduated from. As discussed above, using more granular field-of-study classifications also increases the possibility that more programs will have insufficient N sizes to calculate the ''same-state, same-field'' earnings threshold, and the Department is concerned about exempting additional programs because of this data limitation. For these reasons, the Department will use two-digit CIP classifications for the purpose of determining the same-state, same-field earnings threshold.

Changes: None.

Comments: One commenter stated that BLS data are inappropriate for use in constructing the comparison statistics used for the earnings threshold, explaining that BLS wage estimates rely on payroll data that exclude the self-employed.

Discussion: The Department is required under the statute to use data from the Census Bureau to determine earnings thresholds. Therefore, we are not considering using BLS data for the earnings thresholds.

Changes: None.

Comments: Many commenters expressed concern about the Department's method for classifying field of study categories to calculate the ''same field of study'' earnings thresholds for graduate programs. Commenters noted that the Department's approach, grouping fields using 2-digit CIP codes, may obscure meaningful differences between programs with distinct training pathways and labor market outcomes.

Discussion: The Department disagrees with the commenters' concern. The American Community Survey (ACS) identifies bachelor's programs using 2-digit CIP codes, meaning the Department would be unable to produce a more-granular definition for ''field of study'' as recommended by several commenters. The Department believes that grouping programs based on common 2-digit CIP codes is necessary so that appropriate sample sizes can be achieved. The Department also notes that the use of the median value (rather than the mean) reduces the concerns raised by commenters that this method would obscure meaningful differences across programs.

Changes: None.

Earnings Threshold—Characteristics of Working Adults

Comments: Numerous commenters argued that the proposed rule would arbitrarily penalize certain programs because the earnings test does not distinguish between full-time and part-time employment when calculating the median program earnings value. For example, some commenters explained that part-time work is temporary while building a clientele in some occupations, while others pointed to situations where individuals choose to work part-time work to accommodate family obligations. Because of this, commenters expressed concern that the earnings test would disproportionately impact programs whose graduates go on to work part-time at high rates. Commenters argued that it is inappropriate to compare the earnings of part-time workers to the earnings of full-time employees. Some commenters advocated that the Department incorporate a tiered system that scales program earnings based on the share of part-time workers in the program. Several commenters similarly suggested adjustments to compensate for completers who may experience gaps in employment due to temporarily leaving the workforce for family responsibilities.

Discussion: Both the earnings of program completers and the counterfactual earnings benchmark include full-time and part-time workers, which the Department believes will roughly cancel out for most programs. Because of this, the Department disagrees with commenters who assert the rule will unfairly impact programs who enroll graduates that go on to work part-time. Additionally, the Department notes that the program earnings value is based on the median earnings of workers. Programs would have to have unusually high levels of students who go on to work part-time for the program's median earnings value to be negatively skewed by these workers.

Furthermore, the Department is unable to scale earnings in the manner requested by some commenters because employment status and hours worked is not reported on the wage records with the IRS and therefore do not allow us to distinguish between full-time and part-time workers. In the Department's view, including an exemption or differentiated test for the lower earnings of part-time workers would undermine the purpose of the earnings test, which is to determine if the credential leads to sufficient earnings to justify the Federal investment and to allow the graduate to afford the loans they borrowed.

Additionally, the Department does not have the authority to differentially scale the earnings for degree programs that may enroll students who go on to work part-time. The earnings test outlined by Congress in Section 84001 of the WFTCA specifies that the median earnings value for programs is based on the earnings of *working* individuals, which is inclusive of both full-time and less-than-full-time workers.

Changes: None.

Comments: One commenter suggested that the Department use BLS information for average weekly hours by industry, crosswalk it to occupational SOC codes and program-level CIP codes and make proration adjustments to scale reported earnings up to full-time equivalents.

Discussion: The median earnings returned to the Department by the IRS are returned anonymously and in the aggregate. As previously mentioned, the Department has no way to know the hourly workload corresponding to the earnings of the individual at the median value for a program's completers, and such an adjustment could very well be misleadingly multiplying income already earned from full-time work. Regardless, the calculation is designed to evaluate whether a program's completers are actually earning enough to justify continued loan eligibility for the program under the framework's standard, not what they hypothetically could potentially be earning.

Changes: None.

Earnings Threshold—Geographic Scope of Data

Comments: Many commenters emphasized that the earnings threshold fails to take regional wage differences into account, potentially comparing earnings of graduates in an area with lower wages and lower cost of living to higher statewide or national median figures. Examples often cited were rural geographic areas as compared to more urban or metropolitan regions or comparing median income from individuals living in the same county or city. One commenter stated that these effects are heightened by online and multi-location students. Another commenter requested that the Department allow institutions the flexibility to choose which State its students are considered to be from when the institution is from a geographically small area extending beyond one State border.

Other commenters stated that the economies in some rural areas fluctuate more than other regions, which would adversely impact programs in these areas. Several commenters mistakenly asserted that the Department entirely ignored how the regulation would impact programs in rural areas.

One commenter cautioned that unique characteristics of local labor markets could create misleading results. Some commenters suggested that the Department should account for regional economic differences in determining the earnings threshold. One commenter pointed out that whether graduates choose to live and work in higher paying urban labor markets is a graduate decision beyond the school's control. Several commenters pointed out that Tribal economies often differ substantially from surrounding regional labor markets as well.

Discussion: The Department specifically considered the impact of the proposed regulation on programs in rural areas. The Department's analysis (Table 5.10) shows that the proposed regulation would result in a slightly higher share of failing programs (3.9 percent vs. 3.4 percent) and students (1.8 percent vs. 1.3 percent) in rural areas relative to the current regulation. This is due to the statutory requirement to hold all programs accountable for their earnings, including programs at public institutions. Many programs at public colleges were previously exempt from the current accountability framework. Including these programs results in a marginal increase in the share of programs and students in rural areas that will be impacted by the regulation because many programs in rural areas are offered by public institutions.

The Department disagrees with the commenters who stated that short-term labor market fluctuation would adversely impact rural programs. Programs must fail the earnings test in two out of three consecutive years. Therefore, a one-year labor market fluctuation will not result in any program losing access to title IV, HEA programs.

The Department also clarifies that the earnings test for undergraduate-level programs compares the earnings of program graduates to the earnings of individuals with only a high school diploma in the same State (assuming the institution enrolls a majority of its students from the state where the institution is located). Therefore, the earnings benchmark will include the earnings of rural, urban, and suburban individuals in the same State who have only a high school diploma. While this sometimes results in a rural program being compared against the earnings of individuals from different geographies, the Department notes that this requirement is predicated on the highly specific statutory requirement outlined in Section 84001, where Congress explicitly instructed the Department on how the earnings test would be conducted.

The Department further notes that Congress included regional variations and adjustments in other parts of the WFTCA, such as the provisions for Workforce Pell Grants, and chose not to include such an adjustment for the earnings test in Section 84001. Therefore, the Department concludes it was not Congress's intent to account for regional differences in the earnings accountability framework.

The Department also analyzed the impact of the regulation on Tribal Colleges and found that the regulation would not increase the impact on these institutions relative to the baseline regulation (Table 5.10). Thus, the Department disagrees with commenters who suggested the regulation would negatively impact Tribal Colleges.

Changes: None.

Comments: One commenter suggested that using State-level data by CIP code to establish an earnings threshold for working adults with no more than a high school diploma would lead to artificially inflated earnings thresholds in States where particular areas of defense manufacturing may be in high demand.

Discussion: The commenter incorrectly describes the use of State-level data broken out by CIP code to construct an earnings threshold, which is not applied to working adults with no more than a high-school diploma as the commenter states. Earnings thresholds used to evaluate undergraduate programs use median earnings for working adults aged 25–34 with only a high school diploma either from the State in which the institution is located or nationwide, depending on the institution's enrollment makeup, but they are not disaggregated by CIP code.

The issues described by the commenter do not appear to be ones that would apply in the case of groups of adults with no more than a bachelor's degree being used to construct the earnings threshold for graduate-level programs. However, even in the case when field-of-study data comes into play for evaluating graduate-level programs, the Department still uses the lowest median earnings to construct the earnings threshold. If working adults aged 25–34 with only a bachelor's degree in a graduate program's 2-digit CIP field of study have a higher median earnings than working adults aged 25–34 with only a bachelor's degree as calculated under the other earnings benchmarks, the (lower) median earnings not targeted to a specific CIP code would be used to evaluate the program. If working adults aged 25–34 with only a bachelor's degree in a graduate program's 2-digit CIP field of study have a higher median earnings than working adults aged 25–34 with only a bachelor's degree as calculated under the other earnings benchmarks, then the (lower) median earnings benchmark would be used to evaluate the program; the scenario the commenter describes would not occur under the framework.

Changes: None.

Comments: One commenter wanted the Department to extend the field-adjusted threshold options used with graduate programs to undergraduate programs as well.

Discussion: We thank the commenter for their suggestion; however, the earnings threshold comparison groups and field-adjusted threshold options for degree programs and graduate programs are statutory and the Department is not permitted to modify the statutorily mandated threshold formula. Additionally, the Department clarifies that it is not possible to adjust the undergraduate earnings thresholds by field of study. Undergraduate programs are compared to an earnings threshold based on individuals with only a high school diploma, which by definition, do not have an applicable field of study because those individuals have not gone to college.

Change: None.

Earnings Threshold—Other

Comments: One commenter suggested that rather than requiring the median earnings of a program's completers to be equivalent to those of a high school graduate to be eligible for Federal student loans, the threshold should be at least 10 percent higher to compensate for the time and money invested in higher education.

Discussion: The Department thanks the commenter for this suggestion, but notes that the requirement for a program's median earnings to equal or exceed its relevant comparison group is a statutory requirement, so we are unable to change it for degree programs or graduate certificate programs. For undergraduate certificate programs, because the Department's aim is to harmonize requirements across program types, we decline to adopt a separate standard only applicable to a single credential level. Additionally, the commenter did not provide reasoning for the 10 percent value selected, and the Department is unaware of information that would support that specific value.

Changes: None.

Comments: One commenter suggested making adjustments to the comparison threshold based on a program's target occupation or sector, possibly paired with earnings analysis distinguishing public-service professions from private-sector occupation with market-driven wages.

Discussion: The Department thanks the commenter for their suggestions, but we believe that taking this approach would not be consistent with the criteria set out in the statute that we are obligated to implement, as it adds a factor that is not clearly described in the law. We also note that many credentials in higher education prepare graduates for a variety of professions and success in both the private and public sectors, so we do not believe it would be fair to judge some programs only on the statutory earnings premium calculation, while judging other programs that prepare students for specific occupations in accordance with the outcomes for those occupations.

Changes: None.

Comments: One commenter detailed various potential interpretations of the 50 percent used to determine whether a program's earnings threshold uses a national comparison group or a State, requesting clarification on how out-of-state status is determined and at what point in time that determination is made.

Discussion: To clarify, the commenter has mistaken the old criterion in current 668.2's definition of earnings threshold assessing whether ‘‘fewer than 50 percent of the students in the program are from the State where the institution is located’’ with the proposed regulatory language's dividing line assessing whether ‘‘fewer than 50 percent of the students enrolled in the institution . . . are from the State where the institution is located.’’ This is a new statutory requirement under HEA 454(c)(3)(B) as amended by the WFTCA. The Department will determine whether to use in-State or national earnings thresholds based on an evaluation of address information provided on the FAFSA form by students who are currently enrolled at the institution at the time the evaluation is performed.

Changes: None.

Comments: One commenter requested that the Department define ''uncommon field of study'' in instances where the ACS may not be able to sample enough individuals to produce a formal calculation, and use that definition to either avoid a pass or fail judgment or use other methods for evaluation, such as qualitative methods. The commenter argued that failing to take one of those approaches would result in inaccurate evaluations.

Discussion: This request appears to be grounded in a misunderstanding of the terms that the Department uses for the earnings premium calculation process. The term ''uncommon fields of study'' is not used to enable the Department to adjust its approach to use a particular earnings threshold. By ''uncommon fields of study,'' the Department was referring to bachelor's degree programs where, among the group of individuals surveyed in the ACS, there are not a sufficient number of individuals that are working individuals aged 25–34 who live in a particular state and hold a bachelor's degree in a particular field of study. For example, in the ACS, there are very few working 25–34 year-olds with a bachelor's degree in English—which the Department referred to as ''an uncommon field of study.'' Because there are so few individuals included in the ACS in Wyoming who have a bachelor's degree in English, the Department would not be able to calculate the ''same-state, same-field bachelor's degree earnings thresholds'' for graduate-level English programs in Wyoming.

In response to concerns about reasonable comparison groups used to construct the earnings threshold for graduate-level programs when too little data is available to construct a ''same-state, same-field of study'' threshold from ACS data, the Department has made adjustments to the procedure. When a graduate-level program has at least 50% of enrolled students come from the state of the main campus but an insufficient n-size in the ACS data for their field of study, the Department will use an earnings threshold of one dollar.

Changes: The final rule adjusts the language in § 668.2's definition of earnings threshold under (3). It now specifies that for States where the Census Bureau data necessary to perform the calculations set forth in subsections (1) and (2) are not available, the earnings threshold will be one dollar. This safeguards graduate-level programs from being held to an unfairly high threshold if they are at an institution where at least 50 percent of enrolled students come from the State where the main campus is located and if the data for their field of study has an insufficient n-size in the ACS data.

As a conforming change, we also struck the language in 34 CFR 668.402(c)(3), which indicated that the Department would not calculate an earnings premium in cases where there no earnings threshold could be determined. The change to the earnings threshold definition obviates this provision.

Comments: One commenter requested that the language requiring publication of the annual earnings thresholds in the **Federal Register** be changed to require publication of the annual earnings thresholds on the FSA Partner Connect Knowledge Center (Knowledge Center) in a manner that is easy for financial aid professionals to locate, read, and consume, citing the importance of the Knowledge Center as a centralized resource for financial aid professionals.

Discussion: The Department thanks the commenter for their feedback and is glad to hear that the Knowledge Center is a helpful resource. While the NPRM and final rule both contain language requiring the Department to list information for institutional reporting in the **Federal Register**, under the regulatory language the Department is simply required to publish the earnings thresholds annually, not necessarily in the **Federal Register**. Keeping this part open-ended provides the Department with the flexibility to publish this information to the Knowledge Center web page the commenter mentioned relying upon, to a successor website, or to a future resource created as we learn more about what is helpful to stakeholders.

Changes: None.

Comments: One commenter recommended the Department to publish, well in advance of the first measurement year, a comprehensive data availability map—by state, by CIP at both 2-digit and 4-digit levels, by credential level, and including both n-sizes for program earnings and n-sizes for the earnings threshold (ACS)—so institutions can identify which of their programs will be subject to which comparison and which will fall into the ''no threshold calculated'' bucket described. The commenter also suggested that the Department commit to providing the all-students program earnings dataset to institutions at least two cohort years before any institution is subject to a loss-of-eligibility determination, so that institutions can validate the data, benchmark programs, and undertake any orderly program closures or curricular changes responsibly.

Discussion: The Department thanks the commenter for their suggestion, but declines to implement it. Data will not be available in advance, as the commenter requests, on which particular earnings threshold that each program will be compared against. This is because the Department must verify program completers lists and institutional enrollment lists to determine which earnings benchmarks (in-state or national) that a particular program will be compared against. Therefore, data for each threshold group will be made available when earnings premium data is released. Following the commenter's suggestion would require the Department to use less recent and unofficial data, which the Department believes would add significant burden for itself and create confusion among colleges. The Department further clarifies that ACS data are publicly available, and if colleges desire, they could use the data in conjunction with their own institutional enrollment records to estimate which types of programs at their institutions would fall into the ''no threshold calculated'' category based on the n-sizes in the ACS and enrollment at their institution.

Changes: None.

Comments: One commenter wanted to adjust the high school benchmark based on individual State issues. As an example, the commenter indicated that the State of Wyoming's earnings landscape is unique from other States. Wyoming leads the nation in energy jobs per resident. The majority of those jobs only require a high school diploma, with entry-level oil field wages often exceeding $60,000 per year. As a result, Wyoming's median high school graduate income is inflated, and the proposed earning premium measure fails to take that into account.

Discussion: The Department thanks the commenter for their feedback, but the statute requires us to compare the median earnings for completers of most undergraduate-level programs to the median earnings for working adults aged 25–34 with only a high school diploma. The Department would note, however, that institutions with fewer than 50 percent of their enrolled student population coming from the State where the institution is located would be compared to national data and therefore, programs at those schools would not be impacted by what the commenter describes.

The Department also examined how the regulation would impact programs in Wyoming. Among those with earnings data currently available (in

PPD:2026) and who are projected to be subject to the earnings test, just two programs out of 86 total are estimated to fail the earnings test. This is far below the national average, suggesting that the actual impact of the commenter's concern on programs in Wyoming at institutions where at least 50 percent of enrolled students are not from the State where the institution is located will likely be much smaller than they anticipate.

For all these reasons, the Department declines to make a change based on this commenter's concerns.

Changes: None.

Completers, Cohort Period, and Cohort Expansion

Cohort Expansion

Comments: Several commenters recommended changing the method by which small-program cohorts are expanded in a way that would limit a cohort strictly to completers under the 6-digit CIP code of the program being evaluated, but would pull completers from award years as far in the past as needed to reach the minimum cohort of 30. Under this proposed method, completers from award years prior to the eighth award year prior to the year with earnings data might be included in calculations, but distinct programs(as defined by 6-digit OPEID, 6-digit CIP code, and credential level) would not have completers from other programs included in the cohort used to calculate their earnings premium measure. Commenters from several fields pointed out examples of diverse fields that would be grouped together under the same 2-digit CIP codes to illustrate their belief that the 2-digit level is overbroad.

Several commenters recommended stopping the cohort expansion process after expanding to programs sharing a 4-digit CIP level, striking a balance between increasing the number of programs for which an earning premium measure may be calculated and grouping data that some commenters thought would be too broad, while complying with the expansion mandated by the statute.

We also received public comments suggesting that the cohort aggregation process used in this regulation should align with the process used in the Workforce Pell final rule (91 FR 29254). Commenters argued that this would reduce burden and complexity on the Department, as it would prevent the need to develop different systems to implement the aggregation procedure.

Several commenters expressed concern that cohort aggregation methods combining programs across broader CIP categories at the 2-digit or 4-digit level may produce metrics that do not accurately reflect the curricula, quality, or labor-market outcomes of distinct academic programs. A few commenters similarly were concerned that aggregation beyond the 6-digit level could reduce statistical validity and program-specific reliability of the median earnings by potentially combining materially different occupations, labor markets, and educational pathways into a single metric.

Another commenter discussed the range of programs covered within a 4-digit CIP code, pointing out examples of different credentials with differing earnings prospects, citing examples specific to Ph.D., master's degree, and baccalaureate degree types. This commenter requested that cohorts be limited to the 6-digit CIP level and that the CIP–SOC crosswalk be consulted in constructing benchmark fields without specifying how that should be done in this context.

Numerous other commenters more broadly requested limiting cohorts to the 6-digit CIP code, with various suggestions. Several recommended an exemption for programs with fewer than 30 completers under FVT/GE's 2-year/4-year cohort group structure, with one suggesting that wage transparency would still be covered for small programs by other Federal reporting requirements and accreditor requirements plus general knowledge of wages for the relevant profession.

Discussion: We thank the commenters for their helpful feedback. The statutory language in WFTCA requires the cohort construction to expand beyond the 6-digit CIP code if an n-size of 30 is not reached, but does not specify how many years of past data must be used before expanding to a broader CIP code. The Department is also balancing the need to use data for completers who graduated recently enough for the data to be a fair reflection of the program.

To clarify, program data aggregation does not combine programs at different credential levels, meaning some of the commentary about dissimilarities in earnings prospects between one master's program and another baccalaureate program in similar subject areas is not applicable.

The Department is persuaded by commenters who suggested that aggregating programs from the same institution and credential level up to the 2-digit CIP code is too broad for constructing the cohort used to evaluate a program. Aggregating to that level would risk that certain programs are evaluated based on the earnings outcomes of individuals from potentially highly dissimilar programs. The Department was also persuaded by commenters who recommended the cohort aggregation process should, to the extent possible, be aligned with the process used in the Workforce Pell regulation. The Department agreed that using a similar process would reduce burden, complexity, and cost. Therefore, the final rule's revised definition of cohort period has removed steps involving the use of data from other programs that only match a program's CIP code at the 2-digit level. To more closely align this process with the cohort aggregation process used in the Workforce Pell regulation, it has also removed the steps involving the use of data from completers during the eighth award year prior to the year of determination.

Changes: We have revised the definition of cohort period in § 668.2(b) to simplify the procedure, to reduce the number of steps, to remove the addition of data from the eighth award year prior to the calendar year corresponding to earnings, and to remove steps that involve expanding the cohort to include programs at the 2-digit CIP level. Under the revised approach, if an institution's program (grouping of any institutional programs sharing the same 6-digit OPEID, 6-digit CIP code, and credential level) does not have a sufficient number of completers in the award year four years prior to the calendar year used for earnings, we will add data for completers from the fifth award year prior to the calendar year used for earnings. If additional data is still needed, the next step would include adding data for completers from the sixth and seventh award year prior to the calendar year used for earnings together as one group. If that additional data still does not yield a sufficient number of completers, data for completers from programs sharing the same 4-digit CIP code and credential level from the fourth, fifth, sixth, and seventh award years prior to the calendar year used for earnings will be added in one batch. If the n-size is still too small following those additions, metrics will not be calculated.

Comments: Several commenters requested data be broken down to a more granular level than the 6-digit CIP code, including by occupation, institutional program name, or program modality. One commenter stated that the proposed expansion methodology is a reasonable solution to sample size constraints, but fails to represent the diverse array of occupations that may be occupied by graduates from a single program. Another commenter requested additional data such as the reporting of earnings distributions by occupational sector or graduate pathway to help students and the public make genuinely informed choices.

Discussion: Splitting a program's data into sub-groupings by occupation or other distinctions would run up against many of the sample size issues some commenters acknowledged. Compiling broad occupational sector data not specific to an educational program is outside of the scope of this program-based accountability framework and would likely be duplicative of information already published by other Federal agencies. Furthermore, consistent data are not available that would allow the Department to break down programs into categories that are more granular than six-digit CIP codes, as the commenters requested. The commenters provided no recommendation on what data could be used to accomplish this request.

Changes: None.

Comments: One commenter expressed concern that small cohort sizes might heighten the risk of false-negative outcomes unrelated to educational quality.

Discussion: The cohort expansion is designed to address the concern of statistical reliability with overly small n-sizes, expanding the cohort in accordance with the WFTCA's requirements until a critical number can be reached.

Changes: None.

Comments: One commenter suggested using multi-year averaging would better reflect true program value instead of sampling variation.

Discussion: While programs meeting the minimum n-size will be measured according to the single year prescribed by Congress in the WFTCA, when smaller programs require additional years of program data, each of those will be measured the same number of years after graduation, resulting in earnings sourced from multiple calendar years being factored into the program's median earnings.

Changes: None.

Comments: A few commenters requested additional transparency into aggregation methodologies, institutional review prior to publication, and safeguards for small-sample statistical reliability.

Discussion: The Department is fully transparent about its aggregation methodology—every initially proposed procedural step in the aggregation process was listed in the NPRM. Every procedural step in the process we will ultimately use following changes in response to public comment is now listed in the final rule. Institutions will have the opportunity to review the program completers lists prior to the earnings calculation, allowing institutions an opportunity to correct any inaccuracies in the data they previously submitted to the Department. This review process enhances transparency and reduces the possibility of error. Furthermore, the cohort expansion process was included in the WFTCA by Congress as a safeguard for small-sample statistical reliability.

Changes: None.

Comments: One commenter said that cohort expansion would not solve a problem with the time it takes to receive a security clearance, leading to some calendar years in which a graduate's permanent job's earnings only are reflected in some of the months out of the year.

Discussion: The commenter misunderstands the lapse between graduation and the year in which earnings are measured. The commenter's example states that a 2025–2026 graduate might receive a conditional offer in May 2026 and begin cleared employment in February 2027, leading to incomplete earnings for calendar years 2026 and 2027, but a 2025–2026 graduate's earnings would not be examined in either of those years under the earnings accountability framework. Under the framework, in 2027 we would begin examining earnings from calendar year 2025 for graduates from four award years prior, or 2020–2021. Smaller programs requiring data from additional years would go further into the past, such as adding earnings from calendar year 2024 earnings for 2019–2020 program graduates. A program graduate from 2025–2026 would have their earnings from calendar year 2030 first come into view in early 2032. A May 2026 graduate's security clearance taking until some point in 2027, as the commenter described, would not lead to a partial year of earnings in 2030, and therefore the commenter's further discussion based on this foundational misunderstanding is moot.

Changes: None.

Comments: One commenter expressed concern with the proposed rule giving the Secretary discretion to raise the n-size requirement above 30, requiring additional years of data when the commenter already was concerned that data from certain years would not be representative of program quality.

Discussion: The Department thanks the commenter for their feedback. To clarify, the Department is only maintaining this discretion for scenarios where the n-size of 30 is met but there are too few matches to earnings data for the Federal agency with earnings data to meet their own threshold to release what they consider to be statistically reliable median earnings to the Department. In this case, it is possible that further cohort expansion to additional steps in the sequence would be required to obtain statistically reliable data.

Changes: None.

Comments: One commenter requested that when a program has ceased admitting new students and a successor program using the same CIP code has been established, the predecessor program's completers be excluded from the successor program's earnings cohort effective as of the date new admissions ceased. The commenter suggested that this treatment could apply to any institution that could document the transition through State educational system records. The commenter argued that this would avoid concerns about new programs or programs transitioning into new fields from being judged on the basis of other programs at the same institution that may have poorer outcomes.

Discussion: The Department thanks the commenter for their suggestion, but we are unable to implement this idea under the statute's requirements. Exempting such subdivisions for a program (defined for the framework as covering all institutional programs sharing the same 6-digit CIP code, credential level, and 6-digit OPEID) would result in fewer programs receiving metrics and such a loophole would run the risk of being exploited to evade accountability and potential consequences.

Changes: None.

Comments: One commenter saw problems with the aggregation methodology, pointing out that programs sharing only a 2-digit CIP code in their vocation field vary significantly in length, content, and labor market outcomes. They stated that they do not believe that these are ''of equivalent length'' by reasonable construction.

Discussion: The Department interpreted the statutory specification of ''of equivalent length'' to apply to programs at the same credential level in similar subject areas. In response to commenters' concerns about the aggregated cohorts in the NPRM, as described in section ''Completers, Cohort Period, and Cohort Expansion Cohort Expansion,'' we have simplified the cohort expansion process to involve fewer steps and to limit expansion to the 4-digit CIP level. This revised process more closely aligns with the process for aggregating Workforce Pell programs, reducing burden and complexity for the Department.

Changes: None.

Comments: One commenter stated that when the statute instructs the Department to look to ''additional years'' of programmatic data when an initial cohort does not have sufficient completers, it does not require looking backward for these additional years. They request that the Department hold off on calculating an earnings premium in the first year of calculations for programs without an n-size of 30, waiting until further data in future years builds up for programs at the same 6-digit CIP level, and only expanding to broader pooling of similar programs later if necessary at some unspecified time in the future.

Discussion: The statute specifies that the Department must measure earnings for individuals who completed a program four years prior to the year of determination (the year from which earnings are sourced). Since we are beginning with the most recently available earnings and graduates from the corresponding award year, it is implied that the instruction to aggregate additional years of programmatic data must involve reaching to completers from years further in the past.

Changes: None.

Comments: Some commenters expressed concern about the cohort aggregation process for small programs because of the possibility that some programs may get combined with other programs that are loosely-related or unrelated to the original program. Such an outcome could occur if a small program was aggregated with other programs sharing the same 2-digit CIP code. Commenters stated that aggregating dissimilar programs together could skew the earnings outcomes of small programs. Some commenters requested a process to allow institutions to provide additional information to develop more nuanced and appropriate related program lists.

Discussion: The Department agrees with the commenters' concerns. Aggregating programs to the 2-digit CIP code level introduces the possibility that certain programs are aggregated with other programs that are highly unlike the initial program, and these different types of programs may have different earnings outcomes that may skew the earnings of small programs. Given this concern, the Department proposes in Section 668.2(b) to aggregate small programs up to the 4-digit CIP level. This greatly reduces the possibility that dissimilar programs are aggregated together in ways that skew the program earnings metric.

The Department disagrees with the commenters' suggestion to allow for institutions to submit more nuanced program completers lists. This would greatly increase burden on both the Department and institutions and would likely result in arbitrary procedures for determining which students are ultimately included or excluded from such lists. We believe the proposed process to aggregate programs up to the 4-digit CIP code level produces a consistent and fair cohort aggregation process while also mitigating the commenters' concerns.

Changes: Cohort expansion to programs sharing a 2-digit CIP has been removed. For further improvements to cohort expansion, see the more comprehensive description above or the final definition for Cohort period.

Comments: Many commenters requested that when further years of data are aggregated into the cohort group, the Department adjusts prior earnings years for inflation so that earnings data from different calendar years will be comparable. One commenter requested that the Department include the final cohort size used for a program's earnings premium measure, the number of completers with earnings used in the calculation (in ranges if necessary for privacy), the aggregation path taken and how many award years were pulled to reach the minimum, the inflation index used, and a clear indication of whether the program would have been exempt absent a particular aggregation step. The commenter also requested a short-structured pre-publication review period for institutions to validate cohort construction inputs (not to negotiate outcomes) to ensure accurate, reliable determinations and transparency.

Discussion: The Department will adjust all earnings data used in calculation of the program's median earnings in accordance with the CPI–U to be consistent across years. This will correspond to the calendar year before the base calendar year used to source program earnings so that data is comparable to the most recent ACS data available to construct the earnings threshold. For example, in 2027 when we source earnings data for calendar year 2025, the most recently available ACS data corresponds to calendar year 2024. As a result, we will source 2025 earnings data for 2020–2021 graduates (and 2024 earnings data for 2019–2020 graduates, 2023 earnings data for 2018–2019 graduates, and 2022 earnings data for 2017–2018 graduates, if needed) and adjust to 2024 dollars using the CPI–U.

The Department will make several pieces of information available to institutions, including program n-sizes, the number of aggregation steps used in the cohort expansion process, and information on which individuals are included in program completer lists and when determining the institutions in-state or out-of-state enrollment status (for the purpose of determining which earnings threshold is utilized).

Changes: None.

Comments: One commenter requested that when cohort expansion added completers from additional award years to the cohort, the Department source earnings from the same calendar year for all completers used in the calculation. For example, if a program does not have enough 2020–2021 completers and the Department must next aggregate data from the program's 2019–2020 completers, instead of using the most recently available calendar year earnings from 2025 for the 2020–2021 completers and shift back a year to calendar year earnings from 2024 for the 2019–2020 completers, the commenter believes it would be better to use the most recently available earnings for all completers.

Discussion: The Department chooses to measure each completer's earnings in the fourth tax year following program completion (for example, 2025 for 2020–2021 completers, 2024 for 2019–2020 completers, etc.) so that each completer is assessed at roughly the same amount of time after graduation. We believe that this approach of standardizing the span between graduation and measured earnings leads to more comparable data and fairness in calculation for programs of varying sizes.

Changes: None.

Similar Programs of Study

Comments: One commenter expressed concern with when the Department would be using various levels of CIP specificity, voicing opposition to a use that they believed would potentially lead to novice studio art majors with two-year degrees being compared to visual arts professionals who are well-established in their fields.

Discussion: The commenter is misunderstanding the use of similar CIP codes in the earnings premium calculation. The earnings premium for a two-year undergraduate degree would still compare the earnings of program graduates to the earnings of working adults aged 25–34 (not specific to a field of study) with only a high school diploma. If a program had few enough graduates to necessitate adding completers from similar programs of study to have sufficient data, those graduates would be added to the measurement pool for the program being evaluated; they would not adjust the earnings threshold (benchmark).

For additional clarity, we would add that what the commenter is describing as 2-digit and 4-digit CIP codes are actually considered 4-digit and 6-digit CIP codes, respectively. These categorizations count all of the digits of a CIP code, not just those following the decimal point.

Changes: None.

Comments: A few commenters requested confirmation that the Department would not apply cohort aggregation procedures to a new program before the program has a single completer, pointing out how a strict reading of the statute could lead to this presumably unintended outcome.

One commenter also urged the Department to exempt programs from earnings premium determinations until they have produced at least one title IV completer with earnings data in the determination year cohort. The commenter asserted that if the Department does not make this change, the likely consequence is that a new program could lose Direct Loan eligibility based solely on the performance of students in other programs at the 4-digit or 6-digit CIP code levels. The commenter argued this would be inconsistent with the purpose of these requirements, which is to evaluate how a particular program's completers fare in the labor market.

Discussion: The Department disagrees with the commenters for several reasons. First, the Department is concerned about the quality of all postsecondary programs, including new programs. If an institution has a failing program in a closely related CIP (*i.e.,* a program in a different 6-digit CIP but the same 4-digit CIP), we are concerned about the college starting a new 6-digit CIP in that same field. Second, the Department anticipates the scope of this problem to be very small. Approximately 83 percent of 4-digit CIPs only have a single 6-digit CIP within it.[19] Therefore, at most, this concern would only apply to the roughly 17 percent of 4-digit CIPs that have two or more 6-digit CIPs. Then, the college would also need to have a preexisting 6-digit CIP sharing the same 4-digit CIP and credential level. And finally, only a smaller subset of those programs will be impacted, since only approximately 5 percent of programs are estimated to fail overall (Table 5.12). Therefore, the Department believes the odds that a new program gets aggregated with another failing 4-digit CIP and therefore also fails the earnings test is very low.

Third, the Department believes that rolling up programs in these situations is, for degree programs and graduate non-degree programs, the only solution meeting statutory criteria. And, by extension, we also believe that treating programs across postsecondary education equitably requires the Department to take the same approach for undergraduate non-degree programs.

Finally, even if the Department believed that treating undergraduate certificate programs differently was warranted and that, as a policy matter, new programs should be treated differently, the logistical obstacles to doing so would be costly and resource intensive. The Department would need to identify and track each student who first enrolls in a new program through the point that they complete programs, which could be years apart, particularly if a student withdraws and returns to enroll in the same program. This would result in significant burden for a very small number of affected programs.

Given these factors, the Department believes that providing new programs with an exemption, as the commenter requested, would be frivolous, costly to the taxpayer, and unnecessary, as it would only infrequently change the result of the earnings premium calculation.

Changes: None.

Minimum Number of Completers, Privacy, and Statistical Reliability

Comments: Many commenters want the program cohort to include all completers, not just those that receive federal financial aid, when determining the median earnings calculation. This will help small programs meet the 30 completer threshold without having to dilute program data with prior year or similar program information and will also help obtain a true program median earnings measurement by factoring in all program completers income.

Discussion: The Department thanks the commenters for their suggestion, but the statute requires that a low-earning outcome program is to be determined based on the programmatic cohort of students who received title IV, HEA funds for enrollment in the program.

Changes: None.

Comments: Many commenters raised concerns about statistical reliability with small n-sizes, requesting that eligibility determinations be limited to programs with an aggregated n-size of at least 50 or 100 completers and earnings premium measures for programs with aggregated n-sizes such as cohorts of 30–49 or 30–99 completers be informational only.

Discussion: The Department thanks the commenter for their feedback. The statutory framework established by Congress considered the n-size of 30 to be sufficient and we support that determination. Furthermore, this request would substantially reduce the number of programs covered under the accountability framework. For example, if programs were aggregated until they achieved 100 completers, as one commenter requested, the Department estimates that fewer than half as many programs would be subject to the earnings premium metric relative to the share that are covered in this final rule. The Department is concerned that this approach would allow many moderately small programs, some of which may have low earnings outcomes, to skirt the accountability framework in this regulation.

Changes: None.

Other Definitions

Institutional Grants and Scholarships

Comments: One commenter voiced support for the proposed expanded definition for institutional grants and scholarships, stating that they believed the proposed clarification on what constitutes an institutional grant or scholarship would help reduce ambiguity and improve consistency in reporting across institutions, leading to lower administrative burden, more accurate data collection, and better comparability of program-level information available to students, institutions, and policymakers.

Discussion: The Department thanks the commenter for their support.

Changes: None.

Comments: One commenter wanted to remove the reference to the institutional share of Federal Campus-based programs in the definition of institutional grants and scholarships due to a concern of increased complexity and institutional burden associated with additional reporting requirements.

Discussion: The Department added the language to provide further clarification and resolve confusion among stakeholders when reporting institutional grants and scholarships. Based upon the commenter's concerns, it appears our goals are actually in alignment, as the new definition further specifies that the Department does not consider the institutional share of Federal Campus-based programs to be institutional grants or scholarships; therefore, the institution would not be required to report the non-Federal share

[19] Blagg, K., (2026). Measuring Program-Level Outcomes in Higher Education. Washington, DC: The Urban Institute.

of Federal Campus-based programs under the Transparency reporting requirements.

Changes: None.

Other Definitions

Comments: One commenter requested that we clarify whether eligible non-GE programs include programs that do not participate in the Direct Loan Program.

Discussion: Eligible non-GE programs include programs participating in at least one title IV, HEA program even if those programs do not participate specifically in the Direct Loan program.

Changes: None.

Comments: One commenter suggested adopting a functional definition of ''worker'' for purposes of the earnings premium calculation that limits calculations to graduates who work at least 30 hours per week, are employed within their field of study, are employed in a position with employer-sponsored health and/or retirement benefits, or are self-employed. This definition would exclude individuals in unpaid positions, on medical disability or leave, on family-based leave within 12 months of credential conferral, or serving on active duty in the United States Armed Forces or National Guard.

Discussion: There is not a viable way to disaggregate individuals based on their work intensity, a field of employment that matches their coursework, or work-based compensatory benefits received. Moreover, if a program's graduates are underemployed and/or unable to find work in their field in large numbers, allowing institutions to exclude program outcomes for those graduates would evade the point of having an accountability metric.

The final rule excludes completers with Direct Loan program loans discharged or under consideration for discharge on the grounds of Total and Permanent Disability or death. The framework already limits working adults to those who have worked for pay, and the Department does not believe it appropriate to exclude individuals based on additional unpaid activity or based on family plans occurring roughly three years prior to the year in which earnings are measured.

The Department made a considered choice in the 2023 Financial Value Transparency/Gainful Employment final rule to include graduates engaged in military service in program outcome metrics, citing educational attainment as a key factor to successful advancement within the miliary. The Department also pointed to the military's stated intent to pay service members at the equivalent of the 70th percentile of comparably educated and experienced civilians, indicating the high likelihood that a program graduate in the armed services would raise the median earnings for their program. We continue to believe that this is the correct approach.

Changes: None.

Comments: Several commenters suggested defining ''working'' to include only individuals who meet a certain income threshold, such as $15,000 in income or the $19,000 gift exclusion amount in the relevant year, to eliminate individuals with only sporadic, seasonal, or de minimis attachment to the labor market. A few other commenters requested that the Secretary define a ''working'' adult as a person working a minimum period of time in the labor market over a year or by month.

Discussion: The Department declines to adopt this suggestion. The ACS data includes individuals meeting the same criteria the commenters would like to exclude, so excluding those individuals from one grouping but not the other would decrease the validity of the comparison. We would also note that the $15,000 that some commenters selected could potentially exclude some individuals working full-time or nearly full-time at low wages. For example, at the federal minimum wage of $7.25 per hour, an individual working 40 hours per week and 50 weeks out of the year would only earn $14,500 in income.

Changes: None.

STATS—Transparency Framework and Metric

STATS Scope and Purpose

Requests for Exemption

Comments: Numerous commenters asked that specific programs be exempt from the new earnings premium measure. As described above under the ''General Opposition'' section, many institutions with religious missions sought an exclusion on legal grounds, because their students do not borrow Direct Loans, or are foregoing higher earnings in favor of a life of religious service. Many suggested that cosmetology, esthetics, and massage programs should be excluded. Several commenters requested an exemption for programs preparing individuals for high-skill, high-need professions. One commenter urged the Department to exclude non-degree, licensure-based programs from this provision, and another similarly recommended removing undergraduate certificate programs from consideration. One asked that private career schools be removed from this regulation. One commenter recommended either an exemption to the accountability measure or adjusted benchmarks for licensed healthcare professions with mandated clinical training. One commenter suggested that the Department exclude all vocational, technical, and community colleges from the rule.

Many commenters argued that early childhood education programs should be exempt from the STATS framework and the earnings premium calculation. One commenter offered that early childhood educators should be exempt because they are an essential part of the workforce. Another commenter agreed, requesting exemption from the earnings premium measure for high-skill, high-need, low-wage positions in education including school paraprofessionals, public school teachers, and private school teachers. One commenter recommended excluding from earnings calculations students who gave birth after graduation, as childbirth and early childcare responsibilities can directly and temporarily affect earning capacity.

Another requested the Department restore and extend the profession-specific evaluation accommodations that were incorporated in prior Federal frameworks, ensuring that professions with non-linear income trajectories, practice-based models, and community-based delivery roles are evaluated on terms the commenter considered more appropriate.

Another commenter proposed that the Department exempt students at high-quality religious private institutions from the earnings premium measurement, as they are not Direct Loan participants and they continue to have access to the education they deserve.

Discussion: The Department declines to adopt these suggestions for several reasons. First, aside from undergraduate certificate programs, the Department lacks the statutory authority to exempt any class of institutions or programs from the earnings premium measure. As described in the Department Authority (Including GE and Quality Assurance Authority) section, the Department is exempting institutions and programs in several very specific scenarios where other laws or the Department's limited authority required such changes, but in general we do not have the ability to establish exemptions based on commenters' arguments about the merits of certain occupations or types of institutions.

Additionally, none of the commenters offered a persuasive rationale for why their particular programs or occupations should merit a unique approach compared with other valuable programs.

The Department has taken a careful approach in these regulations to support the equitable treatment of all programs and students, and implementing any of the exemptions described by commenters would necessarily preference some programs above others. Doing so would arbitrarily benefit whole groups of students, programs, institutions, or occupations, which would undermine the Department's strong desire for a fair, equitable, and consistent evaluation of all postsecondary programs.

Changes: None.

Comments: Some commenters suggested that programs at accredited institutions should be exempt from the earnings test. The commenters argued that accrediting agencies already ensure that programs are high quality, making the earnings test unnecessary for these programs.

Discussion: The Department disagrees with the commenters' suggestions. First, all programs qualifying for title IV, HEA program funds are at accredited institutions. Therefore, the commenters' request would exempt all programs from the accountability framework. Second, Congress directed the Department to evaluate programs based using graduates' earnings, which accrediting agencies do not often evaluate. Third, Congress did not provide an exemption for programs at accredited institutions. Therefore, the Department does not believe exempting such programs would align with the statutory requirements of the WFTCA.

Changes: None.

Comments: One commenter requested the Department add to the list of students in the exclusion list those who are employed less than full time. They also encouraged us to expand the completers list to include both title IV and non-title IV students. According to the commenter, by focusing only on title IV, HEA recipients, program earnings data will be skewed by not reflecting the full earnings premium gained for program completers who are eligible for title IV, HEA program funds. The commenter noted that this would be especially true for degree programs where there is a high concentration of non-Pell-eligible students who choose not to take out Direct Loans. This could create a potential earnings penalty for institutions and programs that keep costs low to minimize student loan borrowing.

Discussion: We decline to add less than full-time students to the list of exclusions for the reasons we have discussed elsewhere in this rule. As for expanding the completers lists to include title IV-eligible students who are eligible for title IV, HEA program funds, but who don't receive such funds, we decline to do that as well. First, this suggestion directly contradicts the statute, which requires the program earnings measure be based on recipients of title IV, HEA program funds. Additionally, this request would also be extremely difficult, if not impossible, to implement operationally, because the Department cannot know with certainty whether a student was ''eligible'' for title IV, HEA program funds without information directly from the institution. This information would not be provided under normal circumstances for students who do not ultimately receive aid. The Department believes that the best course of action is to track students who receive title IV, HEA program funds rather than to add those who applied for aid but did not receive it to that group. This would add complexity and burden to both the Department and schools. Moreover, the purpose of the accountability program is to limit students' access to potentially dangerous borrowing or overborrowing to programs that do not provide a sufficient return on investment. The Department believes that including students who did not receive title IV, HEA funds, despite their eligibility, would run counter to the intent to limit borrowing.

Changes: None.

Comments: One commenter suggested that the Department should apply this accountability framework on a forward-looking basis, exempting all student cohorts admitted prior to the final publication of this rule. The commenter argued that this would provide a reasonable transition and phase in period during which earnings metrics are released for informational and evaluative purposes only, without triggering immediate eligibility consequences or institutional sanctions particularly for cohorts that enrolled or graduated prior to implementation of the final rule.

Discussion: The Department disagrees with the commenter. The Department is concerned that, if this regulation was applied only on a forward-looking basis, it would allow many low-earning outcome programs to continue receiving Federal student loans for at least four additional years. As a consequence, it would fail to protect students from programs that routinely leave students worse-off financially after attending until at least 2031.

Additionally, the statute clearly requires the Department to evaluate programs based on the earnings of individuals who completed the program in the past. The Department also does not believe that such treatment is appropriate for undergraduate certificate programs, which were already subject to the existing FVT/GE regulations.

However, as described in under the section entitled ''Earnings of Program Completers—Use of IRS Data,'' the Department is making a limited exception for programs associated with professions that have substantial amounts of tipped income, and will not treat such a program as passing or failing if earnings for graduates of the program are from tax year 2025 or prior.

Changes: None.

Elimination of the D/E Rate

Comments: Several commenters supported the removal of the debt-to-earnings rate.

Discussion: The Department thanks the commenters for their support. The Department acknowledges that this is a change from the previous regulations. However, we believe the elimination of the D/E metric will reduce the complexity, cost, and burden necessary to implement and comply with the regulations; result in greater consistency in the regulations across all program types and sectors of postsecondary education; and provide useful and comparable information to students and the public. These benefits outweigh any potential reliance any party could have had on the current rule, which the Department notes, it has never applied to any program or institution.[20]

Changes: None.

Comments: Several commenters opposed the elimination of the D/E rate metric for GE programs. One commenter specifically requested that the Department not to impose the proposed earnings premium measure on GE programs. They claimed the D/E framework, when coupled with cohort default rate oversight, is more appropriate, more informative, and more consistent with congressional intent.

Some of the commenters opposing the elimination of the D/E rate metric suggested that a debt-to-earnings test or a loan-based metric, such as a repayment or default rate, would be superior to the proposed earnings test because it would better reflect whether students were able to repay their loans. They suggested the Department replace the earnings test with a debt-based test. Other commenters suggested that the Department add a D/E rate metric to the

[20] Because the Department has not applied the D/E metric to a program or institution or determined that a program is ineligible for title IV benefits because of the metric, we do not believe any party has a reliance interest, let alone a significant reliance interest, on the use of the metric.

earnings test and require that programs pass both to remain eligible for title IV, HEA program funds.

Discussion: The Department does not have the statutory authority to replace the earnings test enacted in the WFTCA with a loan-based test for degree programs and graduate certificate programs. For programs subject to gainful employment requirements, the Department believes the earnings test in the final rule is more advantageous than a loan-based alternative test. Earnings are a more direct measure of whether a loan is affordable, or a whether program of study pays off, whereas loan repayment measures can be influenced by many factors, including repayment terms and policies.

The Department did not include a separate debt-to-earnings test, similar to the current regulations, for programs subject to the gainful employment requirements as the Department believes that such a test does little to increase taxpayer and consumer protection but adds significant complexity, cost, and administrative burden for the Department.

As described in the NPRM, the Department's analysis of data obtained for the College Scorecard revealed that it is likely that including a D/E test for GE programs would not result in a substantial number of additional programs failing the metric. The Department estimates that, after accounting for the programs that fail the earnings premium measure, maintaining the D/E metric would result in a 0.1 to 0.3 percentage point increase in the share of programs and students, respectively, that would fail (Table 8.1). The Department believes those shares are likely be even smaller once pending changes to loan limits under the WFTCA are implemented. In the Department's view, this amounts to a de minimis number of impacted programs. The Department notes that the estimated net budget impact for the proposed regulation reflects a larger effect by removing the D/E metric than the Department's separate analysis that identifies additional failing programs used for research purposes.

Changes: None.

Comments: A few commenters disagreed with the Department's proposal to eliminate the D/E metric from the accountability framework and STATS transparency reporting requirements and indicated their belief this action would be a step backwards in oversight, leaving students at risk of predatory programs. They opined that an earnings premium metric alone does not go far enough to ensure that programs lead to financial stability. Some commenters further stated that evaluating a program strictly on earnings, without providing any context for the debt required to achieve those earnings, provides an incomplete picture of the financial realities for students. These commenters argued that removing the D/E metric enables institutions to continue charging high tuition for graduate education programs or certificates without facing any consequences. A few commenters urged the Secretary to reinstate the D/E metric for all programs, create fair alternative benchmarks, and immediately cut off all title IV, HEA funding, including Pell Grants, to predatory and failing programs.

Discussion: The Department will not apply a D/E test to GE programs for the reasons discussed during negotiated rulemaking and in the NPRM to harmonize the accountability requirements for all programs and reduce unnecessary complexity while preserving meaningful accountability. Additionally, as we have explained previously, the D/E rate metric would only impact a very small percentage of programs that the earnings premium measure does not already address, and the added technical complexity, cost, and burden to the Department is not worth maintaining the framework. As discussed during negotiated rulemaking, in the NRPM, and in the RIA in this final rule (Table 8.1), the Department believes that including the D/E metric would result in a 0.1 to 0.3 percentage point increase in the share of failing programs and students, respectively, which the Department does not believe justifies the burden, complexity, and cost to maintain this metric.

Changes: None.

Earnings Premium Calculation (Earnings Measurement Period)

Comments: One commenter applauded the Department's commitment to applying accountability standards to non-degree programs. They reiterated that maintaining an earnings test for these programs will protect both students and public investment in higher education.

Discussion: The Department agrees that revising the existing FVT and GE regulations to align with the WFTCA requirements and applying both frameworks across title IV eligible GE and non-GE programs regardless of institutional sector or program type is beneficial for students and the public's investment in higher education.

Changes: None.

Comment: Many commenters expressed their belief that there is a mismatch between the age of program completers and individuals in the earnings test benchmark. The earnings threshold includes individuals who are 25–34 years old, and commenters argued the earnings test makes a flawed comparison by measuring graduates' earnings just four years after completion against a benchmark derived from individuals with significantly more years in the workforce.

These commenters suggested that the Department should use different age ranges to determine the earnings thresholds, such as individuals aged 21 to 25, which they believed would better reflect the age program graduates.

Other commenters suggested that a larger age range be utilized to determine the earnings thresholds, such as individuals aged 19–60 or 19–65. These commenters believed that a larger age range more appropriately reflected the age of workers in particular industries, such as massage therapy.

Discussion: The Department believes the typical graduate across the credential categories (certificate, associates, bachelor's degree) is within the identified comparison age range. According to the National Postsecondary Student Aid Study (2019–20), the median age for a student who completes an undergraduate certificate is 26.

Under the earnings test, earnings would therefore be measured when completers are 30 years old (4 years post completion), placing them squarely within the 25–34 age range for the comparison group. Median ages for completers in associate and bachelor's degree programs are 24 and 22, respectively, also placing them within the age range for the earnings comparison group when earnings are measured four years after completion (*i.e.,* 28 and 26, respectively).

Furthermore, the Department does not have the statutory authority to use different age ranges to determine the earnings thresholds used in the earnings test for degree programs and graduate non-degree programs. Section 84001 of the WFTCA specifically states that the earnings benchmarks will be based on the median earnings of individuals aged 25–34. For these reasons, the Department cannot accept the commenters' suggestions to use alternative age ranges.

Changes: None.

Comments: Many commenters expressed concern with using the 4-year earnings of program graduates to judge program quality. Commenters stated that measuring earnings after only four years is too soon to accurately measure the true value of the program. Other commenters noted that in many fields it takes longer than four years for individuals to realize the true outcomes from their program.

Many commenters explicitly called out the future earnings growth in cosmetology professions. These commenters stated that it takes cosmetologists many years to build a client base, invest in necessary tools, and establish themselves in the field. Other commenters stated that the rule does not account for the additional time it takes cosmetologists to become licensed in their states. For these reasons, commenters argued that measuring the earnings of cosmetologists during these early earnings years does not accurately reflect the earnings of individuals in this profession.

Several commenters explained that graduates of Chinese Medicine programs must complete 4 or 5 national board exams and then apply for state licensure, a process that can take several months or more. Also, acupuncture and East Asian medicine programs require extensive supervised clinical hours mandated by state licensure boards and national accreditors. Early earnings in such models are not comparable to those of graduates entering salaried employment immediately after graduation. Applying a uniform earnings-based standard across different career pathways risks mischaracterizing program effectiveness.

Several commenters recommended pushing the program earnings measurement year out to five to ten years after students graduate, suggesting that this would provide a more realistic measure of earnings.

Discussion: The Department is aware that earnings tend to grow over time, including for individuals with cosmetology credentials, as they gain experience and establish themselves in the labor market. The Department notes that the proposed rule measures earnings a year later (4 years after completion) than under the current Gainful Employment regulations, which better accounts for these earnings gains.

The Department is concerned that there is a policy tradeoff, however, in pushing the measurement year out further. Graduates are responsible for repaying their loans starting in the first year after they complete their credential. A credential that does not produce earnings above the test threshold for many years will make it difficult for borrowers to afford their loans during those years, leading to financial distress or costs for the federal government which must subsidize low earnings through loan repayment benefits, such as interest waivers and loan forgiveness. The Department believes that the 4-year measurement strikes an appropriate balance between capturing earnings gains after graduation and ensuring that loan borrowers earn enough to support their debts.

The Department has also reviewed research showing that certificates and associate degrees in cosmetology and massage therapy tend to show lower earnings growth than other credentials between the first and fifth year (about $5,000 after inflation) after students complete. Earnings growth between the fourth and fifth year after completion for these credentials accounts for only approximately $1,000 after inflation, which does not support the claim that these fields tend to see a large spike in income around the 5th year after completion.[21]

The Department also notes that measuring earnings as late as 10 years after completion, as some commenters suggest, may not accurately reflect the current program the institution offers because so much time has passed from the point that students enrolled and the point at which earnings are measured. Under a 10-year earnings test, the Department would effectively take action against a program that may no longer resemble the one for which it is measuring earnings.

Lastly, the Department does not have the authority to extend the period between the student's graduation and the year in which earnings are measured for degree programs, as some commenters requested. Section 84001 of the WFTCA specifies that program earnings are to be measured in the fourth year following the year students graduate from their program. For this reason, the Department does not believe it has the authority to measure the earnings of program graduates in later years, as some commenters requested.

Changes: None.

Alternate or Additional Metrics

Comments: One commenter requested that, when calculating the program earning premium measure, the Department should distinguish between graduates who plan to pursue a career related to their major and those who do not. The commenter noted that many students enroll in online courses for a bachelor's degree program with no intention of pursuing a career in that particular field, but these students would continue to be included in the program's median earnings measure.

Discussion: The Department believes that in such situations, programs should still be held to the same standard regardless of which occupation students intend to pursue. Students who receive Direct Loans to pay for an undergraduate degree they are interested in for nonpecuniary reasons should expect as much, not only for themselves, but also on behalf of the taxpayers who provide the loan funds. Importantly, the law does not distinguish between student motivations. Also, as we note in the RIA section below, the regulations accommodate programs that serve as a precursor to graduate school both by excluding from the earnings premium calculation students who have completed a higher-credentialed program and, pertinent to this comment, by excluding students who are enrolled during the year earnings would be measured for the student.

Changes: None.

Comments: One commenter asserted that the Secretary has the ability to adjust the proposed ACS-based median earnings thresholds, such as increasing the margin of error (MOE) confidence level for the results of the ACS from 50 percent to 99 percent, which would have the result of lowering the thresholds a marginal amount. In addition, the commenter proposed adding a ''Zone'' result to the earnings premium test if a program's earnings miss the threshold by less than a given percentage, such as 5 percent. Finally, the commenter believed the Secretary should consider testing based on combining the program graduates' earning results over a rolling two-year period, as it has done with some prior GE accountability measures. These recommendations would directly apply only to the measurement of undergraduate degree programs.

Discussion: The Department disagrees with the commenter and declines to accept these recommendations. First, the Department does not use a confidence interval or margin of error when calculating the median earnings value in the earnings thresholds. The Department uses the median without regard for a confidence interval because of the statutory requirements to use median earnings. Second, there is no legal justification for the Department to establish a ''zone'' category for degree programs because the statute does not describe such a category nor a unique treatment for programs that might fall into it. Third, the commenter requests that the Department average several

[21] Jason Delisle and Jason Cohn, ''Measuring Earnings Growth by Field of Study to Inform Higher Education Policy, New College Scorecard Data Report Earnings up to Five Years after Completion.'' Urban Institute, December 2024. *https://www.urban.org/sites/default/files/2024-12/Measuring_Earnings_Growth_by_Field_of_Study_to_Inform_Higher_Education_Policy.pdf.*

years of data together, and the Department clarifies that some programs, particularly small programs, will include completers from two or more years due to the cohort expansion process described in this regulation. Furthermore, the Department reminds commenters that a program must fail the earnings premium metric in two out of three consecutive award years before Direct Loan program participation is impacted, which further reduces the influence that one anomalous earnings year may have on program earnings outcomes.

Changes: None.

Comments: Several commenters proposed the Department incorporate repayment-based safe harbor protections for programs with strong borrower repayment outcomes and low default rates. They stated this method would provide a more accurate and equitable measure of program value than a narrow earnings-based calculation alone.

Discussion: The Department declines to adopt the commenters' proposed ''safe harbor'' because establishing a categorical exemption from earnings-based standards for programs with low cohort default rates would undermine the purpose of a uniform accountability framework, violate the statute in the case of degree programs and graduate non-degree programs, and could inadvertently shield programs whose graduates earn low wages but avoid default through income-driven repayment mechanisms. The Department recognizes that repayment and default rates can provide important information about students' ability to manage their debt after leaving a program. However, the Department believes that the earnings premium measure remains a critical component of accountability, as it provides a direct measure of the economic value of educational programs and helps ensure that Federal student financial assistance supports pathways that lead to positive financial outcomes for students. While low default rates may indicate students avoiding default, they do not demonstrate whether a program leads to labor market outcomes that justify the investment of Federal resources.

Changes: None.

Comments: A commenter from an acupuncture program stated that the entry level degree for that program is a doctorate. They requested that the accountability framework for doctoral programs be modified to use a 35 percent repayment rate and a licensure pass rate as an alternative to the debt ratios.

Discussion: As the Department has already described above, we decline the suggestion to use alternative metrics like licensure pass rates and loan repayment rates. For the specific program the commenter mentions, the Department clarifies that we are statutorily required to implement the earnings test for the doctoral degree program in acupuncture. The Department does not have the statutory authority to exempt or modify the accountability framework for particular types of graduate programs, as the commenter requests.

Changes: None.

Comments: One commenter encouraged the Department to build upon the STATS framework by publishing program-linked loan performance datasets across all title IV programs. The datasets could include repayment outcomes, delinquency, and default status. Post-completion earnings distributions, borrower characteristics, program and institution identifiers, and loan product and repayment plan information. The commenter contended that these datasets would allow researchers, policymakers, students, parents, and other market participants to assess program value and identify areas for improvement.

Discussion: The Department appreciates the commenter's request to publish program-level outcomes. While the Department does not commit to publishing the specific data elements the commenter requests, we clarify that this regulation includes a provision that requires the Department to publish program-level outcomes information, including: the published length of the program; the median length of calendar time it takes for students to complete the program's academic requirements; the total number of individuals enrolled in the program; the total cost of tuition and fees; the total cost of books, supplies, and equipment; the percentage who received a Direct Loan program loan, a private loan, or both for enrollment in the program; the median loan debt of students who completed the program during the most recently completed award year; the median earnings of students who completed the program; whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

The Department believes this information will be informative to students and families, as well as researchers, who would like to assess program value. The Department also clarifies that it has the ability to publish additional metrics beyond this list, should it determine to do so at a future point.

Changes: None.

Comments: One commenter recommended that the Department adopt a multi-year averaging of earnings (*i.e.* 3–5 years) or an adjustment for self-employment dynamics, mirroring the methodology used for Social Security benefit calculations to remedy the limitations in the administrative data.

Discussion: The Department declines the commenter's request. As discussed above in this regulation, self-employment income is accounted for in the earnings data maintained by the IRS. The Department believes that averaging multiple years of self-employment data together to smooth over year-to-year variation would contradict the statutory intent of the earnings test, which is to measure earnings in the fourth year after graduates finish their program. Combining earnings across multiple years would extend the time horizon in which earnings are measured in a way that the Department does not have the authority to do.

Changes: None.

Comments: Several commenters urged the Department to replace or supplement the earnings premium test by comparing the earnings of a program's graduates before and after completing a program of study instead of an earnings threshold of working adults. These commenters argued that this methodology would better account for factors such as regional cost and wage differences and age group comparisons between graduate and working adult cohorts.

Discussion: The Department disagrees with this suggestion. First, Congress specified the working adults benchmark population in the WFTCA, and the Department does not believe it would be appropriate to contradict Congressional intent by imposing an alternate comparison group. Moreover, comparing the pre- and post-enrollment earnings of graduates would violate the statutory prohibition against a student unit-record system under section 134 of the HEA.

Changes: None.

Covered Institutions and Programs

Comments: One commenter suggested that the Department maintain the exemption of institutions located in U.S. Territories and the Freely Associated States from the earnings premium test. The commenter was concerned that data used for the earnings benchmark thresholds for the territories do not reflect actual earnings in those territories in the same field.

Discussion: The Department disagrees with the commenter for several reasons.

First, in the 2023 FVT/GE final regulations, the Department supported its decision to exempt institutions in these regions by arguing that there are limited sources of earnings information for these areas and that the coverage rate of the Puerto Rico Community Survey (PRCS) is significantly lower than that of the ACS. However, after conducting additional research and analysis, we do not believe that the exemption in the previous regulations was appropriate and, may in fact, have reduced the integrity of the title IV, HEA programs with respect to the FVT/GE framework.

Second, most generally, in the NPRM the Department indicated that eliminating the exemption for institutions in the U.S. Territories and the Freely Associated States would result in a regulation that included a greater number of eligible institutions and a wider range of programs, which would benefit students and the public by providing useful and comparable information across institutions and programs. We continue to believe that holding a greater number of programs accountable for the earnings of their graduates is appropriate and beneficial to both students and taxpayers.

Third, since the 2023 regulations were published, the WFTCA was passed, and that law requires the Department to implement an earnings premium test for all undergraduate degree programs and all graduate programs, including programs at colleges in U.S. Territories and the Freely Associated States. We do not have the statutory authority to fully exempt institutions in these areas. Congress specifically called on the Department to use data from the Census Bureau, and the only such data that could accomplish this is the ACS and PRCS. The Department believes the WFTCA's requirement to apply an earnings test to undergraduate degree programs, and all graduate programs supersede the Department's prior decision to give certain programs in U.S. Territories and Freely Associated States an exemption.

Fourth, the Department believes the ACS and PRCS are reliable as long as there are a sufficient number of survey respondents to determine an earnings threshold. The threshold the Department considers sufficient is 16 or more, which aligns with the thresholds used in the privacy protocols of this Department and in other Federal agencies. Thus, the Department believes that the PRCS can be utilized in certain cases as long as a sufficient number of survey respondents are available to calculate an earnings threshold.

Fifth, certain programs in certain U.S. Territories will continue to receive an exemption. This exemption would not apply simply because the programs are located in a U.S. Territory or a Freely Associated State, but because Census data are not available to calculate the earnings threshold. For example, bachelor's degree programs at in-state serving institutions in Guam will be exempt from the earnings premium metric because U.S. Census data are not available to calculate the in-state (*i.e.,* in-territory) earnings threshold in which this program would be judged against. The Department estimates that approximately 300 programs will qualify for an exemption for this reason.

Finally, the Department believes that this change closes a potential loophole in the prior regulations that would have allowed an institution, particularly an institution offering distance education programs, to relocate to one of the U.S. Territories or Freely Associated States in an effort to avoid the consequences of the regulations. Especially in cases where institutions offer only distance education programs from a main location that is only an administrative location, such a move would not change the students they are able to recruit for online enrollment, but would still result in an exemption from the consequences of the earnings premium measure. We believe that eliminating this blanket exemption will limit the opportunities for avoiding the consequences of the earnings premium measure by relocating to a U.S. Territory or a Freely Associated State.

Changes: None.

Comments: One commenter recommended that a distinction between career tech/vocational, corporate, and independent schools be identified in the earnings premium measure.

Discussion: The new earnings test compares the earnings of program graduates to an earnings benchmark. There are six earnings benchmarks. The benchmark earnings data come from the U.S. Census Bureau. The data includes the median earnings of working 25–34-year-olds, with the relevant credential level, the relevant geographic area, in the relevant field of study.

Changes: None.

Earnings Accountability

Scope of Accountability

Comments: Many commenters supported the expansion of the accountability framework to include all sectors and credential levels, including undergraduate nondegree programs. One commenter praised the Department's effort to consolidate previously fragmented accountability and disclosure frameworks including FVT, GT, and the WFTCA accountability framework into a single, more coherent earnings-based standard. Another commenter concurred and stated that by including undergraduate certificate programs within a single unified framework, the Department has created a more consistent and equitable system in which all students, regardless of the credential they pursue, benefit from the same transparency and protections. A few commenters pointed out that Congress did not prohibit the Department from continuing to regulate GE programs under longstanding GE authority, but instead explicitly left the Department GE authority intact. One commenter reasoned that the Department should not exempt certificate programs from accountability because even if they were not included directly in the WFTCA legislation, it was Congress's documented intent that certificate programs be held accountable, with the understanding that they were already subject to a similar earnings threshold under the Department's existing GE rule. One commenter pointed out that no version of the WFTCA would have removed accountability requirements for undergraduate certificate programs, noting that an earlier House-led version would have removed GE authority but applied an accountability framework directly to these programs, while the subsequent Senate-led version instead maintained GE authority, which applies to undergraduate certificate programs. One commenter noted that the concept of an earnings accountability framework falls within the boundaries of Section 454 of the HEA; that the Direct Loan program exists to provide students with access to capital for higher education on terms that assume repayment is realistic; and that programs that repeatedly leave students with earnings outcomes below appropriate benchmarks do not provide assurances that the institution is serving students, that borrowers are left in a position to repay their loans, that institutions are meeting the objectives of Federal programs, and that Federal resources are being used consistently for their intended purposes.

One commenter estimated that, while undergraduate certificate programs make up only 8 percent of overall ''Federally aided enrollment,'' they enroll 52 percent of Federally aided students enrolled in low-earning programs that would fail the earnings threshold. A few commenters remarked that students in every sector deserve protection from low-earning outcomes, and that protecting students from spending their limited title IV, HEA eligibility on programs that fail to deliver economic value, including undergraduate certificate programs, is an essential issue of equity. One commenter noted that the title IV, HEA programs are funded by U.S. taxpayers, and that taxpayers want an appropriate return on this investment. One commenter observed that, regardless of credential level or sector, students should not be left worse off than if they had never attended a postsecondary program and that institutions receiving taxpayer dollars have a responsibility to provide sufficient economic value to continue to access title IV, HEA funds. One commenter characterized the earnings premium standard as a low bar, and observed that certificate programs would only fail the metric if they leave graduates worse off than the median high school graduate.

One commenter expressed support for the Department's approach to harmonize the way different programs are treated for accountability purposes, maintaining that it is critical to hold all institutions and all programs accountable when they lead to unacceptably poor earnings outcomes. This commenter urged the Department to maintain the proposed rule as written.

One commenter commended the Department for expanding the accountability framework to include programs in U.S. Territories and Freely Associated States, noting that the expanded scope of accountability will promote greater transparency and comparability for students when evaluating program options.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Numerous commenters objected to the inclusion of undergraduate certificate programs in the earnings accountability framework. Many commenters argued that because the WFTCA did not specifically include undergraduate certificate programs, including these programs in the accountability framework would circumvent Congressional intent. Many commenters speculated that Congress intentionally chose not to include undergraduate certificate programs in the WFTCA accountability framework because the earnings test was designed for degree-granting programs, not shorter-term skills-based programs that lead directly to licensure and employment. One commenter further speculated that including undergraduate certificate programs in the accountability framework contradicts the Trump administration's regulatory priorities and its goals for career education. One commenter further claimed the Department did not sufficiently explain in the NPRM the decision to apply the earnings accountability framework to undergraduate certificate programs.

Several commenters opined that the accountability framework does not adequately consider different functions and outcomes of nondegree certificate programs as compared to degree programs, and observed that career and technical certificate programs are designed to deliver an immediate licensable skill set in a shorter timeframe to enter a fundamentally different labor market than degree holders.

Numerous commenters demanded that the Department exempt undergraduate certificate programs from the accountability framework entirely. Many commenters suggested that the Department exempt such programs from sanctions under the accountability framework but retain the earnings premium measure, reporting, and informational disclosure requirements for such programs for transparency and disclosure purposes. A few commenters proposed that the Department provide undergraduate certificate programs a ''safe harbor'' alternative compliance pathway if the program's median cumulative Federal student loan debt for the most recently calculated cohort period falls below a specific threshold, with a few commenters suggesting exempting a program with median debt less than $10,000 (adjusted annually for inflation).

One commenter suggested that if the Department retains an accountability framework for undergraduate certificate programs, it should restore the more flexible standards of the 2019 GE Rule rather than the earnings premium measure.

One commenter predicted that many short-term credential programs would fail the same earnings test applied to degree programs and noted that exempting them from the accountability framework while restricting degree programs in humanities, education, and social services would channel students into a narrow band of government-sanctioned occupations and away from occupations that produce higher long-term earnings and mobility.

Another commenter opined that the accountability framework may create a troubling precedent wherein the Federal government indirectly pressures institutions to steer students toward only fields and career pathways that produce the highest immediate earnings, regardless of public value, cultural importance, or student autonomy, thereby working against the principles of a free and open labor market.

Discussion: As stated in the ''Authority for This Regulatory Action'' section of this document, the Department maintains that the WFTCA, Section 410 of the GEPA, title IV of the HEA, and the Secretary's unambiguous authority to establish procedures and requirements relating to the administration of title IV, HEA programs, provide the Secretary authority to amend the regulations governing institutional eligibility, general provisions regulations, and the Direct Loan Program. We believe that the inclusion of undergraduate certificates in the earnings accountability framework is needed to harmonize the implementation of the WFTCA with the existing FVT/GE regulatory framework. The Department's resolute goal is to provide students, families, institutions, and the public with meaningful and comparable program information and to promote consistency in the treatment of programs across all credential levels and institutional sectors. This goal is best advanced through the establishment of a single metric that would be calculated for nearly all programs eligible for title IV, HEA funds and that has the same program eligibility consequences for failure of GE and eligible non-GE programs alike. It will also result in consistent and comparable program information disclosures for students.

The Department seeks to reduce unnecessary regulatory burden on institutions as part of our broader effort to implement Executive Order 14192, entitled ''Unleashing Prosperity Through Deregulation.'' We reiterate that applying the value-added earnings premium test to all programs will effectively ease institutional burden and advance the Executive Branch's policy to deregulate under Executive Order 14192. As discussed more fully below in the RIA, applying the WFTCA earnings test to undergraduate certificate programs will result in fewer of those programs failing the metric and facing eligibility consequences compared to under the outgoing FVT/GE regulations.

The Department acknowledges the different functions and outcomes of nondegree certificate programs as compared to degreed postsecondary education programs, but central to this regulatory action and to the statute that prompted it is the notion that all title IV, HEA-eligible programs must lead to improved earnings outcomes for graduates. We believe that comprehensive disclosures on program outcomes are necessary so that any student, regardless of chosen academic program or future occupation, will be more fully informed about costs and potential returns on their investment.

The Department believes a ''safe harbor'' exemption based on relatively low cumulative Federal student loan debt would be contrary to the intent of a uniform accountability framework and declines this suggestion. In addition, Congress did not provide any such exemption in the WFTCA, and such an exemption based on loan debt would be completely unrelated to the earnings outcomes Congress emphasized in the WFTCA.

The Department reiterates that this accountability framework is not intended to pressure institutions to steer students to any particular career pathway but—to the extent that a program participates in title IV, HEA—to incentivize institutions in every sector of higher education to offer programs at all levels that deliver economic value, to enhance data accessibility for students, and to protect taxpayers and students through stronger oversight and comprehensive disclosures on program outcomes. Most importantly, the Department seeks to establish a commonsense, functional, implementable accountability framework that will withstand legal scrutiny, endure future changes in political winds, and—above all—yield actual results after the Department's four previous attempts at GE regulations, which spanned well over a decade and did not hold a single program accountable. An accountability framework that exempts undergraduate certificate programs, or that treats such programs preferentially, simply would not accomplish those goals.

Changes: None.

Comments: One commenter suggested that the Department exempt programs from eligibility consequences in disciplines where many students pursue a higher-level credential during the earnings measurement window and where documented enrollment in graduate programs accounts for a cohort shortfall in years three through five.

Discussion: We believe the regulations already accomplish these suggestions. Under § 668.403(c)(2), a student is excluded from the earnings premium calculation if the student was enrolled in any other educational program at the institution or at another eligible institution during the calendar year for which the Department obtains earnings information under. In addition, for undergraduate programs, § 668.403(c)(3) excludes a student from the earnings premium calculation if the student completed a higher credentialed undergraduate program at the institution after completing the program. Similarly, for graduate programs, § 668.403(c)(4) excludes a student from the earnings premium calculation if the student completed a higher credentialed graduate program at the institution after completing the program. The definition of *Cohort period* under § 668.2(b) expands the completer cohort until it includes at least 30 graduates who are not excluded for reasons such as those described above, and if the fully expanded cohort still does not reach a minimum of 30 graduates, the Department does not perform the earnings premium calculation for that award year. In sum, we believe these provisions address the circumstances to which the commenter refers.

Changes: None.

Comments: One commenter argued that, because the general consequence for a low-earning outcome program is a loss of that program's Direct Loan eligibility, the Department should exempt from the accountability framework institutions that have not participated in the Direct Loan program since before July 1, 2026, as their educational programs are not at risk of losing Direct Loan eligibility.

Discussion: We acknowledge the commenter's concerns, and upon consideration, have made changes to the rule in response, though we have adopted a slightly more targeted approach. As explained above in the ''Department Authority (Including GE and Quality Assurance Authority)'' section, the Department will exempt institutions from the consequences of the earnings premium measure if they have not participated in the Direct Loan program for the five most recently completed award years prior to the year during which the earnings premium measure is calculated. The metric will still be calculated for such programs, but the programs will not be subject to a loss of eligibility for title IV, HEA programs due to the new administrative capability test in 34 CFR 668.16(t). Also, we provide a similar exception if the institution agrees not to permit students to borrow Direct Loan funds in that program under the provisions in 34 CFR 685.203(m)(2) for at least five award years.

Changes: None.

Certification Requirements

Comments: A few commenters characterized the use of four-digit CIP codes linked to any matching SOC code for purposes of precluding institutions from seeking Direct Loan eligibility for new programs that are substantially similar to programs that lost Direct Loan eligibility under the earnings accountability framework as an overly restrictive approach that risks negatively affecting an institution's ability to offer distinct and unrelated academic programs. Commenters noted that for some CIP–SOC crosswalk combinations, despite shared secondary linkage, programs can have distinct curricula, competencies, labor market outcomes, and, in some cases, separate programmatic accrediting bodies, so poor performance in one program should not limit an institution's ability to begin another program within the broader four-digit CIP category. Several commenters suggested that the Department adopt a more granular methodology, such as the use of six-digit CIP codes or limiting to primary SOC mappings only.

A few commenters argued that prohibiting an institution from adding programs that share the same four-digit CIP code and overlapping SOC codes as a program subjected to a two-year loss of eligibility determination may, especially for small, specialized institutions, limit thoughtful program development, curriculum refinement, and educational innovation. They noted this may happen even where revised or newly developed programs differ meaningfully in educational structure, emphasis, delivery model, or professional focus, because broad CIP and SOC classification categories may not adequately distinguish between materially different educational models. A few commenters urged the Department to narrow the restriction to programs sharing the same six-digit CIP code and credential level, rather than relying solely on broader four-digit CIP classifications. One commenter suggested tailoring the restriction to programs sharing the same six-digit CIP code, credential level, and a substantially similar educational and professional focus. Another commenter recommended that the Department also consider providing an exception or review pathway for programs that have been evaluated and approved by a specialized accrediting agency with demonstrated expertise in the profession, particularly where those programs reflect material differences in curriculum, clinical training, educational model, or professional emphasis.

One commenter contended that the classification systems do not keep pace with workforce needs, given that the latest updates to CIP and SOC codes occurred in 2020 and 2018, respectively, and argued that tying program eligibility to outdated codes limits higher education's ability to launch programs that meet current employer demand.

Discussion: We disagree with the commenters who argued that prohibiting an institution from adding programs that share the same four-digit CIP code and overlapping SOC codes as a program subjected to a two-year loss of eligibility determination is too restrictive. This provision is designed to prevent institutions from evading consequences for programs producing inadequate earnings outcomes by voluntarily discontinuing a program before Direct Loan consequences apply based on the earnings premium, and from bringing back a program that is failing or at risk of failing under a similar CIP code with few changes. While six-digit CIP codes within some four-digit CIP categories may have some more variation than others, there are still sufficient common elements to programs within a four-digit CIP category to raise concerns that an institution with one failing program within the category should wait and reassess elements such as program design and market demand before establishing a new eligible program within the same category. We also note that the protections against adding similar programs are less restrictive than those under the outgoing FVT/GE rule in that (1) unlike under FVT/GE, we consider whether the programs have overlapping SOC codes; and (2) the earnings accountability framework uses a less stringent two-year minimum period of ineligibility, as compared to three years under FVT/GE.

The Department does not believe that an exception or review pathway for programs that have been evaluated and approved by a specialized accrediting agency would be supported under the WFTCA. Even were this not the case, such an exception or review process would likely be costly and burdensome for the Department, institutions, and accrediting agencies.

With regard to the updating of SOC codes, we note that the Department of Labor maintains and updates the listing of SOC codes, and we cannot regulate another Federal agency. The Department of Education updates the list of CIP codes every 10 years, and we believe this regular review is sufficient to track developments in academic fields. We disagree that tying program eligibility to CIP and SOC codes stifles an institution's ability to respond to workforce demand.

Changes: None.

Comments: A few commenters expressed concern that prohibiting an institution from adding programs that share the same four-digit CIP code and overlapping SOC codes as a program subject to a two-year loss of eligibility determination is an overly lenient approach, which an institution could game by simply making minor alterations to its program. The commenters were concerned that the institution would be able to continue to market, offer, and receive financial aid for a low-earning program, that, in substance, would be a reiteration of a previously failed program, and requested that the Department strike the SOC overlap provision. One commenter further suggested that the Department additionally provide, in sub-regulatory guidance, that an institution may petition for an exception where it can demonstrate with clear and convincing evidence that the new program is meaningfully distinct from the failed program in academic content, length, and delivery—placing the burden of proof on the institution rather than on the Department.

One commenter cited as examples that a medical insurance coding program (51.0713), which leads to medical records specialists (29–2072) or health IT and medical registrars (29–9021) occupations, could instead reopen as a medical insurance specialist/medical biller (51.0714), which leads to a different set of occupations (healthcare support workers [31–9099] and medical secretaries and administrative assistants [43–6013]); and that a cosmetology program (CIP code of 12.0401) could instead begin a barbering program (12.0402), as both have distinct listed occupations. The commenter claimed that the Department has not adequately explained the shift away from the definition of a substantially similar program under the FVT/GE regulations.

Discussion: We disagree that prohibiting an institution from adding programs that share the same four-digit CIP code and overlapping SOC codes as a program subjected to a two-year loss of eligibility determination is an overly lenient approach. As discussed above, other commenters argued that it is too restrictive an approach that stifles an institution's ability to develop programs to meet market demand and advocated for restricting programs sharing the same six-digit CIP code only.

We believe the fairest and most reasonable approach is a middle ground between restricting at the six-digit CIP level only, which we see as too permissive and susceptible to the types of gaming the commenters described, and restricting at the four-digit CIP more broadly, which we perceive as too strict. Although we appreciate the suggestion to allow an institution to petition for an exception where it can demonstrate with evidence that the new program is meaningfully distinct from the failed program, such a reconsideration process could not be conducted based on administrative data and would be costly and burdensome both for the institution and the Department.

We disagree that the NPRM did not sufficiently explain the shift away from the substantially similar program definition under the outgoing FVT/GE rule. As we noted in the NPRM, the concept of substantially similar programs as described in the FVT/GE regulations does not comport with the Department's earnings accountability framework. The outgoing definition used a different restriction on establishing new programs with subject matter overlapping programs that were voluntarily discontinued or lost eligibility following failing metrics. The exemption from reporting for substantially similar program groupings under FVT/GE did not have an equivalent provision in the WFTCA statute, nor was a similar provision added in negotiated rulemaking. Therefore, due to changes in statute and proposed regulatory changes related to the new accountability metric, the Department determined, and the AHEAD Committee agreed, that the previous substantially similar program definition was no longer necessary.

Changes: None.

Comments: One commenter suggested that the Department consider requiring institutions seeking to reestablish eligibility for a previously failed program to provide evidence of material changes to the program, such as a revised curriculum, strengthened employer partnerships, improved support structures for program completion, or a demonstrated increase in labor market demand.

Discussion: The Department declines this suggestion. A process requiring evidence of material changes to the program could not be based on administrative data sources and would require costly and burdensome manual review by the Department. In addition, we are concerned that such a process would overstep the Department's role in the regulatory triad, and we believe that matters concerning academic program design and administration are best overseen by an institution's accrediting agency.

Changes: None.

Comments: One commenter suggested that the Department implement provisional certification requirements for programs that regain eligibility after losing eligibility, noting that students enrolling in restored programs may continue to face elevated risk necessitating additional oversight in the initial years following reestablishment of eligibility.

Discussion: The Department declines this suggestion. The outgoing GE regulations did not include a mandatory provisional certification requirement for programs that regain eligibility after losing eligibility, and we believe it is appropriate to maintain a consistent approach under the earnings accountability framework. We further note that the existing regulations at § 668.13(c)(1)(i)(D) provide that the Department may provisionally certify an institution if the institution seeks to be reinstated in a title IV, HEA program after a prior period of participation in that program has ended.

Changes: None.

Comments: One commenter claimed that the requirement to provide the certification described in § 668.604(c) would place a substantial and unnecessary administrative burden on institutions but did not further elaborate upon the supposed burden. The commenter asked the Department to reconsider this requirement, particularly for nondegree and new programs.

Discussion: We disagree that providing the certification in § 668.604(c) unduly burdensome. The certification requirement is generally consistent with the one institutions provided for GE programs under the outgoing FVT/GE framework, and only requires the institution to provide through the Partner Connect system a certification, signed by its most senior executive officer, that each of its currently eligible GE and non-GE programs are approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, and that the institution agrees to comply with the requirements of the STATS framework in part 668, subpart Q, and the earnings accountability framework in part 668, subpart S. An institution's signed Program Participation Agreement (PPA) satisfies the requirement except in circumstances where the Department has reason to believe that a program is not accredited by a recognized agency or, if the institution is a public postsecondary vocational institution, the program is not approved by a recognized State agency for the approval of public postsecondary vocational education.

Changes: None.

Low-Earning Outcome Programs and Direct Loan Ineligibility

Comments: One commenter expressed support for program eligibility consequences for low-earning outcome programs. One commenter recognized that the tuition charged by some institutions is disproportionate to the actual earnings in the field, and that by implementing an earnings accountability framework with program eligibility consequences the Department will prompt institutions to improve by requiring these institutions to align costs with market realities and to invest in instructional expenses rather than predatory marketing and recruitment.

Discussion: We thank the commenter for their support.

Changes: None.

Comments: One commenter noted that numerous State and Federal programs rely on the Department's statistical benchmarks to determine funding allocations, eligibility criteria, and program survival, and expressed concern that if the earnings accountability rule causes shifts in key metrics there is a danger that important programs may be cut or eliminated. This commenter requested that methodological updates should not trigger a loss of program eligibility unless there is a documented, real-world improvement in the underlying community conditions.

Discussion: The earnings accountability framework is a set of statutory and regulatory requirements that determine whether a program will be permitted to continue participation in the Direct Loan program based on performance on an earnings premium measure. The Department believes that the application of this metric to all programs eligible for Direct Loan program funds will improve accountability in postsecondary education while also expanding the data available to State and Federal policymakers. We believe this is a positive impact of the changes to the law and regulations, and in any event cannot control the reaction of other government bodies to the introduction of this new earnings accountability framework.

Changes: None.

Comments: Several commenters opined that institutions should not be held accountable or lose funding based on what graduates do following program completion. These commenters argued that institutions should not be penalized for factors the institution cannot directly control, such as which fields graduates choose to enter, how much graduates earn, how many hours graduates choose to work, whether graduates choose to take time away from work to raise children, what information graduates choose to report to the IRS, or how graduates manage their finances including debt repayment. One commenter further claimed that the tax information graduates report to the IRS is the responsibility of the IRS, not institutions.

Discussion: The Department disagrees with commenters who assert that institutions should not be held accountable based on the earnings of their graduates. One of the functions of postsecondary education is to prepare students to enter the larger world, and to the extent that many or most of a program's graduates earn less than individuals with only a lower-level credential, the Department believes that the program has not been successful. Congress also indicated a similar belief when it established the earnings accountability framework in the WFTCA.

Additionally, in order to carry out the wishes of Congress and to improve the accountability of institutions with respect to the economic success of their graduates, the Department must use the best possible source of data on earnings. We believe that only Federal agencies maintain valid, reliable, and consistent earnings data for individuals across the country, and plan to rely on those agencies to provide the earnings information needed to perform the earnings premium calculation.

Changes: None.

Comments: Several commenters objected to limiting the general consequences for low-earning outcome GE programs only to a loss of Direct Loan Program eligibility. These commenters argued that the sanctions will be too weak to drive institutional reform or student choice, that allowing programs with recorded poor earnings outcomes to retain access to Pell Grants leaves vulnerable and low-income students exposed to the risk of inadvertently exhausting their limited lifetime Pell Grant eligibility on worthless credentials, and that for many programs, specifically at proprietary institutions, the loss of Direct Loan eligibility is an insufficient penalty because Department data shows that approximately 40 percent of students in failing GE programs rely solely on Pell Grants to attend.

Several commenters argued that allowing a low-earning outcome GE program to retain Pell eligibility appears inconsistent with the HEA requirement in Sec. 101(b) for such programs to lead to gainful employment in a recognized occupation, as the statutory language does not suggest that the Department has the discretion to pick and choose which of the title IV, HEA programs the requirements apply to and, rather, applies broadly to any of the programs under title IV, HEA. The commenters further contended that the Department has historically interpreted the HEA GE requirement in that manner. Commenters also claimed that the use of HEA Section 454 to create a loan-only accountability regime improperly rewrites the statute because it does not authorize the Department to redefine the consequences Congress attached to failure to satisfy statutory GE requirements elsewhere in the HEA.

A few commenters argued that the broader eligibility consequences under § 668.14(h) are insufficient to protect students because poor performers may be able to game the 50 percent threshold and, even in cases where they do not, an institution's low-earning outcome programs would only lose Pell Grant eligibility a full year after the programs lost Direct Loan eligibility.

One commenter postulated that because other provisions under the WFTCA allow institutions to reduce or zero out the loan limits of students in a given program, institutions will be able to evade all Earnings Accountability sanctions if sanctions are limited to Direct Loan eligibility only.

One commenter opined that with Workforce Pell expanding the universe of programs eligible for Pell Grant funds, the Department must ensure that failing programs do not consume grant aid that should support high-quality short-term credentials. One commenter argued that providing Pell Grant access to low-performing undergraduate certificate programs is inconsistent with the value-added earnings framework for Workforce Pell programs.

Discussion: The Department disagrees with these commenters. We believe the sanctions will be sufficient to drive institutional reform and to preserve student choice, and that it would present a fundamental issue of fairness if the Department imposed stricter consequences on undergraduate certificate programs than on every other category of program.

Although commenters are rightly concerned that allowing programs with recorded poor earnings outcomes to retain access to Pell Grants could leave vulnerable and low-income students exposed to the risk of inadvertently exhausting their limited lifetime Pell Grant eligibility on credentials that do not lead to strong earnings outcomes, this rule — as thousands of other commenters have complained — does not stop at limiting the consequences for poor earnings performance to cessation of Direct Loan participation only. An institution that fails the administrative capability requirement at § 668.16(t) by deriving more than 50 percent of its title IV, HEA funding or recipients from low-earning outcome programs will lose all title IV, HEA eligibility for all such programs—including the loss of Pell Grant eligibility sought by these commenters. It makes no difference if a substantial portion of students in failing GE programs rely solely on Pell Grants to attend, as the Department will conduct the earnings test for each GE program and eligible non-GE regardless of which title IV, HEA programs the institution offers for the program, disclosures about earnings outcomes will be available to students in every such program, and the administrative capability test will identify and remedy the poorest performing programs and institutions while incentivizing institutions to rethink their program offerings to promote better earnings outcomes.

For the reasons above we disagree with the commenter who contended that because other provisions under the WFTCA allow an institution to reduce or eliminate the borrowing limits of students in a given program, an institution could evade all Earnings Accountability sanctions. Such a program would nonetheless be subject to the earnings premium calculation and disclosure, and through the administrative capability requirement the institution's low-earning outcome programs are ultimately subject to consequences that impact the other title IV, HEA programs as well.

We firmly disagree with claims that applying sanctions for GE programs consistent with those for eligible non-GE programs is unsupported by or improperly rewrites statute. As we explain more fully in the ''Authority for This Regulatory Action'' section, we believe that the Department has authority under Section 454 of the HEA, as well as the GE provisions in Section 102, to require GE programs to comply with the earnings premium standard, and that the appropriate remedy for programmatic noncompliance is the loss of eligibility for Direct Loans for such programs that fail the earnings premium measure except when a large number of an institution's programs fail. Section 454 provides significant flexibility in designing the quality assurance system, and that includes the option to tailor the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. We believe it would not be in the interest of the United States to disqualify all programs at an institution from access to Pell Grants if only a small portion of the institution's programs are not performing, because students in high performing programs would also lose access to programs that are adding value.

We believe that the administrative capability threshold will be resistant to the sort of gaming anticipated by commenters, in part because an institution must meet more than one threshold (*i.e.,* 50 percent of title IV, HEA revenue and 50 percent of title IV, HEA recipients). In addition, as we further discuss below in the ''Consequences for Failure to Demonstrate Administrative Capability'' section, we believe that imposing a full loss of title IV, HEA eligibility after a single-year failure of the administrative capability requirement would be inappropriate, and that a two-of-three standard is appropriate not only to reduce the possibility of adverse consequences attaching in borderline cases where an institution may actually have passed the 50 percent threshold, but also to protect both institutions and students from sudden disruptions in the availability of other title IV, HEA programs such as Pell Grants and to provide institutions one additional opportunity to improve their program offerings.

We concur that with Workforce Pell expanding the number of programs eligible for Pell Grant funds, the Department must see to it that failing programs do not consume grant aid that should support high-quality short-term credentials. We note, however, that eligible workforce programs are subject to even more oversight than most other programs, in that not only are such programs subject to the earnings premium calculation and administrative capability requirements and consequences that pertain to other GE programs and eligible non-GE programs, but also the value-added earnings calculation under § 690.95. We believe that these frameworks, together, meet statutory requirements and sufficiently safeguard Pell Grant funds from low-quality short-term credentials.

Changes: None.

Comments: Many commenters speculated that a loss of Direct Loan eligibility would cause institutions to close and would reduce choices available to students as well as the number of licensed or credentialed professionals entering the workforce. Many commenters argued that the accountability framework would remove health and safety standards from licensed professions such as cosmetology. One commenter speculated that loss of eligibility for two failures in three years is not a meaningfully more flexible standard than loss of eligibility with one failure but the institution can choose to teach out, because when faced with a need to pass the earnings premium calculation in the next two years alongside issuing warnings to students, almost all institutions would choose to teach out the program after the first failure.

Many commenters postulated that accountability measures may pressure institutions to transition to degree-only models or restrict enrollment to mitigate risk in programs that serve students who benefit most from career education, including women, parents, caregivers, minorities, immigrants, low-income students, first-generation students, students with prior convictions, students with disabilities, and other historically underserved students. A few commenters warned of a chilling effect that could cause institutional leaders to make curricular decisions not on the basis of educational value or community need, but instead on the basis of whether a program's graduates can be expected to out-earn a benchmark group.

Several commenters predicted that loss of eligibility under the accountability framework would force institutions to lower tuition to accommodate students' financial limitations.

Many commenters presumed that a program's loss of eligibility for one or more title IV, HEA programs would inevitably lead to reduced choice and opportunities for students.

Discussion: As a different commenter noted, low-earning outcome programs need not shut down entirely. The rule allows these programs to continue to operate; they simply cannot enroll students using Direct Loans. There are many institutions, particularly in the nondegree space, which do not rely on title IV, HEA assistance and often charge lower tuition. Failing programs can lower their prices so their students do not need to take on Federal debt. Institutions could also allow their students to work for pay while enrolled to help cover their tuition, which many cosmetology schools effectively prevent their students from doing today. An important feature of applying accountability at the program level is that students can choose different programs at the same institution or at a nearby institution that might provide a better return on investment.

Changes: None.

Comments: One commenter appeared to take issue with the terminology used in the accountability framework, objecting to labeling programs as ''low-earning degree'' programs when some such programs may lead instead to a certificate or other nondegree credential.

Discussion: This commenter appears to have misunderstood the terminology used in § 668.603, which in both the NPRM and in this final rule categorize programs that fail the earnings premium measure in two out of three award years as ''low-earning outcome programs,'' not ''low-earning outcome degrees.'' The ''low-earning outcome program'' language directly reflects the wording Congress provided in Section 454(c)(2) of the HEA as revised by the WFTCA, and the Department believes it is appropriate to retain this language given the application of the accountability framework to programs across credential levels.

Changes: None.

Comments: Several commenters suggested phased implementation timeline or a longer period of time before a program loses eligibility, arguing that institutions should have an opportunity to review and validate data and to implement program improvements before sanctions take effect because program improvements cannot affect measured earnings outcomes for several years due to cohort timing and the four-year earnings measurement period. A few commenters suggested a two-year phase-in during which EP measure results would be published for transparency but would not trigger ineligibility or institutional status changes.

One commenter argued that loss of eligibility after failing the earnings metric in two out of three award years may provide insufficient protection against systemic misclassification for professions characterized by delayed workforce entry, graduate practice development, and self-employment.

A few commenters argued that sanctions punish programs by measuring income during predictable periods of practice building, and suggested delaying sanctions until a program fails the earnings premium measure in three out of five years.

One commenter suggested that the Department first place a program on a probational status with technical assistance before imposing sanctions.

A few commenters requested that institutions be evaluated only using prospective data created following the effective date of the regulations, rather than relying on historical data. One commenter postulated that making program eligibility determinations based on metrics calculated using data from years that precede the effective date of the rule would constitute impermissible retroactive rulemaking, arguing that it is unfair to sanction institutions based on program decisions that were made prior to the effective date of the new regulations and that cannot be reversed or impacted in any way in an effort to comply with the new regulations.

Discussion: For the majority of programs covered by the earnings accountability framework, the Department does not have the authority to alter the timeline for earnings measurement established by Congress. Additionally, the Department continues to strongly believe that it is appropriate to apply the same statutory methodology to undergraduate certificate programs, resulting in a fairer and more consistent approach to accountability throughout postsecondary education in the United States.

The Department does not believe it is appropriate to delay the implementation of the regulations, in part because of statutory requirements that cannot be waived by the Department, but also because the Department believes it is important to implement these accountability requirements as soon as possible to ensure that students and taxpayers receive the maximum possible benefit from the changes.

Changes: None.

Comments: One commenter encouraged the Department to resist requests for an extended transition period in which EP determinations are reported on an informational-only basis without eligibility consequences, noting that the original GE rule has been promulgated four times since 2011 and no program has ever lost eligibility under any version of it, and that extended informational-only periods undermine the goal of accountability.

Discussion: We agree with the commenter and thank them for their support.

Changes: None.

Comments: A few commenters opined that the Department did not adequately explain the change from a three-year period of ineligibility under the FVT/GE rule to a two-year period of ineligibility under the earnings accountability framework, because the Department had previously justified the three-year ineligibility period as one that most closely aligns with the ineligibility period for failing the cohort default rate, and recommended that the Department extend the limitation from the proposed two years after losing eligibility to three years for all low-earning outcome programs.

Discussion: The Department is shifting to a two-year period of ineligibility for degree programs and graduate certificate programs because the statute requires us to do so. For undergraduate certificate programs, the Department believes that the ineligibility period described in statute for the earnings accountability framework is significantly more appropriate than the period of ineligibility for the cohort default rate, particularly since the latter rate measures different outcomes for a different population of students.

Changes: None.

Comments: One commenter argued that characterizing the period of ineligibility as a two-year prohibition is inaccurate, arguing that the practical result of the restriction on seeking eligibility for a program that was previously determined to be a low-earning outcome program until the program has not failed the earnings premium calculation for the most recent two award years is an indefinite period of ineligibility with a two-year minimum. The commenter further opined that making this clarification would remind institutions that their programs will continue to be evaluated under the earnings premium test even during the ineligibility period.

Discussion: The Department thanks the commenter for making this point and will emphasize in training and guidance to institutions that the period of ineligibility is an indefinite period of ineligibility with a two-year minimum.

Changes: None.

Comments: A few commenters argued that students who entered a program in good faith should not lose access to title IV, HEA programs midstream because of a retrospective earnings calculation, and urged the Department to protect currently enrolled students partway through a program by allowing them to retain eligibility after the program is determined to be a low-earning outcome program.

Discussion: The Department disagrees with the commenter for several reasons. First, the statute prevents the Department from permitting an extension of student eligibility if they are enrolled in degree programs or graduate non-degree programs. Second, the Department wishes to harmonize the requirements for undergraduate certificate programs with those of all other programs eligible for title IV, HEA program funds. Finally, the Department does not believe it is appropriate for a student to continue receiving title IV, HEA funds in a program that has demonstrated that it does not confer adequate financial value. Institutions are required to warn students that they will lose Direct Loan eligibility when a program has failed the metric for at least one year, and this will allow students to make their own informed decision about whether to remain enrolled in the program or seek to transfer elsewhere or discontinue enrollment.

Changes: None.

Comments: One commenter opined that the NPRM did not make apparent when the termination of a program's Direct Loan eligibility actually takes effect, particularly in the event the termination action concluded in the middle of a term, and requested that the Department clarify that a program's Direct Loan eligibility termination would not take effect until the beginning of the term after the term in which the Department completes the eligibility termination.

Discussion: As described in the ''Termination Mechanism and Appeals Process'' section, the Department has amended its policy for ending program eligibility when a program has failed the earnings premium measure in two out of three consecutive award years. The Department will now rely on any available mechanism to end the eligibility of a program, which could include a limitation action under 34 CFR Subpart G, a partial revocation action under 34 CFR 668.13, or a refusal to include the low-earning outcome programs on an institution's Eligibility and Certification Approval Report (ECAR) when it recertifies the institution.

Changes: None.

Orderly Program Closure

Comments: Several commenters praised the inclusion of the orderly program closure provisions, noting that allowing a program to wind down over a reasonable period of time rather than facing immediate loss of program eligibility provides institutions and students a more orderly transition process, promotes continuity of student access to academic resources, and allows students to complete their studies without sudden disruption. One commenter additionally expressed support for requiring an institution to provide students the academic and financial options to continue their education in another program when conducting an orderly program closure.

Discussion: We agree with the commenters and appreciate their support.

Changes: None.

Comments: A few commenters expressed concern that the orderly program closure provision would reduce overall accountability benefits and protections for students under the earnings accountability framework by extending the timeline for a failing program to continue receiving title IV, HEA funds while creating risk for students who remain enrolled where better options may exist. A few commenters recommended that the Department eliminate the orderly program closure provision. If the Department retains the provision, commenters suggested limiting it to a single year, which would provide time for a student to transfer to another program if his or her program is longer than two years or the student is enrolled less than full time, and prohibiting programs longer than three years from accessing an orderly program closure.

Discussion: We appreciate the commenters' concern about the well-being of students but we maintain that, on balance, the orderly program closure option improves, not reduces, student protections and we decline the suggestion to remove it.

We note that during an orderly program closure institutions must provide an enhanced warning to students that discloses the status of the program and provides information about options to transfer to another program at the institution or at another institution. With regard to students currently enrolled in a program that has failed the earnings premium calculation and opts for an orderly program closure, we believe that students fundamentally have a right to make choices about where to complete their education, and such disclosures will provide the information necessary to inform and support that decision. The Department trusts that postsecondary students are sufficiently mature and competent to make wise enrollment decisions when provided with the relevant information at the point in time when that information would be most meaningful. If a student, who has been seen the required disclosures, makes the informed decision to finish his or her program of study during an orderly program closure, we believe that the Department and the institution should honor that decision and the student should have the opportunity to continue in that program until the student graduates or for the limited duration of the orderly program closure (*i.e.,* up to three years or the length of the program, whichever is shorter).

Moreover, the orderly program closure process requires the institution to immediately cease enrolling new students in the program, thereby benefiting prospective students and taxpayers by incentivizing institutions to cease enrolling new students in at-risk programs one year earlier than the program would otherwise lose Direct Loan program eligibility if determined to be a low-earning outcome program.

Changes: None.

Comments: One commenter argued that many supposedly precipitous institutional closures of large for-profit chains were foreseeable because of these institutions' questionable admissions practices, inferior pedagogy, and failure to consider the employability of their students or their ability to repay student debt. The commenter observed that such programs do not operate in the best interest of students, and therefore suggested that the Department limit the orderly program closure option to programs where graduates are repaying their loans.

Discussion: We concur that precipitous institutional closures are both undesirable and problematic, but we do not believe that further limiting criteria for an institution to qualify for the orderly program closure option would address the issues described by the commenter. Conversely, we believe that allowing an institution to commit to an orderly program closure will reduce the likelihood of a precipitous institutional closure and improve the likelihood that a student, who makes an informed decision to do so, will be able to complete his or her program of study without the sudden disruption that is characteristic of a precipitous closure.

Additionally, we are concerned that adding a repayment rate criterion could undermine the legal sustainability of the earnings accountability framework, given that the original 2011 GE rule was vacated by a court on the basis of its loan repayment rate metric, and that the WFTCA does not prescribe a repayment rate calculation.

Changes: None.

Comments: One commenter posited that the Department should not prevent an institution from accessing the orderly program closure option solely due to being subject to the heightened cash monitoring 2 (HCM2) or reimbursement method of payment, and that the Department should consider the underlying reasons the institution was placed on a restrictive method of payment. This commenter noted that the decision to place an institution on a restrictive method of payment is a risk mitigation tool at the discretion of the Department, and theorized that the Department could therefore simply change an institution to a less restrictive method of payment momentarily to approve an orderly program closure agreement. The commenter also contended that not all institutions on a restrictive method of payment are in that status for reasons that should in every instance preclude the approval of an orderly program closure—for instance, under § 668.175(h)(2)(iii) the Department may offset an institution's title IV, HEA draws to fund a financial protection, a process that can involve HCM2. The commenter also reasoned that the Department has tended to keep institutions on HCM2 for a period after an administrative problem has been resolved for a school to demonstrate a positive pattern of compliance through several successive compliant HCM2 payment request submissions, inferring that such institutions may not be able to access the orderly program closure option despite having resolved the administrative or compliance issue for which the institution was initially placed on a restrictive method of payment. The commenter further suggested that if an institution was placed on HCM2 due to an accrediting agency action or a state agency action, approving an orderly program closure could be advantageous for beginning an orderly winddown of an institution that may otherwise be in danger of precipitously closing, and highlighted that in such instances the Department could use the HCM2 submission requirements to ensure that the institution complies with the requirements of the orderly program closure agreement.

Discussion: We appreciate the commenter's concern, but in the Department's view placement on the HCM2 method of payment always represents a response to a significant risk to taxpayer funds, and any such risk is important enough to warrant precluding the orderly program closure option. Even in the example the commenter described under § 668.175(h)(2)(iii) where the Department may offset an institution's title IV, HEA draws to fund a financial protection, the fact remains that a financial protection is required and a financial stability risk exists. The Department will consider the effects of HCM2 on this provision, among various other issues, when it decides whether to keep an institution on that method of payment.

Changes: None.

Comments: One commenter speculated that although the Department presented the orderly program closure option as a compassionate accommodation, in reality once an institution decides to undertake an orderly program closure faculty will depart, students will transfer, donor support will evaporate, and the program will collapse before the limited window of eligibility expires.

Discussion: We disagree with the commenter, and we do not believe that it is a foregone conclusion that an institution or program voluntarily undergoing an orderly program closure will experience a sudden collapse in the manner the commenter described. We believe that allowing an institution to commit to an orderly program closure will reduce the likelihood of a sudden collapse and will improve the likelihood that the institution will take the appropriate steps to retain faculty and support students through the program closure process.

Changes: None.

Comments: A few commenters expressed confusion about the interaction between the orderly program closure option and the regaining eligibility framework, as under proposed 34 CFR 668.604(b)(2) an institution could not add a program with the same four-digit CIP code if it shares any of the same SOC codes as one that was voluntarily discontinued (including via an orderly closure) or became ineligible, while under proposed 34 CFR 668.603(c)(4) failing programs could be permitted to continue their loan eligibility in the context of an orderly closure, but (per proposed 34 CFR 668.603(c)(4)(G)) must agree not to restart that program or a program in the same four-digit CIP code for at least two years without specifying any SOC code provisions. One commenter further recommended elimination of the orderly program closure provision.

Discussion: We acknowledge the inconsistency between the criteria for establishing the eligibility for a similar program in these two different contexts. The criterion for adding programs that are similar to one that the institution has opted to orderly close is more restrictive than for low-earning outcome programs that ceased Direct Loan participation. Because an institution voluntarily chooses whether to offer an orderly program closure and is aware of the conditions of doing so, we do not believe the stricter requirement for adding similar programs is unreasonable.

Changes: None.

Comments: One commenter expressed concern that limiting entry to the orderly program closure option to shortly after the first year a program fails the earnings premium measure would not meaningfully benefit undergraduate certificate programs which are typically shorter than one calendar year, because the population of currently enrolled students at any given point is small relative to annual program revenue, so the institution will in most cases lack sufficient revenue to continue operating through the completion of an orderly program closure for those remaining students. The commenter concluded that the practical consequence would be an abrupt closure rather than an orderly teach-out, harming the very students the provision is designed to protect, and urged the Department to either change the timing for programs with normal lengths of less than one academic year or permit continued new enrollment during teach-out, subject to appropriate student disclosures.

Discussion: We disagree with assertions that limiting entry to the orderly program closure option to shortly after the first year a program fails the earnings premium measure would not meaningfully benefit undergraduate certificate programs. We further disagree that it is a foregone conclusion that any institution will lack sufficient revenue to continue operating through the completion of an orderly program closure for remaining students in a certificate program. Resources and staffing vary from institution to institution, and while in some cases an institution may determine that it is not feasible to offer an orderly program closure for a certificate program, other institutions will readily do so and their students will benefit from the option to finish the program.

We also note that, as a general ongoing condition of title IV, HEA participation, institutions must demonstrate financial responsibility, which includes the requirement to have operating funds sufficient to pay title IV, HEA credit balances; satisfy payroll obligations; make refunds under its own refund policy (as applicable); return unearned title IV, HEA funds for which it is responsible; and more generally to provide students with the programs and services that the institution marketed to them. Broad claims that an institution offering a certificate program could not benefit from an orderly program closure based on revenue concerns suggest that the institution was not meeting financial responsibility requirements even before the program failed the earnings premium calculation.

Changes: None.

Comments: A few commenters pointed out that the regulatory text does not explicitly exempt programs undergoing an orderly program closure from continued earnings premium calculations and opined that there is ambiguity regarding whether such a program can accumulate a second failure during the wind-down period, thereby becoming a low-earning outcome program and counting toward the 50 percent administrative capability threshold. One commenter encouraged the Department to explicitly exempt programs from continued earnings premium calculations if the institution chooses to undergo an orderly program closure.

Discussion: The regulatory text at § 668.603(d)(4)(i) provides that when an institution agrees to amend its program participation agreement to carry out an orderly program closure, the Secretary allows such program to continue participation in the Direct Loan program under the conditions of the agreement. In essence, upon the countersigning of an orderly closure agreement, the program is set aside and, for the limited duration of the orderly closure process, is not considered a low-earning outcome program and does not count toward the 50 percent administrative capability threshold.

Changes: None.

Student Warnings and Acknowledgments

Comments: Many commenters argued that the implementation of student warnings after a single metric failure may cause reputational harm, enrollment disruption, and program closure, even in cases where programs remain viable and aligned with state licensure requirements.

Discussion: The Department disagrees with the commenters that stressed a warning would cause irreparable harm and an industry-wide closure of viable institutions. The statute requires institutions to actively warn prospective and current students when an eligible non-GE program may become ineligible for the Direct Loan program based on its earnings premium measure in order to help the student make educated decisions on where to invest their time and money in pursuit of higher education. The Department is applying the same set of requirements to both GE and eligible non-GE programs consistent with its intent to harmonize all earnings accountability requirements and establish a better understood and more uniform framework for providing consumers with information about failing programs. The Department believes these changes are necessary to incentivize institutions to offer programs that deliver appropriate return on investment, enhance data accessibility for students, and protect taxpayers and students.

Changes: None.

Comments: Several commenters requested the ability to add contextual information to the student warnings such as specific labor-market data, program improvement plans, that four-year snapshots are not predictive of lifetime earnings in fields with demonstrated long-term growth, or otherwise state that educational quality and student outcomes may not be measured solely through earnings data.

Discussion: The Department acknowledges the concerns raised by commenters, but is concerned that including additional information on the warning could detract or confuse students from the critical content of the warning. The Department clarifies that institutions may provide supplemental information and explanations to accompany the warnings, but these must be separate from and in addition to the warning itself, as the warning content specified in the regulation must be the only substantive content of that communication. The Department reiterates that no supplemental information or explanations that accompany the warnings may dilute, obfuscate or otherwise downplay the Department's efforts and intentions to inform and protect taxpayers and students.

Changes: None.

Comments: A few commenters argued against the elimination of required alternate language student warnings. These commenters stressed that institutions serving populations in which a significant percentage of students or their families are non-English speaking would be more effective in conveying information to them.

Discussion: The Department acknowledges these concerns but declines to make a change due to the administrative burden imposed by the requirement. Institutions must provide the warning in English but may additionally provide a separate warning in an alternate language if they wish.

Changes: None.

Comments: A few commenters stressed that warnings would be detrimental to students from lower income backgrounds, who may be disproportionately dependent on federal loans to pursue higher education or otherwise more sensitive to regulatory signals about program risk. The commenters expressed the warnings would act to deter these students from enrolling.

Discussion: The Department believes that more robust and comprehensive disclosures are needed to protect all students, especially those from lower economic backgrounds, from low-earning outcome programs. If a student chooses not to enroll in an at-risk program based on a warning, we believe that is one outcome that indicates the warning is working as the statute and the regulations intend, in that the student made an informed enrollment decision based on timely information about the program. Another student might choose to enroll nonetheless after receiving a warning, but in both cases the warning empowers the student to make a more informed decision. The Department reiterates that all higher education programs should deliver economic value and warnings will help convey important information about the potential earnings and economic benefits of a program when those benefits are in question.

Changes: None.

Comments: Other commenters stated that warning and acknowledgment requirements could disproportionately impact smaller institutions.

Discussion: The Department reiterates that all higher education programs, including those at smaller institutions, should deliver economic value and the warnings would help convey important information about the potential earnings and economic benefits of a program.

Changes: None.

Comments: Several commenters shared various suggestions regarding the content and process of the warning and acknowledgements required under 34 CFR 668.605. Some of the comments were to strengthen the warnings and acknowledgments with additional information, repeated warnings after failure, and an active acknowledgment process. Other commenters were against including remaining Pell Grant eligibility on the acknowledgments, arguing that so much information is unnecessarily burdensome.

Discussion: The Department appreciates the commenters' suggestions and enhancements. We believe the revised 34 CFR 668.605 strikes the appropriate balance of critical and optional information needed for consumer information related to the performance of their program. Regarding student acknowledgements of the warnings, the Department believes that the value of timely and relevant information regarding Direct Loan and Pell Grant eligibility justifies any administrative burden to institutions subject to the warning.

With respect to additional information that could be included in student warnings, the Department believes that the introduction of the administrative capability process in 34 CFR 668.16(t) requires that additional information be provided to students whose programs are in danger of losing all title IV, HEA program eligibility because at least half of the institution's revenue or students are associated with low-earning outcome programs. Therefore, in that circumstance we are adding a requirement for an institution to provide additional information to that effect in a student warning.

Changes: The Department added a new paragraph (iii) at the end of § 668.605(c)(1) to establish an additional requirement for an institution that has failed to comply with the requirements of 34 CFR 668.16(t) in at least one of the three most recent consecutive award years. Such an institution would also be required to include in student warnings an explanation that students enrolled in a low-earning outcome program could also lose access to the other title IV, HEA programs.

Appeals

Basis for Appeals

Comments: A few commenters expressed support for limiting the basis for appeals, noted that the Department's obligation is to use IRS data as the best available data, and recalled that the broader appeals process under the 2014 GE rule yielded flawed earnings surveys that inflated alternate earnings estimates about 73 percent higher than earnings reported in SSA data under the GE calculations for all programs (and this inflated survey data was even more pronounced for cosmetology programs at 82 percent). One commenter surmised that allowing institutions to appeal based on alternative earnings measures or similar methodologies would likely lead to lengthy disputes, create incentives for manipulation that would disadvantage students, while continuing to direct funding to programs that provide little or no meaningful earnings benefits to graduates.

Discussion: The Department agrees with these commenters, and we thank them for their support.

Changes: None.

Comments: Many commenters claimed that the earnings accountability framework lacks a meaningful and transparent appeal process. Several commenters opined that limiting appeals to mathematical errors in calculating the earnings premium measure is too restrictive, rendering appeals an administrative formality. Several commenters postulated that an appeals process that does not allow substantive challenge to the data underlying the determination does not satisfy the intent of HEA Section 454(c)(5). A few commenters theorized that limiting the scope of appeals may depart from the Administrative Procedure Act, which considers sanctions lawful only if the institution has been given notice by the agency in writing of the facts or conduction which may warrant the action and the opportunity to demonstrate or achieve compliance with all lawful requirements.

One commenter expressed concern that the limited basis for appeals means institutions may be unable to independently replicate, verify, or evaluate the determinations underlying a failing program designation.

A few commenters argued that the appeals process should allow institutions the opportunity to challenge the formula itself, such as when an institution receives a calculation that is technically accurate under the Department's methodology while the methodology itself is ill-suited to the realities of a particular profession such as acupuncture practice. One commenter advocated for a methodological appeal if the program prepares students for a self-employment-intensive licensure profession, if the cohort or earnings threshold fails specified sample-size or reliability thresholds established by the Secretary, or the Federal agency with earnings data applies privacy suppression techniques in a manner that materially alters the reported median earnings.

One commenter emphasized a need for robust mechanism to challenge punitive findings and urged the Department to consider a data appeals process that encompasses databases such as the Cal Pass dashboard that underscore persistent disparities in visual arts majors gaining employment in underserved California regions.

Several commenters maintained that a ''one-size-fits-all'' framework does not account for the diversity of educational models and workforce outcomes across industries, and one commenter advocated that there should be no limitations on what aspects institutions can appeal.

Discussion: The Department disagrees with claims that the earnings accountability framework lacks a meaningful and transparent appeal process and with claims that the appeals process does not satisfy the requirements of the WFTCA or the APA. The WFTCA provides that the Secretary shall establish an appeals process so that if a program is determined to be a low-earning outcome program, the institution may appeal that determination. The WFTCA did not instruct the Secretary to allow institutions to appeal at each step of the determination, including the reliability of the data set as to that program. It instead leaves the Department discretion to make a reasoned choice of the best available data on which to make the low-earning outcome determination. We considered the difficulty in verifying alternative data in a timely manner and believe that, even were it accurate, alternative data is unlikely to have a significant impact on the overall calculation. With regard to commenter concerns about the Administrative Procedure Act, the threshold question for procedural due process purposes is whether a person has been or will be deprived of a property interest protected by the U.S.

Constitution, but institutions lack such a protected interest in continued eligibility to participate in Federal student aid programs. A unilateral expectation of benefits is insufficient, institutions are neither promised nor led to believe that they will receive a continuing stream of Federal support without change in student aid rules, and neither institutions nor programs are direct beneficiaries of title IV, HEA aid to students. The final rule's appeal process is fair, and the risk of error is low in the first place because the Department will use quality data on earnings from a Federal agency combined with other reliable information, including information supplied by institutions themselves. We do however agree that institutions should be provided with adequate information about the information used to calculate the earnings premium measure for their programs, and commit to providing that information to institutions at the time that we provide the annual notice of determination of the results of the metric.

We strongly disagree that the appeals process should allow institutions the opportunity to challenge the earning premium formula or methodology itself. We even more strongly disagree with the suggestion that there should be no limits on what factors an institution can appeal. The WFTCA did not provide a menu of options and alternatives for the Department to consider for different types of institutions and programs. While we recognize that one of the defining features of the American higher education system is its diversity of options to meet each student's needs, it would be both impracticable and inequitable for the Department to develop unique metrics and unique appeal mechanisms for each and every institution, occupation, locality, or sector. Through the WFTCA, Congress selected one earnings premium methodology to measure a program's economic value, and the Department cannot allow institutions to circumvent that methodology through the appeal process.

With regard to the commenter who requested the use of alternate earnings data from State data systems to address disparities in earnings outcomes for certain disciplines or localities, we disagree and believe that the appeals process should apply to all programs consistently. We discuss more fully in the ''Use of Alternate Earnings Data for Appeals'' section other comments requesting the use of supplemental earnings data from State data systems.

Changes: None.

Comments: A few commenters suggested that an institution should be able to appeal a low-earning outcome program determination based on evidence of a program's civic and societal value, to account for the benefit of lower-paying fields that serve the public good and whose societal benefits may not be reflected by earnings.

Discussion: The Department disagrees with the commenter. Although postsecondary programs offer value in a variety of ways, including to students and society, these regulations and the earnings test set forth by Congress in the WFTCA specifically measure the economic value conferred by the program. The statute does not require consideration of civic or societal value, and in any event it would be impractical for the Department to accurately and consistently measure the civic or societal value of a postsecondary program.

Changes: None.

Comments: A few commenters claimed the Department's demonstration data contained inaccuracies including programs misassigned to institutions in fields they do not offer and that, without an earnings appeal process, institutions would be vulnerable to outcomes based on flawed inputs. One commenter representing several institutions claimed that in the Department's demonstration data, some institutions had programs listed with graduates in CIP codes for which no programs have ever existed at the institution, and the commenter highlighted the importance that institutions be able to appeal data errors of this sort. A few commenters more broadly contended that institutions should be able to appeal improperly constructed cohorts.

Discussion: The Department believes the appeal process already allows institutions to appeal and correct errors of this type. We remind commenters that the graduates included in the earnings cohort are based on data reported by institutions to the Department, and institutions are required to report accurate student-level title IV, HEA recipient information to the Department, including correct CIP codes for each recipient's program of study. Although institutions cannot directly challenge the administrative earnings data the Department obtains from a Federal agency with earnings data, the regulations provide institutions the opportunity to review and correct the completers list for each program. In addition, institutions can through the appeals process review and challenge the completers list the Department uses to obtain graduate earnings data.

Changes: None.

Comments: A few commenters posited that the appeal process should include adequate notice, access to the underlying data and methodology used to establish cohorts and calculate earnings outcomes, and sufficient time for institutions to review and respond before consequences apply.

Discussion: We agree with the commenters that institutions should be provided with adequate information about the information used to calculate the earnings premium measure for their programs, and commit to providing that information to institutions at the time that we provide the annual notice of determination of the results of the metric.

Changes: None.

Comments: A few commenters called for additional specificity regarding the appeals process. One commenter broadly claimed that the appeals process is not clearly articulated. One commenter opined that the Department should specify the allowable grounds for challenge, the procedures and deadlines for submitting a challenge, the documentation institutions may provide, and the timeline within which the Department must respond.

Discussion: We agree with the commenters that additional specificity about the appeals process is warranted, and believe the changes that we made to Subpart S in response to a comment below provide greater clarity about the criteria that an institution may use to appeal a loss of Direct Loan eligibility. We decline to regulate the Department by providing complete information about the procedures and deadlines for submitting an appeal in the regulations, but commit to providing that information via sub-regulatory guidance prior to the first appeals submitted by institutions.

Changes: None.

Ability To Challenge Graduate Earnings Data

Comments: Many commenters emphasized that institutions should be able to examine and appeal underlying earnings data. Several commenters elaborated that earnings data appeals are appropriate because of limitations with IRS earnings that may not fully reflect self-employment, business income, tip income, and an earnings measurement window that captures practice-development periods rather than longer-term earnings patterns. Several commenters suggested that the Department allow earnings appeals on the basis of alternative state wage data, graduate surveys including tipped income, or BLS occupational data for the relevant occupation and geographic area.

Discussion: The Department strongly disagrees with suggestions that we should allow appeals to substitute or modify the earnings data using alternative earnings data. We maintain, as discussed at length in negotiated rulemaking at in the NPRM, that it is inappropriate to accept appeals on the basis of alternative earnings for numerous reasons. IRS earnings data represent the highest quality and most accurate available data source and, accordingly, are also currently used for determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Moreover, past data submitted by institutions in alternate earnings appeals, such as graduate earnings surveys and employment verifications, was unreliable and was of considerably lower quality than the earnings data available from administrative data sources.

As discussed more fully above in the ''Earnings of Program Completers—Use of IRS Data'' section, tipped income is already included in Federal tax data, as it is legally required to be reported under the tax code. Given the use of median earnings data, the possibility of under-reported tipped income would only occur if program graduates were unlawfully not reporting tipped income *en masse* and over half of graduates from a program illegally under-report their tipped income for this purported issue to impact the median earnings value of a program. Such a large amount of illegal under-reporting of tipped income seems implausible, and the Department believes the ''no tax on tips'' policy included in the WFTCA will further reduce the prevalence of any potential underreporting in tipped income. We also note that, as explained above in the ''Earnings of Program Completers—Use of IRS Data'' section, if a program is designed to prepare a student for gainful employment in a recognized occupation that qualifies for a deduction of tip income under IRS ''No Tax On Tips'' regulations, and 50 percent or more of individuals in the occupation receive income from tips, eligibility consequences will not apply in cases where earnings premium calculation would use earnings data from 2025 or prior. Given that change, we believe that the results for tipped occupations will be significantly more reliable indicators of the true earnings of graduates, and therefore no further adjustment is necessary or appropriate though the appeal process to account for tipped income.

With regard to the earnings measurement window, we note that many, if not most, occupations are characterized by earnings that increase over time. Contrary to commenters' assertions, that is a natural and expected function of career and economic growth over time, not an outlier unique to a particular program or field. In the WFTCA, Congress nonetheless specified a four-year earnings measurement window for all programs. Given the significant costs of higher education, we believe that students and taxpayers have a right to expect a timely return on their investment, and we do not believe it would be supportable or appropriate to contradict Congressional intent by offering a longer earnings measurement through the appeals process.

Changes: None.

Comments: One commenter cautioned the Department to avoid creating an appeals process that becomes overly burdensome for schools and the Department to process, noting that smaller institutions may not have the necessary staff and resources to track down former students, verify informal earnings reports, or assemble individualized documentation to support an appeal. The commenter also observed that even when graduates are working, some may be reluctant to provide employment information, and reasoned that if a graduate is not reporting income fully to the IRS, it is unrealistic to expect that graduate to report it to an institution for purposes of an appeal.

Discussion: We agree that documenting alternative graduate earnings data, such as by developing and administering graduate earnings surveys, would be time-consuming and burdensome both for institutions to administer, and for the Department to adjudicate. We also agree that such alternative earnings data is unlikely to be more complete or of better quality than administrative earnings data provided by the IRS or another Federal agency with earnings data. These are some of the reasons the Department believes it is necessary and prudent to thoughtfully limit the basis for appeals to errors in the earnings premium calculation based on supportable administrative data.

Changes: None.

Use of Alternate Earnings Data for Appeals

Comments: A few commenters suggested that the Department allow for appeals of graduate earnings data based on State longitudinal data systems. A few commenters claimed that many States have developed data systems that allow them to track information such as enrollment and completion data; program performance data; financial aid data; workforce data; and return on investment data that includes student debt, time to degree, and earnings of graduates by degree type, program, and institution, and contended that if an institution is in a State with a robust data system, the institution should be afforded the opportunity to submit State earnings data. One commenter speculated that using such state data systems would align with the Secretary's broader aim of returning education to the States.

Discussion: We appreciate the commenters' suggestion, but we do not believe such an approach would be fair or practical. Although some States may have developed relatively robust longitudinal data systems, which may in some cases include graduate earnings data, other States may not have done so. Even for those States where such systems may be available, the data available may not be consistent or comparable between different States, or even within different sectors or occupations within the same State, and the Department has no reason to believe that such earnings would be more complete or accurate than Federally sourced data. In addition, we believe it would be inconsistent and unfair for institutions located in some States to have access to appeals using alternative State administrative data, when institutions located in other States, as well as eligible foreign institutions, would not have access to a similar appeal option. Moreover, given that graduates may seek employment in States other than the one where an institution is located, even within a given institution or program the availability and applicability of State-level earnings data would be unreliable.

Changes: None.

Comments: Several commenters recommended that the Department establish an alternate earnings appeal process whereby religiously controlled institutions with a failing religious program could appeal and retain eligibility if the institution establishes that the earnings of graduates working in ministry-related positions exceed the earnings of workers in those same occupations with only a high school diploma or equivalent (for baccalaureate programs) or with only a baccalaureate degree (for graduate and professional degree and graduate certificate programs).

Discussion: We decline to provide a unique earnings appeal process for a single type of institution. We continue to believe that alternate earnings appeals are both impracticable and result in less accurate information than that collected by Federal agencies. These concerns apply equally to all types of institutions, including religiously controlled institutions.

Changes: None.

Other Categories of Appeals

Comments: Many commenters noted that wages and living costs in rural areas are lower than in metropolitan areas, and requested that the Department add a local earnings appeal to allow programs offered in lower-wage areas to be evaluated based on local economic data rather than broader State or National data. Several commenters requested expanding appeal categories to allow regional cost-of-living adjustments. A few commenters further requested that the Department reconsider incorporating a ''branch appeal'' process similar to one submitted by a negotiator,[22] which would compare graduate earnings to the median earnings of working adults where each individual campus is located, arguing that earnings for programs offered by institutions with campuses in several States will always be compared to the national benchmark, when some or all of the States where the institution is located may have lower median earnings than the national benchmark.

Several commenters suggested that the Department allow additional categories of appeals, such as an appeal for economically disadvantaged students based on the program's percentage of Pell Grant recipients, an appeal based on low median graduate debt, loan repayment rates, an appeal based on licensure outcomes, completion outcomes, job placement outcomes, cohort demographics, part-time work, or self-employment. One commenter suggested that the Department allow institutions to present evidence of successful graduate outcomes, career advancement, entrepreneurship, and workforce participation. One commenter recommended that the Department allow institutions to appeal based on caregiving interruptions to a graduate's participation in the workforce.

A few commenters presumed that the earnings premium measure should reflect or replace the cohort default rate (CDR) as an accountability mechanism, opined that a program with low earnings is likely to also have high default rates, and suggested that institutions with low-earning outcome programs should have access to appeal categories similar to CDR appeals provided under § 668.189(a).

Discussion: We disagree that a local or branch appeal is necessary or appropriate. As we further discuss below in the ''Summary of Comments from the NPRM'' section of the RIA, the Department specifically considered the impact of the proposed regulation on programs in rural areas. The Department's analysis shows that the regulation will result in only a slightly higher share of failing programs and students in rural areas relative to the current regulation. We remind commenters that both the graduate cohort earnings and the working adults threshold earnings include rural earners, and we note that the earnings threshold definition is predicated on the highly specific statutory requirement outlined in Section 84001 of the WFTCA, where Congress explicitly instructed the Department on how the earnings test would be conducted. Therefore, the Department does not believe it has the authority to alter the earnings test for programs located in rural areas.

The Department is unpersuaded by commenters' requests for additional categories of appeals. An appeal for economically disadvantaged students based on the program's percentage of Pell Grant recipients, or one based on cohort demographics, would be poorly targeted given the primary focus of the accountability framework on Direct Loan eligibility. In addition, we believe such an appeal option would lessen accountability for programs that serve the highest proportion of vulnerable students, which we believe would contradict the purpose of the accountability framework in protecting students and promoting strong economic outcomes.

An appeal based on low median graduate debt or high loan repayment rates, while better targeted toward Direct Loan-related issues, appears to exceed the scope of appeals contemplated in the WFTCA in describing ''the opportunity to appeal the programmatic median earnings of students working and not enrolled determination.'' If Congress wished to exempt such programs from the accountability framework, it could have done so explicitly in the WFTCA.

While licensure, completion, job placement, workforce participation, and career advancement are important program outcomes, those factors are not the ones that Congress specified should be examined by the Department in the earnings accountability framework. Moreover, those factors already directly contribute to the ability of graduates to produce measurable earnings, which is the factor Congress emphasized in the WFTCA. We do not perceive strong licensure, completion, or placement results as a supplemental benefit or an unusual circumstance; such results constitute the absolute floor of acceptable program performance and are the Department's expectation for all participating programs, not the exception.

We believe an appeal or adjustment to reflect part-time work or self-employment would be inappropriate. As discussed in more detail above in the ''Earnings and Earnings Threshold'' section, both the graduate earnings group and the working adults comparison group include part-time workers and entrepreneurs. It would not be appropriate to adjust only the graduate earnings side of the calculation without also adjusting the benchmark group. In addition, an appeal based on part-time work could not be based on administrative data sources, as the IRS does not capture whether filers worked full time or part time. Moreover, the WFTCA does not specify any adjustment for part-time work or self-employment on either side of the earnings premium calculation.

Although we understand the commenter's concern about caregiving interruptions to a graduate's participation in the workforce, such interruptions also impact the working adults comparison group. In addition, we believe that in passing the WFTCA Congress intended to incentivize graduate workforce participation and earnings, not caregiving.

While we certainly acknowledge the relevance and importance of the cohort default rate as an accountability mechanism, and we agree that a program with lower earnings is likely to also have higher rates of default, we do not believe that Congress intended these two metrics to be interchangeable or integrated. Section 435(a)(2)(D) of the HEA explicitly sets forth several categories of cohort default rate appeals and challenges for a variety of situations, demonstrating that Congress knows how to specify categories and criteria for appeals when it wishes to do so. Congress did not, however, choose to

[22] *https://www.ed.gov/media/document/2025-ahead-2026-1-6-np-accountability-appeals-submitted-submitted-aaron-lacey-112961.pdf.*

employ those same appeal categories and criteria for the earnings accountability framework under the WFTCA, nor did it choose to specify other particular parameters for appeals. Absent such explicit directives, as discussed earlier in the context of the basis of appeals, the Department believes the best reading of the statute is to limit the basis of appeals to the earnings premium calculation itself.

Changes: None.

Comments: One commenter noted that some occupations in fields such as defense manufacturing require workers to obtain a security credential, which can in some cases take a year or more to obtain, and recommended that the Department amend the appeals process to recognize documented evidence of clearance-related employment delays as a basis for adjustment to the earnings calculation.

Discussion: The Department declines to create an exception for security clearances. We believe that the time between graduation and earnings measurement is sufficient to account for the time needed to obtain a security clearance.

Changes: None.

Comments: Several commenters urged the Department to expand the appeals process to allow institutions to appeal a low-earning outcome determination when the program prepares students for a documented Federal or State workforce shortage field, a profession named as an area of national need in the Public Service Loan Forgiveness program, or supports a public service workforce.

A few commenters recommended that the Department include a ''force majeure'' appeal option to protect programs from adverse consequences due to industry-wide disruptions such as strikes or regional economic shifts. One commenter elaborated that this determination should entail both Federal-level and State-level review, and that a Governor or designated State agency should be able to suspend, adjust, or waive earnings premium determinations.

One commenter suggested that the Department consider a ''Primary Program Remediation Agreement'' in lieu of automatic Direct Loan ineligibility after two EP failures for situations where a single six-digit CIP code program composes at least seventy-five percent of total enrollment, under which the institution would commit to tuition freezes, quarterly reporting of placement and gross receipts data, and enhanced financial literacy training for students for a defined period (*e.g.,* five years), with transparent monitoring.

Discussion: The Department declines to add options for institutions to appeal on the basis of workforce shortages or areas of national need or in situations where an institutions commits to taking steps to mitigate the potential harm to students such as tuition freezes or additional financial literacy training. It is not practical for the Department to determine, on an annual basis, whether a program is associated with an area of national need. In addition, such programs should support adequate earnings for students, perhaps even more so if the workforce is in need of skilled workers in such an area.

Similarly, we do not believe it is appropriate or practical to protect programs whose graduates could be affected by industry-wide disruptions such as strikes or economic changes. Very broad economic changes will affect both the earnings threshold value and the earnings of program graduates, whereas more localized issues such as strikes are unlikely to affect the earnings of individuals across the country, and the Department cannot account for nuanced changes in local or regional industries.

We also do not believe we have the authority to allow an institution to avoid the consequences of failing the earnings premium measure simply by taking remedial action to improve aspects of a program. We anticipate most institutions would take advantage of such an option, substantially reducing the cases where consequences would apply, which would be contrary to the statutory requirement. Additionally, we do not believe such remedial action would adequately compensate for the lack of economic value conferred by the program, which is detrimental both to students and to the taxpayers whose funds supported those students' enrollment in the program. Moreover, no objective and administrable data source exists to document and support appeals on the basis of remedial or curricular actions to improve a program, and therefore such an appeals process would necessitate costly and burdensome review by the Department of subjective evidence and criteria. For this reason, and for the reasons the Department has expressed repeatedly, including in the 2023 final rule and in the NPRM preceding this final rule,[23] the Department will not establish a burdensome appeal process that is more likely to generate inaccurate, unreliable, and inconsistent information about student earnings than the data source the Department is using in the first place.

Changes: None.

Comments: A few commenters urged the Department to establish a waiver or appeals process for programs in career pathways where evidence has demonstrated delayed earnings growth beyond the four-year earnings measurement window, and suggested granting earnings measurement periods of up to 10 years for such programs based on a successful appeal.

Discussion: The Department declines to adjust the earnings measurement window for particular programs or occupations. As many commenters from a variety of fields and sectors have argued, most occupations are characterized by earnings that increase over time. In addition, many occupations require a period of postgraduate clinical or residency work or professional licensure before full employment or practice. In the WFTCA, Congress specified a four-year earnings measurement window for all programs, without exceptions for licensed or security-cleared professions. Given the increasing costs of higher education, we believe that students and taxpayers have a right to expect a much more timely return on their investment than the 10 years suggested by some commenters and, given the approach adopted by Congress in the WFTCA, we do not believe it would be supportable or appropriate to contradict Congressional intent by superimposing a longer earnings measurement window for particular occupations or professions.

Changes: None.

Comments: A few commenters acknowledged the Department's concern about the low quality of past data submitted by institutions in alternate earnings appeals, but urged the Department to permit institutions to raise appeals challenging cohort inclusion decisions, including disputes regarding the accuracy of cohort expansion determinations.

Discussion: We appreciate the commenters' support, and we also acknowledge the importance of permitting institutions to raise appeals challenging cohort inclusion decisions. In the final rule we have amended § 668.603 to clarify the factors an institution can appeal. Those factors include the individuals that are included in the list of completers, the determination of the appropriate version of the earnings threshold, the comparison of the median earnings determined by the Federal agency with earnings data and the earnings threshold for the program, and such other bases for appeal determined by the Secretary.

[23] *See* 88 FR 70004, 70095 (Oct. 10, 2023) and 91 FR 21114 (April 20, 2026).

Changes: The Department amends § 668.603 to specify the allowable bases for appeal, as described above.

Other Accommodations and Special Circumstances

Comments: One commenter thought that some cohorts that will be evaluated under the earnings accountability framework would include graduates from the 2020–2021 academic year, had experienced unusual labor market disruptions, and suggested that the Department provide an appeal option for cohorts whose early career outcomes were significantly affected by the COVID–19 pandemic.

Discussion: Although some early cohorts may include graduates from the 2020–2021 award year, we are not persuaded that an accommodation or exemption would be appropriate. The impact of the COVID–19 pandemic was most pronounced in 2020, and the labor market had largely recovered by 2022. Commenters made similar arguments regarding the FVT/GE rule, which used earnings data measured as soon as three years following graduation, and we note that under the new STATS framework the earnings premium calculation uses earnings data measured four years following graduation, providing graduates more time to secure employment and establish income and making the earnings measurement less susceptible to temporary market disruptions. We believe that even for graduates who entered the workforce during the 2020–2021 award year when the primary impact of COVID–19 occurred, a four-year measurement window allows ample time for graduates to demonstrate accurate earnings outcomes for a program of study.

Changes: None.

Program Eligibility During Appeals Process

Comments: A few commenters opined that any appeal should stay the effect of the Department's determination pending resolution of the appeal. One commenter urged the Department to explicitly state in the final rule that no program will lose eligibility until all appeal rights have been exhausted and argued that allowing programs to retain eligibility during an appeal protects students and avoids disruption to workforce pipelines.

Discussion: We agree that an appeal stays the effect of the Department's determination, pending the resolution of the appeal. Section 454(c)(5) of the HEA, as amended by the WFTCA, specifies as much, stipulating that ''[a]n educational program shall not lose eligibility . . . unless the institution has had the opportunity to appeal'' the Department's determination. We note, however, that in cases where an appeal does not change the Department's determination, the effective date of the cessation of program participation is the date of the Department's initial determination, not the date the appeals concluded.

Changes: None.

Comments: A few commenters expressed concern that allowing a program to remain eligible during an appeal period creates a window in which borrowing and enrollment continues despite unresolved concerns about the program's outcomes.

One commenter reasoned that under Section 454(c) of the HEA, the Department has the discretion, but not the requirement, to permit programs to continue participating in the Direct Loan program during an appeal, and must only provide the opportunity for (but not the decision on) an appeal before a program loses Direct Loan eligibility.

One commenter suggested that the Department (1) impose reasonable time limits on the length of an appeal so that programs cannot indefinitely delay the effective date of sanctions while continuing to draw federal funds; (2) condition or limit Direct Loan eligibility during an appeal, such as by capping enrollment in the affected program, restricting new first-time borrowers, or treating the program as provisionally ineligible until the appeal is resolved; and require institutions to provide enhanced disclosures to any students enrolling in a program during an appeal period clearly explaining that the program has failed the earnings test, that its eligibility is under review, and that continued enrollment may carry elevated financial and repayment risk. One commenter cited the recent reductions in the Department's staff and efforts to transfer the Department's functions as a risk to the Department's capacity to administer timely appeals, and expressed concern that institutions may prolong the eligibility of poor performing programs by dragging out the appeal process, resulting in harm to students.

Discussion: We share the commenters' concern about protecting students from programs for which the earnings outcome and future funding availability are in question. However, as we noted in discussing the other comments immediately above, in cases where an appeal does not change the Department's determination, the effective date of the cessation of program participation is the date of the Department's initial determination, not the date the appeals concluded. We believe this function serves to reasonably limit the appeals process and may discourage institutions from attempting to prolong access to Federal funds through appeals that are unlikely to succeed.

We disagree with the commenter who opined that Section 454(c) of the HEA provides the Department discretion to suspend participation during the appeal process. We believe Section 454(c)(5) of the HEA, as amended by the WFTCA, specifically requires that the Department permit an institution to continue program participation during an appeal. We similarly do not believe the WFTCA supports further conditioning or limiting eligibility during an appeal, including by capping enrollment, restricting new first-time borrowers, treating the program as provisionally ineligible, or requiring institutions to provide heightened disclosures.

With regard to the commenter who suggested that the Department impose time limits on the length of an appeal, while Department plans to provide institutions a limited window to decide whether to appeal an adverse determination and to submit an appeal if appropriate, the Department declines to regulate itself by enshrining a time limit to adjudicate a submitted appeal.

We appreciate the commenter's concern about the Department's capacity to administer timely appeals, and though we maintain that existing staffing and resources are sufficient to timely and effectively administer the appeals process described in the NPRM, as we explain below in the ''Termination Mechanism and Appeals Process'' section, in the final rule we have provided for an appeals process outside of part 668, subpart G, which we expect will result in timelier and more efficient consideration of appeals.

Changes: None.

Termination Mechanism and Appeals Process

Comments: A few commenters expressed concern that requiring a subpart G termination and appeals process in all cases could turn be unmanageable for the Department, and encouraged the Department to maintain the 2023 GE rule's approach to removing eligibility for failing programs based on the certification status of the program. One commenter cited the Department's termination of significant portions of the Office of the General Counsel and FSA, which together manage subpart G proceedings, along with other retirements and voluntary departures, raising questions about whether the Department has the capacity to fulfill the process steps required to terminate program eligibility in a timely manner. One commenter suggested that standard FSA reconsideration processes can further provide an opportunity for recourse for provisionally certified schools or schools that are up for recertification. One commenter advised the Department to use an alternative and more streamlined appeals process instead of the process detailed in subpart G.

Discussion: We understand the commenters' concerns about the Department's proposal to administer all eligibility actions under the earnings accountability framework as termination actions and to administer all appeals under part 668, subpart G. We note that any action to limit or terminate the title IV, HEA eligibility of a program is ultimately subject to subpart G, so to an extent that process is unavoidable, and this was one of the reasons that the Department originally adopted the subpart G approach for the outgoing FVT/GE rule, as well as in the proposed STATS and Earnings Accountability rule. The Department concurs, however, that adding a separate appeals process prior to the subpart G process would reduce the number of instances where institutions would need to resort to an appeal and hearing under subpart G.

In response to these concerns, the Department will make several changes to the regulations in part 668, subparts Q and S. The Department will no longer limit to part 668, subpart G the method for adjudicating appeals of the results of the earnings premium calculation and will regulate the process for submitting an appeal in subpart S instead. This effectively means that the Department will now rely on any available mechanism to end the eligibility of a program, which could include a limitation action under 34 CFR Subpart G, a partial revocation action under 34 CFR 668.13, or a refusal to include the low-earning outcome programs on an institution's Eligibility and Certification Approval Report (ECAR) when it recertifies the institution. The notice of determination under § 668.405 now references the additional appeal process under subpart S. Additionally, as part of those new regulatory requirements in subpart S for submitting an appeal, the Department will stipulate that an institution has 30 days to appeal following a notice of determination that indicates that the program is a low-earning outcome program, which is consistent with 34 CFR 668.91(c). We will also specify the specific items on which an institution can base its appeal.

Changes: The Department amends the regulations in three ways. First, we revise 668.603(a) to revise the scope of the appeal process to not immediately invoke subpart G. We amend the policy for ending program eligibility when a program has failed the earnings premium measure in two out of three consecutive award years. Second, we revise § 668.603(b) to provide an appeal process under subpart S to institutions prior to eligibility consequences. Consistent with existing timeframes for limitation or suspension proceedings under § 668.91(c), institutions have 30 days from the date of the Secretary's determination to file an appeal. We also add § 668.603(c) to clarify the factors an institution can appeal under subpart S. Those factors include the individuals that are included in the list of completers, the determination of the appropriate version of the earnings threshold, the comparison of the median earnings determined by the Federal agency with earnings data and the earnings threshold for the program, and such other specific bases for appeal determined by the Secretary. Third, as a conforming change we amend § 668.405(b) to include information about the appeal process under part 668, subpart S in the notice of determination that will be sent to institutions following the calculation of the earnings premium measure.

Reporting and Disclosures

Reporting and Disclosures—General Comments

Comments: Many commenters argued that reporting and disclosure requirements already strain overburdened institutions. The commenters emphasized these requirements as excessive and costly and recommended that the Department reduce their number or eliminate them entirely.

Discussion: The Department is sensitive to these concerns and acknowledges that all institutional reporting requirements impose at least some administrative burden. However, we maintain that students, taxpayers, and the institutions themselves will benefit from these regulations in several ways that offset the burden associated with them. First, because the Department is eliminating some of the reporting requirements that were identified as duplicative or particularly burdensome, institutions will benefit from the reduced reporting requirements under the final rule relative to the reporting requirements under the existing FVT regulations. In total, the regulation reduces the number of data elements that institutions are required to report by approximately 30 percent. Many of these are elements the Department determined it can calculate and report through its administrative data systems (*e.g.,* withdraw dates) and the Department will continue to report this information publicly under STATS. Because institutions no longer need to calculate and report this information, they will incur reduced administrative costs to comply with the regulations. Furthermore, the Department estimates that fewer students will attend failing programs under these regulations relative to the prior regulations. This result is beneficial to students and taxpayers, but it will also result in fewer institutional warnings and disclosures, ultimately reducing the burden on colleges to comply with these regulations. In total, the Department estimates that approximately 85,500 fewer disclosures would need to be sent to students by institutions (Table 5.12). Second, some institutions offer programs that failed the accountability framework under the previous regulations but will pass under the final regulation and retain access to title IV, HEA funds. The Department estimates that this would primarily benefit programs at proprietary institutions and undergraduate and graduate certificate programs from all sectors. Lastly, many institutions that offer GE programs will benefit from the fact that failing the accountability framework under the final regulation results only in loss of eligibility for Federal student loans, as compared to all title IV, HEA programs under the outgoing GE regulations.

Changes: None.

Comments: Several commenters stressed the need for additional context to be included with the disclosures to explain details such as career earning trajectories, institution mission alignment, licensure requirements and board certification timelines.

Discussion: Revised 34 CFR 668.605(c) details what information must be included in student warnings. Revised 34 CFR 668.605(d) and (e) detail the delivery to enrolled and prospective students respectively. The Department continues to believe that the items described in the regulations include the most important information for students. Institutions are always able to provide supplemental information and explanations to help convey important information to students. However, these must be separate from (and in addition to) the student warnings itself, as the student warnings content specified in the regulations must be the only substantive content of that communication, and the disclosure process must adhere to revised 34 CFR 668.605(d) and (e).

Changes: None.

Comments: Several commenters agreed with the Department that improved reporting and disclosures were needed for consumer transparency. These commenters concurred with the need for clear reporting and strong disclosures that are nonetheless simple and not complicated and expressed support for the Department's approach.

Discussion: The Department appreciates the commenters' support for improved reporting and disclosures related to transparency and earnings accountability.

Changes: None.

Comments: Several commenters requested that the Department align the reporting requirements with existing Integrated Postsecondary Education Data System (IPEDS) and FSA reporting definitions to avoid duplicative and inconsistent efforts.

Discussion: The Department agrees that such an approach would be more efficient in obtaining key data from institutions. However, the required reporting items included in the final regulations are dissimilar to other FSA reporting functions. For example, the IPEDS report collects institutional data on title IV, HEA recipients and non-recipients. The reporting requirements included in these regulations are specific to title IV, HEA recipients and are student specific.

Changes: None.

Comments: A few commenters opined that all the required reporting items were not necessary to calculate the earnings premium measure and therefore should not be required or reported. Another commenter remarked that institutions that have not been approved to participate in the Direct Loan Program on or before July 1, 2026 should be exempted from the reporting requirements. The commenter contended that because their educational programs are not eligible for Direct Loans and this reporting should not be necessary to assess the Direct Loan Program eligibility of these educational programs.

Discussion: The Department disagrees. First, because of the changes that the Department has made to 34 CFR 668.14, it is true that institutions not participating in the Direct Loan program would not be subject to a loss of title IV, HEA program eligibility. However, for these institutions reporting is still required for calculation purposes. The Department will still calculate the metric for programs at these institutions, but the programs would not lose eligibility for any title IV, HEA program as a result of the earnings premium measure.

Additionally, the Department maintains that the purpose of the reporting is not simply to support the calculation of the earnings premium measure. Institutional reporting is also necessary for the Department to provide information to current and prospective students about the net price of postsecondary programs and other important factors about the financial value of such programs.

Changes: None.

Reporting Deadlines

Comments: Several commenters recommended that the reporting and disclosure framework should be delayed by one to two years or otherwise allow for a phased-in or transitional period of implementation. These commenters argued that this approach would ease institutional burden and allow for a more thorough understanding of required reported data items.

Discussion: First, the Department reiterates that the reporting and disclosure requirements under this regulation are reduced compared with the prior regulation. The Department disagrees with the suggestion to delay the implementation of changes to the reporting disclosure framework because of the statutory requirements to calculate the earnings premium measure and the necessity for the Department to obtain some of the information in the reporting requirements in order to perform that calculation.

Changes: None.

Data Elements Reported

Comments: Several commenters objected to the removal of the requirement for institutions to report, at a student level, the institutional debt that students owe after completing or withdrawing from programs. These commenters argued that students would be harmed by the removal of this requirement because information about institutional debt is critical for students to know.

Discussion: The Department disagrees with the commenters. There are several reasons the Department has removed this reporting requirement. First, the Department is sensitive to the significant administrative burden that calculating and reporting this particular data point has on institutions. As explained in the NPRM, we are removing the requirement for an institution to report the total amount of institutional debt the student may owe any party after completing or withdrawing from the program because it will no longer be needed for purposes of the debt-to-earnings rate (which we are eliminating) and because of the complicated way that institutions were required to report this information, particularly for withdrawn students. We believe this change will reduce burden for institutions. We also believe that information on institution-related debt is not as important for students compared to the other information included in STATS, such as tuition and fees, private loan debt, and the institutional, Federal, and State financial assistance received by the student.

Changes: None.

Comments: Many commenters expressed that the reporting should include more information than is required in the proposed regulations. These commenters argued for disclosures of career outcomes (*i.e.,* salary outcomes) by occupational sectors, total income (not solely wages provided on the Form W–2), the typical earnings of individuals located in MSA and non-MSA areas, program completion rates and loan repayment rates.

Discussion: The Department agrees with the need for valuable information to be shared with students, but believes the reporting requirements detailed in revised 34 CFR 668.406 are appropriate without being unduly burdensome. In addition, we believe that overwhelming students with excessive or duplicative information would likely result in many students ignoring or only skimming the disclosures, ultimately proving less effective at informing enrollment decision than targeted, timely disclosures of the most relevant information at the time that information is most useful for students. The Department believes that the final rule strikes the appropriate balance with the reporting and disclosure of the most meaningful and relevant information.

In the future, the Department will continue to evaluate the efficacy of consumer disclosures under STATS and whether additional information can be obtained, either from institutions or elsewhere, that would supplement the information we currently plan to provide. Any changes to that process would only be made following consumer testing to determine the usefulness of the disclosures to the public.

Changes: None.

Removal of Transitional Reporting and Metric

Comments: A few commenters urged the Department to retain the debt-to-earnings metric, arguing it was helpful in preventing unmanageable debt and reducing the risk of continued harm to students.

Discussion: As further discussed above in the ''Elimination of the D/E Rate'' section, the Department removes D/E rates because the statute provides for an earnings premium metric as part of the new accountability framework. Also, the former D/E metric neither on its own nor in combination with the earnings premium calculation definitively distinguishes between high-quality and low-quality programs; these are strictly measurements of a program's debt and earnings outcomes, and through the WFTCA Congress expressed its preference for an earnings premium measurement. Further, calculation of D/E rates requires the use of a significant amount of data reported by institutions to the Department beyond what is normally necessary to administer the title IV, HEA programs. Although we continue to believe the resources needed to support the D/E rate were justified, the reduction in cost and burden for the government is an additional benefit of shifting our focus to the earnings premium, which was the clear preference of Congress. For these reasons we believe the new earnings premium measure will be more effective as a new accountability standard.

Disclosure Website

Comments: A few commenters remarked that the disclosures do not go far enough and should be strengthened to facilitate data transparency requirements. The commenters stressed that enhanced disclosures should be used to provide:

- Continued warnings after loss of eligibility (including during appeal periods)
- Warnings for potential loss of all title IV aid
- Additional information in warnings to assist students in decision making
- A Department-managed student acknowledgement tracking system

Discussion: The Department thanks the commenters and shares commenters' concerns about ensuring that students are informed about their educational programs. However, we decline the commenters' request because of the additional burden on institutions (this could double or triple the number of disclosures made), the WFTCA specially calls out student loans and therefore that is the title IV program that is specified for penalty. Further, because students must acknowledge they reviewed the disclosure, we feel confident the student will be aware the program is at risk. Finally, a Department-managed student acknowledgement tracking system would not be feasible given the number of programs that are estimated to fail under the final regulation (Table 5.12). The Department has no plans to develop and manage a student acknowledgement tracking system.

Changes: None.

Comments: One commenter stressed that the disclosure link should be placed on the institution's web page that shares cost of attendance information, not other general academic information.

Discussion: The final regulation will amend 34 CFR 668.43(d)(2) to no longer require institutions to provide a prominent link to the website maintained by the Secretary on any web page containing academic information about the program or institution. Institutions will still be required to provide a prominent link to a website containing cost, financial aid, or admissions information about the program or institution. The Department believes this will reduce burden on institutions, while still providing a link to relevant program information on pages where that link makes the most sense. The Department contemplated the broad usage and applicability of the term ''academic information'' and believes it is far too general in nature and would require a prominent link on every page and subpage of an institution's website, likely hundreds of instances or more. The Secretary continues to reserve the right to require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

Changes: None.

Comments: One commenter argued that the Department, rather than institutions, should manage and track the disclosure acknowledgement process. The commenter argued that the institution is expected to obtain an acknowledgement prior to a student enrolling in a program, but it is not required to document the acknowledgement. The commenter said that this runs the risk of institutions not complying with the acknowledgement and the Department being unable to conduct oversight. The commenter recommended the Department maintain this process to ensure students receive and acknowledge the information, which would reduce burden on institutions. The commenter stressed that if this is not possible, the Department should require that institutions document these acknowledgements from students.

Discussion: Institutions would no longer need to require student acknowledgments under 34 CFR 668.407, since the accountability framework in part 668, subpart S, including the student warning process in § 668.605, would now apply to both GE and non-GE programs. The separate student acknowledgement process is not required under the WFTCA framework, and it is duplicative with the warning process described in 34 CFR 668.605. Institutions are expected to maintain documentation of the student's acknowledgement for review by the Department or by non-Federal auditors in the future.

Changes: None.

Disclosure Content

Comments: One commenter stressed that the disclosure requirements (extending the disclosure requirement to prospective students, requiring institutions to obtain a signed acknowledgment from each prospective student before enrollment in an affected program and requiring the disclosure to indicate the program's failing status in language designed to convey program quality concern) would function as an enrollment-dampening mechanism, not as a neutral consumer information requirement.

Discussion: The Department disagrees. We believe these changes are needed to compel institutions to offer programs that deliver economic value, enhance data accessibility for students, and protect taxpayers and students through stricter oversight and comprehensive disclosures on program outcomes. Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes and also to inform the public about Federally supported education programs. Further, the WFTCA requires warnings for programs at risk of losing Direct Loan eligibility under Section 454(c)(6) of the HEA.

Changes: None.

Distribution and Linking Requirements

Comments: One commenter recommended that the Department streamline processes by publishing the program-level metrics on the College Scorecard in lieu of creating a separate program information website. The commenter opined this would avoid unnecessary confusion and duplication of information on multiple websites.

The commenter suggested institutions should be required to link to the program-level data in the College Scorecard, in place of the program information website, on any web page containing cost, financial aid, and admissions information about the program and institution. The student warnings should provide links to the program-level data on the College Scorecard, instead of the program information website.

Discussion: We thank the commenter for the suggestion and will consider it as we determine how to best implement this regulation. We note the definition of program information website could be any Department website, including the College Scorecard itself. Nonetheless, the commenter's suggestion is an option that we will consider and may pursue in the future.

Changes: None.

Administrative Capability and Consequences

Administrative Capability Requirements

Comments: One commenter claimed that the Department's proposed approach to apply programmatic sanctions to low-earning outcome programs only if more than half of Federally aided students or title IV, HEA revenue are in such failing programs is inconsistent with the structure of the administrative capability framework under § 668.16, which applies more broadly at the institutional level rather than for particular programs or sets of programs.

Discussion: We disagree with the commenter. Although most of the other administrative capability criteria under § 668.16 encompass an institution as a whole, some of the other existing requirements apply more narrowly to a program or set of programs. For example, § 668.16(r) requires institutions to provide students, within 45 days of successful completion of other required coursework, geographically accessible clinical or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation. That requirement could only apply to programs with licensure requirements. In addition, no provisions in the statute or regulations prohibit the Department from establishing an administrative capability criterion that applies only to particular programs.

Changes: None.

Comments: A few commenters characterized the 50 percent threshold for the administrative capability requirement at § 668.16(t) as an overly permissive loophole that would still allow large institutions to continue operating predatory programs by cross-subsidizing or balancing them against a few high-earning programs, and suggested that the Department strengthen the administrative capability requirement by increasing the success threshold to require at least 75 percent of an institution's title IV, HEA recipients and funding not be from low-earning outcome programs.

A different commenter characterized the 50 percent threshold for the administrative capability requirement at § 668.16(t) as too strict for specialized institutions that offer only one or a few programs, and suggested that the threshold should be lowered to require that 25 percent of an institution's title IV, HEA recipients and funding not be from low-earning outcome programs.

Discussion: The Department notes that commenters differ on the appropriate percentage threshold for this requirement. The Department's goal with this provision is to identify the point at which an institution's inability to offer programs that lead to acceptable earnings outcomes shifts from being a program-level issue to instead represent a widespread issue that shows there is a more systemic problem with the way the institution operates. The Department proposed the 50 percent threshold, and the AHEAD Committee agreed to that threshold, because that is the point where an institution has more title IV, HEA recipients or revenue associated with low-earning outcome programs than there are with those that are demonstrating acceptable earnings outcomes. This metric also considers the students who might be enrolling in a poorly performing program but not completing it, and it makes sense to consider how such programs may be impacting the larger pool of students while also making the same comparison for students enrolling in the passing programs at the institution. At that point, more of the title IV, HEA funds or recipients going to the institution are for enrollment in low-earning outcome programs than for students enrolling in programs that are consistent with continued participation in the Direct Loan Program. That is an obvious warning sign for the institution, and the 50-percent threshold represents a logical and relatively familiar and easily understood measure that is reasonably related to the Department's regulatory concerns. At lower percentages of title IV, HEA funds or recipients at risk it is, in our judgment, relatively more likely the case that the issue is tied to program-specific challenges and a lesser threat to the institution as a whole. We must draw a line for this rule to be fairly clear and administrable, and we have concluded that 50 percent reflects a reasonable balance of considerations based on available information.

Changes: None.

Comments: One commenter argued that the new administrative capability standard at § 668.16(t) creates a perverse financial incentive for institutions to eliminate borderline programs not because those programs are failing students but because retaining them risk triggering consequences that impact the institution more broadly, not merely the program in question. A few commenters contended that this dynamic would particularly impact programs at comprehensive public universities where administrators would be pressured to cut programs in disciplines such as anthropology, sociology, and other social sciences where graduates are likely to enter public service careers, which are characterized by lower compensation not because of poor outcomes or institutional failure but because they operate within public, nonprofit, or community-based systems with constrained wage structures. One commenter recommended that the administrative capability standard should exclude programs that meet a minimum enrollment threshold, demonstrate graduate employment rates above a minimum threshold, and document that graduates pursue advanced degrees or public service occupations at rates substantially higher than national averages.

Discussion: The Department disagrees with the commenters' assertions and suggestions. We believe it is fitting and beneficial for the administrative capability requirement to prompt institutions to thoughtfully consider the economic value of their program offerings for students, particularly for programs that benefit from Federal funds provided by U.S. taxpayers who, in turn, expect a reasonable economic benefit for that investment. With regard to programs where graduates pursue advanced degrees at a higher rate than other programs, the regulations already accommodate such programs both by excluding from the earnings premium calculation students who have completed a higher-credentialed undergraduate program (for undergraduate programs) or a higher-credentialed graduate program (for graduate programs), and by excluding students who are enrolled during the year earnings would be measured for the student.

Changes: None.

Comments: One commenter opined that the phrase ''failing program'' in the NPRM was unclear in the context of the administrative capability requirement at § 668.16(t). This commenter contrasted the Department's use of that phrase in the May 19, 2023 NPRM for FVT/GE, which the commenter characterized as a forward-looking rule that considered the future risk of a program or set of programs failing the metric in a second or subsequent year, against use of the phrase in the April 20, 2026 STATS and Earnings Accountability NPRM, which the commenter characterized as having changed over time. The commenter suggested that the Department clearly define the term ''failing program'' in its regulations.

Discussion: Although the Department appreciates the commenter's suggestion, we believe the revised regulatory text at § 668.16(t) is clear and unambiguous, obviating the need to define a ''failing program'' elsewhere in the regulations. Indeed, the new regulatory language at § 668.16(t) is arguably clearer than the outgoing language. Under the outgoing language, an institution that offers GE programs was administratively capable if at least of its total title IV, HEA funds were from programs that were not ''failing'' under part 668, subpart S, meaning that the program(s) in question did not fail either the D/E rates or the EP measure. The revised language stipulates that an institution is administratively capable if at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under part 668, subpart S, and § 668.603 under that subpart specifically defines a low-earning outcome program as one that has failed the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated. The definition of a low-earning outcome program at § 668.603 is clear and direct and, because the administrative capability criterion in question at § 668.16(t) directly cross-references that definition rather more obliquely referencing failing programs, there is no need to define separately ''failing program'' for the purposes of the administrative capability requirement at § 668.16(t).

Changes: None.

Comments: One commenter noted that not all title IV, HEA programs are processed through a single data system and questioned how the Department would efficiently collect data and determine whether at least half of an institution's title IV, HEA funds are not from low-earning outcome programs. The commenter suggested that the Department only measure whether at least half of an institution's Pell Grant and Direct Loan funds are from low-earning outcome programs for the purpose of the administrative capability criterion because doing so would enable the Department to use more unified existing reporting systems that could be more easily adapted for this purpose.

Discussion: We understand and appreciate the commenter's concern. In sub-regulatory guidance under the outgoing FVT/GE framework, we noted that the Department currently does not maintain information about an individual's receipt of Federal Work-Study (FWS), and therefore students who received only FWS funds for enrollment in a program could not be included on an institution's completer's lists.[24] We anticipate that will remain true going forward at least for a time under the STATS framework, however it remains possible that the Department's systems may eventually accommodate more granular reporting and tracking of FWS funds. We believe it is appropriate not to carve out particular programs from the administrative capability measurement to allow the calculation to consider FWS-only recipients if and when that becomes possible.

Changes: None.

Comments: One commenter objected to the administrative capability standard at § 668.16(t), claiming it is of a fundamentally different nature than the examples of administrative capability laid out in the HEA.

Discussion: We disagree with the commenter. Section 498(d) of the HEA provides the Secretary broad authority to establish procedures and requirements relating to an institution's administrative capability, including the authority to establish reasonable new procedures and requirements that will contribute to ensuring that the institution will be able to administer the title IV, HEA programs in a manner consistent with the goals of such programs. The statute does not limit the Secretary to promulgating only administrative capability criteria that closely resemble those examples that Congress may have specifically anticipated at the time the statute was adopted.

Changes: None.

Comments: One commenter sought clarification regarding the meaning of ''at least half of the institution's recipients of title IV, HEA funds'' for purposes of the administrative capability requirement at § 668.16(t). The commenter requested that the Department confirm that, for purposes of § 668.16(t), the phrase ''recipient of title IV, HEA funds'' will be calculated based on students receiving title IV, HEA funds during enrollment in the specific program being evaluated, and noted that this interpretation would be consistent with the WFTCA which states that the new earnings test measures earnings ''of the programmatic cohort of students who received funds under this title for enrollment in such program.''

Discussion: We note that the definition of *Student* at § 668.2, for purposes of the earnings premium calculation, defines a student as an individual who received title IV, HEA program funds for enrolling in the program. Because the administrative capability determinations under § 668.16(t) are based on the earnings premium calculation, that definition would generally apply here as well. We also note, however, that § 668.2 relatedly defines an *eligible non-GE program* in such a way as to include all coursework associated with the program's credential level. Therefore, for GE programs, the measurement is based only on amounts associated with the program itself. For eligible non-GE programs, however, the measurement also considers amounts associated with other coursework the student completed at the same credential level.

Changes: None.

Consequences for Failure To Demonstrate Administrative Capability

Comments: Many commenters objected to the loss of title IV, HEA eligibility for all of an institution's low-earning outcome programs if the institution fails the new administrative capability requirement at § 668.16(t). Many commenters noted that the WFTCA specifies only a loss of Direct Loan program eligibility for low-earning outcome programs, and argued that loss of overall title IV, HEA eligibility for such programs would therefore overstep Congressional intent by depriving low-income students of Pell Grants or other forms of title IV, HEA funds. A few commenters observed that Section 401 of the HEA establishes Pell Grant eligibility, that Section 84001 of the WFTCA does not amend Section 401 of the HEA, and one commenter suggested that the Department limit consequences to provisional certification status only, which preserves the Department's regulatory leverage without categorical title IV, HEA elimination.

Discussion: The Department disagrees with the commenters who objected to

[24] See Q&A G–15 on FSA's FVT/GE frequently asked question page, available at *https://fsapartners.ed.gov/knowledge-center/topics/financial-value-transparency-and-gainful-employment-information/frequently-asked-questions.*

the loss of title IV, HEA eligibility for all of an institution's low-earning outcome programs if the institution fails the requirement at § 668.16(t). While the WFTCA mentions only a loss of Direct Loan program eligibility for low-earning outcome programs, that is the primary consequence at the individual program level of consistently failing the earnings premium metric. However, as noted in response to comments above, the Department believes that if more than 50 percent of an institution's title IV, HEA recipients or revenue are associated with programs that are demonstrated to lead consistently to low earning outcomes, it is likely that broader problems within the overall institution will impact its ability to administer the title IV, HEA programs consistent with the Congressional intent of those programs—to assist students in completing postsecondary education that will lead to improved employment and earnings outcomes. As we noted above, Section 498(d) of the HEA provides the Secretary broad authority to establish procedures and requirements relating to an institution's administrative capability, including the authority to establish reasonable new procedures and requirements that will contribute to ensuring that the institution will be able to administer the title IV, HEA programs in a manner consistent with the goals of such programs. In this case, we do not believe a mere disclosure to remind students about their limited lifetime Pell Grant eligibility would be sufficient to safeguard the interests of students, taxpayers, and the title IV, HEA programs.

Changes: None.

Comments: Several commenters posited that this provision particularly impacts institutions that are focused on preparing students for a particular job or employment sector, as such institutions frequently offer only one or a handful of programs, making it more likely that more than 50 percent of the institution's students would be enrolled in a single failing program, leading to a loss of both Direct Loans and Pell Grants. A few commenters predicted that this outcome would cause such institutions to close. A few commenters recommended that the Department more gradually phase in the administrative capability standard for these types of programs and institutions, such as an initial three-year period during which earnings metrics are used for disclosure and calibration only. A few commenters advocated for an exemption for highly specialized institutions. One commenter broadly advocated that institutions in general should only lose title IV, HEA eligibility under § 668.14(h) for failing the administrative capability criteria at § 668.16(t) for three consecutive years, rather than in two out of three years.

Discussion: As discussed in the RIA, the Department estimated the impact of the final regulation on single-program institutions, and our analysis reveals that single-program institutions are better off under the final regulation than under the outgoing FVT/GE framework, since fewer of these programs are estimated to fail the accountability framework relative to the baseline.

Changes: None.

Comments: Many commenters opined that this provision disproportionately impacts religious institutions and exacerbates the rule's burden on religious exercise, because graduates of religious degree programs may earn relatively modest incomes (despite delivering other important societal benefits), pressuring institutions to stop offering religious degree programs because all low-earning outcome programs at such institutions could become ineligible for all title IV, HEA programs, not just the Direct Loan Program. A few commenters noted that such programs tend not to participate in the Direct Loan program and maintain low tuition rates to reduce the need for student borrowing. A few commenters suggested that the Department protect programs in this category by revising the administrative capability requirement at § 668.16(t) to exempt programs for which no students borrowed Direct Loan funds since July 1, 2021. A few commenters requested a general religious exemption from the administrative capability requirement.

One commenter expressed concern about the impact of these provisions on institutions located in rural or remote areas, including Tribal Colleges and Universities which generally do not participate in the Direct Loan program but 69 percent of whose students rely on the Pell Grant program.

Discussion: As discussed above in the ''Legal Authority/Department Authority'' section, we do not believe the rule unfairly burdens religious institutions or programs. We also do not believe that the rule unfairly burdens Tribally Controlled Colleges and Universities, and we maintain that it would be inappropriate to exempt certain institutions or sectors.

However, the Department understands the commenters' point regarding institutions that historically have not participated in the Direct Loan Program. In the final rule, we exempt an institution from the automatic loss of title IV, HEA eligibility under § 668.14(h) if the institution does not currently participate in the Direct Loan program and has not participated in the Direct Loan program for the five most recently completed award years. In addition, under the final rule we will also exempt a program from automatic loss of title IV, HEA eligibility under § 668.14(h) if the program is not yet determined to be a low-earning outcome program and the institution and the Department agree to amend the institution's program participation agreement to prevent students from borrowing for the program using the institution's authority under 685.203(m)(2) for a period of at least five years.

Changes: No changes based on these comments; however, as described in the ''Legal Authority/Department Authority'' section, the Department amends proposed § 668.14(h) by adding paragraphs (3) and (4) to provide the exemptions for institutions or programs that do not participate in the Direct Loan program described in that section.

Comments: A few commenters explained that an effective institution could fail the administrative capability requirement for reasons that are not the fault of the institution, such as if the institution is located in an area with a lower cost of living and wages below those elsewhere in the state.

Discussion: As we further discuss below in the ''Summary of Comments from the NPRM'' section of the RIA, the Department specifically considered the impact of the proposed regulation on programs in rural areas. The Department's analysis shows that the regulation will result in only a slightly higher share of failing programs and students in rural areas relative to the current regulation. We remind commenters that both the graduate cohort earnings and the working adults threshold earnings include rural earners, and we note that this earnings threshold definition is predicated on the highly specific statutory requirement outlined in Section 84001 of the WFTCA, where Congress explicitly instructed the Department on how the earnings test would be conducted. Therefore, the Department does not believe it has the authority to alter the earnings test for programs located in rural areas.

Changes: None.

Comments: One commenter opined that the consequences for failure to meet the 50–50 administrative capability standard extend far beyond those that generally attach to an institution that is found to not be administratively capable. This commenter claimed that § 668.14(h) is superfluous because § 668.14(b)(6) already requires institutions to agree to comply with the administrative capability standards under § 668.16. The commenter cited 668.16(m) as an opposing example where an administrative capability criterion involves specific consequences but those consequences are specifically rooted in the HEA.

Discussion: We disagree. We believe that each of the administrative capability requirements under § 668.16 are necessary criteria for any well-functioning institution that administers the title IV, HEA programs. Although most of the administrative capability criteria provide the Department reasonable discretion to administer appropriate corrective action based on the institution's circumstances, other administrative capability criteria necessitate a more specific and coordinated response. The example cited by the commenter of the cohort default rate-related requirement at § 668.16(m) includes consequences specified in the HEA, but nothing in the statute or regulations prevents the Department from applying a specific remedy for other factors of administrative capability.

Changes: None.

Comments: Many commenters expressed general support for continued access to Pell Grants and concern about the potential loss of Pell Grant eligibility for institutions that fail the administrative capability requirement, noting that grant assistance makes higher education and workforce education available to students who otherwise could not afford it. One commenter claimed that maintaining Pell eligibility would reduce barriers to access for low-income students while still enforcing accountability for borrowing outcomes. One commenter suggested that maintaining the student notification requirement about remaining lifetime Pell eligibility while limiting institutional sanctions only to loss of Direct Loan eligibility would be an appropriate compromise.

Discussion: The Department appreciates and shares the commenters' concern about the importance of Pell Grants to students who otherwise could not afford postsecondary education. It is precisely because of our concern for the best interest of students that we believe it is necessary that an institution which derives over 50 percent of its title IV, HEA funding or recipients from programs that are demonstrated to lead to low earning outcomes must cease disbursing Pell Grants to students who enroll in such programs. As discussed above in response to other comments, failure to meet this administrative capability requirement calls into question the institution's overall operations and ability to administer the title IV, HEA programs in the way that fulfills Congress's intentions—*i.e.,* to help students enroll in programs that lead to improved employment and earnings outcomes. In cases where an institution consistently cannot achieve that objective, the Department believes that students would be best served in preserving their limited title IV, HEA eligibility to enroll in other better-performing programs that the institution may offer, or to enroll at another institution where such programs are available. We do not believe a mere disclosure to remind students about their limited lifetime Pell Grant eligibility would be sufficient to safeguard the best interests of students.

Changes: None.

Comments: One commenter recommended that a case-by-case review, distinct from the Direct Loan eligibility determination, should be required prior to loss title IV, HEA eligibility for an institution's low-earning outcome programs under § 668.14(h).

Discussion: The determination under § 668.14(h) that an institution has failed to meet the administrative capability requirement at § 668.16(t) in two out of three years will be made separately from the Direct Loan eligibility determination under § 668.405. In addition, an institution facing a cessation of title IV, HEA participation for all of its low-earning outcome programs under § 668.14(h) would be able to separately contest that action under part 668, subpart G.

Changes: None.

Comments: One commenter advocated for the removal of title IV, HEA eligibility after failing the administrative capability standard in any one year, rather than in two years out of three.

Discussion: The Department appreciates but declines this suggestion. Although we recognize that failure to meet the administrative capability requirement at § 668.16(t) is a serious concern, we do share the concern expressed by numerous other commenters that ceasing title IV, HEA participation for all or a substantial portion of the institution's educational programs would significantly impact most institutions. Imposing that consequence after a single-year failure could result in a number of programs ceasing all other title IV, HEA program participation at the same time they cease Direct Loan Program participation. We believe that a two-of-three standard is appropriate under § 668.14(h) for the same reasons a two-of-three standard is needed for the individual Direct Loan eligibility determinations under § 668.603. For such a significant consequence, it is prudent to wait until the institution has failed the requirement in two out of three years, not only to reduce the possibility of adverse consequences attaching in borderline cases where an institution may actually have passed the 50 percent threshold, but also to protect both institutions and students from sudden disruptions in the availability of other title IV, HEA programs such as Pell Grants and to provide institutions one additional opportunity to improve their program offerings.

Changes: None.

Other Public Comments

Other Issues

Comments: A few commenters asked about what occurs for students who double majored in college and obtained a single degree. The commenters inquired if the earnings of that person would apply to one of the programs or to both.

Discussion: The Department clarifies that students who double major, including students who fulfill the course requirements for two separate programs but receive a single degree, would have their earnings counted in both programs they completed. Similarly, students who earned *dual degrees, i.e.,* separate degrees for each program of study that they completed, also have their income counted toward both degrees they complete. The Department further notes that institutions will have the ability to review program completer lists prior to the point in which the median earnings value is determined, giving colleges the opportunity to ensure that students who fall into such categories are appropriately counted in both program completer lists. This review process mitigates the concern that commenters raised about how certain students may mistakenly be excluded from the completers list where they should be included.

Changes: None.

Comments: One commenter was concerned about the substantial role that third-party servicers play in the administration of the title IV programs and asked that the Department explicitly acknowledge that institutions may rely on such servicers for accountability-related functions.

Discussion: This final rule does not diminish the role that third-party servicers play in the administration of aid. Their activities continue to include ''performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA'' as explained in the definition under § 668.2. This would encompass functions relating to these new STATS and earnings accountability regulations.

Changes: None.

Comments: One commenter asked that the Department add a cross-reference to comprehensive transition and postsecondary (CTP) programs where they appear in the list of students excluded from the earnings premium measure calculation in § 668.403(c) and that the Department specifically state in the regulations that we will not publish an earnings premium measure for CTP programs.

Discussion: We decline to make these changes to the regulations as they are unnecessary. There is no cross-reference to prison education programs in the list of exclusions either, and because students in CTP programs are excluded from the earnings premium measure, there will be no metric to publish.

Changes: None.

Comments: One commenter was concerned about the implications under the earnings premium measure and accountability rule for Prison Education Programs or PEPs. Even though under § 668.403(c) students enrolled in PEPs are not counted in the metric calculation, it is possible that a school might have a non-PEP program with the same 6-digit CIP code and credential level, and if it is designated a low-earning outcome program, the PEP version could be swept up in that. Although PEPs are only eligible for Pell Grants, that aid can be endangered when the school meets the 50 percent thresholds for number of students or amount of title IV dollars involved in low-earning outcome programs. If a small PEP that has few students gets rolled up with other programs at more general CIP code levels, the PEP could be associated with programs that are dissimilar.

Discussion: As the commenter noted, students in approved PEPs are not counted in the earnings premium measure calculation, and PEPs are not eligible for Direct Loans; therefore, there is no danger of the Department ending those programs' participation in the Direct Loan program. Also, as noted elsewhere in this final rule, programs that do not participate in the Direct Loan Program will not be subject to potential loss of Pell eligibility. And as with CTP programs above, there will be no metric calculated for PEPs, so the negative outcomes associated with the metric will not apply. Finally, when taking action to end the title IV, HEA participation of a program under the administrative capability penalty, the Department will ensure that any denial of participation applying to a program that includes students who are enrolled in a PEP or CTP program will not apply to those students.

Changes: We have amended the language of the PEP and CTP exclusions in § 668.403(c)(5) and (6) to remove the present tense and clarify that students in those programs, regardless of when they were enrolled, will not be included in an earnings premium measure calculation.

VIII. Regulatory Impact Analyses

1. Regulatory Planning and Review, Including a Regulatory Impact Analysis

Executive Orders 12866 and 13563

Under Executive Orders (E.O.) 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of the E.O. and subject to review by OMB. Section 3(f) of E.O. 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 in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, 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 E.O.

The Department estimates the net budgetary impacts to be $1,517 million from changes in transfers between the Federal Government and student loan borrowers and transfers of $8,782 million between the Federal Government and Pell Grant recipients resulting from replacing the current regulations with the accountability framework. Annualized, these transfers are estimated at $871 million and $862 million for Pell Grants and $149 million and $147 million at 3 percent and 7 percent discounting, respectively. Quantified benefits include a net reduction in costs of compliance with paperwork requirements ($113.4/$103.7 million) while quantified costs include administrative updates to Government systems ($2.4/$2.8 million), implementation staffing and contract costs ($1.4/$1.6 million), long-term staffing costs ($0.9/$0.9 million), and ongoing contract costs ($1.9/$1.8 million) at 3 percent and 7 percent discounting, respectively. Therefore, based on our estimates, the Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is ''economically significant'' under section 3(f)(1) of E.O. 12866 and subject to OMB review.

We have also reviewed these regulations under E.O. 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, E.O. 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 considering, 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.

The E.O. 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

This final rule is considered an E.O. 14192 deregulatory action. We estimate that this rule generates $111.3 million in annualized cost savings at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon. E.O. 14192 directs agencies of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people.

Consistent with OMB Circular A–4, we compare the final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

In this RIA, we discuss the need for regulatory action, the summary of comments and changes from the NPRM, the impact of the final regulation on institutions and programs, the costs and benefits of the final regulations, the net budget impacts, and the regulatory alternatives we considered in cases where the Department had discretion. Unless otherwise noted, throughout this RIA we compare the effects of the final regulation relative to a pre-statutory baseline where the WFTCA has not been enacted. This baseline includes the current Financial Value Transparency and Gainful Employment regulation (enacted October 10, 2023).

Defining Key Terms

Key terms used throughout this RIA are defined as follows:

- ''Current Regulations''—refers to the current Financial Value Transparency and Gainful Employment regulations that were enacted on October 10, 2023 (88 FR 70004);[25]
- ''Accountability framework''—refers collectively to the debt to earnings (D/E) and earnings premium (EP) tests in the context of the current regulation, or to the revised EP test in the context of the final regulation;[26]
- ''GE programs''—refers to programs that are subject to the gainful employment rule and the accountability framework under the current regulations, which includes all non-degree programs and all types of programs offered at proprietary institutions;
- ''Non-GE programs''—refers to programs that are not subject to the gainful employment rule and accountability framework under the current regulations, which includes degree programs offered at public and non-profit institutions.

2. Need for Regulatory Action

These final regulations are needed to implement certain provisions of the WFTCA that affect students and program participants in the Federal student loan programs authorized under title IV of the HEA. The WFTCA amended the HEA to create new eligibility criteria for programs of study at institutions to receive title IV loans. These changes establish an accountability framework for all undergraduate degree programs and all types of graduate programs that participate in the Direct Loan program. The final regulations are also needed to align existing accountability framework under the current FVT/GE rule (88 FR 70004) with those in the WFTCA.

The Department has limited discretion in implementing many of the provisions contained in the WFTCA. Many of the changes included in these final regulations simply modify the Department's regulations to reflect statutory changes made by the WFTCA. In some cases, the Secretary has exercised her limited discretion to implement certain provisions of the WFTCA. Areas of limited discretion include:

- General definitions (§ 668.2), including how earnings would be measured and defined;
- The student tuition and transparency system framework (§ 668.402), including the specific reporting requirements for institutions;
- The method for calculating the earnings premium (§ 668.403), and whether the Department should adjust or exempt certain programs for various reasons;
- The appeals process (§ 668.603), including the usage of alternative earnings data from State data systems; and
- The scope and purpose of the earnings accountability framework (§ 668.601), including whether certain undergraduate certificate programs should be exempted, whether accountability framework should be delayed for certain programs, and whether the sanction for failing programs should be the removal from participation in all title IV, HEA programs.

These areas of limited discretion are discussed in the ''Alternatives Considered'' section below. In general, where the Secretary had discretion, she sought to align the accountability framework in Section 84001 of the WFTCA with the accountability framework under the current regulations such that all postsecondary programs are covered by the same accountability framework. In addition to the reasons stated earlier in the ''Department Authority (Including GE and Quality Assurance Authority)'' section, this alignment reduces complexity, burden, confusion, and compliance costs for both institutions and the Department. Additionally, the Secretary sought to reduce reporting burden under the STATS framework while maintaining the disclosure of relevant information on college costs and outcomes to students and families.

3. Summary of Comments and Changes in the Final Rule

Table 3.1 provides a summary of changes from the NPRM to the final rule.

TABLE 3.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS

Provision	Regulatory section	Description of final provision
STATS and Earnings Accountability		
Updating application information	§ 600.21(a)(11)	The final regulation is updated to clarify that the requirement for institutions to report to the Department certain changes to eligible programs now applies both to GE and eligible non-GE programs.
General definitions	§ 668.2(b)	The final regulation revises the definition of *Cohort period* to streamline the cohort expansion procedures.

[25] Financial Value Transparency and Gainful Employment, 34 CFR parts 600 and 668 Docket ID ED–2023–OPE–0089. *www.federalregister.gov/documents/2023/10/10/2023-20385/financial-value-transparency-and-gainful-employment.*

[26] The EP and D/E metrics are defined in the ''Methodology for Current Regulation Calculations'' and ''Methodology for Final Regulation Calculations'' subsections below. In the context of the final regulations, ''accountability framework'' also includes the final revisions to the standards of administrative capabilities, discussed in the ''Department Authority (Including GE and Quality Assurance Authority)'' section above.

TABLE 3.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS—Continued

Provision	Regulatory section	Description of final provision
		It also revises the definition of *Earnings threshold* to establish a minimum benchmark of one dollar in cases where the Census Bureau data necessary to perform the calculations is unavailable.
Program participation agreement	§ 668.14(h)(3) and (4)	The final regulation adds two exceptions to the loss of title IV, HEA eligibility for all of an institution's low-earning outcome programs for failure to comply with the administrative capability requirement at § 668.16(t) in two out of three years. First, an institution's low-earning outcome programs are not subject to an automatic loss of eligibility for title IV, HEA funds if the institution is not participating in the Direct Loan program and has not participated in that program for the five most recently completed award years. Second, the program is not subject to the loss of title IV, HEA funds if the institution agrees in an amendment to its PPA to use its authority under § 685.203(m)(2) to prevent students from borrowing Direct Loans in the program for at least five years. This exception will continue to apply for as long as the institution continues to prevent Direct Loan borrowing in the program.
Initial and final decisions	§ 668.91(a)(3)(vi)	The final regulation clarifies that the agency's action against a low-earning outcome program could be either a limitation or termination action.
Student tuition and transparency system framework.	§ 668.402(b)	The final regulation, for a GE program designed to prepare students for employment in a recognized occupation that qualifies for a deduction of tip income under IRS "No Tax on Tips" regulations and 50 percent or more of individuals in the occupation receive income from tips, will not consider the program to have passed or failed the earnings premium measure for any award year in which the graduate cohort earnings data includes earnings from 2025 or prior.
Earnings accountability scope and purpose.	§ 668.601	The final regulation exempts from the accountability framework programs at institutions that enroll only individuals with a documented Specific Learning Disability or Autism, as defined under 34 CFR 300.8.
Low-earning outcome programs	§ 668.603	The final regulations provide that an institution may appeal within 30 days the Secretary's determination that a program is a low-earning outcome program through a process described by the Secretary separate from the limitation and termination proceedings under Part 668 Subpart G.
Student warnings	§ 668.605(c)(1)(iii)	The final regulation adds warning content to notify students about a program's potential loss of overall title IV, HEA eligibility under § 668.14(h).

4. Summary of Comments From the NPRM

The Department received hundreds of comments related to the Regulatory Impact Analysis in the NPRM. This section responds to these comments. Many commenters submitted alternatives that were substantially similar to remarks submitted by other commenters; in these cases, we grouped those comments and responded to them collectively.

Impact on the Economy

Comments: Some commenters expressed concern that the regulation will reduce economic activity and economic growth because the earnings test will lead to fewer educational opportunities as programs and colleges will be forced to close. Commenters noted this could reduce the supply of workers in critical fields, prevent individuals from starting new businesses, harm rural and local economies where college close, and lead to a less educated workforce, harming the nation's competitiveness internationally.

Discussion: The Department notes that the overall impact of the rule is estimated to increase the number of eligible educational programs (weighted by enrollment) and increase title IV, HEA disbursements relative to the current rule (Tables 5.12 and 5.15). While the final rule applies an earnings test to all degree programs for the first time, it also replaces the current Gainful Employment rule (implemented in 2023) with a new earnings test under which fewer programs fail. The net effect, as is shown throughout the Regulatory Impact Analysis, is an increase in program eligibility and a net increase in title IV, HEA volume for programs and students between 2027 and 2036 relative to current regulations (Tables 5.15,7.1A, 7.1B).

The Net Impact Budget Impact reflects an increase in outlays of $1,517 million in Direct Loan cohorts 2027 to 2036 and $8,782 million in Pell Grants in FYs 2027 to 2036. On an annual basis, the Department estimates that an additional $1.2 billion in title IV, HEA loans and Pell Grants will be disbursed to students relative to the baseline (Table 5.15).

Overall, the Department's analysis shows that approximately 85,500 additional students will gain access to title IV aid under the proposed regulation (Table 5.12) because fewer programs fail the earnings test. Under the current regulations, the programs that these students attend would lose eligibility for all title IV, HEA program assistance, negatively impacting their ability to afford college. Under the final rule, failing programs usually only lose eligibility for title IV Federal student loans (unless the failing program is also at an institution that fails the Standards of Administrative Capability requirements).

The Department's estimates also show that the earnings test could result in higher earnings for graduates of associates degree programs (Table 6.1) because the regulations reduce the number of low-earning associates degree programs that may receive Title IV aid (many of which were previously exempt from the accountability framework). Put another way, the associate degree programs that are available to students will, on average, lead to higher earnings among students earning these degrees. The earnings for associate degree programs that pass the earnings test in the proposed rule but fail in the current rule are approximately $7,000 higher, on average, than programs that pass the earnings test in current regulation and fail under the proposed regulation. This is because the WFTCA applies an accountability framework to all degree programs (including associates degrees) at all types of institutions whereas the prior rule did not apply to associates degree programs offered at public and private non-profit institutions. In short, more associates degrees are subject to an accountability framework under the final rule, reducing the number of programs that lead to low earnings.

Ultimately, the Department's analysis shows that the assertions made about the harmful effects this regulation would have on the economy are misguided. In fact, when compared against the baseline Gainful Employment regulation, this final rule will result in fewer students being negatively impacted by program closures due to failing the earnings test, and it will therefore have a smaller effect on worker shortages and the local economies who depend on such workers.[27]

Changes: None.

Comments: Some commenters expressed that the regulation would harm the economy because it would negatively impact state budgets. Commenters expressed that the regulation would result in the closure of many types of programs, including cosmetology programs. Commenters stated that this will result in fewer students taking state licensure exams, ultimately reducing state revenues from licensure examination fees.

Discussion: The Department evaluated the impact of the final rule on programs, students, and title IV, HEA student financial assistance. The Department's analysis indicates that fewer students will be impacted by the earnings test in the final rule relative to the share of students impacted under the current policy (Table 5.12). To the extent that the commenters' concerns about state budget are accurate, the Department's analysis implies that the final regulation would result in an increase in state revenue because more students will be anticipated to take state licensure examinations relative to the baseline policy.

Changes: None.

Impact on Small Businesses

Comments: The Department received many comments about the effects the regulation would have on small businesses, particularly with respect to cosmetology businesses. Commenters explained that because the earnings test would cause cosmetology programs to lose access to title IV, HEA program assistance, there will be fewer cosmetologists, a group that tends to own and operate their own small businesses. Others noted that barber shops, salons and spas are small businesses that rely on trained and licensed cosmetologists as their employees. Cosmetology schools themselves are often small businesses, as some commenters noted.

Discussion: The Department disagrees with the commenters' assertions. We assessed the effects of the rule on cosmetology programs, single-program institutions (which are often cosmetology schools), and small institutions of higher education in the Regulatory Flexibility Act analysis. In each of these analyses, we find that when compared with the current Gainful Employment regulation, fewer programs are expected to fail the earnings test under this final rule (Tables 5.17, 5.18, 5.19, and 5.20). Relative to the baseline policy, the Department estimates the earnings test will reduce the negative effects on small businesses commenters have raised.

Although a smaller share of cosmetology programs are expected to fail under the final rule relative to the baseline policy, the Department does acknowledge that a high share of cosmetology certificate programs are likely to fail under this final rule (approximately 93%), and that the smallest institutions of higher education are more likely to have a high share of failing programs. The Department is, however, concerned that these fields and credentials do not produce adequate earnings to support student debt. The Department believes that institutions of higher education, employers, and state and local policymakers will have stronger incentives as a result of the earning premium measure to create or modify programs so that they lead to higher earnings, or reform employee pay policies, or credentialing requirements.

Lastly, the Department notes that many cosmetology programs do not participate in title IV, HEA programs. One study found that just 14 percent of barber and cosmetology programs in Texas participate in federal student loan and grant programs. Moreover, many of these non-federally funded programs charge lower tuition prices and have similar outcomes than cosmetology programs subsidized by taxpayers.[28] These non-federally funded cosmetology programs will have incentives to increase their enrollment if fewer programs are eligible for title IV, HEA student aid, helping to supply the cosmetology workforce. As a result, it is possible that students benefit from this rule if they switch from more-expensive, Federally funded cosmetology programs to less expensive, non-Federally funded programs.

Changes: None

Impact on Consumers

Comments: Some commenters stated that the regulation will impact consumers by making the price of haircuts more expensive. Commenters stated that the rule would result in the closure of many cosmetology programs, creating a shortage of barbers and therefore resulting in an increase in the price of haircuts.

Discussion: The Department specifically examined the estimated impact of the regulation on cosmetology programs (Table 5.17, 5.18, 5.19, 5.20, 5.27, and 5.28). Relative to the current Gainful Employment regulation, the final rule is estimated to result in fewer failing cosmetology programs. As a result, this means there will likely be fewer cosmetology program closures as a result of this regulation, helping to blunt the possible shortage of barbers that would otherwise occur under the baseline policy. The Department also notes that there are hundreds of cosmetology programs participating in the title IV, HEA programs that will not be covered by the accountability framework in this regulation, further mitigating the extent to which the regulations contribute to a worker shortage (Table 5.27).

Changes: None.

Comment: Commenters expressed that the regulation would harm consumers in the particular context of cosmetology. Some commenters expressed that the rule would result in the closure of many cosmetology programs, which would therefore create negative effects on health, safety, and sanitary conditions because more services would be provided in homes and in unlicensed or uninspected facilities

Discussion: The Department notes that cosmetologist licensure and facility inspection are areas regulated and enforced at the State and local levels, not at the Federal level. The Department trusts the appropriate State and local entities to maintain appropriate standards for health and safety within their jurisdiction. Furthermore, as shown in the Department's analysis (Tables 5.17, 5.18, 5.19, 5.20, 5.27, and 5.28), fewer cosmetology programs are expected to fail the earnings test under the final rule relative to the current gainful employment regulation. Therefore, the Department believes this final rule reduces the health, safety, and sanitary concerns expressed by the commenters because it is likely that more cosmetology programs will remain open relative to the baseline policy.

Changes: None

Impact on College Enrollment

Comments: Commenters expressed that the regulation would result in a decline in college enrollment, arguing that many students will no longer be able to afford to attend higher education

[27] Consequently, some students who attend programs that failed under the current regulation but now pass under this regulation may be harmed by the ability to attend passing programs that have relatively lower-earning programs. However, it is difficult for the Department to estimate this possibility because we lack counterfactual earnings data for what the students' earnings outcomes may have been had they not attended college at all.

[28] Cellini, S.R., & Onwukwe, B., (2022). Cosmetology Schools Everywhere: Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Washington, DC: PEER Center. *www.american.edu/spa/peer/upload/peer_cosmetology_b.pdf.*

without access to title IV, HEA student aid programs. Commenters further noted that the decline in college enrollment will negatively impact the nation's economy, competitiveness, and entrepreneurialism.

Discussion: The Department is concerned about the low-earnings outcomes found in certain programs, and believes that students will be economically harmed by attending such programs. Students will have access to other title IV-eligible programs and can continue receiving grants and loans to attend non-failing programs. Furthermore, the Department notes that fewer students will be impacted by the final rule relative to the current policy (Table 5.12). Therefore, to the extent that the commenters' concerns are accurate, we note that this rule will enhance the ability for students to remain enrolled in college, thereby benefiting the nation's economy, competitiveness, and entrepreneurialism.

Changes: None.

Impact on Specific Student Groups

Comments: Numerous commenters expressed concern about the impact the proposed rule would have on under-represented and disadvantaged student populations, including those from racial/ethnic minority groups. Some commenters stated opposition to the regulation because they believed it would disproportionately harm these groups, and requested the Department conduct an analysis to examine this issue. Some commenters expressed that the regulation would disproportionately harm certain types of institutions, such as Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and other minority-serving institutions (MSIs).

Discussion: The Department specifically examined how the rule may impact individuals from different racial/ethnic backgrounds, shown in Table 5.21. For all racial/ethnic groups, the Department estimates that smaller shares of students will attend failing programs under the proposed regulation relative to the current regulation. We therefore disagree with these commenters, as this analysis shows that students from racial/ethnic minority groups will be less impacted overall by the proposed regulation relative to the way these students would be impacted under the current Gainful Employment regulations.

Furthermore, the Department estimated how the regulation would impact HBCUs, TCCUs, and other MSIs in Table 5.10. Relative to the current regulations, we estimate the final rule would result in a slight to moderate increase in the share of students and programs at HBCUs and MSIs that fail the earnings test. This is largely because of the statutory requirement to hold all programs accountable for their earnings outcomes, whereas the existing regulation only applied to non-degree programs and for-profit institutions.

Although a marginally higher share of programs and students at HBCUs and MSIs will be impacted by the final rule, the Department remains concerned that these programs regularly provided students with very low earnings after graduation, leaving them unable to afford their student debt burden and other financial expenses. The Department believes this final regulation will therefore benefit these students who otherwise would have attended these low-earning programs. Because of the final rule, some of these students may now consider attending other higher-earning programs that are not impacted by these final regulations, possibly resulting in higher earnings for students.

Changes: None.

Comments: Many commenters expressed concern that the regulation will negatively impact women. Commenters stated that many of the programs that will fail the earnings test—including education programs, social work programs, arts programs, cosmetology programs, and childcare programs—serve larger shares of women, resulting in a disproportionate impact on this student population.

Commenters also stated that programs that serve larger shares of women will be disproportionately impacted by the regulation because women are more likely to have family obligations and work part-time, downwardly skewing the median earnings value of the programs they attend. Many commenters expressed that this issue was particularly common among women in the cosmetology sector, where it is very common for women to work part-time as they manage other family obligations.

Discussion: The Department's analysis shows that fewer women will attend failing programs relative to the current baseline (Table 5.21). Under the final regulation, the Department estimates that only 5.5 percent of women who receive title IV, HEA funds would attend programs that are expected to fail the earnings test. Under the current Gainful Employment regulation, 6.4 percent of women who receive title IV, HEA funds attend programs that are estimated to fail the accountability framework. Some women may therefore benefit from this regulation due to the greater educational choices afforded to them, along with the greater amount of title IV, HEA funds they are eligible to receive.

The Department does acknowledge that certain women may not benefit, if they experience low earning outcomes after attending programs that remain open under this regulation but would have failed (and therefore likely closed) under the prior regulation. On net, the Department's analysis suggests there will be a greater number of students who attend programs with relatively lower-earning outcomes relative to the prior rule (Table 5.12). However, it is difficult for the Department to estimate if students benefit or are harmed by this provision because we do not have the ability to determine students' earning outcomes had they not attended such programs.

Furthermore, many of the programs listed by the commenters—including cosmetology programs, social work programs, and education programs—have lower fail rates under the accountability framework in this final regulation relative to the fail rates under the current regulation (Table 5.18 and 5.19). Again, this means certain women may benefit if they value the greater amount of educational choices and opportunities that will be available to them under this rule relative to the prior regulation. In summary, the Department disagrees with the commenters' assertions because our estimates show that relative to the current baseline, more female students and the programs they attend are likely to have access to title IV funding under the proposed rule, which may benefit certain female students.

Changes: None.

Comments: Some commenters expressed concern that the proposed regulation will negatively impact low-income students. The commenters stated that fewer low-income students will enroll in college as a result of the regulation because they will have less access to the title IV, HEA student aid programs they depend on. Commenters believed that low-income students would therefore be disproportionately harmed because they will have no other way to afford postsecondary education, forcing them to drop out of college or skip higher education entirely.

Discussion: Relative to the current Gainful Employment regulation, the Department estimates that fewer students will attend failing programs (Table 5.12). Additionally, students will continue to receive Federal Pell Grants, even if they attend failing programs. This is because the failing programs in the final rule will usually only lose access to Federal student loans, which differs from the current Gainful Employment regulation, where students at failing programs would lose access to all types of title IV, HEA aid. This means low-income students who attend failing programs under the final regulation will usually have access to higher amounts of Federal student financial assistance relative to the amount they would have access to under the current policy. To the extent that low-income students pay less tuition as a result (due to the Federal title IV, HEA aid they can receive under this regulation), they may benefit.

Changes: None.

Comments: Some commenters stated that the regulation would harm formerly incarcerated individuals, veterans, and the family members of veterans because these individuals rely on cosmetology programs to re-enter the labor force. The commenter argued that the rule would result in the closure of many cosmetology programs, creating a disproportionate impact on these populations.

Discussion: The Department does not have data to evaluate how the rule would impact veterans, the family members of veterans, and formerly incarcerated individuals. However, the Department specifically examined the estimated impact of the regulation on cosmetology programs (Tables 5.17, 5.18, 5.19, 5.20, 5.27, and 5.28). Relative to the current Gainful Employment regulation, the final rule is estimated to result in fewer failing cosmetology programs. As a result, there will likely be fewer cosmetology program closures as a result of this rule. This may benefit formerly incarcerated individuals and veterans who may desire to enroll in these programs because they will enjoy greater educational choice as a result of this regulation. Therefore, while the Department is unable to evaluate the specific concerns raised by commenters, we believe that the rule will enhance the ability for students to attend cosmetology programs due to the overall reduction in the rule's impact on cosmetology programs.

Changes: None.

Comments: Commenters expressed concern that the proposed regulation would disproportionately impact first-generation college students, asserting that the earnings test will result in the closure of programs that serve these students.

Discussion: The Department notes that assessing the degree to which first-generation students are impacted by the rule is difficult and that commenters provided no data or analysis to support their concerns. While the Department does not have comprehensive data to directly estimate the impact of the regulation on first-generation students, we estimate the impact on less-than-two-year institutions and two-year institutions, which prior research has found could be more likely to enroll first-generation students.[29] The results are mixed. ED's analysis (Table 5.7) shows that fewer programs at less-than-two-year institutions will fail the earnings test under the proposed regulation when compared against the current regulations but programs at two-year institutions will fail at slightly higher rates under the proposed rule. Additionally, some first-generation students may benefit from the rule in the form of higher earnings, if those students instead enroll in programs that have higher earnings outcomes as a result of this regulation.

Changes: None.

Impact on Rural Communities

Comments: Many commenters expressed concern about how the regulation will impact programs in rural areas and communities. Commenters suggested the rule will negatively impact programs in these areas for factors that are outside of their control, including lower costs of living and localized labor market conditions.

Discussion: The Department addressed these comments above in the ''Earnings Threshold—Geographic Scope of Data'' section. To briefly reiterate, the Department specifically examined the impact of the Regulation on rural colleges, and notes that the regulation will have a slightly larger impact on rural programs and the students who attend them relative to the current regulation (Table 5.10). The Department clarifies that this increased impact on rural communities is driven by the statutory requirement to hold degree programs offered at public colleges accountable for earnings outcomes.

Changes: None.

Comments About RIA Methodology

Comments: Some commenters stated that the Regulatory Impact Analysis did not explain how the earnings test would impact programs and colleges and suggested that terms were not well defined. Other commenters expressed that the Department's analysis in the RIA is confusing, inaccurate, and misleading.

Discussion: The Department disagrees with the commenters' assertions. The commenters did not provide any specific details on which parts of the Department's analysis they found confusing, inaccurate, or misleading. The Department notes that it clearly explained the data and methods used to produce its estimates, which are shown in Tables 5.7 to 5.21 in the Regulatory Impact Analysis.

However, to further enhance transparency in the Department's analysis, we included two new tables in the RIA, Tables 5.1 and 5.2. These tables explain how the Department used the PPD:2026 data to create an analytic sample of programs for which its estimates are based on. Furthermore, these tables list which types and number of programs that are anticipated to be covered by the accountability framework in this regulation. All subsequent tables were re-numbered to account for the inclusion of these new tables.

Changes: None.

Comments: Some commenters stated that the income definition used in the Department's analysis in the RIA was unclear. Commenters stated that the definition used to calculate the earnings benchmarks—personal income from wages and salary and personal income from self-employment and farm income—is an incomplete measure of individual income.

Discussion: The Department disagrees with the commenters' assertions. When calculating the earnings benchmarks, the Department includes personal income from wages and salary and personal income from self-employment and farm income. This is the most comprehensive measure of personal income available in the ACS, the dataset the Department will use to calculate the earnings benchmarks. Commenters who believed this measure was incomplete offered no alternative dataset or data that the Department could use as a better measure for earnings. In the absence of any other data, the Department will use the available data from the ACS.

Changes: None.

Comments About PPD:2026 Data

Comments: Some commenters expressed that PPD:2026, the dataset used for the Department's analysis, contained errors and inaccuracies. Commenters alleged that the dataset included programs at colleges that did not exist, and suggested that this data would be inappropriate to use for the accountability framework.

Discussion: The Department stated in the Regulatory Impact Analysis that

[29] PNPI (2025). First Generation Students in Higher Education. Washington, DC: Postsecondary National Policy Institute. *https://pnpi.org/wp-content/uploads/2025/05/FirstGenStudents_FactSheet_Apr25.pdf.*

there are several important differences between the PPD:2026 data and the dataset that will ultimately be used to administer the final rule (Table 5.3). The Department used PPD:2026 for the analysis in this final rule because we will not have the data to implement the final rule until 2027. The Department reiterates that the estimates presented in the Regulatory Impact Analysis are the best available estimates based on currently-available data on programs and earnings.

In response to commenters who expressed the PPD:2026 dataset contained programs for which their college never offered, the Department notes that the Technical Data Appendix clearly explains the process used to include programs in PPD:2026. The data utilizes program-level information on enrollments and title IV, HEA disbursements from COD in a particular program during a particular period of time. Programs where there was at least one title IV enrollee in the program during the 2024 or 2025 award years were maintained in the analytic sample.

The Department reiterates that, to mitigate this concern when the final rule is implemented, all colleges will have an opportunity to review their program completer lists for each program they offer. During this process, colleges will be able to amend completer lists for each program to ensure that the college is held accountable for the correct set of program completers.

Changes: None.

Comments: One commenter representing a college expressed concern about the PPD:2026 data used to produce estimates in the Regulatory Impact Analysis. The commenter was concerned with the way federal loan disbursements were associated with programs, noting that they believed the data inaccurately apportioned federal loan disbursements to a program at their institution. The commenter argued that borrowers who graduated with loans from one program who then re-enrolled in another program were having their loans counted towards the second program. The commenter also expressed confusion regarding the pass/fail indicators in the PPD:2026 dataset.

Discussion: The Department disagrees with the concerns expressed by the commenter. The Technical Data Appendix clearly articulates how loans are tied to programs. Specifically, FSA data include information on which program students were enrolled in when the loan was disbursed and which program and college received the loan. This means loans are not double counted for individuals who enroll in a new program and have loans from a prior program.

Furthermore, the Variable Codebook articulates which programs would pass or fail the proposed regulation; the variable ''mstr_obbb_fail_cip2_wageb'' indicates whether the program is estimated to pass or fail the earnings test in the proposed regulation. The Department further notes that institutions can reach out to us directly if they have specific questions about how to use the data we produce.

Changes: None.

Comments: One commenter indicated that of the 16 graduate Acupuncture and Herbal Medicine (AHM) programs in the Department's own College Scorecard, 12 have earnings data suppressed due to privacy thresholds. Because of this, the commenter suggests that existing federal data infrastructure cannot produce reliable earnings estimates for the majority of AHM programs, and recommends using alternative data sources.

Discussion: The Department notes that prior data from the College Scorecard is not the dataset that will be used to determine program earnings. Rather, in conjunction with a Federal Agency with earnings data, the Department will assemble new program-level dataset on program earnings, and this newly-assembled data will have a more-robust cohort aggregation process to account for small programs. This will greatly reduce the concern raised by the commenter who believes that AHM programs will not be covered by the earnings test. We decline the commenter's request to use alternative datasets because the earnings data must be pasted on program completers, not broad data based on the earnings of individuals with certain degrees.

Changes: None.

Comments: One commenter requested that the Department impute the earnings of programs with missing earnings data in PPD:2026. The commenter argued that this would provide a better comparison to estimate the potential impact of eliminating the D/E metric on programs.

Discussion: The Department declines the commenter's request. The commenter did not offer a way in which the Department could feasibly impute the earnings outcomes for programs with missing data. In addition, the Department is concerned that the imputation of missing data could produce confusion, as some earnings values would based on statistical estimates rather than the program's actual earnings outcomes from a Federal agency with earnings data. The Department also notes that the specific method used to impute missing earnings data could be highly sensitive to model specifications, further contributing to potential confusion and the possibility of misleading results.

Changes: None.

5. Impact of the Final Regulation

This section presents the Department's analysis of the anticipated impact of the final regulations. For this analysis, the Department estimated which programs would fail the accountability framework in the final regulations relative to the current regulations, which is the baseline for the analysis. The Department also analyzed the characteristics of these failing programs and the characteristics of students who attend them. The following subsections describe the data and methodology the Department used and the estimated impact of the final regulation on students, programs, and institutions.

Data Description

Throughout this RIA, we use data from a modified version of the 2026 Program Participation Data (PPD:2026) that the Department compiled for the negotiated rulemaking sessions. This data was made publicly available on the Department's website prior to the January 2026 negotiated rulemaking sessions, along with additional details. You may find the data at *www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025–2026*.[30]

PPD:2026 was assembled by combining data from a variety of public and private sources, including the Integrated Postsecondary Education Data System (IPEDS), the College Scorecard, the IRS, FSA, and the ACS. It includes information on enrollments, earnings, and title IV, HEA disbursements, among other variables.

The unit of analysis in PPD:2026 is the unique combination of institutional ID (*opeid6*), credential level (*credlev*), and four-digit classification of instructional program (CIP) code (*cip4*).[31] [32] When necessary, OPEIDs are

[30] U.S. Department of Education AHEAD Session 2 Program Performance Data Fact Sheet, *https://www.ed.gov/media/document/ahead-session-2-program-performance-data-fact-sheet-112902.pdf*; AHEAD Session 2 Program Performance Data Variable Codebook, *https://www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf*; AHEAD Session 2 Program Performance Data Technical Appendix *https://www.ed.gov/media/document/ahead-session-2-program-performance-data-technical-appendix-112901.pdf.*

[31] Programs are defined using the unique combination of institutional ID (OPEID6), credential

Continued

linked to UNITIDs using the UNITID of the main campus, identified using the College Scorecard crosswalk files.[33] The universe of programs in PPD:2026 includes all programs eligible for title IV, HEA funds that had at least one title IV enrollee reported to the National Student Loan Data System (NSLDS) during the 2023–24 or 2024–25 award years. In total, PPD:2026 includes information for 209,321 unique programs offered at 5,096 unique higher education institutions.

There are two key differences between the data used in this RIA and the public dataset available on the Department's website. First, the data used in this RIA contains information on the specific counts of enrollees regardless of program size. This differs from the publicly released version of PPD:2026, where student counts fewer than 20 are privacy-suppressed or perturbed. Estimates in this RIA may therefore differ slightly from those using the publicly released version of PPD:2026. Additional information is available in the technical documentation for PPD:2026 on the Department's website.[34] Second, the data used in this RIA contains additional variables from publicly available sources (such as IPEDS and the College Scorecard) that were not originally included in the PPD:2026 data released by the Department in January. The Department needed to include these additional variables in its analysis of the final rule to estimate the impact of certain provisions, such as the provision allowing failing programs to voluntarily remove themselves from the Federal student loan program for a period of five years (discussed in the ''Department Authority (Including GE and Quality Assurance Authority)'' section).

Analytic Sample

The analysis in this RIA uses data from PPD:2026. These data include information on 209,321 individual programs. We then limit these data to exclude programs that the Department estimates are unlikely to be subject to the accountability framework in this rule. This includes:

- Programs located in U.S. territories with unavailable ACS data; [35]
- Programs with no Federal loan participation from 2021–2025; [36]
- Graduate programs in states where ACS data will likely be unavailable or unreliable; [37] and
- Programs that are estimated to not meet the minimum size requirement to generate a program earnings measure.[38]

Table 5.1 reports the number of programs removed by each of these restrictions as well as the final set of programs included in the analysis. Approximately 30 percent of all programs are expected to be covered by the accountability framework in this final rule, and these programs enroll approximately 79 percent of all title IV, HEA students and receive 84 percent of all annual title IV, HEA disbursements (Table 5.2). The fail rates presented in the ''Impact of the Final Regulations on Institutions'' and ''Impact of the Final Regulations on Programs'' sections are therefore based on the roughly 61,900 programs in PPD:2026 that the Department anticipates will be subject to the accountability framework in this final rule.[39] The other programs in PPD:2026, which, based on the Department's analysis, are unlikely to be covered by the accountability provisions in this regulation, are not included in the numerator or denominator for fail rates displayed in these sections.

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level, and 4-digit CIP codes. In almost all cases, 4-digit CIP code titles align with the 2010 CIP code taxonomy. In some cases, 4-digit CIP codes appear only in the 2020 CIP code taxonomy. In these cases, the 2020 CIP code taxonomy is used to title the program. Programs with CIP codes that do not appear in the 2010 or 2020 CIP code taxonomies are dropped. This removes fewer than 20 individual programs, representing less than 0.006% of all higher education programs in the final data set.

[32] Credential levels are defined by the following eight categories: (1) Undergraduate certificate programs, (2) Associate degree programs, (3) Bachelor's degree programs, (4) Post-Baccalaureate degree programs, (5) Master's degree programs, (6) Doctoral programs, (7) First-Professional Programs, and (8) graduate certificate programs.

[33] UNITIDs are the unique institution identifiers used in IPEDS data.

[34] For more information, see: *www.ed.gov/media/document/ahead-session-2-program-performance-data-technical-appendix-112901.pdf*.

[35] This includes programs at institutions located in U.S. territories that primarily enroll in-territory students for which ACS data are unavailable.

[36] This restriction removes *programs* that received $0 in Federal student loan disbursements for each award year between 2021 and 2025. This method slightly differs from the process outlined in this regulation, where programs at *institutions* that did not participate in the Federal student loan program for the prior five award years would not have an outcome calculated. This analysis uses program-level participation since we observe loan disbursement data at the program level.

[37] This includes graduate programs at colleges that primarily enroll in-state students located in states and fields where the ACS had fewer than 30 respondents used in the same-state, same-field earnings benchmark (see Table 5.5 for further explanation).

[38] To determine if a program would likely meet the minimum size requirement, we used PPD:2026 and summed the number of title IV completers from the 2021–22 to 2024–25 award years. Following the aggregation process described in the ''Cohort Expansion'' section, we summed together completers from the same college and credential level who shared the same four-digit or two-digit CIP code and completed within during the 2021–22, 2022–23, 2023–24 and 2024–25 award years. If this value did not exceed 30 unique title IV completers, we assume the program (defined at the OPEID6 x CREDLEV x CIP4 level) would not reach the minimum size requirement needed to be included under the final rule and therefore removed it from the sample. Additionally, approximately 160 cosmetology programs and massage therapy programs will receive two or more years of delay because they are small and additional cohorts of students with earnings under the ''No Tax on Tips'' policy will be needed for the cohort aggregation process (described in the ''Earnings of Program Completers—Use of IRS Data'' section). These small programs are excluded from the final sample of programs; however, we note that these programs will eventually be subject to the earnings test when their cohort sizes become large enough in future years, which would occur between 2030 and 2032.

[39] In other words, programs that are not expected to be covered by the accountability framework are not included in the pass rates or fail rates in the analysis presented in the ''Impact of the Final Regulations on Institutions'' section.

Table 5.1 - Sample Construction

Exclusions	Number of Programs Removed	Remaining Programs
Starting Sample of Programs (All programs in PPD:2026)	--	209,320
Exclude Programs in US territories with unavailable ACS data	310	209,010
Exclude Programs with no Federal loan participation from 2021-2025	28,280	180,730
Exclude Graduate programs in states with unavailable ACS data	2,650	178,080
Exclude Programs that will not meet minimum size requirements	116,200	61,880
Final Sample of Programs		61,880

Notes: See text and related footnotes for description of each of the exclusions. These programs are removed from the analytic sample because they are unlikely to be subject to the earnings test and will therefore not face accountability sanctions. The final sample represents the set of programs the Department estimates will be subject to the accountability framework in the final rule. Program counts rounded are rounded to the nearest 10.
Source: Department of Education calculations using PPD:2026.

Table 5.2 - Number of Programs, Students, and Title IV Volume Covered by Final Rule

	All Programs in PPD:2026			Programs Subject to Accountability Framework		
	Number of Programs	Number of Title IV Students	Annual Title IV Volume ($ Millions)	Number of Programs	Number of Title IV Students	Annual Title IV Volume ($ Millions)
	(1)	(2)	(3)	(4)	(5)	(6)
Undergrad Cert	38,350	2,034,900	8,647	7,260	1,389,600	7,257
Associate	42,930	6,058,900	19,173	9,630	4,350,000	15,154
Bachelor	68,970	9,475,500	56,311	29,670	8,163,500	48,810
Post-Bacc Cert	3,470	42,200	50	120	9,400	12
Masters	33,640	2,057,700	19,866	12,140	1,750,100	17,511
Doctoral	11,860	484,800	6,462	1,640	295,100	5,147
Professional	1,650	311,700	11,904	640	229,100	9,434
Grad Cert	8,450	155,700	784	780	81,700	469
Total	209,320	20,621,400	123,197	61,880	16,268,500	103,794

Notes: This table reports the total number of programs, title IV enrollees, and title IV disbursements to all programs (columns 1-3) and to the subset of programs, title IV enrollees, and title IV disbursements to programs that the Department estimates will be covered by the accountability framework in the final rule (columns 4-6). The sample in columns 4-6 excludes programs that are estimated to have fewer than 30 title IV completers after the cohort aggregation process, programs located in US territories where ACS data are unavailable, graduate-level programs located in states where ACS data are unreliable, and programs that have not participated in the Federal loan program between 2021-22 to 2024-25. N sizes in columns 1 and 4 are rounded to the nearest 10. N sizes in columns 2 and 5 are rounded to the nearest 100. N sizes in columns 3 and 6 are rounded to the nearest million. N sizes may not sum to total due to rounding. Programs, title IV enrollees, and annual title IV volume correspond to the values in the 2024-25 award year.

Source: Department of Education calculations using PPD:2026.

Data Limitations & Assumptions

The data used in this RIA differ slightly from what the Department would use to evaluate programs under the current regulations and these final regulations. These differences are summarized in Table 5.3. We make several assumptions in our analysis to account for these differences and note that the estimates in this RIA may slightly differ from the actual rates.

Table 5.3 – Comparison of PPD:2026 to Data to be Assembled for the Current and Final Regulations

	PPD:2026	Data used to Evaluate Programs Under Current Rule	Data used to Evaluate Programs Under Final Rule
Program Definition	Unique combination of OPEID6 by Credential level by 4-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.
Cohort Construction	A single, pooled cohort of Title IV completers from two award years.	Title IV completers for either two or four years of pooled award years, depending on program size.	Title IV completers from a single award year, unless the program does not meet the minimum size threshold.
Program Failure	For current regulations: Assumed to fail if the program fails the Debt to Earnings or the Earnings Premium metric after 1 year. For the proposed regulations: Assumed ot fail if the program fails the Earnings Premium metric after 1 year.	Failing the Debt to Earnings metric in 2 out of 3 consecutive years, or failing the Earnings Premium metric in 2 out of 3 consecutive years.	Failing the Earnings Premium metric in 2 out of 3 consecutive years.
Missing Earnings Values	76% of programs have missing earnings values.	69% of programs are expected to have missing earnings values.	32% of programs are expected to have missing earnings values.

Notes: In the first column, the percent of programs with missing earnings data is calculated by dividing the number of programs in PPD:2026 with missing earnings data by the total number of programs in PPD:2026. In the second column, the percent of programs with missing earnings data is based on the number of programs in PPD:2026 that have fewer than 30 title IV completers from 2022-2025 divided by the total number of programs in PPD:2026. In the third column, the percent of programs with missing earnings data is based on the number of programs in PPD:2026 that have missing earnings data our of all programs in PPD:2026, excluding programs that are estimated to have fewer than 30 title IV completers after the cohort aggregation process described in the final regulation, programs located in US territories where ACS data are missing, graduate-level programs located in states where ACS data are unreliable, and programs that have not participated in the Federal loan program between 2021-2025.
Source: Department of Education calculations using PPD:2026.

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First, our estimates may slightly overcount the share of programs that ultimately fail the accountability framework in the current regulations and final regulations because programs in PPD:2026 are identified by a unique combination of 6-digit OPEID, credential level, and 4-digit CIP code. However, in the current and final regulations, programs are identified by a unique combination of 6-digit OPEID, credential level, and *6*-digit CIP code. We therefore assume that earnings outcomes of programs within the same 4-digit CIP code, credential level, and institution are equally distributed across (unobserved) 6-digit CIPs. Fail rates in this RIA may vary from the actual fail rates if different programs (defined at the 6-digit CIP level) nested within the same overarching 4-digit CIP have different earnings outcomes. Some research has shown that program earnings outcomes may vary across 6-digit CIP codes within the same 4-digit CIP code; however, the Department believes that any effect this has on our estimates should be small because approximately 83 percent of 4-digit CIP codes have only a single 6-digit CIP code nested within it.[40]

Second, student completer cohorts in PPD:2026 are constructed differently than under the current and final regulations. Specifically, the cohort for earnings in PPD:2026 includes title IV completers from two pooled award years; these data were drawn from the College Scorecard for expediency and therefore use the cohort construction from that source. Under the current regulation, cohorts would include title IV completers from two or four pooled award years, depending on program size. Under the final regulation, cohorts will generally include title IV completers from a single award year unless the program does not meet the minimum size threshold (discussed in the ''Cohort Expansion'' section above), in which case cohorts will be aggregated with similar programs for up to three prior award years, until a statistically reliable cohort size is achieved. We therefore must assume that the cohort aggregation processes for the current and final regulations would result in programs having similar earnings as the cohorts used in PPD:2026.

Third, our estimates use the earnings outcomes from the single pooled cohort of completers, but in the current and final regulations, programs face sanctions only if they fail the accountability framework in two out of three consecutive years.[41] A single cohort is used for the analysis in this section because PPD:2026 does not include multiple, consecutive years of program-level earnings outcomes. This is another reason why our estimates may slightly overcount the share of programs that fail the accountability framework.[42]

Fourth, our analysis in this section (''5. Impact of the Final Regulations'') assumes that students who attend failing programs will not switch to a different, non-failing program.[43] Program-switching is not accounted for in this section because the Department is unable to precisely estimate which programs individual students will select when switching. However, we expect this to have a minimal impact on our estimates because this assumption is applied consistently to our estimates of both the current and final regulations.[44]

Another caveat is that earnings are missing for many programs in PPD:2026, usually due to the IRS's privacy protocols.[45] Earnings data will, however, be collected for many of these programs because cohorts will be aggregated to include more students under the final regulation. As discussed in the prior section, the Department anticipates that roughly 61,900 programs will be subject to the accountability framework in this final rule (Table 5.1). Approximately one third of these programs (32 percent) have missing earnings data in PPD:2026, but the Department expects these programs will have earnings data available when the final rule is implemented due to the expanded cohort aggregation process (Table 5.4). Rates of missingness are higher (approximately 59 percent) for GE programs covered by the accountability framework in the final rule (Table 5.4).

To estimate the pass and fail rates for programs in PPD:2026 where earnings data are missing, we assume that these programs fail the accountability framework at equivalent rates as similar programs with reported earnings data in PPD:2026. Specifically, using the subset of programs where earnings data are available, we calculate the fail rates within each sector, broad field of study, credential level, and institutional level. Using those rates, we then assume that programs with missing earnings data will fail the accountability frameworks under the current and final regulations at the same rate as programs with reported earnings data from the corresponding sector, broad field of study, credential level, and institutional

[40] Blagg, K., (2026). Measuring Program-Level Outcomes in Higher Education. Washington, DC: The Urban Institute. *www.urban.org/sites/default/files/2026–01/Measuring_Program-Level_Outcomes_in_Higher_Education.pdf*; Soliz, A., & McCann, C., (2026). Earnings of Programs Can Vary Widely—Even Within the Same Field of Study. Washington, DC: PEER Center. *www.peer-center.org/research/earnings-vary-widely-within-field*.

[41] In the current regulation, GE programs that fail the D/E test in two out of three consecutive years or GE programs that fail the EP test in two out of three consecutive years lose access to *all* title IV, HEA funds. Under the final regulations, programs that fail the EP test in two out of three consecutive years lose access to title IV Federal student loans.

[42] We anticipate this issue will be very small given that program earnings outcomes are based on completers who exited a program approximately six calendar years prior to the date in which earnings are measured. For this reason, there is little, if anything, colleges could do to alter the earnings outcomes of their former students. In other words, we anticipate that failing the earnings test one year will be highly correlated with failing the earnings test in the subsequent year.

[43] The Department's analysis in the ''5. Impact of the Final Regulations'' section does not account for the possibility of program switching. This is because the analysis in this section is presented at specific fields of study and credential levels, and the Department is unable to predict how students may switch across specific types of fields of study and credentials. This differs from the assumptions made in the ''7. Net Budget Impact'' section, which does account for the possibility of program switching when estimating the budgetary impact of the final rule. The ''7. Net Budget Impact'' section can account for program switching because the estimates are derived with assumptions using broad volume-based groups that students may switch to; the budget estimates are not disaggregated by specific fields of study or credential levels.

[44] Our estimates could differ from the true impact of the final regulation if students would differentially switch programs under the final regulation relative to how they would switch programs under the current regulation. This could occur, for example, if under the current regulation students are more likely to drop out of college (due to losing access to both Pell Grant and Federal student loan eligibility) relative to the extent that students drop out of college (rather than switch programs) under the final rule, since under the final rule students would lose access to Federal student loans only.

[45] The IRS (which was the agency that provided the Department with earnings data used in PPD:2026) is usually unable to provide the Department with median earnings estimates for programs where there is a relatively small number of working title IV recipients with available tax records. In some cases, the IRS may be unable to provide the Department with median earnings estimates depending on the distribution of earnings within programs. This results in many small programs having unobserved (missing) program earnings.

level.[46] This method for estimating pass and fail rates slightly differs from the preliminary analysis presented by the Department during the negotiated rulemaking sessions in January 2026 (available at: *www.ed.gov/media/document/2025-ahead-results-of-earnings-test-and-ge-changes-112932.pdf*) because that preliminary analysis excluded programs with missing earnings data.[47]

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[46] This means our estimates may undercount the true share of programs that fail the earnings test in the final regulation if the earnings of small programs are systematically lower than the earnings of larger programs. Conversely, our estimates may overcount the true share of programs that fail the earnings test if the earnings of small programs are systematically higher than the earnings of large programs.

[47] In most cases, the Department's preliminary analysis presented during the negotiated rulemaking sessions in January 2026 are within a fraction of a percentage point from the estimates presented in this RIA. The marginal difference in estimates is because the preliminary analysis presented at the negotiated rulemaking sessions excluded programs with missing earnings, whereas the analysis in this RIA includes these programs and assumes they pass and fail the accountability framework at equivalent rates as similar programs (programs in the corresponding sector, broad field of study, credential level, and institutional level) with observed earnings data.

Table 5.4 - Share of Programs with No Earnings Data, by Credential Level and Sector

	All Programs Subject to Accountability Framework		GE Programs Subject to Accountability Framework	
	N	Percent with No Earnings Data	N	Percent with No Earnings Data
	(1)	(2)	(3)	(4)
A. Public				
Undergrad Cert	4,690	52.9	4,690	70.1
Associate	8,190	38.2	0	--
Bachelor	17,600	20.3	0	--
Post-Bacc Cert	80	69.6	80	87.3
Masters	6,600	35.2	0	--
Doctoral	810	45.2	0	--
Professional	340	19.5	0	--
Grad Cert	410	75.4	410	82.4
Total	38,710	31.8	5,180	71.3
B. Non-Profit				
Undergrad Cert	380	47.4	380	59.0
Associate	660	35.1	0	--
Bachelor	11,490	32.8	20	66.7
Post-Bacc Cert	40	75.0	40	97.2
Masters	5,190	35.2	0	--
Doctoral	740	48.3	0	--
Professional	290	25.6	0	--
Grad Cert	320	66.5	320	79.4
Total	19,110	35.0	750	69.7
C. Proprietary				
Undergrad Cert	2,190	23.2	2,190	35.1
Associate	770	28.6	760	40.8
Bachelor	570	27.7	520	44.8
Post-Bacc Cert	<10	100.0	<10	100.0
Masters	360	34.6	340	48.8
Doctoral	90	37.0	90	50.6
Professional	20	40.0	20	60.0
Grad Cert	60	62.5	60	71.4
Total	4,070	26.9	3,970	39.6
Grand Total	61,880	32.4	9,900	58.5

Notes: The sample is limited to programs that the Department estimates will be subject to the accountability framework under the final rule. This sample excludes programs that are estimated to have fewer than 30 title IV completers after the cohort aggregation process, programs located in US territories where ACS data are missing, graduate-level programs located in states where ACS data are unreliable, and programs that have not participated in the Federal loan program between 2021-2025. Programs are counted as GE programs if they were ever classified as a GE program between the 2016 and 2025 award years. Earnings data used in column 2 are median 4-year earnings of working title IV completers from the pooled 2017-18 and 2018-19 award years, where earnings are measured in 2022 and 2023, respectively. Earnings data used in column 4 are median 4-year earnings of title IV completers from the pooled 2014-15 and 2015-16 award years. Throughout the analysis, these different earnings variables are used to account for the different definitions of earnings across the final and current regulations. N sizes in columns 1 and 3 are rounded to the nearest 10. N sizes may not sum to totals due to rounding.

Source: Department of Education calculations using PPD:2026.

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Lastly, the Department's analysis may slightly overestimate the share of programs and students that fail the accountability framework under the final rule because the Department is unable to accurately incorporate two policies into its analysis, both of which are described in the ''Low-earning outcome programs (§ 668.603)'' section above. First, the final rule includes a teach-out provision that allows institutions to continue receiving title IV, HEA funds if they agree to an orderly program closure. Failing programs that exercise this teach-out option can continue to receive title IV, HEA funds for the lesser of three years or the full-time normal duration of the program, meaning students currently enrolled in these failing programs would not be immediately impacted.

Second, the final rule includes an appeals process that allows institutions to appeal the Department's determination for failing programs. If institutions successfully appeal, those programs initially identified as failing would not lose eligibility for Federal student loans.[48] As estimated in the PRA, the Department anticipates that approximately 1,000 programs may appeal the determination annually. However, it is not possible for the Department to estimate how many of these appeals may be successful. Therefore, we are unable to account for the possibility that the appeals process reduces the program fail rates in this RIA.

Methodology for Current Regulation Calculations

Throughout the RIA, the Department estimates the share of programs that fail the accountability framework under the current and final regulations to determine the net-effects of the final regulations relative to the baseline.[49] We first estimate which programs would fail the earnings premium measure and D/E metrics under the current regulations. Consistent with the current GE regulation, we count a GE program as failing if it failed either the earnings premium measure or the D/E metric according to our estimates of these measures using PPD:2026.

GE programs are counted as failing the earnings premium measure under the current regulation if the median earnings of program graduates is below the earnings threshold, which is defined as the median annual earnings of working individuals aged 25 to 34 whose highest level of educational attainment is a high school diploma (or equivalent) in the relevant geographic area.[50] For this calculation, we used the three-year median earnings of title IV program graduates in the labor market who completed during the 2014–15 and 2015–16 pooled award years, obtained from the IRS.[51] To calculate the earnings threshold, we used the median annual earnings of working high school graduates using the 2023 ACS 5-Year Estimates, obtained from IPUMS.[52] All monetary values were adjusted to constant 2024 dollars using the CPI–U.

Next, we counted GE programs as failing the D/E metric if they failed either the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation.[53] For this calculation the Department used program-level data on cumulative student debt from the College Scorecard for individuals who completed during the pooled 2017–18 and 2018–19 award years.[54] To

[48] The inability to account for these factors may ultimately result in a slight overestimate in the share of programs, students, and title IV, HEA student aid disbursements impacted under the final rule.

[49] While the baseline assumes the current regulations are in effect, we note that no program has actually failed the current regulations at the time this regulation is published because the EP and D/E metrics (as defined under the current regulations) have not yet been computed by the Department. However, in the absence of this final rule, these rates would be calculated, which is why we use the impact of the current regulation as the baseline to judge the impact of the final rule.

[50] Under the current regulations, for programs that enrolled more than 50 percent of their students from the state where the institution is located, the relevant geographic area is the state in which the college is located. For programs that enroll 50 percent or less of their students from the state where the institution is located, the relevant geographic area is the entire United States. In our analysis, we do not observe the share of enrollees in a program that are from out of State. We proxy for program-level in-State enrollment shares using institution-level data on the share of students across the entire institution who are from in-State. To determine whether an institution enrolls more than half its students from out-of-state, we use each enrolled student's address reported in the student's most recently reported FAFSA relative to the award year being evaluated.

[51] These data were collected by the Department for the original version of the PPD during development of the current GE/FVT regulation. It is the only cohort of students for which readily available earnings data match the requirements of the current GE/FVT regulation. The Department does not have more recent data that match these requirements. Note that one of the measurement years for earnings was during the COVID–19 pandemic. Specifically, title IV completers from the 2014–15 award year had their earnings measured during the 2019 calendar year, and title IV completers from the 2015–16 award year had their earnings measured during the 2020 calendar year. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. The median earnings value includes statistical noised added by the IRS to protect student privacy.

[52] Earnings were defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and farm income (*incbus00*). The median earnings value is taken using individuals who live in the relevant geographic area (*e.g.,* the corresponding state, or nationally), who have the relevant educational attainment level (*e.g.,* those who only have a high school diploma or equivalent with no postsecondary education), who are between 25–34 years old (inclusive), and who have a positive, non-zero income. Appropriate survey weights were utilized to ensure estimates were representative at the national and state levels.

[53] The Annual Earnings Rate measure is defined as Annual Earnings Rate = (Annual Loan Payment)/(Annual Earnings); the Discretionary Earnings Rate measure is defined as Discretionary Earnings Rate = (Annual Loan Payment)/(Discretionary Earnings). Under current regulation, programs are counted as failing the D/E metric if the Annual Earnings Rate measure exceeds 8% or if the Discretionary Earnings Rate measure exceeds 20% in two out of three consecutive years.

[54] To calculate the Annual Loan Payment amount, the Department used the following amortization periods: undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs are amortized over 10

Continued

calculate the annual loan payment amount (which is used in both the Earnings Rate Measure and Discretionary Earnings Rate measure), we assumed a 4.45 percent interest rate on loans for undergraduate programs and a 6.23 percent interest rate for graduate programs.[55] To calculate the denominator for the Annual Earnings Rate measure and the Discretionary Earnings Rate measures, we used the same program-level earnings measure described above. When relevant, we used 150 percent of the Federal Poverty Guidelines for a single person in 2024, which was $22,590.[56]

years; bachelor's and master's degree programs are amortized over 15 years; and doctoral and first professional degree programs are amortized over 20 years. These differing amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (*e.g.,* bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans. The amortization rates mirror those used in the 2014 and 2023 prior rules.

[55] These interest rates were determined by taking a weighted average of the interest rates on Undergraduate Unsubsidized Stafford Loans, Graduate Stafford Loans, and Grad PLUS Loans between 2016 and 2019, which were the available interest rates on these loans around the time that borrowers completed their programs.

[56] The Federal Poverty Guideline is used to calculate the denominator of the Discretionary Earnings Rate measure.

Methodology for Final Regulation Calculations

The Department estimated which programs would fail the revised earnings premium measure under the final regulation using PPD:2026. Programs are counted as failing if the median earnings of *working* program graduates are below the relevant earnings threshold. For this calculation, we used the four-year median earnings (from the College Scorecard) of title IV program graduates who completed during the 2017–18 and 2018–19 pooled award years and were working at the time earnings was measured.[57]

The relevant earnings thresholds for each program are listed in Table 5.5. There are six different earnings thresholds in which a program could be judged under the final regulation, including:

- *In-State High School (HS).* The median earnings of individuals aged 25–34 in the state where the college is located, who are working,[58] and have only a high school diploma or its recognized equivalent.
- *National HS.* The median earnings of individuals aged 25–34 in the entire United States, who are working, and have only a high school diploma or its recognized equivalent.
- *Same-State, Same-Field Bachelor's degree (BA).* The median earnings of individuals aged 25–34 in the state where the college is located, who are working, and have a bachelor's degree in the same field of study.
- *Same-State BA.* The median earnings of individuals aged 25–34 in the state where the college is located, who are working, and have a bachelor's degree.
- *National Same-Field BA.* The median earnings of individuals aged 25–34 in the entire United States who are working and have a bachelor's degree in the same field of study.
- *National BA.* The median earnings of individuals aged 25–34 in the entire United States who are working and have a bachelor's degree.

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[57] Specifically, title IV, HEA completers from the 2017–18 award year had their earnings measured during the 2022 calendar year, and title IV, HEA completers from the 2018–19 award year had their earnings measured during the 2023 calendar year. Earnings were inflation adjusted to 2024 using CPI–U. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. Individuals are determined to be ''working'' if they had positive income reported to the IRS from wages, salary, or self-employment during the calendar year earnings were measured. The median earnings value includes statistical noise added by the IRS to protect student privacy.

[58] For all six ETs in the final regulation, we determine an individual was working if the individual reported positive, non-zero personal income from wages, salary, or self-employment income (including farm income) during the year. Individuals who reported that they were currently unemployed (at the time they completed the survey) but had otherwise worked during other parts of the year (meaning they had positive personal income from wages, salary, or self-employment) are still counted as working.

Table 5.5 - List of Earnings Thresholds used in the Revised Earnings Premium Measure in the Final Regulation

	Earnings Thresholds Applied Under the Proposed Regulations	
	<50% Institution Enrollment from Out-of-State	≥ 50% Institution Enrollment from Out-of-State
	(1)	(2)
Undergrad Cert	In-State HS Median	National HS Median
Associates	In-State HS Median	National HS Median
Bachelors	In-State HS Median	National HS Median
Post-Bacc Cert	In-State HS Median	National HS Median
Masters	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Doctoral	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Professional	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Grad Cert	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median

Notes: See text for a definition of the earnings threshold names used in this table. Consistent with the final rule, out-of-state enrollment shares are determined using enrollment from the entire institution using the location of the main campus (defined by six-digit OPEIDs) and the students' home location based on the address reported on their most recently reported FAFSA relative to the award year being evaluated.

To calculate each of the six earnings thresholds, we used data from the 2023 ACS 5-Year Estimates, obtained from IPUMS. We defined earnings using the same approach described in the ''Methodology for Current Regulation Calculations'' section.[59] We computed each specific earnings threshold by using the corresponding group of individuals aged 25–34 who live in the relevant geographic area (*e.g.,* the corresponding state, or nationally), who have the relevant educational attainment level (*e.g.,* high school diploma/recognized equivalent or bachelor's degree in the relevant field of study), and who are not currently enrolled in college.[60]

A majority of programs are compared against the in-state earnings thresholds, reflective of the fact that most postsecondary students are in-state residents of the college they attend. Summary statistics on the share of programs that compared against the in-state thresholds are shown in Table 5.6. This reveals variation in the rate at which certain types of programs are judged against the in-state thresholds. For example, undergraduate Culinary & Personal Services programs are most likely to be compared to the in-state earnings threshold (96 percent), whereas graduate-level Religious Studies programs are least likely to be compared to the in-state earnings threshold (55 percent).

[59] Specifically, earnings are defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and farm income (*incbus00*), and are adjusted to 2024 dollars using CPI–U. Individuals with $0 or non-positive earnings are omitted from the medians.

[60] Appropriate survey weights were utilized to ensure estimates were representative at the National and state levels. For institutions that enrolled fewer than 50 percent of their students from in-state, the relevant geographic area is the State in which the college is located. For institutions that enrolled 50 percent or more of their students from out-of-state, the relevant geographic area is the entire United States. To determine if students are from in-state or out-of-state, we use each enrolled Title IV student's address reported in the student's most recently reported FAFSA relative to the award year being evaluated.

Table 5.6 – Share of Programs Compared to In-state and Out-of-state Earnings Thresholds, by Broad Field of Study and Credential Level

Broad Field of Study	Share of Programs with <50% Institution Enrollment from Out-of-State	Share of Programs with ≥50% Institution Enrollment from Out-of-State
A. Undergraduate Programs		
Business/Management	87.4	12.6
Computer/Information Science	85.1	14.9
Culinary & Personal Services	96.4	3.6
Education	90.7	9.3
Engineering/Math	84.0	16.0
Health-Related	91.8	8.2
Humanities/Liberal Arts	85.9	14.1
Life Sciences	83.4	16.6
Other Technical/Professional	87.8	12.2
Physical Sciences	86.3	13.7
Religious Studies	64.2	35.8
Social/Behavioral Sciences	81.4	18.6
Vocational/Technical	94.1	5.9
B. Graduate Programs		
Business/Management	77.8	22.2
Computer/Information Science	72.4	27.6
Culinary & Personal Services	100.0	0.0
Education	88.0	12.0
Engineering/Math	77.0	23.0
Health-Related	81.0	19.0
Humanities/Liberal Arts	76.7	23.3
Life Sciences	78.2	21.8
Other Technical/Professional	77.9	22.1
Physical Sciences	83.6	16.4
Religious Studies	55.4	44.6
Social/Behavioral Sciences	80.3	19.7
Vocational/Technical	78.6	21.4

Notes: Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies were combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Undergraduate programs include ungraduated certificate programs, associate degree programs, baccalaureate degree programs, ang post-baccalaureate certificate programs. Graduate programs include master's degree programs, doctoral programs, professional programs, and graduate certificate programs. Consistent with the final rule, out-of-state enrollment shares are determined using enrollment from the entire institution using the location of the main campus (defined by six-digit OPEIDs) and the students' home location based on the address reported on their most recently reported FAFSA relative to the award year being evaluated. Source: Department of Education calculations using PPD:2026.

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For the ''*Same-State, Same-Field BA*'' and ''*National Same-Field BA*'' earnings thresholds, we determined programs to have the same field of study if the graduate program shared the same 2-digit CIP as the bachelor's degree program.[61] Monetary values were adjusted to constant 2024 dollars using the CPI–U. In a small number of cases we could not reliably calculate the ''*Same-State, Same-Field BA*'' earnings threshold due to the small number of individuals sampled in the ACS in the correct age range who had a bachelor's degree in a specific field and were located in the relevant state.[62] In these cases, we removed these graduate programs from the analysis because they are expected to automatically pass the earnings test, consistent with the process described in the ''Earnings threshold—Data Source'' section.[63] The Department estimates that this removes approximately 2,650 graduate programs from the analysis (Table 5.1).

Programs are counted as failing the revised earnings premium test under the final regulations if the median earnings of program graduates were below the relevant earnings threshold in Table 5.5.

Accounting for Additional Provisions in the Final Regulation

The Department's impact analysis also accounts for four provisions that are included in this final rule. First, the final regulations modify the standards of administrative capability as described in the ''Administrative Capability and Consequences'' section. Under this provision, all programs (GE- and non-GE programs alike) that fail the revised earnings premium test will lose access to Pell Grants (in addition to losing access to Federal student loans) if:

- More than half of title IV, HEA funds disbursed to an institution are to students attending programs that fail the revised EP test under the final regulations; or
- More than half of title IV students enrolled at an institution are in programs that fail the revised EP test under the final regulations.

To account for this provision, the Department used PPD:2026 to calculate the total amount of title IV, HEA funds (Pell Grants and Federal student loans) disbursed to failing programs during the 2024–25 award year. Then, we calculated the share of title IV students and title IV, HEA funds in failing programs at each institution. If either of those shares exceeded 50 percent, the institution is considered as failing the standards of administrative capability requirements, and its failing programs are counted as losing eligibility for both Federal student loans and Pell Grants.[64]

Second, as described above in the ''Department Authority (Including GE and Quality Assurance Authority)'' section, the accountability framework in this rule will not apply to programs at institutions that have not participated in the Direct Loan program for the prior five award years. To account for this provision, the Department removed programs with $0 in federal student loan disbursements between 2020–21 and 2024–25 from this analysis.

Third, as described in the ''Department Authority (Including GE and Quality Assurance Authority)'' section, the final rule allows colleges to voluntarily remove programs from the Federal student loan program for a period of five years after the initial year a program fails the revised earnings premium test. Voluntarily removing a program from the Federal student loan program will mean the programs will not be at risk of failing the standards of administrative capability requirements. As a consequence, these failing programs can preserve their Pell Grant eligibility by pre-emptively opting out of the Federal student loan program after the first year they fail the revised earnings premium test.

The Department used PPD:2026 and supplemental data from IPEDS to estimate which failing programs would likely choose to opt out of the Federal loan program under this provision. For this estimate, we began by calculating which programs and institutions would fail the revised earnings premium test under the final rule and the standards of administrative capability requirements, respectively. Then, we used Pell Grant disbursement data from PPD:2026 to calculate the average Pell Grant award disbursed to Pell-recipients in each program during the 2024–25 award year (or from the 2023–24 award year, if data from 2024–25 is missing). Lastly, using institutional tuition data from IPEDS for the 2024–25 award year (or the 2023–24 award year, if data for 2024–25 were missing) we calculated the weighted average of the in-state and out-of-state average net tuition and fees.[65]

For the subset of failing programs at institutions that also fail the standards of administrative capability requirements, we assume that colleges would voluntarily remove these programs from the Federal student loan program if their Pell Grant recipients received an average Pell Grant disbursement within 120 percent of the institution's weighted average tuition and fees. This is because these programs are likely able to continue operating on Pell Grant funding alone, given the relative closeness between the institution's tuition and fees and the average Pell Grant awards received by students in the failing programs. Ultimately, for this subset of failing programs, our analysis assumes those programs will only lose eligibility for Federal student loans because it is likely

[61] We used the variable DEGFIELD from the ACS to crosswalk fields of study to two-digit CIP codes. To do so, we subtracted 10 from the value of DEGFIELD to match the corresponding two-digit CIP code. One exception was DEGFIELD=38 (Military Technologies), where we had to subtract 11 (rather than 10) to achieve the corresponding two-digit CIP code. For more information, see *https://usa.ipums.org/usa-action/variables/DEGFIELD#codes_section.*

[62] If an earnings threshold would be based on fewer than 30 individuals in the ACS, we did not calculate the earnings threshold because we believed it would not be statistically reliable or representative. As described earlier in this RIA, these programs are removed from the analysis.

[63] These programs are expected to automatically pass the earnings test because the earnings threshold they would be compared against is $1.

[64] Our estimates may slightly overcount the share of programs that lose access to Pell Grants under the final regulation's revisions to the standards of administrative capabilities. This is because the revised standards in the final regulation apply to institutions after three years of failing the revised earnings premium metric. However, as described above, we do not observe multiple, consecutive years of program-level earnings data in PPD:2026. Thus, our estimates may slightly overcount the share of programs that are impacted by the final regulation's revisions to the standards of administrative capabilities since we assume they fail this standard after failing the accountability framework in a single year.

[65] We calculate an institution's average tuition as the weighted average of the in-state and out-of-state average net tuition price, where the average tuition and fees are weighted by the share of in-state and out-of-state students at the institution.

those programs will choose to opt-out of the Federal student loan program and therefore avoid the penalties associated with failing the standards of administrative capability requirements.

Fourth, as described in the ''Earnings of Program Completers—Use of IRS Data'' section, the final rule delays the implementation of the accountability framework for a subset of programs associated with predominantly-tipped occupations. The programs that qualify for the delay are listed in Table 5.22.[66] The Department accounts for this provision in the following manner. First, for our main analysis presented in the ''Impact of the Final Regulations on Institutions'', ''Impact of the Final Regulations on Programs'', and ''Impact of the Final Regulations on Students'' sections, these programs are included, meaning they are not counted as either passing or failing the earnings test. This is because the analysis in those sections assumes this rule is fully implemented (*i.e.,* it assumes the delay period has ended).[67] However, in the ''Impact of the Delayed Implementation for Certain Programs'' section, we conduct a secondary analysis where we examine how ''first-year'' fail rates (*i.e.,* the fail rates of programs in 2028/29) are likely to differ from the fail rates when the delay provision has expired. In that analysis, we remove from the sample programs that qualify for the delay provision, thereby showing the rule's impact on programs after those programs are excluded from the earnings test.

Impact of the Final Regulations on Institutions

Although the current and final regulations establish an accountability framework for individual programs, we considered their effects on institutions with two approaches: by estimating how many programs fail within each level of institution type, and how many institutions will see high and low rates of program failure. For this analysis, higher education institutions are categorized into levels by their predominant degree offered (Less-than 2-year; 2-year; 4-year; Exclusively Graduate-degree Granting).

Examining the rate of program failure within levels, we estimate that 30.2 percent of programs at the less-than 2-year level would fail under the current regulation, whereas only 23.7 percent are estimated to fail under the final regulation (Table 5.7). At the two-year, four-year, and graduate levels, we estimate an increase in the share of programs that fail the accountability framework under the final regulation. Overall, the Department estimates that slightly more programs will fail under the final regulation relative to the current regulation (5.2 percent vs. 4.6 percent), but these programs enroll fewer students than those that fail under the final regulation (4.2 percent vs. 4.7 percent), which contributes to a smaller loss in title IV disbursements (4.1 percent vs. 5.2 percent). This is consistent with the estimated net cost from the final regulation in the net budget impact section, as shown in Tables 7.1A and 7.1B.

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[66] See section ''Earnings of Program Completers—Use of IRS Data'' for an explanation of how this list of programs was assembled.

[67] In other words, that analysis assumes the rule has been in effect for at least four years, such that the delay period is over and most programs covered by the rule, including those listed in Table 5.22, have been subject to the accountability provisions in this regulation. One exception is 160 small cosmetology and massage therapy programs, which continue to be excluded from the main analysis because these programs will not be subject to the earnings test until a later year between 2030 and 2032.

Table 5.7 - Estimated Impact of the Final Regulation on Institutions, by Predominant Degree Awarded

Institution Level	Number of Institutions	Programs: Number of Programs	Programs: Share of Programs that Fail	Title IV Enrollments: Number of Students	Title IV Enrollments: Enrollment In Failing Programs	Title IV Volume: Annual Volume ($ Millions)	Title IV Volume: Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
A. Current Regulations							
L/T 2-Year	1,620	6,800	30.2	1,990,500	25.4	10,181	33.6
2-Year	750	9,200	5.7	3,530,100	3.6	12,050	5.6
4-Year	1,630	45,400	0.5	10,648,300	1.3	77,934	1.7
Exclusively Grad	150	500	4.1	99,700	0.9	3,630	0.6
Total	4,150	61,900	4.6	16,268,500	4.7	103,794	5.2
B. Final Regulations							
L/T 2-Year	1,620	6,800	23.7	1,990,500	18.2	10,181	20.7
2-Year	750	9,200	7.2	3,530,100	4.8	12,050	5.4
4-Year	1,630	45,400	1.9	10,648,300	1.4	77,934	1.7
Exclusively Grad	150	500	12.7	99,700	5.0	3,630	3.4
Total	4,150	61,900	5.2	16,268,500	4.2	103,794	4.1

Notes: The sample is limited to programs that the Department estimates will be subject to the accountability framework under the final rule. This sample excludes programs that are estimated to have fewer than 30 title IV completers after the cohort aggregation process, programs located in US territories where ACS data are missing, graduate-level programs located in states where ACS data are unreliable, and programs that have not participated in the Federal loan program between 2021-2025. Programs with missing earnings data are assumed to fail at rates of similar programs with the same control, credential level, broad field of study category, and predominant degree of institution. N sizes in column 1 are rounded to the nearest 10; N sizes in columns 2 and 4 are rounded to the nearest 100; N sizes in column 6 are rounded to the nearest million. N sizes may not sum to totals due to rounding.
Source: Department of Education calculations using PPD:2026.

Next, we estimated how many programs within each institution would fail the accountability framework under the current and final regulations and then assigned institutions to one of five groups based on the degree to which students attend programs that fail (Tables 5.8 and 5.9). For this analysis we disaggregate institutions by level and sector (Public; Private Non-Profit; Proprietary).[68]

This analysis shows that approximately 94 percent and 98 percent of public and private non-profit institutions, respectively, have 0 percent of their enrollment in failing GE programs under the baseline (Table 5.8). At the other end of the distribution, we find that less than 1 percent of public and private non-profit institutions have all (100 percent) of their enrollment in failing GE programs under the baseline.

These rates noticeably differ from shares estimated for the final regulation (Table 5.9). Sixty-nine percent and 81 percent of public and private non-profit institutions, respectively, are unaffected by the final regulation (these institutions have 0 percent of their enrollment in failing programs). On the other end of the distribution, about 3 percent of private non-profit institutions have 100 percent of their enrollment in failing programs, which is four times the rate as the current regulation.

[68] Estimates for the current regulation are based on enrollments in GE programs with non-missing earnings data, while estimates for the final regulation are based on enrollments in all types of programs with non-missing earnings data.

Table 5.8 - Share of Enrollment in Programs that Fail the Current Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing GE Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	370	87.4	9.6	1.1	0.5	1.4
2-Year	570	93.1	6.0	0.4	0.4	0.2
4-Year	540	99.6	0.4	0.0	0.0	0.0
Exclusively Grad	10	100.0	0.0	0.0	0.0	0.0
Total	1,490	94.1	4.8	0.4	0.3	0.4
B. Non-Profit						
L/T 2-Year	80	81.0	1.2	2.4	4.8	10.7
2-Year	80	96.2	2.5	1.3	0.0	0.0
4-Year	1,020	99.5	0.4	0.0	0.0	0.1
Exclusively Grad	120	100.0	0.0	0.0	0.0	0.0
Total	1,300	98.2	0.5	0.2	0.3	0.7
C. Proprietary						
L/T 2-Year	1,170	42.5	1.2	2.8	3.6	49.8
2-Year	100	64.4	8.9	5.0	6.9	14.9
4-Year	70	70.0	11.4	12.9	1.4	4.3
Exclusively Grad	20	84.2	0.0	0.0	0.0	15.8
Total	1,360	46.1	2.3	3.4	3.7	44.4

Notes: Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing GE programs (conditional on having earnings data) under the 2023 GE/FVT regulations out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T" = Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

Table 5.9 - Share of Enrollment in Programs that Fail the Final Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	370	71.8	23.0	3.0	0.8	1.4
2-Year	570	68.3	28.0	2.1	1.1	0.5
4-Year	540	67.5	32.1	0.2	0.2	0.0
Exclusively Grad	10	100.0	0.0	0.0	0.0	0.0
Total	1,490	69.1	28.1	1.6	0.7	0.5
B. Non-Profit						
L/T 2-Year	80	75.0	4.8	1.2	7.1	11.9
2-Year	80	86.3	6.3	1.3	2.5	3.8
4-Year	1,020	81.0	14.9	2.1	0.7	1.4
Exclusively Grad	120	82.1	4.9	0.8	0.8	11.4
Total	1,300	81.1	12.8	1.9	1.2	3.1
C. Proprietary						
L/T 2-Year	1,170	34.6	4.4	2.4	3.2	55.5
2-Year	100	76.2	8.9	2.0	4.0	8.9
4-Year	70	70.0	22.9	2.9	2.9	1.4
Exclusively Grad	20	89.5	0.0	0.0	0.0	10.5
Total	1,360	40.3	5.6	2.4	3.2	48.6

Notes: Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing programs (conditional on having earnings data) under the final regulation out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T"=Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

The Department also estimated the impact of the final regulation on special types of institutions and those with unique missions, including Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), Minority Serving Institutions (MSIs), religiously affiliated institutions, rural institutions, and institutions located in U.S. territories, and single-program institutions (Table 5.10). We find that a larger share of programs at HBCUs, MSIs, religiously affiliated colleges, rural institutions, and institutions in U.S. territories will be more negatively impacted by the final regulation relative to the current regulation. Single-program institutions are less impacted under the final regulation because fewer programs at these institutions are estimated to fail the accountability framework relative to the baseline.

Table 5.10 - Estimated Impact of the Final Regulation on Institutions with Specialized Missions

Institution Type	Programs		Students		Title IV Volume	
	Number of Programs	Share of Programs that Fail	Number of Students	Enrollment In Failing Programs	Annual Volume ($ Millions)	Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)
A. Current Regulations						
HBCUs	1,100	0.9	242,800	0.1	2,440	0.1
TCCUs	<100	<0.1	800	<0.1	2	<0.1
Other MSIs	15,500	2.4	5,102,800	2.0	26,319	1.5
Religiously Affiliated	9,700	0.3	1,335,000	0.4	11,958	0.2
Rural	5,400	3.4	1,198,700	1.3	6,369	1.2
Institutions in U.S. Territories	800	<0.1	179,000	<0.1	1,218	<0.1
Single-Program Institutions	800	80.5	157,600	80.6	1,313	66.7
B. Final Regulations						
HBCUs	1,100	3.1	242,800	4.1	2,440	2.4
TCCUs	<100	<0.1	800	<0.1	2	<0.1
Other MSIs	15,500	3.2	5,102,800	2.6	26,319	2.3
Religiously Affiliated	9,700	1.9	1,335,000	2.0	11,958	1.3
Rural	5,400	3.9	1,198,700	1.8	6,369	1.1
Institutions in U.S. Territories	800	2.0	179,000	1.0	1,218	0.4
Single-Program Institutions	800	76.0	157,600	79.5	1,313	68.2

Notes: "Other MSIs" include colleges with any of the following designations: PBI, AANAPII, HSI, and ANNHI. "TCCUs" refers to Tribally Controlled Colleges and Universities. "Religiously affiliated" institutions include colleges with any listed religious affiliation from any denomination. "Rural" institutions are institutions located in counties where 50 percent or more of the population in the county lives in a designated rural census track. "Institutions in US Territories" include institutions of higher education located in any of the following territories: AS, FM, GU, MH, MP, PR, PW, VI. "Single-Program Institutions" are institutions that only have a single program (defined by credential level and four-digit CIP) at the college. Counts in columns 1 and 3 are rounded to the nearest 100. Counts in column 5 are rounded to the nearest million. Percentages in columns 2, 4, and 6 are computed prior to rounding. Enrollment includes title IV enrollees during the 2024-25 award year. Title IV volume is the annual title IV volume disbursed during the 2024-25 award year.

Source: Department of Education calculations using PPD:2026.

The Department also estimated the share of institutions that fail the standards of administrative capability requirements under the current and final regulations (Table 5.11). Overall, similar shares of institutions will fail the standard (15.4 percent and 14.5 percent under the final and current regulations, respectively). Although these are similar shares, the penalty for failing the standard is less under the final regulation. Under the final rule, only the subset of failing programs at institutions that fail the standards of administrative capability requirements lose access to all title IV, HEA aid. This differs from the current regulations, where *all* programs at an institution that fails to meet the standard would lose access to all title IV, HEA funds.

Proprietary institutions are expected to fail the standards of administrative capabilities at the highest rates. Under the final rule, the Department estimates that approximately 43 percent of proprietary institutions are estimated to fail. One reason the proprietary sector has higher fail rates is because these institutions offer fewer programs, making it more likely that failing programs will account for a majority of enrollment or title IV HEA funds at the institution. Less than two-year proprietary institutions offer an average of just 5 programs (Panel C, column 4). If just one or two programs at one of these institutions fails the accountability framework under the final regulations, the institution has a higher probability of failing the standards of administrative capabilities than other institutions that offer a broad range of programs where enrollments and title IV, HEA funds are more disbursed.

Table 5.11 - Percent of Institutions that Fail the Standards of Administrative Capability Requirements, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Percent that Fail the Standards of Administrative Capabilities		Average Number of Programs Per Institution
		Current Regulations	Final Regulations	
	(1)	(2)	(3)	(4)
A. Public				
L/T 2-Year	610	2.6	0.7	36
2-Year	650	2.0	<0.1	65
4-Year	550	0.5	<0.1	124
Exclusively Grad	10	<0.1	<0.1	15
Total	1820	1.7	0.2	73
B. Non-Profit				
L/T 2-Year	150	12.4	9.7	7
2-Year	130	1.6	2.4	12
4-Year	1180	1.1	1.4	54
Exclusively Grad	220	1.9	6.0	6
Total	1680	2.3	2.8	40
C. Proprietary				
L/T 2-Year	1380	49.3	48.9	3
2-Year	110	16.7	7.9	10
4-Year	80	14.5	3.6	27
Exclusively Grad	30	20.0	6.7	6
Total	1600	44.8	43.0	5
Grand Total	5100	15.4	14.5	41

Notes: In this analysis, programs with missing earnings data are assumed to pass the accountability framework under the current and final rule. The sample in this table includes all programs and institutions in PPD:2026. The N sizes (institution counts) in column 1 differ from the institution counts in prior tables because the counts in prior tables were based on the subset of programs that are estimated to be subject to the accountability framework under the final rule.
Source: Department of Education calculations using PPD:2026.

Impact of the Final Regulations on Programs

The Department estimated the share of programs by credential level that will be impacted by the final regulation (Table 5.12). We estimate the final regulation will result in a slight increase in the total share of programs that would fail the accountability framework, growing from 4.6 percent of all programs under current regulation to 5.2 percent under the final regulation (Panel A). This increase is driven by associate's, bachelor's, master's, and professional degree programs. Many of these programs are offered at institutions that are exempt from the accountability framework under the current regulation but are now subject to it under the final regulation. In contrast, undergraduate and graduate certificate programs are expected to fail the accountability framework at lower rates under the final regulations. These reductions in fail rates, however, are not enough to offset the large increase in expected fail rates among associate's, bachelor's, master's, and professional degree programs, resulting in a net increase in the share of programs that fail.

In terms of students (Panel B), we estimate the final regulation will result in a slight reduction in the total share of students enrolled at programs that would fail the accountability framework, dropping from 4.8 percent of students under the current regulation to 4.2 percent under the final regulation. Even though a larger share of programs would fail under the final regulation relative to the baseline, those programs are smaller and enroll fewer students than programs that fail under the current regulation on average.

Table 5.12 - Estimated Share of Programs that Fail and Enrollment in Failing Programs, by Credential Level

Credential Level	N	Share that Fail	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Program-Weighted			
Undergrad Cert	7,260	33.4	24.1
Associate	9,630	2.3	6.0
Bachelor	29,670	0.3	1.1
Post-Bacc Cert	120	<0.1	3.9
Masters	12,140	0.5	4.2
Doctoral	1,640	0.5	0.7
Professional	640	0.2	2.0
Grad Cert	780	5.0	2.0
Total	61,880	4.6	5.2
B. Student-Weighted			
Undergrad Cert	1,389,600	42.3	27.6
Associate	4,350,000	1.8	3.9
Bachelor	8,163,500	0.9	0.6
Post-Bacc Cert	9,400	<0.1	1.4
Masters	1,750,100	1.0	4.1
Doctoral	295,100	2.1	0.8
Professional	229,100	2.7	4.9
Grad Cert	81,700	7.3	2.8
Total	16,268,500	4.8	4.2

Notes: In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to the nearest 10 in panel A and to the nearest 100 in panel B. Total Ns may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year. "Final Regs"=Final Regulations. Source: Department of Education calculations using PPD:2026.

When looking at the effect of the final regulation on sectors (Table 5.13), we estimate that the public and non-profit sectors will experience a net-increase in the share of programs that fail. This is because many programs offered in these sectors are exempt from the accountability framework under the current regulation. Conversely, under the final regulations, we estimate that the proprietary sector will experience a reduction in the share of programs expected to fail—primarily driven by the reduction in failing undergraduate certificate programs. This is largely because under the current regulations, undergraduate programs at proprietary institutions are subject to a more-punitive earnings premium measure relative to the final regulations.[69]

We find this pattern holds when weighting by title IV enrollment (Table 5.14). Under the final regulations, we estimate that 1.8 percent of students at programs in the public sector attend programs expected to fail the accountability framework. This is modestly higher than the estimated share who attended failing programs under current regulations (1.1 percent). The increase is driven by the large number of students who attended associate's, bachelor's, and master's degree programs at public institutions that would be subject to the

[69] By ''more-punitive'', we mean the earnings premium metric under the current regulations uses median program earnings measured 3-years after completion and includes the earnings of non-working individuals. Conversely, the revised earnings premium metric in the final regulations uses median program earnings measured 4-years after completion and only includes the earnings of working individuals.

accountability framework but are currently exempt. This increase more than offsets the reduction in students attending undergraduate certificate programs at public institutions that are no longer expected to fail the accountability framework. A similar pattern exists for students who attend private non-profit programs (Panel B). While there is a reduction in the share of students who attended failing certificate programs at those institutions, there are increases in the shares of students who attend failing programs in all other credentials, resulting in an overall increase in the share of students who attend failing programs.

In the proprietary sector (Panel C), we estimate that fewer students attend programs that fail the accountability framework in the final regulations relative to the current regulations (18.0 percent vs. 29.9 percent), mainly because the test was made slightly less punitive under the final regulation (program earnings are measured after 4-years and include only working individuals).

Table 5.13 - Estimated Share of Programs that Fail, by Credential Level and Sector

Credential Level	Number of Programs	Share that Fail	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Public			
Undergrad Cert	4,690	16.0	10.5
Associate	8,190	0.0	5.5
Bachelor	17,600	0.0	0.9
Post-Bacc Cert	80	<0.1	<0.1
Masters	6,600	0.0	3.1
Doctoral	810	0.0	0.2
Professional	340	0.0	<0.1
Grad Cert	410	2.7	2.1
Total	38,720	2.0	3.4
B. Non-Profit			
Undergrad Cert	380	25.4	19.2
Associate	660	0.0	6.7
Bachelor	11,490	0.0	1.2
Post-Bacc Cert	40	<0.1	13.0
Masters	5,190	0.0	5.1
Doctoral	740	0.0	1.4
Professional	290	0.0	3.7
Grad Cert	320	6.8	1.5
Total	19,110	0.6	2.9
C. Proprietary			
Undergrad Cert	2,190	71.9	54.0
Associate	770	29.2	10.4
Bachelor	570	15.5	3.3
Post-Bacc Cert	0	<0.1	<0.1
Masters	360	17.7	13.3
Doctoral	90	9.1	<0.1
Professional	20	6.7	13.3
Grad Cert	60	11.6	3.9
Total	4,060	48.5	32.9

Notes: Ns are rounded to nearest 10. Total program counts may not sum to their subcomponents due to rounding. "Final Regs"=Final Regulations.
Source: Department of Education calculations using PPD:2026.

Table 5.14 - Estimated Share of Enrollment in Programs that Fail, by Credential Level and Sector

Credential Level	Title IV Enrollment	Enrollment in Failling Programs	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Public			
Undergrad Cert	603,700	19.2	9.0
Associate	3,754,700	0.0	2.9
Bachelor	5,334,600	0.0	0.4
Post-Bacc Cert	6,800	<0.1	<0.1
Masters	770,500	0.0	1.6
Doctoral	94,200	0.0	0.1
Professional	108,600	0.0	<0.1
Grad Cert	37,100	1.2	1.3
Total	10,710,200	1.1	1.8
B. Non-Profit			
Undergrad Cert	64,900	49.0	36.4
Associate	236,700	0.0	16.6
Bachelor	2,140,400	0.0	0.8
Post-Bacc Cert	2,100	<0.1	6.2
Masters	721,700	0.0	3.8
Doctoral	151,400	0.0	1.4
Professional	107,900	0.0	4.5
Grad Cert	31,700	3.0	0.4
Total	3,456,800	0.9	3.3
C. Proprietary			
Undergrad Cert	721,100	61.1	42.4
Associate	358,500	21.4	6.5
Bachelor	688,400	11.2	1.3
Post-Bacc Cert	500	<0.1	<0.1
Masters	258,000	6.9	12.5
Doctoral	49,500	12.8	0.0
Professional	12,600	48.8	49.5
Grad Cert	12,900	35.5	12.8
Total	2,101,500	29.9	18.0

Notes: Ns are rounded to nearest 100. Total enrollment counts may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year. "Final Regs"=Final Regulations.
Source: Department of Education calculations using PPD:2026.

The Department also estimated the share of title IV, HEA funds disbursed to students who attend programs expected to fail the accountability framework, disaggregated by credential level (Table 5.15).[70] [71] Overall, the Department estimates that failing programs under the final regulations would lose a smaller amount of title IV, HEA funds than failing programs under the current regulations (4.0 percent vs. 5.2 percent). Undergraduate certificate programs will experience the largest change. Under the current regulations, more than half (50.2 percent) of all title IV, HEA funds disbursed to undergraduate certificate programs are projected to be lost due to the accountability framework. Under the final regulations, only 29.4 percent is projected to be lost. This reduction is driven by the fact that programs lose eligibility for only Federal student loans under the final regulation (unless the failing program is offered at an institution that also fails the standards of administrative capabilities, and the program is also estimated to not opt out of the federal loan program), and because undergraduate certificate programs face a less-punitive accountability framework.

Table 5.15 - Estimated Annual Title IV, HEA Program Volume and Share Disbursed to Programs that Fail, by Credential Level

Credential Level	Annual Title IV Volume ($ Millions)	Volume to Failing Programs	
		Current Regs	Final Regs
	(1)	(2)	(3)
Undergrad Cert	7,257	50.2	29.4
Associate	15,154	4.5	4.1
Bachelor	48,810	1.4	0.6
Post-Bacc Cert	12	<0.1	1.3
Masters	17,511	1.2	4.4
Doctoral	5,147	2.1	1.6
Professional	9,434	0.4	2.9
Grad Cert	469	9.2	2.4
Total	103,794	5.2	4.0

Notes: Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Percentages in columns 2 and 3 are estimated prior to rounding. Total financial aid volume may not sum to its subcomponents due to rounding. Annual volume corresponds to disbursements made during the 2024-25 award year. "Final Regs"=Final Regulations.

Source. Department of Education calculations using PPD:2026.

When disaggregated by sector (Table 5.16), we estimate no net change in the overall amount of title IV, HEA funds disbursed to failing programs at public institutions. While undergraduate and graduate certificate programs in the public sector are expected to lose less Title IV, HEA aid under the final regulations (Panel A), most other credential levels at those institutions are expected to lose more title IV, HEA aid, resulting in no net change in the title IV, HEA disbursements.

The Department's estimates suggest that there could be a sizeable reduction in title IV, HEA funds disbursed to the non-profit sector (Panel B) because all programs in this sector are now subject to an accountability framework. Under the current regulations, just 0.8 percent of title IV, HEA funds disbursed to non-profit programs were to failing programs. Under the final regulations, that figure is estimated to increase to 3.9 percent, driven by failing associate's, bachelor's, master's, and professional degree programs. The proprietary sector (Panel C) demonstrates the opposite pattern. Under the final regulations, these programs will see an increase in

[70] Under the current regulations, lost title IV HEA funds includes both Pell Grants and Federal student loans. Under the final regulations, lost title IV, HEA funds include only Federal student loans, unless the program is at an institution that is estimated to also fail the administrative capability standards—in which case, lost title IV HEA funds also includes Pell Grants for that program.

[71] Our estimates on title IV, HEA student aid disbursements assume no program switching for students who switch from a failing program to a passing program and therefore continue to receive title IV, HEA funds.

title IV, HEA funds relative to the baseline. This is because the accountability framework is (generally) easier for these programs to pass, and the final regulation allows failing programs to continue receiving Pell Grants (as long as the institution does not fail the standards of administrative capability requirements).

Table 5.16 – Estimated Annual Title IV, HEA Program Volume and Share Disbursed to Programs that Fail, by Credential Level and Sector

Credential Level	Annual Title IV Volume ($ Millions)	Volume to Failing Programs	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Public			
Undergrad Cert	1,372	19.9	2.6
Associate	10,481	0.0	0.8
Bachelor	29,506	0.0	0.2
Post-Bacc Cert	6	<0.1	<0.1
Masters	6,165	0.0	1.6
Doctoral	1,109	0.0	0.1
Professional	3,990	0.0	0.0
Grad Cert	167	2.7	0.9
Total	52,796	0.5	0.5
B. Non-Profit			
Undergrad Cert	434	57.3	39.8
Associate	1,667	0.0	22.9
Bachelor	14,285	0.0	0.8
Post-Bacc Cert	6	<0.1	3.0
Masters	8,830	0.0	4.0
Doctoral	3,378	0.0	2.4
Professional	5,130	0.0	4.6
Grad Cert	224	5.2	0.5
Total	33,954	0.8	3.9
C. Proprietary			
Undergrad Cert	5,451	57.2	35.4
Associate	3,007	22.7	5.0
Bachelor	5,019	14.1	2.1
Post-Bacc Cert	1	<0.1	<0.1
Masters	2,517	8.2	12.3
Doctoral	661	16.5	0.0
Professional	314	10.5	11.1
Grad Cert	77	34.8	11.3
Total	17,047	28.6	14.9

Notes: Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Total volume may not sum to their subcomponents due to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year. "Final Regs"=Final Regulations. Source: Department of Education calculations using PPD:2026.

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Next, we estimated how the final regulations would impact specific fields of study.[72] The Department estimates that some undergraduate programs, such as Education programs (CIP=13), Humanities/Liberal Arts programs (CIPs=05, 16, 23, 24, and 50), and Religious Studies programs (CIPs=38 and 39) will fail at a higher rate relative to the baseline (Table 5.17). Other programs, such as Health-Related undergraduate programs (CIPs=51, 60, 34, and 61), Business/Management undergraduate programs (CIP=52), and Vocational/Technical undergraduate programs (CIPs=15, 41, 46, 47, 48, and 49), are estimated to fail at lower rates. Culinary & Personal Services undergraduate programs (CIP=12) will fail the accountability framework at the highest rates among all broad field of study categories, though the share that they fail under the final regulation (77 percent) is slightly lower than the share under the current regulation (83 percent). This implies that certain types of institutions offering these types of programs will likely benefit because fewer of their programs will be at risk of failing the accountability framework under this final rule, relative to the current baseline.

A somewhat different pattern is observed when estimates are weighted by enrollment (Table 5.18). For example, approximately half as many students attend failing Religious Studies undergraduate programs under the final rule than under the current baseline (3.9 percent vs. 7.8 percent). One reason for this difference is because the final regulation does not apply the accountability framework to programs that received no Federal student loans during the five award years prior to the enactment of the Working Families Tax Cut Act—many of which are religious programs that would have otherwise failed the revised earnings premium test.

Similarly, undergraduate programs in Religious Studies are also estimated to lose fewer title IV, HEA funds under the final regulation (Table 5.19). These programs will lose about half as much title IV, HEA funds under the final rule relative to the amount they would lose under the current regulations (2.9 percent vs. 8.1 percent). Again, this difference is driven by the provision in the final rule that exempts certain programs from the accountability framework if they are at institutions that received no Federal student loans during the prior five award years.

Other types of undergraduate programs, including Business/Management programs, Culinary & Personal Services programs, Health-related programs, Humanities/Liberal Arts programs, Other Technical/Professional programs, Social/Behavioral Science Programs, and Vocational/Technical programs also experience increases in title IV, HEA funding under the final rule relative to the current baseline (Table 5.19). Certain types of institutions offering these programs will likely benefit under the final regulation (relative to the baseline) because fewer of their programs will be at risk of failing the accountability framework. This is because the final regulation includes a less-punitive earnings test and because programs that fail the accountability framework lose access only to Federal student loan eligibility (unless the failing program is at an institution that fails the standards of administrative capability requirements.

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[72] The Department grouped programs into broad field of study categories using a slightly modified version of the field of study categories defined in the variable ''MAJORS12'' from NPSAS:2020. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with ''Other Technical Professional''; Math was combined with ''Engineering''; new categories were created for ''Culinary and Personal Services'' (CIP2=12) and ''Religious Studies'' (CIP2=38 or 39). For more information, see *https://nces.ed.gov/datalab/codebooks/by-subject/157-national-postsecondary-student-aid-study-2020-undergraduate-students.*

Table 5.17 - Estimated Share of Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Number of Programs	Share of Programs that Fail	Number of Programs	Share of Programs that Fail
	(1)	(2)	(3)	(4)
A. Current Regulations				
Business/Management	6,160	2.6	2,110	0.2
Computer/Information Science	2,250	0.8	470	0.0
Culinary & Personal Services	1,190	83.0	<10	<0.1
Education	2,070	2.1	3,270	0.2
Engineering/Math	2,490	<0.1	740	<0.1
Health-Related	8,180	12.6	3,800	1.4
Humanities/Liberal Arts	5,350	3.4	650	2.1
Life Sciences	3,540	0.3	830	1.3
Other Technical/Professional	6,880	2.3	1,790	0.4
Physical Sciences	720	<0.1	130	<0.1
Religious Studies	350	2.6	190	<0.1
Social/Behavioral Sciences	4,590	0.1	1,140	1.4
Vocational/Technical	2,910	4.5	100	0.0
Total	46,680	5.9	15,220	0.7
B. Final Regulations				
Business/Management	6,160	1.7	2,110	0.9
Computer/Information Science	2,250	0.9	470	1.9
Culinary & Personal Services	1,190	77.3	<10	<0.1
Education	2,070	6.2	3,270	0.3
Engineering/Math	2,490	<0.1	740	0.2
Health-Related	8,180	7.0	3,800	7.1
Humanities/Liberal Arts	5,350	8.0	650	21.0
Life Sciences	3,540	1.6	830	2.8
Other Technical/Professional	6,880	4.3	1,790	2.0
Physical Sciences	720	0.3	130	<0.1
Religious Studies	350	4.8	190	3.9
Social/Behavioral Sciences	4,590	1.5	1,140	3.7
Vocational/Technical	2,910	1.1	100	<0.1
Total	46,680	5.7	15,220	3.6

Notes: Program counts (columns 1 and 3) are rounded to nearest 10. Total program counts may not sum to the sum of their subcomponents due to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39).
Source: Department of Education calculations using PPD:2026.

Table 5.18 - Estimated Share of Enrollment in Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Title IV Enrollment	Share of Enrollment in Failing Programs	Title IV Enrollment	Share of Enrollment in Failing Programs
	(1)	(2)	(3)	(4)
A. Current Regulations				
Business/Management	2,156,400	1.2	417,000	0.3
Computer/Information Science	820,000	0.8	72,000	<0.1
Culinary & Personal Services	261,400	85.4	<100	<0.1
Education	540,400	1.2	471,500	<0.1
Engineering/Math	530,600	<0.1	42,800	<0.1
Health-Related	2,591,300	11.5	769,700	3.3
Humanities/Liberal Arts	2,648,400	2.8	38,900	4.1
Life Sciences	964,200	0.1	62,100	0.7
Other Technical/Professional	1,564,000	4.2	258,700	0.5
Physical Sciences	87,400	<0.1	8,100	<0.1
Religious Studies	46,600	7.8	27,300	<0.1
Social/Behavioral Sciences	1,177,000	1.0	181,000	3.6
Vocational/Technical	524,700	4.5	7,000	<0.1
Total	13,912,400	5.3	2,356,100	1.5
Business/Management	2,156,400	0.9	417,000	0.4
Computer/Information Science	820,000	1.1	72,000	0.9
Culinary & Personal Services	261,400	74.2	<100	<0.1
Education	540,400	4.2	471,500	0.1
Engineering/Math	530,600	<0.1	42,800	<0.1
Health-Related	2,591,300	6.7	769,700	9.3
Humanities/Liberal Arts	2,648,400	3.5	38,900	17.9
Life Sciences	964,200	1.0	62,100	1.1
Other Technical/Professional	1,564,000	3.6	258,700	0.9
Physical Sciences	87,400	0.3	8,100	<0.1
Religious Studies	46,600	3.9	27,300	1.3
Social/Behavioral Sciences	1,177,000	1.4	181,000	1.4
Vocational/Technical	524,700	0.8	7,000	<0.1
Total	13,912,400	4.3	2,356,100	3.7

Notes: Student counts (columns 1 and 3) are rounded to nearest 100. Percentages are computed prior to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV enrollment corresponds to enrollment during the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

Table 5.19 - Estimated Annual Title IV, HEA Program Volume and Share Disbursed to Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Annual Title IV Volume ($ Millions)	Share of Volume to Failing Programs	Annual Title IV Volume ($ Millions)	Share of Volume to Failing Programs
	(1)	(2)	(3)	(4)
A. Current Regulations				
Business/Management	10,636	1.7	3,349	0.4
Computer/Information Science	3,891	1.0	446	<0.1
Culinary & Personal Services	1,680	87.8	<1	<0.1
Education	2,854	0.8	3,200	<0.1
Engineering/Math	3,004	0.1	202	<0.1
Health-Related	14,044	14.5	17,531	1.2
Humanities/Liberal Arts	10,787	3.9	426	7.0
Life Sciences	5,589	<0.1	700	0.7
Other Technical/Professional	8,234	6.8	4,172	0.5
Physical Sciences	467	<0.1	18	<0.1
Religious Studies	256	8.1	154	<0.1
Social/Behavioral Sciences	6,529	1.5	2,323	4.8
Vocational/Technical	3,262	4.9	40	<0.1
Total	71,233	7.0	32,561	1.2
B. Final Regulations				
Business/Management	10,636	0.5	3,349	0.4
Computer/Information Science	3,891	1.3	446	0.6
Culinary & Personal Services	1,680	71.4	<1	<0.1
Education	2,854	0.8	3,200	0.1
Engineering/Math	3,004	<0.1	202	<0.1
Health-Related	14,044	8.0	17,531	5.3
Humanities/Liberal Arts	10,787	3.5	426	23.7
Life Sciences	5,589	0.1	700	1.2
Other Technical/Professional	8,234	2.1	4,172	0.7
Physical Sciences	467	<0.1	18	<0.1
Religious Studies	256	2.9	154	1.7
Social/Behavioral Sciences	6,529	0.2	2,323	1.5
Vocational/Technical	3,262	0.6	40	<0.1
Total	71,233	4.3	32,561	3.5

Notes: Annual title IV volume (columns 1 and 3) is rounded to nearest million. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

To conclude the program-level analysis, the Department examined the programs estimated to fail the final regulations at the highest rates (Table 5.20).[73] Some of these—such as Cosmetology (CIP=12.04), Somatic Bodywork (CIP=51.35), and Dental Support Services (CIP=51.06)—have substantially lower fail rates under the final regulation relative to the baseline. For example, the Department estimates that 99 percent of undergraduate certificate programs in Cosmetology would fail the accountability framework under the current regulations, but only 93 percent are expected to fail under the final regulation. So, while many Cosmetology certificate programs are estimated to fail under the final regulation, it is less punitive for these programs than the estimated impact of the current regulation.

On the other hand, Mental and Social Health & Allied Professions master's degree programs (CIP=51.15), Teacher Education and Professional Development associate's degree programs (CIP=13.12), and Drama/Theater Arts bachelor's degree programs (CIPs=50.05, 50.07, and 50.09) are anticipated to be most negatively impacted by the final regulations relative to the current baseline. These programs are often between 10 and 20 times more likely to fail the accountability framework under the final regulation relative to their fail rates under the current regulations. These higher fail rates are driven by the fact that a large share of these programs are offered at public and non-profit institutions. Unlike the policy in the current regulations, these programs would no longer be exempt from the accountability framework under the final rule.

[73] The Department included the twelve programs (defined by the unique combination of *cip4* and *credlev*) that had the highest share of programs estimated to fail under the final regulations. Programs where there were fewer than 100 observations with non-missing earnings data nationally were excluded from the ranking.

Table 5.20 - Twelve Most-Impacted Programs Under the Final Regulation

Program (CIP4)	Credential Level	N	Share that Fail: Current Regs	Share that Fail: Final Regs
		(1)	(2)	(3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	900	99.3	93.2
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	100	98.5	89.8
Dental Support Services and Allied Professions. (5106)	Ug Cert	200	84.8	40.1
Mental & Social Health Services and Allied Professions. (5115)	Master's	300	1.1	37.8
Allied Health and Medical Assisting Services. (5108)	Ug Cert	400	84.2	37.6
Health and Medical Administrative Services. (5107)	Ug Cert	300	79.8	29.4
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	200	0.9	25.2
Music. (5009)	Bachelor	400	2.0	14.5
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	500	0.6	14.0
Fine and Studio Arts. (5007)	Bachelor	300	1.0	14.0
Health and Medical Administrative Services. (5107)	Associate	200	15.5	13.2
Rehabilitation and Therapeutic Professions. (5123)	Master's	200	<0.1	11.4
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	201,000	99.1	92.5
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	15,200	99.7	89.1
Dental Support Services and Allied Professions. (5106)	Ug Cert	26,400	91.2	60.6
Mental & Social Health Services and Allied Professions. (5115)	Master's	81,600	10.4	64.4
Allied Health and Medical Assisting Services. (5108)	Ug Cert	137,000	89.8	50.9
Health and Medical Administrative Services. (5107)	Ug Cert	95,000	80.5	30.0
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	64,300	3.2	20.9
Music. (5009)	Bachelor	51,300	6.9	10.9
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	96,600	1.5	8.4
Fine and Studio Arts. (5007)	Bachelor	34,800	1.6	10.7
Health and Medical Administrative Services. (5107)	Associate	94,700	16.3	30.8
Rehabilitation and Therapeutic Professions. (5123)	Master's	17,100	<0.1	9.0
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	1,329	99.3	90.0
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	81	99.7	80.0
Dental Support Services and Allied Professions. (5106)	Ug Cert	175	92.5	44.2
Mental & Social Health Services and Allied Professions. (5115)	Master's	924	8.8	54.7
Allied Health and Medical Assisting Services. (5108)	Ug Cert	913	91.6	41.3
Health and Medical Administrative Services. (5107)	Ug Cert	580	83.2	31.2
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	217	6.7	7.2
Music. (5009)	Bachelor	384	10.1	9.1
Fine and Studio Arts. (5007)	Bachelor	677	2.2	5.6
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	343	2.5	10.1
Health and Medical Administrative Services. (5107)	Associate	606	21.0	45.3
Rehabilitation and Therapeutic Professions. (5123)	Master's	318	<0.1	7.4

Notes: The twelve programs on this list are the twelve programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the proposed regulations in which there were at least 100 programs with non-missing earnings data nationally. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student enrollment counts. In Panel C, "N" refers to total title IV loan volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 100 in Panels A and B. N sizes are rounded to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and title IV volume correspond to the amounts in the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

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Impact of the Final Regulations on Students

The Department also estimated the share of students in failing programs from each sex and race category using data from IPEDS for completers from the 2017–18 and 2018–19 pooled award years (Table 5.21). For each program, we multiplied the number of title IV enrollees from the 2024–25 award year by the ratio of completers from the given sex or race category.[74] As reported above, fewer students attend programs that are estimated to fail under the final regulation relative to the baseline. Consistent with this finding, we estimate a reduction in the overall share of students from both sex categories and

[74] For example, we multiplied the number of title IV, HEA enrollees in each program by the ratio of completers from the program (using IPEDS data) who were male to calculate the share of male students in passing and failing programs.

all race categories who attend failing programs. The estimated reduction is largest for male students, Hispanic students, and students with another race category not listed in Table 5.21.

Table 5.21 - Estimated Demographic Characteristics of Students in Failing Programs

Student Characteristic	Title IV Enrollment (Millions)	Current Regs		Final Regs		Percent Change in Fail Rate
		Pass	Fail	Pass	Fail	
	(1)	(2)	(3)	(4)	(5)	(6)
Male	5.8	97.6	2.4	98.0	2.0	-16.7
Female	9.0	93.6	6.4	94.5	5.5	-14.1
White	7.8	96.3	3.7	96.8	3.2	-13.5
Black	1.8	91.6	8.4	92.7	7.3	-13.1
Hispanic	2.6	92.5	7.5	94.0	6.0	-20.0
Asian	0.9	97.9	2.1	97.9	2.1	±0.0
Other Race	1.7	95.4	4.6	96.2	3.8	-17.4

Notes: See PPD:2026 codebook for definitions of race categories, available at: www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf. Enrollments correspond to the estimated number of title IV enrollees from the sex or race category during the 2024-25 year. Column 6 presents the percent change using the values in columns 3 and 5.
Source: Department of Education calculations using PPD:2026.

Impact of the Delayed Implementation for Certain Programs

Next, the Department estimated the impact of the provision that delays when the accountability framework first takes effect for qualifying programs. As described in the ''Earnings of Program Completers—Use of IRS Data'' section, programs listed in Table 5.22 will receive at least a one-year delay in when they are first counted as passing or failing the accountability provision.[75] The delay applies for all programs sharing one of the 6-digit CIP codes listed in Table 5.22, regardless of credential level or institutional sector in which the program is offered.[76]

The Department examined the number of programs that will likely qualify for a delay under this provision using data from FSA (not PPD:2026 [77]) for the 2024–25 award year. This data contains information on the number of title IV enrollees, completers, and title IV, HEA student aid disbursements, disaggregated by institution (OPEID6), credential-level, and program (6-digit CIP code).[78] The Department finds that approximately 3 percent of all programs will qualify for at least a one-year delay. These programs collectively enroll approximately 1.4 percent of all title IV, HEA students and receive approximately 1.4 percent of all title IV, HEA disbursements (Table 5.23).

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[75] As explained above in the ''Earnings of Program Completers—Use of IRS Data'' section, this list was determined in the following manner. First, we started with the list of occupations listed in the final regulation ''Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips'' from the Internal Revenue Service and Treasury (91 FR 19026). This final regulation became effective June 12, 2026. For more information, see: *www.federalregister.gov/documents/2026/04/13/2026-07104/occupations-that-customarily-and-regularly-received-tips-definition-of-qualified-tips.* We then narrowed the list to predominantly tipped occupations, meaning that 50 percent or more of workers in a given occupation report tipped income to the IRS. Then, we used the Department's CIP–SOC crosswalk to link occupations (defined using 6-digit SOC codes) to programs (defined using 6-digit CIP codes). Twenty unique programs (defined using 6-digit CIP codes) qualify for the delay.

[76] Some of these programs may qualify for additional years if they have fewer than 30 title IV, HEA completers in cohorts that graduated after the 2021–22 award year. This is because the Department will not aggregate completers for programs listed in Table 5.22 using graduates prior to the 2021–22 award year. Ultimately, this means that some share of programs within those listed in Table 5.22 will not meet the minimum cohort size (30 title IV, HEA completers) until a future point between 2030 and 2032, giving them additional years in which they will not be subject to the earnings test.

[77] The Department could not use PPD:2026 for this analysis because programs in PPD:2026 are identified by 4-digit CIP codes, but the delay provisions applies to programs at the 6-digit CIP code level.

[78] Using this data, the Department dropped programs with fewer than 8 title IV completers during 2024–25 because these programs would likely have fewer than 30 title IV completers after the cohort aggregation process, exempting them from the earnings test. The N sizes differ from prior those in prior table because this is a different dataset (programs are measured at the 6-digit CIP code level) and the same restrictions cannot be applied to it as PPD:2026.

Table 5.22 - Programs that Qualify for a Delayed Implementation of the Accountability Framework

CIP6	Program Name	SOC6	Occupation Name
12.0401	Cosmetology/Cosmetologist, General.	39-5012; 39-5094	Hairdressers, Hairstylists, and Cosmetologists; Skincare Specialists
12.0402	Barbering/Barber.	39-5011	Barbers
12.0404	Electrolysis/Electrology and Electrolysis Technician.	39-5012	Hairdressers, Hairstylists, and Cosmetologists
12.0406	Make-Up Artist/Specialist.	39-5012	Hairdressers, Hairstylists, and Cosmetologists
12.0407	Hair Styling/Stylist and Hair Design.	39-5011; 39-5012	Barbers; Hairdressers, Hairstylists, and Cosmetologists
12.0408	Facial Treatment Specialist/Facialist.	39-5094	Skincare Specialists
12.0409	Aesthetician/Esthetician and Skin Care Specialist.	39-5094	Skincare Specialists
12.0411	Permanent Cosmetics/Makeup and Tattooing.	39-5012	Hairdressers, Hairstylists, and Cosmetologists
12.0412	Salon/Beauty Salon Management/Manager.	39-5011; 39-5012	Barbers; Hairdressers, Hairstylists, and Cosmetologists
12.0413	Cosmetology, Barber/Styling, and Nail Instructor.	39-5011; 39-5012	Barbers; Hairdressers, Hairstylists, and Cosmetologists
12.0414	Master Aesthetician/Esthetician.	39-5094	Skincare Specialists
12.0499	Cosmetology and Related Personal Grooming Arts, Other.	39-5012	Hairdressers, Hairstylists, and Cosmetologists
12.0502	Bartending/Bartender.	35-3011	Bartenders
12.0601	Casino Operations and Services, General.	39-1013	First-Line Supervisors of Gambling Services Workers
12.0602	Casino Dealing.	39-1013; 39-3011	First-Line Supervisors of Gambling Services Workers; Gambling Dealers
51.3501	Massage Therapy/Therapeutic Massage.	31-9011	Massage Therapists
51.3502	Asian Bodywork Therapy.	31-9011	Massage Therapists
51.3503	Somatic Bodywork.	31-9011	Massage Therapists
51.3599	Somatic Bodywork and Related Therapeutic Services, Other.	31-9011	Massage Therapists
52.0908	Casino Management.	39-1013	First-Line Supervisors of Gambling Services Workers

Notes: This list is derived from "Table A—Reported Tips of Single-Job Holders, Tax Year 2023" in Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips" (Final Rule) from the Department of the Treasury and the IRS. We used the ED/Labor CIP-SOC crosswalk to link any program (defined at the six-digit CIP level) to SOCs (defined at the 6-digit level) included in the IRS/Treasury list, and we limited the list to programs linked to occupations where 50 percent or more of individuals in the occupation receive income from tips. See the discussion in the "Earnings of Program Completers – Use of IRS Data" for additional details.

Table 5.23 - Number of Programs, Students, and Annual Federal Aid Volume in Programs Qualifying for the Delay Provision

	Total	Total in Delay-Qualifying Programs	Percent
	(1)	(2)	(3)
Programs (CIP-6)	69,900	2,100	3.0
Annual Title IV Enrollees	16,087,500	226,000	1.4
Annual Federal Student Aid Volume ($ billions)	104.3	1.4	1.4

Notes: Annual Federal student aid volume includes Federal student loan disbursements and Pell Grant disbursements. N sizes in columns 1 and 2 are rounded to the nearest 100. Percentages in column 3 are calculated prior to rounding in columns 1 and 2. See Table 5.22 for a list of "Delay-Qualifying Programs." The sample of programs included in this analysis includes programs (defined at the 6-digit CIP level) that had at least 8 title IV completers during the 2024-25 award year, because these are programs that would likely be large enough to be subject to the earnings test in this final rule.
Source: Department of Education calculations using FSA data from the 2024-25 award year.

Two fields of study benefit most from the delay: Personal and Culinary Services (CIP=12) and Health Professions and Related Clinical Sciences (CIP=51). Specifically, the Department estimates that 77 percent of all Personal and Culinary Service programs and 1 percent of all Health Professions and Related Clinical Sciences programs will qualify for the delay (Table 5.24, Panel A). These programs collectively enroll 226,000 title IV, HEA students annually, which is roughly 1% of all title IV, HEA students (Table 5.24, Panel B).

Table 5.24 – Number of Programs and Students in Programs that Qualify for the Delay Provision, by 2-digit CIP

Broad Field of Study (2-digit CIP)	Total	Number that Gets a Delay	Percent
	(1)	(2)	(3)
A. Programs			
Personal And Culinary Services (CIP=12)	2,500	1,900	77%
Health Professions (CIP=51)	14,000	200	1%
All Other Programs	53,000	0	0%
Total	69,900	2,100	3%
B. Title IV Enrollment			
Personal And Culinary Services (CIP=12)	278,700	208,100	75%
Health Professions (CIP=51)	3,329,500	17,900	1%
All Other Programs	12,479,400	0	0%
Total	16,087,500	226,000	1%

Notes: "All Other Programs" includes all programs outside of CIP=12 and CIP=51. N sizes in columns 1 and 2 are rounded to the nearest 100. Percentages in column 3 are calculated prior to rounding in columns 1 and 2. See Table 5.22 for a list of "Delay-Qualifying Programs." The sample of programs included in this analysis includes programs (defined at the 6-digit CIP level) that had at least 8 title IV completers during the 2024-25 award year, because these are programs that would likely be large enough to be subject to the earnings test in this final rule.
Source: Department of Education calculations using FSA data from the 2024-25 award year.

Next, the Department estimated how the delay provision will impact the number of students enrolled in failing programs during the first years of sanctions. For this analysis, the Department used PPD:2026 and removed all programs sharing a 4-digit CIP code with one of the 6-digit CIP codes listed in Table 5.22. With these delay-qualifying programs excluded, the Department estimates that 3.0 percent of all title IV, HEA students are enrolled in programs expected to fail the accountability framework during the first award year in which sanctions go into effect (*i.e.,* the award year starting with July 2028) (Table 5.25, Panel A). After the delay period has expired, the Department estimates that 4.3 percent of students will have enrolled in failing programs (Table 5.25, Panel B), which corresponds to our main estimates shown in Table 5.12.

Lastly, the Department examined how the delay provision will impact the share of title IV, HEA student aid disbursements to failing programs in the first year of sanctions. We again use PPD:2026 and remove programs sharing a 4-digit CIP code with a 6-digit CIP code in Table 5.22. With these programs excluded, the Department estimates that 2.9 percent of all title IV, HEA student aid will be cut off from failing programs in the first award year that sanctions go into effect (Table 5.26, Panel A). When the delay period has expired and programs listed in Table 5.22 are subject to the accountability framework, the Department estimates that 4.0 percent of all title IV, HEA student aid will be cut off from failing programs (Table 5.26, Panel B), corresponding to our main estimates in Table 5.15.

Table 5.25 – Impact of the Regulation on the Share of Title IV students in Failing Programs, With and Without the Delay Provision

Credential Level	Title IV Enrollment	Share of Enrollment
	(1)	(2)
A. With the Delay Provision		
Undergrad Cert	1,151,700	15.8
Associate	4,318,200	3.8
Bachelor	8,141,900	0.6
Post-Bacc Cert	9,300	1.4
Masters	1,749,000	4.1
Doctoral	295,100	0.8
Professional	229,100	4.9
Grad Cert	81,700	2.8
Total	15,976,000	3.0
B. Without the Delay Provision		
Undergrad Cert	1,392,300	27.7
Associate	4,350,100	3.9
Bachelor	8,163,700	0.6
Post-Bacc Cert	9,400	1.4
Masters	1,750,200	4.1
Doctoral	295,100	0.8
Professional	229,100	4.9
Grad Cert	81,700	2.8
Total	16,271,600	4.3

Notes: Panel A excludes title IV students enrolled in programs with 4-digit CIP codes that align with one or more of the 6-digit CIP codes listed in Table 5.22. Panel B includes these students. N sizes in column 1 are rounded to the nearest 100. Percentages in column 2 are calculated prior to rounding.
Source: Department of Education calculations using PPD:2026.

Table 5.26 – Impact of the Regulation on the Share of Annual Title IV, HEA Student Aid Disbursed to Students in Failing Programs, With and Without the Delay Provision

Credential Level	Annual Title IV Volume ($ Millions)	Share of Title IV Volume in Failing Programs
	(1)	(2)
A. With the Delay Provision		
Undergrad Cert	5,719	15.5
Associate	14,979	4.0
Bachelor	48,663	0.6
Post-Bacc Cert	12	1.3
Masters	17,500	4.4
Doctoral	5,147	1.6
Professional	9,434	2.9
Grad Cert	469	2.4
Total	101,923	2.9
B. Without the Delay Provision		
Undergrad Cert	7,269	29.5
Associate	15,155	4.1
Bachelor	48,811	0.6
Post-Bacc Cert	12	1.3
Masters	17,512	4.4
Doctoral	5,147	1.6
Professional	9,434	2.9
Grad Cert	469	2.4
Total	103,809	4.0

Notes: Panel A excludes title IV, HEA student aid disbursements to students enrolled in programs with 4-digit CIP codes that align with one or more of the 6-digit CIP codes listed in Table 5.22. Panel B includes these students.
Source: Department of Education calculations using PPD:2026.

Impact on the Cosmetology Sector

The Department has previously discussed the impact of the regulation on the Cosmetology sector above (Tables 5.17, 5.18, 5.19, and 5.20), demonstrating that the regulation will likely result in a substantial reduction in the share of these programs that are at risk of failing the accountability framework relative to the current regulations. Institutions offering cosmetology programs will likely benefit from the final regulation because they will have fewer programs at risk of failing the accountability framework. This means fewer of their programs would be at risk of losing eligibility for certain types of title IV, HEA funds. Given the many comments the Department received about the rule's impact on cosmetology programs, the Department includes additional analysis on these programs to further clarify the rule's impact on this sector.

Overall, the Department estimates that 93 percent of cosmetology certificate programs are estimated to fail the accountability framework in this rule (Table 5.20). This is a reduction from the current regulation, under which 99 percent of cosmetology certificate programs are expected to fail. These percentages are calculated by dividing the number of failing cosmetology programs by the total cosmetology programs that are subject to the earnings test. In other words, to determine the share of cosmetology certificate programs impacted by this final regulation, we divided the 840 cosmetology certificate programs that are expected to fail the earnings test by the 900 total cosmetology certificate programs that are subject to the earnings test (yielding roughly 93 percent).

However, the Department clarifies that there are many more cosmetology programs that receive Federal student aid that will not be impacted by the earnings test because these programs are too small to form a cohort, or because these programs do not receive Federal student loans. As shown in Table 5.27, there are a total of 1,450 cosmetology certificate programs nationally. Approximately 450 of these programs are entirely exempted from the earnings test (columns 2 and 3), and an additional 100 programs or will receive two or more years of delay before the earnings test applies to them (column 4). Thus, when these programs are factored into the analysis, the Department finds that just 58 percent of all cosmetology programs are expected to fail the earnings test, which we refer to as the ''effective fail rate'' for these programs (Table 5.28). Furthermore, the Department finds that just 80.6 percent of students in cosmetology programs are enrolled in programs that are expected to fail the earnings test under this regulation, a significant reduction compared with the current regulations under which 99 percent of students in cosmetology certificate programs are enrolled in programs expected to fail.

Table 5.27. Number of Exempted Cosmetology Programs and Students

	Total	Remaing number of programs after:		
		Small Program Exemption	No-Loan Program Exemption	Delayed Start Date due to Roll-Up
	(1)	(2)	(3)	(4)
Programs	1,450	1,200	1,000	900
Title IV Enrollment	230,700	224,200	202,200	201,000
Title IV Federal Aid Volume ($ Millions)	1,449.6	1,419.1	1,335.5	1,329.4

Notes: The "Exempted Roll-Up Programs", column 4, are the additional set of programs that will get exempted for at least one year due to the interaction between the one-year delay provision and the small program provision.
Source: Department of Education calculations using PPD:2026.

Table 5.28 - "Effective Fail Rates" of Cosmetology Programs

	Total	Total Subject to the Earnings Test	Share that Fail (Among programs subject to the Earnings Test)		Effective Fail Rate
			Current Regs	Final Regs	
	(1)	(2)	(3)	(4)	(5)
Programs	1,450	900	99.3	93.2	57.8
Title IV Enrollment	230,700	201,000	99.1	92.5	80.6
Title IV Federal Aid Volume ($ Millions)	1,449.6	1,329.4	99.3	90.0	82.5

Notes: The "Effective Fail Rate", column 5, uses the values from column 1 as the denominator when calculating the fail rate. Programs that are exempted are counted as "passing" in this calculation.
Source: Department of Education calculations using PPD:2026.

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6. Discussion of Costs and Benefits

As shown in the prior analysis, the final regulations will result in costs and benefits for various entities. Specifically, the Department anticipates that certain students and institutions will incur new costs, along with the Department, and by extension, taxpayers. Further, the Department anticipates that certain students, institutions, and the Department itself will incur new benefits because of the final regulations.

Costs of the Final Regulations

The final regulations will result in costs to students, institutions, and taxpayers. We discuss these costs in that order.

Students will experience costs due to the impact the final regulation would have on certain programs. Some students—especially current and prospective students in public and private non-profit degree programs—attend programs that would fail the accountability framework under the final regulation but pass under the current regulation (shown in Tables 5.12 and 5.14). Institutions may choose to close these programs due to the loss of eligibility for Federal student loans. Students in these programs may be negatively impacted if they desire to attend those closed programs despite the low-earning outcomes. For example, some Drama programs may close due to the final regulations, but students may desire to attend these programs for reasons other than the monetary return.

Certain students in specific fields of study may be disproportionately impacted by the final regulation (Tables 5.18 and 5.20) and may therefore experience higher costs. At the undergraduate level, students in Humanities/Liberal Arts programs, Education programs, and Fine Arts programs will be most impacted. At the graduate level, students in Computer/IT programs, Health-related programs (such as Mental/Social Health Services & Allied Professions), Religious Studies programs, and Humanities/Liberal Arts programs will be most impacted (Tables 5.18 and 5.20). Thus, current, former, and prospective students pursuing credentials in these specific fields of study are most likely to experience costs associated with the final regulations due to the high rates of program closures that may occur in these fields.

In some cases, program closures may occur abruptly and cause further disruption for enrolled students.[79] If closures are sudden, students may inadvertently cease their enrollment if they are not instructed on how to transfer. Other students may choose to end their postsecondary education if there are no substitutable programs to attend. For students who choose to remain enrolled, program closure may force them to change majors or transfer to a different institution, imposing search costs and possible financial costs on affected students.

The final regulation may also impose reputational costs on the former graduates of failing programs. Graduates from degree programs in the public and non-profit sectors would be most impacted, as certain programs in these sectors are more likely to fail the accountability framework under the final regulation relative to the baseline (Tables 5.12 and 5.14). Prospective job applicants who formerly graduated from these failing programs may become disadvantaged in the labor market relative to other job applicants from non-failing programs. For example, employers may view degrees awarded from failing programs as less valuable. This would occur if failing the accountability framework under the final regulations sends a negative signal to employers about the graduates' former program quality, potentially impacting the ability for graduates to find employment.

[79] The Department has attempted to mitigate these disruptions by including a teach-out provision in the final regulations that allows programs to implement an orderly program closure.

Lastly, certain students pursuing undergraduate certificates may also experience new costs. The accountability framework under the final regulation will allow more programs at that credential level to remain eligible for title IV, HEA funds (Table 5.12), and some of these programs leave students with relatively lower earnings. The typical earnings of students who attend passing undergraduate certificate programs under the final regulations are slightly lower than the typical earnings of passing programs under the current regulations (Table 6.1, column 1 vs. 2). Furthermore, earnings are lower for students who complete programs that pass the accountability framework under the final regulation but fail it under the current regulation (columns 1 vs. 4). These students may be negatively impacted by the final regulation because they may be better off not attending such programs, though it is difficult for the Department to estimate a proper counterfactual for these students.

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Table 6.1 - Median Earnings for Students in Passing and Failing Programs under the Current and Final Accountability Framework

	Four-Year Median Earnings of 2017-18 & 2018-19 Title IV Completers who are Working and Not Enrolled			
	Passes Current Regulations	Passes Final Regulations	Fails Final Regulations, Passes Current Regulations	Passes Final Regulations, Fails Current Regulations
	(1)	(2)	(3)	(4)
Undergrad Certificate	50,600	49,100	29,200	37,500
Associate	48,100	48,200	32,000	38,700
Bachelor	63,300	63,300	33,300	47,000
Master's	80,100	80,600	58,000	63,700
Total	63,200	63,000	32,400	39,300

Notes: Credential levels are not shown if there were fewer than 10 programs with non-missing earnings data to calculate the median earnings values in columns 3 or 4. Earnings data are for title IV completers who graduated during the 2017-18 or 2018-19 award years, with earnings measured in 2022 and 2023, inflation adjusted to 2024 dollars using CPI-U. Median earnings values in this table are calculated by taking the median of "md_earn_wne_p4", weighted by "count_wne_p4". See PPD:2026 codebook for details. Median earnings values are rounded to the nearest $100.

Source: Department of Education calculations using PPD:2026.

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The second group that will experience costs are institutions of higher education; more specifically, institutions of higher education that participate in title IV, HEA programs. These costs will vary across institutions depending on the extent to which they offer GE-programs vs. non-GE programs. While the current regulation calculates the EP and D/E metrics for non-GE programs, those programs are not subject to sanctions (loss of all title IV eligibility) if they fail those metrics. Under the final regulation, all programs—regardless of credential level and the sector of the institution at which they are offered—are now subject to sanctions (loss of Federal student loan eligibility, and the potential loss of Federal Pell Grant eligibility through the Standards of Administrative Capability requirements) for failing the accountability framework.[80]

In other words, some non-GE programs will lose access to Federal student loans due to the final regulations because these programs will be covered by the accountability framework for the first time. Without access to Federal student loans, these programs may experience enrollment declines, ultimately resulting in lost revenue to the institutions that offer them. This loss in revenue may exceed the loss in Federal student loan revenue because institutions often receive additional revenues from students who pay tuition and fees using non-Federal resources.

Next, some institutions will incur new costs due to the loss of Pell Grant eligibility for certain programs. Programs lose Pell Grant eligibility, in addition to Federal student loan eligibility, if they are offered at institutions that fail the standards of administrative capability under the final regulations.[81] For degree programs offered at public and non-profit

[80] Certain programs may not be subject to the accountability framework under the final regulation if certain data are not available. For example, programs with fewer than 30 title IV, HEA completers after the cohort expansion process would not be subject to the earnings test in this final regulation.

[81] The final regulations include a provision that allows failing programs to voluntarily opt-out of the Federal student loan program after the first year the program fails the earning test. Programs that exercise this option will avoid the sanctions that could occur under the Standards of Administrative Capability policy.

institutions, this marks the first time they could lose access to Federal Pell Grant eligibility due to low-earning outcomes of their former students.[82] This loss in Pell Grant revenue may drive further enrollment and revenue declines and, for some institutions, lead them to close their institution altogether.

The Department estimates that certain public institutions and private non-profit institutions will incur greater costs from the final regulations relative to the current regulations. Specifically, public and private non-profit institutions offering large shares of associate's degree programs, bachelor's degree programs, and master's degree programs will incur the largest costs, as these programs are projected to fail the accountability framework under the final regulation at the highest rates relative to the current regulations (Tables 5.13 and 5.14).

Additionally, certain types of institutions (including HBCUs, those located in U.S. territories, and those that exclusively offer Humanities/Liberal Arts programs) may be uniquely impacted because they offer programs that are anticipated to fail the accountability framework under the final regulation at the highest rates relative to the baseline (Tables 5.10, 5.18, and 5.20).

These institutions may struggle to recruit and enroll students if they obtain a reputation for offering low-quality educational services as a result of offering programs that fail the accountability framework in the final regulation. Ultimately, these institutions may incur financial costs due to lost tuition revenue from students who now choose to avoid these institutions due to reputational risks.

Further, institutions that offer programs that fail the accountability framework under the final regulation but pass under the current regulation (*e.g.,* degree programs at public and non-profit institutions) will experience new costs related to compliance. First, institutions with failing programs must notify students in those programs to alert them of the failing status. Tracking and alerting students will create administrative costs for institutions if they must hire additional staff to manage this process. Even if institutions do not hire new staff to oversee this process, they may still experience non-monetary costs if these regulations require colleges to divert their existing staff away from other essential activities. Second, institutions may choose to appeal the Department's determination of a failing program. This process will impose administrative costs and (potentially) legal costs on institutions who choose to exercise this option.

Taxpayers are the third group that will experience costs. They will incur costs from the budgetary costs due to increased transfers of title IV loans to GE programs that now pass the accountability framework under the final regulation but fail under current regulation. As noted in the accounting statement (Table 7.12), these annualized costs are approximately $149 million at a 3 percent discount rate.

Taxpayers will also incur budgetary costs due to increased transfers of Pell Grants to programs. Unlike the current regulation, programs that fail the accountability framework under the final regulation remain eligible for Pell Grants unless they are offered at institutions do not meet the standards for administrative capability. As noted in the accounting statement (Table 7.12), these annualized costs are approximately $871 million at a 3 percent discount rate.

Taxpayers may also face costs if the loss of title IV revenue and enrollment under the final regulation causes institutions to close. Under 34 CFR 685.214, students who are enrolled at an institution upon closure (or withdraw within 180 days of such closure) and do not complete their program may be eligible for discharges on their federal student loans if they are unable to complete their program at another institution. Thus, for institutions that close because of the final accountability framework, there may be some cost to taxpayers if those closures result in additional loan discharges that may not have occurred if the final regulations were not in place.[83]

The Department, and by extension the taxpayer, is the final group that will experience costs due to the final regulation. Costs to the Department are due to the administrative costs needed to implement the changes to the Federal student loan and Pell Grant programs. We estimate that, based on comparable changes made in the past, those administrative costs would average approximately $6.6 million (using a 3 percent discount rate, Table 7.12) in systems modifications, contract changes, and staffing on an annualized basis over the 2026–2035 period. Most of these estimated costs will be incurred during the first two years of implementation.

To implement the changes under this final regulation, the Department needs to update its systems for loan and grant origination to align with the new eligibility rules for programs of study in order to correctly identify programs that maintain or lose eligibility. This includes changes to the Common Origination and Disbursement (COD) system, which supports origination, disbursement, and reporting for Direct Loan, Pell Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. The system uses a single "Common Record" (XML format) for efficiency and elimination of duplicate student and borrower data, providing a centralized system for title IV program administration used by the Department and all institutions that participate in the delivery of Federal student aid.

The Department must also update the National Student Loan Data System (NSLDS), which is the central database for all disbursements made through title IV, HEA programs. NSLDS tracks title IV loans and grants through their entire lifecycle, from approval to repayment or closure. The system provides an integrated view for institutions and the Department to track aid, loan status, and enrollment. It consolidates data from schools, lenders, and programs, enabling users to access loan history, disbursement details, and servicer information via the FSA Partner Connect portal. The NSLDS system provides the Department with the data needed to identify program enrollment and completer cohorts that are central to administering the earnings-based eligibility tests in the final regulation.

While most of the administrative costs the Department will incur implementing the WFTCA occur in the first few years, the Department will incur long-term administrative costs for maintaining the Department's COD, NSLDS, and other system changes in future years to account for ongoing development, operations, and maintenance.

The Department expects to incur additional administrative costs to train and support institutions of higher education that now must align their procedures and systems with the new eligibility rules for loans, grants, and programs of study. The Department must also modify its internal systems

[82] Note that only degree programs at public and non-profit institutions stand to incur new costs related to loss of Pell Grant eligibility, because these programs are exempt from the accountability framework under the current regulation.

[83] Note that this cost to taxpayers only includes public and non-profit institution closures, because these institutions offer programs that are subject to an accountability framework for the first time. Costs associated with closing proprietary institutions are not considered a cost to taxpayers because these institutions were more likely to close under the current regulation relative to the final regulation, since the current regulation had a stricter accountability framework and removed eligibility for both Federal student loans and Pell Grants.

and amend its data-sharing agreement with a federal agency with earnings data, which will be used to annually determine program eligibility under the new and modified earnings tests. The Department will incur minor, long-term administrative costs associated with the earnings tests and maintaining a data-sharing agreement with a federal agency with earnings data. As shown in Table 7.12, these costs will average $1.9 million on an annualized basis (3% discount rate). Approximately 70% of these costs will support the data-sharing agreement with a federal agency with earnings data. The balance of the funds will be used to maintain the NSLDS system to support the annual operations of the accountability framework in the final regulation.

Benefits of the Final Regulations

The final regulations provide benefits to students, institutions of higher education, and the Department. These benefits are discussed in that order.

Students will benefit in several ways due to the final regulations. First, students in non-GE programs may experience higher earnings outcomes. Under the current regulations, these programs were exempt from the accountability framework, but under the final regulation, low-earning non-GE programs at public and non-profit institutions can lose eligibility for title IV, HEA funds. Students benefit because, in the absence of the final regulation, they may have attended these low-earning outcome programs and were at a heightened likelihood of experiencing financial harm as a result. The Department estimates that approximately 163,000 title IV, HEA students attend programs at public and non-profit institutions that will fail the accountability framework under the final regulation but would have passed under the current regulation (Table 5.14).

Certain students may also benefit due to the final regulation better positioning them to pay back their student loans through the possibility of higher earnings outcomes that occur as a result of low-earning outcome programs that close. As shown in Table 6.1, the typical earnings of students from passing associate and master's degree programs under the final regulation are slightly higher than the earnings of students who attended passing programs under the current regulation. This is because many low-earning associate and master's degree programs are offered at public and non-profit institutions, which were exempt from the accountability framework under the current regulations. Similarly, debt levels are lower, on average, for programs that pass the accountability framework in the final regulation relative to passing programs under the current regulation (Table 6.2). Default rates are roughly equivalent among programs that pass the accountability framework under the current and final regulations, though some credential levels (*e.g.,* master's, doctoral, and graduate certificates) have lower default rates under the final regulations (Table 6.3). These estimates suggest that some students may be better positioned to pay back their loans as a result of the final regulation, which would benefit those students if it saves them from experiencing these adverse outcomes related to debt and default.

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Table 6.2 - Median Debt of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulations		Final Regulations		Difference in Median Debt Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	9,300	11,700	9,300	11,300	-400
Associate	21,600	14,500	18,400	14,500	±0
Bachelor	38,200	22,400	24,700	22,500	100
Masters	72,400	44,700	52,700	44,500	-200
Doctoral	181,100	85,600	65,000	90,200	4,600
Grad Cert	83,300	43,300	54,300	44,800	1,500
Total	13,500	28,400	16,000	28,000	-400

Notes: Median debt is defined as the median cumulative student debt of borrowers who completed during the 2017-18 or 2018-19 award years. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the difference between columns 4 and 2. Debt values are rounded to the nearest 100.

Source: Department of Education calculations using PPD:2026.

Table 6.3 - Default Rates of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulations		Final Regulations		Difference in Default Rates Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	24.6	25.5	24.7	24.1	-1.3
Associate	27.2	25.0	27.3	24.7	-0.3
Bachelor	19.7	13.8	19.7	13.9	0.1
Masters	8.2	5.9	7.3	5.8	-0.1
Doctoral	5.0	5.6	2.2	5.5	-0.1
Grad Cert	7.1	5.9	7.1	5.6	-0.4
Total	24.5	18.7	24.7	18.7	0.0

Notes: Default rates are the median default rate for each credential level, calculated using the cohort of federal student loan borrowers who entered repayment during the 2015-16 award year, weighted by the number of borrowers from each program who enter repayment during the 2015-16 award year. Default rate is defined as the share of those borrowers who have ever entered default within three years of entering repayment. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the percentage point difference between columns 4 and 2. The difference may not sum to the total due to rounding.
Source: Department of Education calculations using PPD:2026.

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Additionally, students who attend non-GE programs may benefit if institutions take measures to improve programs that are at risk of failing the accountability framework. Institutions offering non-GE programs had little incentive to improve these programs under the current regulations since these programs were exempt from the accountability framework. Given that they are subject to the accountability framework under the final regulation, institutions may choose to begin offering better student services, working with employers to ensure graduates have in-demand skills, and helping students with career planning, or risk losing access to title IV, HEA funds. These efforts may lead to better graduation rates and labor market outcomes for students.[84]

Lastly, a subgroup of students in GE programs may benefit from the final regulations. This would occur when two conditions are met: first, the GE program they attend passes the accountability framework under the final regulation but fails under the current regulations, and second, if the students in those programs desire to attend despite the earnings outcomes of the program. For this unique group of students, they benefit because they can continue receiving Federal student loans and Pell Grants to attend their program under the final regulation, and these students may attain other non-monetary benefits because they are able to continue their education in their desired program.

Institutions will also benefit from the final regulations in several ways. First, institutions will benefit from the reduced reporting requirements under the final regulation relative to the reporting requirements under the existing FVT regulations. In total, the final regulation reduces the number of data elements that institutions are required to report by approximately 30 percent. Many of these are elements the Department determined it can calculate and report through its administrative data systems (*e.g.,* withdraw dates) and the Department will continue to report this information publicly under STATS. Because institutions no longer need to calculate and report this information, they will incur reduced administrative costs to comply with the final regulations.

Second, some institutions offer programs that fail the accountability framework under the current regulations but will pass under the final regulation and retain access to title IV, HEA funds. The Department estimates that this would primarily benefit programs at proprietary institutions and undergraduate and graduate certificate programs from all sectors (Table 5.16).

Lastly, many institutions that offer GE programs will benefit from the fact that failing the accountability framework under the final regulation usually results in loss of eligibility for Federal student loans. To better understand this benefit, Table 6.4 decomposes the overall change in title IV, HEA funds disbursed to failing programs (Panel A) by separately showing the estimated change in Federal student loan disbursements (Panel B) and Pell Grant disbursements (Panel C).[85] As shown in Panel B, we estimate a similar share of

[84] This is not a benefit for students who attend proprietary institution programs since these institutions face a less punitive accountability framework under the final regulations relative to the current regulations.

[85] Note that programs only lose eligibility for Pell Grants under the final regulation if they are at an institution that fails the standards of administrative capability requirements.

Federal student loans are disbursed in failing programs under both the current and final regulations. This is because the increase in failing associate, master's, and professional degree programs under the final rule is almost completely offset by the reduction in failing undergraduate certificate programs in terms of the amount of loan disbursements to these programs.

This differs from Panel C, where we estimate a smaller share of total Pell Grant volume will be disbursed to failing programs under the final regulation (5.8 percent) relative to the share of Pell volume disbursed to failing programs under the current regulation (7.3 percent). In other words, the final regulation cuts of a smaller share of Pell Grant disbursements to failing programs relative to the share cut off under the current regulations. The reduction is driven by undergraduate certificate programs: under the current regulations, these programs were expected to lose half (51 percent) of their total Pell Grant volume, whereas under the final regulations these programs are estimated to lose approximately one-third (34.6 percent) of their Pell Grant volume. This suggests institutions offering undergraduate certificates will benefit, as more of these programs will maintain access to Pell Grants under the final regulation. Maintaining eligibility for Pell Grants may buffer enrollment declines at these institutions and help their program continue to operate.

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Table 6.4 - Estimated Annual Title IV, HEA Program Funds and Share Disbursed to Programs that Fail, by Credential Level & Aid Type

	Annual Title IV Volume ($ Millions)	Volume to Failing Programs	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Total Title IV Student Aid			
Undergrad Cert	7,257	50.2	29.4
Associate	15,154	4.5	4.1
Bachelor	48,810	1.4	0.6
Post-Bacc Cert	12	<0.1	1.3
Masters	17,511	1.2	4.4
Doctoral	5,147	2.1	1.6
Professional	9,434	0.4	2.9
Grad Cert	469	9.2	2.4
Total	103,794	5.2	4.0
B. Federal Student Loans Only			
Undergrad Cert	3,831	49.5	33.3
Associate	5,758	6.9	7.6
Bachelor	30,005	1.4	0.8
Post-Bacc Cert	11	<0.1	1.4
Masters	17,511	1.2	4.4
Doctoral	5,147	2.1	1.6
Professional	9,434	0.4	2.9
Grad Cert	469	9.2	2.4
Total	72,166	4.3	4.3
C. Pell Grants Only			
Undergrad Cert	3,425	50.9	34.6
Associate	9,397	3.0	5.4
Bachelor	18,805	1.5	0.7
Post-Bacc Cert	1	<0.1	<0.1
Masters	0	N/A	N/A
Doctoral	0	N/A	N/A
Professional	0	N/A	N/A
Grad Cert	0	N/A	N/A
Total	31,628	7.3	5.8

Notes: In Panel A, annual title IV volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. The corresponding cells below in Panels B and C may not sum to the total listed in Panel A due to rounding. Percentages in columns 2 and 3 are estimated prior to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

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The Department, and by extension taxpayers, will also benefit from the final regulation. This is largely from a streamlined and simplified administrative process for the GE regulation. The final regulation removes the complicated D/E metric from the current accountability framework, which will reduce burden and save administrative costs, ultimately benefitting the taxpayers that fund the Department of Education.

7. Net Budget Impact

The accountability framework implemented by the proposed regulations is estimated to have a net Federal budget impact of $1,517 million in Direct Loan cohorts 2027 to 2036 and $8,782 million in Pell Grants in FYs 2027 to 2036 as shown in Tables 7.1A and 7.1B. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

The baseline for estimating the cost of these regulations is the President's Budget FY2027 baseline. This baseline includes the Department's estimates for the current regulations and therefore the cost estimate captures changes in the accountability framework from that regulation. Direct Loan and Pell Grant volumes at failing programs under current regulations are higher than those at failing programs under the proposed accountability framework, so the estimated reduction in volume is greater under current regulations. Therefore, the net budget impact of replacing the current regulations with the accountability framework in the proposed regulation is scored as a cost to the taxpayer.

Table 7.1A - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Subs.	42	48	44	46	48	50	54	56	57	82	527
Unsub.	48	62	63	67	69	74	78	79	81	102	723
PLUS (Par & Grad)	9	17	18	14	12	10	6	4	1	(3)	89
Consol	0	3	8	14	16	18	25	28	33	32	179
Total for Loans	99	131	134	141	145	152	164	167	171	213	1,517

Table 7.1B - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Discretionary	641	820	785	514	550	627	715	818	917	979	7,366
Mandatory	126	160	152	100	106	120	137	156	174	185	1,416
Total for Pell	767	980	937	614	656	747	852	974	1,091	1,164	8,782

Methodology for Net Budget Impact

This section describes the methodology used to estimate the budget impact of the proposed regulations. The main behaviors that drive the direction and magnitudes of the budget impacts of the proposed regulations are the performance of programs and the enrollment and borrowing decisions of students. The Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA funds per student to estimate the budget impact of these proposed regulations. These assumptions and results vary from those in the ''Impact of the Proposed Regulations'' section, consistent with the Federal Credit Reform Act of 1990. The model (1) uses PPD:2026 to synthesize programs' results on the earnings premium measure to predict future results, and (2) tracks programs' cumulative results across multiple cycles of results to determine title IV, HEA loan eligibility and estimated effects on borrowing and Pell Grant receipt. While programs will be defined at the six-digit CIP level for the regulation, the data file includes two-digit and four-digit CIP codes that are used in our estimation process. As described in Section 5 (''Impact of the Final Regulation''), the Department estimated which programs would be exempt from the accountability framework under these regulations, including those that are unlikely to meet the minimum size requirements under the simpler roll-up process, those that did not participate in the Federal student loan program for five years prior to the enactment of the WFTCA, and those that may opt-out of participation in the Direct Loans program after failing the earnings premium test after the first year.

Assumptions

Assumptions were made in four areas to estimate the budget impact of the proposed regulations: (1) Program performance under the proposed regulations (initial and continued); (2) Student behavior in response to program performance; (3) Borrowing of students under the proposed regulations; and (4) Enrollment growth of students in passing and failing programs. Table 7.2 provides an overview of the main categories of assumptions and sources. Assumptions that are included in our sensitivity analysis are also noted. Wherever possible, our assumptions are based on past performance and student enrollment patterns in data maintained by the Department or documented by scholars in prior research.

Table 7.2 - Main Assumptions and Sources

Category	Detail	Source	Included in sensitivity?
Initial Program Performance	Share in each performance category in public data set	Department Data	No
Enrollment Growth	Annual enrollment growth rate by sector/level and year	Sector-level projections based on Department data	No
Program transition between performance categories	AY2026-27 onward, separately by loan risk group	Based on Department Data	Yes
Student response	Share of students who remain in programs, transfer to passing programs, or dropout by program performance category and transfer group	External research and assumptions from 2023 RIA	Yes
Student borrowing	Debt changes if students transfer to passing program or dropout by program performance, risk group, cohort	Based on Department Data	No

Enrollment Growth Assumptions

For AYs 2026 to 2036, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program funds in absence of the rule.[86] The average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2025 is computed, separately by the combination of control and credential level. This rate of growth is assumed for each type of program for AYs 2026 to 2037 when constructing our baseline enrollment projections.[87] Table 7.3 reports the assumed average annual percent change in title IV, HEA enrollment.

Table 7.3 - Annual Enrollment Growth Rate (Percent) Assumptions

	Public	Private, Non-Profit	Proprietary
Associate	0.4	1.2	3.0
Bachelor	0.9	0.9	0.6
Doctoral	4.4	5.6	0.3
Graduate Certificate	8.1	6.9	5.4
Master's	3.4	1.3	1.5
Post-Bacc Certificate	12.4	1.8	2.4
Professional	1.9	2.0	2.4
Undergrad Certificate	3.9	0.7	4.7

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific programs, but rather by groups of programs by broad credential level and control, the number of alternative programs available, and whether groups of programs pass or fail the relevant performance measure. The model estimates the flow of students between these groups due to changes in program performance over time and reflects assumptions for the share of enrollment that would transition between the following two performance categories in each year:

- Passing (includes with and without data, exempt programs and programs that fail the first earnings premium test and are assumed to opt out of Direct Loans).
- Failing earnings premium measure.

A program becomes ineligible if it fails the earnings premium measure in

[86] AYs 2027 to 2037 are transformed to FYs 2026 to 2036 later in the estimation process.

[87] The number of programs in proprietary graduate certificate and proprietary professional degrees was too low to reliably compute a growth rate. Therefore, we assumed a rate equal to the overall proprietary rate of 2.4 percent.

two out of three consecutive years.[88] The model applies the same program transition assumptions across the budget estimation window. All transition probabilities are estimated separately for four aggregate groups: proprietary 2-year or less; public or non-profit 2-year or less; 4-year programs; and graduate programs.[89]

The assumptions for program transition are taken directly from an observed comparison of actual rates in the PPD:2026 data results. The initial assignment of performance categories in 2027 is based on the PPD:2026 for students who completed programs during the 2017–18 and 2018–19 award years, whose earnings are measured in calendar years 2022 and 2023, respectively (adjusted to constant 2024 dollars using CPI–U). The program transition assumptions for 2027 to 2036 are based on the outcomes for this cohort of students. Programs with fewer than 30 title IV completers are determined to be passing, because these programs do not meet the minimum size requirements in the regulation to determine a program median earnings value and will therefore have a ''Not Calculated'' outcome when determining if these programs pass or fail the EP metric.

As the earnings premium measure in this regulation is backwards looking, it is not expected for there to be much churn between failing and passing for programs across consecutive years. It is expected for there to realistically be a small amount of movement around the earnings thresholds. To simulate this, the percentage of programs within a 1 percent band of their earnings threshold (0.5 percent on either side) were calculated for each group. The percentage of programs within the band, dependent on their initial status, were applied to calculate the share of enrollment that transitions from passing to failing or failing to passing. The percentages of programs outside of the band, dependent on their initial status, were applied to calculate the share of enrollment that remain passing or failing. The share of enrollment that transitions from each performance category to another is computed separately for each group. An alternative assumption was incorporated by increasing the band from 1 percent to 2 percent for calculating these transitions in the sensitivity analysis.

Table 7.4 - Program Transition Assumptions

		Percent in Year t+1 Status	
		Pass	Fail EP
Proprietary 2-year or less			
Year t Status	Pass	99.2	0.8
	Fail EP	5.4	94.6
Public and Non-Profit 2-year or less			
Year t Status	Pass	99.6	0.4
	Fail EP	4.7	95.3
4-year			
Year t Status	Pass	99.9	0.1
	Fail EP	5.3	94.7
Graduate			
Year t Status	Pass	99.9	0.1
	Fail EP	5.2	94.8

Student Response Assumptions

The Department's model applies assumptions for the probability that a current or potential student would transfer or choose a different program, remain in or choose the same program, or withdraw from or not enroll in any postsecondary program in reaction to a program's performance. The model assumes that student response would be greater when a program becomes ineligible for title IV, HEA loans than when a program has a single year of inadequate performance, which initiates warnings and publicly disclosed performance information. The rates of transfer and withdrawal or non-enrollment differ with the number of alternative transfer options available to students enrolled (or planning to enroll) in a failing program. Specifically, individual programs are categorized into one of four categories:

- *High transfer options:* Have at least one passing program in the same credential level at the same institution and in a related field (as indicated by being in the same 2-digit CIP code).
- *Medium transfer options:* Have a passing transfer option within the same ZIP3, credential level, and narrow field (4-digit CIP code).
- *Low transfer options:* Have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code.
- *Few transfer options:* Do not have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code. Students in these programs would be required to enroll in either a distance education program or

[88] Factors, such as in-state percentage, contribute to the earnings threshold used at the program-level and are incorporated into the public data file used in this analysis. For more information, see Table 5.5 in the ''Methodology for Final Regulation Calculations'' section.

[89] The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

enroll outside their ZIP3. Over 99 percent of failing programs have at least one non-failing program at the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, assumptions are made for each type of student transition. Programs with passing metrics are assumed to retain all their students. Students from programs with failing metrics that transfer are assumed to transfer to passing programs. It is assumed that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the warning is required. It is also assumed that rates of transfer are decreasing (and rates of dropout and remaining in programs are both increasing) as students have fewer transfer options. These assumptions regarding student responses to program results are provided in Table 7.5.

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Table 7.5 - Student Response Assumptions, by Program Result and Number of Alternative Program Options Available

Program Result	Pass			Fail once			Ineligible		
Student Response	Remain	Transfer	Dropout	Remain	Transfer	Dropout	Remain	Transfer	Dropout
High Alternatives	1	0	0	0.80	0.15	0.05	0.2	0.6	0.2
Medium Alternatives	1	0	0	0.85	0.09	0.06	0.2	0.55	0.25
Low Alternatives	1	0	0	0.90	0.03	0.07	0.25	0.45	0.3
Few Alternatives	1	0	0	0.90	0.02	0.08	0.25	0.35	0.4

The assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth. Table 7.6, includes details of the assumptions of the destinations among students who transfer, separately for the following groups:[90]

- Risk 1 (Proprietary <= 2 year).
- Risk 2 (Public, Non-Profit <= 2 year).
- Risk 3 (Lower division 4 year).
- Risk 4 (Upper division 4 year).
- Risk 5 (Graduate).

Table 7.6 - Student Response Assumptions, Among Transferring Students

	Shift to New Programs				
Shift from…	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5
Risk 1	0.5	0.4	0.1	0	0
Risk 2	0.2	0.7	0.1	0	0
Risk 3	0.05	0.1	0.85	0	0
Risk 4	0	0	0	1	0
Risk 5	0	0	0	0	1

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The values in the student response tables are based on assumptions from extant research that we view as reasonable guides to the share of students likely to transfer to or choose another program when their program loses title IV, HEA eligibility. For instance, a 2021 Government Accountability Office (GAO) report found that about half of non-completing students who were enrolled at closed institutions transferred.[91] This magnitude is similar to recent analysis that found that 47 percent of students reenrolled in another program after an institutional closure.[92] The authors of this report find very little movement from public or non-profit institutions into proprietary institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed proprietary, 2-year institutions moved to public 2-year institutions, whereas less than 3 percent of re-enrollees at closed public and private non-profit 4-year institutions moved to proprietary institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at proprietary colleges that were subject to loss of federal financial aid disbursement eligibility, with much of that shift to public two-year institutions.[93] The Department also considered an internal analysis of ITT Technical Institute

[90] Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

[91] U.S. Government Accountability Office. ‘‘College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges.’’ July 15,2022. *www.gao.gov/products/gao-22-104403.*

[92] State Higher Education Executive Officers Association (2022). ‘‘More Than 100,000 Students Experienced An Abrupt Campus Closure Between July 2004 and June 2020. November 15,2022. *sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.*

[93] Cellini, S. R., Darolia, R., & Turner, L. J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy,* 12(2), 46–83.

closures. About half of students subject to the closure re-enrolled elsewhere (relative to pre-closure patterns). The majority of students that re-enrolled did so in the same two-digit CIP code. Of associate's degree students that re-enrolled, 45 percent transferred to a public institution, 41 percent transferred to a different proprietary institution, and 13 percent transferred to a private non-profit institution. Most remained in associate's or certificate programs. Of bachelor's degree students that re-enrolled, 54 percent transferred to a different proprietary institution, 25 percent shifted to a public institution, and 21 percent transferred to a private non-profit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information on students' general patterns through and across postsecondary institutions (not specific to responses to sanctions or closures). Of students that started at a public or private non-profit 4-year institution, about 3 percent shifted to a proprietary institution within 5 years. Of those that began at a public or private non-profit 2-year institution, about 8 percent shifted to a proprietary institution within 5 years.

Student Borrowing Assumptions

To incorporate changes in average loan volume associated with student transitions, the average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per student enrolled are computed separately by risk group and program performance group. For programs assumed to fail the first earnings premium calculation and opt out of loan program participation, this effect is captured by zeroing out their loan volumes in the calculation of the average loan amounts. These averages are then applied to shifts in enrollment to generate changes in the amount of aid. The baseline incorporates the sunsetting of Grad PLUS loans due to the WFTCA. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

Process for Net Budget Impact Estimate

The budget model estimates a yearly enrollment for AYs 2027 to 2036 and the distribution of those enrollments in programs is characterized by earnings premium measure performance, risk group, and transfer category. This enrollment is projected for a baseline (in absence of the accountability framework) and under the legislative changes implemented in the proposed regulations. The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received by these distributions of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the accountability framework. We do not simulate the impact of the rule at the individual program level because doing so would necessitate very specific assumptions about which programs students transfer to in response to the proposed regulations. Therefore, for the purposes of budget modeling, we perform analysis with aggregations of programs into groups (called ''program aggregate'' groups) defined by the following:

- Five student loan model risk groups: (1) 2-year (and below) proprietary; (2) 2-year (and below) public or non-profit; (3) 4-year (any control) lower division, which is students in their first two years of a Bachelor's program; (4) 4-year (any control) upper division, which is students beyond their first two years of a Bachelor's program; (5) Graduate student (any control).
- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is an initially assigned program-level characteristic and is assumed not to change.
- Four performance categories: Pass, Fail earnings premium measure, Pre-ineligible (a program's current enrollment is title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not title IV, HEA eligible).

We first generate a projected baseline (in absence of the accountability framework) enrollment, Pell volume, and loan volume for each of the program aggregate groups from AYs 2027 to 2037. This baseline projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2025. These growth rates are presented in Table 7.3. We then apply these annual growth rates to the actual enrollment by program in 2025 to forecast enrollment in each program in 2026. This step is repeated for each year to get projected enrollment by program through 2037. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group and program performance group for 2025. These averages are then adjusted according to the President's Budget FY2027 assumptions loan volume and Pell Grant baseline assumptions for the change in average loan by loan type and the change in average Pell Grant. We then multiply the projected enrollment for each program by these average aid amounts to get projected total aid volume by program through 2037. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, AYs 2027 to 2037, and shift the baseline Pell and loan volume from AYs 2027 to 2037 to FYs 2027 to 2036 for calculating budget cost estimates.

The most significant task is to generate projected enrollment, Pell volume, and loan volume for each of the program aggregate groups from AYs 2027 to 2037 with the proposed accountability framework in place. We assume the first set of rates would be released in the 2027 award year, so this is the starting year for our projections. Projecting counterfactual enrollment and aid volumes involves several steps:

Step 1: Start with the enrollment by program aggregate group in 2027. In this first year, there are no programs that are ineligible for title IV, HEA funding.

Step 2: Apply the student transition assumptions to the enrollment by program aggregate group. This generates estimates of the enrollment that is expected to remain enrolled in the program aggregate group, the enrollment that is expected to drop out of postsecondary enrollment, and the enrollment that is expected to transfer to a different program aggregate group.

Step 3: Compute new estimated enrollment for the start of 2028 (before the second program performance is revealed) for each cell by adding the remaining enrollment to the enrollment that is expected to transfer into that group. We assume that (1) students transfer from failing or ineligible programs to passing programs in the same transfer group; (2) Students in risk groups 4 or 5 stay in those risk groups; (3) Students in risk group 1 can shift to risk groups 2 or 3; (4) Students in risk group 2 can shift to risk groups 1 or 3; (5) Students in risk group 3 can shift to risk groups 1 or 2. Therefore, we permit enrollment to shift between proprietary and public or non-profit certificate, associate's, and lower-division bachelor's programs, based on the assumptions listed in Table 7.6.

Step 4: Determine the change in aggregate baseline enrollment between 2027 and 2028 for each risk group and allocate these additional enrollments to each program aggregate group in proportion to the group enrollment computed in Step 3.

Step 5: Apply the program transition assumptions to the aggregate group enrollment from Step 4. This results in estimates of the enrollment that would stay within or shift from each performance category to another performance category in the next year. This mapping would differ by risk group, as reported in Table 7.4. Enrollment in a failing category would not remain in the same category because if a metric is failed twice, this enrollment would move to pre-ineligibility. The possible program transitions for programs are:

- Pass → Pass, Fail Earnings Premium
- Fail Earnings Premium → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2028 (after program performance is revealed) for each program aggregate group by adding the number that stay in the same performance category plus the number that shift from other performance categories.

Step 7: Repeat steps 1 to 6 above using the end of 2028 enrollment by group as the starting point for 2029 and repeat through 2037. The only addition is that in Step 5, two more program transitions are possible for failing programs:

- Pre-Ineligible → Ineligible
- Ineligible → Ineligible (no change)

Step 8: Generate projected Pell and loan volume by program aggregate group from AYs 2027 to 2037 under the proposed rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) that vary over time to get projected total aid amounts by group through 2037. Any enrollment that has dropped out (not enrolled in any postsecondary program) get zero Pell Grant and loan amounts. Enrollment in the Ineligible category initially receives Pell Grants but no loan amounts. To account for revisions to the standards of administrative capability (§ 668.16), Pell Grant amounts in the Ineligible category are reduced by 33 percent in 2030 and 51 percent starting in 2031 to capture the estimated impact. This is based on an analysis, using PPD:2026, of the percentage of Pell Grant volume at low-earning outcome programs at institutions in which more than half of title IV, HEA recipients or more than half of title IV, HEA funds are from low-earning outcome programs. While the accountability framework does not make programs ineligible for Pell Grants immediately, we do estimate that borrowers whose programs lose eligibility for title IV, HEA loans will transfer programs or choose not to attend with corresponding effects on their Pell Grants. The lower percentage reduction in 2030 represents the delay in implementation of the accountability framework for programs that train individuals for occupations where workers customarily and regularly receive tips until the earnings of those individuals can be measured after the ''No Tax on Tips'' policy is in effect. To account for this delay on loan volume and enrollment, impacts of the accountability framework on programs within the identified CIP categories were shifted out by a year. The process for identifying these CIP categories is discussed in the ''Earnings of Program Completers—Use of IRS Data'' section.

Step 9: Shift Pell and loan volume under the proposed rule from AYs 2027 to 2037 to FYs 2027 to 2036 for calculating budget cost estimates.

Step 10: Calculate adjustment factors capturing the replacement of the current regulations with the accountability framework in the proposed regulations. This is done by first calculating the percentage change between the model results for the baseline and accountability framework scenarios described in the previous steps and then generating the inverses of the adjustment factors for the current regulations. These two adjustment factors are multiplied to create a final adjustment factor that represents both the removal of the current regulations and the impact of the accountability framework.

Accountability Framework and Model Results

Key distinctions between this final accountability framework and the current GE regulations are the applicability to programs regardless of institutional control and the removal of annual and discretionary debt-to-earnings rate metrics. Degree programs at private proprietary, private not-for-profit, and public institutions that fail the earnings premium measure in two out of any three years will lose eligibility for title IV, HEA loans. However, if the program fails the first earning premium measure calculated and chooses to opt-out of the loan programs, it can maintain eligibility for the Pell Grant program. The proposed regulations are estimated to shift enrollment towards passing programs with higher median earnings and away from programs that fail the earnings premium tests. The vast majority of students are assumed to resume their education at the same or another program in the event they are warned about poor program performance or if their program loses eligibility. The proposed regulations are also estimated to reduce overall enrollment, as some students decide not to enroll. Changes in enrollment patterns in Tables 7.7 and 7.8 reflect students transferring in and out of each risk group, as well as remaining in programs that do not provide title IV, HEA loans, or dropping out.[94] Table 7.7 summarizes the main enrollment results from within the accountability framework model. By the end of the analysis window, 99.6 percent of title IV, HEA enrollment is expected to be in passing programs.

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[94] Tables 7.7 and 7.8 represent enrollment estimated within the accountability framework model, which is not equivalent to borrower count.

Table 7.7 - Projected Title IV, HEA Enrollment Estimate within the Accountability Framework Model

		2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Projected Total Aggregate Enrollment (millions)											
	Baseline	21.29	21.60	21.92	22.25	22.59	22.95	23.31	23.68	24.06	24.47
	Policy	21.25	21.49	21.77	22.14	22.50	22.85	23.20	23.55	23.91	24.28
Percent of Enrollment by Program Performance											
Pass	Baseline	96.7	96.7	96.6	96.6	96.5	96.5	96.4	96.4	96.3	96.3
	Policy	97.2	98.7	99.5	99.6	99.6	99.6	99.6	99.6	99.6	99.6
Fail EP	Baseline	3.3	3.3	3.4	3.4	3.5	3.5	3.6	3.6	3.7	3.7
	Policy	2.8	1.3	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4

Table 7.8 - Projected Percent of Title IV, HEA Enrollment Estimate by Loan Risk Category within the Accountability Framework Model

		2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Percent of Enrollment by Loan Risk Category											
Prop. 2-year & below	Baseline	5.77	5.93	6.08	6.24	6.40	6.56	6.73	6.90	7.08	7.25
	Policy	5.64	5.70	5.34	5.50	5.68	5.84	6.00	6.16	6.31	6.47
Public/NP 2-year & below	Baseline	33.37	33.24	33.11	32.99	32.87	32.74	32.60	32.47	32.34	32.21
	Policy	33.42	33.37	33.45	33.33	33.19	33.04	32.89	32.74	32.59	32.44
4-year (lower)	Baseline	32.42	32.25	32.07	31.88	31.69	31.50	31.30	31.10	30.89	30.68
	Policy	32.49	32.40	32.38	32.19	32.01	31.83	31.66	31.49	31.32	31.15
4-year (upper)	Baseline	13.47	13.40	13.33	13.25	13.18	13.10	13.02	12.93	12.85	12.77
	Policy	13.49	13.42	13.39	13.30	13.22	13.14	13.06	12.98	12.91	12.83
Graduate	Baseline	14.96	15.18	15.40	15.63	15.86	16.10	16.34	16.59	16.84	17.09
	Policy	14.96	15.10	15.43	15.68	15.91	16.14	16.38	16.63	16.87	17.12

In addition to changes in enrollment, both overall and between risk groups, differences in average loan amounts are a factor in estimating total volume. While Tables 7.7 and 7.8 display estimates from within the accountability framework model, total volume changes and the net budget impact include removal of the current regulations. While non-GE programs were not subject to potential ineligibility under the current regulations, students could react to poor performance, so the net budget impact reflected changes for all institution types. In the current regulations, higher-level and higher-debt programs were particularly impacted by the D/E measures and resulting student reactions. Additionally, Pell Grant eligibility was treated the same way as loan eligibility in the current regulations, while the impact of the accountability framework on Pell Grants from the standards of administrative capability is lesser.

The accountability framework estimation process described in the methodology, and the resulting change in Direct Loan and Pell Grant volume over the budget window compared to the estimated change in Direct Loan and Pell Grant volume from current regulations, generates the primary net budget impact shown in Tables 7.1A and 7.1B.

Sensitivity Analysis

The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. Realized budget impacts will be heavily influenced by actual program performance, student response to program performance, student borrowing, and changes in enrollment because of the regulations. For example, if students, including prospective students, react more strongly to the warnings or potential ineligibility of programs than anticipated, and if many of these students leave postsecondary education, the impact on Pell Grants and loans could change.

Therefore, we conducted simulations of the rule while varying several key assumptions. Specifically, we provide estimates of the change in title IV, HEA volumes using varied assumptions about student transitions, student dropout, and program performance. We believe these to be the main sources of uncertainty in our model.

Along with the primary estimate, the scenarios presented in the ''Sensitivity Analysis'' are intended to provide a reasonable estimation of the range of impact that the proposed regulations could have on the budget.

Varying Levels of Student Transition

The primary analysis assumes rates of transfer and dropout for programs based on relevant research and literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives (Tables 7.9A and 7.9B) and few alternatives (Tables 7.10A and 7.10B). As reported in Tables 7.9A, 7.9B, 7.10A, and 7.10B, it is estimated that the proposed regulations would result in an increase in title IV, HEA program assistance between fiscal years 2027 and 2036, regardless of whether all students have the highest or lowest amount of transfer alternatives.

Table 7.9A - High Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Subs.	43	51	47	48	50	51	55	56	57	82	541
Unsub.	49	65	66	69	73	76	79	80	81	103	741
PLUS (Par & Grad)	9	15	15	13	12	10	4	3	2	(3)	79
Consol	0	3	8	14	16	19	26	29	34	32	180
Total for Loans	101	135	137	144	150	155	163	167	174	214	1,541

Table 7.9B - High Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Discretionary	650	845	809	551	582	652	734	833	931	991	7,578
Mandatory	128	165	157	107	112	125	141	159	176	187	1,457
Total for Pell	778	1,010	966	658	694	777	875	992	1,107	1,178	9,035

Table 7.10A - Low Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Subs.	37	37	31	34	39	43	48	51	53	77	451
Unsub.	38	44	45	52	58	63	70	73	76	98	615
PLUS (Par & Grad)	11	23	28	22	18	15	8	9	5	1	141
Consol	0	2	4	8	8	13	19	21	23	25	124
Total for Loans	86	106	108	116	123	134	146	154	157	201	1,331

Table 7.10B - Low Transfer Sensitivity Analysis - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Discretionary	590	682	636	340	390	495	603	721	830	898	6,185
Mandatory	116	133	124	66	75	95	115	137	158	170	1,189
Total for Pell	706	815	760	406	465	590	718	858	988	1,068	7,374

Increased Program Transition Band

Our primary analysis assumes that programs in a one percent band around the relevant earnings threshold will transition from failing to passing, and vice versa, but the transition band could be higher. A sensitivity was modeled with a two percent band to demonstrate the effect of more programs changing between failing and passing statuses.

As reported in Tables 7.11A and 7.11B, we estimate that the regulations would result in an increase in title IV, HEA program assistance between fiscal years 2027 and 2036, regardless of whether a one or two percent band around the relevant earnings threshold is applied.

Table 7.11A - High Program Transition Band Sensitivity - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Subs.	43	49	45	45	47	49	52	54	55	78	518
Unsub.	49	64	64	66	68	70	75	77	79	97	708
PLUS (Par & Grad)	9	17	18	14	12	10	6	6	1	(4)	91
Consol	0	4	9	14	16	19	25	28	33	31	179
Total for Loans	101	134	136	140	143	147	160	166	167	202	1,495

Table 7.11B - High Program Transition Band Sensitivity - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions $

	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	Total
Discretionary	642	821	784	508	526	596	677	774	867	922	7,117
Mandatory	126	160	152	99	102	115	130	148	165	174	1,371
Total for Pell	768	981	936	607	628	711	807	922	1,032	1,096	8,488

Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the benefits, costs, and transfers associated with the provisions of these regulations. As noted in the *Paperwork Reduction Act* section, some items are reductions in burden and others are increases, with a combination of one-time adjustments and recurring items. The net effect of this is a reduction in burden that is displayed as a benefit in the accounting statement. This is a contrast to the presentation in the *Paperwork Reduction Act* summary table that presents the annual burden without the subsequent net reductions in future years. Table 7.12 provides our best estimate of the changes in annualized monetized benefits, costs, and transfers as a result of these proposed regulations.

Table 7.12 Accounting Statement for Primary Scenario

	Annualized Impact (millions, $(2026)	
Category	Benefits	
	3 percent	7 percent
Net reduction in costs of compliance with paperwork requirements	$113.4	$103.7
Earnings gain for students at programs that are not low-earning outcome programs.	Not quantified	
Measures to improve programs at risk of failing, such as offering better student services, helping with career planning, and working with employers to ensure graduates have in-demand skills may lead to better graduation and labor market outcomes.	Not quantified	
Reduced risk that students enroll in high-cost programs that do not produce earnings that justify their costs	Not quantified	
Approximately 30 percent reduction in reporting elements required of institutions, many of which the Department can produce from its administrative data	Not quantified	

No loss of title IV, HEA funds and additional non-Federal revenues for programs, primarily programs at proprietary institutions and certificate programs from all sectors, that would lose eligibility under the current regulations but not the proposed regulations	Not quantified	
Category	Costs	
	3 percent	7 percent
Costs of system changes for Education to implement the proposed regulations	$2.4	$2.8
Federal implementation staffing and contract costs	$1.4	$1.6
Federal long-term staffing increases	$0.9	$0.9
Additional ongoing contract costs to operate and maintain systems to administer regulatory provisions	$1.9	$1.8
Potential for abrupt closures to disrupt enrolled students and impose search costs and financial costs to switch majors or institutions	Not quantified	
Reputational costs for former graduates of failing programs	Not quantified	
Students at lower-earnings certificate programs that would not remain eligible	Not quantified	

under the current regulations may earn less		
Reputational cost to institutions offering multiple failing programs	Not quantified	
Lost revenue from non-Federal sources because of enrollment declines at institutions with failing programs	Not quantified	
Category	Transfers	
	3 percent	7 percent
Increased transfers from Federal government to Pell recipients at programs satisfying the earnings measure	$871	$862
Increased transfers of Federal loan dollars from the Federal Government to students at programs that pass the earnings measure	$149	$147
Transfer of State aid dollars from failing programs for dropouts	Not quantified	

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8. Alternatives Considered

During the negotiated rulemaking process, the Department received more than 40 proposals from non-Federal negotiators representing numerous impacted constituencies on a variety of issues. As the Department previously explained in the NPRM, we noted proposals that were accepted by the committee. All other proposals were discussed and declined. To view all submitted proposals, see here: *https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026.*

Furthermore, the Department received 9,994 total comments during the public comment period. We considered them all as possible alternatives. Based on these comments, the Department updated several provisions in the regulatory text; these updates are listed in Table 3.1 of the Regulatory Impact Analysis.

This section summarizes the significant alternatives that were proposed but ultimately declined during negotiated rulemaking.

§ 668.2 General Definitions

In this rule, we adapt the existing definition of the earnings threshold used in the earnings premium calculation under the current FVT regulations to conform with the earnings benchmark specified under the WFTCA. This benchmark would use State or national earnings data from the ACS.

Some negotiators raised questions about various elements of the ACS, which is to be used to determine the earnings threshold for evaluation. In particular, negotiators expressed concern that the use of median earnings data at only the State or national level may disadvantage programs and institutions located in rural areas where expected wages may be lower compared to State and national medians.

The Department examined this issue and found that programs at rural institutions will be impacted by the final regulation at slightly higher rates relative to the current regulation (Table 5.10). Specifically, the Department estimates that approximately 1.8 percent of enrollment at rural institutions is in programs that would fail under the final rule, which is a slight increase relative to the current regulations (1.3 percent). However, rural institutions would lose a smaller share of title IV, HEA funds under the final regulation relative to the current rule (1.1 percent vs. 1.2 percent).

Furthermore, the WFTCA is highly prescriptive with regard to the precise manner in which program earnings would be evaluated, specifying factors for comparison such as age ranges, working status, education level, and geography. Congress did not include a regional price parity adjustment in Section 84001, even though they included it elsewhere in the WFTCA for value-added earnings for eligible workforce programs. The Department believes that the absence of a regional price parity in Section 84001, but its inclusion in other parts of the WFTCA, suggests that Congress did not intend for the Department to adjust program earnings at rural institutions.

Another negotiator submitted a suggestion to adjust the earnings threshold for certificate programs having at least 75 percent of female completers downward to 85 percent of the median earnings for the comparison group to account for ''gender-based'' wage gaps. The Department disagreed with this proposal for several reasons. First, the Department does not believe that the statute allows this manner of adjustment to the earnings benchmark. Again, Congress was prescriptive regarding how the benchmark group must be defined. Second, such an adjustment could also undermine the consistent treatment of programs, could potentially lead to confusion among stakeholders, and would also appear to be in conflict with the spirit of Executive Order 14173's prohibition on identity-based preferential treatment based on race, color, sex, sexual preference, religion, or national origin. Third, the Department finds that undergraduate certificate programs that enroll at least 75 percent of female students do not earn less, on average, than other types of programs after controlling for program field of study.[95]

§ 668.402 Student Tuition and Transparency System Framework

In this rule, we amend the existing FVT framework to harmonize with the earnings accountability framework provided under the WFTCA. Among these changes, the final regulations would rescind the existing D/E rates metric, adapting the earnings premium measure as the sole earnings accountability metric.

Some negotiators proposed that the Department retain the D/E rates metric. These negotiators argued that D/E rates are valuable in preventing the flow of title IV, HEA funds to programs that leave students in a position where they may not be able to afford to repay their student debt. They further reasoned that D/E rates would remain important in the future because pending changes to Direct Loan limits under the WFTCA may result in an increase in private lending. Other negotiators supported the Department's position to eliminate the D/E rates metric, noting that this change would reduce unnecessary complexity while preserving meaningful accountability. These negotiators reasoned that the change reflects statutory intent and may therefore reduce risk of future policy fluctuations.

As the Department notes above in the discussion of § 668.402, we believe the revision to remove the D/E rates metric reflects the intent of the WFTCA, as the Direct Loan program accountability framework in revised HEA Section 454(c) establishes an earnings comparison metric only, not a debt-to-earnings measurement. While calculating an earnings premium measure requires very little reported data other than an accurate list of students who completed the program, D/E rates rely heavily on significant amounts of institutionally reported data regarding costs and sources of student financial assistance beyond the title IV, HEA programs. Such reporting can be burdensome and confusing for institutions and, given the Department's concerns about the completeness and accuracy of this reported data, we believe this data would be more appropriate for use in informational disclosures rather than in an accountability metric used to determine a program's eligibility for Direct Loan program funds.

Furthermore, the Department finds that maintaining the D/E metric would result in a very small increase in the overall share of programs that would fail the accountability framework. As shown in Table 8.1, maintaining the D/E metric would increase the share of programs that fail from 5.2 percent to 5.3 percent (columns 3 vs. 4).[96] In real terms, this increase represents approximately 100 additional programs that would fail the accountability framework; an extremely small fraction of the 200,000+ programs that enroll title IV, HEA students nationally (Table 5.2).

Furthermore, the Department believes this is likely an overestimate of impact of maintaining the D/E metric for two reasons. First, the debt measures in the PPD:2026 do not reflect the new annual Federal student loan limits that will take effect on July 1, 2026, under the WFTCA. Those annual limits ($20,500 for graduate programs and $50,000 for professional programs) will reduce the debt that graduate and professional borrowers can accumulate, reducing the risk that program completers would accumulate unmanageable levels of debt.[97] Second, the debt measure in PPD:2026 includes the debt of only Federal student loan borrowers, whereas the debt measure under the current regulation includes all students who received title IV, HEA program assistance, even if they did not borrow. That means the debt measure in PPD:2026 is higher than the one that would ultimately be used if the D/E metric was maintained in the final regulation, which would likely result in a smaller share of programs failing the D/E test than what is estimated here.

In summary, the Department estimates that, at most, maintaining the D/E metric would result in a 0.1 percentage point increase in the overall

[95] For this analysis, the Department limited the sample to undergraduate certificate programs with earnings data and regressed program earnings on a binary indicator equal to 1 if at least 75 percent of program completers are female and program (cip4) fixed effects. Programs were weighted by the count of individuals in the earnings cohort (*count_wne_p4*) and standard errors were clustered at the program level. The coefficient on the indicator was not statistically significant at conventional levels.

[96] This analysis assumes that the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation are aligned with the new earnings definition from Section 84001 in the WFTCA—specifically, the median earnings of working title IV graduates measured four years after completion who are not currently enrolled in college. Note that this estimate differs from what was included in the NPRM and discussed during Negotiated Rulemaking due to the updates made to the analysis discussed in ''5. Impact of the Final Regulation'' section above.

[97] The Department approximates that a third of the programs it estimates would fail only the D/E test would instead pass once borrowers are subject to the WFTCA loan limits for graduate and professional students.

share of programs that would fail the accountability framework. In the Department's view, this marginal addition would not justify the significant difference in complexity, cost, and administrative burden of including D/E rates.

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Table 8.1 - Estimated Share of Failing Programs and Students in Failing Programs with D/E Maintained, by Credential Level

Credential Level	N	Share that Fail		
		Current Regs	Final Regs	Final Regs + Keeping DTE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	7,260	33.4	24.1	24.3
Associate	9,630	2.3	6.0	6.2
Bachelor	29,670	0.3	1.1	1.1
Post-Bacc Cert	120	<0.1	3.9	3.9
Masters	12,140	0.5	4.2	4.4
Doctoral	1,640	0.5	0.7	1.6
Professional	640	0.2	2.0	2.0
Grad Cert	780	5.0	2.0	5.5
Total	61,880	4.6	5.2	5.3
B. Student-Weighted				
Undergrad Cert	1,389,600	42.3	27.6	27.7
Associate	4,350,000	1.8	3.9	4.2
Bachelor	8,163,500	0.9	0.6	0.7
Post-Bacc Cert	9,400	<0.1	1.4	1.4
Masters	1,750,100	1.0	4.1	4.3
Doctoral	295,100	2.1	0.8	3.4
Professional	229,100	2.7	4.9	4.9
Grad Cert	81,700	7.3	2.8	9.3
Total	16,268,500	4.8	4.2	4.5

Notes: In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV, HEA student counts. Ns are rounded to nearest 100. Total Ns may not sum to their subcomponents due to rounding. Title IV, HEA enrollment corresponds to enrollment during the 2024-25 award year. "DTE" = Debt to Earnings test. When calculating the Annual Earnings Rate and Discretionary Earnings Rate metrics, we use the 4-year median earnings of program completers who are working and not enrolled. This differs from current regulation, where those metrics are calculated using the 3-year median earnings of program completers who are not enrolled.
Source: Department of Education calculations using PPD:2026.

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§ 668.403 Calculating Earnings Premium Measure

In this final rule, we calculate a program's earnings premium measure using the median annual earnings of working students who completed the program during the cohort period for the fourth tax year following program completion. As under the current FVT/GE regulations, a Federal agency with earnings data would provide this earnings data and the data would be unmodified other than the potential use of marginal statistical noise for privacy masking purposes.

Some negotiators proposed the use of alternative sources of earnings data. In particular, negotiators suggested that the Department consider obtaining earnings data from State data systems where available, speculating that such earnings data might in some cases be more accurate than data available at the

Federal level and speculating that State data systems may improve over time. Other negotiators expressed concern about the use of non-Federal earnings data, noting that if the Department were to consider the use of State-level earnings data, the Department would need to evaluate whether the earnings data is more reliable than what a Federal agency with earnings data would provide.

The Department disagreed with the proposal to use State-level earnings data, and we concur with the concerns of the negotiators who objected to this proposal. We believe it would be highly impractical for the Department to evaluate, on an ongoing basis for each State, whether the quality of State-level earnings data exceeds that of Federal-level earnings data. Moreover, even if this were feasible, HEA Section 454(c) does not provide authority for the Department to enter agreements with States to obtain State-level earnings data.

Some negotiators proposed that the Department adjust a program's median earnings data to account for various circumstances including tip income and self-employment. This discussion focused heavily on cosmetology programs, and negotiators suggested that the Department introduce an earnings modifier to address the possibility of unreported tipped income. Proponents of this view argued that some occupations—such as barbers—rely heavily on tips which may be underreported in Federal earnings data.

The Department's position on this issue is summarized in the ''Earnings of Program Completers—Use of IRS Data'' section above. Ultimately, the Department disagrees with suggestions to upwardly adjust the median graduate earnings data for a program based on purported underreporting of tipped or self-employment income within an occupation.

First, the Department's approach includes earned income sources from work as they are reported on IRS forms. Tip income is generally required to be reported to employers and included in the wages reported in box 1 of IRS Form W–2. Additional tip income not otherwise reported is required to be included with wage income on the filer's tax form. Any existing underreporting of income would impact both sides of the earnings premium calculation, *i.e.,* both the measured median earnings of program graduates and the benchmark median earnings of working adults in the earnings threshold.

Second, the Department examined the share of cosmetology programs that would fail the accountability framework under the final regulation (Tables 5.17, 5.18, 5.19, and 5.20). We found that cosmetology programs perform better under the Department's final regulation relative to the baseline without an earnings adjustment, implying that, at minimum, these programs will be better off than they would if the existing regulations were left unchanged.

Third, the Department finds that an earnings adjustment for cosmetology programs would not result in a meaningful change in fail rates for these programs (Table 8.2). Even with an 8 percent earnings boost, the vast majority of cosmetology programs (84 percent) would still fail the accountability framework under the final rule. These findings align with points raised by other negotiators, who argued that tips are usually reported, and that to the extent that they may be underreported, that underreporting is minimal.

Table 8.2 - Estimated Share of Cosmetology Certificate Programs that Fail, with Earnings Adjustment

Cosmetology and Related Personal Grooming Services. (1204)	Credential Level	N	Share that Fail		
			Current Regs	Final Regs	Final Regs + Boosted Earnings
		(1)	(2)	(3)	(4)
Programs	Ug Cert	900	99.3	93.2	84.3
Students	Ug Cert	201,000	99.1	92.5	83.4
Title IV Volume	Ug Cert	1,329	99.3	90.0	81.9

Notes: Program and student N sizes are rounded to the nearest 100. Title IV Volume, in $ millions, is rounded to the nearest million. Percentages in columns 2, 3, and 4 are computed prior to rounding. In column 4, program earnings are boosted by 8 percent, reflecting the estimated share of un-reported tipped income found in Cellini & Blanchard (2022).
Source: Department of Education calculations using PPD:2026.

Fourth, Congress specifically selected the use of median earnings rather than mean earnings for both the program and benchmark earnings, likely because it would take over half of the respective earners to shift the median value by even a small amount. Adjusting graduate earnings across the board by any amount would over adjust for any unreported or underreported earnings, to the extent they may exist.

Fifth, negotiators arguing for an earnings adjustment offered no practical way to determine which programs, and by what amount, earnings should be adjusted to account for the possibility of unreported tips. There is limited research on the extent of underreporting of tipped income by occupation, and the Department does not believe it is appropriate to create a variance for one type of program without clearer information about the extent to which underreporting exists in other occupations.

For all of these reasons, the Department determined that providing an earnings adjustment for certain programs to account for the possibility of unreported tipped income or self-employment income would be infeasible, burdensome, and arbitrary without stronger data to support establishing a variance to account for unreported earnings for particular types of programs. However, the Department was persuaded by commenters who recommended the Department delay the earnings test for heavily tipped occupations until after the ''No Tax on Tips'' policy is in effect. To the extent that cosmetologists may under-report tipped income, the Department believes this approach will enhance the earnings test for the reasons described in the ''Earnings of Program Completers—Use of IRS Data'' section above.

Negotiators also suggested modifying a program's median earnings data to account for less than full-time work. The negotiators noted that in certain occupations, graduates may routinely work less than full time, which they argued would unfairly skew earnings premium results that compare their earnings to a full-time earnings benchmark. Other negotiators countered that the statute clearly defines the benchmark group and noted that it would be inappropriate to distinguish between full-time and part-time earnings because all graduates have costs, regardless of how many hours they choose to work. A negotiator further observed that a key function of higher education is to prepare students to obtain better jobs, and to that end the regulations should incentivize full-time work.

The Department disagrees with the suggestion to adjust program earnings to account for the possibility that graduates choose to work less than full time. It is important to note that although some graduates may work less than full time, the same is true of the earnings benchmark group, which considers all applicable working adults of ages 25 through 34 regardless of the number of hours worked. HEA Section 454(c) does not specify that only graduates working full time should be measured, nor does the statute seek to compare graduate earnings to only full-time working adults. Adjusting either side of the earnings premium equation would necessitate adjusting the other, and doing so would invite significant burden, costs, and increased risk of inaccurate determinations. Furthermore, this suggestion may not be feasible since the Federal agency with earnings data may not have access to information on the hours worked by program graduates, preventing them from making adjustments based on full-time and part-time work status. The Department also believes that the statute does not authorize this type of adjustment, as it would circumvent the specific methodology prescribed by Congress.

§ 668.601 Earnings Accountability Scope and Purpose

In this final rule, we implement the accountability framework required under the WFTCA pertaining to Direct Loan program eligibility of undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs). Some negotiators proposed that the Department entirely rescind the existing GE accountability framework in favor of the WFTCA accountability framework to reduce regulatory complexity. Other negotiators argued for retaining the existing GE accountability framework without alteration, arguing that it provides students and taxpayers a greater degree of protection from poorly performing undergraduate certificate programs and that fully rescinding the current GE accountability framework would exclude undergraduate certificate programs from oversight, putting students and taxpayers at increased risk.

As further discussed in the ''Department Authority (Including GE and Quality Assurance Authority'' section above, although undergraduate certificate programs were not specifically mentioned in Section 84001 of the WFTCA, Congress nonetheless did not explicitly forbid the Secretary from applying the accountability framework to those programs, nor did Congress choose to otherwise eliminate, limit, or curtail the Department's existing GE accountability framework, either when crafting the WFTCA or in any other prior legislative act. Congress was in fact aware when passing the WFTCA that undergraduate certificate programs were already covered using a similar earnings test under the Department's existing GE accountability framework. The Department therefore believes that rescinding the existing GE framework altogether, thereby excluding undergraduate certificate programs from the accountability framework, would contradict Congressional intent for program accountability in higher education, and we agree with the negotiators who noted that doing so would put students and taxpayers at increased risk.

However, we also disagreed with the proposal to maintain the existing GE accountability framework in its current form, because maintaining competing GE and WFTCA accountability frameworks would add significant complexity, increase administrative burden and costs for institutions and the Department, and could generate increased confusion for students in comparing and understanding differing informational disclosures and warnings generated from multiple frameworks that apply to different types of institutions and programs. We view harmonization of the existing FVT/GE framework and the WFTCA accountability framework to be essential in establishing parity among institutions and program types through a single accountability framework that covers the vast majority of programs qualifying for title IV, HEA assistance and nearly all title IV, HEA recipients.

To better understand this issue, the Department examined the share of programs and students who would attend failing programs if the existing GE accountability framework was entirely rescinded (Table 8.3). We find that entirely rescinding the GE accountability framework would result in half as many failing programs relative to the final rule which maintains the GE accountability framework (2.3 percent vs. 5.2 percent). The reduction is entirely driven by undergraduate certificate programs: these programs would be exempt from the accountability framework if the GE regulation was rescinded. In addition to the reasons stated in the ''Department Authority (Including GE and Quality Assurance Authority'' section above, the Department believes maintaining the GE accountability framework is important because these programs usually produce earnings outcomes that are lower than other programs.

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Table 8.3 - Estimated Share of Programs that Fail and Students in Failing Programs if GE were Eliminated, by Credential Level

Credential Level	N	Share that Fail: Current Regs	Share that Fail: Final Regs	Share that Fail: Final Regs + Eliminate GE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	7,260	33.4	24.1	0.0
Associate	9,630	2.3	6.0	6.0
Bachelor	29,670	0.3	1.1	1.1
Post-Bacc Cert	120	<0.1	3.9	0.0
Masters	12,140	0.5	4.2	4.2
Doctoral	1,640	0.5	0.7	0.7
Professional	640	0.2	2.0	2.0
Grad Cert	780	5.0	2.0	2.0
Total	61,880	4.6	5.2	2.3
B. Student-Weighted				
Undergrad Cert	1,389,600	42.3	27.6	0.0
Associate	4,350,000	1.8	3.9	3.9
Bachelor	8,163,500	0.9	0.6	0.6
Post-Bacc Cert	9,400	<0.1	1.4	0.0
Masters	1,750,100	1.0	4.1	4.1
Doctoral	295,100	2.1	0.8	0.8
Professional	229,100	2.7	4.9	4.9
Grad Cert	81,700	7.3	2.8	2.8
Total	16,268,500	4.8	4.2	1.9

Notes: In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student counts. Ns are rounded to nearest 10 in Panel A and to the nearest 100 in Panel B. Percentages in columns 2, 3, and 4 are computed prior to rounding.
Source: Department of Education calculations using PPD:2026.

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Some negotiators suggested that programs that lead to low-earning outcomes under the accountability framework should lose access to all title IV, HEA programs, as under the current GE accountability framework, rather than losing eligibility for the Direct Loan program only. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on programs that are not performing well, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would better incentivize institutions to shift their program offerings away from failing programs or to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would in many cases already lead to the closure of the program or possibly the institution itself.

The Department notes that it has a greater interest in applying the accountability framework to the Direct Loan program because, unlike the other programs under title IV, HEA, the government and taxpayers expect loan funds to be repaid. We further note that the accountability framework set forth in Section 84001 of the WFTCA resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. To the extent that undergraduate certificate programs would be covered by the accountability framework under the GE statutory authority, we believe that authority does not explicitly require the loss of all title IV, HEA eligibility as the sole remedy for noncompliance. In addition, the further changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16 would terminate title IV, HEA eligibility for all of an institution's low-earning outcome programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs. We believe these provisions would sufficiently address concerns about continued Pell Grant eligibility for institutions whose programs lead to consistently poor earnings outcomes for students.

§ 668.603 Low-Earning Outcome Programs

In this final rule, we provide all institutions the option to appeal a low-earning outcome program's loss of Direct Loan program eligibility. Similar to the current GE accountability framework, the earnings accountability framework would limit appeals to instances where the Department erred in the calculation of the program's EP measure.

Some negotiators proposed broadening the factors that an institution could appeal to include the underlying median graduate earnings data used to calculate the earnings premium measure, arguing that there would otherwise rarely be a basis for an institution to appeal under the proposed criteria as both the median graduate earnings and earnings benchmark would be based on elements an institution could not dispute. Negotiators further suggested that the Department consider alternative earnings survey data that might address limitations in available administrative earnings data and improve fairness and due process. Other negotiators expressed support for the scope of the appeals process as proposed, arguing that appeals in other areas of title IV, HEA administration, such as cohort default rates, can sometimes consume significant time and costs, that the earnings standards set forth in the WFTCA are specific, and appeals must not circumvent the will of Congress.

The Department disagreed with negotiators who claimed that the proposed basis for appeals would deprive institutions of a meaningful opportunity to appeal a low-earning outcome determination. As under the current GE framework, institutions would have the opportunity to review and correct the list of completers provided to the Federal agency with earnings data to obtain median graduate earnings and could meaningfully appeal any discrepancies pertaining to the completers list. The Department emphatically disagrees with suggestions to allow appeals on the basis of alternative earnings data. IRS earnings data represents the highest quality and most accurate available data source and, accordingly, is also currently used for many other title IV, HEA purposes such as determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Federal requirements for accurate reporting of income and the increasing prevalence of electronic transactions make underreporting income both more difficult and less likely than under past accountability frameworks. The Department also remains concerned about the low quality of data submitted by institutions in alternate earnings appeals, such as graduate earnings surveys and employment verifications, given the Department's experience with such data in appeal submissions under past iterations of GE regulations.

HEA Section 454(c)(5) does not require the Department to consider appeals of earnings data, only of the low-earning outcome determination in HEA Section 454(c)(2). If the Department fails to thoughtfully and purposefully manage the scope and basis of appeals, it could result in institutions inundating both the Department and, potentially, the courts with cumbersome appeals and challenges that are unlikely to prevail but would, nonetheless, generate significant burden and costs for both institutions and the Department, all while delaying accountability and leaving students and taxpayers at continued risk during the appeals process. While we understand concerns about the consequences for institutions and students if a program loses Direct Loan program eligibility under the earnings accountability framework, it is equally important to recognize that in any meaningful accountability framework, some programs will fail. Finally, even given the limited grounds for appeals under the final rule, to address truly extenuating circumstances we note that the Department still has the option to exercise other existing authorities to waive or modify title IV, HEA program requirements in national emergencies and has exercised these authorities in the past when appropriate.

9. Regulatory Flexibility Act

This section considers the effects that the final regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.,* Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a ''significant impact on a substantial number of small entities.''

This final regulation amends the current gainful employment regulation to implement statutory changes to the title IV, HEA programs included in the WFTCA. Currently, the Department's regulations apply two tests—a debt-to-earnings test and an earnings premium test—to all undergraduate certificate programs and any program offered by proprietary institutions. If these programs fail one of the tests in two out of three consecutive award years, they lose eligibility for all types of title IV, HEA program funding, including both Pell Grants and Direct Loans. As stated throughout the RIA, the Department's baseline assumes the current gainful employment regulations are in effect. This is because, in the absence of the final rule, the requirements in the current regulation would be calculated. Therefore, we use the impact of the current regulation as the baseline to judge the impact of the final rule.

The WFTCA applies an earnings premium test (''accountability framework'') to each degree program at institutions, expanding the universe of affected programs to include degree programs at non-profit and public institutions. Programs where the median earnings of graduates do not meet a specified threshold in two out of three years lose access to Direct Loans. Under a separate provision (standards of administrative capability) the final regulations require that if a majority of an institution's students or title IV, HEA disbursements are in programs that fail the accountability framework for three years, those failing programs also lose access to Federal Pell Grants. Programs are exempt from the potential loss of Federal Pell Grants under this provision if they opt out of the Federal student loan program prior to failing the accountability framework or if have not participated in the loan program in the past five years. The final regulation also modifies the current FVT/GE rule to replace its eligibility tests with the same earnings tests under WFTCA, which is a less-punitive test. The Department's final regulations would also eliminate one of the two tests (the debt-to-earnings test) by which programs are judged under the current FVT/GE rule.

For the purposes of this analysis the Department has defined ''significant economic impact'' as increasing or reducing a small entity's revenues by more than 3 percent, and a ''substantial number of small entities'' as more the 5 percent of institutions that meet the Department's definition of a small entity.

While the Department is unable to assess the revenue effects of the final regulation on individual institutions of higher education due to missing data on the earnings of program completers (see ''Data Limitations & Assumptions'' section above), the Department can assess the average effects on institutions within different categories. Using that approach, the Department has determined that small institutions will experience a 0.9 percent increase in revenue on average due to the final regulations, less than what the Department defines as a significant economic impact. Small institutions are likely to experience an increase in revenue because the accountability framework includes a less-punitive earnings test than under the current accountability framework, resulting in fewer programs failing (and losing access to Federal student financial assistance) within small institutions. Furthermore, the Department determines that small institutions will experience a change in total revenues of less than 3 percent (Table 9.4).

Description of, and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are institutions of higher education, which do not report such data to the Department. As a result, for purposes of this final rule, the Department defines ''small entities'' by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. We construct four different categories of small entities for the purposes of classifying higher education institutions: [98]

(1) Extremely Small (1–249 FTE, full-time equivalent student enrollees);

(2) Very Small (250–499 FTE);

(3) Moderately Small (500–749 FTE); and

(4) Small (750–999 FTE).

Table 9.1 summarizes the number of institutions affected by these final regulations. In total, 53 percent of institutions are classified as small institutions under the enrollment-based definition. Specifically, 33 percent are Extremely Small (1–249 FTE), 9 percent are Very Small (250–499 FTE), 6 percent are Moderately Small (500–749 FTE), and 5 percent are Small (750–999 FTE). Note that the Department's analysis and these categories apply only to small institutions that receive Federal title IV, HEA aid; it does not include small institutions that operate without this aid. Therefore, the Department's analysis will overstate the extent to which small entities are affected by this rule. Institutions that do not participate in title IV, HEA aid programs are unaffected by the rule.

As seen in Table 9.2, small entities (all four categories combined) in the public sector generate $3.9 billion in revenues annually, small entities (all four categories combined) in the private non-profit sector generate $11.7 billion in revenues annually, and small entities (all four categories combined) in the proprietary sector generate $4.5 billion in revenues annually. An outsized share of these revenues come from institutions in the largest category of small entities (institutions with 750–999 FTE). These institutions make up just 9 percent of all institutions classified as a small entity (having fewer than 1,000 FTE) but comprise 36 percent of the annual revenues generated by these institutions.

[98] The Department consulted with the SBA Office of Advocacy in March 2026 regarding the use of an alternative size standard. The Department did not receive comments on the size standard for this rule and therefore proceeds with these classifications.

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Table 9.1 - Number of Small Institutions Under Enrollment-Based Definition, by Sector

	Small Entities						
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal	All Colleges	Percent Small
A. Public							
Public, Primarily 4yr	0	5	5	10	20	542	3.7%
Public, Primarily 2yr	180	68	68	81	397	1,231	32.3
Total	180	73	73	91	417	1,773	23.6
B. Non-Profit							
Non-prof, Primarily 4yr	288	101	119	103	611	1,372	44.5%
Non-prof, Primarily 2yr	154	34	21	8	217	246	88.2
Total	442	135	140	111	828	1,618	51.1
C. For-Profit							
For-prof, Primarily 4yr	29	15	10	5	59	100	59.0%
For-prof, Primarily 2yr	950	226	70	57	1,303	1,433	90.9
Total	979	241	80	62	1,362	1,533	88.8
Grand Total	1,601	449	293	264	2,607	4,924	52.9%

Notes: Institutions are defined using OPEID6 identification codes. in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length.
Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Table 9.2 - Total Revenue in 2023-24, by Institution Size Categories ($ in millions).

	Small Entities						
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal	All Colleges	Percent Small
A. Public							
Public, Primarily 4yr	0.0	92.7	170.7	514.4	777.8	361,144.6	0.2%
Public, Primarily 2yr	199.9	364.8	852.9	1,655.5	3,073.1	111,857.5	2.7
Total	199.9	457.5	1,023.6	2,169.9	3,850.9	473,002.1	0.8
B. Non-Profit							
Non-prof, Primarily 4yr	1,751.5	1,886.5	3,191.7	4,001.6	10,831.4	312,634.4	3.5%
Non-prof, Primarily 2yr	295.1	214.9	248.3	135.3	893.7	14,450.3	6.2
Total	2,046.6	2,101.4	3,440.0	4,136.9	11,725.1	327,084.7	3.6
C. Proprietary							
For-prof, Primarily 4yr	66.0	129.3	175.2	173.2	543.7	9,795.3	5.6%
For-prof, Primarily 2yr	1,377.5	1,111.9	624.2	825.7	3,939.3	10,686.9	36.9
Total	1,443.5	1,241.2	799.4	998.9	4,483.0	20,482.2	21.9
Grand Total	3,690.0	3,800.1	5,263.0	7,305.7	20,059.0	820,569.0	2.4%

Notes: Institutions are defined using OPEID6 identification codes. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutional revenues are from the 2023-24 academic year. Institutional revenues are defined using the f1d01, f2b01, and f3d09 variables in IPEDS. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length.
Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Table 9.3 compares the share of programs at small entities that are estimated to fail the accountability framework under the current regulations and the accountability framework under the final regulations. Both the current and final regulations include accountability frameworks and Table 9.3 shows the fail rates under each, revealing the net change from the current regulation (column 2) to the final regulation (column 3). Relative to the current regulations, programs at small entities will fail at slightly lower rates under the final regulations. We find similar results when weighting estimates by title IV enrollments (Panel B).

Table 9.3 - Estimated Share of Programs that Fail and Enrollment in Programs that Fail, by Institution Size Categories

Institution Size Category	N	Share that Fail	
		Current Regs	Final Regs
	(1)	(2)	(3)
A. Program-Weighted			
Extremely Small (1-249 FTE)	1,330	67.6	58.7
Very Small (250-499 FTE)	760	47.3	35.9
Moderately Small (500-749 FTE)	980	16.4	12.1
Small (750-999 FTE)	1,240	15.5	13.1
Small Subtotal	4,310	37.4	31.0
All Colleges	61,880	4.6	5.2
B. Student-Weighted			
Extremely Small (1-249 FTE)	136,600	73.9	65.1
Very Small (250-499 FTE)	133,700	56.6	48.7
Moderately Small (500-749 FTE)	141,300	26.4	23.4
Small (750-999 FTE)	179,700	29.2	25.4
Small Subtotal	591,300	45.1	39.4
All Colleges	16,268,500	4.8	4.2

Notes: In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to nearest 10 in Panel A and to the nearest 100 in Panel B. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

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To assess the impact of the final regulation on small entities, the Department estimated how much revenue institutions may lose on average when programs become ineligible for title IV, HEA funds because their programs fail the accountability framework. Note that because the current regulations already include an accountability framework,[99] the Department's analysis is concerned with the change in program fail rates and revenue effects relative to the current regulations. The potential loss in revenue for small institutions can be compared with small institutions' total revenue to determine the effect on small entities (Table 9.4).

On average, small institutions are at risk of losing 11.4 percent ($1.885 billion) of their total revenue due to the loss of title IV, HEA funds under the current regulations. Under the final regulations they are estimated to lose 10.6 percent ($1.752 billion) of their revenue. Therefore, small entities are estimated to experience a 0.9 percent ($132 million) increase in their total revenue ($14,646 billion) due to the final regulations (Table 9.4). Extremely small entities are the most impacted

[99] *See* Financial Value Transparency and Gainful Employment, 88 FR 70004, 70095 (Oct. 10, 2023).

subgroup. Under the current accountability framework, they are at risk of losing 33.0 percent ($695 million) of their revenue, but under the accountability framework they are at risk of losing 28.7 percent of revenue ($604 million), resulting in a 6.4 percent increase ($91 million) in revenue. Extremely small entities are the most affected subgroup because they tend to offer the types of programs (mainly undergraduate certificates in fields such as cosmetology) that see the largest change in eligibility for title IV, HEA funds under the final regulation.

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Table 9.4 - Estimated Annual Title IV, HEA Program Assistance Volume and Institutional Revenues to Programs that Fail, by Institution Size Categories

Institution Size Category	Annual Title IV Volume ($ Millions)	Share of Volume in Failing Programs	Total Institutional Revenue ($ Millions)	Share of Title IV Volume in Failing Programs as a Share of Total Revenue
	(1)	(2)	(3)	(4)
A. Current Regulations				
Extremely Small (1-249 FTE)	1,025	67.7	2,106	33.0
Very Small (250-499 FTE)	1,154	47.7	3,251	16.9
Moderately Small (500-749 FTE)	1,517	18.4	4,632	6.0
Small (750-999 FTE)	1,577	23.2	6,543	5.6
Small Subtotal	5,273	35.8	16,531	11.4
All Colleges	103,794	5.2	809,671	0.7
B. Final Regulations				
Extremely Small (1-249 FTE)	1,025	58.9	2,106	28.7
Very Small (250-499 FTE)	1,154	44.2	3,251	15.7
Moderately Small (500-749 FTE)	1,517	22.0	4,632	7.2
Small (750-999 FTE)	1,577	19.1	6,543	4.6
Small Subtotal	5,273	33.2	16,531	10.6
All Colleges	103,794	4.0	809,671	0.5

Notes: Annual volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutional revenues are from the 2023-24 academic year. Institutional revenues are defined using the f1d01, f2b01, and f3d09 variables in IPEDS.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

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Lastly, the Department examined the types of programs at small institutions that are estimated to fail the accountability framework at the highest rates (Table 9.5). As shown in Panel A, approximately 93 percent of cosmetology certificate programs (CIP=12.04) at small institutions are estimated to fail, which is the highest rate among all programs at small entities where there were at least 40 programs with non-missing earnings data. However, when compared to the current accountability framework, these programs at small entities will fail at slightly lower rates relative to the existing baseline (99 percent). Other common types of programs at small institutions that are estimated to fail the accountability framework in the final regulation include undergraduate certificate programs in somatic bodywork (CIP=51.35), dental support services (CIP=51.06), allied health (CIP=51.08), and health administrative services (CIP=51.07). Again, each of these programs will fail the accountability framework at lower rates relative to their fail rates under the current baseline.

Only one type of program at small entities—associate degree programs in liberal arts and sciences (CIP=24.01)—are anticipated to fail under the final regulation at higher rates relative to the existing baseline. These programs at small institutions fail at higher rates under the final regulation because many of these degree programs were offered at institutions that were previously exempt from the accountability framework under the current regulation. Similar estimates are reported in Panels B and C, which are weighted by title IV, HEA enrollment counts and title IV, HEA volume, respectively.

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Table 9.5 - Estimated Share of Programs, Enrollment, and Title IV Volume for the Fifteen Most-Impacted Programs at Small Institutions (FTE < 1,000) Under the Final Regulation

Program (CIP4)	Credential Level	N	Share that Fail	
			Current Regs	Final Regs
		(1)	(2)	(3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	760	99.2	93.6
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	100	98.1	90.9
Dental Support Services and Allied Professions. (5106)	Ug Cert	50	85.3	50.0
Allied Health and Medical Assisting Services. (5108)	Ug Cert	170	90.6	45.7
Health and Medical Administrative Services. (5107)	Ug Cert	70	88.2	41.9
Liberal Arts and Sciences General Studies and Humanities. (2401)	Associate	90	<0.1	13.2
Allied Health and Medical Assisting Services. (5108)	Associate	60	20.8	13.0
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Ug Cert	70	23.1	4.7
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Associate	90	3.7	3.5
Precision Metal Working. (4805)	Ug Cert	60	20.0	2.4
Practical Nursing Vocational Nursing and Nursing Assistants. (5139)	Ug Cert	250	6.3	2.1
Business Administration Management and Operations. (5202)	Bachelor	130	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	100	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	160	<0.1	<0.1
Sports Kinesiology and Physical Education/Fitness. (3105)	Bachelor	70	<0.1	<0.1
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	152,400	98.9	94.9
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	9,400	99.6	95.1
Dental Support Services and Allied Professions. (5106)	Ug Cert	5,100	91.3	61.5
Allied Health and Medical Assisting Services. (5108)	Ug Cert	28,000	92.9	43.8
Health and Medical Administrative Services. (5107)	Ug Cert	4,800	90.5	56.8
Liberal Arts and Sciences General Studies and Humanities. (2401)	Associate	24,600	<0.1	6.6
Allied Health and Medical Assisting Services. (5108)	Associate	4,600	28.9	21.4
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Ug Cert	7,500	17.0	3.1
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Associate	16,400	1.8	2.2
Precision Metal Working. (4805)	Ug Cert	5,700	36.7	7.5
Practical Nursing Vocational Nursing and Nursing Assistants. (5139)	Ug Cert	35,400	6.0	1.7
Business Administration Management and Operations. (5202)	Bachelor	16,300	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	17,000	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	28,800	<0.1	<0.1
Sports Kinesiology and Physical Education/Fitness. (3105)	Bachelor	7,000	<0.1	<0.1
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	1,047	99.1	94.5
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	50	99.6	89.4
Dental Support Services and Allied Professions. (5106)	Ug Cert	33	90.2	43.7
Allied Health and Medical Assisting Services. (5108)	Ug Cert	194	93.3	35.4
Health and Medical Administrative Services. (5107)	Ug Cert	30	90.7	44.6
Liberal Arts and Sciences General Studies and Humanities. (2401)	Associate	96	<0.1	3.6
Allied Health and Medical Assisting Services. (5108)	Associate	32	30.1	16.3
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Ug Cert	51	23.7	2.0
Allied Health Diagnostic Intervention and Treatment Professions. (5109)	Associate	152	2.1	1.9
Precision Metal Working. (4805)	Ug Cert	43	38.4	4.9
Practical Nursing Vocational Nursing and Nursing Assistants. (5139)	Ug Cert	289	5.4	1.4
Business Administration Management and Operations. (5202)	Bachelor	119	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	118	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	202	<0.1	<0.1
Sports Kinesiology and Physical Education/Fitness. (3105)	Bachelor	58	<0.1	<0.1

Notes: The sample of programs is limited to include only the subset of programs offered at small entities (defined as FTE < 1,000). The fifteen programs on this list are the fifteen programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the final regulations in which there were at least 40 programs with non-missing earnings data nationally at institutions classified as small entities. In Panel A, "N" refers to program counts. In Panel B, "N" refers to Title IV student enrollment counts. In Panel C, "N" refers to total Title VI Loan Volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 10 in Panel A, to the nearest 100 in B, and to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and Title IV volume correspond to the amounts in the 2024-25 award year.
Source: Department of Education calculations using PPD:2026.

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The Department received many comments about the effects the regulation would have on small businesses, particularly with respect to cosmetology businesses. Many commenters explained that the regulation would cause cosmetology programs to lose access to title IV, HEA program assistance. Therefore, commenters argued that there will be fewer cosmetologists, a group that tends to own and operate their own small businesses. Other commenters noted that barber shops, salons, and spas are small businesses that rely on trained and licensed cosmetologists as their employees. Cosmetology schools themselves are often small businesses, as some commenters noted.

The Department assessed the effects of the rule on cosmetology programs, single-program institutions (which are often cosmetology schools), and small institutions of higher education. In each of these analyses, we find that when compared with the current gainful employment rule, fewer institutions and programs are expected to fail the earnings test under this final rule (Tables 5.17, 5.18, 5.19, and 5.20). Relative to the baseline policy, the Department estimates the earnings test will reduce the negative effects on small businesses commenters have raised.

Although a smaller share of cosmetology programs are expected to fail under the final rule relative to the baseline policy, the Department does acknowledge that a high share of cosmetology certificate programs are likely to fail under this final rule (approximately 93 percent), and that the smallest institutions of higher education are more likely to have a high share of failing programs. The Department is, however, concerned that these fields and credentials do not produce adequate earnings to support student debt. The Department believes that institutions of higher education, employers, and state and local policymakers will have stronger incentives as a result of the earning premium measure to create or modify programs so that they lead to higher earnings, or reform employee pay policies, or credentialing requirements.

Lastly, the Department notes that many cosmetology programs do not participate in title IV, HEA programs. One study found that just 14 percent of barber and cosmetology programs in Texas participate in federal student loan and grant programs. Moreover, many of these non-federally funded programs charge lower tuition prices and have similar outcomes than cosmetology programs subsidized by taxpayers.[100] These non-federally funded cosmetology programs will have incentives to increase their enrollment if fewer programs are eligible for title IV, HEA student aid, helping to supply the cosmetology workforce. As a result, it is possible that students benefit from this rule if they switch from more-expensive, Federally funded cosmetology programs to less expensive, non-Federally funded programs.

10. Alternatives Considered (Small Entities)

The Department examined whether the final regulation could incorporate other options or changes to the rule intended to make compliance less burdensome for small institutions of higher education. Specifically, the Department considered whether small institutions of higher education could be exempted from the changes to the statute in the final regulation, or whether they could be granted a delayed start date to the changes. The Department does not have discretion in the WFTCA to exempt certain institutions of higher education from the WFTCA requirements. The statute also establishes the effective dates for the changes to the Federal student loan program and does not leave flexibility for the Department to consider granting a delay in compliance for small entities that may benefit from such a delay. Therefore, the Department determined that none of these options would be permissible under the statute, and could not identify any reasonable alternatives given the statutory directives.

The Department has, however, adopted a provision to delay the implementation of the accountability framework for certain programs. This policy will indirectly have a large impact on small entities given the overlap between small entities and the types of programs that will qualify for the delay. Specifically, the Department will delay the implementation of the accountability framework for certain programs that prepare students for employment in occupations where workers customarily and regularly receive a predominant percentage of their income through tips, in order to use earnings from the tax years when the ''No Tax on Tips'' policy is in effect, which began with the 2026 tax year. Many types of cosmetology programs are included in this delay.

11. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose amended information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department submitted these information collection amendments to OMB for its review. The Office of Management and Budget approved the amended information collection requirements under existing OMB Control Number 1845–0184.

Responses to Comments Received in the NPRM on the Paperwork Reduction Act of 1995

Comment: Once school suggested that the administrative burden of the proposed student-level reporting requirements places a disproportionate strain on specialized career schools. They added: even with the removal of the debt-to-earnings metric, these heavy compliance mandates threaten to drive up institutional administrative costs, which directly impacts student tuition. The commenter recommended the Department maximize its use of existing federal administrative data to prevent tuition increases for the very students we are trying to help.

Discussion: The Department appreciates this comment. The Department took great care to consider administrative burden when developing these regulations. Wherever possible, existing administrative data is used to minimize burden.

Changes: None.

Comment: One commenter wrote that the Department's proposed rule pertains to the Federal Direct Loan Program. Since nonprofit and public institutions in Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau may not administer Direct Loans to their students, the Department should, at a minimum, explain the public benefit of applying the earnings test to public or nonprofit private eligible institution in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau when these very institutions are ineligible to participate in the Direct Loan program by the Department's own rule. Another commenter recommended that, instead

[100] Cellini, S.R., & Onwukwe, B., (2022). Cosmetology Schools Everywhere: Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Washington, DC: PEER Center. *www.american.edu/spa/peer/upload/peer_cosmetology_b.pdf.*

of requiring institutions that do not participate in the Direct Loan program to report on their programs, the Department ought to act on its competing obligation under the Paperwork Reduction Act of 1995 (PRA) and exempt such IHEs from reporting and testing. The purpose of the PRA is to minimize the paperwork burden for educational and nonprofit institutions and other types of entities under 44 U.S.C. 3501(1). The Department should abide by the PRA and exempt such IHEs from the reporting and consequences under this proposed rule.

Discussion: As described in the ''Department Authority (Including GE and Quality Assurance Authority)'' section, the Department is amending the regulations to prevent institutions that have not participated in the Direct Loan program for at least five years from being subject to penalties under the administrative capability provision that would affect those institutions' eligibility for other title IV, HEA programs. This exemption would also apply to any institution that is prohibited by law from participating in the Direct Loan program. However, the Department still believes that the information provided by calculating the earnings premium measure is valuable for consumers and the broader public, and therefore disagrees with the commenter that the measure should not be calculated for institutions that do not participate in the Direct Loan program.

Changes: None.

Comment: One commenter disagreed with including undergraduate non-degree programs in the earnings accountability framework. The commenter indicated that these regulations place an undue burden on programs that the statute did not include.

Response: As explained above in the preamble, the statute did not prevent the Department from expanding the earnings accountability framework to degree-granting programs. The statute required the framework to cover degree-granting programs and was silent on approaches to non-degree credentials. The Department has determined that the best approach to implementation is to harmonize the requirements established under the statute for degree and graduate non-degree programs with requirements for undergraduate non-degree programs, creating a more uniform approach to nearly all programs. Undergraduate certificate programs do not exist solely at the vocational and professional training institutions that the commenter mentions; they are represented across all institution types, and this approach will be applied uniformly regardless of institution type.

Changes: None.

Comment: One commenter requested that the accountability framework should:

- Recognize entrepreneurship and self-employment outcomes as valid indicators of workforce success.
- Allow for regional economic differences and industry-specific earning patterns.
- Avoid disproportionately penalizing small institutions and workforce programs serving historically underserved populations.
- Consider broader workforce outcomes such as licensure attainment, job placement, business creation, apprenticeship participation, and community economic contribution.
- Ensure that compliance requirements do not become so burdensome that smaller career schools and training providers lose the ability to operate
- Ensure that smaller institutions are not disproportionately burdened by administrative requirements that could limit student access to workforce training opportunities.

Discussion: The Department considered administrative and compliance burden on schools when developing the regulations. Where possible, existing administrative data is used to minimize burden. As required by the Paperwork Reduction Act, the Department will seek public comment on this collection no later than three years from the date of this final rule. The Department will welcome additional comments on administrative and compliance burden at that time. This will help ensure that compliance and administrative requirements become so burdensome that it limits access to education opportunities.

Changes: None.

Comment: One commenter expressed concern about the administrative and compliance burden associated with the proposed reporting requirements. That commenter added that small vocational institutions already face substantial regulatory obligations through accreditation agencies, state oversight agencies, FVT/GE reporting, financial aid compliance, annual audits, and state licensing boards. They suggested that the additional reporting and monitoring obligations under the STATS framework may require significant operational costs and staffing increases for institutions with limited administrative resources.

Discussion: The Department anticipates there will be a reduction in the reporting requirements with these new regulations. Additionally, the Department took great care to consider administrative burden when developing these regulations. Wherever possible, existing administrative data is used to minimize burden.

Changes: None.

Comment: One commenter suggested the likely result of these regulations would be a reduction in the number of institutions able or willing to sustain teacher preparation programs. The commenter added that this would constrict the pipeline of well-prepared, highly qualified teachers entering the profession at a time when schools across the country are already struggling to fill classrooms. In response, districts may be forced to rely more heavily on alternatively certified or under-prepared teachers, increasing the burden on schools to provide training and support while potentially impacting instructional quality and student outcomes.

Discussion: The Department developed these regulations carefully considering administrative burden. The WFTCA did not make any exceptions for teacher preparation programs, and the Department does not believe we have the authority to do so.

Changes: None.

Comment: One commenter asked the Department to ensure that smaller institutions are not disproportionately burdened by administrative requirements that could limit student access to workforce training opportunities.

Discussion: The Department appreciates the concern expressed by the commenter and took great care to consider administrative burden when developing these regulations. We are reducing the number of items that institutions are required to report and eliminating the burdensome framework for institutions to ensure that students access the Secretary's website to acknowledge viewing information about the outcome of accountability calculations. Additionally, we have continued to make great efforts to ensure that. wherever possible, existing administrative data is used to minimize burden to institutions and students.

Changes: None.

Comment: One commenter from a postsecondary institution indicated that the proposed rules would impose substantial new operational burden and cost on institutions at a time when colleges are already implementing other major federal reporting changes. That institution requested an alignment of definitions, reporting formats, and submission schedules across federal reporting requirements to minimize duplication.

Discussion: The Department appreciates this comment and the suggestion to align schedules across Federal reporting requirements. The Department took great care to consider administrative burden when developing these regulations, including with respect to maintaining consistency among items reported to the Department in multiple places, such as IPEDS. Wherever possible, existing administrative data is used to minimize burden. Additionally, as described above, these regulations reduce reporting requirements compared to the prior regulatory reporting requirements.

Changes: None.

Comment: Another commenter stated that they had concerns that proposed fixes—such as longer-term tracking or expanded data collection—would increase administrative burden while failing to capture true program value, particularly given career changes and variation in state licensing requirements. The commenter indicated that the issue was not simply how earnings are measured, but whether earnings alone are an appropriate proxy for the value of workforce education.

Response: The Department disagrees. We anticipate a reduction in reporting burden due to the new rules, and we believe this earnings metric will provide insight into program value in order to protect taxpayers and students through stricter oversight.

Changes: None.

Comment: One commenter from a postsecondary institution wrote that the burden imposed by the regulation does not reflect the true value of what institutions do. The commenter suggested that the regulations would also require significant time, staff, and money to gather and report the information. One commenter said they are concerned about the burden these regulations may place on smaller institutions with limited administrative capacity, as well as the narrow scope of the proposed appeals process. Institutions should have broader opportunities to demonstrate contextual factors affecting graduate earnings and professional outcomes. One commenter indicated that reporting requirements remain excessively burdensome for small nonprofit institutions, with staff and IT personnel spending more than 200 hours responding to compliance-related requirements. Another commenter expressed concern about the administrative burden these reporting requirements place on small career schools. The commenter indicated that such institutions already devote substantial resources and staffing to compliance and reporting obligations, and additional requirements would create significant strain without improving educational quality or student outcomes.

Discussion: The Department disagrees, especially since the regulations will result in a reduction in reporting burden due to the new rules. In addition, the Department believes this earnings metric will provide insight into program value in order to protect taxpayers and students through stricter oversight, which provides value that is more than commensurate with the burden that the regulation imposes.

Changes: None.

Comment: A few commenters indicated that reporting the data the government requires to determine eligibility will be a significant burden for their staff because obtaining information about the earnings of graduates is challenging and not currently performed by many institutions.

Discussion: The Department appreciates this comment, but notes that institutions are not expected to determine earnings for their programs' graduates. The Department is using a combination of existing administrative data and information from the IRS to perform this calculation, and this is intended to minimize burden on institutions. behalf.

Changes: None.

Comment: A commenter suggested the proposed changes could place additional administrative and financial burdens on schools without providing the support necessary to help students succeed. The commenter also expressed concern that limiting Pell Grant access primarily to certain workforce-driven programs may reduce flexibility for institutions and students alike.

Response: The Department developed these regulations carefully considering administrative burden. And although it is possible that programs could cease Pell Grant participation under these regulations, there are several steps before that sanction is imposed on an institution, and several options for an institution to avoid that outcome, including an orderly program closure or discontinuing Direct Loan participation for the program.

Changes: None.

§ 600.10 Date, Extent, Duration, and Consequence of Eligibility, § 600.21 Updating Application Information, § 685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program

Summary

Sections §§ 600.10 and 600.21 require a school to report all of its Direct Loan-eligible programs on its Eligibility Application (E-App). GE programs and eligible non-GE programs need to meet the requirements of STATS and earnings accountability to maintain eligibility for participation in the Direct Loan program. Currently only GE programs must be reported to the Department in all circumstances.

Burden

These regulatory changes require an update to the current institutional application form, 1845–0012. The form update will be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes will be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

§ 668.2 General Definitions

Summary

Institutions will be required to incorporate several key definitions related to earnings accountability into their policies and procedures.

Burden

§ 668.2 creates burden on institutions. Institutions will be required to review the new regulations (8 hours), identify the scope of the new requirements and updates needed (20 hours), amend their policies and procedures (20 hours), train staff (80 hours), and update relevant systems (160 hours). In total, the Department estimates this will take 288 hours per institution during the first year of implementation of these regulations.

Entity	Respondents	Hours	Burden Hours
Public	1,869	288	538,272
Private	1,674	288	482,112
For Profit	2,083	288	599,904
Total	5,626		1,620,288

§ 668.14 Program Participation Agreement

Summary

An institution is permitted to appeal the Secretary's determination that a program is a low-earning outcome program under § 668.603(a)(2) based on the data used in the calculation. An institution is also permitted to appeal the Secretary's determination that a program has failed to meet the administrative capability conditions at § 668.16(t) in two out of three consecutive award years.

Burden

In the preamble to the Notice of Proposed Rulemaking (NPRM), the Department had originally estimated there would be 6,520 programs that failed the earnings premium the first year the calculation becomes effective. The Department now estimates that approximately 3,302 programs could fail the earnings premium measure. This slightly decreases our estimate of burden assessed in the NPRM for this regulation from 1,956 responses and 5,868 burden hours to 991 responses and 2,973 burden hours within the first 3 award years after implementation of the regulations.

We believe that a large majority of programs that fail in the first year will fail in the next, as described in the Regulatory Impact Analysis. For that reason, we anticipate that 40 percent of those programs will choose to do an orderly shutdown of the program that failed the earnings premium measure.

Of the remaining 1,981 programs, we anticipate that 50 percent of programs would seek an appeal, which is very common for institutions to do. However, the Department is also proposing to limit an institution's ability to appeal only in instances where the institution believes the Department erred in its calculations. These final regulations also provide an opportunity for programs to voluntarily opt-out of the federal loan program after the first year a program fails the earnings premium metric.

Taking these factors into consideration, we expect half (50 percent) of programs that fail the earnings premium metric to appeal the decision. If it takes an institution three hours to file an appeal, we anticipate this would increase 2,973 burden hours assigned to 1845–0022 Student Assistance General Provisions.

Entity	Respondents	Hours	Burden Hours
Public	407	3	1,221
Private	165	3	495
Proprietary	417	3	1,251
Total	991	N/A	2,973

§ 668.16 Standards of Administrative Capability

Summary

§ 668.16 requires an institution to demonstrate that they have administrative capability by maintaining the standard that at least half of the institution's students and half of institutions' total title IV, HEA funds do not come from students enrolled in low-earning outcome programs. Failure to do so would cause the institution to be placed on a provisional PPA.

Burden

The Department does not believe changes to 668.16(t) will increase burden on institutions, as administrative capability is an existing requirement of eligibility for Title IV, HEA funds. However, we believe it may take institutions time to acknowledge and understand the new requirements. For that reason, we are adding 1 hour of burden per institution the first year the rule is effective.

5,626 × 1 hour = 5,626 burden hours.

§ 668.43 Institutional and Programmatic Information

Summary

The regulation limits the requirements for providing a prominent link to the program information website to only pages containing cost, financial aid, or admissions information. This reduces burden on institutions.

Burden

When the Department proposed § 668.43 in 2023, it was estimated that these requirements would annually add an additional 5,230 responses and

261,500 hours of burden to 1845–0022. We now remove half of the burden for this regulation while retaining the current assessment of 5,230 responses per year.

261,500 hours/2 = 130,750.

5,230 responses.

§ 668.91 Initial and Final Decisions

Summary

The Department adds ‘‘eligible non-GE programs’’ to the requirements of these regulations.

Burden

The Department does not believe this regulation adds additional burden to institutions because this regulation pertains to final decisions on punitive actions. Any burden an institution may face because of this regulation has already been accounted for elsewhere in this section.

§ 668.401 Student Tuition and Transparency System Scope and Purpose

Summary

Regulations require institutions to remove references to the debt-to-earnings metric and update, where necessary, the earnings premium metric.

Burden

Prior to implementation of the regulations, institutions will be required to review the revised earnings premium measure (10 hours), remove any references to the debt-to-earnings metric, and add the revised earnings premium measure to policies, procedures, systems, operations (160 hours), and train staff (60 hours).

230 hours × 5,626 institutions = 1,293,980 burden hours.

§ 668.402 Student Tuition and Transparency System Framework

Summary

Section 668.402 amends the current FVT/GE framework. The Department removes the D/E rate metric and uses only an earnings premium measure.

Burden

§ 668.402 decreases burden on institutions. The new approach uses significantly less data reported by institutions and instead relies on administrative enrollment data that institutions have become accustomed to reporting. Currently, there are 5,104,110 burden hours assigned to 1845–0184. With the new framework, institutions will still have recordkeeping and reporting requirements, however, the Department estimates the final rule will eliminate 30 percent of the currently assessed reporting burden. This results in a decrease of 1,531,233 burden hours every year.

30 percent of 5,104,110 = 1,531,233.

§ 668.403 Calculating Earnings Premium Measure Summary

668.403 explains the process the Secretary uses to calculate the earnings premium measure.

Burden

The Secretary is responsible for calculating the earnings premium measure; therefore, we are not changing any institutional burden based on this regulation.

§ 668.404 Process for Obtaining Data and Calculating Earnings Premium Measure

Summary

Section 668.404 of the regulations explains the processes for the Secretary to obtain data to calculate the earnings premium measure. The Secretary will send institutions lists of completers based on the requirements in this regulation. An institution will have 60 days from receiving the lists to correct any information on the lists.

Burden

This would create burden on institutions. § 668.403 would allow an institution to review information by the Secretary and correct the information, if necessary, within 60 days of receiving the list. While this regulation is permissive rather than instructive, the Department believes that 80 percent of institutions would still take time to review the information on the list provided by the Department. If it takes an average of 3 hours to review the information, this adds 13,503 burden hours to 1845–0022 per year.

Note that although this is not a new requirement, it was not reflected in the PRA analysis for the FVT/GE regulations in which this requirement originated. Therefore, the Department is calculating burden for this requirement in these regulations.

80 percent of 5,626 = 4,501 institutions.

4,501 institutions × 3 hours = 13,503 burden hours.

§ 668.405 Determination of the Earnings Premium Measure

Summary

Section 668.405 describes the notice of determination that the Secretary sends to institutions each year with information on the outcomes of their programs.

Burden

The Department estimates it will take an institution 2 hours to review the notice of determination. This adds 11,252 additional burden hours in the first full award year following implementation of the regulations.

5,626 institutions × 2 hours = 11,252 burden hours.

§ 668.406 Reporting Requirements

Summary

Section 668.406 details the reporting requirements for these regulations.

Burden

As stated in earlier sections of this NPRM, the Department estimates that under the regulations, there could be a 30 percent decrease in burden on institutions for reporting. In 2023, we estimated that the annual burden hours for all institutions for reporting would be 1,459,603 hours. The Department believes there will be a 30 percent reduction in burden and will remove 437,801 hours from 1845–0184 Earnings Accountability Reporting, Disclosures, and Warnings every year.

30 percent of 1,459,603 = 437,801 less burden hours.

§ 668.601 Earnings Accountability Scope and Purpose

Summary

Section 668.601 applies the earnings accountability program eligibility consequences to both GE programs and eligible non-GE programs. Previously, the program-level eligibility consequences only applied to GE programs.

Burden

Institutions will be required to apply the earnings accountability metric to nearly all of their Title IV eligible programs. This will require an institution to review the new regulations and new metrics (8 hours), update relevant systems (100 hours), and update policies and procedures and train staff (100 hours). This would add 208 burden hours to institutions per year.

208 hours × 5,626 institutions = 1,170,208 total burden hours.

§ 668.602 Earnings Accountability Criteria

Summary

The Department amends and renames § 668.602 to conform with regulations.

Burden

We expect any burden stemming from this regulation will be minimal, as the regulation seeks to conform the language in the regulation to align with new statutory requirements rather than alter any information collections.

668.603 Low-Earning Outcome Programs

Summary

Under the regulations, a program that has failed the earnings premium measure metric, as long as it is not yet a low-earning outcome program, could conduct a voluntary orderly program closure. This would require the institution to meet certain program discontinuation requirements. A voluntary orderly program closure would allow the program to retain Direct Loan eligibility for no more than 3 years while currently enrolled students completed their program.

Burden

In the preamble to the Notice of Proposed Rulemaking (NPRM), the Department had originally estimated there would be 6,520 programs that failed the earnings premium the first year the calculation becomes effective. As described earlier in the Regulatory Impact Analysis, the Department now estimates that approximately 3,302 programs could fail the earnings premium measure the first year the calculation becomes effective. Of the 3,302 programs, the Department predicts that 40 percent, or 1,321, will choose to complete a voluntary orderly program closure. Based on comparable situations, we anticipate it would take an institution 40 hours of preparation for an orderly program closure, which would include informing students and providing options and agreeing to amend their PPA. We estimate an additional 6 hours for reporting this information to the to the State, accrediting agency, and the Department. Because of the decrease in the estimated number of program failures since the publication of the NPRM, the burden in the final rule for this regulation has been reduced from 2,608 responses and 119,968 burden hours to 1,321 responses and 60,766 burden hours in the first 3 years the regulations are effective.

1,321 orderly program closures × 46 hours = 60,766 Burden hours.

§ 668.604 Certification Requirements for GE Programs and Eligible Non-GE Programs

Summary

§ 668.604 updates the eligibility requirements for participation in the Direct Loan program.

Burden

These regulatory changes require an update to the current institutional application form, 1845–0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

§ 668.605 Student Warnings

Summary

In the regulations, student warning requirements would be extended to eligible non-GE programs for both enrolled and prospective students. The regulations would also expand the content of the warnings to explain Pell lifetime eligibility used. Institutions would be required to send this warning when the Secretary notifies them of the potential that their program may become ineligible for some, or all, Title IV aid. Additionally, the institution will be required to provide a Pell lifetime eligibility warning each time Pell is disbursed.

The Department amends the description of academic and financial options from the current requirements of the student warnings.

Burden

The Department estimates 831,000 students will need to receive such warnings. We believe it would take 5 hours to create this warning and an additional 1 hour per 100,000 students for review and transmission of the warnings, totaling 14 burden hours.

Institutions will also need to send the same group of recipients the Pell lifetime eligibility warning notification for each subsequent Pell disbursement. The Department believes it would take institutions 8 hours to create and implement this requirement. We estimate that subsequent warnings would take 1 hour per 100,000 students, adding 8.3 hours of burden. Pell disbursements may happen more than once during one award year. For this reason, we estimate 2 warnings per student per award year. This totals 16.6 hours of burden per award year.

5,626 institutions × 16.6 hours = 93,392 annual burden hours.

§ 685.102 Definitions

Summary

To implement the new provisions enacted in the WFCTA, we add definitions for eligible non-GE program and GE program to 685.102.

Burden

§ 685.102 will require institutions to update their internal system definitions. We believe the burden to conform with these new definitions will be minimal as the definitions serve to provide consistency and clarity of these terms rather than change them.

With this final rule, the Department seeks to promote consistency across institutions and programs by harmonizing the existing FVT/GE framework with the earnings accountability framework established by the OBBB. As part of that harmonization and to reduce burden for institutions, we intend to merge the following existing approved information collections:

1845–0184 Financial Value Transparency and Gainful Employment Reporting Requirements.

1845–0174 Student Disclosure Acknowledgements.

1845–0173 Gainful Employment Student Warnings and Acknowledgments.

The Department requests to retain the 1845–0184 OMB Control number but amends the title of the collection to: Earnings Accountability Reporting, Disclosures, and Warnings.

The Department requests that OMB discontinue 1845–0174 and 1845–0173 because the burden associated with those collections has been absorbed into 1845–0184. This final rule also amends 1845–0022 Student Assistance General Provisions.

The Department has also created a new collection, 1845–NEW Accountability Definitions. Burden for § 685.102 is found in 1845–0021 William D. Ford Federal Direct Loan Program (DL) Regulations. That collection, 1845–0021, was under review with the Reimagining and Improving Student Education (RISE) Notice of Proposed Rulemaking (NPRM) at the time this rule was being drafted. To accurately track the burden associated with the new regulations and definitions regarding these regulations at the same time as the RISE NPRM, the Department established a new collection to track burden for accountability changes in § 685.102. Once all regulations are final, the Department plans to merge the new collection with 1845–0021 William D. Ford Federal Direct Loan Program (DL) Regulations.

Along with the two collections listed above, §§ 600.10, 600.21, 685.300, 668.604 requires the Department to update 1845–0012, Application for Approval to Participate in Federal Student Aid Programs. Form updates to 1845–0012 will be completed through the full clearance process prior to the date the regulations are effective.

For each regulation containing burden in this NPRM, we provide below our estimates for potential burden changes.

To estimate costs for institutions, we used the median hourly wage for Education Administrators, Postsecondary (11–9033) from the U.S. Bureau of Labor Statistics. In 2024 this was $49.98. To account for overhead costs and benefits, the Department has multiplied by this wage by two, resulting in hourly costs of $99.96.

BILLING CODE 4000–011–P

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
§ 668.2 General Definitions	1845-NEW Accountability Definitions	288 X 5,626 1,620,288 total burden hours	5,626	$161,963,988
§ 668.14 Program Participation Agreement	1845-0022 Student Assistance General Provisions	991 X 3 = 2,973	991	$297,181
§ 668.16 Standards of administrative capability	1845-0022 Student Assistance General Provisions	1 hour X 5,626 institutions = 5,626 burden hours	5,626	$562,374
§ 668.43 Institutional and programmatic information	1845-0022 Student Assistance General Provisions	-24.5 burden hours X 5,320 institutions = -130,750	5,320	-$13,069,770
§ 668.401 Student tuition and transparency system scope and purpose	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	230 hours X 5,626 institutions = 1,293,980	5,626	$129,346,240
§ 668.402 Student tuition and transparency system framework	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	272 hours X 5,626 = -1,531,233	5,626	-$153,062,050
§ 668.404 Process for obtaining data and calculating earnings	1845-0184 Earnings Accountability Reporting, Disclosures	4,501 X 3 hours = 13,503	4,501	$1,349,759

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
premium measure	, and Warnings			
§ 668.405 Determination of the earnings premium measure	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	2 hours X 5,626 = 11,252	5,626	$1,124,750
§ 668.406 Reporting requirements	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	-77.82 X 5,626 = -437,801	5,626	-$43,762,588
§ 668.601 Earnings accountability scope and purpose	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	208 hours x 5,626 institutions = 1,170,208 total burden hours	5,626	$116,973,991
668.603 Low-earning outcome programs	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	1,321 X 46 hours = 60,766 burden hours	1,321	$6,074,169
§ 668.605 Student Warnings	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	16.6 hours X 5,626 = 93,392 burden hours	5,626	$9,335,424
Total		**2,172,204**	**35,249**	**$217,133,512**

BILLING CODE 4000–011–C

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.

12. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has determined that this rule does meet the criteria in 5 U.S.C. 804(2).

Intergovernmental Review

This program is subject to E.O. 12372 and the regulations in 34 CFR part 79. One of the objectives of the E.O. is to foster an intergovernmental partnership and strengthen Federalism. The E.O. relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

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

Federalism

E.O. 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations do not have Federalism implications.

Accessible Format: On request to the program contact person(s) listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 600

Colleges and universities, Grant program—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant program—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Nicholas Kent,

Under Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 668, and 685 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. Amend § 600.10 by revising paragraph (c)(3) to read as follows:

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

* * * * *

(c) * * *

(3) For a gainful employment program or eligible non-GE program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the Direct Loan eligibility of the program, an eligible institution must update its application under § 600.21.

* * * * *

■ 3. Amend § 600.21 by revising paragraph (a)(11) introductory text and paragraph (a)(11)(vi) to read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) For any GE program or eligible non-GE program, as defined under 34 CFR 668.2(b)—

* * * * *

(vi) Updating the certification pursuant to 34 CFR 668.604(a).

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, and 1231a, unless otherwise noted.

■ 5. Amend § 668.2(b) by:

■ a. Removing the definitions of ''Annual debt-to-earnings rate (Annual D/E rate)'' and ''Discretionary debt-to-earnings rate (discretionary D/E rate)'';

■ b. Revising the definition of ''Cohort period'';

■ c. Adding, in alphabetical order, a definition of ''Earnings'';

■ d. Revising the definitions of ''Earnings premium'', ''Earnings threshold'', ''Eligible non-GE program'', ''Federal agency with earnings data'', and ''Institutional grants and scholarships''; and

■ e. Removing the definitions of ''Metropolitan statistical area'', ''Poverty Guideline'', ''Qualifying graduate program'', and ''Substantially similar program''.

The addition and revisions read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose earnings outcomes are used to calculate the earnings premium measure under subpart Q of this part. The Secretary uses a single-year cohort period to calculate the measure for a program when the number of students (after exclusions identified in § 668.403(c)) in the single-year cohort period is 30 or more. The Secretary sequentially expands the cohort period when the number of students completing the program in the single-year cohort period is fewer than 30. The cohort period includes award years that are—

(1) For the single-year cohort period, the fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

(2) For the expanded cohort period, the Secretary will sequentially add prior award year data to the single-year cohort in the following order until the cohort equals or exceeds 30 students (unless the Secretary determines the data is unreliable, in which case the cohort size may be increased until the Secretary determines the data is statistically reliable)—

(i) Prior award years within the same program—

(A) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The sixth and seventh award years prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(ii) For all programs within the same 4-digit CIP code and credential level, the fourth, fifth, sixth, and seventh award years prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

* * * * *

Earnings. For the purposes of subparts Q and S of this part, wages, income as reported to the Internal Revenue Service, and other earned income, including from self-employment.

Earnings premium. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.403. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

Earnings threshold. (1) For undergraduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings for working adults aged 25–34, with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution during the year of the associated measured earnings—

(i) In the State in which the institution is located; or

(ii) Nationally, if fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located.

(2) For graduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings of working adults aged 25–34, with only a baccalaureate degree, who worked and were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be—

(i) The lowest of the median earnings of working adults—

(A) In the State in which the institution is located;

(B) In the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable, in the State in which the institution is located; or

(C) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable; or

(ii) If fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located, the lowest of the median earnings of working adults—

(A) Nationally; or

(B) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable.

(3) For States where the Census Bureau Data necessary to perform the calculations set forth in paragraphs (1) and (2) of this definition are not available, the earnings threshold will be one dollar.

(4) For programs offered by eligible foreign institutions—

(i) For undergraduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25–34 in the United States, with only a high school diploma or recognized equivalent, who were not enrolled in an eligible institution during the year of the associated measured earnings; or

(ii) For graduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25–34, with only a baccalaureate degree, who were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be the lowest of the median earnings of working adults—

(A) Nationally in the United States; or

(B) Nationally in the United States in the same field of study under the two-digit CIP code or four-digit CIP code, as such data is available and statistically reliable.

* * * * *

Eligible non-GE program. An educational program (other than a GE program) that is subject to HEA Section 454(c), offered by an institution and included in the institution's participation in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Includes all coursework associated with the program's credential level.

* * * * *

Federal agency with earnings data. A Federal agency with which the Department enters into an agreement to access earnings data for the earnings threshold or value-added earnings measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

* * * * *

Institutional grants and scholarships. Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver, including a grant or scholarship which could convert to a loan if a student does not meet certain requirements. An institutional grant or scholarship does not include Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Campus-based programs; or assistance that must be repaid.

* * * * *

■ 6. Amend § 668.14 by revising paragraphs (h) through (k) and adding paragraph (l) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(h)(1) In addition to any other conditions that the Secretary may deem appropriate, if an institution does not comply with the provisions of § 668.16(t) (at time of enactment) in two out of any three consecutive award years, the institution will be placed on provisional status and the institution's low-earning outcome programs shall not qualify for title IV, HEA funds.

(2) The institution shall have the opportunity to appeal the Secretary's determination that the institution failed to meet the conditions in § 668.16(t) in two out of any three consecutive award years under subpart G of this part.

(3) Notwithstanding paragraph (h)(1) of this section, an institution's low-earning outcome program is not subject to an automatic loss of eligibility for title IV, HEA funds if—

(i) The institution is not participating in the Direct Loan program and has not participated in that program for the five most recently completed award years; or

(ii) The institution agrees, in an amendment to its program participation agreement, that it will use its authority under 34 CFR 685.203(m)(2) to prevent students from borrowing Direct Loans in the program for at least five years.

(4) The exception in paragraph (h)(3)(ii) of this section only applies if

the Secretary determines that the program has failed to satisfy the requirements of § 668.402, the program is not a low-earning outcome program, and the Secretary determines that it is in the best interest of students.

(i) The Secretary permits the extension of eligibility if, within 120 days of the Secretary's determination, the institution and the Secretary agree to add an amendment with the provisions in paragraph (h)(3)(ii) of this section to the institution's program participation agreement.

(ii) Once granted, the exception will continue to apply for as long as the institution agrees to prevent Direct Loan borrowing in the program.

(i)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(j)(1) Except as provided in paragraphs (g) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date.

(k) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a)(1), (2), (4), or (7).

(l) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

■ 7. Amend § 668.16 by revising paragraph (t) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(t) Demonstrates that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S of this part;

* * * * *

■ 8. Amend § 668.43 by revising and republishing paragraph (d) to read as follows:

§ 668.43 Institutional and programmatic information.

* * * * *

(d)(1) *Program information website.* The Secretary will establish and maintain a website with information about institutions and their educational programs. For this purpose, an institution must provide to the Department such information about the institution and its programs as the Secretary prescribes through a notice published in the **Federal Register**. The Secretary may conduct consumer testing to inform the design of the website.

(i) The website must include, but is not limited to, the following items, to the extent reasonably available:

(A) The published length of the program in calendar time (*i.e.,* weeks, months, years).

(B) As calculated by the Secretary, the median length of calendar time (*i.e.,* weeks, months, years) taken for full-time and less-than-full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

(C) The total number of individuals enrolled in the program during the most recently completed award year.

(D) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(E) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a Direct Loan program loan, a private loan, or both for enrollment in the program.

(F) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(G) As provided by the Secretary, the median earnings of students who completed the program as obtained under § 668.404(c), or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(H) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(I) As calculated by the Secretary, the program's earnings premium measure.

(ii) The website may also include other information deemed appropriate by the Secretary, such as the following items:

(A) The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site.

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

(C) As calculated by the Secretary, the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment, and the total net cost of attendance paid by students completing the program.

(D) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on Direct Loan program loans during a period determined by the Secretary.

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

(3) *Distribution to prospective students.* The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(4) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

■ 9. Amend § 668.91 by revising paragraph (a)(3)(vi) to read as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a limitation or termination action against a GE program or eligible non-GE program based upon the program's failure to meet the requirements in § 668.403, the hearing official must limit or terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

■ 10. Revise subpart Q to read as follows:

Subpart Q—Student Tuition and Transparency System

§ 668.401 Student tuition and transparency system scope and purpose.

General. This subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

(a) An institution reports information about the program to the Secretary; and

(b) The Secretary assesses the program's earnings outcomes.

§ 668.402 Student tuition and transparency system framework.

(a) *General.* The Secretary assesses the program's earnings outcomes using an earnings premium measure.

(b) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in §§ 668.403 and 668.404.

(c) *Outcomes of the earnings premium measure.* (1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program equal or exceed the earnings threshold.

(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are less than the earnings threshold.

(3) If a program is designed to prepare a student for employment in a recognized occupation that qualifies for a deduction of tip income under 26 CFR 1.224–1(h), and 50 percent or more of individuals in the occupation receive income from tips, the program will not be considered to have passed or failed the earnings premium measure for any award year in which the Secretary evaluates earnings data from tax year 2025 or prior. In this circumstance, the Department will make earnings data and the earnings threshold that would have been used for the program publicly available.

§ 668.403 Calculating earnings premium measure.

(a) *General.* Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the earnings premium measure for a program by determining whether the median annual earnings of the students who completed the program equal or exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.* (1) The Secretary obtains from a Federal agency with earnings data, under § 668.404, the median annual earnings of the students who completed the program during the cohort period for the fourth tax year following program completion, who are working and are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of working adults using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually.

(c) *Exclusions.* The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that—

(1) One or more of the student's Direct Loan program loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled in any other educational program at the institution or at another eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(5) The program in which the student was enrolled was an approved prison education program;

(6) The program in which the student was enrolled was a comprehensive transition and postsecondary program; or

(7) The student died.

(d) Earnings premium measures not issued. The Secretary does not issue the earnings premium measure for a program under § 668.405 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the fully expanded cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

§ 668.404 Process for obtaining data and calculating earnings premium measure.

(a) *Administrative data.* In calculating the earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview.* The Secretary uses the administrative data to—

(1) Compile lists of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under § 668.403(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information reported by the institution on which the list was based, no later than 60 days after the date the Secretary provides the list to the institution;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the earnings premium measure and provide it to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary the median annual earnings of the students on the list who are working and whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form.

(d) *Calculating earnings premium measure.* If the Federal agency with earnings data includes reports from records of earnings on at least 16 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the earnings premium measure for each program.

§ 668.405 Determination of the earnings premium measure.

(a) For each award year for which the Secretary calculates the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The earnings premium measure for each program as determined under § 668.403.

(2) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(3) Whether the institution is required to provide the student warning under § 668.605.

(4) Whether the program could become ineligible under subpart S of this part based on its final earnings premium measure for the next award year for which it is calculated for the program.

(5) The determination by the Secretary that the program is a low-earning outcome program and will become ineligible for Direct Loan funds under Subpart S of this part because the program has failed the earnings premium measure in two out of three consecutive award years for which the earnings premium measure is calculated.

§ 668.406 Reporting requirements.

(a) *Data elements.* In accordance with procedures established by the Secretary, an institution offering any GE program or eligible non-GE program must report to the Department—

(1) For each GE program and eligible non-GE program, for its most recently completed award year—

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in any State, and, consistent with the requirements in 34 CFR 668.43(a)(5)(v), a list of all States where the institution has determined the program meets such requirements, including as part of the institution's obligation under 34 CFR 668.14(b)(32); and

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds.

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's total cost of attendance (COA) for the award year under HEA section 472;

(iv) The total actual tuition and fees assessed to the student for the award year;

(v) The student's residency tuition status by State or district, as applicable;

(vi) The student's total allowance for books, supplies, and equipment from their COA for the award year under HEA section 472;

(vii) The student's total allowance for housing and food from their COA for the award year under HEA section 472;

(viii) The amount of institutional grants and scholarships disbursed to the student for the award year;

(ix) The amount of other Federal, State, Tribal, or private grants disbursed to the student for the award year; and

(x) The amount of any private education loans disbursed to the student for the award year for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The total amount the student received from private education loans, as defined in 34 CFR 601.2(b), for enrollment in the program that the institution is, or should reasonably be, aware of;

(ii) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(iii) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses;

(iv) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program;

(v) The total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the **Federal Register**, any other information the Secretary requires the institution to report.

(b) *Initial and annual reporting.* (1) An eligible institution must report the information required under paragraph (a) of this section no later than—

(i) October 1, following the date these regulations take effect, for the two most recently completed award years prior to that date; and

(ii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the **Federal Register**.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation of why the institution failed to comply with any of the reporting requirements that is acceptable to the Secretary.

§ 668.407 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

■ 11. Revise subpart S to read as follows:

Subpart S—Earnings Accountability

Sec.

§ 668.601 Earnings accountability scope and purpose.

(a) *General.* This subpart applies to an eligible non-GE program or a GE program offered by an eligible institution and establishes rules and procedures under which the Secretary determines that the program is eligible for Direct Loan program funds.

(b) *Exemption.* The provisions of this subpart shall not apply to programs at institutions that enroll only individuals with a documented *Specific Learning Disability* or *Autism,* as defined under 34 CFR 300.8.

§ 668.602 Earnings accountability criteria.

(a) A GE program or eligible non-GE program provides training that leads to acceptable earnings outcomes if the program—

(1) Satisfies the applicable certification requirements in § 668.604; and

(2) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

§ 668.603 Low-earning outcome programs.

(a) *Low-earning outcome programs.* If a GE program or eligible non-GE program is a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated, the program is a low-earning outcome program and the Secretary notifies an institution of its determination that a program is a low-earning outcome program and the date that the program's participation in the Direct Loan program will end in a notice of determination under § 668.405.

(b) *Process for appeal.* An institution may appeal a determination under paragraph (a) of this section, through a process described by the Secretary, within 30 days of receipt of a notification of determination indicating that a program is a low-earning outcome program.

(1) An institution may only appeal an earnings premium measure that the program has failed in the three most recent consecutive award years for which the measure was calculated.

(2) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under paragraph (d) of this section while the Secretary considers the appeal.

(c) *Basis for appeal.* Institutions may not appeal the Secretary's determination under paragraph (a) except on the basis of an error in the Secretary's calculation of the program's earnings premium measure under § 668.403, including only—

(1) The individuals that are included in the list of completers provided to the Federal agency with earnings data under § 668.404;

(2) The determination of the appropriate earnings threshold under the definition of *earnings threshold* in § 668.2;

(3) The comparison of the median earnings determined by the Federal agency with earnings data and the earnings threshold for the program; and

(4) Such other bases for appeal determined by the Secretary.

(d) *Restrictions*—(1) *Direct Loan program ineligibility.* Except as provided in § 668.26(d), or as provided in paragraph (d)(4) of this section, an institution may not disburse Direct Loan program funds to students enrolled in a low-earning outcome program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the Direct Loan program eligibility of a failing program that it discontinued voluntarily either before or after the earnings premium measure is issued for that program, or reestablish the Direct Loan program eligibility of a program that is ineligible under the earnings premium measure, until two years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility.* A low-earning outcome program, or a failing program that an institution voluntarily discontinues, remains ineligible for Direct Loan program participation until the institution establishes the eligibility of that program under § 668.604(b).

(4) *Retaining eligibility during orderly program closure.* (i) Notwithstanding paragraph (d)(1) of this section, if the Secretary determines that a program has failed to satisfy the requirements of § 668.402, the program is not a low-earning outcome program, and the Secretary determines that it is in the best interest of students, the Secretary may allow such program to continue participation in the Direct Loan program. Such participation shall not exceed the lesser of 3 years or the full-time normal duration of the program. The Secretary permits the extension of eligibility if, within 120 days of the Secretary's determination, the institution and the Secretary agree to add an amendment to the institution's program participation agreement, that requires the institution to—

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

(B) Engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program regardless of their academic progress at the time of closure;

(C) Inform the institution's State authorizing agency and accrediting agency and to meet any program discontinuation or closure requirements of those agencies;

(D) Acknowledge that the program has been voluntarily discontinued and subject to the requirements of § 668.603(c)(2);

(E) Maintain the program under a warning status and provide warning notice to students in accordance with the requirements set forth in § 668.605, with the exception of (c)(1)(ii) of that section;

(F) Provide to students the academic and financial options to continue their education in another program to which the student's academic credit would transfer that has not failed to satisfy the requirements of § 668.402, either at the same institution or a different institution;

(G) Agree not to restart the same program or to start a program that shares the same 4-digit CIP code for at least two award years following the completion of the orderly closure described under paragraph (d)(4)(i)(B) of this section.

(ii) An institution may not add the addendum provided in § 668.603(c)(4)(i) in cases where the program or the institution based upon the program's compliance is subject to a probation or equivalent action by a recognized accrediting agency or State regulatory agency (including licensing Boards), or where the institution is subject to § 668.162(c) or (d)(2).

(5) *Limitation.* The ending of a program's participation in the Direct Loan program is not considered a limitation under § 668.94.

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

(a) *Program participation agreement certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs and eligible non-GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (c) of this section. As provided under 34 CFR 600.21(a)(11)(vi), an institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(b) *Establishing eligibility and disbursing funds.* (1) An institution establishes a program's eligibility for Direct Loan program funds by updating the list of the institution's Direct Loan-eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's Direct Loan-eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (c) of this section. Except as provided in paragraphs (b)(2) and (3) of this section, after the institution updates its list of Direct Loan-eligible programs, the institution may disburse

Direct Loan program funds to students enrolled in that program.

(2) An institution with one or more failing programs that the institution voluntarily discontinued or that became ineligible as described in §§ 668.603(c) may not update its list of Direct Loan-eligible programs as outlined in this paragraph (b)(2).

(i) Until the two-year loss of eligibility period under § 668.603 has expired for the failing program, the institution may not update its list of Direct Loan-eligible programs to include a program that—

(A) Is offered at the same credential level as the failing program;

(B) Shares the same 4-digit CIP code as the failing program; and

(C) Shares one or more overlapping SOC codes, according to the CIP SOC Crosswalk that is provided by a Federal agency, as the failing program;

(ii) After the two-year loss of eligibility period under § 668.603 has ended, the institution may not update its list of Direct Loan-eligible programs to include the failing program if the program was also a failing program under § 668.402 in either of the two most recent award years; and

(iii) After the two-year loss of eligibility period under § 668.603 has ended, if the failing program was also a failing program under § 668.402 in either of the two most recent award years, the institution may not update its list of Direct Loan-eligible programs to include a program that—

(A) Is offered at the same credential level as the failing program;

(B) Shares the same 4-digit CIP code as the failing program; and

(C) Shares one or more overlapping SOC codes, according to the CIP SOC Crosswalk that is provided by a Federal agency, as the failing program.

(c) *Direct Loan program eligibility certifications.* An institution certifies for each Direct Loan-eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that—

(1) The institution agrees to comply with the requirements of subparts Q and S of this part; and

(2) Such program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

§ 668.605 Student warnings.

(a) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program or eligible non-GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible for the Direct Loan program under this subpart based on its final earnings premium measure for the next award year for which it is calculated for the program.

(b) *Subsequent warning.* If a student or prospective student receives a warning under paragraph (a) of this section, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student, unless, since providing the initial warning, the program has passed the earnings premium measure for the two most recent consecutive award years in which the metric was calculated for the program.

(c) *Content of warning.* The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the **Federal Register**, that—

(i) The program has not passed standards established by the U.S. Department of Education based on the reported earnings of program graduates;

(ii) The program could lose access to Direct Loans based on the next calculated program metrics; and

(iii) For an institution that has failed to comply with the requirements of § 668.16(t) in at least one of the three most recent consecutive award years, the program could also lose access to the other title IV, HEA programs;

(2) The relevant information to access the program information website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds to the student; and

(4) For a student who is eligible for Pell Grant funds, a description of the student's remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility.

(d) *Delivery to enrolled students.* (1) An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.405 and maintain documentation of its efforts to provide that warning.

(2) The warning must be the only substantive content contained in these written communications.

(3) The warning regarding the student's remaining Pell Grant eligibility under § 668.605(c)(4) must be provided to an enrolled student at the time that the institution makes a disbursement of Pell Grant funds to that student.

(e) *Delivery to prospective students.* (1) An institution must provide the warning as required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(i) Hand-delivering the warning as a separate document to the prospective student or third party, individually or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in paragraph (f) of this section.

(f) *Acknowledgment prior to enrollment and disbursement.* An institution may not allow a prospective student seeking title IV, HEA assistance to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse title IV, HEA funds to the student until the student or prospective student completes the acknowledgment described in paragraph (c)(3) of this section.

(g) *Discharge claims.* The provision of a student warning or the acknowledgment described in paragraph (c)(3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive evidence against a student's claim if applying for a loan discharge.

§ 668.606 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of this part and subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 12. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 13. Effective August 31, 2026, amend § 685.102(a)(1) by adding, in alphabetical order, ''Eligible non-GE program'' and ''Gainful employment program (GE program)'' to read as follows:

§ 685.102 Definitions

(a)

(1) * * *

Eligible non-GE program

* * * * *

Gainful employment program (GE program)

* * * * *

■ 14. Effective August 31, 2026 revise § 685.300(a) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program

(a) *General.* Participation of a school in the Direct Loan program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations;

(2) Enter into a written program participation agreement with the Secretary; and

(3) As part of such agreement, in order to maintain eligibility for a GE program or an eligible non-GE program to participate in the Direct Loan program, show that such program meets the student tuition and transparency system requirements under 34 CFR part 668, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

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[FR Doc. 2026–13286 Filed 6–30–26; 8:45 am]

BILLING CODE 4000–01–P